

NORTH DAKOTA



ND MINIMUM WAGE & WORK CONDITIONS SUMMARY

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OVERTIME

N.D. Admin. Code § 46-02-07-02(4)

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

Employers have overtime rules listed below. Examples for calculating overtime are available in N.D. Admin. Code Section 46-02-02.

MEAL PERIODS

N.D. Admin. Code § 46-02-07-02(5)

- A minimum 30-minute meal period must be provided in excess of the hours for which time is paid or for which compensation is due.
- Employees may waive their right to a meal period upon agreement with the employer.
- Employees do not have to be paid for meal periods if they are completely relieved of their duties and the meal period is at least thirty minutes in length. Employees are not considered relieved if they are required to perform any duties during the meal period.
- Other breaks (such as 15-minute "coffee" breaks) are not required by law, but must be paid for if they are afforded by the employer.

PAID TIME OFF

N.D. Admin. Code § 46-02-07-02(12)

Applies unless a limitation below is met.

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

LIMITATIONS ON PAID TIME OFF

N.D.C.C. § 34-14-09.2

1. If an employee separates from employment voluntarily, a private employer may withhold payment for accrued paid time off if the following conditions are all met:
 - a. At the time of hiring, the employer provided the employee written notice of the limitation on payment of accrued paid time off.
 - b. The employee has been employed by the employer for less than one year.
 - c. The employee gave the employer less than 30 days' written or verbal notice.
2. If an employee separates from employment, a private employer may withhold payment for paid time off:
 - a. The paid time off was awarded by the employer and not paid by the employee; and
 - b. Before awarding the paid time off, the employer provided the employee written notice of the limitation on payment of awarded paid time off.

PAYDAYS & RECORD KEEPING

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

- Employees must be paid at least once each calendar month at the regular pay rate designated in advance by the employer.
- Every employee must furnish to the employer each pay period a check, stub, or receipt reflecting hours worked, rate of pay, regular and overtime pay, deductions, and any other amounts.
- When an employee is terminated from employment, separation from employment voluntarily, or is separated from work as the result of an industrial disease, related wage or compensation because due and payable at the regular pay rate(s) established in advance by the employer for the period(s) selected by the employee.
- When an employee terminates an employment, the employer shall pay wages to the employee by certified mail at an address designated by the employee or as otherwise agreed upon by both parties.

DEDUCTIONS FROM PAY

N.D.C.C. § 34-14-04.1

- Except for those amounts that are required under state or federal law to be withheld from employee compensation or where a court order requires an employer to withhold compensation, an employer may withhold from the compensation due employees:
 1. Deductions paid to employees, other than unemployment cash;
 2. A reasonable deduction authorized in writing, when the source of the deduction is clear; and
 3. A nonrecurring deduction for damage, breakage, shortage, or negligence must be authorized by the employee at the time of the deduction.

EMPLOYMENT AT WILL

N.D.C.C. § 34-03-01

- Employment relationships without a specific term exist at the will of both parties and can be terminated by either party upon notice to the other. Its minimum length of notice is generally a two-week notice in response. Contracts specifying a term of employment can pre-empt the at-will provision.

MINIMUM WAGE RATE:

North Dakota does not have a Training Wage.

\$7.25

per hour on 7/24/09

Effective Date: August 1, 2015

RIGHT TO WORK

N.D.C.C. § 34-03-14

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

YOUTH EMPLOYMENT

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

Employment of Age-Certificated (work permit) are required for workers ages 14, 15, and 16 and are available from the Department of Labor, Job Service Offices, County School Superintendents', offices, and local schools.

Restricted hours for youth ages 14, 15:

- Maximum hours per day: 4 per school day, 8 per non-school day.
- Maximum hours per week: 18 per school day (any week in which school attendance is required any part of 4 or more days), 40 per non-school day.
- May work only between 7 a.m. - 7 p.m. (paid by at least June 1st - Labor Day).

Handbook jobs duties for youth ages 14, 15:

Workers ages 14, 15 are prohibited from performing certain jobs which are hazardous to their health.

EXEMPTIONS FROM OVERTIME

N.D. Admin. Code § 46-02-07-02(4)

- An employee employed in a bona fide executive, administrative, or professional capacity. Excludes — an employee whose primary duties consist of:
 - a. The management of the enterprise or recognized department or subdivision thereof;
 - b. The directing of two or more other employees; and,
 - c. The authority to hire or fire other employees or whose suggestions will be given particular weight.

Administrative — an employee whose primary duties consist of:

- a. Office or non-manual work directly related to management policies or general business operations; and
- b. Work customarily and regularly exercising discretion and independent judgment.

Professional — an employee whose primary duties consist of:

- a. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study as distinguished from a general academic education and from apprenticeship; and from training in the performance of routine mental, manual, or physical processes;
- b. Work requiring the consistent exercise of discretion and judgment in the performance; and
- c. Work that is predominantly intellectual and varied in character or required to require mental, manual, mechanical, or physical work.

