

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1028

Introduced by Hunt, 8.

Read first time January 13, 2022

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the Wage and Hour Act; to amend sections
2 48-1202, 48-1203, 48-1203.01, 48-1205, 48-1206, 48-1207, 48-1208,
3 and 48-1209, Reissue Revised Statutes of Nebraska; to define terms;
4 to clarify language regarding compensation for tipped employees; to
5 provide duties for employers; to change powers and duties of the
6 Department of Labor and the Commissioner of Labor; to prohibit acts
7 and provide a penalty; to provide for liquidated damages; to provide
8 for complaints; to harmonize provisions; and to repeal the original
9 sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-1202, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-1202 For purposes of the Wage and Hour Act, unless the context
4 otherwise requires:

5 (1) Commissioner means the Commissioner of Labor;

6 (2) Department means the Department of Labor;

7 (3) (1) Employ includes ~~shall include~~ to permit to work;

8 (4) (2) Employer includes ~~shall include~~ any individual, partnership,
9 limited liability company, association, corporation, business trust,
10 legal representative, or organized group of persons employing four or
11 more employees at any one time except for seasonal employment of not more
12 than twenty weeks in any calendar year, acting directly or indirectly in
13 the interest of an employer in relation to an employee, but shall not
14 include the United States, the state, or any political subdivision
15 thereof;

16 (5) (3) Employee includes ~~shall include~~ any individual employed by
17 any employer but shall not include:

18 (a) Any individual employed in agriculture;

19 (b) Any individual employed as a baby-sitter in or about a private
20 home;

21 (c) Any individual employed in a bona fide executive,
22 administrative, or professional capacity or as a superintendent or
23 supervisor;

24 (d) Any individual employed by the United States or by the state or
25 any political subdivision thereof;

26 (e) Any individual engaged in the activities of an educational,
27 charitable, religious, or nonprofit organization when the employer-
28 employee relationship does not in fact exist or when the services
29 rendered to such organization are on a voluntary basis;

30 (f) Apprentices and learners otherwise provided by law;

31 (g) Veterans in training under supervision of the United States

1 Department of Veterans Affairs;

2 (h) A child in the employment of his or her parent or a parent in
3 the employment of his or her child; or

4 (i) Any person who, directly or indirectly, is receiving any form of
5 federal, state, county, or local aid or welfare and who is physically or
6 mentally disabled and employed in a program of rehabilitation, who shall
7 receive a wage at a level consistent with his or her health, efficiency,
8 and general well-being;

9 (6) (4) Occupational classification means ~~shall—mean~~ a
10 classification established by the Dictionary of Occupational Titles
11 prepared by the United States Department of Labor; and

12 (7) (5) Wages means ~~shall—mean~~ all remuneration for personal
13 services, including commissions and bonuses and the cash value of all
14 remunerations in any medium other than cash.

15 Sec. 2. Section 48-1203, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 48-1203 (1) Except as otherwise provided in this section and section
18 48-1203.01, every employer shall pay to each of his or her employees a
19 minimum wage of:

20 (a) Seven dollars and twenty-five cents per hour through December
21 31, 2014;

22 (b) Eight dollars per hour on and after January 1, 2015, through
23 December 31, 2015; and

24 (c) Nine dollars per hour on and after January 1, 2016.

25 (2) For persons compensated by way of gratuities such as waitresses,
26 waiters, hotel bellhops, porters, and shoeshine persons, the employer
27 shall pay wages at the minimum rate of two dollars and thirteen cents per
28 hour, plus all gratuities given to them for services rendered. For each
29 payment of wages made, the employer shall ensure that the ~~The~~ sum of
30 wages and gratuities received by each person compensated by way of
31 gratuities shall equal or exceed the minimum wage rate provided in

1 subsection (1) of this section. In determining whether or not the
2 individual is compensated by way of gratuities, the burden of proof shall
3 be upon the employer.

