

North Dakota

Human Resources Legal Fact Sheet

Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor, and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in July 2018, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.

ARE THERE NORTH DAKOTA STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday / Pay Rate	NO	North Dakota law does not require employers to give employees a notice of the regular pay day or pay rate.
Reporting ¹	YES	New hires and rehires must be reported to the State Directory of New Hires within 20 days.

WAGES

TOPIC	ANSWER	DETAILS
Payday ²	YES	Must establish and maintain regular paydays designated in advance that are at least once monthly.
Final Pay ³	YES	Employees that are fired, quit, resign, or otherwise terminated must be paid by the regular payday for the period worked by the employee. Paid time off, once earned, is considered wages and is due upon separation.
Overtime ⁴	NO	Agricultural employees are exempt from North Dakota overtime compensation, federal rules may apply. Refer to the federal fact sheet.
Minimum Wage ⁵	YES	\$7.25 per hour
Hours Worked ⁶	YES	<p>North Dakota does not have a general definition for hours worked but has the following rules:</p> <ul style="list-style-type: none"> • <i>Employees must be paid for on-call time if they are required to remain on the premises or close by, such that the employee cannot effectively use the time for their own purposes</i> • <i>Lectures, meetings, training, and other similar activities must be paid unless: attendance is outside of regular working hours, attendance is in fact voluntary, the course/lecture/meeting does not directly relate to the employee's job, and the employee does not perform any productive work during attendance.</i> • <i>Regular commuting from home to work is not work time. But traveling to special assignments performed for the employer at their request is work time. Travel away from home is work time when performed during the employee's regular working hours. Time spent traveling on nonworking days during regular working hours is work time.</i>

This fact sheet contains embedded hyperlinks. If you are viewing a printed copy, please refer to the FARM website at www.nationaldairyfarm.com for the online version to access the links.

North Dakota

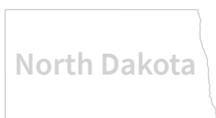
WAGES

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TOPIC	ANSWER	DETAILS
Pay Stub ⁷	YES	Employers must provide a pay stub or voucher that shows hours worked, rate of pay, required state/federal deductions, and any authorized deductions.
Reporting Time Pay	NO	North Dakota law does not require reporting time pay for agricultural employees, i.e. an employee is only required to be paid for actual hours worked.
Taxes and Withholding ⁸	YES	<p>Employers must withhold North Dakota income taxes. Employers must give your employees a statement of taxes withheld, like a federal Form W-2, 1099-MISC or 1099-R.</p> <p>Employers must pay North Dakota Unemployment Insurance taxes if:</p> <ul style="list-style-type: none"> You paid cash wages to farm workers of \$20,000 or more in a quarter in the current or prior calendar year; OR, You employed ten or more farm workers for some part of a day in 20 or more weeks of the current or prior calendar year. <p>Certain family employment is excluded from coverage requirements (children under 18 working for a parent, an individual working for spouse, or parent working for a son or daughter). Unemployment taxes are paid by the employer; they are not taken out of employee pay. You can credit the amount you pay to North Dakota in calculating how much you owe for federal unemployment taxes.</p>
Deductions and Allowances ⁹	YES	<p>Employers can only deduct from wages:</p> <ul style="list-style-type: none"> As required to by state or federal law, or court order Advances paid to employees, other than undocumented cash A recurring deduction authorized in writing A nonrecurring deduction authorized in writing, when the source of the deduction is cited specifically A nonrecurring deduction for damage, breakage, shortage, or negligence must be authorized by the employee at the time of the deduction. <p>The reasonable value (not exceeding the employer's actual cost) of board, lodging, and other facilities given for the employee's benefit may be treated as part of wages. The maximum is up to \$18 per day. The employee must voluntarily agree in writing to receive part of their wages as meal, lodging, etc. and must actually accept/use the meals/lodging/other facilities.</p> <p>Employers should refer to the federal fact sheet for additional rules.</p>
Bonuses ¹⁰	YES	<p>An earned bonus is an amount paid in addition to a salary, wage, or commission. An earned bonus is compensable when the employee performs the requirements set forth in a contract or agreement between the parties. Generally, discretionary bonuses are not considered wages.</p> <p>Employers should follow any written policy they have about paying bonuses as a best practice.</p> <p>A nondiscretionary/earned bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee, and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.</p>

