



Labor and Human Rights

2017-2019 BIENNIAL REPORT

December 1, 2019

Doug Burgum, Governor

Erica Thunder, Commissioner of Labor

December 1, 2019

The Hon. Doug Burgum
Governor of North Dakota
600 E Boulevard Ave
Bismarck, ND 58505

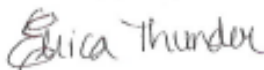
The Hon. Alvin A. Jaeger
Secretary of State
600 E Boulevard Ave
Bismarck, ND 58505

Dear Governor Burgum and Secretary Jaeger:

As Commissioner of Labor, I am pleased to submit the 2017-2019 Biennial Report of the North Dakota Department of Labor and Human Rights, pursuant to North Dakota Century Code § 54-06-04.

The staff of the Department of Labor and Human Rights has worked diligently investigating complaints and has spent significant time and energy educating the public. The Department of Labor and Human Rights continues to provide fair, impartial, and timely service to North Dakota citizens.

Sincerely yours,



Erica Thunder
Commissioner of Labor

Doug Burgum
GOVERNOR

Erica Thunder
COMMISSIONER

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Department History

In 1889, the North Dakota Constitution created the Department of Agriculture and Labor. In the 1960 primary election, voters approved a constitutional amendment authorizing the legislature to establish a Department of Labor separate from the Department of Agriculture. In 1965, the legislature created the Department of Labor. The department's functions at that time consisted of establishing and enforcing standards for wages and working conditions in the state.

In 1983, the state legislature enacted North Dakota Century Code (N.D.C.C.) ch. 14-02.4, the North Dakota Human Rights Act, authorizing the Department of Labor to investigate complaints alleging discriminatory employment practices. In 1999, the state legislature added to the department's human rights responsibilities when it enacted N.D.C.C. ch. 14-02.5, the North Dakota Housing Discrimination Act, which authorized the department to investigate complaints of discriminatory housing practices. In 2000, the Human Rights Division was established within the Department of Labor.

Additional amendments to the Human Rights Act were passed in 2001 authorizing the department's Human Rights Division to investigate and enforce complaints of discrimination in public accommodations, public services, advertising for public accommodations or services, and credit transactions. In 2009, the Legislative Assembly amended and reenacted portions of the Public Employees Relations Act under N.D.C.C. ch. 34-11.1, providing that the Department of Labor receive complaints and attempt voluntary compliance relating to N.D.C.C. § 34-11.1-04. In 2013, the legislature passed a bill which changed the name of the department from the Department of Labor to the Department of Labor and Human Rights to accurately reflect the scope of the department.

From its inception until 1998, the Department of Labor and Human Rights was administered by a Commissioner who was elected on a no-party ballot to a term of four years. In 1995, the Legislative Assembly passed legislation making the Commissioner of Labor an appointee of the Governor effective January 1, 1999, or upon the vacancy of the office. The state's last elected Commissioner, Craig Hagen, resigned his office in August 1998. Since that time, the Commissioner of Labor has served at the pleasure of the Governor and is a member of the Governor's Cabinet.

Commissioners of Labor

Orville "Ike" Hagen	1966-1986
Byron Knutson	1987-1990
Craig Hagen	1991-1998
Tony Clark	1999-2000
Mark D. Bachmeier ¹	2001-2004
Leann K. Bertsch	2004-2005
Lisa K. Fair McEvers	2005-2010
Tony J. Weiler	2010-2013
Bonnie L. Storbakken	2013-2014
Troy T. Seibel	2014-2016

¹ Mark Bachmeier also served as Interim Labor Commissioner when Craig Hagen departed in August 1998 until the appointment of Tony Clark in September 1999.

