

**N.D.A.G. Letter to Vogel (Sep. 13, 1989)**

September 13, 1989

Honorable Sarah Vogel  
Commissioner of Agriculture  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Commissioner Vogel:

Thank you for your August 22, 1989, letter concerning the scope of a minimum wage order issued by the Commissioner of Labor which was to become effective August 14, 1989. You ask whether the overtime provisions apply to farm labor contracts.

According to the wage order enclosed with your letter, hours worked in excess of 40 in any week must be paid at no less than one and one-half times the regular rate of pay. The order does not specify which occupation is subject to this requirement. It implies that all occupations are subject to the overtime provisions.

N.D.C.C. ch. 34-06 provides the Commissioner with the authority to issue an order reflecting the standards of hours of employment and the standards of minimum wages for employees of any occupation. Occupation is defined as "a business or industry, or a trade or branch thereof." N.D.C.C. § 34-06-01(5). The only exemption provided from the definition is "outside salesmen who are compensated on a commission basis."

The Commissioner's authority to address minimum wages and hours may be extended to any business or industry, or a trade or branch thereof, so long as it does not apply to salesmen compensated on a commission basis. The minimum wage order enclosed with your letter does not restrict the overtime provisions to a particular occupation or branch thereof. Thus, I must conclude the overtime provisions are applicable to farm labor contracts.

Your second question concerns the ability of the Commissioner of Labor to orally modify his wage order. Enclosed is a copy of a letter opinion I have recently provided to Senator John Olson which responds to this issue. In that letter opinion, I concluded the wage order which was to be effective August 14, 1989, was invalid and had no legal effect because the Commissioner of Labor failed to comply with the administrative rulemaking procedures outlined in N.D.C.C. ch. 28-32. A wage order must be reduced to an administrative rule in order to carry the force and effect of law. When it is adopted as an administrative rule, the order can be amended through the administrative rulemaking process outlined in N.D.C.C. ch. 28-32.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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Enclosure