• An employee engaged in agricultural occupation — growing, raising, preparing, or delivering agricultural commodities for market.

• An employee in excess of 51% of the employee's work time providing direct care to clients of a shelter, foster care, or other such related institution.

• An employee engaged in domestic service who resides in the household in which employed.

• A freight commission salesperson in retail automobile, truck, boat, aircraft, train, or train equipment dealerships where the salesperson is required to be on the premises for more than forty hours per week.

• A computer professional exercising discretion and independent judgment when developing, designing, creating, analyzing, testing, or modifying computer programs or who is paid hourly at a rate of at least \$27.00.

• An employee who is customarily and regularly engaged away from the employer's premises for the purpose of making sales calls on others. Work awarded to outside sales may not exceed 25% of the hours worked in the week.

• A franchisee paid on a commission basis off a franchise schedule.

• An employee of a retail establishment if the employee's regular rate of pay exceeds 1.5 times the minimum hourly rate applicable to more than half of the employee's compensation for a period of not less than two months is derived from commission or services sold.

• An employee employed as an insurance, securities, or chief engineer by a radio or television station.

• An employee in a artistic profession that is original and creative in nature or where the work is dependent upon the invention, imagination, or talent of the employee.

• Motor carrier as applied to covered employees of motor carriers, contract, and private carriers specified by the Motor Carrier Act (49 U.S.C. 31502).

• A teacher, instructor, tutor, or lecturer engaged in teaching in a school or educational system.

• A highly compensated employee an employee who is paid total annual compensation of not less than \$44,000, exclusive of dollars or more, which include at least four hundred fifty dollars per week paid as a salary or bonus. The employee's primary duty includes performing all or nonseasonal work.

• An employee providing computer services (hardware, software, or peripherals) to a client or disabled individual. No more than 20% of the hours worked in the week may be household work cleaning, laundry, or meal preparation. N.D.C.C. § 34-02-21.1

TAXI DRIVER AND HEALTHCARE OVERTIME PROVISIONS

N.D. Admin. Code § 46-02-07-02(4)

Taxi drivers must be paid overtime for all hours worked in excess of fifty hours in any work week.

People and residential care establishments may adjust, by agreement with their employees, a fourteen-day overtime period, if the employees are paid at least one and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period.

TIPS

N.D. Admin. Code § 46-02-07-03

• Deductions offered to an employee by a customer belong to the employee and may not be retained by the employer.

• Employees may utilize a tip credit of 50% of the minimum wage for tipped employees. With the tip credit applied, the minimum direct wage payable to a tipped employee is \$4.88 per hour effective July 24, 2009. The employer must maintain records verifying that tipped employees receive at least the full minimum wage for all hours worked when the direct wage and tips are combined.

• Employees employed in any service occupation in an occupation in which he or she receives more than thirty dollars per month in tips.

A SERVICE EMPLOYEE IS AN EMPLOYEE WHO IS PROVIDING DIRECT SERVICE TO THE CUSTOMER AND THAT CUSTOMER DOWNSIDE APPRECIATION FOR THAT SERVICE IS TIPPING THAT EMPLOYEE FOR THE DIRECT SERVICE. THE EMPLOYEE MUST REGULARLY AND CUSTOMARILY PROVIDE PERSONAL CARE TO FACILITATE TO INDIVIDUAL CUSTOMER, WHOSE CUSTOMER WOULD BE ASKING FOR TIPS AS BEING PERFORMED FOR HIS OR HER BENEFIT. SERVICES SUCH AS COOKING AND CLEANING ARE NOT INCLUDED.

• An employer who elects to use the tip credit must inform the employee in advance.

• Tip pooling is allowed only among the tipped employees. A rate of tipped employees to allow for pooling must be taken, and fifty percent plus one of all tipped employees must approve it. The employer must maintain a written record of such vote on tip pooling, including names of employees voting and the vote tally. A vote on whether to pool tips is required if requested by fifty-one percent or more of the tipped employees. The tipped employees shall provide documentation verifying the request. Time spent in meetings called by the employees exclusively for tip issues is not work time. During such time, which includes that any newly incident employees on duty, can require tip pooling among all tipped employees at the site. All bosses or supervisors at parties are not tipped employees and cannot be part of the tip pool when performing functions of those positions other than directing tipping (twenty-one).

MEETINGS AND TRAINING TIME

N.D. Admin. Code § 46-02-07-02(6)

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

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

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

TRAVEL TIME

N.D. Admin. Code § 46-02-07-02(7)

• The following types of travel time are not considered work time for which an employee must be compensated: 1) Ordinary travel from home to work; 2) Time spent as a passenger on an airplane, train, bus, or automobile outside of regular working hours; 3) Activities that are merely incidental to an employee provided vehicle for commuting from home to work.

• The following types of travel time are considered work time for which an employee must be compensated: 1) Travel during regular work hours; 2) Travel on non-work days during regular work hours; 3) Activities that are not merely incidental to an employee's work; 4) Travel time from home to job site or from job site to job site. The third of a validly working day when the employee is required to travel to the job site or to any assignment performed at the employee's request regardless of direct or passenger status.

