

**LETTER OPINION**  
**96-L-117**

May 31, 1996

Mr. Doug Mattson  
Ward County State's Attorney  
Ward County Courthouse  
Minot, ND 58701

Dear Mr. Mattson:

Thank you for your May 14, 1996, letter seeking my review and rescission of a previous opinion approving N.D. Admin. Code § 46-02-07-02(10) adopted by the North Dakota Labor Commissioner. See Letter from Attorney General Heidi Heitkamp to Labor Commissioner Craig Hagen (February 24, 1994). In the absence of a change to relevant law, there is no authority for me to review and rescind an opinion on administrative rules that have been approved, adopted, published, and have the force and effect of law. N.D.C.C. § 28-32-03(3). I, therefore, adhere to my above-noted opinion.

N.D. Admin. Code § 46-02-07-02(10) provides that an employer must treat earned but unused vacation pay and paid time off the same as wages upon separation from employment for workers who have been employed at least one year. In your letter, you argue that the Labor Commissioner's authority to promulgate administrative rules under the statutory definition of "wages" does not encompass vacation or paid leave. The definition of "wages" in N.D.C.C. § 34-06-01(6) uses the word "includes" to set out the definition. You will note that the same language is used in subsections 2 and 3 of that section, whereas the other three subsections use the term "means." The North Dakota Supreme Court has interpreted the use of the word "includes" to mean that the information contained in the definitional section is not intended to be an exhaustive list of the subject matter which may be included. That is, the word "includes" is not a word of limitation but is a word of expansion or enlargement. See Peterson v. McKenzie County School District No. 1, 467 N.W.2d 456, 459 (N.D. 1991). With that in mind, it is not difficult to see how the term "wages" can be interpreted to include matters in addition to those few items cited in the statute.

Further, the plain meaning of the statutory definition of wages is not limited to payment in money. Wages includes "all payments made to or on behalf of an employee as remuneration for employment." N.D.C.C. § 34-06-01(6). Although the words "payment" and "remuneration" connote payment or remuneration in money, the plain

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meaning of these terms also embraces payment in kind or in service. Payment includes the fulfillment of a promise or the performance of an agreement. Black's Law Dictionary 1129 (6th ed. 1990). To pay includes to discharge a debt or obligation. American Heritage Dictionary 911-912 (2d coll. ed. 1991). Remunerate is defined as to pay or compensate. American Heritage Dictionary 1046 (2d coll. ed. 1991). See also Black's Law Dictionary 1296 (6th ed. 1990). Therefore, the plain meaning of "wages" as defined in N.D.C.C. § 34-06-01(6) includes compensation which does not take the form of monetary payments, and includes earned vacation pay or paid leave when that is part of an employee's compensation.

You also argue that the Labor Commissioner does not have authority to promulgate an administrative rule affecting employees covered by the state central personnel system under N.D.C.C. ch. 54-44.3. Statutes on related topics are to be construed together to give effect to both provisions, if possible. N.D.C.C. § 1-02-07. Nothing in N.D.C.C. ch. 54-44.3 exempts the central personnel system from the Labor Commissioner's plenary authority on employment issues under N.D.C.C. ch. 34-06. Further, the administrative rules concerning accrual of annual leave hours and limiting the hours which may be carried over from year to year under the state central personnel system at N.D. Admin. Code ch. 4-07-12 are not in conflict with N.D. Admin. Code § 46-02-07-02(10) because the state central personnel rules govern how annual leave hours are earned or are treated upon transfer from one agency to another in the role of an employer while the Labor Commissioner's rule governs how these earned hours are treated by governmental employers upon separation from employment.

You also cite the limitations upon severance pay for state employees or officers contained in N.D.C.C. § 54-14-04.3. This statute relates only to state employees and state agencies. Further, this statute specifically states that "[s]everance pay does not include payments made to a terminated employee or officer for accrued annual or sick leave or compensatory leave, where such payments are authorized." N.D.C.C. § 54-14-04.3(1).

At this time, considering N.D.C.C. § 28-32-15(2), your options are to convince the Labor Commissioner to amend the minimum wage and work condition rules to suit what you believe to be appropriate (see N.D.C.C. § 28-32-02), or to work with your local legislators to amend the relevant statutes to define and clarify the Labor Commissioner's authority on rules concerning minimum wages and work conditions. The 1995 Legislative Assembly adopted legislation to provide greater legislative oversight on agency rulemaking. See 1995 N.D. Sess. Laws chs. 310 and 517. With that in mind, the Legislature may choose to review N.D.C.C. ch. 34-06, and rules adopted thereunder, with a view toward defining the "standards" that may be adopted under N.D.C.C.

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§ 34-06-03 or the need to include political subdivisions within the regulated community under N.D.C.C. ch. 34-06 in light of the existence of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. See N.D.C.C. § 54-35-02.6.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

eee/vkk  
cc: Craig Hagen, Commissioner of Labor