

# South Dakota Labor and Employment Laws

July 1, 2022– June 30, 2023



**SOUTH DAKOTA**  
DEPT. OF **LABOR**  
& **REGULATION**

Division of Labor & Management  
123 W. Missouri Ave  
Pierre, SD 57501

605.773.3681

inside cover  
(blank)

# TITLE 60

## LABOR AND EMPLOYMENT

### Chapter

1. Nature And Terms Of Employment.
2. Obligations Of Employer And Employee.
3. Gratuitous Employees.
4. Termination Of Employment.
5. Administration Of Labor Laws.
6. State Employment Service.
8. Interference With Employment.
9. Labor Unions.
- 9A. Collective Bargaining.
10. Labor Disputes, Picketing And Boycotts.
11. Wages, Hours And Conditions Of Employment.
12. Child labor - Discrimination on basis of sex.
14. Nannies.

### CHAPTER 1

#### NATURE AND TERMS OF EMPLOYMENT

### Section

- 60-1-1.** Employee defined.
- 60-1-2.** Contract of employment defined.
- 60-1-3.** Relevancy of wage estimation period in determining term of employment.
- 60-1-4.** Presumption as to monthly hiring.
- 60-1-5.** Continuation in service - Renewal presumed on same terms.
- 60-1-7.** Delivery facilitation contractor considered an independent contractor--Criteria--Services performed before July 1, 2022.
- 60-1-8.** Delivery facilitation contractor and delivery facilitation platform defined.

**60-1-1.** Employee defined.

An employee is one who is employed to render personal service to his employer otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter who is called his employer.

**60-1-2.** Contract of employment defined.

The contract of employment is one where the employer engages the employee to do something for the employer or for a third person.

**60-1-3.** Relevancy of wage estimation period in determining term of employment.

The length of time which an employer and employee adopt for the estimation of wages is relevant to a determination of the term of employment.

**60-1-4.** Presumption as to monthly hiring.

In the absence of any agreement or custom as to the rate or value of wages, the term of service, or the time of payment, an employee is presumed to be hired by the month at a monthly rate of reasonable wages, to be paid when the service is performed.

**60-1-5.** Continuation in service - Renewal presumed on same terms.

Where after the expiration of an agreement respecting the wages and the term of service the parties continue the relation of employer and employee, they are presumed to have renewed the agreement for the same wages and term of service.

**60-1-7.** Delivery facilitation contractor considered an independent contractor--Criteria--Services performed before July 1, 2022.

A delivery facilitation contractor is an independent contractor of a delivery facilitation platform if:

- (1) The delivery facilitation contractor and delivery facilitation platform agree in writing that the delivery facilitation contractor is an independent contractor of the delivery facilitation platform;
- (2) The delivery facilitation platform does not unilaterally prescribe specific hours during which the delivery facilitation contractor must be available to accept service requests submitted through the delivery facilitation platform's digital network;
- (3) The delivery facilitation platform does not prohibit the delivery facilitation contractor from engaging in outside employment or performing services through another delivery facilitation platform except while the delivery facilitation contractor is performing services through the delivery facilitation platform's digital network; and
- (4) The delivery facilitation platform may not terminate the contract of a delivery facilitation contractor for failure or refusal to accept service requests.

For services performed before July 1, 2022, a delivery facilitation contractor is considered an independent contractor of the delivery facilitation platform if the requirements of this section were satisfied at the time the services were performed.

Source: SL 2022, ch 188, § 1.

**60-1-8.** Delivery facilitation contractor and delivery facilitation platform defined.

Terms used in § 60-1-7 mean:

- (1) "Delivery facilitation contractor," a person who:
  - (a) Enters into a written agreement with a delivery facilitation platform to use the delivery facilitation platform's digital network to connect with customers seeking services offered by a delivery facilitation contractor;
  - (b) Performs services for customers through a delivery facilitation platform's digital network in exchange for value; and
  - (c) Does not perform services at a physical business location operated by the delivery facilitation platform, if any, in this state.

The term does not include a person transporting freight, sealed or closed envelopes, boxes, parcels, or other similar sealed or closed containers for compensation. The term includes a transportation network company driver as defined in § 32-40-1;

- (2) "Delivery facilitation platform," a person who:
  - (a) Maintains a digital network to facilitate services by a delivery facilitation contractor to customers seeking those services; and
  - (b) Accepts requests from customers only through the delivery facilitation platform's digital network.

The term includes a transportation network company as defined in § 32-40-1.

Source: SL 2022, ch 188, § 2.

**CHAPTER 60-2.**  
**OBLIGATIONS OF EMPLOYER AND EMPLOYEE**

**Section**

- 60-2-1.** Indemnification of employee by employer, exceptions.
- 60-2-2.** Losses for which employer not required to indemnify employee.
- 60-2-3.** Employer to indemnify for his own negligence.
- 60-2-4.** Duties of employee for reward.
- 60-2-5.** Duties of employee for his own benefit.
- 60-2-6.** Contract for service limited to two years.
- 60-2-7.** Obedience to employer required, exceptions.
- 60-2-8.** Duty of employee to conform to usage, exception.
- 60-2-9.** Degree of skill required of employee.
- 60-2-10.** Products of employment belong to employer, exception.
- 60-2-11.** Duty of employee to account.
- 60-2-12.** Employee not bound to deliver without demand.
- 60-2-13.** Preference to employer's business.
- 60-2-14.** Preference between employers according to urgency.
- 60-2-15.** Responsibility of employee for substitute.
- 60-2-16.** Responsibility to employer for misconduct.
- 60-2-17.** Duty of surviving employee.
- 60-2-18.** Day's labor defined.
- 60-2-19.** Duty of employee to deliver things received.
- 60-2-20.** Use of genetic information in employment practices prohibited - Exceptions - Action for damages.
- 60-2-21.** "Genetic Information" defined.

- 60-2-1.** Indemnification of employee by employer, exceptions.

An employer must indemnify his employee, except as provided in 60-2-2 for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the direction of the employer, even though unlawful, unless the employee at the time of obeying such directions believed them to be unlawful.

- 60-2-2.** Losses for which employer not required to indemnify employee.

An employer, except as otherwise specially provided, is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee.

- 60-2-3.** Employer to indemnify for his own negligence.

An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

- 60-2-4.** Duties of employee for reward.

One who agrees to serve another for a good consideration must perform the service with ordinary care and diligence so long as he is thus employed.

**60-2-5. Duties of employee for his own benefit.**

One employed at his own request to do that which is more for his advantage than for his employer must use great care and diligence to protect the interest of the latter.

**60-2-6. Contract for service limited to two years.**

A contract to render personal service cannot be enforced against the employee beyond the term of two years from the commencement of service under it, but if the employee voluntarily continues his services under it beyond that time, the contract may be referred to as affording a presumptive measure of the consideration.

**60-2-7. Obedience to employer required, exceptions.**

An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, even though contrary to the provisions of law on the subject of employer and employee, except where such obedience is impossible, or unlawful, or would impose new and unreasonable burdens upon the employee, or in case of an emergency, which according to the best information which the employee can with reasonable diligence obtain, the employer did not contemplate, and in which he cannot with reasonable diligence be consulted, and in which noncompliance is judged by the employee, in good faith, and in the exercise of reasonable discretion, to be absolutely necessary for the protection of the employer's interests. In all such cases the employee must conform as nearly to the directions of his employer as may be reasonably practicable and most for the interest of the latter.

**60-2-8. Duty of employee to conform to usage, exception.**

An employee must perform his service in conformity to the usage of the place of performance unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

**60-2-9. Degree of skill required of employee.**

An employee must use reasonable skill unless his employer has notice of his want of skill before employing him. The employee must always use all skill he possesses, as far as required, for the service specified.

**60-2-10. Products of employment belong to employer, exception.**

Everything which an employee acquires by virtue of his employment, lawfully or unlawfully, during or after the term of employment belongs to the employer, excepting any compensation due the employee.

**60-2-11. Duty of employee to account.**

An employee must, on demand, render to his employer just accounts of all his transactions in the course of his service as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

**60-2-12. Employee not bound to deliver without demand.**

An employee who receives anything on account of his employer in any capacity other than that of a mere employee, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance without demand, in any mode involving greater risk than its retention by the employee himself.

**60-2-13.** Preference to employer's business.

An employee who has any business to transact on his own account, similar to that entrusted to him by his employer, must always give the latter the preference.

**60-2-14.** Preference between employers according to urgency.

If an employee is entrusted with similar affairs by different employers, he must give them preference according to their relative urgency, or other things being equal, according to the order in which they were committed to him.

**60-2-15.** Responsibility of employee for substitute.

An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

**60-2-16.** Responsibility to employer for misconduct.

An employee who is guilty of willful and wanton misconduct is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him if the service is not gratuitous, for the value of such service only as is properly rendered.

