

N.D.A.G. Letter to Hagen (May 17, 1991)

May 17, 1991

Honorable Craig Hagen
Commissioner of Labor
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Commissioner Hagen:

Thank you for your April 30, 1991, letter asking whether the 1991 amendment of N.D.C.C. § 34-14-02 by Senate Bill 2498 authorizes an employer to make participation in a direct deposit program a condition of employment. For the reasons stated below, it is my opinion the amendment did not authorize an employer to make participation in a direct deposit program a condition of employment.

The amendment to N.D.C.C. § 34-14-02, adopted by the 1991 North Dakota Legislative Assembly, states:

If an employee participates in a direct deposit program, that employee's employer shall deposit the employee's wages into the financial institution of the employee's choice.

In a recent opinion to you, I determined that N.D.C.C. § 34-14-02 did not authorize an employer to unilaterally require its employees to participate in a direct deposit program at a financial institution for the receipt of wages. N.D. Op. Att'y Gen. 91-02. The amendment noted above did not change the statute to empower an employer to make participation in a direct deposit program a condition of employment.

As amended, section 34-14-02 provides an employee with discretion to determine in which financial institution the employee's wages will be deposited only "if an employee participates in a direct deposit program." If the employee decides to participate in such a program, by agreement with the employee's employer, then the employer must deposit the employee's wages in the financial institution chosen by the employee. Thus, it is the employee who controls whether the wages will be directly deposited and where.

I trust this answers your question.

Sincerely,

Nicholas J. Spaeth

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