



NORTH DAKOTA QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

PROVIDED BY BAKER DONELSON

Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.

At-Will Employment

N.D. Cent. Code § 34-03-01

In North Dakota, the employer-employee relationship is governed by the at-will employment doctrine. Employment that lacks a "specified term" can be terminated at the will of either party with notice to the other, except when otherwise prohibited by law.

Employer Retaliation

N.D. Cent. Code § 34-01-20

The North Dakota legislature has enacted a whistle-blower statute. An employer is prohibited from terminating, disciplining, penalizing, or discriminating against an employee who, in good faith, reports a violation or potential violation of a federal, state, or local law or rule to their employer, a governmental body, or a law enforcement official. An employer is also prohibited from taking the same action against an employee because the employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry, or refuses an employer's order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. With respect to the foregoing, the employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.

Immigration Verification

North Dakota places no additional employment verification procedures on employers beyond federal I-9 compliance. There is no requirement to use E-Verify under North Dakota state laws.

Drug Testing

N.D. Cent. Code § 34-01-15

The only statutory restriction on drug testing in the workplace concerns payment for drug testing. If an employer requires a drug or alcohol test as a condition of retaining or obtaining employment, the employer must pay for the test and for furnishing any medical records.

Jury Duty Leave

Private Employers

N.D. Cent. Code § 27-09.1-17

An employer may not deprive an employee of employment or lay off, penalize, threaten, or coerce an employee who serves jury duty. If an employer fires an employee for missing work due to jury duty, the employee may bring a civil action for recovery of wages lost and reinstatement of employment within 90 days. Private employers are not required to pay employees while they serve as jurors.

State and Local Government Employers

N.D. Admin. Code § 4-07-16-02

State and local government employers must grant an approved absence from work with pay for employees who are selected for jury duty. Employees shall receive regular pay, but the amount paid by the court must be deducted from the regular pay. However, the employee's pay cannot be reduced if the employee serves as a juror while on authorized leave.

Voting Leave

N.D. Cent. Code § 16.1-01-02.1

Employers are encouraged to establish a program to allow employees to be absent for the purpose of voting. However, this is voluntary for employers, and there is no guaranteed right to be absent.

Parental Leave

N.D. Cent. Code §§ 14-02.4-01 – 14-02.4-03; N.D. Cent. Code § 54-52.4-02

The North Dakota Human Rights Act prohibits employment discrimination on the basis of sex. The definition of sex includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth. It is discriminatory for an employer to fail or refuse to hire an individual, fire an employee, or treat an individual or employee unfairly in terms of application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment on account of sex. It is also discriminatory for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified individual with a physical or mental disability because that individual is pregnant.

Private employers with at least 50 employees are covered by the Family and Medical Leave Act (FMLA), which gives eligible employees the right to take unpaid, job-protected leave with continuation of insurance coverage as if the employee had not taken leave. This includes 12 workweeks of leave in a 12-month period for the birth of a child, to care for the newborn child within one year of birth, and the placement of a child through adoption or foster care to care for the child within one year of placement.

North Dakota's requirements for state employers mirror the FMLA. State employers are required to grant an employee's request for family leave to:

- Care for the employee's child by birth if the leave concludes within 12 months of the child's birth;
- Care for a child placed with the employee by a child-placement agency for adoption or as a precondition to adoption, or for foster care, if the leave concludes within 12 months of the child's placement; or
- Care for the employee's child if the child has a serious health condition.

As of 2023, state employers must also grant an employee's request for family leave to care for the employee's child, regardless of age, if the child is a service member or veteran with a serious injury or illness and the leave does not exceed a combined 26 workweeks in any twelve-month period.

Other Leave

N.D. Admin. Code § 46-02-07-02; N.D. Cent. Code § 54-06-14; N.D. Cent. Code § 54-52.4-02

Private employers are not required to offer paid vacation or sick leave to employees. However, the employer is subject to the federal FMLA and its requirements. Eligible employees of covered employers are entitled to 12 workweeks of unpaid, job-protected leave in a 12-month period to care for a spouse, child, or parent who has a serious health condition or for a serious health condition that makes the employee unable to perform the essential functions of their job. Paid time off includes annual leave, earned time, personal days, or any other provisions intended to provide compensation as vacation. If a private employer provides paid time off, the employer cannot require an employee to forfeit accrued or earned vacation leave upon separation from employment but may cap the vacation leave an employee may accrue over time if the employee had notice of such a provision. All leave is considered paid time off unless the employer specifically divides paid time off from sick leave.

