



**DEPARTMENT OF LABOR
AND HUMAN RIGHTS**

2011-2013 BIENNIAL REPORT

December 1, 2013
Jack Dalrymple, Governor
Bonnie L. Storbakken, Commissioner of Labor

Jack Dalrymple
Governor

Bonnie L. Storbakken
Commissioner



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www.nd.gov/labor
www.nd.gov/humanrights

December 1, 2013

The Hon. Jack Dalrymple
Governor of North Dakota
600 E Boulevard Ave
Bismarck, ND 58505

The Hon. Alvin A. Jaeger
Secretary of State
600 E Boulevard Ave
Bismarck, ND 58505

Dear Governor Dalrymple and Secretary Jaeger:

As Commissioner of Labor, I am pleased to submit the 2011-2013 Biennial Report of the North Dakota Department of Labor and Human Rights, pursuant to North Dakota Century Code § 54-06-04.

The staff of the Department of Labor and Human Rights has worked diligently investigating complaints and has spent significant time and energy educating the public. The Department of Labor continues to provide fair, impartial, and timely service to North Dakota citizens.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Bonnie L. Storbakken".

Bonnie L. Storbakken
Commissioner of Labor

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 ¹	2001-2004
Leann K. Bertsch	2004-2005
Lisa K. Fair McEvers	2005-2010
Tony J. Weiler	2010-2013
Bonnie L. Storbakken	2013-present

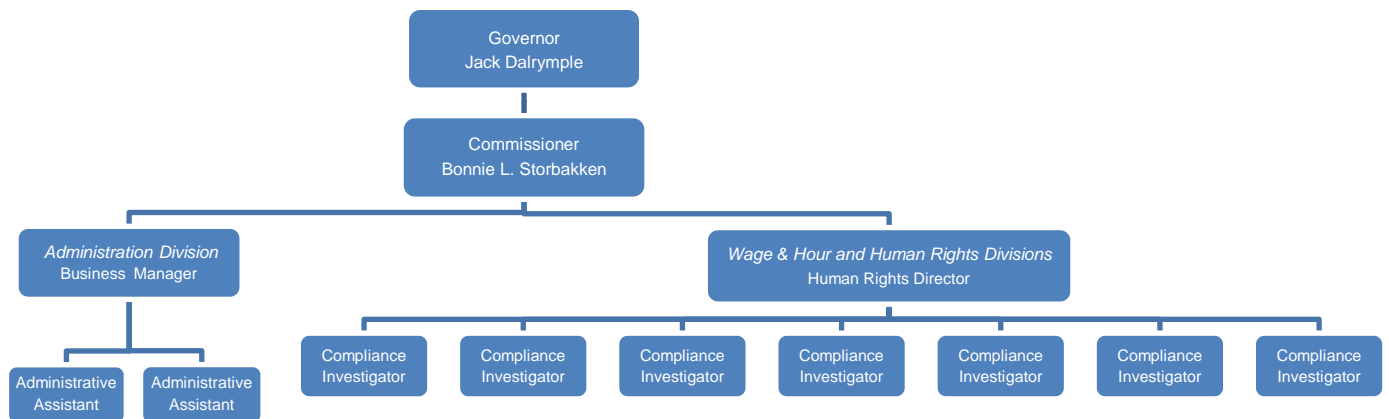
¹ Mark Bachmeier also served as Interim Labor Commissioner when Craig Hagen departed in August 1998 until the appointment of Tony Clark in September 1999.

Department Organization

The Commissioner of Labor administers the department. During the 2011-13 biennium, the Commissioner had a staff of eleven 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 Business Manager 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 2011-13 biennium:

Summary of Claims for Wages, 2011-13 Biennium

Claims Pending 6/30/2011	65
New Claims Filed 7/1/2011 – 6/30/2013	1,266
Claims Closed 7/1/2011 – 6/30/2013	1,100
Claims Pending 6/30/2013	231

Claims for Wages Closed, 2011-13 Biennium

Claims Closed	1,100
Average Days to Closure	76
Total Amount Collected	\$1,015,905

