

HOUSE BILL NO. 1257

Introduced by

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

Senators Heckaman, Nelson, Oban

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

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

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

8 **34-06.1-03. Prohibition of discrimination.**

- 9 1. ~~No~~An employer may not discriminate between employees in the same establishment
10 on the basis of gender, by paying wages to any employee in any occupation in this
11 state at a rate less than the rate at which the employer pays any employee of the
12 opposite gender for comparable work on jobs ~~which~~that have comparable
13 requirements relating to skill, effort, and responsibility. Differentials that are paid
14 pursuant to established seniority systems, job descriptive systems, merit increase
15 systems, or executive training programs, and which do not discriminate on the basis of
16 gender, are not within this prohibition.
- 17 2. An employer ~~wh~~ethat is paying a wage differential in violation of this chapter may not,
18 in order to comply with this chapter, reduce the wage rates of any employee. ~~No~~
- 19 3. A person may not cause or attempt to cause an employer to discriminate against any
20 employee in violation of this chapter. ~~No~~
- 21 4. An employer may not discharge or discriminate against ~~any~~an employee by reason of
22 any action taken by the employee to invoke or assist in any manner the enforcement
23 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. AnyAn 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 a discriminatory practice
18 under section 34-06.1-03 may file a complaint of discriminatory practice with the
19 commissioner.
20 3. Any one or more individuals claiming to be aggrieved by an unlawful employment
21 practice under section 34-06.1-03 may bring an action in the district court in the
22 judicial district in which the unlawful employment practice is alleged to have been
23 committed, in the district in which the records relevant to the alleged unlawful
24 employment practice are maintained and administered, or in the district in which the
25 individual would have worked or obtained credit were it not for the alleged unlawful
26 employment practice. In an action brought under this chapter, the court in such action
27 shall, in cases of violation in addition to any judgment awarded to the plaintiff or
28 plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of
29 the action.

1 4. An agreement by ~~any such an~~ employee to work for less than the wage to which
2 such~~the~~ employee is entitled under this chapter ~~is does~~ not a bar to ~~any such an~~ action
3 or to a voluntary wage restitution of the full amount due under this chapter.

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

16 6. If a person elects to bring an action in district court under this chapter, the
17 commissioner shall dismiss any administrative action pending before the
18 commissioner which is based on the same alleged unlawful employment practice.

19 **SECTION 3.** A new section to chapter 34-06.1 of the North Dakota Century Code is created
20 and enacted as follows:

21 **Prima facie case.**

22 If an employee claiming to be aggrieved by an unlawful employment practice under
23 subsection 1 of section 34-06.1-03 brings an action in district court and establishes a disparity
24 exists between wages received by at least two employees of different sexes when the
25 employees were performing comparable work on jobs that have comparable requirements, the
26 burden shifts to the employer to rebut this prima facie case.

27 **SECTION 4. AMENDMENT.** Section 34-06.1-06 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **34-06.1-06. Statute of limitations.**

30 Court action under this chapter may be commenced no later than two years after the ~~claim~~
31 ~~for relief occurs~~ unlawful employment practice occurred. However, if a complaint of a

1 discriminatory practice is first filed with the commissioner, this period of limitation for bringing an
2 action in the district court is tolled until the commissioner dismisses the complaint or issues a
3 written probable cause determination.

4 **SECTION 5. AMENDMENT.** Section 34-06.1-07 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **34-06.1-07. Records and reporting.**

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