**60-2-17.** Duty of surviving employee.

Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone if the service to be rendered is such as he can rightfully perform without the aid of the deceased person, but not otherwise.

**60-2-18.** Day's labor defined.

A day's labor for employees is to the extent as is usual in the business in which they serve not exceeding ten hours in the day unless the employer and employee expressly agree to the contrary.

**60-2-19.** Duty of employee to deliver things received.

An employee must deliver to his employer as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound, without orders from his employer, to send anything to him through another person.

**60-2-20.** Use of genetic information in employment practices prohibited - Exceptions - Action for damages.

It is an unlawful employment practice for an employer to seek to obtain, to obtain, or to use genetic information, as defined in 60-2-21, of an employee or a prospective employee to distinguish

between or discriminate against employees or prospective employees or restrict any right or benefit otherwise due or available to an employee or a prospective employee. However, it is not an unlawful employment practice for an employer to seek to obtain, to obtain, or to use genetic information if:

- (1) The employer is a law enforcement agency conducting a criminal investigation; or
- (2) The employer relies on the test results from genetic information obtained by law enforcement through a criminal investigation, the employer legally acquires the test results, the employer keeps the test results confidential except as otherwise required by law, and the employer uses the test results for the limited purpose of taking disciplinary action against the employee based only on the alleged misconduct.

Any employee or prospective employee claiming to be aggrieved by this unlawful employment practice may bring a civil suit for damages in circuit court. The court may award reasonable attorney fees and costs in addition to any judgment awarded to the employee or prospective employee.

#### **60-2-21. "Genetic Information" defined.**

For the purposes of 60-2-20, genetic information is information about genes, gene products, and inherited characteristics that may derive from the individual or a family member. This includes information regarding carrier status and information derived from laboratory tests that identify mutations in specific genes or chromosomes, physical medical examinations, family histories, and direct analysis of genes or chromosomes.

### **CHAPTER 60-3. GRATUITOUS EMPLOYEES**

#### **Section**

**60-3-1.** Care and skill required.

**60-3-2.** Duty of employee under power of attorney.

**60-3-1.** Care and skill required.

One who undertakes to do a service for another without consideration is not bound to perform the same unless it is entrusted to him at his own request in which case he must perform fully. If he commences performance he must use slight diligence and care at least. In other cases a gratuitous employee may relinquish the employment at any time.

**60-3-2.** Duty of employee under power of attorney.

A gratuitous employee who accepts a written power of attorney must act under it so long as it remains in force, or until he gives notice to his employer that he will no longer do so.

### **CHAPTER 60-4. TERMINATION OF EMPLOYMENT**

#### **Section**

**60-4-1.** Death or incapacity of employer.

**60-4-2.** Expiration of appointed term - Extinction of subject - Death or incapacity of employee.

**60-4-3.** Employee must continue in certain cases.

**60-4-4.** Termination at will.

**60-4-5.** Fault of employee - Breach of duty.

**60-4-6.** Breach of obligation of employer.



**60-4-9.** Discharge of employee - Misconduct or immorality.

**60-4-10.** Discharge of employee - Concealment of misconduct prior to or after commencement of service.

**60-4-11.** Discrimination against employee's off-duty use of tobacco.

**60-4-12.** Presumption of good faith disclosure of employment information to prospective employers.

**60-4-1.** Death or incapacity of employer.

Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

- (1) Death of the employer; or
- (2) Legal incapacity of the employer to contract.

**60-4-2.** Expiration of appointed term - Extinction of subject - Death or incapacity of employee.

Every employment is terminated:

- (1) By expiration of its appointed term;
- (2) By extinction of its subject;
- (3) By death of the employee; or
- (4) By legal incapacity of the employee to act as such.

**60-4-3.** Employee must continue in certain cases.

An employee, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of the employer so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment.

**60-4-4.** Termination at will.

An employment having no specified term may be terminated at the will of either party on notice to the other, unless otherwise provided by statute.

**60-4-5.** Fault of employee - Breach of duty.

An employment even for a specified term may be terminated at any time by the employer for habitual neglect of duty or continued incapacity to perform or any willful breach of duty by the employee in the course of his employment.

**60-4-6.** Breach of obligation of employer.

An employment even for a specified term may be terminated by the employee at any time for any willful or permanent breach of the obligations of the employer to the employee as such.

**60-4-9.** Discharge of employee - Misconduct or immorality.

An employer may discharge any employee whether engaged for a fixed term or not if he is guilty of misconduct in the course of his service or of gross immorality, though unconnected with the same.

**60-4-10.** Discharge of employee - Concealment of misconduct prior to or after commencement of service.

An employer may discharge any employee whether engaged for a fixed term or not if, being employed about the person of the employer or in a confidential position, the employer discovers that he has been guilty of misconduct before or after the commencement of his service of such a nature that, if the employer had known or contemplated it, he would not have so employed him.

**60-4-11.** Discrimination against employee's off-duty use of tobacco.

It is a discriminatory or unfair employment practice for an employer to terminate the employment of an employee due to that employee's engaging in any use of tobacco products off the premises of the employer during nonworking hours unless such a restriction:

(1) Relates to a bona fide occupational requirement and is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer; or

(2) Is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest.

Notwithstanding any other provisions of this chapter, the sole remedy for any person claiming to be aggrieved by a discriminatory or unfair employment practice as defined in this section shall be as follows: the person may bring a civil suit for damages in circuit court and may sue for all wages and benefits which have been due up to and including the date of the judgment had the discriminatory or unfair employment practice not occurred. However, nothing in this section may be construed to relieve such person from the obligation to mitigate damages. It is not a discriminatory or unfair employment practice pursuant to this section for an employer to offer, impose or have in effect a health or life insurance policy that makes distinctions between employees for the type of coverage or the cost of coverage based upon the employees' use of tobacco products. The provisions of this section shall not apply to full-time fire fighters.

**60-4-12.** Presumption of good faith disclosure of employment information to prospective employers.

Any employer or agent of the employer, who in writing, discloses information about the job performance of an employee or former employee to a prospective employer of that person at the written request of the prospective employer or the employee or former employee is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, may not be held liable for the disclosure or its consequences. Any written response to the written request shall be made available to the employee or the former employee upon written request. For purposes of this section, the presumption of good faith is rebutted upon a showing that the employer or agent of the employer:

(1) Recklessly, knowingly, or with a malicious purpose, disclosed false or deliberately misleading information; or

(2) Disclosed information subject to a nondisclosure agreement or information that is confidential under any federal or state law.

## **CHAPTER 60-5. ADMINISTRATION OF LABOR LAWS**

### **Section**

**60-5-4.** Department created - Functions and responsibility.

**60-5-4.1.** Former department abolished - Performance of functions.

**60-5-10.** Appointment of employees.

**60-5-11.** Transfer of duties from commissioner of labor - Enforcement of labor laws.

**60-5-12.** Transfer of duties from industrial commissioner.

**60-5-14.** Enforcement of laws relating to minors - Separate division in department.

**60-5-15.** Investigation and prosecution of violations of labor laws - Duty of state's attorneys.

**60-5-18.** Fees established by rule.

**60-5-4.** Department created - Functions and responsibility.

There is hereby created a department of state government which shall be known as the state department of labor and which shall exercise all powers and perform all functions, duties and services relating to the field of labor and management relations as may be assigned by the Legislature. This department is charged with the responsibility of assisting employers and employees in meeting their respective obligations, and benefiting from their respective rights under the laws and in the areas so assigned to the department, all in the interest of the public welfare.

**60-5-4.1.** Former department abolished - Performance of functions.

The department of labor and management relations is abolished and all its functions shall be administered by the department of labor as provided by 1-37-5.

**60-5-10.** Appointment of employees.

The secretary of labor shall appoint such other employees, including attorneys as may be necessary for the administration of the functions, duties and responsibilities as hereinafter provided.

**60-5-11.** Transfer of duties from commissioner of labor - Enforcement of labor laws.

All duties heretofore assigned to or performed by the commissioner of labor are hereby transferred to the department of labor. The department shall be responsible for the enforcement of all labor laws as found in chapters 60-1 to 60-5, chapters 60-8 to 60-13 and §§ 3-18-4 to 3-18-6.

**60-5-12.** Transfer of duties from industrial commissioner.

All duties heretofore assigned to the industrial commissioner are hereby transferred to the department of labor.

**60-5-14.** Enforcement of laws relating to minors - Separate division in department.

The department of labor is hereby charged with the responsibility of administering and enforcing all the laws of this state pertaining to the employment of minors, and it may establish within the department a separate division or other organizational unit thereof to administer and enforce all such laws.