Claims for Wages Closed, 2011-13 Biennium

Settled without Determination	347
Settled after Determination	228
No Merit Determination	135
Small Claims Court for Enforcement	46
Attorney General for Enforcement	209
Referred to US Department of Labor	13
Withdrawn by Claimant	36
Dismissed ²	80
Bankruptcy	6
Total Claims Closed	1,100

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

**Claims for Wages Closed, 2011-13 Biennium
by Basis of Claim³**

Minimum Wage	10
Unpaid Wages	855
Unpaid Overtime	237
Unpaid Vacation	117
Unauthorized Deductions from Pay	195
Unpaid Commissions	3
Unpaid Bonus	6

**Claims for Wages Closed, 2011-13 Biennium
by County of Employer**

Adams	1	McLean	6
Barnes	0	Mercer	1
Benson	5	Morton	55
Billings	3	Mountrail	29
Bottineau	0	Nelson	1
Bowman	2	Oliver	0
Burke	2	Pembina	2
Burleigh	99	Pierce	0
Cass	130	Ramsey	10
Cavalier	3	Ransom	3
Dickey	1	Renville	4
Divide	1	Richland	12
Dunn	15	Rolette	5
Eddy	1	Sargent	1
Emmons	1	Sheridan	0
Foster	3	Sioux	2

³ Claims may have more than one basis.

Golden Valley	0	Slope	1
Grand Forks	43	Stark	60
Grant	1	Steele	1
Griggs	1	Stutsman	14
Hettinger	0	Towner	2
Kidder	2	Traill	2
LaMoure	1	Walsh	3
Logan	0	Ward	75
McHenry	2	Wells	1
McIntosh	4	Williams	147
McKenzie	28	Out of State	314
Total Claims Closed			1,100

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, 2011-13 Biennium

Inquiries Pending 6/30/2011	0
Inquiries Opened 7/1/2011 – 6/30/2013	410
Inquiries Closed 7/1/2011 – 6/30/2013	407
Inquiries Pending 6/30/2013	3
Total Collected 7/1/2011 – 6/30/2013	\$75,610

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 doing agricultural work, or working in domestic service performing services of a household nature in or about the private home of the employer.

During the 2011-13 biennium, 2,383 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 2011-13 biennium:

Summary of EEO Charges, 2011-13 Biennium

Charges Pending 6/30/2011	44
New Charges Filed 7/1/2011 – 6/30/2013	386
Charges Closed 7/1/2011 – 6/30/2013	306
Charges Pending 6/30/2013	124

EEO Charges Closed, 2011-13 Biennium

Charges Closed	306
Average Days to Closure	139
Number of Charges Settled	63
Total Amount of Settlements	\$737,037

EEO Charges Closed, 2011-13 Biennium, by Resolution

Negotiated Settlement	59
Conciliated Settlement ⁴	4
Determined with No Probable Cause	215
Determined with Probable Cause	5
Notice of Right to Sue Issued	9
Transferred to EEOC	3
Withdrawn with Resolution	5
Withdrawn without Resolution	1
Dismissed ⁵	5
Total Charges Closed	306

⁴ 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.

⁵Charges may be dismissed for a variety of reasons including lack of jurisdiction, lack of evidence, failure of charging party to respond, etc. Of the five (5) charges dismissed this biennium, three (3) were dismissed due to a lack of jurisdiction and two (2) were dismissed due to the charging party's failure to cooperate.

**EEO Charges Closed, 2011-13 Biennium
by Statutory Jurisdiction**

Title VII of the Civil Rights Act of 1964	168
Americans with Disabilities Act of 1990	97
Age Discrimination in Employment Act of 1967	59
North Dakota Human Rights Act Only ⁶	26

**EEO Charges Closed, 2011-13 Biennium
by Basis of Charge⁷**

Age	62
Color	21
Disability	102
Marital Status	7
National Origin	31
Pregnancy	15
Receipt of Public Assistance	0
Race	81
Religion	13
Retaliation	90
Sex	93
Lawful Activity ⁸	9
Release of Medical Information ⁹	0

**EEO Charges Closed, 2011-13 Biennium
by County of Respondent**

Adams	0	McLean	1
Barnes	3	Mercer	5
Benson	1	Morton	6

⁶All charges meeting federal jurisdiction also meet North Dakota jurisdiction.

