

LETTER OPINION
94-L-3

January 10, 1994

Mr. Brian McClure
Director
Central Personnel Division
Office of Management and Budget
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0120

Dear Mr. McClure:

Thank you for your November 24, 1993, letter asking whether your office has the authority to adopt an administrative rule concerning severance pay for classified state employees in furtherance of North Dakota Century Code (N.D.C.C.) ? 54-14-04.3.

N.D.C.C. ? 54-44.3-01 describes the purpose of N.D.C.C. ch. 54-44.3 as being generally the creation of the Division of Central Personnel in order to establish a unified system of personnel administration for the classified service of the state based on merit principles and scientific methods to govern the position classification, pay administration, and transfer of its employees.

N.D.C.C. ? 54-44.3-12 provides for the duties of the director of the Central Personnel Division and authorizes, in subsection 1, the adoption of general policies, rules, and regulations on matters relating to personnel administration. The rules authorized to be adopted pursuant to that section provide for a number of items, including enhancing greater uniformity in matters relating to probation, hours of work, leaves of absence, separations, transfers, discipline, grievances, and performance management.

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N.D.C.C. ? 54-14-04.3(1) defines severance pay as "compensation received, upon termination of employment, for reasons primarily beyond the control of the state employee or officer, for the purpose of assuring an employee or officer funds to depend upon while another job is sought." Severance pay is also generally defined as "[p]ayment by an employer to employee beyond his wages on termination of his employment." Black's Law Dictionary (5th ed. 1979), p. 1232.

Because the subject of severance pay deals with separation of a state employee or officer from the service of the state under N.D.C.C. ? 54-14-04.3, and the director of the Central Personnel Division is authorized to adopt rules providing greater uniformity in matters relating to separations, it is my opinion that the Central Personnel Division is authorized to adopt administrative rules on the subject of severance pay for classified employees and to set appropriate guidelines to be followed by state agencies when a decision to provide severance pay is made. However, any rules promulgated would need to include recognition that N.D.C.C. ? 54-14-04.3 grants an agency discretion in determining whether an employee is entitled to severance pay.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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