**60-5-15.** Investigation and prosecution of violations of labor laws - Duty of state's attorneys.

The department of labor shall cause to be investigated all violations or suspected violations of labor laws. The various state's attorneys of the several counties are hereby charged with the responsibility for investigation and prosecution of violations and suspected violations of the labor laws. If any state's attorney shall fail to investigate any violation or shall fail to prosecute a known violation of the labor

laws of South Dakota, the department of labor shall conduct such investigation or prosecution.

**60-5-18.** Fees established by rule.

The department may, by rules promulgated pursuant to chapter 1-26, establish and collect reasonable fees and charges, except fees prohibited by § 60-6-24, for the following:

- (1) Fees, not to exceed one thousand dollars, for certification or renewal of certification of case management plans for workers' compensation claims;
- (2) Fees, not to exceed twenty-five dollars, for searches of the files and records of the department;
- (3) Fees for producing transcripts and copying any papers contained in the files and records of the department, at cost plus mailing;
- (4) Fees paid for seminars, conferences, or workshops conducted by the department; and
- (5) Fees paid for computer software and publications produced by the department.

All fees paid to the department pursuant to subdivisions (1), (2), (3), and (5) of this section shall be deposited with the state treasurer each calendar month by the tenth day of next month and shall be credited to the Department of Labor special revenue fund. The money in the fund is continuously appropriated to the department for the purpose of paying the expense of administering and enforcing the provisions of Titles 60, 61, and 62. All fees collected pursuant to subdivision (4) of this section shall be deposited in the Department of Labor's local bank account as authorized by § 4-4-3.

**CHAPTER 60-6.  
EMPLOYMENT: STATE EMPLOYMENT SERVICE**

**Section.**

**60-6-1.** State employment service - State employment service - Free employment service - Acceptance of federal provisions.

**60-6-3.** State employment service - Department and secretary defined.

**60-6-4.** State employment service - Co-operation with offices and agencies of the United States.

**60-6-7.** State employment service - Federal funds - Paid into special employment service account - Expenditure by secretary.

**60-6-8.** State employment service - Acceptance of funds, services or quarters as contribution to employment service account.

**60-6-14.** State employment service - Agents - Authority of secretary to appoint - Location.

**60-6-18.** State employment service - Aid to employees in enforcement of claims - Duties of secretary.

**60-6-19.** State employment service - Strike or lockout - Signed statement, filing at public employment office.

**60-6-20.** State employment service - Statement and reply concerning strike or lockout - Posting in employment office.

**60-6-21.** State employment service - Strike or lockout - Advice to applicant for vacancy.

**60-6-22.** State employment service - Solicitation of business for public employment offices.

**60-6-23.** State employment service - Bulletin as to state of labor market - Publication by department.

**60-6-24.** State employment service - Fees for services - Misdemeanor - Disqualification from office.

**60-6-1.** State employment service - State employment service - Free employment service - Acceptance of federal provisions.

The Department of Labor shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are provided by 29 U.S.C. paragraph 49c, as amended through July 1, 1999. These provisions of federal law are hereby accepted by this state. The Department

of Labor is designated as the agency of this state that is to cooperate with the federal government pursuant to this federal law.

**60-6-3.** State employment service - Department and secretary defined.

The term, department, as used in this chapter, means the Department of Labor. The term, secretary, as used in this chapter, means the secretary of the Department of Labor.

**60-6-4.** State employment service - Co-operation with offices and agencies of the United States.

The secretary shall cooperate with any official or agency of the United States having powers or duties under the federal law referred to in § 60-6-1 and to do and perform all things necessary to secure to this state the benefits of that federal law in the promotion and maintenance of a system of public employment offices.

**60-6-7.** State employment service - Federal funds - Paid into special employment service account - Expenditure by secretary.

Any money received by this state under the federal law referred to in § 60-6-1 shall be paid into the special employment service account in the employment security administration fund. Such money is available to the secretary to be expended as provided by this chapter and the federal law.

**60-6-8.** State employment service - Acceptance of funds, services or quarters as contribution to employment service account.

For the purpose of establishing and maintaining free public employment offices, the secretary may enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an unemployment compensation law, or with any political subdivision of this state, or with any private, nonprofit organization, and as a part of any such agreement the secretary may accept moneys, services, or quarters as a contribution to the employment service account.

**60-6-14.** State employment service - Agents - Authority of secretary to appoint - Location.

The secretary may appoint employees to carry out the provisions of this chapter. The employees may be located at points in the state which will best serve to carry out the provisions and intent of this chapter.

**60-6-18.** State employment service - Aid to employees in enforcement of claims - Duties of secretary.

The secretary shall render all aid and assistance necessary for the enforcement of any claim by an employee against an employer which the secretary finds reasonable and just, and for the protection of the employee from frauds, extortions, exploitations, or other improper practices on the part of persons, public or private. The secretary shall investigate such claims for the purpose of presenting the facts to the proper authorities and of inducing action thereon by the various agencies of the state possessing the requisite jurisdiction.

**60-6-22.** State employment service - Solicitation of business for public employment offices.

The secretary may solicit business for the public employment offices established under this chapter by advertising in newspapers and in any other way the secretary deems expedient and take other steps that the secretary deems necessary to ensure the success and efficiency of such offices. No expenditure under these provisions may exceed five percent of the total expenditure for the purpose of this chapter.

**60-6-23.** State employment service - Bulletin as to state of labor market - Publication by department.

The department shall publish a bulletin in which shall be made public all possible information with regard to the state of the labor market, including reports of the businesses of the various public employment offices.

**60-6-24.** State employment service - Fees for services - Misdemeanor - Disqualification from office.

No fees direct or indirect may be charged or received from any person seeking the benefits of this chapter. Any person that violates the provisions of this section commits a Class 2 misdemeanor and is thereafter disqualified from holding any office or position in the department.

## **CHAPTER 60-8. INTERFERENCE WITH EMPLOYMENT**

### **Section**

**60-8-1.** Intimidation of employees - Misdemeanor.

**60-8-2.** Intimidation of employers - Misdemeanor.

**60-8-3.** Denial of right to work because of membership or nonmembership in union as misdemeanor.

**60-8-4.** Agreement denying free exercise of right to work as misdemeanor.

**60-8-5.** Coercion to enter into agreement denying free exercise of right to work as misdemeanor.

**60-8-6.** Coercion of employee to join labor organization as misdemeanor.

**60-8-8.** Violation of right to work law - Investigations by state's attorney - Prosecutions.

**60-8-1.** Intimidation of employees - Misdemeanor.

Every person who by any use of force, threats, or intimidation, prevents or endeavors to prevent any hired foreman, journeyman, workman, laborer, servant, or other person employed by another from continuing or performing his work or from accepting any new work or employment, or induces such hired person to relinquish his work or employment, or to return any work he has in hand before it is finished, is guilty of a Class 2 misdemeanor.

**60-8-2.** Intimidation of employers - Misdemeanor.

Every person who by any use of force, threats, or intimidation prevents or endeavors to prevent another from employing any person, or compels another to employ any person, or forces or induces another to alter his mode of carrying on business, or to limit or increase the number of his hired foremen, journeymen, workmen, laborers, servants, or other persons employed by him, or their rate of wages or time of service, is guilty of a Class 2 misdemeanor.

**60-8-3.** Denial of right to work because of membership or nonmembership in union as misdemeanor.

No person shall be deprived of life, liberty, or property without due process of law. The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any



labor union, or labor organization. Violation of this section is a Class 2 misdemeanor.

**60-8-4.** Agreement denying free exercise of right to work as misdemeanor.

Any agreement relating to employment, whether in writing or oral, which by its stated terms, or by implication, interpretation, or effect thereof, directly or indirectly denies, abridges, interferes with, or in any manner curtails the free exercise of the right to work by any citizen of the state of South Dakota, is a Class 2 misdemeanor.

**60-8-5.** Coercion to enter into agreement denying free exercise of right to work as misdemeanor.

Any request, demand or threat made by any person to any employer or employee, to persuade or coerce such employer or employee to enter into an agreement violative of the provisions contained in 60-8-3 and 60-8-4 and article VI, 2 of the state Constitution, is a Class 2 misdemeanor.

**60-8-6.** Coercion of employee to join labor organization as misdemeanor.

Any solicitation or request to join a labor organization made by any person to any employee, accompanied by threats of injury to such employee or members of his family, or damage to property, or loss or impairment of present or future employment of such employee, is a Class 2 misdemeanor.

**60-8-8.** Violation of right to work law - Investigations by state's attorney - Prosecutions.

It shall be the duty of the state's attorney of every county to prosecute all persons violating any of the provisions of 60-8-3 to 60-8-6, inclusive, in his county, and he shall be responsible for the proper enforcement of such sections, and whenever he shall have any information or knowledge or have any reason to believe that any of the provisions of such sections are being violated in his county, he shall investigate the same and use every legitimate means at his command to secure the necessary and proper evidence of such violation, and immediately upon securing such evidence, he shall file a complaint or preliminary information against any person against whom he shall have any evidence of any such violation, and he shall have such person arrested and shall vigorously prosecute such charges to final judgment.

