

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1309

Introduced by Hilgert, 7; Connealy, 16; Preister, 5

Read first time January 19, 2000

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to workers' compensation; to amend sections
2 48-165, 48-172, and 48-1,110, Reissue Revised Statutes of
3 Nebraska, and section 48-121, Revised Statutes
4 Supplement, 1999; to provide employer and compensation
5 court duties; to change compensation provisions; to
6 provide for certain costs; and to repeal the original
7 sections.

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

1 Section 1. Every employer subject to the Nebraska
2 Workers' Compensation Act shall furnish to each employee at the
3 time of hiring a written statement of the rights, benefits, and
4 obligations of injured employees and their employers under the act.

5 Sec. 2. Section 48-121, Revised Statutes Supplement,
6 1999, is amended to read:

7 48-121. The following schedule of compensation is hereby
8 established for injuries resulting in disability:

9 (1) For total disability, the compensation during such
10 disability shall be sixty-six and two-thirds percent of the wages
11 received at the time of injury, but such compensation shall not be
12 more than the maximum weekly income benefit specified in section
13 48-121.01 nor less than the minimum weekly income benefit specified
14 in section 48-121.01, except that if at the time of injury the
15 employee receives wages of less than the minimum weekly income
16 benefit specified in section 48-121.01, then he or she shall
17 receive the full amount of such wages per week as compensation.
18 Nothing in this subdivision shall require payment of compensation
19 after disability shall cease.

20 (2) For disability partial in character, except the
21 particular cases mentioned in ~~subdivision (3)~~ subdivisions (3)(a)
22 and (3)(b) of this section, the compensation shall be sixty-six and
23 two-thirds percent of the difference between the wages received at
24 the time of the injury and the earning power of the employee
25 thereafter, but such compensation shall not be more than the
26 maximum weekly income benefit specified in section 48-121.01. This
27 compensation shall be paid during the period of such partial
28 disability but not beyond three hundred weeks. Should total

1 disability be followed by partial disability, the period of three
2 hundred weeks mentioned in this subdivision shall be reduced by the
3 number of weeks during which compensation was paid for such total
4 disability.

5 (3)(a) For disability resulting from permanent injury of
6 the classes listed in this subdivision, the compensation shall be
7 in addition to the amount paid for temporary disability, except
8 that the compensation for temporary disability shall cease as soon
9 as the extent of the permanent disability is ascertainable. For
10 disability resulting from permanent injury of the following
11 classes, compensation shall be: For the loss of a thumb, sixty-six
12 and two-thirds percent of daily wages during sixty weeks. For the
13 loss of a first finger, commonly called the index finger, sixty-six
14 and two-thirds percent of daily wages during thirty-five weeks.
15 For the loss of a second finger, sixty-six and two-thirds percent
16 of daily wages during thirty weeks. For the loss of a third
17 finger, sixty-six and two-thirds percent of daily wages during
18 twenty weeks. For the loss of a fourth finger, commonly called the
19 little finger, sixty-six and two-thirds percent of daily wages
20 during fifteen weeks. The loss of the first phalange of the thumb
21 or of any finger shall be considered to be equal to the loss of
22 one-half of such thumb or finger and compensation shall be for
23 one-half of the periods of time above specified, and the
24 compensation for the loss of one-half of the first phalange shall
25 be for one-fourth of the periods of time above specified. The loss
26 of more than one phalange shall be considered as the loss of the
27 entire finger or thumb, except that in no case shall the amount
28 received for more than one finger exceed the amount provided in

1 this schedule for the loss of a hand. For the loss of a great toe,
2 sixty-six and two-thirds percent of daily wages during thirty
3 weeks. For the loss of one of the toes other than the great toe,
4 sixty-six and two-thirds percent of daily wages during ten weeks.
5 The loss of the first phalange of any toe shall be considered equal
6 to the loss of one-half of such toe, and compensation shall be for
7 one-half of the periods of time above specified. The loss of more
8 than one phalange shall be considered as the loss of the entire
9 toe. For the loss of a hand, sixty-six and two-thirds percent of
10 daily wages during one hundred seventy-five weeks. For the loss of
11 an arm, sixty-six and two-thirds percent of daily wages during two
12 hundred twenty-five weeks. For the loss of a foot, sixty-six and
13 two-thirds percent of daily wages during one hundred fifty weeks.
14 For the loss of a leg, sixty-six and two-thirds percent of daily
15 wages during two hundred fifteen weeks. For the loss of an eye,
16 sixty-six and two-thirds percent of daily wages during one hundred
17 twenty-five weeks. For the loss of an ear, sixty-six and
18 two-thirds percent of daily wages during twenty-five weeks. For
19 the loss of hearing in one ear, sixty-six and two-thirds percent of
20 daily wages during fifty weeks. For the loss of the nose,
21 sixty-six and two-thirds percent of daily wages during fifty weeks.

