

N.D.A.G. Letter to Omdahl (Oct. 13, 1989)

October 13, 1989

Honorable Lloyd B. Omdahl
Lieutenant Governor
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Lieutenant Governor Omdahl:

Thank you for your September 18, 1989, letter asking, in your capacity as chairman of the Legislative Audit and Fiscal Review Committee, for an opinion on the duration of the statute of limitations pertaining to claims filed in the Office of State Labor Commissioner.

N.D.C.C. § 34-01-13 provides as follows:

34-01-13. Actions under Fair Labor Standards Act must be brought within certain time. All suits and actions for the recovery of overtime, damages, fees or penalties accruing under laws respecting the payment of wages, and specifically under the Act of Congress known as the Fair Labor Standards Act of 1938 [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 201 et seq.], as same has been or may hereafter be amended, and all other similar acts must be brought within two years after the accrual of such claim for relief, and all claims for relief accruing prior to the date hereof must be brought within one year after passage of this section. This section does not affect suits pending at the time of its passage.

This statute provides that all suits and actions to recover damages or penalties under laws respecting the payment of wages must be commenced within two years after the accrual of such claim for relief. Therefore, the Commissioner of Labor must commence a civil action in court within two years after an employee's claim for relief accrued. The fact that an employee has filed a claim with the North Dakota Department of Labor does not toll the running of the statute of limitations set forth in N.D.C.C. § 34-01-13.

I hope that I have adequately addressed your question. If I can be of any further assistance to you in this matter, please feel free to contact me.

Sincerely,

Nicholas J. Spaeth

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