## **CHAPTER 60-9. LABOR UNIONS**

### **Section**

**60-9-1.** Labor organization - Actions by and against - Funds subject to execution - Service of process.

**60-9-2.** Enforcement of money judgment against labor organization.

**60-9-3.** Rights and liabilities of individual members - Actions by and against, joint or several.

**60-9-4.** Collective bargaining agreement - Enforcement - Remedies for breach.

**60-9-5.** Injunctive relief in labor dispute - Cost bond only bond required.

**60-9-6.** Statement of income and expenditures by union - Filing with secretary of state - Violation as misdemeanor.

**60-9-7.** Agricultural premises - Entry for union purposes restricted - Violation as misdemeanor.

**60-9-8.** Solicitation or acceptance of compensation for services to agricultural employer as misdemeanor.

**60-9-1. Labor organization - Actions by and against - Funds subject to execution - Service of process.**

Any labor union, organization or association, whether or not it be incorporated, may sue or be sued in its organization or association name, as an entity and in behalf of the employees whom it represents, and all the funds and assets of such labor union, association or organization shall be subject to judgment, execution and other process. The service of summons, subpoena or other legal process upon an officer or agent of such labor union, association or organization shall constitute sufficient service upon such union, association or organization.

**60-9-2. Enforcement of money judgment against labor organization.**

Any money judgment against a labor union, association or organization shall be enforced only against such union, association or organization as an entity, and against its assets, property and funds and shall not be enforceable against the property of an individual member or members thereof.

**60-9-3. Rights and liabilities of individual members - Actions by and against, joint or several.**

Nothing in 60-9-1 or 60-9-2 shall be deemed to abrogate or restrict the right or liability of the individual members of a labor union, organization or association to sue or be sued jointly or severally in their own names or name in matters based upon or arising out of their individual acts or relationships.

**60-9-4. Collective bargaining agreement - Enforcement - Remedies for breach.**

Any collective bargaining agreement between an employer or employers and a labor union, association or organization, shall be enforceable at law or equity; and a breach of such collective bargaining agreement by any party thereto, shall be subject to the same remedies including injunctive relief, as are available in the case of other contracts in the courts of this state.

**60-9-5. Injunctive relief in labor dispute - Cost bond only bond required.**

In any action involving a labor dispute or involving a collective bargaining agreement between an employer and his employees and injunctive relief is sought, the only bond required shall be one sufficient to pay the necessary court costs in the case.

**60-9-6. Statement of income and expenditures by union - Filing with secretary of state - Violation as misdemeanor.**

Upon order of the department of labor any labor union operating or carrying on its activities in the state of South Dakota shall file with the secretary of state, within thirty days from receipt of notice of such order a verified statement of the specific items of income and specific expenditures for the twelve-month period next preceding the filing of such statement showing separately the amount of money collected during said period as dues, fees, assessments or fines, together with all moneys collected from any other source and the amount of money in the treasury of such union, branch or local, on the date of such statement, the salary paid to each officer of such union, branch or local, the total of such expenditures for the preceding year and specifically the purpose for which such expenditures were made. Such statement shall be filed on forms supplied by the said department. Violation of this section is a Class 2 misdemeanor.



**60-9-7.** Agricultural premises - Entry for union purposes restricted - Violation as misdemeanor.

No officer, agent, or employee of any labor union shall enter, without the consent of the owner or operator, in or upon any ranch, farm, feed yard, shearing plant, or other agricultural premise, for the purpose of collecting dues, fines or assessments, or to solicit membership in any union, order or promote any strike, or in any other way interfere with the activities of any person employed on such premises. Violation of this section is a Class 2 misdemeanor.

**60-9-8.** Solicitation or acceptance of compensation for services to agricultural employer as misdemeanor.

No person shall solicit or accept any money, or other thing of value, for services rendered, claimed to have been rendered, or promised, to any employer of the class mentioned in 60-9-7, by reason of the labor union connection or association of such person or persons. Violation of this section is a Class 2 misdemeanor.

## **CHAPTER 60-9A. COLLECTIVE BARGAINING**

### **Section**

**60-9A-1.** Definition of terms.

**60-9A-2.** Rights of employees - Labor organizations - Collective bargaining.

**60-9A-3.** Collective bargaining unit as exclusive representative of employees - Individual grievances excepted.

**60-9A-4.** Administration and enforcement.

**60-9A-5.** Jurisdiction of department over labor disputes and grievances.

**60-9A-6.** Determinations as to composition of bargaining unit - Certification.

**60-9A-7.** Investigation of bargaining unit questions - Election by employees - Waiting period before reconsideration.

**60-9A-8.** Tentative settlements - Recommendations to employer and bargaining units.

**60-9A-9.** Implementation of labor agreements - Failure to bargain in good faith.

**60-9A-10.** Request for departmental intervention on failure to agree - Other procedures allowed.

**60-9A-12.** Unfair practices by employers.

**60-9A-13.** Unfair practices by collective bargaining units.

**60-9A-14.** Closed shop and agency shop contracts not authorized.

**60-9A-15.** Citation of chapter.

**60-9A-1.** Definition of terms.

Terms used in this chapter mean:

- (1) "Collective bargaining unit," an organization selected by secret ballot by a majority vote of the employees of a unit appropriate for such purpose;
- (2) "Department," the department of labor or any of its officers or employees authorized to act for it;
- (3) "Employee," any person, other than an independent contractor, domestic servants employed in and about private homes and farm and ranch labor, working for another for hire in the state of South Dakota in a nonexecutive or nonsupervisory capacity, and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer;
- (4) "Employer," a person who engages the services of an employee and shall include any person acting on behalf of an employer within the scope of his authority, but shall not include the United

States or any labor organization, except when acting as an employer in fact; or the government of the state of South Dakota and any of the political subdivisions thereof;

(5) "Grievance," a complaint by an employee or group of employees based upon an alleged violation, misinterpretation, or inequitable application of any existing agreements, contracts, ordinances, policies or rules of the employer, as they apply to the conditions of employment. A disagreement over a nonexisting agreement, contract, ordinance, policy or rule is not a grievance;

(6) "Labor dispute," any controversy concerning wages, hours, or other conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment; provided that the general right of an employer to select his own employees is recognized and shall be fully protected. It shall not constitute a labor dispute if an employer discharges, or refuses to employ an employee on account of incompetence, neglect of work, unsatisfactory service or dishonesty;

(7) "Representative," any person who is the duly authorized agent of a collective bargaining unit.

#### **60-9A-2. Rights of employees - Labor organizations - Collective bargaining.**

In accordance with this chapter, employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own free choosing, and to engage in lawful, concerted activities for the purposes of collective bargaining or other mutual aid or protection; and shall also have the right to refrain from any and all such activities.

#### **60-9A-3. Collective bargaining unit as exclusive representative of employees - Individual grievances excepted.**

A collective bargaining unit chosen for the purpose of collective bargaining by a majority of the employees in the unit shall be the exclusive representative of all employees in such unit; and provided that the employees individually shall have the right at any time to present grievances to their employer in person or through representatives of their own free choosing, and the employer may confer with them in relation thereto.

#### **60-9A-4. Administration and enforcement.**

The department of labor shall administer and enforce the provisions of this chapter.

#### **60-9A-5. Jurisdiction of department over labor disputes and grievances.**

The department shall have jurisdiction over any labor dispute or grievance not subject to the provisions of the Federal Railway Labor Act, and over which the national labor relations board does not have or has declined to assert jurisdiction on substantive grounds. For purposes of determining whether or not the national labor relations board has asserted jurisdiction on substantive grounds, the department shall respect the relevant rules and regulations and case ruling of the board.

#### **60-9A-6. Determinations as to composition of bargaining unit - Certification.**

Whenever a question concerning the composition of employees covered by a collective bargaining unit is raised by an employer or an employee, or the representative of either of them, the department shall investigate such question and, after a hearing conducted pursuant to chapter 1-26, rule on the composition of the members in the unit. The department shall then certify to the parties in writing the proper definition of the employees comprising the unit.

**60-9A-7.** Investigation of bargaining unit questions - Election by employees - Waiting period before reconsideration.

When a question concerning the collective bargaining unit of employees is raised by an employer, or an employee or the representative of either of them, the department shall investigate such question and certify to the parties in writing, the name or names of the collective bargaining units that have been designated or selected. The filing of a petition for the investigation or certification of a collective bargaining unit of employees by any of the parties shall constitute a question within the meaning of this section. In any such investigation, the department may provide for an appropriate hearing and shall take a secret ballot of employees to determine the collective bargaining unit for the purposes of formal recognition. If the department has certified a formally recognized collective bargaining unit of employees, it shall not be required to consider the matter again for a period of one year unless it appears that sufficient reason exists therefor.