Michelle Kommer
Erica Thunder

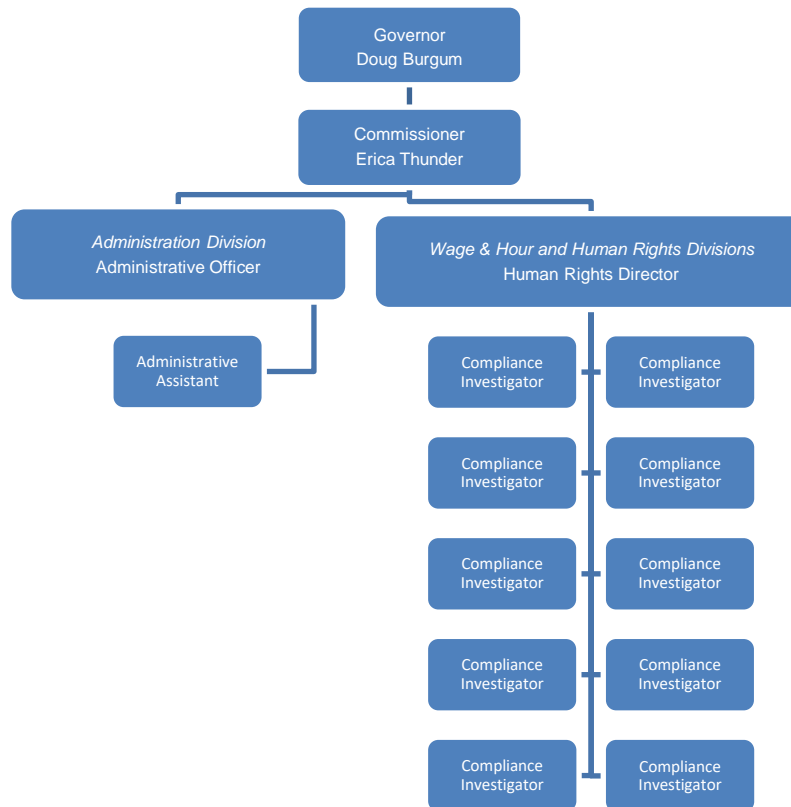
2016-2019
2019-Present

Department Organization

The Commissioner of Labor administers the department. During the 2017-19 biennium, the Commissioner had a staff of thirteen FTE's to assist in the duties of the office. The department has two primary functional areas, administration and investigation/case management. The department's Administrative Officer and the Commissioner oversee the administrative area, which encompasses the day-to-day management of the agency's operations, budgeting, planning, and support functions. The department's Human Rights Director and the Commissioner oversee the case management areas, which encompass the investigation and resolution of labor and human rights complaints, research, and other related activities.

The staff of the department understands that communication and education are vital, and welcome opportunities to speak to employees, employers, housing and service providers, and other citizens to help resolve concerns and help them to better understand their rights and responsibilities under labor and human rights laws. All department staff respond to public inquiries via telephone, email, and in person. In addition, all staff assist in the department's educational efforts by contributing to the development of informational brochures, other reference materials, and may participate in educational presentations.

Department Organizational Chart



Duties and Responsibilities

The duties of the Commissioner of Labor are prescribed by law in N.D.C.C. § 34-05-01.3. Those responsibilities include:

- ✓ Improve working and living conditions of employees and advance the opportunities for employment.
- ✓ Foster, promote, and develop the welfare of wage earners and industries in North Dakota.
- ✓ Promote cooperative relations between employers and employees.
- ✓ Cooperate with other governmental agencies to encourage the development of new and existing industries.
- ✓ Represent the state of North Dakota in dealings with the U.S. Department of Labor, with the federal mediation and conciliation service, and with the U.S. Veterans' Administration with regard to job training programs.
- ✓ Acquire and disseminate information on subjects connected with labor, relations between employers and employees, hours of labor, and working conditions.
- ✓ Encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance.
- ✓ Report biennially to the Governor and the Legislative Assembly concerning activities of the department.
- ✓ Administer the provisions of chapter 34-06 relating to wages and hours, chapter 34-07 relating to child labor, and the provisions of chapter 34-12 relating to labor-management relations.
- ✓ Perform duties as may be required by state law.

The Commissioner is also required to ensure compliance with the provisions of N.D.C.C. ch. 34-14 on Wage Collection, receive and review applications for employment agency licenses under N.D.C.C. ch. 34-13, and enforce employment preferences for bona fide North Dakota residents under N.D.C.C. §§ 43-07-20 through 43-07-22. In addition, the department is required to receive complaints of retaliation and attempt voluntary compliance under N.D.C.C. § 34-01-20(4).

The department is also responsible for enforcement of the provisions of N.D.C.C. ch. 14-02.4, the Human Rights Act, and N.D.C.C. ch. 14-02.5, the Housing Discrimination Act. These responsibilities include:

- ✓ Receiving and investigating complaints alleging discriminatory practices in the state.
- ✓ Educating the public regarding anti-discrimination laws.
- ✓ Studying the nature and extent of discrimination in the state.

Programs and Activities

The Department of Labor and Human Rights' main program activities are related to the enforcement of state labor standards and human rights laws. Labor standards laws include those governing the payment of wages, minimum wage, overtime, breaks, paid time off, and child labor. North Dakota human rights laws prohibit discrimination in employment, housing, public services, public accommodations, and credit transactions. In addition, the department is responsible for issuing sub-minimum wage certificates, verifying independent contractor status, and licensing employment agencies.

Wage & Hour

The Department of Labor and Human Rights is responsible for enforcing the wage and hour provisions outlined in several chapters of N.D.C.C. Title 34 and the North Dakota Wage and Working Conditions Order found in N.D. Administrative Code ch. 46-02-07. Under these provisions, the Commissioner of Labor has the authority to investigate violations, to enter places of employment, to inspect records, to take assignment of wage claims, and to institute or cause to be instituted actions to collect wages.

In carrying out these responsibilities, the department investigates and enforces *Claims for Unpaid Wages*, pursuant to N.D.C.C. ch. 34-14, and addresses other labor standards issues utilizing a range of means from informal communications to the formal investigation of written complaints. The goal of the department is to provide information, correct misunderstandings and misconceptions, and resolve disputes using the means most appropriate to a given situation for timely and effective service to both employees and employers.

