

## Wage & Hour Questions

### **Q. What is the minimum wage?**

**A.** The minimum wage in North Dakota is \$7.25 per hour. North Dakota does not have a training wage.

### **Q. I receive tips. Can my employer pay me less than minimum wage?**

**A.** Maybe. An employee who customarily and regularly receives more than \$30 per month in tips may be paid a minimum direct wage of \$4.86 per hour, subject to some requirements. However, the tips earned plus the direct wage paid by the employer must equal the full minimum wage of \$7.25 per hour for all hours worked. Employers are required to 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.

### **Q. What can be deducted from my wages?**

**A.** 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.

### **Q. Is it legal for an employer to require employees to purchase uniforms?**

**A.** Usually. An employer may establish a dress code and/or require employees to wear uniforms. However, unless it would create an undue hardship on the business, an employer must reasonably accommodate an employee's beliefs or practices, which may include such things as religious dress or grooming practices. If not providing free uniforms, an employer can require an employee to purchase uniforms (either through a deduction from the employee's pay or by billing the employee) provided that the cost does not bring the employee's wage below the hourly minimum wage for all hours worked during that pay period. In the case of a deduction from pay, the employee's written authorization must be obtained.

### **Q. Is my employer supposed to give me a check stub?**

**A.** Yes. Each time an employee is paid, the employer must provide a statement or check stub listing the rate of pay, hours worked, and all deductions from earnings.

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*The North Dakota Department of Labor is committed to educating employers and employees regarding labor laws and employment discrimination laws.*

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An employer may use an electronic version of the check stub or pay voucher so long as the employee has access and the ability to print the information.

### **Q. Am I entitled to breaks?**

**A.** Maybe. Any employee who works a shift exceeding five hours is entitled to an unpaid 30 minute uninterrupted break when there are two or more employees on duty. Paid ten or fifteen minute "coffee" breaks are not required but could be offered at the employer's discretion. Union employees must follow the terms of their collectively bargained agreements.

### **Q. I'm a salaried employee. Might I still be entitled to overtime pay?**

**A.** Possibly. Employees are entitled to overtime pay unless the actual work duties they perform the majority of their work time meet one or more of the exemptions from overtime stated in labor law (a list of overtime exemptions is provided on the reverse side of the North Dakota Minimum Wage & Work Conditions Summary poster). Simply being paid on a salary basis is not enough to make an employee exempt from overtime pay.

### **Q. I am entitled to overtime because my job duties do not meet any of the exemptions. How must my employer calculate overtime pay?**

**A.** Generally, overtime is to be paid at 1-1/2 times the regular rate of pay for hours worked in excess of 40 in a work week (a consistent, consecutive 7 day period defined by the employer, unless the employer is a hospital or residential care establishment which may adopt a 14 day overtime period). Overtime must be calculated each work week regardless of the length of the pay period. Overtime need only be computed for actual hours worked. Vacation days, paid holidays, or sick days (time not worked) do not need to be included in an overtime computation. Non-exempt employees in the private sector cannot be granted compensatory time in lieu of monetary overtime compensation.

### **Q. Can my employer fire me without a reason?**

**A.** Yes. Without a contract specifying a term of employment, the "employment-at-will" doctrine applies. "Employment-at-will" essentially means that either party (employer or employee) can terminate the employment relationship at any time, with or without cause. An employer may not, however, terminate an employment relationship on the basis of race, color, religion, sex, national origin, age, disability, marital status, pregnancy, status with regard to public assistance, or 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. Other discrimination laws may also prohibit an employer from terminating an employee; for example, the Uniformed Services and Reemployment Rights Act protects persons who serve or have served in the Armed Forces, Reserves, National Guard, or other "uniformed services" from discrimination because of their military service.

### **Q. Does my employer have to give notice to fire me? Must I give advanced notice to quit?**

**A.** Based on the employment-at-will doctrine, there is a presumption that either party may terminate the employment relationship upon notice to the other. No specific length of notice is required.

### **Q. When does my employer have to pay me after I've quit or been fired?**

**A.** A separated employee's wages become due and payable at the regular payday(s) established in advance by the employer for the period(s) worked by the employee. In other words, payroll should simply follow its normal course.