**60-9A-8.** Tentative settlements - Recommendations to employer and bargaining units.

If a tentative settlement is reached between an employer and employee or the representative of either of them, such representatives shall recommend to the employer and employee collective bargaining unit, respectively, such settlement. The collective bargaining unit and the employer shall, as soon as practicable consider the recommendations and take such actions, if any, as they deem appropriate.

**60-9A-9.** Implementation of labor agreements - Failure to bargain in good faith.

If a settlement is reached between an employer and collective bargaining unit or the representative of either of them, the settlement in the form of an agreement shall be implemented by the employer. Failure to make a reasonable effort to implement a settlement by either party shall constitute failure to bargain in good faith.

**60-9A-10.** Request for departmental intervention on failure to agree - Other procedures allowed.

In case of a labor dispute or grievance, including but not limited to an impasse or failure to reach an agreement in negotiations, either party may request the department to intervene under the provisions of 60-10-1 to 60-10-3, inclusive. Nothing in this section shall prohibit the parties to such an impasse or dispute from adopting any other procedure to facilitate a settlement that may be mutually agreeable.

**60-9A-12.** Unfair practices by employers.

It shall be an unfair practice for an employer to:

- (1) Interfere with, restrain or coerce employees in the exercise of rights guaranteed by law;
- (2) Dominate, interfere or assist in the formation or administration of any collective bargaining unit, or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;
- (3) Discriminate in regard to hire or tenure or employment or any term or condition of employment to encourage or discourage membership in any collective bargaining unit;
- (4) Discharge or otherwise discriminate against an employee because he has filed a complaint, affidavit, petition or given any information or testimony under this chapter;
- (5) Refuse to negotiate collectively in good faith with a formal representative; or
- (6) Fail or refuse to comply with any provision of this chapter.

**60-9A-13.** Unfair practices by collective bargaining units.

It is an unfair practice for a collective bargaining unit or its agents to:

- (1) Restrain or coerce an employee in the exercise of the rights guaranteed by this chapter. However, this subdivision does not impair the right of an employee organization to prescribe its own requirements with respect to the acquisition or retention of voluntary membership therein;
- (2) Restrain or coerce an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;
- (3) Cause or attempt to cause an employer to discriminate against an employee in violation of subdivision 60-9A-12 (3), or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground; or
- (4) Refuse to negotiate collectively in good faith with an employer.

**60-9A-14.** Closed shop and agency shop contracts not authorized.

Nothing in this chapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization or requiring the payment of fees or contributions of any kind whatsoever in lieu of membership to a labor organization as a condition of employment.

**60-9A-15.** Citation of chapter.

This chapter may be cited as the South Dakota Labor Relations Act.

**CHAPTER 60-10.  
LABOR DISPUTES, PICKETING AND BOYCOTTS**

**Section**

**60-10-1.** Conciliation of labor dispute by department of labor.

**60-10-2.** Unsuccessful efforts to conciliate - Investigation of matters in difference - Recommendation for settlement.

**60-10-3.** Appointees of parties to assist in investigations.

**60-10-4.** Picketing of agricultural premises as misdemeanor.

**60-10-5.** Boycott of nonunion products as misdemeanor.

**60-10-7.** Right to strike or right to work unaffected, exception.

**60-10-8.** Severability of provisions relating to agricultural workers.

**60-10-10.** Interference with right to work by use of force and violence as misdemeanor.

**60-10-11.** Obstructing entrance to premises - Interference with use of public way - Unlawful picketing - Misdemeanor.

**60-10-12.** Labor dispute - Violence and intimidation as misdemeanor - Unlawful destruction or seizure of property.

**60-10-13.1.** Restrictions on number and location of pickets - Violation as misdemeanor.

**60-10-15.** Violations of provisions restricting picketing and violence - Prosecutions.

**60-10-16.** Severability of provisions relating to picketing and violence.

**60-10-1.** Conciliation of labor dispute by department of labor.

In case of strikes, lockouts, or other labor disputes between employers and employees, the department of labor requested by either party, shall endeavor to conciliate the parties to the controversy and induce them to confer with each other and compose their differences.

**60-10-2.** Unsuccessful efforts to conciliate - Investigation of matters in difference - Recommendation for settlement.

If its efforts as conciliator prove unsuccessful, the department of labor shall, if requested by either party, impartially investigate the matters in difference between the parties. The request to the department shall be mailed within twenty days after the conclusion of the conciliation procedure provided for in 60-10-1. The department shall give each party ample opportunity for presentation of the facts and shall make a report of the issues involved and a recommendation for settlement of the controversy. The department shall furnish a copy of its recommendation to each of the parties and to any local newspaper for publication for the information of the public.

**60-10-3.** Appointees of parties to assist in investigations.

The secretary of labor shall have the right, if he so desires, or if requested by either party, to call in two capable citizens not directly connected with the dispute, one to be named by each party, to assist in the investigation and advise with him as to his recommendations.

**60-10-4.** Picketing of agricultural premises as misdemeanor.

No person shall picket, aid in the picketing of, or order to be picketed, the home of any employee or worker on any ranch, farm, feed yard, shearing plant, or other agricultural premise. Violation of this section is a Class 2 misdemeanor.

**60-10-5.** Boycott of nonunion products as misdemeanor.

No person may boycott, assist in boycotting, or order to be boycotted, or otherwise interfere with the movement to market, or the sale of any commodity or farm product because the product may have been produced by nonunion labor or in violation of the orders or policies of any labor union. Violation of this section is a Class 2 misdemeanor.

**60-10-7.** Right to strike or right to work unaffected, exception.

Except as specifically provided in this chapter or chapter 60-9, nothing in 60-9-6 to 60-9-8, inclusive, or in 60-10-4 or 60-10-5, shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in said chapters be so construed as to invade unlawfully the right to freedom of speech.

**60-10-8.** Severability of provisions relating to agricultural workers.

If any section, paragraph or clause or provision of 60-9-6 to 60-9-8, inclusive, or of 60-10-4 to 60-10-7, inclusive, is declared unconstitutional, such judicial decision shall not affect or invalidate the remainder of said sections.

**60-10-10.** Interference with right to work by use of force and violence as misdemeanor.

It is a Class 2 misdemeanor for any person, singly or in concert with others, to interfere or attempt to interfere with another in the exercise of his right to work or of his right to enter upon the performance of any lawful employment or vocation, by the use of force, threatening acts, violence or acts of intimidation.

**60-10-11.** Obstructing entrance to premises - Interference with use of public way - Unlawful picketing - Misdemeanor.

It is a Class 2 misdemeanor for any person to engage in picketing by force or violence, or to picket alone or in concert with others in such manner as to obstruct or interfere with free ingress or egress to and from any premises, or to obstruct or interfere with the free use of public streets, sidewalks, or other public ways.

**60-10-12.** Labor dispute - Violence and intimidation as misdemeanor - Unlawful destruction or seizure of property.

It is a Class 2 misdemeanor for any person or group of persons, employee or employees, or any labor union, association or organization, to use or engage in, or threaten to use or engage in violence, intimidation or unlawful destruction or seizure of property in connection with a labor dispute or as a means of forcing settlement of a labor dispute involving any employer, or in connection with any organizational activity of a labor organization among the employees of any employer, or for the purpose of compelling any person to join or become a member of a labor union, organization or association.

**60-10-13.1.** Restrictions on number and location of pickets - Violation as misdemeanor.

A court may, after notice and hearing pursuant to 15-6-65(a), place reasonable restrictions and penalties for violation thereof upon the number and location of pickets or other persons permitted at any location based upon a finding that repeated incidents of the following nature have occurred:

- (1) A violation of any law of the state of South Dakota or the United States prohibiting the use of force, threatening acts, violence or acts of intimidation directed toward any person entering upon, or leaving, the premises of the employer being picketed;
- (2) Obstruction or interference with the free ingress or egress to or from the premises of the employer being picketed;
- (3) Obstruction or interference with the free use of public streets, sidewalks or other public ways.

It is a Class 2 misdemeanor for any person to violate any such restrictions imposed by a court.

**60-10-15.** Violations of provisions restricting picketing and violence - Prosecutions.

The state's attorney of every county shall have the same duty and responsibility of enforcement of 60-10-10 to 60-10-13, inclusive, as is imposed upon him by 60-8-8.

**60-10-16.** Severability of provisions relating to picketing and violence.

If any provision of 60-10-10 to 60-10-13, inclusive, and 60-10-15, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of the sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are declared to be severable.

