

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/05/2019**

Bill/Resolution No.: SB 2145

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

A bill to amend and reenact sections of code relating to investigation of wage claims, to provide an effective date, and to declare an emergency.  
 No fiscal impact as department already conducts investigations of wage claims.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

No fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No revenues will be realized.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No fiscal impact.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

No additional appropriations will be required.

**Name:** Loni G.

**Agency:** Labor and Human Rights

**Telephone:** 7013282660

**Date Prepared:** 01/09/2019

**2019 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2145**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2145  
1/14/2019  
Job # 30713

- Subcommittee  
 Conference Committee

Committee Clerk: Amy Crane

### Explanation or reason for introduction of bill/resolution:

Relating to investigation of wage collection claims, to provide and effective date; and to declare an emergency.

### Minutes:

Att #1 – Michelle Kommer

**Chairman Klein:** Opened the hearing on SB 2145. All members were present.

**Michelle Kommer, Labor Commissioner:** See attachment #1 for testimony in support of the bill.

**(7:20)Senator Piepkorn:** The totaled and settled amounts seem flipflopped. I don't quite understand the chart. It looks like the settle is more than the total number of claims. Am I just reading that wrong?

**Michelle:** So this is the number of claims that we got in the year, and this is the amount settled. So you may be right that the numbers are flipped. But the darker bar at the bottom represents where we're seeing settlements.

**Chairman Klein:** So if you start way over on the left over to 49, you don't settle less than 1 or 2%, all the way until you get to the 200-499 where it jumps up almost to ten percent. So you're getting things done once it gets a little higher and then it really gets good but once you get into the over 15,000, you don't do so well anymore.

**Michelle:** That's correct.

**Senator Piepkorn:** But so for the record, the colors are backwards.

**Michelle:** That's correct and we'll send the power point to the clerk so we're on record.

**(10:40)Chairman Klein:** Do you find that those citizens that are coming through your office, are they concerned/upset, do you have any experience with people under the \$125 that feel you should be speaking up for them? How is that working?



**Michelle:** I can speak probably more to those that are over, but I have another important component. Which is that a person can always go to small claims court up to \$15,000, so those that are under the current floor can go to small claims court. And that lines up with our current ceiling. And those folks, we are required to refer them to small claims court if the jurisdiction is appropriate. And also that they have a remedy in district court that's part of our process. When we don't accept one of these claims for being over the floor or under the ceiling, we advise people of what their opportunities are. My sense is that that has been part of our process.

**Chairman Klein:** So you can give them advice as they're leaving the door, saying we can't do this but this is how you can get it done?

**Michelle:** Correct.

**Chairman Klein:** But is it as easy as saying, well you always did it before?

**Michelle:** I think that response would only come if a person had experience with our department. And while we do have repeat filers, it happens pretty rarely.

**Senator Roers:** If you send them to small claims court for under, and then you're sending them to court if they're over, is there a mediation or arbitration clause/opportunity?

**Michelle:** Inside of our process, once you're in, in between \$250-\$15,000, mediation is an important part of our process. We do advise and it's a part of our correspondence, when a person is working with us, we do advise the employee and employer to try to work together to settle the matter. You could look on the website right now, and that is advice that's given right on our website that the first step should be to 1) make a written demand for wages and 2) try to work the matter out with the employer.

**Senator Roers:** So between the \$125 and the \$15,000, you said \$250?

**Michelle:** Pardon me.

**Senator Roers:** So between the \$125 and \$15,000, you would, if someone comes in and they are within that zone, you try to mediate that before? Your process is to mediate is it not?

**Michelle:** Definitely. And I didn't focus on that in the previous slide but it comes up again later. Where we emphasize settlement throughout, the process.

**Chairman Klein:** We don't want to get to the point where it goes to small claims court, we want to work it out?

**Michelle:** That's correct.

**(19:49)Chairman Klein:** What we're doing here is exactly like what we're currently doing?

**Michelle:** The wage claim floor and ceiling, you're right is a request to continue what we're currently doing. There are no changes to what we're currently doing and the only change to

that part of the statute is to remove the sunset date. So that's exactly the same we've been doing that for two years. The subpoena power is a new request, but it is to make it consistent with what we're already doing in human rights and housing.

**Chairman Klein:** And what it does is provide speed to the claimant? And to the person charged with not following the rules? It speeds things up?

**Michelle:** You're correct about that. And you make a point that I have failed to make, too. Which is the more efficiently we operate, the more efficiently we serve our citizens. There are claims waiting to be investigated behind the ones that are taking more time. So for many reasons, us being more efficient actually benefits all the citizens we interact with.

**Chairman Klein:** That would be the argument I guess we could have, if we're not benefiting the citizens and only benefiting the department. But if, what I just heard you say, was it provides more help for the folks that are coming in behind, just so that our people aren't just working on this issue, those things are coming through the system and getting settled.

**Michelle:** Yes, thanks for making that point in a much more important way. We have a citizen focus. I don't want to leave the committee with the impression that these changes are to benefit the department, in the end they are to benefit the citizens.

**Chairman Klein:** When we complete our work, we'll have helped the department but we'll have also helped the citizens and I think that's the goal.

**Michelle:** Thank you.

**Senator Roers:** It seems to be crazy that you would have that many claims in the \$100-\$125 and less category. It would consume massive amounts of time to process those, so again you're taking those claims and saying you need to go to small claims court?

