

Sixty-fourth  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1257

Introduced by

Representatives Oversen, Haak, Mooney, Muscha, Schneider, Wallman

Senators Heckaman, Nelson, Oban

1 A BILL for an Act to amend and reenact sections 34-06.1-03, 34-06.1-05, 34-06.1-06, and  
2 34-06.1-07 of the North Dakota Century Code, relating to unequal pay for men and women; and  
3 to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 34-06.1-03 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **34-06.1-03. Prohibition of discrimination.**

8 1. ~~No~~An employer may not discriminate between employees in the same establishment  
9 on the basis of gender, by paying wages to any employee in any occupation in this  
10 state at a rate less than the rate at which the employer pays any employee of the  
11 opposite gender for comparable work on jobs ~~which~~that have comparable  
12 requirements relating to skill, effort, and responsibility. Differentials that are paid  
13 pursuant to established seniority systems, ~~job-descriptive systems~~ that measure  
14 earnings by quantity or quality of production, merit increase systems, or ~~executive-~~  
15 ~~training programs~~a bona fide factor other than gender, such as education, training, or  
16 experience, and which do not discriminate on the basis of gender, are not within this  
17 prohibition.

18 2. An employer ~~whethat~~ is paying a wage differential in violation of this chapter may not,  
19 in order to comply with this chapter, reduce the wage rates of any employee. ~~No~~

20 3. A person may not cause or attempt to cause an employer to discriminate against any  
21 employee in violation of this chapter. ~~No~~

22 4. An employer may not discharge or discriminate against ~~anyan~~ an employee by reason of  
23 any action taken by the employee to invoke or assist in any manner the enforcement  
24 of this chapter, except when proven that the act of the employee is fraudulent.

1       5. An unlawful employment practice occurs under this section when a discriminatory  
2       compensation decision or other practice is adopted; when an individual becomes  
3       subject to a discriminatory compensation decision or other practice; or when an  
4       individual is affected by application of a discriminatory compensation decision or other  
5       practice, including each time wages, benefits, or other compensation is paid, resulting  
6       in whole or in part from such a decision or other practice.

7       **SECTION 2. AMENDMENT.** Section 34-06.1-05 of the North Dakota Century Code is  
8       amended and reenacted as follows:

9       **34-06.1-05. Collection of unpaid wages and other relief - District court -**  
10      **Commissioner.**

- 11       1. ~~Any~~An employer ~~whethat~~ violates the provisions of section 34-06.1-03 is liable to the  
12       employee or employees affected in the amount of their unpaid wages, and in  
13       instances of willful violation in employee suits up to an additional equal amount as  
14       liquidated damages. ~~Action to recover such liability may be maintained in any court of~~  
15       ~~competent jurisdiction by any one or more employees for and in behalf of the~~  
16       ~~employee or group of employees and other employees similarly situated. The~~  
17       2. Any one or more individuals claiming to be aggrieved by an unlawful employment  
18       practice under section 34-06.1-03 may bring an action in the district court in the  
19       judicial district in which the unlawful employment practice is alleged to have been  
20       committed, in the district in which the records relevant to the alleged unlawful  
21       employment practice are maintained and administered, or in the district in which the  
22       individual would have worked or obtained credit were it not for the alleged unlawful  
23       employment practice. In an action brought under this chapter, the court in such action  
24       shall, in cases of violation in addition to any judgment awarded to the plaintiff or  
25       plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of  
26       the action.
- 27       3. An agreement by ~~any such~~an employee to work for less than the wage to which  
28       ~~such~~the employee is entitled under this chapter ~~is does~~ not a bar ~~to any such~~an action  
29       or ~~to a~~ voluntary wage restitution of the full amount due under this chapter.
- 30       4. At the written request of ~~any~~an employee claiming to have been paid less than the  
31       wage to which the employee may be entitled under this chapter, the commissioner

1            may bring any legal action necessary ~~in~~on behalf of the employee to collect ~~such~~the  
2            claim for unpaid wages. The commissioner ~~may~~is not be required to pay the filing fee,  
3            or other costs, in connection with ~~such~~an action under this section. The commissioner  
4            ~~has the power to~~may join various claims against the employer in one claim for relief. In  
5            proceedings under this section, the court may order other affirmative action as  
6            appropriate, including reinstatement of employees discharged in violation of this  
7            chapter. The commissioner ~~has the power to~~may petition ~~any~~the district court of  
8            ~~competent jurisdiction~~ to restrain violations of section 34-06.1-03, and for ~~such~~  
9            affirmative relief as the court may deem appropriate, including restoration of unpaid  
10          wages and reinstatement of employees, consistent with the purpose of this chapter.

11          5. If a person elects to bring an action in district court under this chapter, the  
12          commissioner shall dismiss any action pending before the commissioner which is  
13          based on the same alleged unlawful employment practice.

14          **SECTION 3. AMENDMENT.** Section 34-06.1-06 of the North Dakota Century Code is  
15          amended and reenacted as follows:

16          **34-06.1-06. Statute of limitations.**

17          Court action under this chapter may be commenced no later than two years after the ~~claim~~  
18          ~~for relief occurs~~unlawful employment practice occurred. However, if a complaint of a  
19          discriminatory practice is first filed with the commissioner, this period of limitation for bringing an  
20          action in the district court is tolled until the commissioner completes an investigation or  
21          otherwise notifies the complainant the commissioner will be taking no further action on the  
22          complaint.

23          **SECTION 4. AMENDMENT.** Section 34-06.1-07 of the North Dakota Century Code is  
24          amended and reenacted as follows:

25          **34-06.1-07. Records and reporting.**

26          ~~Every~~An employer subject to this chapter shall make, keep, and maintain ~~such~~ records of  
27          the wages and wage rates, job classifications, and other terms and conditions of employment of  
28          the ~~persons~~individuals employed by the employer, ~~and~~; shall preserve such records for ~~such~~  
29          ~~periods of time, as long as the employee is employed and two years thereafter~~; and shall make  
30          such reports ~~therefrom~~from the records as the commissioner prescribes.