NORTH Dakota | Labor and Human Rights

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ND MINIMUM WAGE & WORK CONDITIONS

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MINIMUM WAGE RATE:

North Dakota does not have a Training Wage.

$7.25 per hour on 7/24/09

Effective Date: August 1, 2015

OVERTIME N.D. Admin. Code § 46-02-07-02(4)

- Overtime pay must be paid at one and one-half times the employee's regular rate of pay for hours worked over forty in any work week.
- A work week is a seven consecutive-day period defined by the employer.
- Overtime is computed on a weekly basis, regardless of the length of the pay period.
- Overtime is based only on hours worked. Paid holidays, paid time off, or sick leave need not be counted in computing overtime hours.
- Compensatory time is not legal in private employment for non-exempt employees — overtime hours may not be "banked" and used for time off in another work week.
- Employees working more than one job under the control of the same employer must have all hours worked counted toward overtime.

Exemptions from overtime are listed on the reverse side of this poster. Formulas for calculating overtime are available in N.D. Admin. Code Section 46-03-01.

MEAL PERIODS N.D. Admin. Code § 46-02-07-02(5)

- A minimum 30-minute meal period must be provided in shifts exceeding five hours when there are two or more employees on duty.
- Employees may waive their right to a meal period upon agreement with the employer.
- Employees do not have to be paid for meal periods if they are completely relieved of their duties and the meal period is at least thirty minutes in length. Employees are not completely relieved if they are required to perform any duties during the meal period.
- Other breaks (such as 15 minute "coffee" breaks) are not required by law, but must be paid breaks if they are offered by the employer.

PAID TIME OFF N.D. Admin. Code § 46-02-07-02(12) - Applies unless a limitation below is met

- Paid time off includes annual leave, earned time, personal days, or other provisions providing compensation for vacation. If sick leave is combined with such time into one balance, all of the hours are defined as paid time off. Sick leave is not defined as paid time off if it is kept in a separate balance.
- Once paid time off is made available for an employee's use, any unused portion of such time is considered wages upon separation from employment and must be paid at the regular rate of pay earned by the employee prior to separation.
- No employment contract or policy may provide for forfeiture of earned paid time off upon separation.
- An employment contract or policy may require an employee to take vacation by a certain date or lose the vacation ("use it or lose it"), provided that the employee is given a reasonable opportunity to take the vacation. The employer must demonstrate that the employee had notice of such contract or policy provision.

LIMITATIONS ON PAID TIME OFF N.D.C.C. § 34-14-09.2

1. If an employee separates from employment voluntarily, a private employer may withhold payment for accrued paid time off if the following three conditions are all met:
   a. At the time of hiring, the employer provided the employee written notice of the limitation on payment of accrued paid time off;
   b. The employee has been employed by the employer for less than one year; and
   c. The employee gave the employer less than five days' written or verbal notice.
2. If an employee separates from employment, a private employer may withhold payment for paid time off if:
   a. The paid time off was awarded by the employer but not yet earned by the employee; and
   b. Before awarding the paid time off, the employer provided the employee written notice of the limitation on payment of awarded paid time off.

PAYDAYS & RECORD KEEPING N.D.C.C. § § 34-14-02, 03 and N.D. Admin Code § 46-02-07-02

- Employees must be paid at least once each calendar month on the regular payday(s) designated in advance by the employer.
- Every employer must furnish to an employee each pay period a check stub or voucher indicating hours worked, rate of pay, required state and federal deductions, and any authorized deductions.
- When an employee is terminated from employment, separates from employment voluntarily, or is suspended from work as the result of an industrial dispute, unpaid wages or compensation become due and payable at the regular payday(s) established in advance by the employer for the period(s) worked by the employee.
- When an employer terminates an employee, the employer shall pay those wages to the employee by certified mail at an address designated by the employee or as otherwise agreed upon by both parties.

DEDUCTIONS FROM PAY N.D.C.C. § 34-14-04.1

Except for those amounts that are required under state or federal law to be withheld from employee compensation or where a court has ordered the employer to withhold compensation, an employer only may withhold from the compensation due employees:

1. Advances paid to employees, other than undocumented cash.
2. A recurring deduction authorized in writing.
3. A nonrecurring deduction authorized in writing, when the source of the deduction is cited specifically.
4. A nonrecurring deduction for damage, breakage, shortage, or negligence must be authorized by the employee at the time of the deduction.

EMPLOYMENT AT WILL N.D.C.C. § 34-03-01

Employment relationships without a specific term exist at the will of both parties and can be terminated by either party upon notice to the other. No minimum length of notice (for example, a two-week notice) is required. Contracts specifying a term of employment can pre-empt the at-will provision.

