

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1183

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1183


2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1183

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Jan 17, 2001

Tape Number	Side A	Side B	Meter #
1	X	X	45.37-20.00
Committee Clerk Signature 			

Minutes: Chairman R. Berg, ~~Vice-Chair~~ G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Mark Bachmeier: *Commissioner of Labor* **Written testimony sponsoring bill**

Rep Ekstrom: Can you protect wages denied by an employer?

Bachmeier: Yes, issuing this bill will force the timing of being paid to be more effective.

Chairman Berg: So you're just trying to create uniformity so it's simple and clear?

Bachmeier: Yes, the current timeline is impractical.

Rep Thorpe: Does unused time off need to be on the final pay check?

Bachmeier: Yes

Rep Ruby: Is the term "faithfully" used to loosely?

Bachmeier: "Faithfully" mean any work done at all.

Rep Kasper: I still see problems. Can we adjust other parts of this?

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1183

Hearing Date Jan 17, 2001

Bachmeler: I don't oppose and additional changes.

Rep Lemieux: What is the influence on salaried employees?

Bachmeler: There is no change to entitle pay. Payment is prorated for work done until finished.

Rep Kelser: Could we add language to correct those windows of work that occur after the end of a pay period but prior to a payday?

Bachmeler: That would seem to do it and I'll see about drafting something to look over.

Chairman Berg: We'll close the hearing on HB 1183 and hold until later.

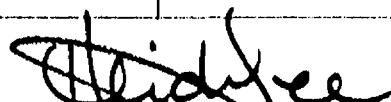
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1183 (B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Jan 31, 2001

Tape Number	Side A	Side B	Meter #
2		X	49
3	X		-1.68
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

R. Kasper: *Overview Bill and Propose Amendment*

R. Ruby: Should change "pay day" to "pay period."

V.C. Keiser: I think we have to include both elements.

C. Berg: We should get back with Bachmeier on this.

R. Froseth: I recommend a Do Pass, without amend.

R. Severson: I second.

14 yes, 1 no, 0 absent
Carrier Rep. Lemieux

Date: 1-31-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Click here to type Bill/Resolution title 1183

House Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Froseth Seconded By Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper		✓
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein	✓	
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich	✓		Rep. Doug Lemieux	✓	
Rep. Glen Froseth	✓		Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe	✓	

Total (Yes) 14 No 1

Absent 0

Floor Assignment Lemieux

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 31, 2001 4:15 p.m.

Module No: HR-17-2041
Carrier: Lemieux
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1183: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends
DO PASS (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1183 was placed on
the Eleventh order on the calendar.

2001 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1183

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1183

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 21, 2001.

Tape Number	Side A	Side B	Meter #
1	x		29.2 to 52.5
2	x		7.2 to 9.5
Committee Clerk Signature <i>Doris E. Pring</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on HB 1183 relating to wages payable upon separation from employment .

Mark Bachmeier, Commissioner, ND DOL : Intent to clarify and simplify, and because section 34-14-03 creates unenforceable violations. Time frames existing in the law are commonly violated because of payroll processing delays not because of wage disputes. Written testimony attached.

Senator Mathern: If employee quits and has vacation accrued and the next day is the regularly scheduled pay day, do I have to pay them everything the next day?

M Bachmeier: Under current law technically that would be so, you may have already processed the payroll, have the checks ready and it would be impracticable to figure out how much vacation is owed and process that. The employee calls the DOL to complain, we would respond file a complaint, under proposed change you can give them the rest of the money owed on the next

payroll day.

Senator Klein: Last check has to be sent by certified mail?

M Bachmeier: We allow other arrangements to be made even though certified mail would be a protection for the employer. Only option under current law if employee is terminated is by certified mail, under proposed change if they have agreed to different means (like direct deposit) that would be allowed.

Senator Krebsbach: Wouldn't it be easier if language read " employer shall pay as agreed on by both parties or by certified mail"? How often is it sent by certified mail?

M Bachmeier: If it makes the section clearer I wouldn't oppose it. Rarely, but important provision in case of dispute.

Senator Every: Wages are due immediately, since under present law we cannot enforce it we are changing the law?

M Bachmeier: Only when person is fired are they due immediately but law already provides they are payable on another date. So we are making that consistent.