4 (3) Any employer employing student-learners as part of a bona fide
5 vocational training program shall pay such student-learners' wages at a
6 rate of at least seventy-five percent of the minimum wage rate which
7 would otherwise be applicable.

8 Sec. 3. Section 48-1203.01, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 48-1203.01 (1) An employer may pay a new employee who is younger
11 than twenty years of age and is not a seasonal or migrant worker a
12 training wage of at least seventy-five percent of the federal minimum
13 wage for ninety days from the date the new employee was hired. An
14 employer may pay such new employee the training wage rate for an
15 additional ninety-day period while the new employee is participating in
16 on-the-job training which (a) ~~(1)~~ requires technical, personal, or other
17 skills which are necessary for his or her employment and (b) ~~(2)~~ is
18 approved by the commissioner ~~Commissioner of Labor~~. No more than one-
19 fourth of the total hours paid by the employer shall be at the training
20 wage rate.

21 (2) An employer shall not pay the training wage rate if the hours of
22 any other employee are reduced or if any other employee is laid off and
23 the hours or position to be filled by the new employee is substantially
24 similar to the hours or position of such other employee. An employer
25 shall not dismiss or reduce the hours of any employee with the intention
26 of replacing such employee or his or her hours with a new employee
27 receiving the training wage rate.

28 Sec. 4. (1)(a) Every employer of persons compensated by way of
29 gratuities as described in subsection (2) of section 48-1203 shall make
30 and keep for a period of not less than three years a record of each
31 employee's:

- 1 (i) Name, address, and occupation;
- 2 (ii) Rate of pay;
- 3 (iii) Amount of pay received each pay period; and
- 4 (iv) Hours worked each day and each workweek.

5 (b) The record required by this section shall be kept on or about
6 the premises wherein any employee is employed or at some other premises
7 which is suitable to the employer. The records shall be open for
8 inspection by the commissioner by appointment. If the records required
9 under this section are kept outside of this state, the records shall be
10 made available upon demand of the commissioner.

11 (2) Every employer of persons compensated by way of gratuities as
12 described in subsection (2) of section 48-1203 shall, on demand by the
13 commissioner, provide a sworn statement of any information required to be
14 maintained under this section. The statement shall be made upon forms and
15 in a manner prescribed by the commissioner.

16 (3) All records and information obtained by the department under
17 this section are confidential, are not public records, and shall only be
18 disclosed by court order.

19 Sec. 5. (1) An employee who has a reasonable belief that an
20 employer is in violation of the Wage and Hour Act may submit a complaint
21 to the department in a manner prescribed by the department.

22 (2) The department shall forward complaints it determines to be
23 credible to the appropriate county attorney or take its own enforcement
24 actions, as the commissioner deems appropriate.

25 (3) The department shall develop forms and adopt and promulgate
26 rules and regulations as necessary to carry out this section.

27 Sec. 6. Section 48-1205, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 48-1205 Every employer subject to the Wage and Hour Act provisions
30 of sections 48-1201 to 48-1209 shall keep a summary of the act sections
31 48-1201 to 48-1209, furnished by the commissioner Commissioner of Labor

1 without charge, posted in a conspicuous place on or about the premises
2 wherein any person subject to the act ~~provisions of sections 48-1201 to~~
3 ~~48-1209~~ is employed. Such summary shall include an advisement that an
4 employee who has a reasonable belief that an employer is in violation of
5 the Wage and Hour Act may submit a complaint to the department and
6 details on how to make such a complaint.

7 Sec. 7. Section 48-1206, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 48-1206 (1) The commissioner ~~Commissioner of Labor~~ shall have the
10 authority to subpoena records and witnesses related to the enforcement of
11 the Wage and Hour Act ~~section 48-1203 and this section~~. The commissioner
12 or his or her agent may inspect all related records and gather testimony
13 on any matter relative to the enforcement of the Wage and Hour Act.