**Michele:** Yes, was are and let me add that the data that was analyzed to provide the information before you is from 2012-2017. We all know what happened during those years in western North Dakota in particular. And I would point out that there were a lot of employers leaving the state, our wage claims more than doubled during that time period. And a lot of that activity was a result of employers leaving the state leaving western North Dakota, and in my sense, and I don't have the data to show this, but particularly on the larger side and the high volume of very small claims was related to that phenomenon. And I do believe that that might explain why my projections two years ago differ from what was actualized. In the sense that it was much smaller, because the data that we used to do this analysis had some anomalies.

**Chairman Klein:** So the data from your projected impact which you thought 5% and 10% and the actual, was certainly less than half. And that would be the phenomenon you were suggesting, the western North Dakota issue.

**Chairman Klein:** Closed the hearing on SB 2145.

**Senator Kreun:** Having sat on the committee, and having been in small claims court, it's a very fair process and it goes relatively quick, and the judge is there and you get to explain things in very understanding terms everybody brings forth their comments and what not so I do believe that's as good a process as you can get and it does alleviate us from working on those small claims. As Senator Roers indicated, that does take a lot of time and effort and are settled in that small claims arena very quickly and amicably and with that I move for a **Do Pass**.

**Senator Roers: Seconded.**

**Chairman Klein:** Asked for discussion from the committee.

**Chairman Klein:** Before the committee contacted me I was in a conversation with Senator Hogue you brought that to my attention and he had that discussion last session when it was added to the appropriations thing and when the sunset was provided until we got it, and he said we should fix this and he gave us all the reasons we heard today.

**Senator Roers:** Just a comment, as we look at this resolution process. Taking the little stuff and putting it in one bucket and the big stuff and putting it the big stuff in another bucket and mediating the stuff in the middle. We have this very same problem in the construction contracting process. And its kind of intriguing to see that maybe we've got something here that we can bring to the table with that situation. Because right now as of today the attorney general's office strikes out the lines in our contracts that deals with mediation and arbitration. And we're like why? Well the reason why is that they don't want to deal with the little stuff they only want to deal with the big stuff. The problem is there's a whole plethora of situations that are small, medium, and large they only deal with the large. So I think it's a conversation worth having.

**A Roll Call Vote was Taken: 6 yeas, 0 nays, 0 absent.**

**Motion Carried.**

**Senator Roers will carry the bill.**

Date: 1/14/19  
Roll Call Vote #: \_\_\_\_\_

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2145**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Kreun Seconded By Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Roers

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

**REPORT OF STANDING COMMITTEE**

**SB 2145: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2145 was placed on the Eleventh order on the calendar.

**2019 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2145**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

SB 2145  
2/27/2019  
32893

- Subcommittee  
 Conference Committee

Committee Clerk: Ellen LeTang

### Explanation or reason for introduction of bill/resolution:

Investigation of wage collection claims.

### Minutes:

Attachment 1

**Chairman Keiser:** Opens the hearing on SB 2145.

**Sen Klein~District 14:** Need to create some parameters on where we need to be when we bring a complaint forward through a filing. We are trying to do is remove the sunset.

**Michelle Kommer~ND Department of Labor:** Attachment 1.

**15:30**

**Rep Laning:** The enforcement aspect that is carried on by the attorney general's office. If you have a totally uncooperative employer, what sort of enforcement does the Attorney General exercise.

**Michelle Kommer:** It would take a traditional judgment on the determination by the Attorney General.

**Rep Bosch:** I'm trying to understand the online process to file a claim. How does it work?

**Michelle Kommer:** Now, the online form has a validation component & they will get a notice. If the person still persists, they can still submit the form. This would prompt a more personal interaction.

**Rep Bosch:** Do you have about 600 claims a year?

**Michelle Kommer:** It has fluctuated over the last 10 years. We are rounding out at about 400.

**Rep Richter:** The graph on page 7, it looks to me that there is a higher claims level.

**Michelle Kommer:** Gives him a colored graph to clarify Rep Richter question.

**Rep M Nelson:** The tipped employees, how does your department handle the tips when doing an investigation?

**Michelle Kommer:** I'm not sure I can respond to that without a specific scenario. I can direct you to the web site.

**Rep M Nelson:** Specifically, the pooled tips, I have never met single employee that actually been in a situation, where they vote of the employees & the majority approve that before you can pool tips. I have not found a single North Dakotan that ever voted on pooling tips. How would your department on pooled tips, handle that?

**Michelle Kommer:** In the investigation, we follow the law precisely.

**Rep M Nelson:** If they voted to pool in 1958, what is your standard?

**Michelle Kommer:** It's specific to the facts & claims before us.

**Rep Schauer:** I look at your numbers & it looks like it doesn't have that big of impact. Is there something else that you could do to increase the efficiency? How would it have an impact on personnel?

**Michelle Kommer:** We have taken measures to increase efficiency. The impact, there isn't significant dollars, for you second question.

**Chairman Keiser:** Page 7, below the floor, you are notifying the employee that you will not take it & investigate and they can go to small claims court. How much does it cost to go to small claims court?

**Michelle Kommer:** Yes, we do notify them of that. I don't have the current fee schedule with me.

**Chairman Keiser:** It doesn't seem to be that the claim is worthwhile. Why don't we notify both parties because there is such a small percentage of claims? Notify them that they can go to small claims court but I bet you, 99.9% the employers would pay the fee & say forget it.