The following tables summarize the department's activity relating to *Claims for Unpaid Wages* filed and closed during the 2017-19 biennium:

Summary of Claims for Wages, 2017-19 Biennium

Claims Pending 6/30/2017	184
New Claims Filed 7/1/2017 – 6/30/2019	771
Claims Closed 7/1/2017 – 6/30/2019	847
Claims Pending 6/30/2019	108

Claims for Wages Closed, 2017-19 Biennium

Claims Closed	847
Total Amount Collected	\$784,780

Claims for Wages Closed, 2017-19 Biennium

Settled without Determination	415
Settled after Determination	31
No Merit Determination	100
Small Claims Court for Enforcement	16
Attorney General for Enforcement	94
Referred to US Department of Labor	11
Referred to Other State	0
Withdrawn by Claimant	55

Dismissed ²	125
Bankruptcy	0
Total Claims Closed	847

**Claims for Wages Closed, 2017-19 Biennium
by Basis of Claim³**

Minimum Wage	13
Unpaid Wages	594
Unpaid Overtime	167
Unpaid Vacation	138
Unauthorized Deductions from Pay	137
Unpaid Commissions	34
Unpaid Bonus	36

**Claims for Wages Closed, 2017-19 Biennium
by County of Employer**

Adams	2	McLean	8
Barnes	3	Mercer	5
Benson	6	Morton	33
Billings	1	Mountrail	25
Bottineau	0	Nelson	0
Bowman	1	Oliver	3
Burke	0	Pembina	1
Burleigh	112	Pierce	0
Cass	142	Ramsey	8
Cavalier	1	Ransom	4
Dickey	0	Renville	0
Divide	3	Richland	4

² Claims may be dismissed for a variety of reasons including lack of jurisdiction, lack of evidence, failure of claimant to respond, etc.

³ Claims may have more than one basis.

Dunn	2	Rolette	6
Eddy	0	Sargent	0
Emmons	0	Sheridan	0
Foster	3	Sioux	2
Golden Valley	0	Slope	0
Grand Forks	27	Stark	48
Grant	3	Steele	0
Griggs	0	Stutsman	20
Hettinger	1	Towner	2
Kidder	2	Traill	7
LaMoure	4	Walsh	4
Logan	2	Ward	53
McHenry	0	Wells	5
McIntosh	1	Williams	109
McKenzie	33	Out of State	151
		Total Claims Closed	847

The department also resolved a number of cases through a process called Complaint Inquiry. This informal process is used mainly in instances where there may be a dispute over a final paycheck between the employer and employee, but may also be used to address other violations of law. The following chart summarizes the department's efforts regarding Complaint Inquiries:

Summary of Complaint Inquiries, 2017-19 Biennium

Inquiries Pending 6/30/2017	2
Inquiries Opened 7/1/2017 – 6/30/2019	353
Inquiries Closed 7/1/2017 – 6/30/2019	349
Inquiries Pending 6/30/2019	6
Total Collected 7/1/2017 – 6/30/2019	\$59,706

Youth Employment

North Dakota Youth Employment Laws, found in N.D.C.C. ch. 34-07, were established to prevent the employment of minors at an unsuitable age, for excessive hours, or in unsafe or undesirable working conditions.

Youth Employment Laws restrict the employment of workers under the age of 16 in four ways:

1. Minimum Age - Establishes a minimum age of 14 to be employed in North Dakota.
2. Employment & Age Certificate - Requires that 14 and 15 year old workers file an Employment and Age Certificate with the department for each job held at ages 14 and 15. The certificate must be signed by the minor's parent or guardian, and filed with the department and the employer. In addition, a copy is filed with the principal of the minor's school. The department reviews the certificate to verify the employee's age, the job duties being performed, and the rate of pay earned. The department also files a copy with the U.S. Department of Labor for its review for compliance with federal laws.
3. Restricted Work Hours - Establishes restricted working hours for both school and summer months, including a maximum number of hours per day and per week, as well as defining times during which the employee is allowed to work.
4. Restricted Work Duties - Prohibits young workers from being employed in specific occupations determined to be hazardous.

There are limited exemptions from North Dakota Youth Employment Laws that may apply to teen workers who are exempt from compulsory school attendance, employed under the direct supervision of their parent or guardian, working on a farm or ranch performing agricultural work, or working in domestic service performing services of a household nature in or about the private home of the employer.

During the 2017-19 biennium, 1,978 Employment and Age Certificates were filed with the Department of Labor and Human Rights for 14 and 15-year-old workers in North Dakota.

Equal Employment Opportunity

The Department of Labor and Human Rights is authorized under the North Dakota Human Rights Act, N.D.C.C. ch. 14-02.4, to investigate complaints alleging discriminatory employment practices. In addition, the department was designated a Fair Employment Practices Agency (FEPA) by the Federal Equal Employment Opportunity Commission (EEOC) in October 1987. This designation permits the department to contract with the EEOC to conduct investigations for the federal agency. Under the contract, complaints meeting both federal and state jurisdictions are "dual-filed" under both state and federal statutes with a single investigation conducted by the department. Complaints subject to dual-filing are those meeting jurisdictional requirements under any of the federal equal employment laws, including Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act of 1990 (ADA), and the Age Discrimination in Employment Act of 1967 (ADEA). In addition, the North Dakota Human Rights Act prohibits discrimination in three areas not protected

by any of the federal statutes - marital status, receipt of public assistance, and participation in lawful activity which is off the employer's premises outside of regular working hours which is not in direct conflict with the essential business-related interests of the employer.

