

AMENDMENTS TO LB169

Introduced by Hunt, 8.

1 1. Insert the following new sections:

2 Sec. 9. Section 48-1102, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 48-1102 For purposes of the Nebraska Fair Employment Practice Act,
5 unless the context otherwise requires:

6 (1) Person shall include one or more individuals, labor unions,
7 partnerships, limited liability companies, associations, corporations,
8 legal representatives, mutual companies, joint-stock companies, trusts,
9 unincorporated organizations, trustees, trustees in bankruptcy, or
10 receivers;

11 (2) Employer shall include a Class I employer and a Class II
12 employer;

13 (3) Class I employer shall mean a person engaged in an industry who
14 has fifteen or more employees for each working day in each of twenty or
15 more calendar weeks in the current or preceding calendar year, any agent
16 of such a person, and any party whose business is financed in whole or in
17 part under the Nebraska Investment Finance Authority Act regardless of
18 the number of employees and shall include the State of Nebraska,
19 governmental agencies, and political subdivisions, but such term shall
20 not include (a) the United States, a corporation wholly owned by the
21 government of the United States, or an Indian tribe; ~~or~~ (b) a bona fide
22 private membership club, other than a labor organization, which is exempt
23 from taxation under section 501(c) of the Internal Revenue Code; or (c) a
24 Class II employer;

25 (4) Class II employer shall mean a person engaged in an industry who
26 has one or more employees for each working day in each of twenty or more
27 calendar weeks in the current or preceding calendar year and any agent of

1 such a person, but such term does not include (a) the United States, a
2 corporation wholly owned by the government of the United States, or an
3 Indian tribe; (b) a bona fide private membership club, other than a labor
4 organization, which is exempt from taxation under section 501(c) of the
5 Internal Revenue Code; or (c) a Class I employer;

6 (5) ~~(3)~~ Labor organization shall mean any organization which exists
7 wholly or in part for one or more of the following purposes: Collective
8 bargaining; dealing with employers concerning grievances, terms, or
9 conditions of employment; or mutual aid or protection in relation to
10 employment;

11 (6) ~~(4)~~ Employment agency shall mean any person regularly
12 undertaking with or without compensation to procure employees for an
13 employer or to procure for employees opportunities to work for an
14 employer and shall include an agent of such a person but shall not
15 include an agency of the United States, except that such term shall
16 include the United States Employment Service and the system of state and
17 local employment services receiving federal assistance;

18 (7) ~~(5)~~ Covered entity shall mean a Class I ~~an~~ employer, an
19 employment agency, a labor organization, or a joint labor-management
20 committee;

21 (8) ~~(6)~~ Privileges of employment shall mean terms and conditions of
22 any employer-employee relationship, opportunities for advancement of
23 employees, and plant conveniences;

24 (9) ~~(7)~~ Employee shall mean an individual employed by an employer;

25 (10) ~~(8)~~ Commission shall mean the Equal Opportunity Commission;

26 (11) ~~(9)~~ Disability shall mean (a) a physical or mental impairment
27 that substantially limits one or more of the major life activities of
28 such individual, (b) a record of such an impairment, or (c) being
29 regarded as having such an impairment. Disability shall not include
30 homosexuality, bisexuality, transvestism, transsexualism, pedophilia,
31 exhibitionism, voyeurism, gender-identity disorders not resulting in

1 physical impairments, other sexual behavior disorders, problem gambling,
2 kleptomania, pyromania, or psychoactive substance use disorders resulting
3 from current illegal use of drugs;

4 (12)(a) ~~(10)(a)~~ Qualified individual with a disability shall mean an
5 individual with a disability who, with or without reasonable
6 accommodation, can perform the essential functions of the employment
7 position that such individual holds or desires. Consideration shall be
8 given to the employer's judgment as to what functions of a job are
9 essential, and if an employer has prepared a written description before
10 advertising or interviewing applicants for the job, this description
11 shall be considered evidence of the essential functions of the job;

12 (b) Qualified individual with a disability shall not include any
13 employee or applicant who is currently engaged in the illegal use of
14 drugs when the covered entity acts on the basis of such use; and

15 (c) Nothing in this subdivision shall be construed to exclude as a
16 qualified individual with a disability an individual who:

17 (i) Has successfully completed a supervised drug rehabilitation
18 program or otherwise been rehabilitated successfully and is no longer
19 engaging in the illegal use of drugs;

20 (ii) Is participating in a supervised rehabilitation program and is
21 no longer engaging in such use; or

22 (iii) Is erroneously regarded as engaging in such use but is not
23 engaging in such use;

24 (13) ~~(11)~~ Reasonable accommodation, with respect to disability,
25 shall include making existing facilities used by employees readily
26 accessible to and usable by individuals with disabilities, job
27 restructuring, part-time or modified work schedules, reassignment to a
28 vacant position, acquisition or modification of equipment or devices,
29 appropriate adjustment or modification of examinations, training manuals,
30 or policies, the provision of qualified readers or interpreters, and
31 other similar accommodations for individuals with disabilities.