Those people may have legitimate complaints & we are putting the burden on them, rather than your department serving them. Just because they are small. Why don't we have an alternative additional by both parties.

**Michelle Kommer:** You're right, we don't notify the employers. The level of success is very low of success.

**Chairman Keiser:** You might say we are not investigating for the very bottom & you would get resolution pretty quickly.



**Michelle Kommer:** Could possibly.

**Rep Bosch:** I agree with you but, I would like to know that on the high side.

**Chairman Keiser:** If you get a notice of the high claim, you will know & it's certified.

**Rep D Ruby:** Page 3, subsection 2, is that where the employee will do liquidation, concerns, or limitations to receive funds that you determine a claim that should be enforced. The last sentence, the consent of the assigning employee at the time of the assignment, the commissioner may settle & adjust the claim to the same extent as the assigning employee. Is that where the employee would agree to take whatever is settled? If don't agree to the settlement, then what do you do?

**Michelle Kommer:** Yes, that is in the section of statute. There are times when we get concluded in the investigation, we issue a no merit determination letter. It is possible for a wage claim to have no merit determination get settled early on. If an employer gets a letter that says that there is a \$100 issue with the Dept of Labor, sometimes they determine that it's not worth their time to proceed through the rest of the process.

**Chairman Keiser:** Do you send notifications to both parties before you turn it over to the Attorney General?

**Michelle Kommer:** We send a request of notification of information to both. If the claim goes to the Attorney General's office for enforcement, there is no surprise because there have been multiple interactions.

**Rep P Anderson:** Is there any way you know if there is a bad actor?

**Michelle Kommer:** No, the only way we become aware of a situation like that is if a claim is filed with us.

**Rep P Anderson:** If it's under 125, it kick's out, you wouldn't know that.

**Michelle Kommer:** That's correct, we do track the claims that are attempted to be filed. don't have access to that.

**Rep D Ruby:** Page 3, section 2, subsection 2, could you explain that paragraph to me?

**Michelle Kommer:** The statute of limitations is told. Once that claim is filed with our department, it creates a book end.

**Rep D Ruby:** What period of time?

**Michelle Kommer:** It's the filing, not the conclusion.

**Rep Richter:** Section 2, employer remedies, if the employer doesn't pay them for that, it says there is a \$15000 maximum, what remedy does that employee have?

**Michelle Kommer:** That would go to district court.

**Rep Richter:** Doesn't come to your department at all?

**Michelle Kommer:** Correct.

**Rep M Nelson:** Let's say the \$15,000 cap wasn't there, could the person go directly to the court or would the court simply kick it back, then say you haven't exhausted your administrative remedies.

**Michelle Kommer:** It would not kick back.

**Chairman Keiser:** The claim would be submitted to you initially; you just say that you are send them a letter saying that you are referring this to the Attorney General?

**Michelle Kommer:** That's correct.

**Chairman Keiser:** Further questions? Anyone else here to testify in support, opposition, neutral. Closes the hearing. What are the wishes of the committee?

**Rep D Ruby:** Moves a Do Pass.

**Vice Chairman Lefor:** Second.

**Chairman Keiser:** Further questions?

**Rep Schauer:** I have two concerns. The \$60,000 ceiling, & the whole idea of not informing the employer that this moving forward.

**Rep P Anderson:** I'm struggling with the \$125, that's one day's work at \$15 an hour. It's too high, it should be \$50.

**Rep Bosch:** I'm concern about the capture of information when we are above & below. Is the data saved for the above & below?

**Vice Chairman Lefor:** If we don't put it in statute, the department can still do that, send out the letter.

**Chairman Keiser:** I hear a lot of complaints from employers & they say they don't get a fair shake, relevant to this department. There is no reason to send a letter to the employer.

**Vice Chairman Lefor:** If they owe a lot of money, I would go to district court.

**Chairman Keiser:** Further discussion?

**Roll call was taken on SB 2145 for a Do Pass with 12 yes, 1 no, 1 absent & Rep D Ruby is the carrier.**

Date: Feb 27, 2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB2145

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or  
Description: \_\_\_\_\_

**Recommendation**

- Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar

**Other Actions**

- Reconsider
- \_\_\_\_\_

Motion Made by Rep Ruby      Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	Ab	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep D Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	X		Rep M Nelson		X

Total (Yes) 12      No 1

Absent 1

Floor Assignment Rep Ruby

**REPORT OF STANDING COMMITTEE**

**SB 2145: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).  
SB 2145 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**SB 2145**

SB 2145 1/14/19 Att #1

SB 2145

---

January 14, 2019



**DEPARTMENT OF LABOR  
AND HUMAN RIGHTS**

# Department Scope



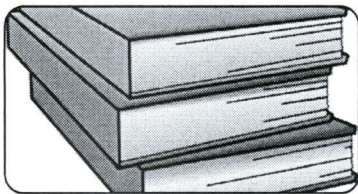
## WAGE & HOUR DIVISION

- Minimum Wage & Overtime, Equal Pay, Child Labor, Labor Unions, Employment Agencies, Wage Collection



## HUMAN RIGHTS DIVISION

- Discrimination in employment, housing, public services, public accommodations, and credit transactions.



## EDUCATION & AWARENESS

- Broaden awareness of wage and hour issues and human rights protections through public education and outreach.



