

MEMORANDUM

TO: Orville W. "Ike" Hagen

FROM: Robert O. Wefald

SUBJECT: Relationship of the Attorney General's Office to the Department of Labor with respect to wage claim assignments referred for legal action

DATE: September 20, 1982

This memorandum is intended to help clarify the relationship of the Attorney General's office to the Department of Labor with respect to wage claim assignments referred to this office for legal action. Section 34-14-08, N.D.C.C., grants the Commissioner of Labor the discretionary authority to accept assignments of employees' wage claims. Since Chapter 34-14, N.D.C.C., does not define the relationship of the Attorney General's office to the Department of Labor in these matters, the need for this memorandum is apparent.

The following recommendations are made:

1. Since the Attorney General's representation of wage claimants in actions brought on their behalf by the Department of Labor is not mandatory, and since the cost to the State of North Dakota through the legal services provided by this office in such cases may substantially exceed the amount of the claim, the Attorney General's office will not take legal action on wage claims which may be pursued by wage claimants in the Small Claims Court of the defendant's county of residence. Because of the legal costs that is borne in these cases by the Attorney General's office, and because the benefits, if any, accrue directly to private individuals rather than the state or public in general, the Small Claims Court alternative is entirely proper. This office will furnish the Department of Labor with a list of the jurisdictional dollar limits of the Small Claims Court in each county as well as other relevant information in brochure form outlining the operation of Small Claims Court. These materials may be made available to the wage claimants. This office will offer to represent any otherwise qualified wage claimant whose action is removed from Small Claims Court to County Court or whose claim exceeds the jurisdictional dollar maximum applied by law to Small Claims Court. Referral of such actions to Small Claims Court will result in both speedy and low cost adjudication of the claimants issues and a cost savings to the state since no state-paid attorney will be required and since the required filing fee, should the Department of Labor choose to bear that expense, is less than either that required by county courts or district courts.

2. Chapter 34-14, N.D.C.C., provides for the assignment of wage claims by employees, not independent contractors. Whether a person is an employee or an independent contractor is a legal and factual question which, for the purposes of legal representation, will be determined, in the final instance, by this office. The Department of Labor should, either on its own initiative or after a legal review at the direction of this office, refuse the assignment of wage claims by independent contractors.
3. In order to expedite the processing of wage claims, all billings for filing fees, fees for service of process, or other direct expenses of litigation should be remitted directly by the Department of Labor to the billing party. The processing of bills and warrant checks by this office is unnecessarily duplicative, cumbersome and time consuming and is needlessly expensive.
4. In order to further expedite the processing of wage claims, the Commissioner of Labor should, upon referring a claim to this office for legal action, submit with that claim the Affidavit of Proof. This simultaneous submission will avoid unnecessary delay in processing the claim.
5. When this office has taken action on an assigned wage claim, the claimant becomes, in effect, our client, and the information contained in the claimant's file is to be considered privileged. This is true regardless of whether or not a file has been returned to the Department of Labor for whatever reason. Any requests to the Department of Labor for access to wage claimant's files should be referred to this office, and the contents of such files should be disclosed to no one except after review and approval by an attorney representative of the Attorney General's office. This policy is designed to both protect the interests of the State of North Dakota and the client/claimant's rights to confidentiality as provided by the attorney-client privilege established by the North Dakota Supreme Court in the Code of Professional Responsibility (Canon 4).