## **CHAPTER 60-11. WAGES, HOURS AND CONDITIONS OF EMPLOYMENT**

### **Section**

**60-11-1.** Manufacturing or mechanical occupations - Hours of labor.



- 60-11-2.** Requiring employee to pay cost of medical examination as misdemeanor - Employer and employee defined.
- 60-11-3.** Minimum wage - Misdemeanor - Certain employees excluded.
- 60-11-3.1.** Minimum wage for tipped employees - Tips credited toward minimum wage - Certain persons excluded.
- 60-11-3.2**
- 60-11-4.** Minimum wage - Agreement to work for less ineffective.
- 60-11-4.1.** Opportunity wage allowed.
- 60-11-5.** Exemptions from minimum wage provisions.
- 60-11-7.** Liability of employer for double damages for breach of obligation to pay wages.
- 60-11-8.** Employers subject to wage payment requirements.
- 60-11-9.** Monthly wage payments required - Agreed pay day - Form of payment.
- 60-11-10.** Prompt payment of wages due on separation by employer - Withholding for return of employer's property.
- 60-11-11.** Payment on regular pay day after resignation by employee - Withholding for return of employer's property.
- 60-11-12.** Payment on regular pay day during labor dispute - Return of deposit for faithful performance.
- 60-11-13.** Payment of conceded wages when amount in dispute - Acceptance not a release of balance.
- 60-11-14.** Provisions applicable to cash wages only.
- 60-11-15.** Employer's intentional refusal to pay wages as misdemeanor.
- 60-11-16.** Fraudulent claim by employee as misdemeanor.
- 60-11-17.** Department to investigate and prosecute violations - Hearings - Access to employer's records.
- 60-11-17.1.** Reprisals because of wage complaints or proceedings prohibited.
- 60-11-18.** Departmental power to take assignment of employees' claims - Prosecution - Joinder of actions.
- 60-11-19.** Assignment of employees' claims in trust to department - Prosecution - Settlement and adjustment.
- 60-11-20.** Promulgation of rules.
- 60-11-21.** Reciprocal agreements with other states for enforcement of wage claims.
- 60-11-22.** Maintenance of actions outside state by department - Assignment to other state for collection.
- 60-11-23.** Actions in South Dakota on claims arising in other states - Reciprocation required.
- 60-11-24.** Costs and attorney fees allowed plaintiff in action removed by defendant.
- 60-11-1.** Manufacturing or mechanical occupations - Hours of labor.

A day's labor in any manufacturing or mechanical occupation shall consist of eight hours unless there is an express agreement to the contrary. This shall not apply when the agreement is for employment by the week, month, or year.

**60-11-2.** Requiring employee to pay cost of medical examination as misdemeanor - Employer and employee defined.

It is a Class 2 misdemeanor for any employer, as defined herein to require any employee to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of continued employment.

The term "employer" as used in this section shall mean and include an individual, a partnership, an

association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within the state.

The term "employee" shall mean and include every person who may be permitted, required or directed by any employer, as defined herein in consideration of direct or indirect gain or profit, to engage in any employment.

**60-11-3. Minimum wage - Misdemeanor - Certain employees excluded.**

Every employer shall pay to each employee wages at a rate of not less than eight dollars and fifty cents an hour. Violation of this section is a Class 2 misdemeanor.

The provisions of this section do not apply to certain employees being paid an opportunity wage pursuant to § 60-11-4.1, babysitters, or outside salespersons. The provisions of this section also do not apply to employees employed by an amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center if one of the following apply:

- (1) The establishment, camp, or center does not operate for more than seven months in any calendar year; or
- (2) During the preceding calendar year, the average receipts of the establishment, camp, or center for any six months of the calendar year were not more than thirty-three and one third percent of its average receipts for the other six months of the year.

**60-11-3.1. Minimum wage for tipped employees--Tips credited toward minimum wage--Certain persons excluded.** Any employer of a tipped employee shall pay a cash wage of not less than fifty percent of the minimum wage provided by § 60-11-3 if the employer claims a tip credit against the employer's minimum wage obligation. If an employee's tips combined with the employer's cash wage of not less than fifty percent of the minimum wage provided by § 60-11-3 do not equal the minimum wage, the employer shall make up the difference as additional wages for each regular pay period of the employer.

A tipped employee is one engaged in an occupation in which the employee customarily and regularly receives more than thirty-five dollars a month in tips or other considerations. This section does not apply to babysitters or outside salespersons. This section also does not apply to employees employed by an amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center if one of the following apply:

- (1) The establishment, camp, or center does not operate for more than seven months in any calendar year; or
- (2) During the preceding calendar year, the average receipts of the establishment, camp, or center for any six months of the calendar year were not more than thirty-three and one-third percent of its average receipts for the other six months of the year.

**60-11-3.2.** Beginning January 1, 2016, and again on January 1 of each year thereafter, the minimum wage provided by § 60-11-3 shall be adjusted by the increase, if any, in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as measured as of August of the previous year of the Consumer Price Index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase, if any, rounded up to the nearest five cents. In no case shall the minimum wage be decreased. The Secretary of the South Dakota Department of Labor and Regulation or its designee shall publish the adjusted minimum wage rate for the forthcoming year on its internet home page by October 15 of each year, and it shall become effective on January 1 of the forthcoming year.



**60-11-4. Minimum wage - Agreement to work for less ineffective.**

A person so employed at less than the minimum wage provided by 60-11-3 shall be entitled to recover the full amount measured by said minimum wage and costs, notwithstanding any agreement to work for less.

**60-11-4.1. Opportunity wage allowed.**

Any employee who is under twenty years of age may be paid an opportunity wage as defined in section 6 of the Fair Labor Standards Amendments of 1996 as of October 1, 1996.

**60-11-5. Exemptions from minimum wage provisions.**

The provisions of 60-11-3 and 60-11-4 shall not apply to any apprentice, nor to any person learning the business or work in which employed, nor to a person with a developmental disability, provided the department of labor of South Dakota shall issue a permit for their employment fixing the wage or compensation of such person.

**60-11-7. Liability of employer for double damages for breach of obligation to pay wages.**

In any action for the breach of an obligation to pay wages, where a private employer has been oppressive, fraudulent, or malicious, in his refusal to pay wages due to the employee, the measure of damages is double the amount of wages for which the employer is liable.

**60-11-8. Employers subject to wage payment requirements.**

Whenever used in 60-11-9 to 60-11-23, inclusive, "employer" includes any person, firm, partnership, limited liability company, association, corporation, receiver or other officer of a court of the state, and any agent or officer of any kind of the above mentioned classes and subject to the provisions of the above sections, employing any person of this state.

**60-11-9. Monthly wage payments required - Agreed pay day - Form of payment.**

Every employer shall pay all wages due to employees at least once each calendar month unless otherwise provided by law, or on regular agreed pay days designated in advance by the employer, in lawful money of the United States. An employer may pay wages by check, cash, or direct deposit to the employee's bank account, unless an employer and employee agree to another form of payment.

**60-11-10. Prompt payment of wages due on separation by employer - Withholding for return of employer's property.**

Whenever an employer separates an employee from the payroll, the unpaid wages or compensation of such employee are due and payable not later than the next regular stated pay day for which those hours would have normally been paid or as soon thereafter as the employee returns to the employer all property of the employer in the employee's possession.

**60-11-11. Payment on regular pay day after resignation by employee - Withholding for return of employer's property.**

Whenever an employee not having a written contract for a definite period quits or resigns that employment, the wages or compensation earned are due and payable not later than the next regular stated pay day for which those hours would have normally been paid or as soon thereafter as the employee returns to the employer all property of the employer in the employee's possession.

**60-11-12.** Payment on regular pay day during labor dispute - Return of deposit for faithful performance.

In the event of the suspension of work as the result of a strike, lockout, or other labor dispute, the wages and compensation earned and unpaid at the time of said suspension shall become due and payable at the next regular pay day, as provided in 60-11-9, including, without abatement or reduction, all amounts due all persons whose work has been suspended as a result of such industrial dispute, together with any deposit or other guaranty held by the employer for the faithful performance of the duties of the employment.

**60-11-13.** Payment of conceded wages when amount in dispute - Acceptance not a release of balance.

In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages less whatever the employee owes the employer which he concedes to be due and shall pay such amount without condition within the time set by 60-11-9 to 60-11-12, inclusive, provided that acceptance by the employee of any payment made hereunder shall not constitute a release as to the balance of the claim.

**60-11-14.** Provisions applicable to cash wages only.

Sections 60-11-8 to 60-11-23, inclusive, shall not apply to any form of compensation other than cash wages owing to any employee by or on behalf of any employer.

**60-11-15.** Employer's intentional refusal to pay wages as misdemeanor.

Any employer who shall intentionally refuse to pay the wages due and payable when demanded as in 60-11-9 to 60-11-13, inclusive, or who shall falsely deny the amount thereof, or that the same is due with the intent to secure for himself or any other person any discount upon such indebtedness, or with any intent to annoy, harass, or oppress, or hinder, or delay, or defraud the person to whom such indebtedness is due, commits a Class 2 misdemeanor.