The following tables summarize the department's activity relating to charges of employment discrimination for the 2017-19 biennium:

Summary of EEO Charges, 2017-19 Biennium

Charges Pending 6/30/2017	134
New Charges Filed 7/1/2017 – 6/30/2019	353
Charges Closed 7/1/2017 – 6/30/2019	407
Charges Pending 6/30/2019	80

EEO Charges Closed, 2017-19 Biennium

Charges Closed	407
Number of Charges Settled	49
Total Amount of Settlements	\$418,349

EEO Charges Closed, 2017-19 Biennium, by Resolution

Negotiated Settlement	47
Conciliated Settlement ⁴	2
Determined with No Probable Cause	299
Determined with Probable Cause	4
Notice of Right to Sue Issued	3
Transferred to EEOC	9
Withdrawn with Resolution	10
Withdrawn without Resolution	9
Dismissed ⁵	24
Total Charges Closed	407

⁴ In EEO Charges, conciliated settlements are only entered into after a finding of probable cause. These settlements have not been reported in "determined with probable cause" below.

⁵ Charges may be dismissed for a variety of reasons including lack of jurisdiction, lack of evidence, failure of the charging party to respond, etc. Of the twenty-four (24) charges dismissed this biennium, nine (9) were dismissed due to a lack of jurisdiction and fifteen (15) were dismissed due to the charging party's failure to cooperate.

**EEO Charges Closed, 2017-19 Biennium
by Statutory Jurisdiction**

Title VII of the Civil Rights Act of 1964	230
Americans with Disabilities Act of 1990	169
Age Discrimination in Employment Act of 1967	56
North Dakota Human Rights Act Only ⁶	23

**EEO Charges Closed, 2017-19 Biennium
by Basis of Charge⁷**

Age	61
Color	41
Disability	176
Marital Status	7
National Origin	38
Pregnancy	15
Receipt of Public Assistance	1
Race	99
Religion	27
Retaliation	170
Sex	118
Lawful Activity ⁸	9

⁶ All charges meeting federal jurisdiction also meet North Dakota jurisdiction.

⁷ Charges may have more than one basis.

⁸ "Lawful Activity" is used to abbreviate the full protected category for participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer.

**EEO Charges Closed, 2017-19 Biennium
by County of Respondent**

Adams	0	McLean	0
Barnes	1	Mercer	3
Benson	2	Morton	9
Billings	0	Mountrail	8
Bottineau	1	Nelson	1
Bowman	1	Oliver	0
Burke	0	Pembina	4
Burleigh	67	Pierce	0
Cass	90	Ramsey	2
Cavalier	1	Ransom	0
Dickey	2	Renville	1
Divide	0	Richland	6
Dunn	1	Rolette	6
Eddy	0	Sargent	5
Emmons	0	Sheridan	0
Foster	0	Sioux	0
Golden Valley	0	Slope	0
Grand Forks	29	Stark	18
Grant	1	Steele	1
Griggs	1	Stutsman	16
Hettinger	0	Towner	0
Kidder	1	Traill	1
LaMoure	0	Walsh	3
Logan	0	Ward	33
McHenry	1	Wells	1
McIntosh	0	Williams	29
McKenzie	14	Out of State	47
Total Claims Closed			407

Employment Retaliation

The Department of Labor and Human Rights is authorized to receive complaints alleging employment retaliation under N.D.C.C. § 34-01-20, and to seek voluntary compliance with the section through informal advice, negotiation, and conciliation. Under N.D.C.C. § 34-01-20, employers are prohibited from discharging, discriminating against, or penalizing an employee because the employee reports what he or she believes in good faith to be a violation of state or federal law or local ordinance; participates in an investigation, hearing, or inquiry by a public body; or refuses to perform action that he or she believes to be a violation of state or federal law or local ordinance.

Under N.D.C.C. § 34-11.1-04, public employees in North Dakota may also file a complaint alleging employment retaliation. While a public employee has several options to report a complaint of retaliation, the Department of Labor and Human Rights shall receive complaints of violations under this section of law and may attempt to obtain voluntary compliance through informal advice, negotiation, or conciliation. To receive assistance from the department, the person claiming to be aggrieved by a violation of this section of law shall file a complaint within 300 days after the alleged act of wrongdoing. Nothing in the law prohibits an employee from filing a complaint with the Department of Labor and Human Rights and then seeking a remedy under other provisions of the law.

During the 2017-19 biennium, the department received 76 complaints of employment retaliation and closed 72. At the end of the biennium, the department had 8 pending retaliation complaints.