RIGHT TO WORK N.D.C.C. § 34-01-14

An individual's right to work may not be denied or abridged due to membership or nonmembership in any labor union or labor organization.

YOUTH EMPLOYMENT N.D.C.C. ch. 34-07

Employment & Age Certificates (work permits) are required for workers ages 14 & 15 and are available from the Department of Labor, Job Service offices, County School Superintendents' offices, and local schools.

Restricted hours for youth age 14 & 15:

- Maximum hours per day: 3 per school day, 8 per non-school day.
- Maximum hours per week: 18 per school week (any week in which school attendance is required any part of 4 or more days), 40 per non-school week.

May work only between 7a.m.-7p.m. (until 9p.m. from June 1st - Labor Day).

Hazardous job duties for youth age 14 & 15:

Workers ages 14 & 15 are prohibited from performing certain job duties defined as hazardous in labor law.

POSTING REQUIRED

Must be posted in a conspicuous place in a commonly frequented area in which employees work.

See REVERSE SIDE of this Poster for Additional Information.

EXEMPTIONS FROM OVERTIME N.D. Admin. Code § 46-02-07-02(4)

- An employee employed in a bona fide executive, administrative, or professional capacity.
  Executive - an employee whose primary duties consists of:
  a. The management of the enterprise or recognized department or subdivision thereof;
  b. Directing the work of two or more other employees therein; and
  c. The authority to hire or fire other employees or whose suggestions will be given particular weight.
  Administrative - an employee whose primary duties consists of:
  a. Office or non-manual work directly related to management policies or general business operations; and
  b. Who customarily and regularly exercises discretion and independent judgment.
  Professional - an employee whose primary duties consists of:
  a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes;
  b. Work requiring the consistent exercise of discretion and judgment in its performance; and
  c. Work that is predominately intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work.
- An employee engaged in an agricultural occupation – growing, raising, preparing, or delivering agricultural commodities for market.
- An employee spending at least 51% of the employee's work-time providing direct care to clients of a shelter, foster care, or other such related establishment.
- An employee employed in domestic service who resides in the household in which employed.
- A straight commission salesperson in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is required to be on the premises for more than forty hours per week.
- A computer professional exercising discretion and independent judgment when designing, developing, creating, analyzing, testing, or modifying computer programs or who is paid hourly at a rate of at least $27.63.
- An employee who is customarily and regularly engaged away from the employer's premises for the purpose of making sales or taking orders. Work unrelated to outside sales may not exceed 20% of the hours worked in the week.
- A mechanic paid on a commission basis off a flat rate schedule.
- An employee of a retail establishment if the employee's regular rate of pay exceeds 1.5 times the minimum hourly rate applicable if more than half of the employee's compensation for a period of not less than one month is derived from commission on goods or services sold.
- An employee employed as an announcer, news editor, or chief engineer by a radio or television station.
- An employee in an artistic profession that is original and creative in nature or where the work is dependent upon the invention, imagination, or talent of the employee.
- Motor carrier as applied to covered employees of motor common, contract, and private carriers specified by the Motor Carriers Act [49 U.S.C. 31502].
- A teacher, instructor, tutor, or lecturer engaged in teaching in a school or educational system.
- A highly compensated employee: an employee who is paid total annualized compensation of one hundred thousand dollars or more, which includes at least four hundred fifty-five dollars per week paid on a salary or fee basis. The employee's primary duty includes performing office or nonmanual work.
- An employee providing companionship services (fellowship, care, or protection) to aged or disabled individuals. No more than 20% of the hours worked in the week may be household work (cleaning, laundry, or meal preparation). N.D.C.C. § 34-06-03.1

TAXI DRIVER AND HEALTHCARE OVERTIME PROVISIONS N.D. Admin. Code § 46-02-07-02(4)

- Taxicab drivers must be paid overtime for all hours worked in excess of fifty hours in any work week.
- Hospitals and residential care establishments may adopt, by agreement with their employees, a fourteen-day overtime period, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period.