1 Reasonable accommodation, with respect to pregnancy, childbirth, or
2 related medical conditions, shall include acquisition of equipment for
3 sitting, more frequent or longer breaks, periodic rest, assistance with
4 manual labor, job restructuring, light-duty assignments, modified work
5 schedules, temporary transfers to less strenuous or hazardous work, time
6 off to recover from childbirth, or break time and appropriate facilities
7 for breast-feeding or expressing breast milk. Reasonable accommodation
8 shall not include accommodations which the covered entity can demonstrate
9 require significant difficulty or expense thereby posing an undue
10 hardship upon the covered entity. Factors to be considered in determining
11 whether an accommodation would pose an undue hardship shall include:

12 (a) The nature and the cost of the accommodation needed under the
13 Nebraska Fair Employment Practice Act;

14 (b) The overall financial resources of the facility or facilities
15 involved in the provision of the reasonable accommodation, the number of
16 persons employed at such facility, the effect on expenses and resources,
17 or the impact otherwise of such accommodation upon the operation of the
18 facility;

19 (c) The overall financial resources of the covered entity, the
20 overall size of the business of a covered entity with respect to the
21 number of its employees, and the number, type, and location of its
22 facilities; and

23 (d) The type of operation or operations of the covered entity,
24 including the composition, structure, and functions of the work force of
25 such entity, and the geographic separateness and administrative or fiscal
26 relationship of the facility or facilities in question to the covered
27 entity;

28 (14) ~~(12)~~ Marital status shall mean the status of a person whether
29 married or single;

30 (15) ~~(13)~~ Because of sex or on the basis of sex shall include, but
31 not be limited to, because of or on the basis of pregnancy, childbirth,

1 or related medical conditions;

2 ~~(16)~~ ~~(14)~~ Harass because of sex shall include making unwelcome
3 sexual advances, requesting sexual favors, and engaging in other verbal
4 or physical conduct of a sexual nature if (a) submission to such conduct
5 is made either explicitly or implicitly a term or condition of an
6 individual's employment, (b) submission to or rejection of such conduct
7 by an individual is used as the basis for employment decisions affecting
8 such individual, or (c) such conduct has the purpose or effect of
9 unreasonably interfering with an individual's work performance or
10 creating an intimidating, hostile, or offensive working environment;

11 ~~(17)~~ ~~(15)~~ Unlawful under federal law or the laws of this state shall
12 mean acting contrary to or in defiance of the law or disobeying or
13 disregarding the law;

14 ~~(18)~~ ~~(16)~~ Drug shall mean a controlled substance as defined in
15 section 28-401;

16 ~~(19)~~ ~~(17)~~ Illegal use of drugs shall mean the use of drugs, the
17 possession or distribution of which is unlawful under the Uniform
18 Controlled Substances Act, but shall not include the use of a drug taken
19 under supervision by a licensed health care professional or any other use
20 authorized by the Uniform Controlled Substances Act or other provisions
21 of state law;

22 ~~(20)~~ ~~(18)~~ Individual who is pregnant, who has given birth, or who
23 has a related medical condition shall mean an individual with a known
24 limitation who, with or without reasonable accommodation, can perform the
25 essential functions of the employment position that such individual
26 holds, desires, or may be temporarily assigned to. Consideration shall be
27 given to the employer's judgment as to what functions of a job are
28 essential, and if an employer has prepared a written description before
29 advertising or interviewing applicants for the job, this description
30 shall be considered evidence of the essential functions of the job;

31 ~~(21)~~ ~~(19)~~ Race is inclusive of characteristics such as skin color,

1 hair texture, and protective hairstyles; and

2 ~~(20)~~ (22) Protective hairstyles includes braids, locks, and twists.