Housing Discrimination

The Department of Labor and Human Rights is authorized under N.D.C.C. ch. 14-02.5, the Housing Discrimination Act, to receive and investigate complaints alleging discriminatory housing practices. The Federal Department of Housing and Urban Development (HUD) has deemed the North Dakota law housing “substantially equivalent” to the Fair Housing Act, meaning that it offers at least the same protections and remedies as the federal law. The substantial equivalency status of the law allows the department to enter into work sharing agreements with HUD, which provides funding to the department in exchange for access to the department’s investigative findings in housing discrimination complaints.

The following tables summarize the department’s activity relating to complaints alleging housing discrimination for the 2017-19 biennium:

**Summary of Housing Discrimination Complaints
2017-19 Biennium**

Complaints Pending 6/30/2019	7
New Complaints Filed 7/1/2017 – 6/30/2019	59
Complaints Closed 7/1/2017 – 6/30/2019	58
Complaints Pending 6/30/2019	8

**Housing Discrimination Complaints Closed
2017-19 Biennium**

Complaints Closed	58
Number of Complaints Settled	34
Total Amount of Settlements ⁹	\$29,614

**Housing Discrimination Complaints Closed
2017-19 Biennium, by Resolution**

Settled Through Conciliation	34
Determined with No Reasonable Cause	15
Determined with Reasonable Cause	1
Referred to HUD	5
Dismissed ¹⁰	1
Withdrawn with Resolution	2
Withdrawn without Resolution	0
Total Complaints Closed	58

**Housing Discrimination Complaints Closed
2017-19 Biennium
by Basis of Complaint¹¹**

Age	1
Color	3
Disability	43
Familial Status	4
Marital Status	0
National Origin	3
Receipt of Public Assistance	4
Race	4

⁹ Monetary settlements reflect only a portion of the relief obtained by complainants in the area of housing. In addition, complainants obtained reasonable accommodations based on their disabilities, modifications to their housing units, and housing providers were required to attend instruction on housing discrimination in an effort to eradicate discrimination through education.

¹⁰ Complaints may be dismissed for a variety of reasons including lack of jurisdiction, lack of evidence, failure of complainant to respond, etc. The one (1) complaint dismissed this biennium was dismissed due to failure of complainant to respond.

¹¹ Complaints may have more than one basis.

Religion	0
Retaliation	6
Sex	2

**Housing Discrimination Complaints Closed
2017-19 Biennium
by County of Complainant**

Adams	0	McLean	0
Barnes	0	Mercer	0
Benson	0	Morton	5
Billings	0	Mountrail	0
Bottineau	0	Nelson	0
Bowman	0	Oliver	0
Burke	0	Pembina	1
Burleigh	5	Pierce	0
Cass	24	Ramsey	0
Cavalier	0	Ransom	0
Dickey	0	Renville	0
Divide	0	Richland	0
Dunn	0	Rolette	0
Eddy	0	Sargent	0
Emmons	0	Sheridan	0
Foster	0	Sioux	0
Golden Valley	0	Slope	0
Grand Forks	7	Stark	4
Grant	0	Steele	0
Griggs	0	Stutsman	2
Hettinger	0	Towner	0
Kidder	0	Traill	0
LaMoure	0	Walsh	0
Logan	0	Ward	3

McHenry	0	Wells	0
McIntosh	0	Williams	6
McKenzie	0	Out of State	1
		Total Claims Closed	58

Discrimination in Public Services, Public Accommodations, & Credit Transactions

The Department of Labor and Human Rights is authorized under N.D.C.C. ch. 14-02.4, the North Dakota Human Rights Act, to investigate complaints alleging discrimination in public accommodations, public services, and credit transactions. Public accommodations are services or facilities offered to the public for a fee, charge, or gratuity; public services are the services or facilities provided by a governmental entity; and credit transactions include all services related to the provision of non-housing-related credit (discrimination in credit transactions related to housing is covered under housing discrimination laws).

The following tables summarize the department’s activity relating to complaints alleging discrimination in public accommodations, public services, and non-housing credit transactions (“other human rights”) during the biennium:

Summary of Other Human Rights Complaints, 2017-19 Biennium

Complaints Pending 6/30/2017	10
New Complaints Filed 7/1/2017 – 6/30/2019	14
Complaints Closed 7/1/2017 – 6/30/2019	22
Complaints Pending 6/30/2019	2

Other Human Rights Complaints Closed 2017-19 Biennium by Type of Discrimination

Public Accommodations	10
Public Services	12
Credit Transactions	0
Total Complaints Closed	22

**Other Human Rights Complaints Closed
2017-19 Biennium**

Complaints Closed	22
Number of Complaints Settled	1
Total Amount Collected	\$0

**Other Human Rights Complaints Closed
2017-19 Biennium**

Settled	1
Determined with No Probable Cause	17
Determined with Probable Cause	0
Withdrawn by Complainant	1
Dismissed ¹²	2
Notice of Right to Sue Issued	1
Total Complaints Closed	22

**Other Human Rights Complaints Closed
2017-19 Biennium by Basis of Complaint¹³**

Age	3
Color	2
Disability	9
Marital Status	0
National Origin	4
Receipt of Public Assistance	0
Race	5
Religion	2
Retaliation	6
Sex	1

¹² Complaints may be dismissed for a variety of reasons including lack of jurisdiction, lack of evidence, failure of complainant to respond, etc. Of the two (2) complaints dismissed this biennium, one (1) was dismissed due to complainant's failure to cooperate and one (1) was dismissed due to a lack of jurisdiction.

