

LEGISLATIVE BILL 765

Approved by the Governor April 10, 2014

Introduced by Conrad, 46.

FOR AN ACT relating to the Nebraska Wage Payment and Collection Act; to amend sections 48-1229 and 48-1230, Reissue Revised Statutes of Nebraska; to provide requirements for wage payment by payroll debit card; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 48-1229, Reissue Revised Statutes of Nebraska, is amended to read:

48-1229 For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

~~(1) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;~~

~~(2)~~ (1) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(2) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(3) Federally insured financial institution means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States Government;

~~(3)~~ (4) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs; and

(5) Payroll debit card means a stored-value card issued by or on behalf of a federally insured financial institution that provides an employee with immediate access for withdrawal or transfer of his or her wages through a network of automatic teller machines. Payroll debit card includes payroll debit cards, payroll cards, and paycards; and

~~(4)~~ (6) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

Sec. 2. Section 48-1230, Reissue Revised Statutes of Nebraska, is amended to read:

48-1230 (1) Except as otherwise provided in this section, each employer shall pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee. Thirty days' written

notice shall be given to an employee before regular paydays are altered by an employer. An employer may deduct, withhold, or divert a portion of an employee's wages only when the employer is required to or may do so by state or federal law or by order of a court of competent jurisdiction or the employer has a written agreement with the employee to deduct, withhold, or divert.

(2) Within ten working days after a written request is made by an employee, an employer shall furnish such employee with an itemized statement listing the wages earned and the deductions made from the employee's wages under subsection (1) of this section for each pay period that earnings and deductions were made. The statement may be in print or electronic format.

(3) When an employer elects to pay wages with a payroll debit card, the employer shall comply with the compulsory-use requirements prescribed in 15 U.S.C. 1693k. Additionally, the employer shall allow an employee at least one means of fund access withdrawal per pay period, but not more frequently than once per week, at no cost to the employee for an amount up to and including the total amount of the employee's net wages, as stated on the employee's earnings statement. An employer shall not require an employee to pay any fees or costs incurred by the employer in connection with paying wages with a payroll debit card.

~~(3)~~ (4) Except as otherwise provided in section 48-1230.01:

(a) Whenever an employer, other than a political subdivision, separates an employee from the payroll, the unpaid wages shall become due on the next regular payday or within two weeks of the date of termination, whichever is sooner; and

(b) Whenever a political subdivision separates an employee from the payroll, the unpaid wages shall become due within two weeks of the next regularly scheduled meeting of the governing body of the political subdivision if such employee is separated from the payroll at least one week prior to such meeting, or if an employee of a political subdivision is separated from the payroll less than one week prior to the next regularly scheduled meeting of the governing body of the political subdivision, the unpaid wages shall be due within two weeks of the following regularly scheduled meeting of the governing body of the political subdivision.

Sec. 3. This act becomes operative on January 1, 2015.

Sec. 4. Original sections 48-1229 and 48-1230, Reissue Revised Statutes of Nebraska, are repealed.