



**DEPARTMENT OF LABOR
AND HUMAN RIGHTS**

2013-2015 BIENNIAL REPORT

December 1, 2015
Jack Dalrymple, Governor
Troy T. Seibel, Commissioner of Labor

Jack Dalrymple
Governor

Troy T. Seibel
Commissioner



State Capitol
600 E. Boulevard Ave. - Dept. 406
Bismarck, ND 58505-0340

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

December 1, 2015

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 2013-2015 Biennial Report of the North Dakota Department of Labor, pursuant to North Dakota Century Code § 54-06-04.

The staff of the Department of Labor 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 blue ink signature of Troy T. Seibel, written in a cursive style.

Troy T. Seibel
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	2013-2014
Troy T. Seibel	2014-present

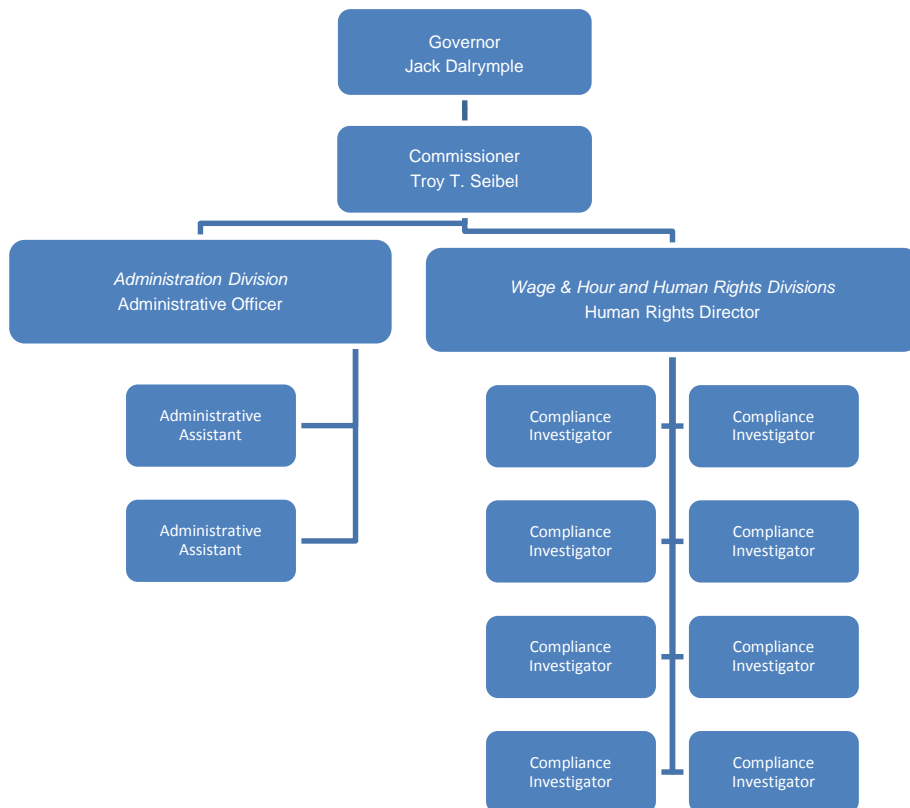
¹ Mark Bachmeier also served as Interim Labor Commissioner when Craig Hagen departed in August 1998 until the appointment of Tony Clark in September 1999.

Department Organization

The Commissioner of Labor administers the department. During the 2013-15 biennium, the Commissioner had a staff of twelve 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 Administrative Officer 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 2013-15 biennium:

Summary of Claims for Wages, 2013-15 Biennium

Claims Pending 6/30/2013	231
New Claims Filed 7/1/2013 – 6/30/2015	1373
Claims Closed 7/1/2013 – 6/30/2015	1247
Claims Pending 6/30/2015	357

Claims for Wages Closed, 2013-15 Biennium

Claims Closed	1247
Average Days to Closure	130
Total Amount Collected	\$1,303,798

Claims for Wages Closed, 2013-15 Biennium

Settled without Determination	377
Settled after Determination	242
No Merit Determination	125
Small Claims Court for Enforcement	39
Attorney General for Enforcement	233
Referred to US Department of Labor	22
Referred to Other State	1