State employers are required to provide annual leave and sick leave to individuals not employed under a written contract of hire. Annual leave for these employees must be, at minimum, one working day per month of employment and, at maximum, two working days per month of employment, based on tenure of employment. Sick leave for employees must be a minimum of one working day per month of employment to a maximum of one and one-half working days per month of employment. Beginning May 1, 2026, state employers of individuals not employed under a written contract must provide such individuals 40 hours of new hire leave to use within the first year of employment. Additionally, state employers may provide new hires with annual leave that exceeds the amount based on tenure of employment if the position was considered hard-to-fill under § 54-06-31. See ND LEGIS H.B. 1170 (2025); 2025 North Dakota Laws H.B. 1170

State employees who have been in the employ of the state or political subdivision immediately prior to the leave of absence are entitled to 20 days of paid leave each calendar year to attend any military duty (annual training, military training schools or courses, or other orders to state or federal active duty). State employees who have been ordered for any military duty are entitled to a leave of absence from the civil service for the entirety of the duty without loss of status or efficiency rating. If leave is required for any military duty on a day the employee is scheduled to work, the employee must be given the option to take time off without pay, use paid leave of absence, or be given the opportunity to reschedule the work period so that military duty occurs during time off. N.D. Cent. Code § 37-01-25.

Smoking Laws

N.D. Cent. Code §§ 23-12-09 – 23-12-10

The legislature has enacted a smoke-free law that prohibits smoking in, among other areas, places of employment, which include any area under the control of a public or private employer. Smoking is prohibited within 20 feet of entrances, exits, operable windows, air intakes, and ventilation systems of places of employment.

Employers are prohibited from discharging, refusing to hire, or retaliating against an employee, applicant for employment, or other person because that person lawfully smokes.

Break Time to Express Milk

N.D. Cent. Code § 23-12-17

Employers are not required to provide break time to express milk under North Dakota law. However, employers that wish to use the designation of "infant-friendly" in their promotional materials are required to have a workplace breastfeeding policy that includes the following:

- Flexible work scheduling, including scheduling breaks and permitting work patterns that provide time for expression of breast milk;
- A convenient, sanitary, safe, and private location, other than a restroom, allowing privacy for breastfeeding or expressing breast milk;
- A convenient, clean, and safe water source with facilities for washing hands and rinsing breast-pumping equipment in a private location; and
- A convenient hygienic refrigerator in the workplace for temporary storage of the mother's breast milk.

Meal Breaks

N.D. Admin. Code § 46-02-07-02

Employers are required to provide employees with a minimum 30-minute meal break for a shift exceeding five hours when two or more employees are on duty. Meal breaks may be unpaid if the employee is completely relieved of their duties and the meal period is ordinarily 30 minutes in length; if the employee is required to perform any duties during the meal period, they are not completely relieved, and the meal break cannot be unpaid.

North Dakota law provides certain exceptions to the meal break requirements, such as where the employee waives their right to a meal period upon agreement with the employer, or where the provisions of a collective bargaining agreement address meal periods.

Minimum Wage, Overtime, and Wage Recordkeeping

Minimum Wage

N.D. Cent. Code § 34-06-22; N.D. Admin. Code §§ 46-02-07-01, 03

The 2025 minimum hourly wage for non-tipped employees is \$7.25. A "tipped employee" is a service employee who customarily and regularly receives more than \$30.00 in tips per month. A "tip credit" is the amount or percentage by which an employer is allowed to reduce the minimum wage for a tipped employee. A tip credit of up to 33 percent of the minimum wage may be allowed for tipped employees. Thus, employers may pay tipped employees a cash minimum of \$4.86 per hour if they regularly receive more than \$30.00 per month in tips. However, employers must ensure that tipped employees' total compensation equals at least \$7.25 per hour (including tips). Employers must notify tipped employees in advance that they will be using the tip credit provision and must maintain written records showing that the tipped employees receive at least the minimum wage when direct wages and the tip credit allowance are combined.

Overtime

N.D. Admin. Code § 46-02-07-02

In North Dakota, employers are required to pay overtime to employees pursuant to the FLSA when the employee has worked more than 40 hours in a work week. Under the FLSA, they are required to pay one and one-half times for all hours worked over 40 hours. Overtime is computed on a weekly basis. Paid holidays, paid time off, or sick leave cannot be counted in computing overtime hours.

Wage Records and Reporting

N.D. Cent. Code § 34-06.1-07

An employer shall make, keep, and maintain records of wages and wage rates, job classifications, and other terms and conditions of employment of employed individuals. The employer must keep the wage records for the time the employee is employed and for two years after employment. The employer is also obligated to make reports from the records as the labor commissioner prescribes.