SB2145 1/14/19 Att #1

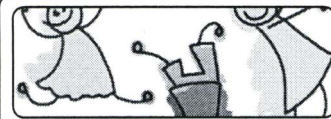
# Wage & Hour Division



Minimum Wage & Overtime, *N.D.C.C. ch. 34-06*



Equal Pay, *N.D.C.C. ch. 34-06.1*



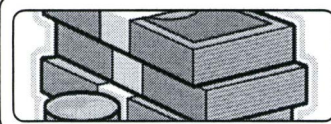
Child Labor, *N.D.C.C. ch. 34-07*



Labor Union, *N.D.C.C. ch. 34-12*



Employment Agency, *N.D.C.C. ch. 34-13*

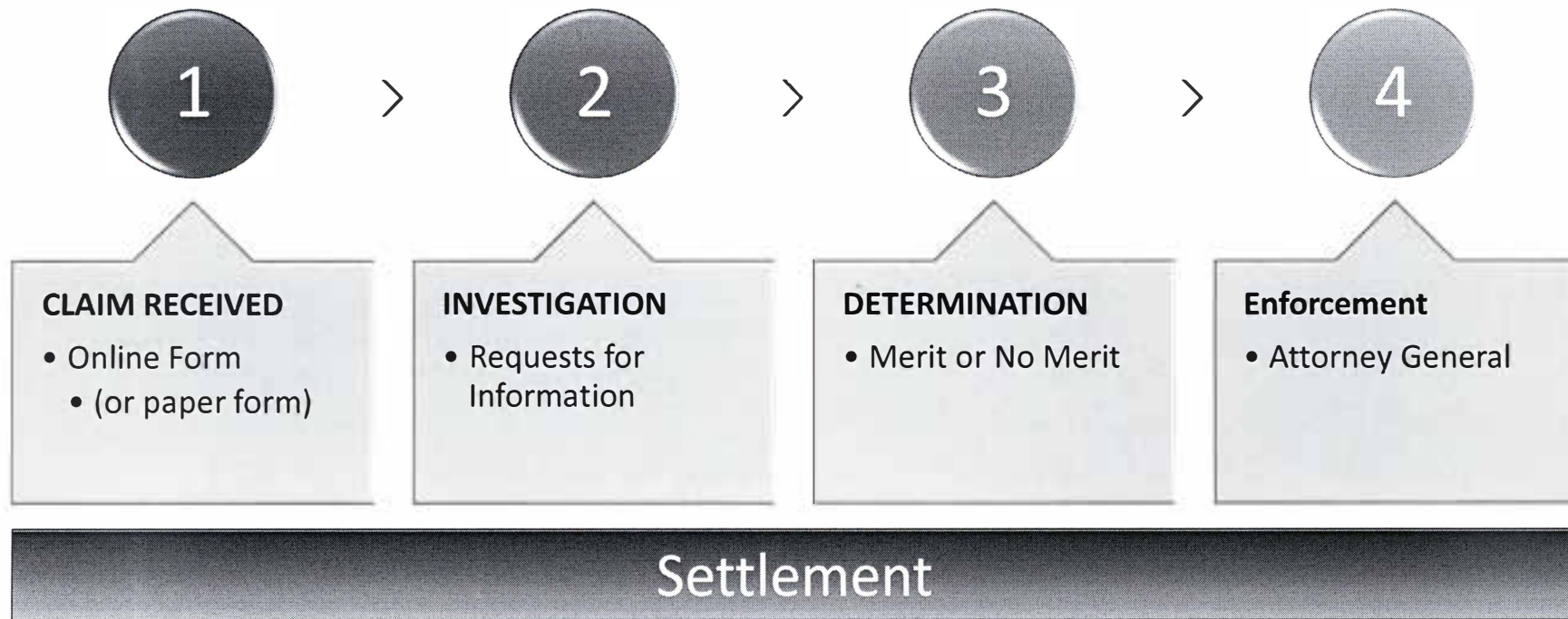


Wage Collection, *N.D.C.C. ch. 34-14*



SB 2145 1/14/19 Att #,

# Wage Claim Process



SB2145 1/14/19 Att #1

# WAGE CLAIM

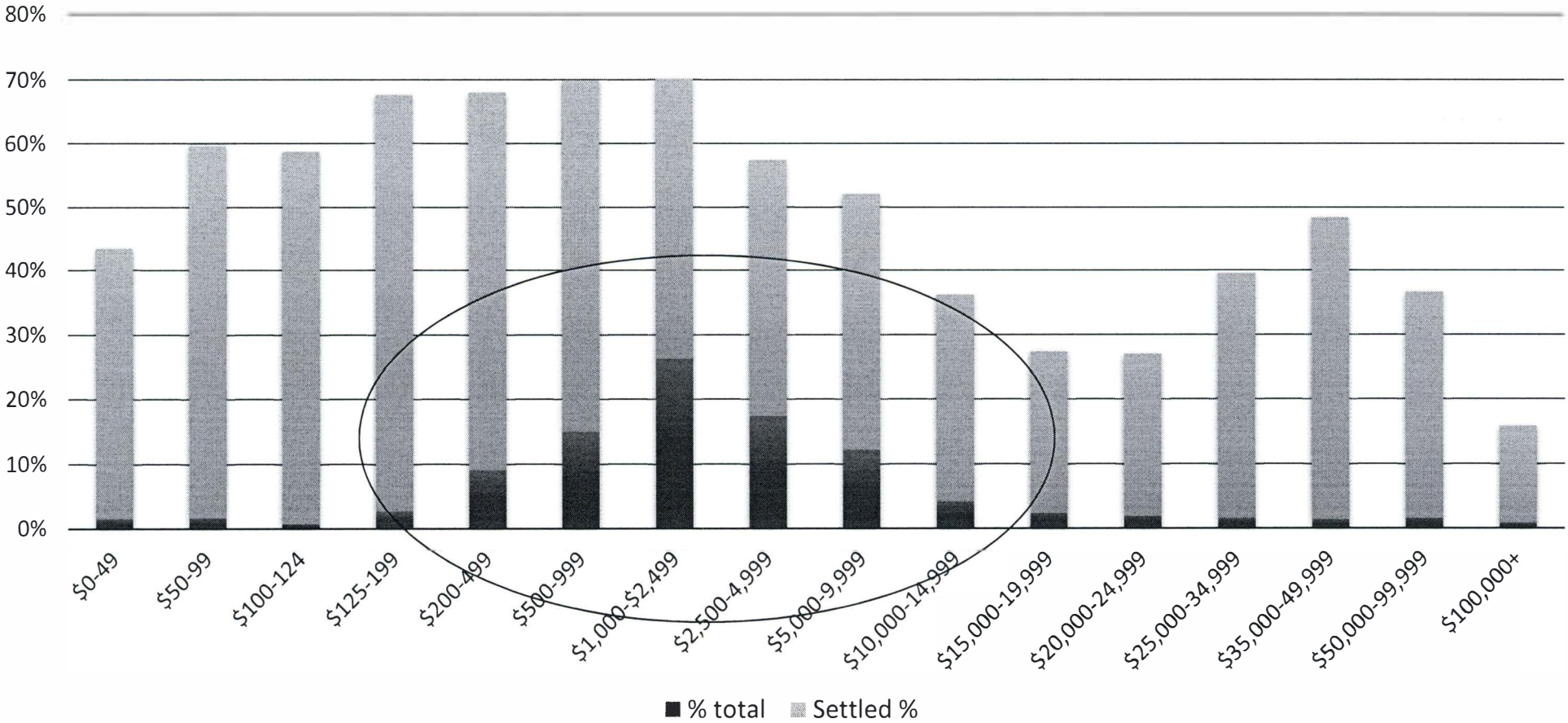
