

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 931

Introduced by Hunt, 8.

Read first time January 10, 2022

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the Employment Security Law; to amend
2 sections 48-602 and 48-628.02, Reissue Revised Statutes of Nebraska;
3 to redefine a term; to change provisions relating to
4 disqualification for benefits; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-602, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-602 For purposes of the Employment Security Law, unless the
4 context otherwise requires:

5 (1) Agricultural labor means services performed:

6 (a) On a farm, in the employ of any employer, in connection with
7 cultivating the soil or in connection with raising or harvesting any
8 agricultural or horticultural commodity, including the raising, shearing,
9 feeding, caring for, training, and management of livestock, bees,
10 poultry, fur-bearing animals, and wildlife;

11 (b) In the employ of the owner, tenant, or other operator of a farm,
12 in connection with the operation, management, conservation, improvement,
13 or maintenance of such farm and its tools and equipment or in salvaging
14 timber or clearing land of brush and other debris left by a windstorm, if
15 the major part of such service is performed on a farm;

16 (c) In connection with the production or harvesting of any commodity
17 in connection with the operation or maintenance of ditches, canals,
18 reservoirs, or waterways, not owned or operated for profit, used
19 exclusively for supplying and storing water for farming purposes;

20 (d)(i) In the employ of the operator of a farm in handling,
21 planting, drying, packing, packaging, processing, freezing, grading,
22 storing, or delivering to storage or to market or to a carrier for
23 transportation to market, in its unmanufactured state, any agricultural
24 or horticultural commodity, but only if such operator produced more than
25 one-half of the commodity with respect to which such service is
26 performed, or (ii) in the employ of a group of operators of farms, or a
27 cooperative organization of which such operators are members, in the
28 performance of service described in subdivision (1)(d)(i) of this
29 section, but only if such operators produced more than one-half of the
30 commodity with respect to which such service is performed. Subdivisions
31 (1)(d)(i) and (ii) of this section shall not be deemed to be applicable

1 with respect to service performed in connection with commercial canning
2 or commercial freezing or in connection with any agricultural or
3 horticultural commodity after its delivery to a terminal market for
4 distribution for consumption; or

5 (e) On a farm operated for profit if such service is not in the
6 course of the employer's trade or business;

7 (2) Base period means the first four of the last five completed
8 calendar quarters immediately preceding the first day of an individual's
9 benefit year, except that if the individual is not monetarily eligible
10 for unemployment benefits as determined pursuant to section 48-627.01
11 based upon wages paid during the first four of the five most recently
12 completed calendar quarters, the department shall make a redetermination
13 of monetary eligibility based upon an alternative base period which
14 consists of the last four completed calendar quarters immediately
15 preceding the first day of the claimant's benefit year;

16 (3) Benefits means the money payments payable to an individual with
17 respect to his or her unemployment;

18 (4) Benefit year, with respect to any individual, means the one-year
19 period beginning with the first day of the first week with respect to
20 which the individual first files a valid claim for benefits, and
21 thereafter the one-year period beginning with the first day of the first
22 week with respect to which the individual next files a valid claim for
23 benefits after the termination of his or her last preceding benefit year.
24 Any claim for benefits made in accordance with section 48-629 shall be
25 deemed to be a valid claim for the purpose of this subdivision if the
26 individual has been paid the wages for insured work required under
27 section 48-627.01. For the purposes of this subdivision a week with
28 respect to which an individual files a valid claim shall be deemed to be
29 in, within, or during that benefit year which includes the greater part
30 of such week;

31 (5) Calendar quarter means the period of three consecutive calendar

1 months ending on March 31, June 30, September 30, or December 31, or the
2 equivalent thereof as the Commissioner of Labor may by rule and
3 regulation prescribe;

4 (6) Client means any individual, partnership, limited liability
5 company, corporation, or other legally recognized entity that contracts
6 with a professional employer organization to obtain professional employer
7 services relating to worksite employees through a professional employer
8 agreement;

9 (7) Combined tax means the employer liability consisting of
10 contributions and the state unemployment insurance tax;

11 (8) Combined tax rate means the rate which is applied to wages to
12 determine the combined taxes due;

13 (9) Commissioner means the Commissioner of Labor;

14 (10) Commodity means an agricultural commodity as defined in section
15 15(g) of the federal Agricultural Marketing Act, as amended, 12 U.S.C.
16 1141j;