Withdrawn by Claimant	66
Dismissed ²	139
Bankruptcy	3
Total Claims Closed	1,247

**Claims for Wages Closed, 2013-15 Biennium
by Basis of Claim³**

Minimum Wage	25
Unpaid Wages	984
Unpaid Overtime	290
Unpaid Vacation	148
Unauthorized Deductions from Pay	224
Unpaid Commissions	9
Unpaid Bonus	6

**Claims for Wages Closed, 2013-15 Biennium
by County of Employer**

Adams	3	McLean	5
Barnes	4	Mercer	8
Benson	0	Morton	32
Billings	6	Mountrail	24
Bottineau	6	Nelson	7
Bowman	0	Oliver	3
Burke	2	Pembina	0
Burleigh	120	Pierce	2
Cass	105	Ramsey	4
Cavalier	5	Ransom	1
Dickey	1	Renville	1

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

³ Claims may have more than one basis.

Divide	6	Richland	15
Dunn	26	Rolette	11
Eddy	1	Sargent	2
Emmons	0	Sheridan	1
Foster	5	Sioux	2
Golden Valley	3	Slope	0
Grand Forks	33	Stark	72
Grant	3	Steele	1
Griggs	2	Stutsman	20
Hettinger	0	Towner	0
Kidder	1	Traill	3
LaMoure	1	Walsh	6
Logan	3	Ward	74
McHenry	2	Wells	3
McIntosh	0	Williams	137
McKenzie	62	Out of State	413
Total Claims Closed			1,247

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, 2013-15 Biennium

Inquiries Pending 6/30/2013	3
Inquiries Opened 7/1/2013 – 6/30/2015	394
Inquiries Closed 7/1/2013 – 6/30/2015	388
Inquiries Pending 6/30/2015	9
Total Collected 7/1/2013 – 6/30/2015	\$61,809

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

During the 2013-15 biennium, 2,458 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 2013-15 biennium:

Summary of EEO Charges, 2013-15 Biennium

Charges Pending 6/30/2013	124
New Charges Filed 7/1/2013 – 6/30/2015	432
Charges Closed 7/1/2013 – 6/30/2015	326
Charges Pending 6/30/2015	230

EEO Charges Closed, 2013-15 Biennium

Charges Closed	326
Average Days to Closure	274
Number of Charges Settled	55
Total Amount of Settlements	\$672,549

EEO Charges Closed, 2013-15 Biennium, by Resolution

Negotiated Settlement	54
Conciliated Settlement ⁴	1
Determined with No Probable Cause	211
Determined with Probable Cause	2
Notice of Right to Sue Issued	2
Transferred to EEOC	11
Withdrawn with Resolution	14
Withdrawn without Resolution	16
Dismissed ⁵	15
Total Charges Closed	326

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.

⁵ Charges may be dismissed for a variety of reasons including lack of jurisdiction, lack of evidence, failure of the charging party to respond, etc. Of the fifteen (15) charges dismissed this biennium, three (3) were dismissed due to a lack of jurisdiction and twelve (12) were dismissed due to the charging party's failure to cooperate.

**EEO Charges Closed, 2013-15 Biennium
by Statutory Jurisdiction**

Title VII of the Civil Rights Act of 1964	206
Americans with Disabilities Act of 1990	81
Age Discrimination in Employment Act of 1967	48
North Dakota Human Rights Act Only ⁶	22

**EEO Charges Closed, 2013-15 Biennium
by Basis of Charge⁷**

Age	51
Color	52
Disability	83
Marital Status	4
National Origin	45
Pregnancy	11
Receipt of Public Assistance	0
Race	95
Religion	16
Retaliation	115
Sex	95
Lawful Activity ⁸	13
Release of Medical Information ⁹	0

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

⁷ Charges 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.