⁷Charges may have more than one basis.

⁸“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.

⁹“Release of Medical Information” is used to abbreviate the requirements under the Americans with Disabilities Act of 1990 as amended and N.D.C.C. § 14-02.4-10(4) regarding the confidentiality of employees’ medical information.

Billings	0	Mountrail	1
Bottineau	1	Nelson	0
Bowman	0	Oliver	0
Burke	0	Pembina	1
Burleigh	44	Pierce	2
Cass	56	Ramsey	4
Cavalier	0	Ransom	0
Dickey	0	Renville	3
Divide	0	Richland	8
Dunn	2	Rolette	0
Eddy	0	Sargent	2
Emmons	0	Sheridan	0
Foster	1	Sioux	0
Golden Valley	0	Slope	0
Grand Forks	33	Stark	12
Grant	0	Steele	0
Griggs	0	Stutsman	5
Hettinger	0	Towner	0
Kidder	0	Traill	1
LaMoure	0	Walsh	3
Logan	1	Ward	20
McHenry	0	Wells	2
McIntosh	3	Williams	27
McKenzie	2	Out of State	56
Total Claims Closed			306

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 2011-13 biennium, the department received 81 complaints of employment retaliation and closed 78. At the end of the biennium, the department had 6 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 2011-13 biennium:

**Summary of Housing Discrimination Complaints
2011-13 Biennium**

Complaints Pending 6/30/2011	13
New Complaints Filed 7/1/2011 – 6/30/2013	78
Complaints Closed 7/1/2011 – 6/30/2013	81
Complaints Pending 6/30/2013	10

**Housing Discrimination Complaints Closed
2011-13 Biennium**

Complaints Closed	81
Average Days to Closure ¹⁰	132
Number of Complaints Settled	32
Total Amount of Settlements ¹¹	\$3,971

**Housing Discrimination Complaints Closed
2011-13 Biennium, by Resolution**

Settled Through Conciliation	32
Determined with No Reasonable Cause	34
Determined with Reasonable Cause	2
Referred to HUD	0
Dismissed ¹²	2
Withdrawn with Resolution	10
Withdrawn without Resolution	1
Total Complaints Closed	81

**Housing Discrimination Complaints Closed
2011-13 Biennium
by Basis of Complaint¹³**

Age	3
Color	2
Disability	53
Familial Status	10

¹⁰ Average days to closure increased this biennium, in part, due to a Class Action filed in federal district court. As this Action affected our determination in some pending cases, we were required to await the outcome of the Action.

¹¹ 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.

¹² Complaints may be dismissed for a variety of reasons including lack of jurisdiction, lack of evidence, failure of complainant to respond, etc. The two (2) complaints dismissed this biennium were dismissed due to the complainant's failure to cooperate.

¹³ Complaints may have more than one basis.

Marital Status	3
National Origin	3
Receipt of Public Assistance	8
Race	9
Religion	0
Retaliation	10
Sex	1

**Housing Discrimination Complaints Closed
2011-13 Biennium
by County of Complainant**

Adams	0	McLean	0
Barnes	0	Mercer	0
Benson	0	Morton	3
Billings	0	Mountrail	0
Bottineau	0	Nelson	0
Bowman	0	Oliver	0
Burke	0	Pembina	3
Burleigh	23	Pierce	0
Cass	26	Ramsey	3
Cavalier	0	Ransom	0
Dickey	0	Renville	0
Divide	0	Richland	4
Dunn	0	Rolette	1
Eddy	0	Sargent	0
Emmons	0	Sheridan	0
Foster	1	Sioux	0
Golden Valley	0	Slope	0
Grand Forks	10	Stark	1

Grant	0	Steele	0
Griggs	0	Stutsman	1
Hettinger	0	Towner	0
Kidder	0	Traill	0
LaMoure	0	Walsh	0
Logan	0	Ward	4
McHenry	0	Wells	0
McIntosh	0	Williams	1
McKenzie	0	Out of State	0
Total Claims Closed			81

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, 2011-13 Biennium

Complaints Pending 6/30/2011	7
New Complaints Filed 7/1/2011 – 6/30/2013	34
Complaints Closed 7/1/2011 – 6/30/2013	33
Complaints Pending 6/30/2013	8

