

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 765
Final Reading

Introduced by Conrad, 46.

Read first time January 09, 2014

Committee: Business and Labor

A BILL

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

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

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

3 48-1229 For purposes of the Nebraska Wage Payment and
4 Collection Act, unless the context otherwise requires:

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

11 ~~(2)~~(1) Employee means any individual permitted to work
12 by an employer pursuant to an employment relationship or who has
13 contracted to sell the goods or services of an employer and to be
14 compensated by commission. Services performed by an individual for an
15 employer shall be deemed to be employment, unless it is shown that
16 (a) such individual has been and will continue to be free from
17 control or direction over the performance of such services, both
18 under his or her contract of service and in fact, (b) such service is
19 either outside the usual course of business for which such service is
20 performed or such service is performed outside of all the places of
21 business of the enterprise for which such service is performed, and
22 (c) such individual is customarily engaged in an independently
23 established trade, occupation, profession, or business. This
24 subdivision is not intended to be a codification of the common law
25 and shall be considered complete as written;

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

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

11 ~~(3)~~(4) Fringe benefits includes sick and vacation leave
12 plans, disability income protection plans, retirement, pension, or
13 profit-sharing plans, health and accident benefit plans, and any
14 other employee benefit plans or benefit programs regardless of
15 whether the employee participates in such plans or programs; and

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

22 ~~(4)~~(6) Wages means compensation for labor or services
23 rendered by an employee, including fringe benefits, when previously
24 agreed to and conditions stipulated have been met by the employee,
25 whether the amount is determined on a time, task, fee, commission, or

1 other basis. Paid leave, other than earned but unused vacation leave,
2 provided as a fringe benefit by the employer shall not be included in
3 the wages due and payable at the time of separation, unless the
4 employer and the employee or the employer and the collective-
5 bargaining representative have specifically agreed otherwise. Unless
6 the employer and employee have specifically agreed otherwise through
7 a contract effective at the commencement of employment or at least
8 ninety days prior to separation, whichever is later, wages includes
9 commissions on all orders delivered and all orders on file with the
10 employer at the time of separation of employment less any orders
11 returned or canceled at the time suit is filed.

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

14 48-1230 (1) Except as otherwise provided in this section,
15 each employer shall pay all wages due its employees on regular days
16 designated by the employer or agreed upon by the employer and
17 employee. Thirty days' written notice shall be given to an employee
18 before regular paydays are altered by an employer. An employer may
19 deduct, withhold, or divert a portion of an employee's wages only
20 when the employer is required to or may do so by state or federal law
21 or by order of a court of competent jurisdiction or the employer has
22 a written agreement with the employee to deduct, withhold, or divert.

23 (2) Within ten working days after a written request is
24 made by an employee, an employer shall furnish such employee with an
25 itemized statement listing the wages earned and the deductions made

1 from the employee's wages under subsection (1) of this section for
2 each pay period that earnings and deductions were made. The statement
3 may be in print or electronic format.

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

14 ~~(3)~~—(4) Except as otherwise provided in section
15 48-1230.01:

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

20 (b) Whenever a political subdivision separates an
21 employee from the payroll, the unpaid wages shall become due within
22 two weeks of the next regularly scheduled meeting of the governing
23 body of the political subdivision if such employee is separated from
24 the payroll at least one week prior to such meeting, or if an
25 employee of a political subdivision is separated from the payroll

1 less than one week prior to the next regularly scheduled meeting of
2 the governing body of the political subdivision, the unpaid wages
3 shall be due within two weeks of the following regularly scheduled
4 meeting of the governing body of the political subdivision.

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

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