Every: Is retirement money included?

No, only wages and additional compensation like bonuses, commissions, things related to the performance of work. We have no jurisdiction over pensions.

No opposing testimony. Hearing closed.

Tape 2-A-7.2 to 2-A-9.5. Discussion held.

Senator Espegard: Motion : do pass. **Senator Krebsbach:** Second

Roll call vote: 7 yes; 0 no. Motion carried. Floor assignment: **Senator Espegard.**

Date:

Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Industry, Business and Labor

Committee



or



Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded

By

[illegible]

Total

(Yes)

No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 21, 2001 1:38 p.m.

Module No: SR-32-4221
Carrier: Espegard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1183: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1183 was placed
on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1183

John Hoeven
Governor

Mark D. Bachmeier
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

www.state.nd.us/labor
E-mail: labor@state.nd.us

Testimony on HB 1183
Prepared for the
House Industry, Business, and Labor Committee

January 17, 2001

Chairman Berg and members of the Committee, good morning. For the record, my name is Mark Bachmeier and I am the Commissioner of Labor.

North Dakota Century Code section 34-14-03 provides for the timing for the payment of wages to an employee who separates from employment with an employer. The section has several things that are awkward about it and one larger problem. HB 1183 proposes to resolve all of the issues by simplifying the entire section.

Currently, the section contains separate provisions for the payment of wages upon separation from employment depending upon whether an employee is terminated from employment by the employer, quits voluntarily, or has his or her employment suspended as the result of an industrial dispute. When an employee is terminated from employment, the employee's unpaid wages become due immediately and payable within fifteen days or at the next regular pay period, whichever occurs first. When an employee quits voluntarily or is suspended from work due to an industrial dispute, that person's wages become due and payable at the next regularly scheduled payday.

There are two minor awkward issues about the first provision. First, to say that the unpaid wages become due immediately but payable at a later time is an unnecessary distinction that leads to questions about what it actually means for the wages to be "due immediately." Secondly, to have the wages due at the next regular pay period is unclear because a pay period is a period of time not a point in time.

In addition, the section provides for a penalty if the wages are not paid within the stated time only in cases where the employee is terminated from employment. Most disputes involving the withholding of an employee's final wages occur when an employee quits voluntarily but the penalty does not apply to that circumstance. Finally, the section requires employers to pay the final wages of an employee who is terminated from employment by certified mail. In most cases, the employee prefers to arrange to pick up the final paycheck and we regularly allow it if the employer agrees to it.

The primary reason we filed HB 1183, however, is that section 34-14-03 creates unenforceable violations. It is a regular occurrence for last paychecks to not be paid within the times currently stated in the section. In most of those instances, the actual

wages are not in dispute but payment is delayed by issues relating to the processing of payrolls. It is very common for a company's payroll to be processed using automated systems, often at a central location out of state, or by a third party payroll company. It is also common for this to cause lags between time worked by employees and the payment of wages for that time. Our authority to collect unpaid wages exists through a process provided for in the remaining sections of chapter 34-14. The process involves the filing of a claim for unpaid wages, the investigation of the claim by the department, and enforcement of the claim if wages are determined to be owed. Most people receive their final paychecks long before we can complete that process. We have no authority to compel employers to comply with the time limitations currently stated in the section.

HB 1183 proposes a simpler set of provisions whereby unpaid wages would be due and payable at the regular paydays established in advance by the employer for the periods worked by the employee regardless of the reasons for the separation from employment. The section would additionally require an employer who terminates an employee to pay the employee's unpaid wages by certified mail or as otherwise agreed upon by both parties. And, finally, the penalty provided in the section would apply to all circumstances in which the wages are not paid within the stated time.

You may also note that the bill eliminates additional conditions relating to the payment of wages when employment is suspended due to an industrial dispute. Specifically, the current provision requires the wages to be paid when such a work suspension occurs to include, "without abatement or reduction, all amounts due to all persons whose work has been suspended as a result of such industrial dispute, together with any deposit or guaranty held by the employer for the faithful performance of the employee's duties." It is my opinion that this language is unnecessary because, as long as the work suspension is considered a separation from employment for purposes of wages, all employees are entitled to be paid, unauthorized deductions from employees' wages are not allowed, and other forms of compensation related to the performance of work are compensable under other provisions of century code and administrative code. In other words, I do not believe that eliminating the language from the section reduces the protections provided for employees.