**Other Human Rights Complaints Closed
2011-13 Biennium
by Type of Discrimination**

Public Accommodations	11
Public Services	22
Credit Transactions	0
Total Complaints Closed	33

**Other Human Rights Complaints Closed
2011-13 Biennium**

Complaints Closed	33
Average Days to Closure	172
Number of Complaints Settled	3
Total Amount Collected	\$600

**Other Human Rights Complaints Closed
2011-13 Biennium**

Settled	3
Determined with No Probable Cause	23
Determined with Probable Cause	4
Withdrawn by Complainant	0
Dismissed ¹⁴	1
Notice of Right to Sue Issued	2
Total Complaints Closed	33

**Other Human Rights Complaints Closed
2011-13 Biennium
by Basis of Complaint¹⁵**

Age	0
Color	7

¹⁴ Complaints may be dismissed for a variety of reasons including lack of jurisdiction, lack of evidence, failure of complainant to respond, etc. The complaint dismissed this biennium was dismissed due to lack of jurisdiction.

¹⁵ Complaints may have more than one basis.

Disability	20
Marital Status	0
National Origin	2
Receipt of Public Assistance	0
Race	11
Religion	2
Retaliation	1
Sex	0

**Other Human Rights Complaints Closed
2011-13 Biennium
by County of Respondent**

Adams	0	McLean	0
Barnes	1	Mercer	0
Benson	0	Morton	0
Billings	0	Mountrail	0
Bottineau	0	Nelson	0
Bowman	0	Oliver	0
Burke	0	Pembina	0
Burleigh	9	Pierce	0
Cass	7	Ramsey	1
Cavalier	0	Ransom	0
Dickey	0	Renville	0
Divide	0	Richland	0
Dunn	0	Rolette	0
Eddy	0	Sargent	0
Emmons	0	Sheridan	0
Foster	0	Sioux	0
Golden Valley	0	Slope	0
Grand Forks	2	Stark	0
Grant	0	Steele	0
Griggs	0	Stutsman	9
Hettinger	0	Towner	0
Kidder	0	Traill	0

LaMoure	0	Walsh	0
Logan	0	Ward	4
McHenry	0	Wells	0
McIntosh	0	Williams	0
McKenzie	0	Out of State	0
Total Claims Closed			33

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 2011-13 biennium, the department reviewed 31 applications for independent contractor status. Of these, 22 were affirmatively verified as being independent contractor relationships.

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 2011-13 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 2011-13 biennium, 1,066 individuals worked under sub-minimum wage licenses issued by the department to 17 community organizations offering rehabilitation programs. In the second year of the biennium the number decreased to 759 individuals with the same number of community organizations. Licenses were also issued to 2 individuals or vocational students during the 2011-13 biennium.

Many businesses participated in providing employment opportunities for workers with disabilities. Examples of participating businesses during the 2011-13 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 2011-13 biennium, the department responded to 19,238 telephone, 1,594 email, and 185 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 2011-13 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" 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, 2011-13 Biennium by Topic

Wage and Hour	18,065
Discrimination	3,040
Other Information	424
Referrals to Other Agencies	8,410
Posters Requested	137
Brochures Requested	191

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 62 informational presentations to groups and hosted exhibit booths to distribute information at 8 events during the 2011-13 biennium. The department aired its "Housing Discrimination is Illegal" and "A Home for All" housing discrimination television Public Service Announcements (PSAs) statewide in July, August, September, and November 2012. An audio version of the PSAs also aired on radio stations in North Dakota.

Administration

The administrative responsibilities of the department include staffing, procurement, budgeting, accounting, fiscal management, information technology, records management and risk management. The department's Business Manager works directly with and under the supervision of the Commissioner to oversee these functions.

Legislation

The department did not introduce any bills during the 2013 legislative session. There was, however, Legislation which dealt with limitations on withholdings as well as a name change for the department. House Bill No. 1369 was introduced and passed changing 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. Senate Bill No. 2247 was passed amending the limitations on withholdings to help clarify for employers and employees what constitutes an authorized deduction under North Dakota law. In addition to the above mentioned legislation the department did amend

the Administrative Rules having to do with Highly Compensated Individuals during the 2011-13 Biennium. All of the Amendments discussed herein are outlined in pertinent part below.