14 (2)(a) An employer shall not:

15 (i) Refuse to admit the commissioner to any place of employment;

16 (ii) Fail to make, keep, and preserve any records as required by
17 section 4 of this act;

18 (iii) Falsify any record required under section 4 of this act;

19 (iv) Refuse to make any record available to the commissioner as
20 required under section 4 of this act;

21 (v) Refuse to provide a sworn statement as required under section 4
22 of this act;

23 (vi) Refuse to provide other nonprivileged information to the
24 commissioner necessary for the enforcement of the Wage and Hour Act;

25 (vii) Fail to comply with section 48-1205;

26 (viii) Discharge or in any other manner discriminate or retaliate
27 against an employee who has:

28 (A) Notified the commissioner that an employee has not been paid
29 wages as required by the act;

30 (B) Caused to be instituted any proceeding under the act; or

31 (C) Testified or is about to testify in any such proceeding;

1 (ix) Pay or agree to pay wages at a rate less than that required by
2 the Wage and Hour Act. Payment at such rate for any week or portion of a
3 week constitutes a separate offense as to each employee; or

4 (x) Otherwise violate any provision of section 48-1203.

5 (b) A violation of this subsection is ~~(2) Any employer who violates~~
6 ~~any of the provisions of section 48-1203 shall be guilty of a Class IV~~
7 ~~misdemeanor.~~

8 (c) Except as provided in subdivision (2)(a)(ix) of this section,
9 each day of violation shall constitute a separate offense.

10 (3) It shall be the duty of the county attorney for the county in
11 which any violation of the Wage and Hour Act occurs to prosecute the same
12 in the district court in the county where the offense occurred.

13 (4) Any employer who violates any provision of section 48-1203 shall
14 be liable to the employees affected in the amount of their unpaid minimum
15 wages and liquidated damages equal the amount of such unpaid wages ~~, as~~
16 ~~the case may be.~~

17 (5) Action to recover the amount unpaid minimum wages ~~as~~ provided in
18 subsection (4) of this section may be maintained in any court of
19 competent jurisdiction by any one or more employees for and in behalf of
20 himself, herself, or themselves and other employees similarly situated,
21 or such employee or employees may designate an agent or representative to
22 maintain such action for and in behalf of all employees similarly
23 situated. The court in which any action is brought under this subsection
24 shall, in addition to any judgment awarded to the plaintiff or
25 plaintiffs, allow costs of the action and reasonable attorney's fees to
26 be paid by the defendant. In any proceedings brought pursuant to this
27 subsection, the employee shall not be required to pay any filing fee or
28 other court costs necessarily incurred in such proceedings.

29 Sec. 8. Section 48-1207, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 48-1207 Nothing in the Wage and Hour Act sections 48-1201 to 48-1209

1 shall be deemed to interfere with, impede, or in any way diminish the
2 right of employees to bargain collectively with their employers through
3 representatives of their own choosing in order to establish wages or
4 other conditions of work in excess of the applicable minimum under the
5 Wage and Hour Act ~~provisions of sections 48-1201 to 48-1209.~~

6 Sec. 9. Section 48-1208, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 48-1208 Any standards relating to minimum wage, maximum hours, or
9 other working conditions in effect on October 23, 1967, by or under any
10 other law of this state, which are more favorable to employees than those
11 applicable to such employees under the Wage and Hour Act ~~provisions of~~
12 ~~sections 48-1201 to 48-1209~~, shall not be deemed to be amended,
13 rescinded, or otherwise affected by the Wage and Hour Act ~~sections~~
14 ~~48-1201 to 48-1209~~ but shall continue in full force and effect.

15 Sec. 10. Section 48-1209, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 48-1209 Sections 48-1201 to 48-1209 and sections 4 and 5 of this act
18 shall be known and may be cited as the Wage and Hour Act.

19 Sec. 11. Original sections 48-1202, 48-1203, 48-1203.01, 48-1205,
20 48-1206, 48-1207, 48-1208, and 48-1209, Reissue Revised Statutes of
21 Nebraska, are repealed.