NORTH DAKOTA — State Laws by Topic

➤ AGE

Under the North Dakota Age Discrimination Act, persons carrying on or conducting business in North Dakota that requires employees are prohibited from refusing to hire or license, barring from employment, or terminating any individual based solely on age, unless the reasonable demands of the position in question require an age distinction or the individual is not qualified for the position. This Act protects individuals between the ages of 40 and 65.

➤ AIDS

Testing: Informed consent must be obtained before an individual is tested for AIDS.

➤ ARRESTS/CONVICTIONS

No general provision prohibiting an employer’s collection and use of arrest or conviction records.

➤ BREAKS

A 30-minute meal break is required for employees who work more than five hours. Exceptions: Meal breaks set by union contracts override the law. Employers with only one employee are excluded from the law.

➤ BREAST-FEEDING

If a woman acts in a discreet and modest manner, she may breast-feed her child in any location, public or private, where she and the child are otherwise authorized to be present.

An employer may use the designation “infant friendly” on its promotional materials if the employer adopts a workplace breast-feeding policy that includes:

- flexible work scheduling, including scheduling breaks and permitting work patterns that provide time for the expression of breast milk;
- a convenient, sanitary, safe, and private location, other than a restroom, which provides privacy for breast-feeding or expressing breast milk;
- a convenient, clean, and safe water source with facilities for washing hands and rinsing breast-pumping equipment located in said private location; and
- a convenient hygienic refrigerator in the workplace for the temporary storage of the mother’s breast milk.
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➢ **CHILD LABOR ➢**

Click on the following link [http://www.nd.gov/labor/youth/index.html](http://www.nd.gov/labor/youth/index.html) to access North Dakota’s Department of Labor, Wage & Hour Division youth employment home page.

➢ **CHILD SUPPORT ➢**

Employers served with a child support order must begin withholding with the first pay period occurring after the order is served. Amounts are remitted within seven business days of payday. Notify the court within seven days if the employee-obligor terminates. Employers may remit withheld child support electronically through the state’s website.

Employers that have 25 or more employees, and that receive five or more income withholding orders, must remit the amounts withheld electronically. The requirement to remit electronically may be waived if employers show good cause.

For employees with past-due support, employers may, but aren’t required to, report lump-sum payments of less than $1,000 to the state disbursement unit.

➢ **COURT ATTENDANCE ➢**

See jury duty.

➢ **DISABILITIES ➢**

Under the North Dakota Human Rights Act, employers are prohibited from refusing to hire or promote, refusing to make reasonable accommodations for, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on physical or mental disability.

The Act defines a person with a disability as one who has a physical or mental impairment that substantially limits one or more major life activity, has a record of this impairment, or is regarded as having this impairment. An employer is defined as an individual in North Dakota who employs one or more employees for more than one quarter of the year, as well as an individual regardless of location who employs one or more employees whose services are to be partially or wholly performed in North Dakota.

➢ **DRUG TESTING ➢**

North Dakota does not have a general drug testing law, but does have a testing provision related to Workers’ Compensation. If an employer that is subject to North Dakota’s Workers’ Compensation law has reasonable grounds to suspect that an employee’s alleged work injury was a result of the employee’s voluntary impairment caused by the use of alcohol or illegal drugs, the employer may request that the employee undergo testing to determine if the employee had an alcohol or drug level that was greater than the limit set by the United States Department of Transportation at the time of the injury.
FAMILIAL/MARITAL STATUS

Under the North Dakota Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on marital status.

For purposes of state law, an employer is defined as an individual in North Dakota who employs one or more employees for more than one quarter of the year, as well as an individual regardless of location who employs one or more employees whose services are to be partially or wholly performed in North Dakota.

FAMILY/MEDICAL LEAVE

Employee eligibility: Under the law, full-time state employees may be eligible for up to four months of family leave in any 12-month period, while part-time state employees, who work at least an average of 20 hours per week, may receive up to two months of family leave in any 12-month period.

General rule: Employers may provide employees with family leave that is more generous than the state’s. But employers must grant an employee’s request for leave for any of the following reasons.

