

# North Dakota: JURY DUTY

## Summary

- Employers in North Dakota must excuse employees from work to serve on a jury, serve as a witness or give testimony pursuant to a subpoena.
- All employees in North Dakota may take time off from work to respond to a jury duty summons.
- Employers are not required to compensate employees for the time spent on jury duty.
- North Dakota law protects an employee's job when the employee serves on a jury. Employers cannot terminate, demote, lay off, penalize, threaten or coerce an employee because of an employee's jury duty leave.

## Employers Obligated to Provide Leave

All employers in North Dakota must provide jury duty leave to employees. This includes time off from work to:

- Serve on a jury;
- Testify as a witness; or
- Give testimony pursuant to a subpoena.

An employer may request that the employee provide a certificate of attendance certifying his or her attendance as a juror and/or a copy of the subpoena.

## Employees Qualified for Leave

All employees in North Dakota may take time off from work to respond to a jury duty summons.

## Compensation During Leave

An employer is not required to compensate an employee for time spent on jury service. While not mandated to do so, many employers do pay employees called to jury duty. In deciding compensation issues, an employer must consider the exempt and nonexempt status of employees.

## Exempt Employees

An employee who is *exempt* under the Fair Labor Standards Act (and therefore not entitled to overtime) must be paid for the whole week for any workweek in which he or she served as a juror or witness, but also performed any actual work. The employer may offset any amount received by an exempt employee as jury fees or witness fees for

a particular week against the salary due for that week. The employee need not be paid for any workweek during which he or she performs no work; for example, when an employee is on jury duty for an entire workweek.

## **Nonexempt Employees**

The Fair Labor Standards Act does not require employers to pay *nonexempt* employees (typically, hourly workers who are entitled to overtime pay for working more than 40 hours in a workweek) for time spent away from work because of jury or witness obligations. Employers may elect to pay such employees, but deduct the amount paid by the court from any compensation paid. This practice is consistent with the philosophy behind the jury duty protection laws, which are intended to encourage individuals to perform their civic duty. However, because it is possible that an employee on jury duty may become involved in a long trial, written company policies should specify that any pay that is granted will be calculated as regular base pay only (no overtime) and will be limited to some finite period. If the employer does not intend to pay employees for lengthy jury service, there must be a written policy in place informing employees of that fact (i.e., an employer's policy can indicate that after a certain length of time, the employee's jury service will no longer be paid leave). Failure to specify such limitation of payment could result in having to pay the employee for the entire length of his or her service.

## **Prohibited Actions**

An employer may not terminate, lay off, penalize, threaten or coerce an employee because an employee:

- Receives a jury summons;
- Responds to the jury summons;
- Attends court for jury service; or
- Serves as a juror.

An employer that engages in any prohibited action can be sued by an employee and ordered to pay up to six weeks of the employee's lost wages and reasonable attorney fees fixed by the court. The employer can also be found guilty of a Class B misdemeanor. If the employee was terminated, the employer may be ordered to reinstate the employee. +*N.D. Cent. Code § 27-09.1-17.*