



Labor and Human Rights

# **2021-2023 BIENNIAL REPORT**

**December 1, 2023**

**Doug Burgum, Governor**

**Nathan Svihovec, Commissioner of Labor**



December 1, 2023

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

The Hon. Michael Howe  
Secretary of State  
600 E Boulevard Ave  
Bismarck, ND 58505

Dear Governor Burgum and Secretary Howe:

As Commissioner of Labor, I am pleased to submit the 2021-2023 Biennial Report of the North Dakota Department of Labor and Human Rights, pursuant to North Dakota Century Code § 54-06-04.

The Department of Labor and Human Rights staff 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 and impartial service to North Dakota citizens.

Sincerely yours,

  
Nathan Svihovec  
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 <sup>1</sup>	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

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

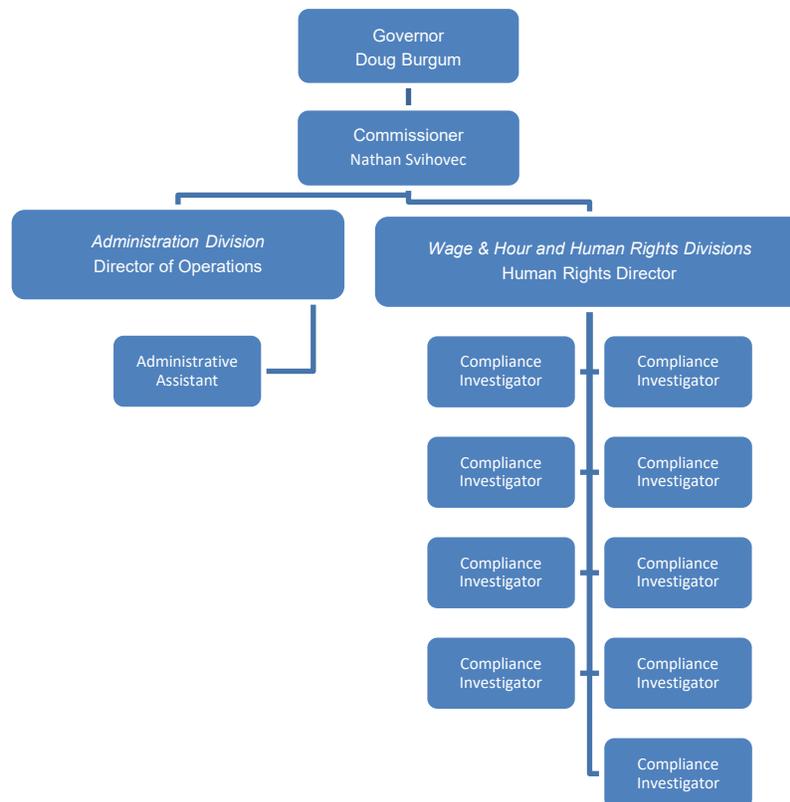
Michelle Kommer	2016-2019
Erica Thunder	2019-2022
Nathan Svihovec	2022-present

## Department Organization

The Commissioner of Labor administers the department. During the 2021-23 biennium, the Commissioner had authorization for a staff of up to 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 Director of Operations 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 2021-23 biennium:

### Summary of Claims for Wages, 2021-23 Biennium

Claims Pending 6/30/2021	58
New Claims Filed 7/1/2021 – 6/30/2023	722
Claims Closed 7/1/2021 – 6/30/2023	492
Claims Pending 6/30/2023	288

### Claims for Wages Closed, 2021-23 Biennium

Claims Closed	492
Total Amount Collected	\$413,385.43

### Claims for Wages Closed, 2021-23 Biennium

Settled without Determination	210
Settled after Determination	47
No Merit Determination	73
Small Claims Court for Enforcement	21
Attorney General for Enforcement	40
Referred to US Department of Labor	7
Referred to Other State	3
Withdrawn by Claimant	18

