

**OPINION  
71-190**

July 14, 1971            (OPINION)

Mr. Lloyd H. Nygaard

Assistant Commissioner of Higher Education

RE: Labor - Minimum Wage - Students Exempt

This is in reply to your recent letter relative to House Bill 1503 enacted by the 1971 Legislative Assembly. You state the following facts and questions:

House Bill 1503 states that employees hired on a full-time monthly basis shall receive a minimum wage of not less than \$300 per month after June 30, 1971, except that students working as part-time help shall be exempt from these provisions.

We respectfully request your opinion on the following points:

1. The State Board of Higher Education manual on personnel policies defines a full-time employee as 'A person who is employed on a permanent or temporary basis for forty hours of more per week.' Under this definition is it proper to assume that any person working less than forty hours per week is thus classified as part time and not subject to the \$300 per month minimum?
2. Would the following groups of employees be entitled to receive a minimum of \$300 per month under the term of this bill?
  - a. An employee who is engaged at a stated hourly wage and may or may not be required to work forty hours or more per week?
  - b. Assuming the above employee actually works eight hours per day for each working day of a given month at the minimum rate permitted by federal law (\$1.60 per hour) which is less than the equivalent of \$300 per month (\$1.73 per hour) would that employee be entitled to \$300 for that particular month?
  - c. Under what conditions are students employed during the summer months or during their breaks exempt from the provisions of this law?
    - i. Does the classification of student automatically exempt the individual or must he be employed for less than forty hours per week to remain exempt?
    - i. What constitutes the definition of student? Is a high school student employed during the summer months exempt?"

House Bill 1503 of the 1971 Legislative Assembly, as it appears in Chapter 491 of the 1971 Session Laws, provides as follows:

MINIMUM WAGE STANDARDS FOR EMPLOYEES OF STATE. To promote efficiency in government, to assure services received for money expended, to be competitive with private industry and labor, and taking into account the cost of living, the following minimum wage standards shall apply to all employees of the state of North Dakota:

1. Employees hired on a full-time monthly basis shall receive a minimum pay of not less than:

- a. Three hundred dollars per month after June 30, 1971;

Except that students, working as part-time help shall be exempt from these provisions."

The act does not define the term "full-time monthly basis" nor are we aware of any statutory definition of that term. The Legislature did not make the act a part of any existing statutory enactment authorizing an administrative agency, such as the Commissioner of Labor, to define the term nor does the act itself contain any such authority or guidelines by which such an administrative regulation could be adopted. We are aware of the many varied methods and standards of employment which exist among the various agencies, departments and institutions of the state. Thus some departments or agencies may employ on an hourly basis, some may employ on a part-time basis consisting of a portion of a day. Others may employ for indefinite periods which may or may not extend over a period of a month.

Because of the fact the law is so indefinite and because of the varied methods of employment the statute is impossible of a precise definition. Ordinarily we would not favor a construction which would permit the individual agencies or departments involved to determine what constitutes an employee on a "full-time monthly basis." However in view of the lack of legislative direction in this regard we must assume that the Legislature enacted a guideline in which the departments, agencies and institutions are to be governed in paying their employees and the decision as to whether a specific employee is "hired on a full-time monthly basis" must be made by the hiring authority. Whether an employee is hired on such a basis must be determined by the department since this office cannot supply the specifics which the Legislature has not included in the statute.

With respect to the question of who is a student, we believe a high school student employed during the summer months would be considered a student. Whether he is employed on a "full-time monthly" basis is a question which the department, agency or institution must determine.

While we realize that the above discussion does not precisely answer each individual question you have presented, we do not believe we can assume the authority to determine what is a "full-time monthly" employee for each agency, department or institution of the state

since the Legislature has not provided any guidelines by which we could make such a determination.

HELGI JOHANNESON

Attorney General