RECORD KEEPING

TOPIC	ANSWER	DETAILS
Payroll ¹¹	YES/NO	Employers must keep records of the names of all employees. North Dakota wage law does not specify additional recordkeeping requirements. However, records must be kept under unemployment insurance law (see below). Federal rules may also apply; refer to the federal fact sheet.
Personnel File — Employee Access	NO	North Dakota law does not require private sector employers to grant employees access to their personnel file.



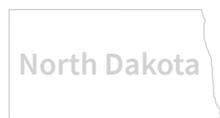
RECORD KEEPING

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TOPIC	ANSWER	DETAILS
Unemployment Insurance ¹²	YES	<p>Employers subject to paying unemployment taxes must submit <u>quarterly wage reports</u>.</p> <p>Whether or not subject to paying Unemployment Insurance taxes, all employers must keep accurate records of employment. Records must be kept for five calendar years.</p> <p>For each worker:</p> <ul style="list-style-type: none"> • Name. • Social security account number. • State or states in which the employee's services are performed; and if significant services are performed outside this state, the employee's base of operations. Where the services are performed in Canada or the base of operations with respect to such services or the residence of the worker is in Canada, it shall be recorded as if Canada were a state. • Date on which the employee was hired, rehired, or returned to work after temporary layoff and date separated from work and reason therefor. • Remuneration paid and dates of payment, showing separately: <ul style="list-style-type: none"> - Cash remuneration, including special payments (such as bonuses, gifts, etc.). - Reasonable cash value of remuneration in any medium other than cash (determined in accordance with rules prescribed by the bureau) including special payments (such as bonuses, gifts, etc.). - Estimated or actual amount of gratuities received from persons other than his employing unit (determined in accordance with rules prescribed by the bureau). • Amounts paid the employee as allowances or reimbursement for traveling or other business expenses, date of payment, and the amounts of such expenditures actually incurred and accounted for by the employee. • With respect to pay periods in which the employee performs services in both employment and nonsubject work. <ul style="list-style-type: none"> - Hours spent in employment. - Hours spent in nonsubject work. • General requirements: <ul style="list-style-type: none"> - Beginning and ending dates of each pay period. - Total amount of remuneration paid in any quarter. - Total amount of wages paid in any quarter.
Workers' Compensation	NO	Workers' compensation coverage is optional for agricultural operations; and there are no specific recordkeeping requirements under the workers' comp law. However, there are recordkeeping requirements under OSHA.
OSHA	YES	North Dakota is under federal OSHA jurisdiction. Refer to the federal fact sheet for reporting and recordkeeping requirements.
Federal	YES	There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.

WORKING CONDITIONS

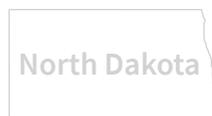
TOPIC	ANSWER	DETAILS
Bathrooms ¹³	YES	North Dakota has incorporated the federal Pasteurized Milk Ordinance (PMO). The PMO rules specify that dairy farms have one or more toilets that are conveniently located, properly constructed, properly operated, and maintained in a sanitary manner.
Working Hours ¹⁴	YES/NO	While North Dakota law does not specify maximum work hours, it does have a law that states it is unlawful to employ someone for unreasonably long hours.
Labor Relations ¹⁵	YES	Employees have the right to organize for the purposes of collective bargaining; but all employees also have the right to decline association with no impact on employment. Elections to determine representatives and to decide on strikes must be free and impartial without the influence of an employer, a worker, or any third parties.