ON-CALL

N.D. Admin. Code § 46-02-07-02(8)

• When employees are required to remain on-call on the employer's premises or in close proximity that they cannot use the time effectively for their own purposes, they are considered to be working and must be compensated.

• When employees are on-call and are not required to remain on the employer's premises but are required to respond to a pager or have call at home or the employer's business where they may be reached, they are not considered to be working and need not be compensated.

CONTRACTS AND COMMISSIONS

N.D. Admin. Code § 46-02-07-02(13)

• An oral contract is an amount paid in addition to a salary, wage, or commission. An amount paid is compensable when an employee performs the requirements and fulfills a contract or an agreement between the parties.

• A commission is a fee or percentage given for compensation to an individual for completion of a sale or transaction. Upon separation from employment, the total position, duties, and entire employment relationship will be used to determine if the commission is earned and compensable.

ROOM AND BOARD

N.D. Admin. Code § 46-02-07-02(13)

• The reasonable value, not exceeding the employer's actual cost, of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be treated as part of the wages, up to a maximum of \$3.00 per hour, if it is agreed in a written contract that the employee's acceptance of facilities is in full satisfaction.

UNIFORMS

N.D. Admin. Code § 46-02-07-02(11)

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

EMPLOYMENT DISCRIMINATION

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

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

EMPLOYMENT RETALIATION

N.D.C.C. § 34-01-20

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

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

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

POSTING REQUIRED

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

This poster summarizes provisions contained in the ND Minimum Wage & Work Conditions Summary. Admin. Code 46-02-07-02(4) and selected provisions of North Dakota Century Code (N.D.C.C.) Title 34 and N.D.C.C. Chapter 14-02.4.

IMPORTANT NOTICE TO WORKERS

In Case of Injury at Work

Seek first aid or medical treatment immediately

- If your employer does not have a Designated Medical Provider (DMP) you may see any medical provider.
- If your employer does have a DMP, you are required to see that DMP unless you selected your own DMP before the injury occurred.
- If it is an emergency, you can treat with any medical provider.

Tell your employer about the injury as soon as you become aware of the injury

- Workforce Safety & Insurance (WSI) may not accept your claim if you fail to tell your employer with 7 days.
- Even if you do not receive medical treatment, report your injury so your employer is aware of a potential hazard.

Your Employer's DMP is:

Employers

The DMP selection must be visible to workers at all locations, including at mobile workites. Failure to give notice, post notice, or to inform employees of the DMP voids the selection.

If you suspect someone is committing fraud, report it immediately to WSI at 800-243-3331.

For a detailed explanation of the information contained in this poster, contact WSI at the numbers listed below or visit our website at www.workforcesafety.com

WSI

North Dakota Workforce Safety & Insurance

1600 E Century Ave, Suite 1 - PO Box 5585 - Bismarck ND 58506-5585

Customer Service: 800-777-5033 or 701-339-3900

Hearing Impaired: 800-366-6888

Decision Review Office: 800-777-4932 or 701-339-9000

Fraud & Safety Hotline: 800-243-3331

800-243-3331

THIS POSTER MUST BE POSTED IN A CONSPICUOUS PLACE TO EMPLOYEES:

THIS EMPLOYER IS SUBJECT TO THE UNEMPLOYMENT COMPENSATION LAWS OF THE STATE OF NORTH DAKOTA

Employer Name: _____ Enter Employer Name

Account #: _____ Enter ND Unemployment Account #

YOU MAY BE ELIGIBLE FOR UNEMPLOYMENT COMPENSATION BENEFITS IF YOU MEET THE ELIGIBILITY REQUIREMENTS

To file a claim for unemployment compensation benefits:

online: www.jobsnd.com
click on the UI ICE logo
 or call: 1-701-328-4995
 or TTY: RELAY ND 1-800-366-6888 (for hearing impaired only)

The North Dakota Unemployment Compensation Law requires subject employees to post this notice near the location(s) where worker's services are performed. Employees are prohibited from posting this notice if they are not currently liable for coverage. NDCC 35-09-35 NDAC 27-02-04-01

NORTH DAKOTA

Be Legendary™

Job Service North Dakota is an Equal Opportunity Employer/Program Provider. Auxiliary Aids and Services are Available Upon Request to Individuals with Disabilities.

Job Service

Unemployment Insurance

PO Box 5507

Bismarck ND 58506-5507

Notice to Employers / Employees

Your state has its own minimum wage law which requires posting a notice regarding the aspects of that law. Employers are still required to post the Federal Minimum Wage notice from the U.S. Dept. of Labor Fair Labor Standards Act in addition to its state posting. According to the Dept. of Labor, where Federal and state law have different minimum wage rates, the higher standard applies.

This Posting is for Informational Purposes Only

NORTH DAKOTA

SP-ND-E

ADP

Always Designing for People®