17 (11) Contribution rate means the percentage of the combined tax rate
18 used to determine the contribution portion of the combined tax;

19 (12) Contributions means that portion of the combined tax based upon
20 the contribution rate portion of the combined tax rate which is deposited
21 in the state Unemployment Compensation Fund as required by sections
22 48-648 and 48-649 to 48-649.04;

23 (13) Crew leader means an individual who furnishes individuals to
24 perform service in agricultural labor for any other person, pays, either
25 on his or her own behalf or on behalf of such other person, the
26 individuals so furnished by him or her for the service in agricultural
27 labor performed by them, and has not entered into a written agreement
28 with such other person under which such individual is designated as an
29 employee of such other person;

30 (14) Department means the Department of Labor;

31 (15) Employers engaged in the construction industry means all

1 employers primarily engaged in business activities classified as sector
2 23 business activities under the North American Industry Classification
3 System;

4 (16) Employment office means a free public employment office or
5 branch thereof, operated by this state or maintained as a part of a
6 state-controlled system of public employment offices, including public
7 employment offices operated by an agency of a foreign government;

8 (17) Farm means stock, dairy, poultry, fruit, fur-bearing animal,
9 and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or
10 other similar structures used primarily for the raising of agricultural
11 or horticultural commodities, and orchards;

12 (18) Fund means the Unemployment Compensation Fund established by
13 section 48-617 to which all contributions and payments in lieu of
14 contributions required and from which all benefits provided shall be
15 paid;

16 (19) Hearing officer means a person employed by the Department of
17 Labor who conducts hearings, contested cases, or other proceedings
18 pursuant to the Employment Security Law;

19 (20) Hospital means an institution which has been licensed,
20 certified, or approved by the Department of Health and Human Services as
21 a hospital;

22 (21) Insured work means employment for employers;

23 (22) Leave of absence means any absence from work: (a) Mutually and
24 voluntarily agreed to by the employer and the employee; (b) mutually and
25 voluntarily agreed to between the employer and the employee's bargaining
26 agent; or (c) to which the employee is entitled as a matter of state or
27 federal law;

28 (23) Paid vacation leave means a period of time while employed ~~or~~
29 ~~following separation from employment~~ in which the individual renders no
30 services to the employer but is entitled to receive vacation pay equal to
31 or exceeding his or her base weekly wage. Paid vacation leave does not

1 include pay received upon separation from employment;

2 (24) Payments in lieu of contributions means the money payments to
3 the Unemployment Compensation Fund required by sections 48-649.04,
4 48-652, 48-660.01, and 48-661;

5 (25) Professional employer agreement means a written professional
6 employer services contract whereby:

7 (a) A professional employer organization agrees to provide payroll
8 services, employee benefit administration, or personnel services for a
9 majority of the employees providing services to the client at a client
10 worksite;

11 (b) The agreement is intended to be ongoing rather than temporary in
12 nature; and

13 (c) Employer responsibilities for worksite employees, including
14 those of hiring, firing, and disciplining, are shared between the
15 professional employer organization and the client by contract. The term
16 professional employer agreement shall not include a contract between a
17 parent corporation, company, or other entity and a wholly owned
18 subsidiary;

19 (26) Professional employer organization means any individual,
20 partnership, limited liability company, corporation, or other legally
21 recognized entity that enters into a professional employer agreement with
22 a client or clients for a majority of a client's workforce at a client
23 worksite. The term professional employer organization does not include an
24 insurer as defined in section 44-103 or a temporary help firm;

25 (27) Standard rate means the rate assigned to category twenty for
26 that year under section 48-649.03. The standard rate shall be not less
27 than five and four-tenths percent of the employer's annual taxable
28 payroll;

29 (28) State includes, in addition to the states of the United States
30 of America, any dependency of the United States, the Commonwealth of
31 Puerto Rico, the Virgin Islands, and the District of Columbia;

1 (29) State unemployment insurance tax means that portion of the
2 combined tax which is based upon the state unemployment insurance tax
3 rate portion of the combined tax rate and which is deposited in the State
4 Unemployment Insurance Trust Fund as required by sections 48-648 and
5 48-649 to 48-649.04;

6 (30) State unemployment insurance tax rate means the percentage of
7 the combined tax rate used to determine the state unemployment insurance
8 tax portion of the combined tax;