Floor & Ceiling

# Why?





### Total Claims & Percent Settled



7

Projected  
Impact  
(2017)

---

**\$125**  
**(5%)**

**\$15,000**  
**(10%)**

---

SB 2145 1/14/19 AH #1

Actual  
Impact  
(Biennium-  
to-date)

---

**\$125**  
**(1.8%)**

**\$15,000**  
**(5.4%)**

---

REQUEST: RETAIN FLOOR & CEILING



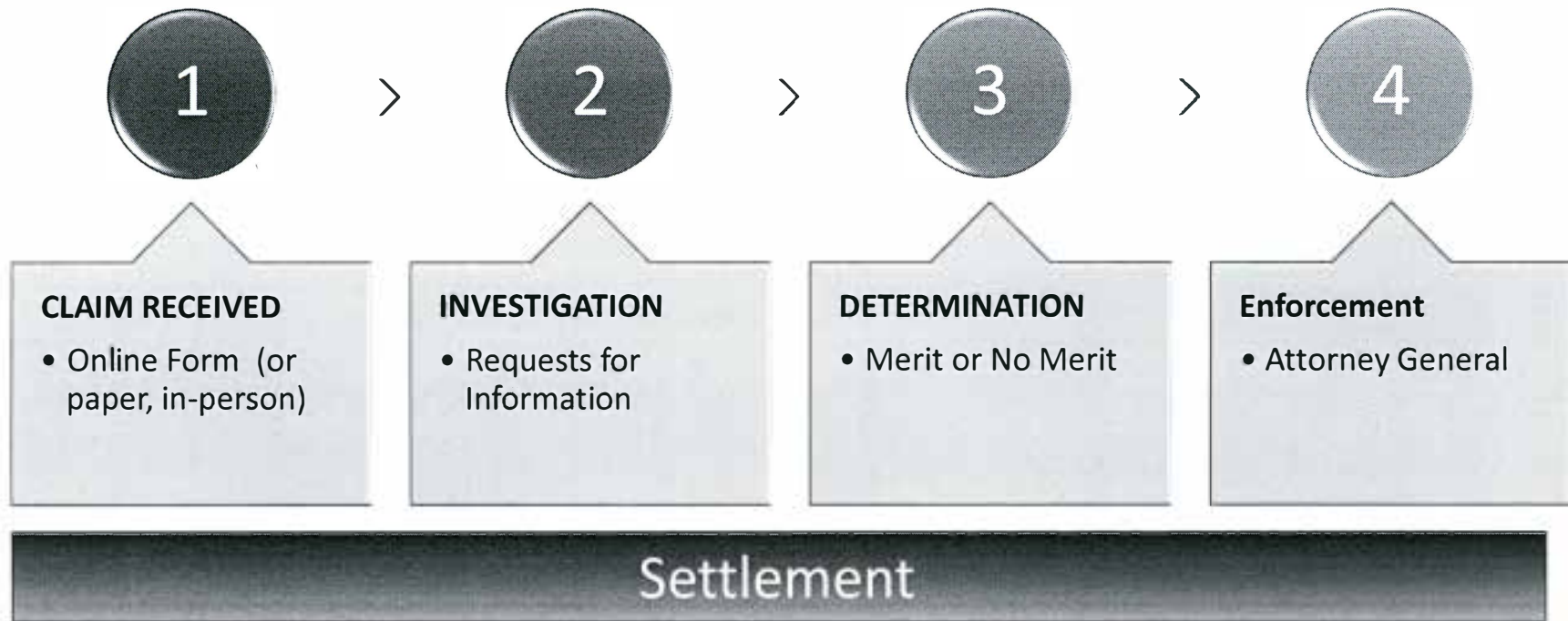
SB2145 1/14/19 Att #1

# WAGE CLAIM

Subpoena Power

SB 2145 1/14/19 Att #1

# Wage Claim Process





SB2145 1/14/19 Att #1

Why?