¹³ Complaints may have more than one basis.

**Other Human Rights Complaints Closed
2017-19 Biennium
by County of Respondent**

Adams	0	McLean	1
Barnes	0	Mercer	0
Benson	0	Morton	0
Billings	0	Mountrail	0
Bottineau	0	Nelson	0
Bowman	0	Oliver	0
Burke	0	Pembina	0
Burleigh	4	Pierce	0
Cass	7	Ramsey	0
Cavalier	0	Ransom	0
Dickey	0	Renville	0
Divide	0	Richland	0
Dunn	0	Rolette	1
Eddy	0	Sargent	0
Emmons	0	Sheridan	0
Foster	0	Sioux	0
Golden Valley	0	Slope	0
Grand Forks	1	Stark	0
Grant	0	Steele	0
Griggs	0	Stutsman	2
Hettinger	0	Towner	0
Kidder	0	Traill	0
LaMoure	0	Walsh	0
Logan	0	Ward	2
McHenry	0	Wells	0
McIntosh	0	Williams	1
McKenzie	1	Out of State	2
Total Claims Closed			22

Independent Contractor Verification

The Department of Labor and Human Rights has authority under N.D.C.C. § 34-05-01.4 to determine if a worker is functioning as an employee or an independent contractor in a particular work relationship. During the 2017-19 biennium, the department reviewed 11 applications for independent

contractor status. Of these, 3 were affirmatively verified as being independent contractor relationships.

In making such determinations, the department utilizes the twenty-point “Common Law” test, which involves consideration of such factors as degree of control, integration of the work into the firm’s business operations, worker’s business operations, and opportunity for profit or loss. The verification is valid only for the specific work relationship assessed. A worker wishing verification for another work relationship must complete a separate application for that relationship.

The verification process is voluntary. However, if the department is able to offer an affirmative verification, the firm involved may have protection from retroactive liability that may otherwise be incurred if the relationship is later determined by another entity to be an employment relationship instead of an independent contractor relationship.

Employment Agency Licensing

The Department of Labor and Human Rights is authorized to issue licenses to private employment agencies under N.D.C.C. ch. 34-13. Historically, the law has required that agencies making permanent placement of applicants (as opposed to temporary assignments) obtain a license to operate in North Dakota. A change took place in the employment agency licensing law as the result of legislation passed by the 2003 Legislative Assembly. Since August 1, 2003, employment agencies that charge fees exclusively to employers are no longer required to obtain a license to operate in the state.

For an agency subject to licensure, the process for obtaining a license has not changed. Agencies seeking licensure are required to submit application materials, which the department reviews to determine compliance with the law. If approved, a license is issued to the employment agency for a period of one year. The annual license fee is \$200.00 and is deposited into the state’s general fund. In addition, the employment agency must provide a bond in the penal sum of five thousand dollars. If the agency violates any term of the employment contract, action may be brought against the bond in the name of the person damaged.

During the 2017-19 biennium, no employment agency licenses were issued.

Sub-minimum Wage

The Commissioner of Labor may issue special licenses under N.D.C.C. § 34-06-15, which provides that an individual whose productive capacity is impaired by physical or mental disability or who is a student or learner enrolled in a career or technical education or related program may be employed at a wage less than the established state minimum wage. Licenses may be issued directly to individuals or special licenses may be issued to nonprofit community rehabilitation programs for the disabled. Licenses are issued for a period of one year.

During the first year of the 2017-19 biennium, 1197 individuals worked under sub-minimum wage licenses issued by the department to 15 community organizations offering rehabilitation programs. In the second year of the biennium the number decreased to 695 individuals to 12 community organizations. The department did not issue any licenses to individuals or vocational students during the 2017-19 biennium.

Many businesses participated in providing employment opportunities for workers with disabilities. Examples of participating businesses during the 2017-19 biennium included schools, banks, hotels, restaurants, hospitals, hardware stores, nursing homes, and thrift stores. The types of work performed included janitorial, housekeeping, food preparation, assembly, grounds keeping/lawn care, sanitation, mail sorting, office assisting, wood working, and waste recycling.

Public Inquiry

The Department of Labor and Human Rights strives to be an accessible resource for the citizens of North Dakota. During the 2017-19 biennium, the department responded to 8,904 telephone, 1,047 email, and 164 in-person inquiries from citizens. The department tracks direct contacts with the public through a multi-user database. Staff log each contact, its source (telephone, email, or in-person), and the nature of the inquiry.