**EEO Charges Closed, 2013-15 Biennium
by County of Respondent**

Adams	0	McLean	1
Barnes	3	Mercer	6
Benson	1	Morton	7
Billings	2	Mountrail	4
Bottineau	0	Nelson	0
Bowman	3	Oliver	0
Burke	0	Pembina	1
Burleigh	39	Pierce	1
Cass	53	Ramsey	3
Cavalier	0	Ransom	1
Dickey	0	Renville	0
Divide	1	Richland	3
Dunn	4	Rolette	3
Eddy	2	Sargent	2
Emmons	0	Sheridan	0
Foster	0	Sioux	1
Golden Valley	0	Slope	0
Grand Forks	16	Stark	17
Grant	0	Steele	0
Griggs	0	Stutsman	4
Hettinger	0	Towner	0
Kidder	0	Traill	0
LaMoure	3	Walsh	2
Logan	0	Ward	33
McHenry	1	Wells	2
McIntosh	1	Williams	37
McKenzie	6	Out of State	63
Total Claims Closed			326

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 2013-15 biennium, the department received 98 complaints of employment retaliation and closed 95. At the end of the biennium, the department had 9 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 2013-15 biennium:

**Summary of Housing Discrimination Complaints
2013-15 Biennium**

Complaints Pending 6/30/2013	10
New Complaints Filed 7/1/2013 – 6/30/2015	70
Complaints Closed 7/1/2013 – 6/30/2015	78
Complaints Pending 6/30/2015	6

**Housing Discrimination Complaints Closed
2013-15 Biennium**

Complaints Closed	74
Average Days to Closure	103
Number of Complaints Settled	32
Total Amount of Settlements ¹⁰	\$13,973

**Housing Discrimination Complaints Closed
2013-15 Biennium, by Resolution**

Settled Through Conciliation	32
Determined with No Reasonable Cause	30
Determined with Reasonable Cause	3
Referred to HUD	0
Dismissed ¹¹	2
Withdrawn with Resolution	6
Withdrawn without Resolution	1
Total Complaints Closed	74

**Housing Discrimination Complaints Closed
2013-15 Biennium
by Basis of Complaint¹²**

Age	1
Color	7
Disability	39
Familial Status	3
Marital Status	4
National Origin	8
Receipt of Public Assistance	11

¹⁰ 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.

¹¹ 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.

¹² Complaints may have more than one basis.

Race	16
Religion	0
Retaliation	10
Sex	10

**Housing Discrimination Complaints Closed
2013-15 Biennium
by County of Complainant**

Adams	0	McLean	0
Barnes	2	Mercer	0
Benson	0	Morton	5
Billings	0	Mountrail	0
Bottineau	0	Nelson	0
Bowman	0	Oliver	0
Burke	0	Pembina	0
Burleigh	22	Pierce	0
Cass	23	Ramsey	0
Cavalier	1	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	6	Stark	3
Grant	0	Steele	0
Griggs	0	Stutsman	0
Hettinger	0	Towner	1
Kidder	0	Traill	0
LaMoure	0	Walsh	0

Logan	2	Ward	7
McHenry	0	Wells	0
McIntosh	0	Williams	2
McKenzie	0	Out of State	0
Total Claims Closed			74

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, 2013-15 Biennium

Complaints Pending 6/30/2013	8
New Complaints Filed 7/1/2013 – 6/30/2015	46
Complaints Closed 7/1/2013 – 6/30/2015	29
Complaints Pending 6/30/2015	25

Other Human Rights Complaints Closed 2013-15 Biennium by Type of Discrimination

Public Accommodations	7
Public Services	22
Credit Transactions	0
Total Complaints Closed	29

**Other Human Rights Complaints Closed
2013-15 Biennium**

Complaints Closed	29
Average Days to Closure	208
Number of Complaints Settled	4
Total Amount Collected	\$0

**Other Human Rights Complaints Closed
2013-15 Biennium**

Settled	4
Determined with No Probable Cause	15
Determined with Probable Cause	0
Withdrawn by Complainant	3
Dismissed ¹³	7
Notice of Right to Sue Issued	0
Total Complaints Closed	29

**Other Human Rights Complaints Closed
2013-15 Biennium by Basis of Complaint¹⁴**

Age	2
Color	1
Disability	18
Marital Status	0
National Origin	2
Receipt of Public Assistance	0
Race	4
Religion	8
Retaliation	3
Sex	0

¹³ Complaints may be dismissed for a variety of reasons including lack of jurisdiction, lack of evidence, failure of complainant to respond, etc. Of the seven (7) complaints dismissed this biennium, four (4) were dismissed due to complainant's failure to cooperate and three (3) were dismissed due to a lack of jurisdiction.

¹⁴ Complaints may have more than one basis.