WORKING CONDITIONS

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TOPIC	ANSWER	DETAILS
Paid Sick and Vacation Leave	NO	North Dakota law does not require paid sick or vacation leave for agricultural workers. Employers who choose to provide such benefits must follow their written policy/contract.
Rest and Meal Breaks ¹⁶	YES	Employers must provide a minimum 30-minute meal period for each shift of over five hours when there are two or more employees on duty. <u>Meal periods</u> do not need to be paid if the employee is completely relieved of duties during that time. Employers who choose to provide rest breaks may be subject to federal rules; refer to the federal fact sheet.
Whistleblower Protection ¹⁷	YES	Employers are prohibited from firing, disciplining, threatening, penalizing, or otherwise discriminating against an employee because: <ul style="list-style-type: none"> • <i>The employee or someone acting on their behalf reports in good faith a violation or suspected violation of a local, state, or federal law or regulation to a government body, an employer, or a law enforcement official</i> • <i>The employee is requested by a government body to participate in an investigation, hearing, or inquiry</i> • <i>The employee refuses to perform an employer's order because the employee believes it will violate state, local, or federal law or regulation. The employee must have an objective basis in fact for that belief and must inform the employer of the reason.</i> <p>Employees are protected if they tell their employer about the problem and allow a reasonable amount of time for it to be corrected, or if they have good reason to believe the employer will not correct the problem.</p>
Breaks for Nursing Mothers ¹⁸	YES/NO	North Dakota law does not require employers to offer breaks for nursing employees. However, <u>employers may use the term "infant friendly"</u> in their promotional material if they adopt a workplace policy that includes: flexible work scheduling including breaks for expressing milk; a convenient, sanitary, safe, and private location to express milk other than a restroom; a convenient and clean water source for washing hands and rinsing breast-pumping equipment; and a convenient hygienic refrigerator for storing the expressed milk.
Pregnancy Accommodations and Leave ¹⁹	YES	An employer cannot refuse or fail to make reasonable accommodations to an otherwise qualified person because the individual is pregnant. There are exceptions if it would interfere with normal business operations, or impose undue hardship, considering the size of the employer, the type of business, the financial resources of the employer, and the estimated cost of the accommodation. Federal rules may apply; refer to the federal fact sheet.
Family and Medical Leave	NO	North Dakota does not have a state-level family and medical leave law. Federal law requiring unpaid leave may apply depending on the size of the employer. Refer to federal fact sheet.
Military and other Service Leave	NO	No specific state law on private employers providing military leave. Refer to the federal fact sheet for federal requirements.
Crime Victim and Witness Leave ²⁰	YES	An employer cannot discharge, threaten, penalize, or otherwise coerce an employee for receiving a summons or subpoena, for responding to it, for serving as a witness, or for attending court to give testimony pursuant to a subpoena.
Jury Duty Leave ²¹	YES	An employer cannot discharge, threaten, penalize, or otherwise coerce an employee for responding to a <u>jury summons or serving on a jury</u> . Employers are not required by law to pay employees during jury service.
Voting Leave ²²	YES/NO	North Dakota encourages employers to allow employees leave to vote if their work schedule conflicts with the time polls are open; however it is not required.
School Activity Leave	NO	North Dakota law does not address leave for private sector employees to attend a child's school activity.

