

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 92-02

Date Issued: January 10, 1992

Requested by: Robert A. Freed, Stutsman County Assistant
State's Attorney

- QUESTION PRESENTED -

Whether an employer's refusal to pay the wages of a non-exempt employee during the period the individual serves as a juror is a penalty prohibited by North Dakota Century Code ' 27-09.1-17(1).

- ATTORNEY GENERAL'S OPINION -

It is my opinion an employer's refusal to pay the wages of a non-exempt employee during the period the individual serves as a juror is not a penalty prohibited by N. D. C. C. ' 27-09.1-17(1).

- ANALYSIS -

North Dakota Century Code ' 27-09.1-17(1) provides:

1. An employer may not deprive an employee of employment, lay off, penalize, threaten, or otherwise coerce an employee with respect thereto, because the employee receives a summons or subpoena, responds thereto, serves as a juror or witness, or attends court for jury service or to give testimony pursuant to a subpoena.

The question is whether refusing to pay an employee's wages during the time the individual serves on a jury is a penalty within the meaning of the statute.

Words in a statute are to be understood in their ordinary sense unless a contrary intent appears in the statute. N. D. C. C. ' 1-02-02. "Penalize" is defined as "to subject to a penalty." AMERICAN HERITAGE DICTIONARY, 916 (2nd Ed. 1985). The word "penalty" in its ordinary sense is a disadvantage incurred by an individual as the result of an act. AMERICAN HERITAGE DICTIONARY, 916 (2nd Ed. 1985). As applied to the facts presented, the alleged penalty, nonpayment of wages, would occur whether the employee missed work to serve on a jury or for another reason. Therefore, the nonpayment of wages during the period the employee serves on a jury is not a penalty as contemplated by N. D. C. C. ' 27-19.1-17(1). This conclusion is supported by the legislative history of N. D. C. C. ' 27-19.1-17(1).

In 1991 subsection 1 of N. D. C. C. ' 27-09.1-17 was amended to include the words "lay off" and "penalize." 1991 N. D. Sess. Laws ch. 332. Senate Bill No. 2385, which introduced these changes, was recommended by the State Court Administrator's Office based upon recommendations it had received from the

North Dakota Juror Standards Committee (the Committee). The amendment to N. D. C. C. ' 27-09.1-17(1) was adopted by the Juror Standards Committee based upon a recommendation from the American Bar Association Standards on Jurors. Hearings on S. 2385 Before the Senate Comm. on the Judiciary, 52nd Leg. (January 29, 1991) (Statement of Greg Wallace, State Court Administrator's Office). The intent in adding the language was to ensure that an individual would not be laid off if they were required to attend jury service. Id.

The Committee recommended that N. D. C. C. ' 27-09.1-17 be amended to prohibit the layoff or other penalization of an employee who serves as a juror and that N. D. C. C. ' 27-09.1-14 be amended to increase the fee for jurors. The Committee also recommended that jurors should be compensated with an adequate fee to protect them from financial hardship when employers did not compensate them for the time spent serving as jurors. The Committee also wished to ensure that employees who served as jurors would not be laid off. N. D. Jury Standards Committee, Jury Use and Management Standards With Commentary, p. 11.

The language adopted originated with an American Bar Association task force. Hearing on S. 2385 Before the Senate Comm. on the Judiciary, 52nd N. D. Leg. (January 29, 1991) (Statement of Gary Wallace). The task force's commentary on the language provides:

[p]ersons should not be penalized for fulfilling their civic duty to serve as jurors. Thus, employees who are discharged, or laid off, whose seniority is adversely affected, or who are otherwise penalized by their employers for missing work because of jury service, should have a statutory right of action for monetary damages as well as equitable remedies. . . . It should be noted, however, that nothing in this standard is intended to prohibit employers who continue to pay employees during jury service from either deducting the amount of the juror fee from their employees' salaries or wages or requiring employees to remit those fees promptly.

ABA Juror Task Force, Standards Relating to Juror Use and Management, p. 132, (1983).

Thus, the language added was not intended to impose a duty on employers to compensate employees for jury duty.

Employers should be aware, however, that employees who are considered exempt under the Fair Labor Standards Act, 29 U. S. C. A. ' 201 et al must be treated differently when they are on jury duty than non-exempt employees. Non-exempt employees are those who are subject to the overtime provisions of the Act. 29 U. S. C. ' 206. An exempt employee is normally a professional paid on a salary basis and is not subject to the payment of overtime. 29 U. S. C. ' 213. An exempt employee may lose exempt status, thus requiring payment of overtime, if the individual's salary is deducted for an absence caused by jury duty. 29

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C. F. R. ' 541.118(a)(4) (1991). However, reducing the pay of a non-exempt employee for time spent serving on a jury does not have the same consequence.

It is therefore my opinion that an employer who refuses to pay the wages of a non-exempt employee during the period the individual serves as a juror does not constitute a penalty prohibited by N. D. C. C. ' 27-09.1-17(1).

- EFFECT -

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

Nicholas J. Spaeth
Attorney General

Assisted by: Carla Smith, Assistant Attorney General

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January 10, 1992

Mr. Robert A. Freed
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State's Attorney
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Dear Mr. Freed:

Enclosed please find the Attorney General's Opinion as you requested.

Sincerely,

Nicholas J. Spaeth

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Enclosure

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