Final Payments

N.D. Cent. Code § 34-14-03

An employer must issue a final paycheck to a terminated employee or an employee who voluntarily terminates their employment on the next regularly scheduled pay date.

Unemployment Insurance

N.D. Cent. Code § 52-06-01

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by Job Service North Dakota. Additional information regarding the benefits may be accessed at Job Service North Dakota's website.

To be eligible for unemployment benefits in North Dakota, an employee must be:

- Monetarily eligible;
- Unemployed through no fault of their own; and
- Able and available to work and actively seeking employment.

Workers' Compensation

N.D. Cent. Code §§ 65-01-01 *et seq.*

The North Dakota Workers' Compensation Act, administered by the North Dakota Workforce Safety & Insurance Organization (WSI), applies to almost every employer in North Dakota with limited exceptions. Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Act. See the North Dakota Workforce Safety and Insurance website for additional information.

*WSI is the sole provider and administrator of workers' compensation in North Dakota without coverage by private insurance companies.

Child Labor

N.D. Cent. Code §§ 34-07-01 *et seq.*

No minor under 14 years of age may be employed or permitted to work in any occupation except farm labor, domestic service, or in the employment of, and under the direct supervision of, that minor's parent, guardian, or grandparent. A minor of 14 or 15 years of age may not be employed or permitted to work in any occupation except farm labor, domestic service, or in the employment and direct supervision of their parent or guardian unless the minor is exempt from compulsory school attendance or has an employment certificate, as statutorily defined, signed by the minor's parent or guardian. There are other restrictions for places of work dealing with minors, as well as restrictions on the hours of the day the minor may work that can be found in the statutory sections listed above.

Gun Laws

N.D. Cent. Code § 62.1-02-13

A public or private employer may not:

- Prohibit any employee from possessing any legally owned firearm if the firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot, and the employee is lawfully in the area;
- Make a verbal or written inquiry regarding the presence of such a firearm or conduct a search for such a firearm;
- Condition employment on whether an employee or prospective employee holds a concealed weapons license, or condition employment on an agreement prohibiting an employee or prospective employee from keeping a legal firearm locked inside or locked to a private motor vehicle if the firearm is kept for lawful purposes; or
- Terminate employment or otherwise discriminate against an employee for exercising the constitutional right to keep and bear arms or for exercising the right of self-defense, as long as a firearm is never exhibited on company property for any reason other than lawful defensive purposes.

Employers do not have a statutory duty of care related to these prohibitions and are not liable in a criminal or civil action based on actions or inactions taken in compliance with this section. An aggrieved employee may bring a civil action for violation of rights protected under this section.

Additional Laws and Regulations

Independent Contractor Status

N.D. Cent. Code. § 34-05-01.4

The commissioner of the Department of Labor and Human Rights receives applications for independent contractor status and makes a determination based on the "common law" test. Additional information regarding the test can be found on the Department's website. If verified as an independent contractor, the individual will receive an identification number that will be invalid if the applicant's job changes. If the individual's job changes, they may reapply for a determination to verify independent contractor status.

Equal Pay

N.D. Cent. Code §§ 34-06.1-01 *et seq.*

The North Dakota Equal Pay Act requires that men and women be paid equally for comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility. Permissible pay differentials must be based on:

- Established seniority systems;
- Systems that measure earnings by quantity or quality of production;
- Merit pay systems; or
- Bona fide factors other than gender (e.g., education, training, or experience).

If an employer is paying wage differentials that are in violation of N.D. Cent. Code § 34-06.1-03, they may not reduce the wages of any employee to comply with the chapter; rather, they must raise the pay of the employee or employees who are discriminatorily paid less. Employers are also prohibited from retaliating against employees for submitting a complaint or participating in investigations under this Act.

Human Rights

N.D. Cent. Code §§ 14-02.4-01 *et seq.*

The North Dakota Human Rights Act prohibits employers from discriminating on the basis of race, color, religion, sex, national origin, age, presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours that are not in direct conflict with essential business-related interests of the employer. The North Dakota Department of Labor and Human Rights enforces this law. Additional information about the Act can be found on the Department's website.

Medical Marijuana

N.D. Cent. Code § 19-24.1-34

An employer may discipline an employee for consuming usable marijuana in the workplace, working while under the influence of marijuana, or working with marijuana in the employee's system, even when the individual is a legal medical marijuana patient.

Disability

N.D. Cent. Code §§ 14-02.4-01 *et seq.*

An employer may not discriminate against an employee because of a mental or physical disability. Employers must make reasonable accommodations for an employee with a physical or mental disability who is otherwise qualified.