**Other Human Rights Complaints Closed
2013-15 Biennium
by County of Respondent**

Adams	0	McLean	0
Barnes	0	Mercer	0
Benson	1	Morton	1
Billings	0	Mountrail	0
Bottineau	0	Nelson	0
Bowman	0	Oliver	0
Burke	0	Pembina	0
Burleigh	8	Pierce	0
Cass	3	Ramsey	0
Cavalier	0	Ransom	0
Dickey	1	Renville	0
Divide	0	Richland	2
Dunn	0	Rolette	0
Eddy	0	Sargent	0
Emmons	0	Sheridan	0
Foster	0	Sioux	0
Golden Valley	0	Slope	0
Grand Forks	4	Stark	1
Grant	3	Steele	0
Griggs	0	Stutsman	2
Hettinger	0	Towner	0
Kidder	0	Traill	0
LaMoure	0	Walsh	1
Logan	0	Ward	2
McHenry	0	Wells	0
McIntosh	0	Williams	0
McKenzie	0	Out of State	0
Total Claims Closed			29

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 2013-15 biennium, the department reviewed 35 applications for

independent contractor status. Of these, 16 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 2013-15 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 2013-15 biennium, 971 individuals worked under sub-minimum wage licenses issued by the department to 12 community organizations offering rehabilitation programs. In the second year of the biennium the number decreased to 932 individuals to 15 community

organizations. The department did not issue any licenses to individuals or vocational students during the 2013-15 biennium.

Many businesses participated in providing employment opportunities for workers with disabilities. Examples of participating businesses during the 2013-15 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 2013-15 biennium, the department responded to 18,470 telephone, 1,661 email, and 107 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 2013-15 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 to Other Agencies” 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, 2013-15 Biennium by Topic

Wage and Hour	15,269
Discrimination	4,166
Other Information	757
Referrals to Department Website	7,969
Referrals to Other Agencies	5,480
Posters Requested	126
Brochures Requested	97

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 38 informational presentations to groups and hosted exhibit booths to distribute information at 5 events during the 2013-15 biennium.

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 2015 legislative session. However, there were numerous bills introduced during the session which would have impacted the department and the areas of law it oversees and enforces. Of these introduced bills, 3 passed out of the legislature and were signed by the Governor. Specifically, House Bill 1202 amended the statute regarding the payment of paid time off upon separation from employment, House Bill 1217 added a new protected category to the Housing Discrimination Act for certain victims of domestic violence, and House Bill 1463 amended the Human Rights Act to require employers in the state to provide reasonable accommodations to pregnant workers. All of these bills are discussed below.

1. House Bill No. 1202 amends N.D.C.C. § 34-14-09.2 and allows a private employer to withhold payment for paid time off upon separation of employment, provided the paid time off was not yet earned by the employee and, before awarding the paid time off, the employer provided written notice of the limitation of payment of awarded paid time off. Basically, this change will now allow an employer to limit payment for paid time off that was available for the employee's use, but had not yet been earned by the employee at the time of separation.

The key words here are "awarded" and "earned". Currently, under N.D.A.C. § 46-02-07-02(12), an employer must pay for paid time off that was awarded ***or*** earned. Under current law, any paid time off that was available for use must be paid out to an employee upon separation of employment. Effective August 1, 2015, "awarded" paid time off does not have to be paid out to an employee, if that leave had not yet been "earned" by the employee at the time of separation. Employers' policies will need to have a specific earning schedule.

In assessing cases under this new law, the department will review an employer's policy and ensure it has a clear earning schedule separate and apart from an awarding schedule

regarding paid time off. In addition, the department will ensure affected employees received written notice of the policy before the paid time off was awarded. Finally, the policy will need to put affected employees on notice that the employer will not pay awarded, but unearned, paid time off when employees separate from employment.