- To care for the employee’s child by birth, if the leave is within 16 weeks of the child’s birth.
- To care for a child placed with the employee by a licensed child-placing agency for adoption, or precondition to adoption, not both, or foster care, if the leave begins within 16 weeks of the child’s placement.
- To care for the employee’s child, spouse, or parent who has a serious health condition.

If an employee intends to take family leave to care for the employee’s child, spouse, or parent, in the event of a serious health condition, the employee should make a reasonable effort to schedule the planned care so that it does not unduly disrupt the employer’s operations, subject to the approval of the health care provider, and give the employer advance notice of the planned care in a reasonable and practicable manner.

Family leave is not required to be granted with pay unless specified by an employer/employee agreement, collective bargaining agreement, or employer policy. If employees are planning to take leave because of the birth or placement of a child, then employees must give employers reasonable and practicable notice.

Certification: The employer may require the employee to provide certification from the health care provider. Employers may only request certification for the following.

- That the child, spouse, or parent has a serious health condition.
- The date the health condition began and its probable duration.
- The medical facts about the serious health condition.
Reinstatement: When an employee returns from family leave, the employer must immediately place the employee in an employment position as follows: if the employment position the employee held immediately before the family leave began is vacant, in that position; if the employment position that the employee held immediately before the family leave began is not vacant, in an employment position having equivalent compensation, benefits, hours of employment, and other terms and conditions of employment; or if, during the family leave, the employer experiences a layoff and the employee would have lost his/her position had he/she not been on leave, pursuant to the good-faith operation of a bona fide layoff and recall system, including a system under a collective bargaining agreement, the employee is not entitled to reinstatement in the former or an equivalent position. In such circumstances, the employee retains all rights under the layoff and recall system, including a system under a collective bargaining agreement, as if the employee had not taken leave.

If an employee on family leave requests a return to work before the end of leave as scheduled, the employer must place the employee in an employment position, as described above, within a reasonable time but not exceeding the duration of the leave as scheduled.

➢ GENETIC TESTING ➢

No provisions specified in the general employment context.

➢ HEALTH CARE CONTINUATION COVERAGE ➢

Continuation coverage requirements generally apply to employers that provide group health insurance coverage to employees. Eligible employees have the right to continue coverage for up to 36 months.


➢ JURY DUTY ➢

Employers are restricted from discharging, threatening, or coercing employees for serving as a juror or a witness, answering a summons or subpoena, attending court for prospective jury service, or testifying under a subpoena.

➢ LIFESTYLE DISCRIMINATION ➢

It is unlawful for an employer to refuse to hire, discharge, or otherwise take adverse action against an individual with respect to training, apprenticeship, tenure, promotion, compensation, layoff, or other terms, privileges, or conditions of employment because of the person’s participation in lawful activity off the employer’s premises during non-working hours that is not in direct conflict with the essential business-related interests of the employer.
➢ MASS LAYOFF NOTIFICATION

No state-specific notification provision.

➢ MEDICAL DONATION LEAVE

State employees may take a leave of absence, not to exceed 20 workdays, to donate an organ or bone marrow. Employees are permitted to request and use donated annual leave or sick leave. If an employee requests such donated leave, but does not receive the full amount needed for the donation, he/she may be granted a paid leave of absence for the remainder of the leave up to the maximum total of 20 workdays. Employers may require verification by a physician for the purpose of the leave request. Paid leave may not result in a loss of annual leave, sick leave, or accrued overtime to which the employee is otherwise eligible.

➢ MILITARY LEAVE

No military leave provision for private employers.

State employees. Employees may request up to 24 hours per year in paid leave to serve as part of an honor guard at veterans’ funerals.

➢ MINIMUM WAGE

Minimum hourly wage/overtime rate: $7.25/$10.88.

Basis for overtime: Over 40 hours/week.

Opportunity wage for under 20-year-olds: None.

Note: The state bases its minimum wage on the federal minimum wage. The state minimum may exceed federal minimum wage by a stated amount or percentage, or be adjusted to reflect cost of living increases.

➢ NATIONAL ORIGIN

Under the North Dakota Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on national origin.