3 Sec. 14. Section 48-1108.01, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 48-1108.01 It shall not be an unlawful employment practice for a
6 covered entity or a Class II employer to:

7 (1) Prohibit the illegal use of drugs and the use of alcohol at the
8 workplace by all employees;

9 (2) Require that employees not be under the influence of alcohol or
10 be engaging in the illegal use of drugs at the workplace;

11 (3) Require employees to comply with any federal regulations
12 concerning the use of alcohol or the illegal use of drugs which are
13 applicable to the position of the employee or to the industry involved;
14 or

15 (4) Hold an employee who engages in the illegal use of drugs or who
16 is an alcoholic to the same qualification standards for employment or job
17 performance and behavior that such entity or employer holds other
18 employees even if any unsatisfactory performance or behavior is related
19 to the drug use or alcoholism of such employee.

20 Sec. 17. Section 48-1114, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 48-1114 (1) It shall be an unlawful employment practice for an
23 employer to discriminate against any of his or her employees or
24 applicants for employment, for an employment agency to discriminate
25 against any individual, or for a labor organization to discriminate
26 against any member thereof or applicant for membership, because he or she
27 has:

28 (a) Opposed ~~has opposed~~ any practice made an unlawful employment
29 practice by the Nebraska Fair Employment Practice Act; or ~~or~~

30 (b) Made ~~has made~~ a charge, testified, assisted, or participated in
31 any manner in an investigation, proceeding, or hearing under the act. ~~or~~

1 ~~(e)~~

2 (2) It shall be an unlawful employment practice for a Class I
3 employer to discriminate against any of his or her employees or
4 applicants for employment, for an employment agency to discriminate
5 against any individual, or for a labor organization to discriminate
6 against any member thereof or applicant for membership, because he or she
7 has opposed any practice or refused to carry out any action unlawful
8 under federal law or the laws of this state. ~~, or (d)~~

9 (3)(a) It shall be an unlawful employment practice for a Class I
10 employer to discriminate against any of his or her employees or
11 applicants for employment, for an employment agency to discriminate
12 against any individual, or for a labor organization to discriminate
13 against any member thereof or applicant for membership, because he or she
14 has inquired about, discussed, or disclosed information regarding
15 employee wages, benefits, or other compensation.

16 (b) This subsection subdivision (d) shall not apply to instances in
17 which an employee who has authorized access to the information regarding
18 wages, benefits, or other compensation of other employees as a part of
19 such employee's job functions discloses such information to a person who
20 does not otherwise have authorized access to such information, unless
21 such disclosure is in response to a charge or complaint or in furtherance
22 of an investigation, proceeding, hearing, or other action, including an
23 investigation conducted by the employer.

24 (c) (2) Nothing in this subsection or subdivision (1)(d) of this
25 section shall be contrary to applicable state or federal law or:

26 (i) (a) Create an obligation for any employer or employee to
27 disclose information regarding employee wages, benefits, or other
28 compensation;

29 (ii) (b) Permit an employee, without the written consent of the
30 employer, to disclose proprietary information, trade secret information,
31 or information that is otherwise subject to a legal privilege or

1 protected by law. For purposes of this subdivision, proprietary
2 information does not include information regarding employee wages,
3 benefits, or other compensation;

4 (iii) ~~(e)~~ Permit an employee to disclose information regarding
5 wages, benefits, or other compensation of other employees to a competitor
6 of the employer;

7 (iv) ~~(d)~~ Apply to a Class II employer or an employer which is
8 ~~employers which are~~ exempt from the Nebraska Fair Employment Practice Act
9 under section 48-1102;

10 (v) ~~(e)~~ Permit an employee to discuss information regarding employee
11 wages, benefits, or other compensation during working hours, as defined
12 in existing workplace policies, or in violation of specific contractual
13 obligations; or

14 (vi) ~~(f)~~ Permit an employee to disseminate information regarding
15 employee wages, benefits, or other compensation to the general public.
16 For purposes of this subdivision, general public does not include public
17 officials, judicial officers, legislators, trade associations, or other
18 reasonable third parties for the employee's mutual aid or protection.

19 (4) ~~(3)~~ The changes made to this section by Laws 2019, LB217, shall
20 not be construed so as to impair or affect the obligation of any lawful
21 contract in existence prior to September 1, 2019.

22 Sec. 21. Section 48-1121, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 48-1121 Every Class I employer, employment agency, and labor
25 organization subject to the Nebraska Fair Employment Practice Act shall
26 post in a conspicuous place or places on his, her, or its premises a
27 notice to be prepared or approved by the commission which shall set forth
28 excerpts of the act and such other relevant information which the
29 commission deems necessary to explain the act.

30 2. Renumber the remaining sections and correct the repealer
31 accordingly.