The following table summarizes the department’s public contacts during the 2017-19 biennium by topic. “Wage & Hour” includes contacts relating to labor standards issues such as breaks, overtime, child labor, wage payments, and vacation. “Discrimination” includes contacts relating to discrimination in employment, housing, public accommodations, public services, and credit transactions. “Other” includes contacts relating to employment agencies, independent contractor status, non-compete clauses, references, sub-minimum wage, and unions. “Referrals to Other Agencies” includes contacts that the department refers to other state or federal agencies, such as Job Service North Dakota, Workforce Safety and Insurance, the Office of State Tax Commissioner, the U.S. Department of Labor, the Internal Revenue Service, the Occupational Safety and Health Administration, and the U.S. Employee Benefits Security Administration.

Public Contacts, 2017-19 Biennium by Topic

Wage and Hour	7,968
Discrimination	2,536
Other Information	495
Referrals to Department Website	4,113
Referrals to Other Agencies	2,948
Posters Requested	28
Brochures Requested	32

Public Education

The department believes strongly that working proactively to develop relationships between the department and North Dakota citizens is essential to effective public service. The department works hard to accomplish this by being an accessible resource to citizens, by developing and distributing resource materials relating to labor and human rights, and by providing presentations to groups throughout the state on labor and human rights topics. Agency staff conducted 47 informational

presentations to groups and hosted exhibit booths to distribute information at 5 events during the 2017-19 biennium.

Administration

The administrative responsibilities of the department include staffing, procurement, budgeting, accounting, fiscal management, information technology, records management and risk management. The department's Administrative Officer works directly with and under the supervision of the Commissioner to oversee these functions.

Legislation

Senate Bill No. 2007 was an Act to provide an appropriation for defraying the expenses of the Department of Labor and Human Rights, which also was to provide for a report to the legislative assembly. The appropriation passed within this Bill was \$2,875,850. This became effective for the biennium beginning July 1, 2019 and ending June 30, 2021.

Senate Bill No. 2145 related to the investigation of wage collection claims, which provided an effective date, and declared an emergency measure to the Bill. In investigating a complaint under N.D.C.C. § 34-14-15, the Commissioner may require the attendance of a witness and the production of a book, record, document, data, or other object at any hearing or with reference to any matter the Commissioner has the authority to investigate under this chapter. If a witness fails or refuses to appear or to produce, the Commissioner may issue a subpoena to compel the witness to appear or a subpoena duces tecum to compel the witness to appear and produce a relevant book, record, document, data, or other object. If a person refuses to obey a subpoena, the district court, upon application by the Commissioner, may issue to the person an order requiring the person to appear and give evidence or otherwise produce documentary evidence requested by the Commissioner regarding the matter under investigation. A witness subpoenaed under this section who appears at a hearing or has a deposition taken is entitled to receive the same fees and mileage as a witness in a civil case in district court. The Bill also removed the sunset clause from N.D.C.C. § 34-14-09, enacted in the 65th Legislative Session, effective to end on June 30, 2019. This created a permanent floor and ceiling for wage claims accepted by the department. The Act became effect July 1, 2019, and was declared to be an emergency measure.

There were additional bills proposed that could have affected the department, however they either failed to pass or were amended in ways that eliminated an effect on the department.

Accomplishments and Activities

In addition to the legislative, program-area, and educational activities discussed in this report, the Department of Labor and Human Rights' accomplishments during the 2017-19 biennium included the following:

- The Department continued to invest in human rights-related training for agency staff during the biennium. Various department staff attended training and policy conferences sponsored by the EEOC and HUD each year. Several of the department's investigators attended a portion

of or completed the core five-week training program at the National Fair Housing Training Academy sponsored by HUD. Several compliance investigators on staff are formally trained as mediators to facilitate resolutions without the need for litigation. Investigators at the department will attend such training as opportunities arise.

- The Department continues to reach out to a broad range of groups affected by the department's regulatory powers and to ensure the department is represented and may contribute in policy decisions.
- The Department created a more user-friendly portal for constituents to submit forms. This was done through a service that provides for online submission of forms, directly on the Department's website.
- The website of the Department was heavily updated to include a full kit of information on the laws the Department acts under, access to those laws along with the Departments brochures, detailed information on the operations of the Department, and online submission forms. Overall, it was streamlined for users to capture education and other resources regarding the Department in an efficient and timely way.

Trends

Wage and Hour

The number of wage and hour complaints received by the department have decreased during the 2017-19 biennium. New complaints filed with the department were 771, compared to 837 in the previous biennium, and 1,373 in the 2013-15 biennium. The types of claims filed most often include claims for unpaid wages, unpaid overtime, and unauthorized deductions. Many employers improperly classify employees as exempt from overtime. The department intends to increase its educational outreach efforts in the upcoming biennium to ensure employers are aware of the laws and rules regarding wages and exemptions from overtime pay.

Human Rights

Employment

The overall number of employment discrimination charges filed with the department decreased during the 2017-19 biennium, from 389 to 353. Charges filed on the protected categories of sex, disability, retaliation, and race were the most numerous types of claims made. At this time, the department expects employment discrimination filings for the current biennium to be similar to the 2017-19 biennium.