TIPS N.D. Admin. Code § 46-02-07-03

- Gratuities offered to an employee by a customer belong to the employee and may not be retained by the employer.
- Employers may utilize a tip credit of 33% of the minimum wage for tipped employees. With the tip credit applied, the minimum direct wage payable to a tipped employee is $4.86 per hour effective July 24, 2009. The employer must maintain written records verifying that tipped employees receive at least the full minimum wage for all hours worked when the direct wage and tips are combined.
- A tipped employee is any service employee in an occupation in which he or she receives more than thirty dollars per month in tips.
- A service employee is any employee who is providing direct service to the customer and to whom that customer shows appreciation for that service by tipping that employee for the direct service. The employee must regularly and customarily provide personal face-to-face service to individual customers, which the customer would recognize as being performed for his or her benefit. Services such as cooking and dishwashing are not included.
- An employer who elects to use the tip credit must inform the employee in advance.
- Tip pooling is allowed only among the tipped employees. A vote of tipped employees to allow tip pooling must be taken, and fifty percent plus one of all tipped employees must approve it. The employer must maintain a written record of each vote on tip pooling, including names of employees voting and the vote totals. A vote on whether to pool tips is required if requested by fifty-one percent or more of the tipped employees. The tipped employees shall provide documentation verifying the request. Time spent in meetings called by the employees exclusively for tip issues is not work time. Gaming sites, which regularly have four or fewer tipped employees on duty, can require tip pooling among all tipped employees at the site. Pit bosses or supervisors at gaming sites are not tipped employees and cannot be part of the tip pool when performing functions of those positions other than dealing blackjack (twenty-one).

MEETINGS AND TRAINING TIME N.D. Admin. Code § 46-02-07-02(6)

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if all the following criteria are met:

a. Attendance is outside of the employee's regular working hours.
b. Attendance is in fact voluntary.
c. The course, lecture, or meeting is not directly related to the employee's job.
d. The employee does not perform any productive work during such attendance.

Training or education mandated by the state, federal government, or any political subdivision for a specific occupation need not be counted as work-time.

TRAVEL TIME N.D. Admin. Code § 46-02-07-02(7)

- The following types of travel time are not considered work time for which an employee must be compensated: 1) Ordinary travel from home to work, 2) Time spent as a passenger on an airplane, train, bus, or automobile outside of regular working hours, 3) Activities that are merely incidental use of an employer-provided vehicle for commuting home to work.
- The following types of travel time are considered work time for which an employee must be compensated: 1) Travel during regular work hours, 2) Travel on non-work days during regular work hours (regular work hours are those typically worked by an employee on work days), 3) Travel time from job site to job site or from office to job site, 4) The driver of a vehicle is working at any time when required to travel by the employer, 5) One-day assignments performed at the employer's request (regardless of driver or passenger status).

ON-CALL N.D. Admin. Code § 46-02-07-02(8)

- When employees are required to remain on-call on the employer's premises or so close thereto that they cannot use the time effectively for their own purposes, they are considered to be working and must be compensated.
- When employees are on-call and are not required to remain on the employer's premises but are required to respond to a beeper or leave word at home or the employer's business where they may be reached, they are not considered to be working and need not be compensated.

BONUSES AND COMMISSIONS N.D. Admin. Code § 46-02-07-02(15)

- An earned bonus is an amount paid in addition to a salary, wage, or commission. An earned bonus is compensable when an employee performs the requirements set forth in a contract or an agreement between the parties.
- A commission is a fee or percentage given for compensation to an individual for completion of a sale, service, or transaction. Upon separation from employment, the past practices, policies, and entire employment relationship will be used to determine if the commission is earned and compensable.

ROOM AND BOARD N.D. Admin. Code § 46-02-07-02(13)

The reasonable value, not exceeding the employer's actual cost, of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be treated as part of the wages, up to a maximum of eighteen dollars per day, if agreed to in writing and if the employee's acceptance of facilities is in fact voluntary.

UNIFORMS N.D. Admin. Code § 46-02-07-02(11)

An employer may require an employee to purchase uniforms if the cost of such uniforms does not bring that employee's wage below the hourly minimum wage for all hours worked during any pay period.

EMPLOYMENT DISCRIMINATION N.D.C.C. ch. 14-02.4

Employers may not discriminate against employees or applicants on the basis of: race, color, religion, sex, pregnancy, national origin, age, mental or physical disability, status with respect to marriage or public assistance, participation in lawful activity off the employer's premises during non-working hours which is not in direct conflict with the essential business-related functions of the employer, or opposition to such discrimination in the work place.

EMPLOYMENT RETALIATION N.D.C.C. § 34-01-20

An employer may not discharge, discipline, threaten, discriminate, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:

- The employee, or person acting on behalf of an employee, in good faith, reports a violation of federal, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, or law enforcement official.
- The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.
- The employee refuses an employer's order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.

Public employees should also see N.D.C.C. ch. 34-11.1 Public Employees Relations Act for further information.

This poster summarizes provisions contained in the *ND Minimum Wage & Work Conditions Order*
North Dakota Administrative Code (N.D. Admin. Code) Chapter 46-02-07, as well as selected provisions of
North Dakota Century Code (N.D.C.C.) Title 34 and N.D.C.C. Chapter 14-02.4.