Makes wage claim process consistent with Human Rights, Housing Discrimination

Obtain information needed during **initial** investigation

Reduce # claims referred and/or time spent by attorney general

Reduce total resources required for investigation and enforcement



SB 2145 1/14/19 Att #1

THANK YOU

---

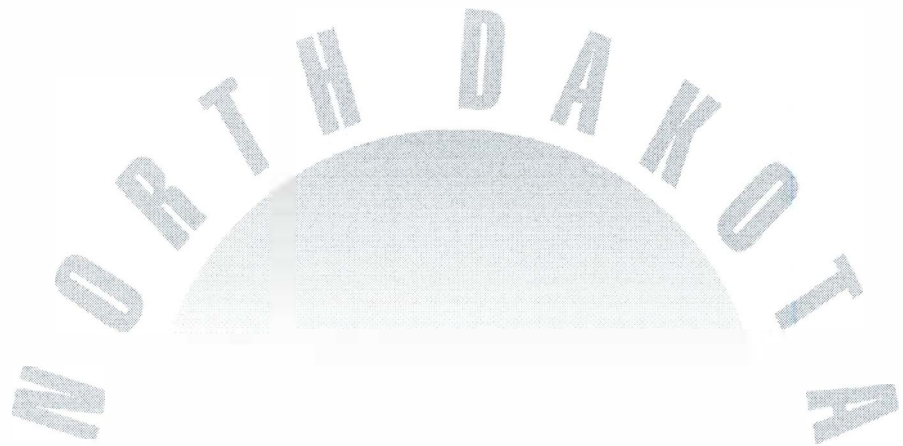
NORTH DAKOTA

**DEPARTMENT OF LABOR  
AND HUMAN RIGHTS**



SB 2145

February 27, 2019



**DEPARTMENT OF LABOR  
AND HUMAN RIGHTS**

Attachment 1  
Feb 27, 2019  
1  
SB 2145

# Department Scope



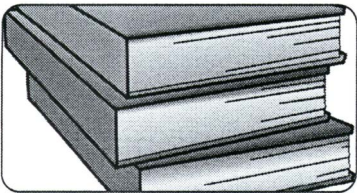
## WAGE & HOUR DIVISION

- Minimum Wage & Overtime, Equal Pay, Child Labor, Labor Unions, Employment Agencies, Wage Collection



## HUMAN RIGHTS DIVISION

- Discrimination in employment, housing, public services, public accommodations, and credit transactions.



## EDUCATION & AWARENESS







- Broaden awareness of wage and hour issues and human rights protections through public education and outreach.

SB 2145

Feb 27, 2019

Attachment 1

# Wage & Hour Division

-  Minimum Wage & Overtime, *N.D.C.C. ch. 34-06*
-  Equal Pay, *N.D.C.C. ch. 34-06.1*
-  Child Labor, *N.D.C.C. ch. 34-07*
-  Labor Union, *N.D.C.C. ch. 34-12*
-  Employment Agency, *N.D.C.C. ch. 34-13*
-  Wage Collection, *N.D.C.C. ch. 34-14*

