

Date Issued: January 23, 1984 (AGO 84-6)

Requested by: LeRoy Erickson, State Senator

- QUESTIONS PRESENTED -

I.

Whether an individual who did not earn wages sufficient to meet the eligibility requirements of section 52-06-04(1)(b) of the North Dakota Century Code is monetarily ineligible for unemployment compensation benefits?

II.

Whether an employer is liable for unemployment compensation taxes where the employer's employees are monetarily ineligible pursuant to section 52-06-04(1)(b), N.D.C.C.?

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that an individual who did not earn wages sufficient to meet the eligibility requirements of section 52-06-04(1)(b), N.D.C.C., is monetarily ineligible for unemployment compensation benefits.

II.

It is my further opinion that an employer is liable for unemployment compensation taxes where the employer's employees are monetarily ineligible pursuant to section 52-06-04(1)(b), N.D.C.C.

- ANALYSIS -

I.

Section 52-06-04(1)(b), N.D.C.C., provides, in part:

* * *

b. An individual's "weekly benefit amount" shall be an amount equal to one fifty-second (if not a multiple of one dollar, to be computed to the next lower multiple of one dollar) of the individual's total wages for insured work paid during the two quarters of the individual's base period in which the individual's wages were the highest, however, if such amount is less than the "minimum weekly benefit amount" the individual shall be monetarily ineligible for benefits. The "minimum weekly benefit amount" shall be eighteen times the current

federal minimum hourly wage provided under the Fair Labor Standards Act 29 USC 206. The "minimum weekly benefit amount", if not a multiple of one dollar, shall be rounded to the next lower multiple of one dollar

Section 1-02-05, N.D.C.C., states that if ". . . the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." Legislative intent must first be sought from the language of the statute. Apple Creek Tp. v. City of Bismarck, 271 N.W.2d. 583 (N.D. 1978).

Section 52-06-04(1)(b), N.D.C.C., is not ambiguous; it clearly sets forth a formula for determining "weekly benefit amount" and monetary ineligibility for unemployment compensation benefits.

It must be concluded, on the basis of section 52-06-04(1)(b), N.D.C.C., that an individual who did not earn wages sufficient to meet the eligibility requirements of the statute, for whatever reason, is not eligible to receive unemployment compensation benefits.

II.

Sections 52-06-01, 52-06-02 and 52-06-03, N.D.C.C., are concerned with the payment of unemployment compensation taxes. Each section indicates that contributions are to be paid by an employer on wages with respect to employment.

Employment is defined as, "services performed by an individual for wages or under any contract of hire." Section 52-01-01(17)(e), N.D.C.C. There are a number of exceptions to this definition throughout sections 52-01-01(17) and 52-01-01(18), N.D.C.C. No exception is made, however, for part-time work or services for less than minimum wage.

Thus an employer may be liable for unemployment taxes on the wages of employees who may, at some time in the future, be monetarily ineligible. Whether or not an employee will be eligible for benefits cannot be predicted until that employee becomes unemployed and files a claim for benefits.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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