2. House Bill No. 1217 amends N.D.C.C. § 14-02.5-02 and adds a new protected category to the North Dakota Housing Discrimination Act. Effective August 1, 2015, an applicant or tenant of housing that is part of a state housing program may not be denied admission to, denied assistance under, terminated from participating in, or evicted from housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. HB 1217 does not define the phrase "state housing program". The Department will be assessing initial cases filed under this new law and will be refining a definition for this term.
3. House Bill No. 1463 amends N.D.C.C. § 14-02.4-03 and adds an affirmative obligation under the North Dakota Human Rights Act for employers to provide reasonable accommodations to pregnant employees. Effective August 1, 2015, employers are now under an obligation to provide reasonable accommodations to employees with a disability, those with sincerely held religious beliefs, or those that are pregnant. In assessing whether an accommodation requested by a pregnant employee is reasonable, the Department will be using the same standards used for some time in assessing whether accommodations requested by an employee because of a disability or sincerely held religious belief are reasonable. This includes determining whether the accommodation would disrupt or interfere with the employer's normal business operations; threaten an individual's health or safety; contradict a business necessity of the employer; or impose an undue hardship on the employer, taking into consideration the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.

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 2013-15 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. Several 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.

Trends

Wage and Hour

The number of wage and hour complaints received by the department continued at historic highs during the 2013-15 biennium. New complaints filed with the department were 1,373, compared to 1,266 in the previous biennium, and 685 in the 2009-11 biennium. The average number of days complaints were pending increased from 76 to 130 days. The types of claims filed most often include claims for unpaid wages, unpaid overtime, and unauthorized deductions. In addition, the department continues to see many employers mischaracterize workers as independent contractors. Further, many employers improperly classify employees as exempt from overtime. The department intends to increase its educational outreach efforts in the upcoming biennium to ensure employers are aware of the laws and rules regarding independent contractors and exemptions from overtime pay.

It is important to note that due to the dramatic increase in wage and hour complaints over the past two biennia, the department was authorized during the 2015 legislative session to hire two additional compliance investigators. These two additional investigators will help the department tackle the backlog of cases. Very recent trends appear to indicate a slowing of the rate of complaint filings. The department will continue to monitor these trends to see if the reduction in filings continues throughout the upcoming biennium.

Human Rights

Employment

The overall number of employment discrimination charges filed with the department increased by nearly 12% during the 2013-15 biennium, from 386 to 432. Charges filed on the protected categories of sex, disability, and retaliation continued to be the most numerous types of claims made, with a notable increase in retaliation claims. In fact, retaliation claims are now the number one type of complaint received by the department in this area. This mirrors trends at the national level. The department saw a significant increase in the number of employment discrimination charges filed towards the end of the 2013-15 biennium, which has continued into the current biennium. However, at this time, the department expects employment discrimination filings for the current biennium to be similar to the 2013-15 biennium.

Housing

The overall number of housing discrimination complaints filed with the department decreased slightly during the 2013-15 biennium. The housing area continued to have a high proportion of complaints settled through the conciliation process, with 32 of the 70 cases closed being closed through the conciliation process. The average number of days to close housing complaints decreased during this biennium from 132 to 103. Complaints filed on the protected categories of disability, familial status, and race were the most common types of allegations made.

For the upcoming biennium, the department expects an increase in the number of complaints filed, as a Fair Housing Initiatives Program (FHIP) has been authorized by the U.S. Department of Housing and Urban Development for North Dakota. FHIPs are advocacy organizations, which assist individuals in filing complaints with the department, among other functions. The last time North Dakota had an active FHIP in the state, the filing rate for housing discrimination complaints was approximately double what it is currently. Therefore, the department expects an increase in housing discrimination complaints for the upcoming biennium.

Public Services, Public Accommodations, and Credit Transactions

The number of new complaints filed in this area increased by over 35% during the 2013-15 biennium. The majority of the complaints pertained to the protected categories of disability, race, and color. A significant number of complaints in this area continue to be filed by inmates of various prisons and jails across the state.

Plans and Goals

New Administrative Rules

The department is considering amendments to its administrative rules to incorporate legislative changes from the 2015 session and to update certain outdated portions.

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 increase 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. It is hoped these efforts will educate the public, ensure employers are complying with the law, and, thereby, reduce the number of complaints filed with the department.

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 2013-15 biennium:

	Appropriation	Actual Expenditures
Salaries & Wages	\$1,922,048	\$1,921,140
Accrued Leave Payment	\$39,609	\$19,988
Operating Expenses	\$333,694	\$322,315
Total	\$2,295,351	\$2,263,443

The department’s appropriation was comprised of \$1,857,425 in general funds and \$437,926 in federal spending authority, while expenditures consisted of \$1,855,653 in general funds and \$407,790 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