Dismissed <sup>2</sup>	70
Bankruptcy	3
<b>Total Claims Closed</b>	<b>492</b>

**Claims for Wages Closed, 2021-23 Biennium  
by Basis of Claim<sup>3</sup>**

Minimum Wage	17
Unpaid Wages	356
Unpaid Overtime	66
Unpaid Vacation	87
Unauthorized Deductions from Pay	83
Unpaid Commissions	37
Unpaid Bonus	38

**Claims for Wages Closed, 2021-23 Biennium  
by County of Employer**

Adams	2	McLean	3
Barnes	2	Mercer	2
Benson	0	Morton	16
Billings	2	Mountrail	11
Bottineau	1	Nelson	0
Bowman	2	Oliver	0
Burke	0	Pembina	2
Burleigh	58	Pierce	0
Cass	91	Ramsey	2
Cavalier	0	Ransom	1
Dickey	1	Renville	0
Divide	1	Richland	4

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

<sup>3</sup> Claims may have more than one basis.

Dunn	4	Rolette	3
Eddy	0	Sargent	3
Emmons	2	Sheridan	0
Foster	2	Sioux	2
Golden Valley	1	Slope	0
Grand Forks	24	Stark	55
Grant	1	Steele	1
Griggs	0	Stutsman	9
Hettinger	2	Towner	0
Kidder	0	Traill	3
LaMoure	1	Walsh	5
Logan	0	Ward	38
McHenry	0	Wells	1
McIntosh	0	Williams	38
McKenzie	15	Out of State	81
		<b>Total Claims Closed</b>	<b>492</b>

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, 2021-23 Biennium**

Inquiries Pending 6/30/2021	2
Inquiries Opened 7/1/2021 – 6/30/2023	573
Inquiries Closed 7/1/2021 – 6/30/2023	571
Inquiries Pending 6/30/2023	5
Total Collected 7/1/2021 – 6/30/2023	\$54,447.98

## 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 2021-23 biennium, 2,861 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 2021-23 biennium:

**Summary of EEO Charges, 2021-23 Biennium**

Charges Pending 6/30/2021	68
New Charges Filed 7/1/2021 – 6/30/2023	308
Charges Closed 7/1/2021 – 6/30/2023	222
Charges Pending 6/30/2023	154

**EEO Charges Closed, 2021-23 Biennium**

Charges Closed	308
Number of Charges Settled	32
Total Amount of Settlements	\$522,858.69

**EEO Charges Closed, 2021-23 Biennium, by Resolution**

Negotiated Settlement	29
Conciliated Settlement <sup>4</sup>	3
Determined with No Probable Cause	144
Determined with Probable Cause	5
Notice of Right to Sue Issued	3
Transferred to EEOC	8
Withdrawn with Resolution	10
Withdrawn without Resolution	6
Dismissed <sup>5</sup>	14
<b>Total Charges Closed</b>	<b>222</b>

<sup>4</sup> 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.

<sup>5</sup> 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, 2021-23 Biennium  
by Statutory Jurisdiction**

Title VII of the Civil Rights Act of 1964	116
Americans with Disabilities Act of 1990	89
Age Discrimination in Employment Act of 1967	34
North Dakota Human Rights Act Only <sup>6</sup>	17

**EEO Charges Closed, 2021-23 Biennium  
by Basis of Charge<sup>7</sup>**

Age	33
Color	17
Disability	90
Marital Status	2
National Origin	22
Pregnancy	10
Receipt of Public Assistance	0
Race	44
Religion	15
Retaliation	86
Sex	66
Lawful Activity <sup>8</sup>	8

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<sup>6</sup> All charges meeting federal jurisdiction also meet North Dakota jurisdiction.

<sup>7</sup> Charges may have more than one basis.