9 (31) Temporary employee means an employee of a temporary help firm
10 assigned to work for the clients of such temporary help firm;

11 (32) Temporary help firm means a firm that hires its own employees
12 and assigns them to clients to support or supplement the client's
13 workforce in work situations such as employee absences, temporary skill
14 shortages, seasonal workloads, and special assignments and projects;

15 (33) Unemployed means an individual during any week in which the
16 individual performs no service and with respect to which no wages are
17 payable to the individual or any week of less than full-time work if the
18 wages payable with respect to such week are less than the individual's
19 weekly benefit amount, but does not include any individual on a leave of
20 absence or on paid vacation leave. When an agreement between the employer
21 and a bargaining unit representative does not allocate vacation pay
22 allowance or pay in lieu of vacation to a specified period of time during
23 a period of temporary layoff or plant shutdown, the payment by the
24 employer or his or her designated representative will be deemed to be
25 wages as defined in this section in the week or weeks the vacation is
26 actually taken;

27 (34) Unemployment Trust Fund means the trust fund in the Treasury of
28 the United States of America established under section 904 of the federal
29 Social Security Act, 42 U.S.C. 1104, as such section existed on January
30 1, 2015, which receives credit from the state Unemployment Compensation
31 Fund;

1 (35) Wages, except with respect to services performed in employment
2 as provided in subdivisions (4)(c) and (d) of section 48-604, means all
3 remuneration for personal services, including commissions and bonuses,
4 remuneration for personal services paid under a contract of hire, and the
5 cash value of all remunerations in any medium other than cash. The
6 reasonable cash value of remuneration in any medium other than cash shall
7 be estimated and determined in accordance with rules and regulations
8 adopted and promulgated by the commissioner. Wages includes tips which
9 are received while performing services which constitute employment and
10 which are included in a written statement furnished to the employer
11 pursuant to section 6053(a) of the Internal Revenue Code as defined in
12 section 49-801.01.

13 With respect to services performed in employment in agricultural
14 labor as is provided in subdivision (4)(c) of section 48-604, wages means
15 cash remuneration and the cash value of commodities not intended for
16 personal consumption by the worker and his or her immediate family for
17 such services. With respect to services performed in employment in
18 domestic service as is provided in subdivision (4)(d) of section 48-604,
19 wages means cash remuneration for such services.

20 The term wages does not include:

21 (a) The amount of any payment, including any amount paid by an
22 employer for insurance or annuities or into a fund to provide for such
23 payment, made to, or on behalf of, an individual in employment or any of
24 his or her dependents under a plan or system established by an employer
25 which makes provision for such individuals generally or for a class or
26 classes of such individuals, including any amount paid by an employer for
27 insurance or annuities or into a fund to provide for any such payment, on
28 account of (i) sickness or accident disability, except, in the case of
29 payments made to an employee or any of his or her dependents, this
30 subdivision (i) shall exclude from wages only payments which are received
31 under a workers' compensation law, (ii) medical and hospitalization

1 expenses in connection with sickness or accident disability, or (iii)
2 death;

3 (b) The payment by an employer, without deduction from the
4 remuneration of the employee, of the tax imposed upon an employee under
5 section 3101 of the Internal Revenue Code as defined in section
6 49-801.01;

7 (c) Any payment on account of sickness or accident disability, or
8 medical or hospitalization expenses in connection with sickness or
9 accident disability, made by an employer to, or on behalf of, an
10 individual after the expiration of six calendar months following the last
11 calendar month in which such individual worked for such employer;

12 (d) Any payment made to, or on behalf of, an individual or his or
13 her beneficiary (i) from or to a trust described in section 401(a) of the
14 Internal Revenue Code as defined in section 49-801.01 which is exempt
15 from tax under section 501(a) of the Internal Revenue Code as defined in
16 section 49-801.01 at the time of such payment unless such payment is made
17 to an employee of the trust as remuneration for services rendered as such
18 employee and not as a beneficiary of the trust or (ii) under or to an
19 annuity plan which, at the time of such payment, meets the requirements
20 of section 401 of the Internal Revenue Code as defined in section
21 49-801.01;