**60-11-16.** Fraudulent claim by employee as misdemeanor.

Any employee who shall falsify the amount due himself or who intentionally attempts to defraud the employer commits a Class 2 misdemeanor.

**60-11-17.** Department to investigate and prosecute violations - Hearings - Access to employer's records.

It shall be the duty of the department of labor to ensure compliance with the provisions of this chapter, to investigate as to any violations of 60-11-8 to 60-11-23, inclusive, and to institute or cause to be instituted actions for penalties and forfeitures provided thereunder. The department may hold hearings to satisfy itself as to the justice of any claim, and it shall co-operate with any employee in the enforcement of a claim against his employer in any case whenever, in its opinion, the claim is valid.

The department and its authorized representatives shall have the right to enter places of employment for the purpose of inspecting records and seeing that all provisions of 60-11-8 to 60-11-23, inclusive, are complied with.

**60-11-17.1.** Reprisals because of wage complaints or proceedings prohibited.

No employer shall discharge, discriminate or engage in or threaten to engage in any reprisal, economic or otherwise, against any employee because such employee has made any complaint to his employer, or to the director, that he has not been paid wages in accordance with this chapter or because such employee has made any complaint or is about to institute any proceedings, or because such employee has testified or is about to testify in any such proceedings.

**60-11-18.** Departmental power to take assignment of employees' claims - Prosecution - Joinder of actions.

The department of labor shall have power and authority to take assignments of wage claims, rights of action for penalties, provided by 60-11-8 to 60-11-23, inclusive, not to exceed five hundred dollars in any case of any one claim without being bound by any of the technical rules with reference to the validity of such assignments; and shall have the power and authority to prosecute actions for the collection of such claims of persons who, in the judgment of the department are entitled to the services of the department and who, in its judgment, have claims that are valid and enforceable in the courts. The department shall have the power to join various claimants in one preferred claim or lien, and in case of suit to join them in one cause of action.

**60-11-19.** Assignment of employees' claims in trust to department - Prosecution - Settlement and adjustment.

Whenever the department of labor determines that wages have not been paid, and that such unpaid wages constitute an enforceable claim, the department shall upon the request of the employee take an assignment in trust for such wages or any claim for liquidated damages, without being bound by any of the technical rules respecting the validity of any such assignments and may bring any legal action necessary to collect such claim. With the consent of the assigning employee at the time of the assignment the department shall have the power to settle and adjust any such claim to the same extent as might the assigning employee.

**60-11-20.** Promulgation of rules.

The department of labor shall promulgate rules pursuant to chapter 1-26 to carry out the provisions of 60-11-8 to 60-11-23, inclusive.

**60-11-21.** Reciprocal agreements with other states for enforcement of wage claims.

The department of labor may enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer or commission authorized to act for and on behalf of such department or agency, for the collection in such other state of claims or judgments for wages or other demands based upon claims previously assigned to the department.

**60-11-22.** Maintenance of actions outside state by department - Assignment to other state for collection.

The department of labor may, to the extent provided for by any reciprocal agreement entered into pursuant to the provisions of 60-11-21, or by the laws of any other state, maintain actions in the courts of such state for the collection of such claims for wages, judgments and other demands and may assign such claims, judgments and demands to the labor department or agency of such other state for collection to the extent that the same may be permitted or provided for by the laws of such state or reciprocal agreement.

**60-11-23.** Actions in South Dakota on claims arising in other states - Reciprocity required.

The department of labor may, upon the written request of the labor department or other corresponding agency of any other state or any other person, board, officer or commission of such state authorized to act for and on behalf of such labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments and demands arising in such other state in the same manner and to the same extent that such actions by the department of labor are authorized when arising in this state; provided, however, that such actions may be commenced and maintained only in those cases where such other state by appropriate legislation or by a reciprocal agreement extends a like comity to cases arising in this state.

**60-11-24.** Costs and attorney fees allowed plaintiff in action removed by defendant.

In any action for wages brought in small claims court which is removed to magistrate court or circuit court under § 15-39-59, the court may, in addition to awarding judgment to the plaintiff, allow costs of the action including reasonable attorney fees to be paid by the defendant.

## **CHAPTER 60-12. CHILD LABOR - DISCRIMINATION ON BASIS OF SEX**

### **Section**

**60-12-1.** Maximum hours for children under sixteen - Exceptions - Misdemeanor.

**60-12-2.** Child under fourteen years of age - Prohibited employment - Mercantile establishment, hours of employment - Misdemeanor.

**60-12-3.** Prohibited employment or exploitation of minors - Separate age limit for pumping fuel - Misdemeanor - Employment by parents excepted - License, permit, or certificate for agricultural employment.

**60-12-5.** Labor of minor necessary for support - Permit authorizing employment.

**60-12-6.** Records of employment of children required - Public inspection - Misdemeanor.

**60-12-7.** Cleanliness, ventilation and rest rooms in shops employing children - Dressing rooms - Misdemeanor.

**60-12-8.** Cleanliness of interior of factory - Misdemeanor.

**60-12-9.** Seats for children - Misdemeanor.

**60-12-11.** Enforcement of child labor laws - Departmental employees to assist.

**60-12-12.** Investigation by department of complaints - Criminal complaints - Security for costs not required.

**60-12-13.** Visitation and inspection of places of employment by department.

**60-12-14.** Superintendent's visitation of places of employment.

**60-12-15.** Equal pay for equal work - Discrimination because of sex prohibited.

**60-12-16.** Differentials excluded from prohibition.

**60-12-17.** Terms and conditions of employment - Employers required to maintain records.

**60-12-18.** Liability of employer for sex discrimination in wages - Other remedies unimpaired.

**60-12-19.** Action to recover unpaid wages - Agreement to work for less no defense.

**60-12-20.** Time for commencement of action for unpaid wages.

**60-12-21.** Employer prohibited from threatening employee to prevent enforcement of discrimination provisions.

**60-12-1.** Maximum hours for children under sixteen - Exceptions - Misdemeanor.

No unemancipated child under sixteen years of age may be employed for more than four hours in any school day, twenty hours in any school week, eight hours in any nonschool day, forty hours in any nonschool week, or after 10 p.m. in any day that precedes a school day. The provisions of this section do not apply to children employed as actors or performers in motion pictures, theatrical, radio, or television productions. The provisions of this section do not apply to roguing or detasselling of hybrid seedcorn for any nonschool day or nonschool week. The employment of a child in violation of this section is a Class 2 misdemeanor.

**60-12-1.1.** As used in this chapter, a school day is any day on which the child's own school or other educational program is operating and the child is expected to attend. A school week is a week during which the child's own school or other educational program is operating and the child is expected to attend.

**60-12-2.** Child under fourteen years of age - Prohibited employment - Mercantile establishment, hours of employment - Misdemeanor.

No child under fourteen years of age shall be employed at any time in any factory or workshop or about any mine, nor be employed in any mercantile establishment except during hours when the child's own school or other educational program is not in session and in no case after seven o'clock p.m. Violation of this section is a Class 2 misdemeanor.

**60-12-3.** Prohibited employment or exploitation of minors - Separate age limit for pumping fuel - Misdemeanor - Employment by parents excepted - License, permit, or certificate for agricultural employment.

No child under sixteen years of age may be employed at any time in any occupation dangerous to life, health, or morals, nor may any child be in any manner exploited by any employer. However, it is permissible to employ children over fourteen years of age to dispense gasoline, gasohol, diesel fuel, and oil at gasoline service establishments. Violation of this section is a Class 2 misdemeanor. This section does not apply to minors employed by their parents or to minors who have successfully completed a safety course and received a license, permit, or certificate from a state or federal agency to operate agricultural equipment or otherwise to be employed in any occupation in an agricultural occupation within the scope of the license, permit, or certificate.

**60-12-5.** Labor of minor necessary for support - Permit authorizing employment.

If it appears upon investigation that the labor of a minor who would otherwise be barred from employment by law is necessary for the minor's support or that of the family to which the minor belongs, the department of labor may issue a permit authorizing employment within certain hours to be fixed therein.

**60-12-6.** Records of employment of children required - Public inspection - Misdemeanor.

Every employer shall keep a list of all persons employed under the provisions of 60-12-5 and shall

keep the required certificates and permits filed therewith and open to inspection at all times by any person interested or any public official. Violation of this section is a Class 2 misdemeanor.

**60-12-7.** Cleanliness, ventilation and rest rooms in shops employing children - Dressing rooms - Misdemeanor.

Every factory, mill, or workshop where children are employed shall be kept clean, be properly ventilated and provided with rest rooms for the separate use of male and female employees, and at all times kept in a sanitary condition. Whenever the labor is such as to require a change of clothing separate dressing rooms shall be provided for the sexes. Violation of this section is a Class 2 misdemeanor.