For purposes of state law, national origin means the place of birth of an individual or any of the individual’s lineal ancestors. An employer is defined as an individual in North Dakota who employs one or more employees for more than one quarter of the year, as well as an individual regardless of location who employs one or more employees whose services are to be partially or wholly performed in North Dakota.
NEW-HIRE REPORTING

Data to be reported: Employee’s name, address, SSN, first day of work; employer’s name, address, federal EIN, and whether they offer health insurance. Employers that have 25 or more employees must submit new-hire reports electronically. The requirement to report electronically may be waived if employers show good cause.

Employers must report as new hires employees who have been off the payroll for at least 60 consecutive days.

Reporting deadline/form: Within 20 days of hire or rehire; on W-4s or through the state’s website.

OVERTIME

Basis for overtime: Over 40 hours in a workweek.

PAY STATEMENTS

Information required: Hours worked; pay rate; deductions.

PERSONNEL FILES

Public employers only. An employee or his/her representative must be permitted to inspect the employee’s official personnel file during normal business hours. Employers are allowed to charge employees a reasonable copying fee.

POLYGRAPH TESTING

No provisions specified in the general employment context.

POSTING REQUIREMENTS

Workers’ Compensation — All employers
Unemployment Benefits — All employers
Wage & Hour — All employers
Child Labor Law — Recommended
Human Rights Protection — Recommended
Sexual Harassment — Recommended
PREGNANCY

General rule: Prohibited discrimination based on sex includes discrimination based on pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

See also family/medical leave.

RACE

Under the North Dakota Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on race or color.

For purposes of state law, an employer is defined as an individual in North Dakota who employs one or more employees for more than one quarter of the year, as well as an individual regardless of location who employs one or more employees whose services are to be partially or wholly performed in North Dakota.

REFERENCES

Blacklisting: It is unlawful for employers to maliciously interfere with or hinder persons from obtaining or enjoying employment.

References: An employer that truthfully discloses dates of employment, pay level, job description and duties, job performance, and wage history about a current/former employee to a prospective employer is immune from civil liability.

Immunity may be lost if the information disclosed was: 1) knowingly false; 2) disclosed with reckless disregard for the truth; 3) deliberately misleading; or 4) rendered with malicious purpose. Immunity also does not apply to disclosures about job performance if the information is provided in violation of a non-disclosure agreement or is otherwise confidential according to applicable law.

RELIGION

Under the North Dakota Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on religion.

It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified individual because of his/her religion.

An employer is defined as an individual in North Dakota who employs one or more employees for more than one quarter of the year, as well as an individual regardless of location who employs one or more employees whose services are to be partially or wholly performed in North Dakota.
REPORTING PAY

No provision.

SAFETY

There is no OSHA-monitored state plan. For general information about employer safety, click on http://www.workforcesafety.com/safety.

SCHOOL VISITATION LEAVE

No provision.

SEX DISCRIMINATION

Under the North Dakota Human Rights Act, employers are prohibited from refusing to hire or promote, terminating, demoting, denying training opportunities to, or otherwise discriminating against an individual with respect to compensation or terms, conditions, or privileges of employment based on sex.

For purposes of state law, an employer is defined as an individual in North Dakota who employs one or more employees for more than one quarter of the year, as well as an individual regardless of location who employs one or more employees whose services are to be partially or wholly performed in North Dakota.

SEXUAL HARASSMENT

Employers are responsible for their own sexually inappropriate acts, as well as the acts of their supervisory personnel, if they knew or should have known about the sexually harassing acts and failed to take timely and appropriate action.

SEXUAL ORIENTATION DISCRIMINATION

No provision.
SMOKING

Smoking, including electronic cigarettes, is prohibited in all enclosed areas of public places and all places of employment.

Smoking is generally prohibited within 20 feet of entrances, exits, windows, air intakes, and ventilation systems of enclosed areas in which smoking is prohibited. Business owners, operators, managers or others who control a place of employment where smoking is prohibited must take the following steps:

- clearly and conspicuously post no smoking signs or the international no smoking symbol in that place;
- clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited;
- clearly and conspicuously post on every vehicle that constitutes a place of employment at least one sign, visible from the vehicle’s exterior, stating that smoking is prohibited;
- remove all ashtrays from any area where smoking is prohibited, except for ashtrays displayed for sale and not for use on the premises; and
- communicate to employees and job applicants that smoking is prohibited.