22 (e) Any payment made to, or on behalf of, an employee or his or her
23 beneficiary (i) under a simplified employee pension as defined by the
24 commissioner, (ii) under or to an annuity contract as defined by the
25 commissioner, other than a payment for the purchase of such contract
26 which is made by reason of a salary reduction agreement, whether
27 evidenced by a written instrument or otherwise, (iii) under or to an
28 exempt governmental deferred compensation plan as defined by the
29 commissioner, (iv) to supplement pension benefits under a plan or trust,
30 as defined by the commissioner, to take into account some portion or all
31 of the increase in the cost of living since retirement, but only if such

1 supplemental payments are under a plan which is treated as a welfare
2 plan, or (v) under a cafeteria benefits plan;

3 (f) Remuneration paid in any medium other than cash to an individual
4 for service not in the course of the employer's trade or business;

5 (g) Benefits paid under a supplemental unemployment benefit plan
6 which satisfies the eight points set forth in Internal Revenue Service
7 Revenue Ruling 56-249 as the ruling existed on January 1, 2015, and is in
8 compliance with the standards set forth in Internal Revenue Service
9 Revenue Rulings 58-128 and 60-330 as the rulings existed on January 1,
10 2015; and

11 (h) Remuneration for service performed in the employ of any state in
12 the exercise of his or her duties as a member of the Army National Guard
13 or Air National Guard or in the employ of the United States of America as
14 a member of any military reserve unit;

15 (36) Week means such period of seven consecutive days as the
16 commissioner may by rule and regulation prescribe;

17 (37) Week of unemployment with respect to any individual means any
18 week during which he or she performs less than full-time work and the
19 wages payable to him or her with respect to such week are less than his
20 or her weekly benefit amount;

21 (38) Wholly owned subsidiary means a corporation, company, or other
22 entity which has eighty percent or more of its outstanding voting stock
23 or membership owned or controlled, directly or indirectly, by the parent
24 entity; and

25 (39) Worksite employee has the same meaning as the term covered
26 employee in section 48-2702.

27 Sec. 2. Section 48-628.02, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 48-628.02 (1) An individual shall be disqualified for benefits for
30 any week in which he or she is receiving or has received remuneration in
31 the form of:

1 (a) Wages in lieu of notice or a dismissal or separation allowance;

2 (b) ~~Paid vacation leave~~ ~~Vacation leave pay, including that received~~
3 ~~in a lump sum or upon separation from employment;~~

4 (c) Compensation for temporary disability under the workers'
5 compensation law of any state or under a similar law of the United
6 States;

7 (d) Retirement or retired pay, pension, annuity, or other similar
8 periodic payment under a plan maintained or contributed to by a base
9 period or chargeable employer; or

10 (e) A gratuity or a bonus from an employer, paid after termination
11 of employment, on account of prior length of service, or disability not
12 compensated under the workers' compensation law.

13 (2) Payments described in subsection (1) of this section that are
14 made in a lump sum shall be prorated in an amount which is reasonably
15 attributable to such week. If the prorated remuneration is less than the
16 benefits which would otherwise be due, he or she shall be entitled to
17 receive for such week, if otherwise eligible, benefits reduced by the
18 amount of such remuneration. The prorated remuneration shall be
19 considered wages for the quarter to which it is attributed.

20 (3) Military service-connected disability compensation payable under
21 38 U.S.C. chapter 11 and primary insurance benefits payable under Title
22 II of the Social Security Act, as amended, or similar payments under any
23 act of Congress shall not be deemed to be disqualifying or deductible
24 from the benefit amount.

25 (4) No deduction shall be made for the part of any retirement
26 pension which represents return of payments made by the individual. In
27 the case of a transfer by an individual or his or her employer of an
28 amount from one retirement plan to a second qualified retirement plan
29 under the Internal Revenue Code, the amount transferred shall not be
30 deemed to be received by the claimant until actually paid from the second
31 retirement plan to the claimant.

1 (5) No deduction shall be made for any benefit received under a
2 supplemental unemployment benefit plan described in subdivision (35)(g)
3 of section 48-602.

4 (6) No deduction shall be made for any supplemental payments
5 received by a claimant under the provisions of subsection (b) of section
6 408 of Title IV of the Veterans' Readjustment Assistance Act of 1952.

7 Sec. 3. Original sections 48-602 and 48-628.02, Reissue Revised
8 Statutes of Nebraska, are repealed.