Housing

The overall number of housing discrimination complaints filed with the department decreased slightly during the 2017-19 biennium. The housing area continued to have a high proportion of complaints settled through the conciliation process, with 34 of the 58 cases closed being closed through the conciliation process. The average number of days to close housing complaints decreased during this biennium from 68 to 63. Complaints filed on the protected categories of disability and retaliation were the most common types of allegations made.

For the upcoming biennium, the department continues to expect a stable number of complaints filed, as a Fair Housing Initiatives Program (FHIP) has been authorized by the U.S. Department of Housing and Urban Development for North Dakota. FHIPs are advocacy organizations, which assist individuals in filing complaints with the department, among other functions. The last time North Dakota had an active FHIP in the state, the filing rate for housing discrimination complaints was approximately double what it is currently. Therefore, the department expects an increase in housing discrimination complaints for the upcoming biennium.

Public Services, Public Accommodations, and Credit Transactions

The number of new complaints filed in this area decreased during the 2017-19 biennium, from 38 to 14. The majority of the complaints pertained to the protected categories of disability, race, and retaliation.

Plans and Goals

New Statutes/Administrative Rules

The department is considering amendments to its statutes and administrative rules to update outdated portions and to clarify other portions.

Technology

The department has several goals relating to its business process improvement plan as well as technology, which includes identifying and correcting areas which can be automated for a more streamlined and quicker approach for both the department and its constituents.

Customer Service Delivery

The department continues to be dedicated to the principles of efficient and effective public service and will continue to ensure timely and effective complaint resolution for North Dakota citizens. The department plans to streamline its intake processes to ensure the most efficient and consistent customer service.

Statewide Education and Awareness

The department plans to increase its statewide wage and hour and human rights education and awareness activities during the next biennium. The effort includes work to educate the public further about rights and responsibilities under the state's wage and hour and human rights laws and activities to continue to promote increased awareness of these laws in North Dakota. The department invites participation in this effort from representatives of the business community, government, the public, and human rights organizations. It is hoped these efforts will educate the public, ensure employers are complying with the law, and, thereby, reduce the number of complaints filed with the department.

Workforce Development

The Commissioner and the department will take steps to be involved in workforce development in North Dakota. This will include continued efforts by the Commissioner to participate in conversations about developing North Dakota’s workforce as we move into the future.

Funding

Funding for the department is primarily from the General Fund as appropriated by the State Legislature. Additionally, the department receives federal funds under two work-sharing contracts, one with the Equal Employment Opportunity Commission and one with the Department of Housing and Urban Development.

The following table summarizes the department’s appropriation and actual expenditures for the 2017-19 biennium:

	Appropriation	Actual Expenditures
Salaries & Wages	\$2,414,984	\$2,076,146
Operating Expenses	\$328,918	\$261,553
Total	\$2,743,902	\$2,337,699

The department’s appropriation was comprised of \$2,303,986 in general funds and \$439,916 in federal spending authority, while expenditures consisted of \$1,897,829 in general funds and \$439,870 in federal funds.

Resources and Publications

The Department of Labor and Human Rights has produced a number of publications to help educate citizens about their rights and responsibilities under wage & hour and human rights laws.

As digital access and use grows, the Department of Labor and Human Rights’ website has become an increasingly important resource for the public. Therefore, all of the resources listed below may be accessed through the department’s website. In addition, hard copies of the posters and brochures listed may be requested directly from the department, and department staff are available during office hours to discuss your questions or concerns by phone or in person.

Posters

- Minimum Wage & Work Conditions Summary Poster
- Fair Housing in North Dakota Poster

Brochures

- Wage & Hour and Equal Employment Laws: Most Commonly Asked Questions and Their Answers
- Youth Employment in North Dakota: State & Federal Laws & Regulations
- Employment Applications and Interviews: Important Information for Employers & Employees
- Sexual Harassment in the Workplace: Important Information for Employers & Employees
- Understanding Housing Discrimination Laws in North Dakota
- Human Rights Protections in North Dakota: An Overview of Discrimination Laws & Remedies
- Housing Related Advertisement: Guidelines on How to Advertise Without Violating Housing Discrimination Laws
- How to File a Discrimination Complaint in North Dakota: A Guide for Those Who Believe They Have Been Discriminated Against

Contacting the Department of Labor and Human Rights

The North Dakota Department of Labor and Human Rights can be reached in person or via mail, telephone, fax, or email. Additionally, interested parties may visit the department's web site.

In Person or Mail: State Capitol
600 East Boulevard Ave, Dept 406
Bismarck, North Dakota 58505-0340

Telephone: Local or out-of-state – (701) 328-2660
ND in-state toll free – 1-800-582-8032
TTY (Relay ND) – 711 or 1-800-366-6888 or 1-800-366-6889

Fax: (701) 328-2031

Email: labor@nd.gov

Web site: nd.gov/labor