See also lifestyle discrimination.

SOCIAL SECURITY NUMBER PRIVACY

Employers that maintain computerized data that includes personal information (e.g., Social Security numbers) shall, following discovery of a breach in the security of the system containing such data, notify “in the most expedient time possible and without unreasonable delay” anyone whose personal information might have been compromised.

UNEMPLOYMENT INSURANCE

Click on the following link [http://www.jobsnd.com/unemployment-business](http://www.jobsnd.com/unemployment-business) to access unemployment insurance information for employers.

VACATION PAY UPON TERMINATION

All earned vacation time must be paid to employees upon separation from employment. No employment contract or policy may provide for forfeiture of earned paid time off upon termination. An employment contract or policy may, however, require that employees take vacation by a certain date or lose the vacation, provided the employee is given a reasonable opportunity to take the vacation. The employer must pay the employee for accrued vacation time at the regular rate of pay earned by the employee just prior to separation.
Employers may withhold the value of accrued time off from a voluntarily terminating employee’s final wages if the employee was provided with written notice that withholding could occur, the employee was employed for less than one year, and the employee provided less than five days’ written or verbal notice of termination.

Employees who separate from employment, whether voluntarily or involuntarily, don’t need to be paid for the value of their time off, if the paid time off was awarded by their employers but not yet earned, and before awarding the paid time off, employees received written notice of the limitation on the payment of the awarded time off.

**VIOLENCE**

Employees who legally own firearms may store them in locked vehicles. Employers are prohibited from asking employees about their firearms, searching their vehicles for firearms, preventing them from entering the premises because they may have a concealed weapon, or taking any action based upon their statements regarding their legal possession of firearms.

Employers are prohibited from conditioning employment based on whether employees hold licenses for concealed weapons. Employers are also prohibited from terminating employees or otherwise discriminating against employees based on their lawful possession of firearms or use of firearms in self-defense.

**VOTING**

Employers are encouraged to establish a program to grant an employee who is qualified to be absent from employment to vote when an employer’s regular work schedule conflicts with voting during times when polls are open. When an employee’s regular work schedule conflicts with the time when polls are open, employees should be allowed enough time away from work to vote.

**WAGE DEDUCTIONS**

An employer shall withhold amounts as required by state or federal law. Amounts that may be voluntarily deducted from employees’ wages are specified to include the following items:

- advances paid to employees, other than undocumented cash;
- a recurring deduction that employees have authorized in writing;
- a nonrecurring deduction that employees have specifically authorized in writing; and
- a nonrecurring deduction for damage, breakage, shortage, or negligence that employees have authorized at the time of the deduction.
➢ WAGE GARNISHMENT ❖

The lesser of 25% of disposable weekly pay, or the amount by which disposable weekly pay exceeds 40 times the federal minimum wage in effect during the week the garnishment is to occur, may be withheld. These maximums are reduced by $20 for a documented family member who lives with the employee. Employers may not terminate an employee because his/her disposable pay is subject to a creditor garnishment.

➢ WAGE PAYMENT ON TERMINATION ❖

*Employee who quits:* Next payday.
*Employee who’s fired:* Next payday.

➢ WAGE PAYMENTS ❖

*Payday requirements:* At least monthly, on regular, predesignated paydays.
*Direct deposit:* Employers may require employees to be paid electronically. Employee chooses bank.

➢ WHISTLEBLOWING ❖

An employer may not discharge, discipline, threaten discrimination, or penalize an employee with respect to the employee’s compensation, conditions, location, or privileges of employment because:

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

In addition, it is unlawful for an employer to engage in any form of threats, retaliation, or discrimination against an employee who has opposed any unlawful discriminatory practice or who, in good faith, has filed a complaint, testified, assisted, or participated in an investigation, proceeding, hearing, or litigation under state law.
➢ WORK AUTHORIZATION ◀

No general provision.

➢ WORKERS’ COMPENSATION ◀

Click on the following link http://www.nd.gov/risk/workers-comp/workers-compensation to access the North Dakota Workers Compensation home page. For online Workers’ Compensation services for employers, click on http://www.workforcesafety.com/employers/onlineservices.asp.