1. House Bill No. 1369 Changed the name of the Department of Labor to the Department of Labor and Human Rights. This Bill effectively amended the following sections of the of the North Dakota Century Code: 14-02.4-02(4), 14-02.5-01(5), 34-01-20(4), 34-05-01.1, 34-05-01.2, 34-05-01.3(8), 34-07-05, 34-11.1-04, 34-14-11, 34-14-12 and 34-14-13
2. Senate Bill No. 2247 amended and reenacted section 34-14-04.1 of the North Dakota Century Code relating to limitations on withholdings. The statute as amended reads as follows:

Except for those amounts that are required under state and 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 non-recurring deduction for damage, breakage, shortage, or negligence must be authorized by the employee at the time of the deduction.*
3. Administrative Rule 46-02-07-01 The amendments to this rule established an exemption from the overtime pay requirement in North Dakota for employees who are paid \$100,000 or more annually. The Amendments to the rule first defined a "highly compensated individual". There was also language added to each of the administrative, executive, and professional exemptions to the overtime rules, by stating this employee must be "paid on a salary or fee basis". The "total annualized compensation" was defined so that the \$100,000 is limited primarily to pay, and nothing else. Additionally, a formula for determining overtime from a regular rate and overtime from day rates and job rates.

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 2011-13 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. Most 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 Commissioner 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 finished its creation of an enhanced database application and began using the database in January 2012. The database serves as a stable multi-user data storage and reporting tool. It allows for consolidated recordkeeping and improves upon the department's statistical reporting abilities.

Trends

Wage and Hour

The number of Claims for Unpaid Wages rose substantially during the 2011-13 biennium. New claims filed with the department were 1,266 compared to 685 in the previous biennium. The average number of days claims were pending increased from 66 to 76 days. The types of claims filed most often include claims for unpaid wages, unpaid overtime, and unauthorized deductions. It is important to note that due to the dramatic increase in wage claims the department was authorized during the last session to hire an additional FTE. The department is not expecting the number of wage claims to decrease in the upcoming biennium.

Human Rights

Employment

The overall number of employment discrimination charges filed with the department increased slightly during the 2011-13 biennium, very similar to the increase in the previous biennium. Charges filed on the protected categories of sex, disability, and retaliation continued to be the most numerous types of claims made.

Housing

The overall housing discrimination complaints filed with the department increased slightly during the 2011-13 biennium. The housing area also had a high proportion of complaints settled through the conciliation process with 32 of the 81 cases closed being closed through the conciliation process. The average number of days to close housing complaints rose during this biennium from 76 to 132. The average number of days to close increased in part, due to a class action filed in Federal District Court. We were required to await the outcome of the class action as it affected the determination in some of our pending cases. Complaints filed on the protected categories of disability, familial status, and race were the most common types of allegations made.

Public Services, Public Accommodations, and Credit Transactions

The number of new complaints filed in this area decreased slightly during the 2011-13 biennium. The majority of the complaints pertained to the protected categories of disability, race, and color.

Plans and Goals

New Administrative Rules

The department is considering amendments to Administrative Rule 46-04-01-08(5) in an effort to clarify the roles of the Department, the Aggrieved Party and the Attorney General's office in the administrative hearing process.

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.

Statewide Education and Awareness

The department plans to continue 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.

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 2011-13 biennium:

	Appropriation	Actual Expenditures
Salaries & Wages	\$1,648,342	\$1,628,298
Operating Expenses	\$491,694	\$416,072
Total	\$2,140,036	\$2,044,370

The department's appropriation was comprised of \$1,550,125 in general funds and \$589,911 in federal spending authority, while expenditures consisted of \$1,480,616 in general funds and \$563,755 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

Public Service Announcements for Television & Radio

- "Housing Discrimination is Illegal" Public Service Announcement
- "A Home For All" Public Service Announcement
- "Know Your Rights" Public Service Announcement
- "This Home" Public Service Announcement

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 or humanrights@nd.gov

Web site: nd.gov/labor or nd.gov/humanrights