### **Q. Am I entitled to my unused vacation when I quit or am fired?**

**A.** In most instances, once earned (available for the employee's use), vacation constitutes a wage and is due with the employee's final paycheck. However, there are limitations that may apply to payment of paid time off:

1) If an employee separates from employment voluntarily, a private employer may withhold payment for accrued paid time off if:

- 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.

## Equal Employment Questions

### **Q. How is discrimination defined?**

**A.** Employment discrimination in violation of North Dakota state or federal law is defined as an act of prejudice based on race, color, religion, sex, age, national origin, disability, pregnancy, marital status, status with regard to public assistance, or 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.

### **Q. My boss doesn't like me. What can I do?**

**A.** Personality conflicts are not necessarily illegal. If your employer doesn't like you because of your race, color, age, religion, sex, national origin, disability, marital status, pregnancy, or status with regard to public assistance and treats other employees more favorably, it may be illegal.

### **Q. They didn't advertise the position and then hired a friend of the boss.**

**A.** There is no statute requiring an employer in the private sector to advertise a position. North Dakota laws do not prevent private employers from hiring friends or relatives; however, there are laws prohibiting nepotism (the hiring of certain relatives) by some state officials and employees, as well as some county and city officials.

### **Q. I'm not paid the same wage as a co-worker. Isn't that a violation of equal pay laws?**

**A.** Equal pay laws are gender-based statutes which indicate that similarly situated males and females who perform essentially the same job functions should be paid equal wages. However, if you are the same gender as the co-worker, there may be other violations of state or federal anti-discrimination laws.

### **Q. I'm being harassed. That's not right, is it?**

**A.** If the harassment is based on race, color, age, religion, sex, pregnancy, national origin, disability, marital status, or status with regard to public assistance, it may be a violation of anti-discrimination laws.

### **Q. I complained to my boss about sexual harassment, but nothing was done about it.**

**A.** An employer is responsible for taking immediate and corrective action in harassment and hostile environment situations related to anti-discrimination laws. If you believe you have been sexually harassed or otherwise harassed because of your race, color, gender, or other protected category and the employer has done nothing after being notified, you may contact the North Dakota Department of Labor and Human Rights.

### **Q. They won't hire me because I filed a claim with Workforce Safety & Insurance (WSI) while employed at my previous employer. Is that legal?**

**A.** If the employer obtained information about your prior WSI claim or occupational injury from a third party, such as a former employer, WSI, or a service that provides WSI information, before making a conditional offer of employment, they have violated Title I of the Americans with Disabilities Act of 1990. At the pre-offer stage, as at any other time, an employer may not obtain from third parties any information that they could not obtain directly from the applicant. However, an employer may ask questions about an applicant's prior WSI claims or occupational injuries after it has made a conditional offer of employment, but before employment has begun, as long as it asks the same questions of all entering employees in the same job category.

### **Q. I was fired because I was sick and didn't go to work for two days. Can they do that?**

**A.** Probably, however, if your absenteeism is related to a disability or pregnancy, you may be protected by anti-discrimination laws. In addition, you may have protection under the Family & Medical Leave Act (FMLA) which provides leave for the birth/adoption of a child or for an employee's or employee's family member's serious medical condition. The FMLA is enforced by the Federal Department of Labor.

### **Q. I broke my leg and now my boss wants to fire me. Is that a violation of disability laws?**

**A.** A broken leg or arm is considered temporary and is not typically covered under the disability discrimination laws. You may, however, be covered under the federal Family and Medical Leave Act (FMLA).

### **Q. I am a qualified individual with a disability but my employer refuses to accommodate my disability and change my schedule. Does he have to?**

**A.** Possibly. An employer has the right to review medical documentation related to your request for an accommodation to determine if it is reasonable. You and the employer should determine and implement a reasonable accommodation that does not create an undue hardship on the employer's business.

Have Additional Questions?  
Need assistance with this information?  
Contact us at:

**North Dakota Department of Labor and Human Rights**

**600 East Boulevard Ave, Dept. 406  
Bismarck, ND 58505-0340**

**Phone - (701)328-2660 or 1-800-582-8032  
TTY (Relay ND) - 1-800-366-6888 or -6889**

**Fax - (701)328-2031**

**E-Mail - labor@nd.gov**

**Web site - nd.gov/labor**

# Wage & Hour and Equal Employment Laws

## Most Commonly Asked Questions and Their Answers