**60-12-8.** Cleanliness of interior of factory - Misdemeanor.

The interior of every factory or workshop in this state where children are employed shall be cleaned or painted at least once in every twelve months. Every floor of any room in any such factory or workshop shall be thoroughly cleaned at least once in two weeks and every dressing room and rest room therein or connected therewith shall be thoroughly cleaned once every week. Violation of this section is a Class 2 misdemeanor.

**60-12-9.** Seats for children - Misdemeanor.

In every mercantile or manufacturing establishment, hotel, or restaurant where children are employed suitable seats must be maintained in the room where such employees work and such use thereof permitted as may be necessary for preservation of the health of such employees. Violation of this section is a Class 2 misdemeanor.

**60-12-11.** Enforcement of child labor laws - Departmental employees to assist.

The department of labor is directed to enforce all the laws of this state relative to employment of children. It shall require all the directors, inspectors, agents, and employees of the department to assist it in execution of the duty and authority hereby placed upon it.

**60-12-12.** Investigation by department of complaints - Criminal complaints - Security for costs not required.

The department of labor shall investigate any complaint made to it as to violation of any of the laws of this state relative to employment of children, and independently without complaint shall at all times endeavor to ascertain violations of any of said laws. The department shall file criminal complaints against any violator of any law relating to employment of children and it shall not be required to furnish security for costs as complainant in any action or proceeding so instituted by it.

**60-12-13.** Visitation and inspection of places of employment by department.

All places where children are employed and whose employment is in any manner regulated by law, shall at all times be subject to the visitation and inspection of the department of labor.

**60-12-14.** Superintendent's visitation of places of employment.

Every factory, workshop, mine, mercantile establishment, or other place in or in connection with



which children are engaged at labor of any kind shall at all times be subject to visitation by the superintendent of schools of the school district in which located or of the child's residence.

**60-12-15.** Equal pay for equal work - Discrimination because of sex prohibited.

No employer shall discriminate between employees on the basis of sex, by paying wages to any employee in any occupation in this state at a rate less than the rate at which he pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort and responsibility, but not to physical strength.

**60-12-16.** Differentials excluded from prohibition.

Differentials which are paid pursuant to established seniority systems, job descriptive systems, merit increase systems, or executive training programs, which do not discriminate on the basis of sex, are not within the prohibition of § 60-12-15.

**60-12-17.** Terms and conditions of employment - Employers required to maintain records.

Every employer of more than twenty-five persons shall make, keep, and maintain the records of the wage and wage rates, job classifications, and other terms and conditions of employment of the persons employed by him, and shall preserve the records for a reasonable period of time.

**60-12-18.** Liability of employer for sex discrimination in wages - Other remedies unimpaired.

An employer who violates the provisions of § 60-12-15 is liable to an employee affected in the amount of his unpaid wages.

Action to recover the liability may be maintained in a court of competent jurisdiction by one or more employees for themselves and other employees similarly situated. The court in the action may in addition to a judgment awarded to the plaintiff, allow a reasonable attorney fee to be paid by the defendant and costs. This section shall not be construed to limit a cause of action under chapter 20-13.

**60-12-19.** Action to recover unpaid wages - Agreement to work for less no defense.

An agreement by an employee to work for less than the wage to which such employee is entitled to under 60-12-15 to 60-12-21, inclusive, is not a defense to the action.

**60-12-20.** Time for commencement of action for unpaid wages.

Court action under 60-12-18 may be commenced no later than two years after the cause of action occurs.

**60-12-21.** Employer prohibited from threatening employee to prevent enforcement of discrimination provisions.

No employer shall, for the purpose of dissuading an employee from preferring charges or giving information against him or testifying against him in an action brought under 60-12-18, threaten termination of the employ of the employee or other retaliatory action, or terminate the employ of the employee or take other retaliatory action.

**CHAPTER 60-13.  
EMPLOYMENT: EMPLOYEE BENEFIT TRUSTS**

**Section.**

**60-13-1.** Employee benefit trusts - Trust for benefit of employees not invalidated by rule against perpetuities.

**60-13-2.** Employee benefit trusts - Validity of prior trust for benefit of employees.

**60-13-1.** Employee benefit trusts - Trust for benefit of employees not invalidated by rule against perpetuities.

A trust of real or personal property, or real and personal property combined, created by an employer as part of a stock bonus pension, disability, death benefit, insurance, endowment, annuity or profit sharing plan for the benefit of some or all of the employer's employees, to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees the earnings or the principal, or both earnings and principal, of the fund held in trust, may continue in perpetuity or for such time as may be necessary to accomplish the purpose for which it is created. No such trust is invalid for violating any rule of law against perpetuities or suspension of the power of alienation of the title to property.

**60-13-2. Employee benefit trusts - Validity of prior trust for benefit of employees.**

**No rule of law against perpetuities or suspension of the power of alienation of the title to property may operate to invalidate any trust created or attempted to be created, prior to July 1, 1955, by an employer as part of a stock bonus, pension, disability, death benefit, insurance, endowment, annuity or profit sharing plan for the benefit of some or all of the employer's employees to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees earnings or principal, or both earnings and principal of the fund held in trust.**

**CHAPTER 60-14.  
EMPLOYMENT: NANNIES**

**Section.**

**60-14-1.** Nannies - Definitions.

**60-14-2.** Nannies - Application of chapter.

**60-14-3.** Nannies - Contract between agency and employer - Specifications.

**60-14-4.** Nannies - Contract between agency and applicant.

**60-14-5.** Nannies - Employment contract between prospective employer and nanny applicant.

**60-14-6.** Nannies - Contract between employer and nanny voidable - Liability for costs.

**60-14-1.** Nannies - Definitions.

Terms used in this chapter mean:

- (1) "Applicant," any person seeking employment as a nanny;
- (2) "Employer," any person seeking to employ or employing a nanny;
- (3) "Nanny," any person who provides child care and sometimes light housekeeping in the home of the child;
- (4) "Nanny agency," or "agency," any person or firm who for a fee undertakes to bring potential nannies and employers together for the purpose of entering into an employment contract.



**60-14-2.** Nannies - Application of chapter.

This chapter applies to nanny applicants under age twenty-one, all nanny agencies and all employers of nannies.

**60-14-3.** Nannies - Contract between agency and employer - Specifications.

A nanny agency shall execute a contract with and provide a copy of it to a prospective employer who uses its services. The contract shall specify the services that the agency provides to the employer both before and after placement, including any training provided to applicants; information to be provided on applicants, including age, background, education and training; and the obligations of the employer to the agency, including the terms of payment for the agency's services. The agency shall provide a copy of this chapter without charge to the employer before the contract is signed.

**60-14-4.** Nannies - Contract between agency and applicant.

A nanny agency shall execute a contract with and provide a copy of it to an applicant who uses its services. The contract shall specify the services that the agency provides to the applicant both before and after placement, including any training provided; information to be provided on prospective employers, including age, background, number of children to be cared for and other items specified in § 60-14-5; and the obligations of the applicant to the agency, including the terms of payment for the agency's services. The agency shall provide a copy of this chapter without charge to the applicant before the contract is signed.

**60-14-5.** Nannies - Employment contract between prospective employer and nanny applicant.

Any employment contract between a prospective employer and an applicant executed as a result of services obtained through a nanny agency shall include:

- (1) The term of employment;
- (2) The specific child care and housekeeping duties required of the nanny;
- (3) Any special care requirements of the child;
- (4) Any special qualifications required of the nanny;
- (5) The regular working hours of the nanny and any overtime work expected;
- (6) Compensation, including room and board if provided, for regular and overtime work and provisions for payment of compensation;
- (7) Provisions for time off and for sick and vacation leave;
- (8) Provisions for transportation while the nanny is employed and responsibility for transportation costs between the homes of the nanny and the employer;
- (9) A description of lodging arrangements for the nanny; and
- (10) Any other financial or working provisions agreed upon.

Copies of the contract shall be provided to both parties. The prospective employer and the applicant shall provide to each other the names, addresses and telephone numbers of three references before the contract is signed.

**60-14-6.** Nannies - Contract between employer and nanny voidable - Liability for costs.

Any contract between a prospective employer and nanny is voidable if the requirements of this chapter are not met. A nanny agency that does not comply with this chapter is civilly liable for all costs incurred by the employer or the nanny that are associated with a voided or breached nanny employment contract.



inside back cover  
(blank)



Printed on Recycled Paper

1,000 copies of this document were printed by the SD Department of Labor and Regulation at a cost of 25 cents per document

Auxiliary aids and services are available upon request to individuals with disabilities. State and federal laws require the Department of Labor and Regulation to provide services to all qualified persons without regard to race, color, creed, religion, age, sex, ancestry, political affiliation or belief, national origin or disability.