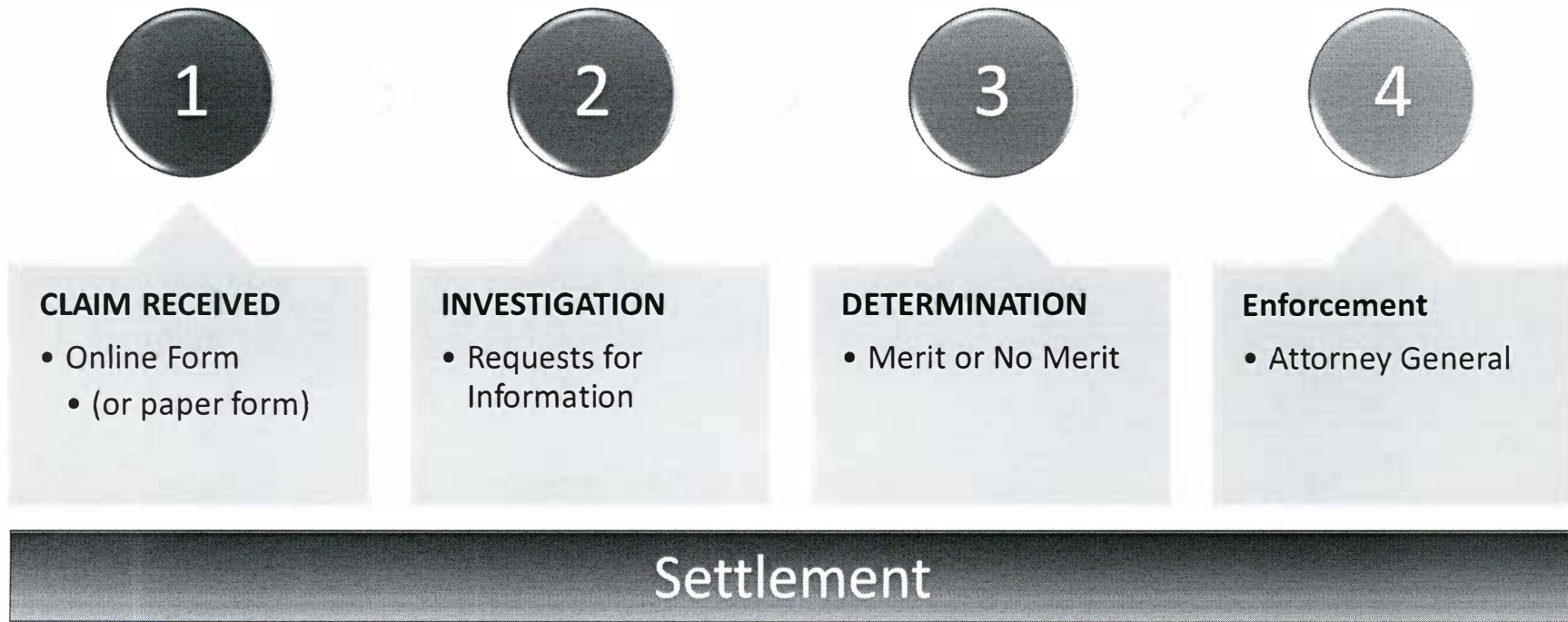
SB 2145

Attachment 1

Feb 27, 2019



# Wage Claim Process



SB 2145

Feb 27, 2019

4

Attachment 1



# WAGE CLAIM

Floor & Ceiling



Why?



SB 2145

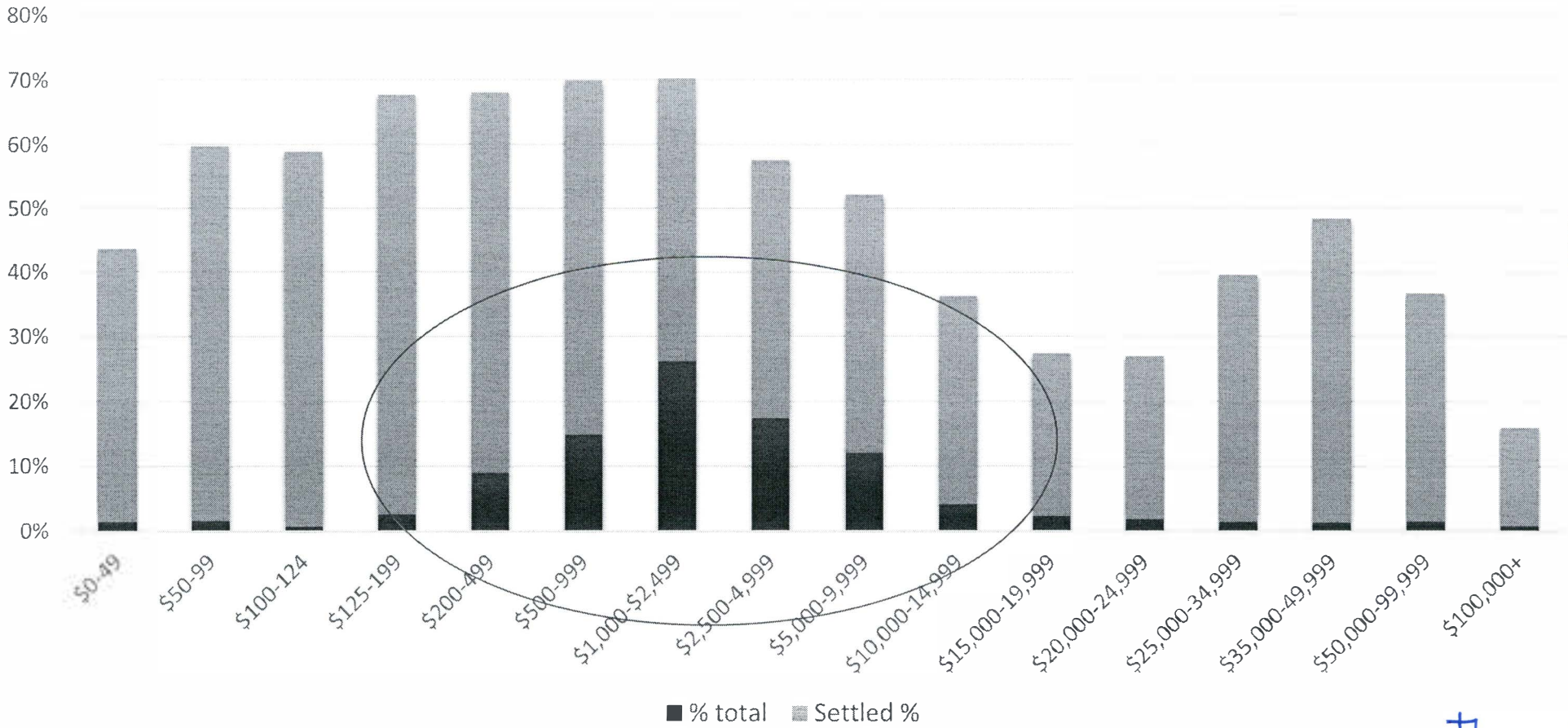
Attachment 1

9

Feb 27, 2019



### Total Claims & Percent Settled



SB 2145

SB 2145

Attachment 1

8

Feb 27, 2019

---

**\$125**  
**(5%)**

**\$15,000**  
**(10%)**

---

Projected  
Impact  
(2017)

