

LEGISLATIVE BILL 297

Approved by the Governor June 7, 1991

Introduced by Hall, 7; Chambers, 11; Morrissey, 1

AN ACT relating to the Wage and Hour Act; to amend sections 48-1202 and 48-1209, Reissue Revised Statutes of Nebraska, 1943, and section 48-1203, Revised Statutes Supplement, 1990; to change the minimum wage rates as prescribed; to provide a training wage rate; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 48-1202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1202. ~~As used in sections 48-1201 to 48-1209~~ For purposes of the Wage and Hour Act, unless the context otherwise requires:

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

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

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

(a) Any individual employed in agriculture;
(b) Any individual employed as a babysitter in or about a private home;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity; ~~or as a superintendent or supervisor; superintendents or supervisors;~~

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

(e) Any individual engaged in the activities

of an educational, charitable, religious, or nonprofit organization ~~where~~ when the employer-employee relationship does not, in fact, exist or ~~where~~ when the services rendered to such organization are on a voluntary basis;

(f) Apprentices and learners otherwise provided by law;

(g) Veterans in training under supervision of the ~~Veterans' Administration~~ United States Department of Veterans Affairs;

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

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

(4) Occupational classification shall mean a classification established by the Dictionary of Occupational Titles, prepared by the United States Department of Labor; and

(5) Wages shall mean all remuneration for personal services, including commissions and bonuses and the cash value of all remunerations in any medium other than cash.

Sec. 2. That section 48-1203, Revised Statutes Supplement, 1990, be amended to read as follows:

48-1203. (1) Every Except as otherwise provided in this section and section 3 of this act, every employer shall pay to each of his or her employees wages at the minimum rate of three dollars and thirty-five cents per hour, except as otherwise provided in this section four dollars and twenty-five cents per hour.

(2) For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops, porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars and one cent thirteen cents per hour, plus all gratuities given to them for services rendered. The sum of wages and gratuities received by each person compensated by way of gratuities shall equal or exceed the minimum wage rate provided in subsection (1) of this section. In determining whether or not the individual is compensated by way of gratuities, the burden of proof shall be upon the employer.

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

Sec. 3. Beginning July 1, 1991, through March 31, 1993, an employer may pay a new employee who is younger than twenty years of age and is not a seasonal or migrant worker a training wage at a rate of three dollars and sixty-one cents per hour for ninety days from the date the new employee was hired. An employer may pay such new employee the training wage rate for an additional ninety-day period while the new employee is participating in on-the-job training which (1) requires technical, personal, or other skills which are necessary for his or her employment and (2) is approved by the Commissioner of Labor. No more than one-fourth of the total hours paid by the employer shall be at the training wage rate.

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

Sec. 4. That section 48-1209, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1209. Sections 48-1201 to 48-1209 and section 3 of this act shall be known and may be cited as the Wage and Hour Act.

Sec. 5. This act shall become operative on July 1, 1991.

Sec. 6. That original sections 48-1202 and 48-1209, Reissue Revised Statutes of Nebraska, 1943, and section 48-1203, Revised Statutes Supplement, 1990, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.