<sup>8</sup> "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, 2021-23 Biennium  
by County of Respondent**

Adams	1	McLean	0
Barnes	1	Mercer	0
Benson	2	Morton	7
Billings	0	Mountrail	6
Bottineau	1	Nelson	0
Bowman	0	Oliver	0
Burke	1	Pembina	1
Burleigh	30	Pierce	0
Cass	60	Ramsey	1
Cavalier	0	Ransom	0
Dickey	1	Renville	0
Divide	0	Richland	6
Dunn	0	Rolette	3
Eddy	0	Sargent	0
Emmons	0	Sheridan	0
Foster	0	Sioux	0
Golden Valley	1	Slope	0
Grand Forks	16	Stark	9
Grant	0	Steele	0
Griggs	0	Stutsman	1
Hettinger	0	Towner	0
Kidder	1	Traill	0
LaMoure	1	Walsh	2
Logan	0	Ward	24
McHenry	0	Wells	0
McIntosh	0	Williams	10
McKenzie	2	Out of State	34
<b>Total Claims Closed</b>			<b>222</b>

## 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 2021-23 biennium, the department received 56 complaints of employment retaliation and closed 54. At the end of the biennium, the department had 3 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 2021-23 biennium:

**Summary of Housing Discrimination Complaints  
2021-23 Biennium**

Complaints Pending 6/30/2021	12
New Complaints Filed 7/1/2021– 6/30/2023	52
Complaints Closed 7/1/2021 – 6/30/2023	46
Complaints Pending 6/30/2023	18

**Housing Discrimination Complaints Closed  
2021-23 Biennium**

Complaints Closed	46
Number of Complaints Settled	24
Total Amount of Settlements <sup>9</sup>	\$39,777.37

**Housing Discrimination Complaints Closed  
2021-23 Biennium, by Resolution**

Settled Through Conciliation	19
Determined with No Reasonable Cause	13
Determined with Reasonable Cause	4
Referred to HUD	0
Dismissed <sup>10</sup>	4
Withdrawn with Resolution	4
Withdrawn without Resolution	2
<b>Total Complaints Closed</b>	<b>46</b>

**Housing Discrimination Complaints Closed  
2021-23 Biennium  
by Basis of Complaint<sup>11</sup>**

Age	1
Color	1
Disability	28
Familial Status	2
Marital Status	1
National Origin	1
Receipt of Public Assistance	10
Race	8

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<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> Complaints may have more than one basis.

Religion	0
Retaliation	9
Sex	4

**Housing Discrimination Complaints Closed  
2021-23 Biennium  
by County of Complainant**

Adams	0	McLean	0
Barnes	0	Mercer	0
Benson	0	Morton	2
Billings	0	Mountrail	1
Bottineau	0	Nelson	0
Bowman	0	Oliver	0
Burke	0	Pembina	0
Burleigh	7	Pierce	0
Cass	20	Ramsey	3
Cavalier	0	Ransom	0
Dickey	0	Renville	0
Divide	0	Richland	0
Dunn	1	Rolette	0
Eddy	0	Sargent	0
Emmons	0	Sheridan	0
Foster	0	Sioux	0
Golden Valley	0	Slope	0
Grand Forks	2	Stark	1
Grant	0	Steele	0
Griggs	0	Stutsman	0
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	0	Out of State	6
		<b>Total Claims Closed</b>	<b>46</b>

## 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, 2021-23 Biennium

Complaints Pending 6/30/2021	2
New Complaints Filed 7/1/2021 – 6/30/2023	16
Complaints Closed 7/1/2021 – 6/30/2023	11
Complaints Pending 6/30/2023	7

### Other Human Rights Complaints Closed 2021-23 Biennium by Type of Discrimination

Public Accommodations	7
Public Services	4
Credit Transactions	0
<b>Total Complaints Closed</b>	<b>11</b>

**Other Human Rights Complaints Closed  
2021-23 Biennium**

Complaints Closed	11
Number of Complaints Settled	1
Total Amount Collected	\$350.00

**Other Human Rights Complaints Closed  
2021-23 Biennium**

Settled	1
Determined with No Probable Cause	8
Determined with Probable Cause	0
Withdrawn by Complainant	0
Dismissed <sup>12</sup>	2
Notice of Right to Sue Issued	0
<b>Total Complaints Closed</b>	<b>11</b>

**Other Human Rights Complaints Closed  
2021-23 Biennium by Basis of Complaint<sup>13</sup>**

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

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<sup>12</sup> 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.