Thank you for your time. I would be pleased to answer any questions you may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1183

Page 1, line 10, overstrike "at the regular paydays" and after "payable" insert "within ten days after the next regular payday"

Page 1, line 11, overstrike "for the periods worked by the employee"

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1183

Page 1, line 11, after "employee." insert "If the final regular payday for the periods worked by the employee occurs within ten days of the employee's last day of employment, the employer shall pay all wages due to the employee within ten days after the regular payday."

John Hoeven
Governor

Mark D. Bachmeier
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

www.state.nd.us/labor
E-mail: labor@state.nd.us

**Testimony on HB 1183
Prepared for the
Senate Industry, Business, and Labor Committee**

February 21, 2001

Chairman Mutch and members of the Committee, good morning. For the record, my name is Mark Bachmeier and I am the Commissioner of Labor.

HB 1183 proposes to clean up and simplify section 34-14-03, which provides for the timing for the payment of wages to an employee who separates from employment with an employer.

Currently, the section contains separate provisions for the payment of wages upon separation from employment depending upon whether an employee is terminated from employment by the employer, quits voluntarily, or has his or her employment suspended as the result of an industrial dispute. When an employee is terminated from employment, the employee's unpaid wages become due immediately and payable within fifteen days or at the next regular pay period, whichever occurs first. When an employee quits voluntarily or is suspended from work due to an industrial dispute, that person's wages become due and payable at the next regularly scheduled payday.

There are two minor awkward issues about the first provision. First, to say that the unpaid wages become due immediately but payable at a later time is an unnecessary distinction that leads to questions about what it actually means for the wages to be "due immediately." Secondly, to have the wages due at the next regular pay period is unclear because a pay period is a period of time not a point in time.

In addition, the section provides for a penalty if the wages are not paid within the stated time only in cases where the employee is terminated from employment. Most disputes involving the withholding of an employee's final wages occur when an employee quits voluntarily but the penalty does not apply to that circumstance. Finally, the section requires employers to pay the final wages of an employee who is terminated from employment by certified mail. In most cases, the employee prefers to arrange to pick up the final paycheck and we regularly allow it if the employer agrees to it.

The primary reason we filed HB 1183, however, is that section 34-14-03 creates unenforceable violations. It is a regular occurrence for last paychecks to not be paid within the times currently stated in the section. In most of those instances, the actual

wages are not in dispute but payment is delayed by issues relating to the processing of payrolls. It is very common for a company's payroll to be processed using automated systems, often at a central location out of state, or by a third party payroll company. It is also common for this to cause lags between time worked by employees and the payment of wages for that time. Our authority to collect unpaid wages exists through a process provided for in the remaining sections of chapter 34-14. The process involves the filing of a claim for unpaid wages, the investigation of the claim by the department, and enforcement of the claim if wages are determined to be owed. Most people receive their final paychecks long before we can complete that process. We have no authority to compel employers to comply with the time limitations currently stated in the section.

HB 1183 proposes a simpler set of provisions whereby unpaid wages would be due and payable at the regular paydays established in advance by the employer for the periods worked by the employee regardless of the reasons for the separation from employment. The section would additionally require an employer who terminates an employee to pay the employee's unpaid wages by certified mail or as otherwise agreed upon by both parties. And, finally, the penalty provided in the section would apply to all circumstances in which the wages are not paid within the stated time.

You may also note that the bill eliminates additional conditions relating to the payment of wages when employment is suspended due to an industrial dispute. Specifically, the current provision requires the wages to be paid when such a work suspension occurs to include, "without abatement or reduction, all amounts due to all persons whose work has been suspended as a result of such industrial dispute, together with any deposit or guaranty held by the employer for the faithful performance of the employee's duties." It is my opinion that this language is unnecessary because, as long as the work suspension is considered a separation from employment for purposes of wages, all employees are entitled to be paid, unauthorized deductions from employees' wages are not allowed, and other forms of compensation related to the performance of work are compensable under other provisions of century code and administrative code. In other words, I do not believe that eliminating the language from the section reduces the protections provided for employees.

Thank you for your time. I would be pleased to answer any questions you may have.