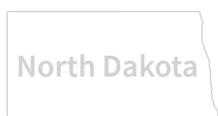


HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination ²³	YES	<p>North Dakota law prohibits employment discrimination based on race, color, religion, sex, national origin, age 40 and above, physical or mental disability, status with respect to marriage or assistance, participation in lawful activities off the employer's premises during non-work hours, or pregnancy.</p> <p>Employment discrimination means bias in hiring (including during interviews), promotion, job assignments, firing, pay, and other terms of employment.</p> <p>It is illegal to retaliate against employees for filing a complaint, reporting a violation or suspected violation of law, or participating in an investigation, hearing or inquiry.</p>
Harassment/ Sexual Harassment ²⁴	YES	<p>Harassment is generally considered a type of employment discrimination. Harassment is unwelcome conduct. It becomes illegal when (1) employees have no choice but to tolerate the harassment if they want to keep their job; (2) it is so severe that a regular person would see it as intimidating, hostile, or abusive.</p> <p>North Dakota law specifically includes sexual harassment as a type of illegal discrimination based on sex. Sexual harassment includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:</p> <ul style="list-style-type: none"> • <i>Engaging in such conduct is made an implicit or explicit term or condition of employment. Example: A newly hired milker is told that sexual jokes, touching and nude posters are just part of farm life and she should try to ignore it.</i> • <i>Acceptance or rejection of such conduct is used as the basis for an employment decision affecting an employee. Example: A manager tells a worker applying for a promotion that the job would be his if he just "treated her right."</i> • <i>The conduct interferes with an employee's work or creates an intimidating, hostile or offensive work environment. Example: One worker experiences repeated advances from another asking her for dates or "just to go out for drinks after work." The worker says she isn't interested, but the co-worker won't take 'no' for an answer.</i> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a complaint.</p>
Forced Labor ²⁵	YES	<p>Human trafficking is illegal. Forced labor means knowingly using coercion to compel or induce someone to provide labor or services.</p> <p>North Dakota law further specifies that the use of force, threats, or intimidation to prevent someone from continuing to work or accepting new work, or to give up their work is illegal.</p> <p>Employers should ensure they are carefully following all visa requirements or work agreements to avoid any inadvertent violations.</p>

CHILD LABOR

TOPIC	ANSWER	DETAILS
Child Labor ²⁶	YES	<p>North Dakota child labor laws mostly exempt farm labor, except that minors under 14 cannot work during school hours. Federal rules are stricter and thus apply. Refer to the federal fact sheet.</p>



HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Workers' Compensation ²⁷	YES	<u>Workers' Compensation</u> coverage is optional for agricultural employers. Coverage is not required for the spouse or child (21 or younger) of the employer. However, carrying worker's compensation coverage is generally good practice. Agricultural employers that <u>elect coverage</u> must follow the law's injury reporting process. Work-related injuries or illnesses must be reported to the <u>Workforce Safety & Insurance</u> department within 7 days of receiving notice of an injury from an employee.
OSHA	YES	North Dakota is under federal OSHA jurisdiction. Refer to the federal fact sheet.
Housing	YES/NO	North Dakota law does not explicitly address standards for farm-provided permanent agricultural housing, though general landlord/tenant or public health laws may apply. Employers should follow best practices when providing housing – which includes, at minimum, a written housing agreement and properly maintaining the facilities. The FARM HR Manual has guidance around best practices for agricultural worker housing.

References

1. N.D. Cent. Code §34-15-03
2. N.D. Cent. Code §34-14-02
3. N.D. Cent. Code §34-14-03, N.D. Admin Code 46-02-07-02(12)
4. N.D. Admin. Code 46-02-07-02(4)(b)
5. N.D. Cent. Code §34-06-22
6. N.D. Admin Code 46-02-07-02
7. N.D. Admin Code 46-02-07-02(10)
8. N.D. Cent. Code §57-38-59, §52-01-01
9. N.D. Cent. Code §34-14-04.1, N.D. Admin Code 46-02-07-02(13)
10. N.D. Admin Code 46-02-07-02(15)
11. N.D. Cent. Code §34-06-07
12. N.D. Admin. Code 27-02-02-01
13. N.D. Cent. Code §4.1-25-30
14. N.D. Cent. Code §34-06-05
15. N.D. Cent. Code §34-09-01
16. N.D. Admin Code 46-02-07-02(5)
17. N.D. Cent. Code §34-01-20
18. N.D. Cent. Code § 23-12-17
19. N.D. Cent. Code §14-02.4-03
20. N.D. Cent. Code §27-09.1-17
21. N.D. Cent. Code §27-09.1-17
22. N.D. Cent. Code §16.1-01-02.1
23. N.D. Cent. Code §34-01-17, 34-01-20, 14-02.4-01 et seq
24. See above.
25. N.D. Cent. Code § 34-01-04, 12.1-41-01 et seq.
26. N.D. Cent. Code §34-07-01 et seq.
27. N. D. Cent. Code §65-01-01; 65-01-02(20), 65-05-01.4