<sup>13</sup> Complaints may have more than one basis.

**Other Human Rights Complaints Closed  
2021-23 Biennium  
by County of Respondent**

Adams	0	McLean	0
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	1	Pierce	0
Cass	5	Ramsey	0
Cavalier	0	Ransom	0
Dickey	0	Renville	0
Divide	0	Richland	1
Dunn	0	Rolette	0
Eddy	0	Sargent	0
Emmons	0	Sheridan	0
Foster	0	Sioux	0
Golden Valley	0	Slope	0
Grand Forks	0	Stark	1
Grant	0	Steele	0
Griggs	0	Stutsman	0
Hettinger	0	Towner	0
Kidder	0	Traill	0
LaMoure	0	Walsh	0
Logan	0	Ward	3
McHenry	0	Wells	0
McIntosh	0	Williams	0
McKenzie	0	Out of State	0
<b>Total Claims Closed</b>			<b>11</b>

## 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 2021-23 biennium, the department reviewed 2 applications for independent

contractor status. Of these, 1 was affirmatively verified as being an independent contractor relationship.

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 2021-23 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 2021-23 biennium, 248 individuals worked under sub-minimum wage licenses issued by the department to 8 community organizations offering rehabilitation programs. In the second year of the biennium the number decreased to 218 individuals to 9 community organizations. The department did not issue any licenses to individuals or vocational students during the 2021-23 biennium.

Many businesses participated in providing employment opportunities for workers with disabilities. Examples of participating businesses during the 2021-23 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 2021-23 biennium, the department responded to 5,220 telephone, 1,180 email, 62 mail, and 98 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 2021-23 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, 2021-23 Biennium by Topic**

Wage and Hour	3,681
Discrimination	1,734
Other Information	779
Referrals to Department Website	3,352
Referrals to Other Agencies	4,041
Posters Requested	296
Brochures Requested	91

## 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 33 informational

presentations to groups and hosted exhibit booths to distribute information at 4 events during the 2021-23 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 Director of Operations works directly with and under the supervision of the Commissioner to oversee these functions.

## **Legislation**

Senate Bill No. 1007 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 \$2,911,054. This became effective for the biennium beginning July 1, 2021 and ending June 30, 2023.

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 2021-23 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 an updated a database that allows the Department to be completely paperless with case work.
- The Department's educational brochures and posters have been updated to include Spanish versions as well.

## **Trends**

### **Wage and Hour**

The number of wage and hour complaints received by the department have decreased during the 2021-23 biennium. New complaints filed with the department were 722, compared to 771 in the previous biennium, and 837 in the 2017-19 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 2021-23 biennium, from 353 to 308. Charges filed on the protected categories of sex, disability, retaliation, and race were the most numerous types of claims made.

### Housing

The overall number of housing discrimination complaints filed with the department remained the same during the 2021-23 biennium. The housing area continued to have a high proportion of complaints settled through the conciliation process, with 24 of the 46 cases closed being closed through the conciliation process. The average number of days to close housing complaints increased during this biennium from 63 to 212. The number of staff members combined with the years of experience that was lost due to retirements is largely the result of this increase. Since early 2023, two additional staff members are trained to conduct housing discrimination investigations. 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 increased slightly during the 2021-23 biennium, from 14 to 16. 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 2021-23 biennium:

	Appropriation	Actual Expenditures
Salaries & Wages	\$2,394,979	\$1,859,333.09
Operating Expenses	\$516,075	\$259,894.73
Total	\$2,911,054	\$2,119,227.82

The department's appropriation was comprised of \$2,394,979 in general funds and \$516,075 in federal spending authority, while expenditures consisted of \$1,668,425.58 in general funds and \$450,802.24 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](mailto:labor@nd.gov)

Web site: [nd.gov/labor](http://nd.gov/labor)