Actual  
Impact  
(Biennium-  
to-date)

---

**\$125**  
**(1.8%)**

---

**\$15,000**  
**(5.4%)**

---

REQUEST: RETAIN FLOOR & CEILING

SB 2145

Attachment 1

9

Feb 27, 2019



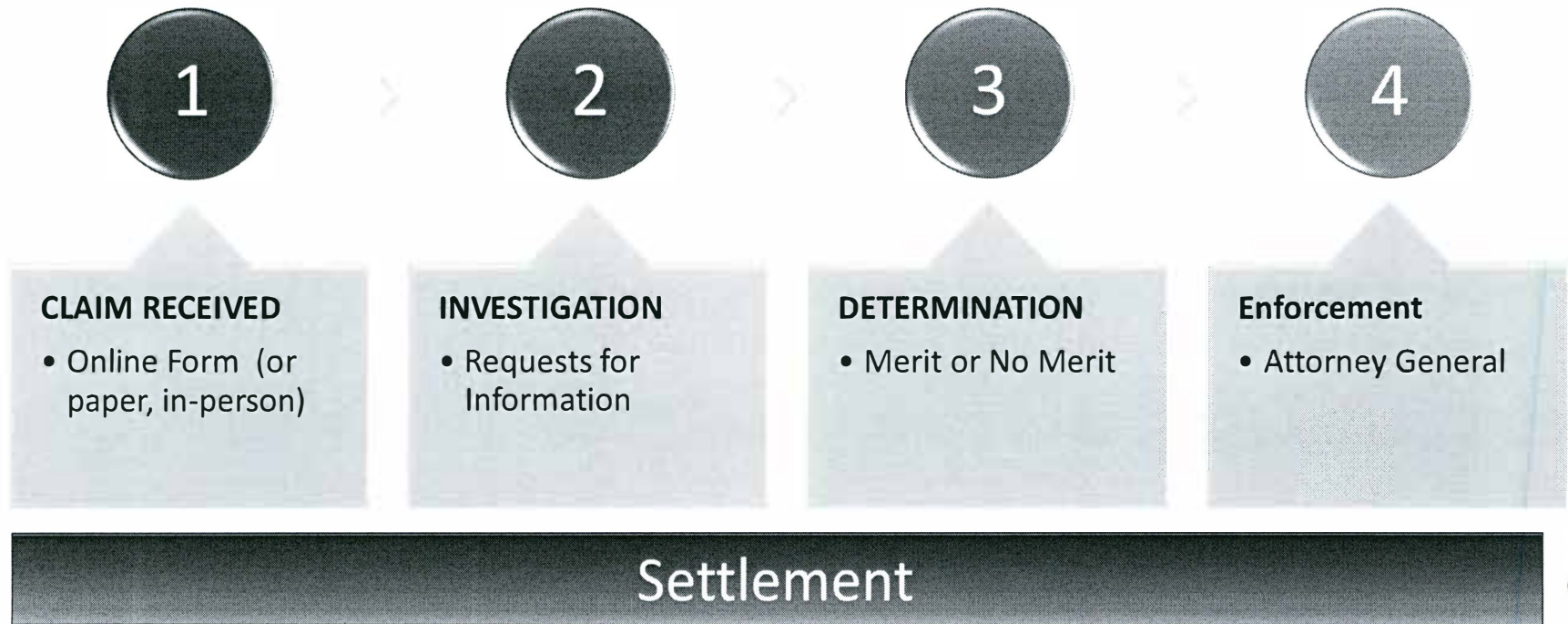
# WAGE CLAIM

Subpoena Power

SB 2145  
Attachment 1  
Feb 27, 2019



# Wage Claim Process



SB 2145

Feb 27, 2019

Attachment 1

Why?



SB 2145

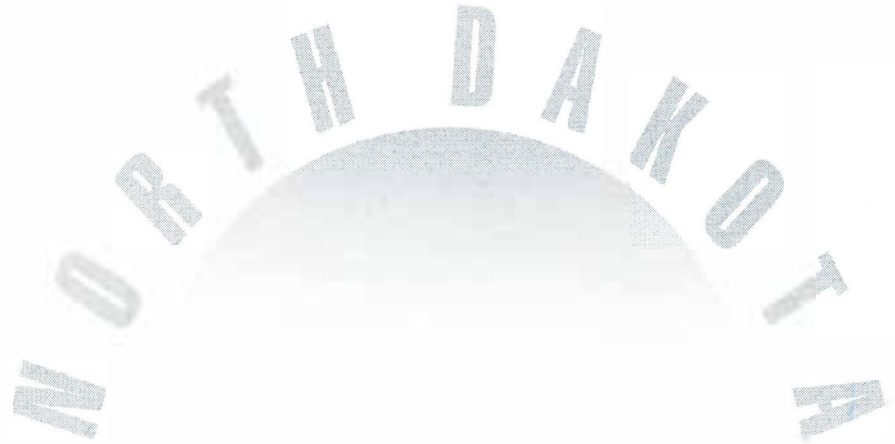
Attachment 1

Feb 21, 2019



THANK YOU

---



**DEPARTMENT OF LABOR  
AND HUMAN RIGHTS**

SB 2145

Attachment 1

13

Feb 27, 2019