

PREVOCATIONAL SERVICES FOR INDIVIDUALS WITH BRAIN INJURY - STATUTORY PROVISIONS

This memorandum provides information regarding North Dakota Century Code Section 34-13-13.1, including its effect on the provision of prevocational services for individuals with brain injury.

Title 34 relates to labor and employment. Chapter 34-13 relates more specifically to licensing of employment agents and agencies. Section 34-13-13.1 identifies situations in which a service charge refund must be issued. Subsection 1 of this section provides that if an employment position terminates or the employee is fired or laid off before the end of 90 calendar days, the employee shall receive a refund of all service charges paid in excess of 20 percent of the gross wages actually received prior to termination or release. Subsection 2 of this section requires employment agencies to submit certain information to the Labor Commissioner.

These provisions apply to all employment agents or agencies that are licensed by the Labor Commissioner to provide these employment services. Certain entities that provide prevocational services for individuals with developmental disabilities or brain injury are licensed to provide these services by the Department of Human Services rather than the Labor Commissioner; therefore, these entities are not required to comply with these provisions. These entities contract with the Department of Human Services to provide these services to specified clients. These entities may not provide services to private pay individuals unless the entity would also be licensed by the Labor Commissioner and comply with the provisions of Chapter 34-13. The provisions of Chapter 34-13 present risk for entities that work primarily with individuals with developmental disability, brain injury, or mental health issues since some clients may not continue employment beyond 90 days, which would require the entity to refund a portion of the service charges. Due to this risk, these entities may not seek to be licensed under this chapter and therefore, are unable to accept private pay for their prevocational services.