22 (b) Except as provided in subdivision (3)(c) of this
23 section: In any case in which there is a loss or loss of use of
24 more than one member or parts of more than one member set forth in
25 this subdivision, but not amounting to total and permanent
26 disability, compensation benefits shall be paid for the loss or
27 loss of use of each such member or part thereof, with the periods
28 of benefits to run consecutively. The total loss or permanent

1 total loss of use of both hands, or both arms, or both feet, or
2 both legs, or both eyes, or hearing in both ears, or of any two
3 thereof, in one accident, shall constitute total and permanent
4 disability and be compensated for according to subdivision (1) of
5 this section. In all other cases involving a loss or loss of use
6 of both hands, both arms, both feet, both legs, both eyes, or
7 hearing in both ears, or of any two thereof, total and permanent
8 disability shall be determined in accordance with the facts.
9 Amputation between the elbow and the wrist shall be considered as
10 the equivalent of the loss of a hand, and amputation between the
11 knee and the ankle shall be considered as the equivalent of the
12 loss of a foot. Amputation at or above the elbow shall be
13 considered as the loss of an arm, and amputation at or above the
14 knee shall be considered as the loss of a leg. Permanent total
15 loss of the use of a finger, hand, arm, foot, leg, or eye shall be
16 considered as the equivalent of the loss of such finger, hand, arm,
17 foot, leg, or eye. In all cases involving a permanent partial loss
18 of the use or function of any of the members mentioned in ~~this~~
19 ~~subdivision~~ subdivision (3)(a) or (3)(b) of this section, the
20 compensation shall bear such relation to the amounts named in such
21 subdivision as the disabilities bear to those produced by the
22 injuries named therein.

23 (c) For the particular cases mentioned in subdivision
24 (3)(b) of this section: If the payment for loss of use and
25 vocational rehabilitation benefits cannot restore the injured
26 employee to his or her earning capacity prior to the injury as
27 determined by the compensation court, the compensation court may
28 award permanent partial disability benefits to the employee

1 according to subdivision (2) of this section rather than benefits
2 under subdivision (3)(b) of this section.

3 (d) If the employer and the employee are unable to agree
4 upon the amount of compensation to be paid in cases not covered by
5 the schedule, the amount of compensation shall be settled according
6 to sections 48-173 to 48-185. Compensation under this subdivision
7 shall not be more than the maximum weekly income benefit specified
8 in section 48-121.01 nor less than the minimum weekly income
9 benefit specified in section 48-121.01, except that if at the time
10 of the injury the employee received wages of less than the minimum
11 weekly income benefit specified in section 48-121.01, then he or
12 she shall receive the full amount of such wages per week as
13 compensation.

14 (4) For disability resulting from permanent disability,
15 if immediately prior to the accident the rate of wages was fixed by
16 the day or hour, or by the output of the employee, the weekly wages
17 shall be taken to be computed upon the basis of a workweek of a
18 minimum of five days, if the wages are paid by the day, or upon the
19 basis of a workweek of a minimum of forty hours, if the wages are
20 paid by the hour, or upon the basis of a workweek of a minimum of
21 five days or forty hours, whichever results in the higher weekly
22 wage, if the wages are based on the output of the employee.

23 (5) The employee shall be entitled to compensation from
24 his or her employer for temporary disability while undergoing
25 physical or medical rehabilitation and while undergoing vocational
26 rehabilitation whether such vocational rehabilitation is
27 voluntarily offered by the employer and accepted by the employee or
28 is ordered by the Nebraska Workers' Compensation Court or any judge

1 of the compensation court.

2 Sec. 3. Section 48-165, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 48-165. The Nebraska Workers' Compensation Court shall
5 prepare and furnish to employees, employers, and to insurance
6 companies licensed to write compensation insurance in this state,
7 blank forms of application for benefits or compensation, elections
8 to operate under the Nebraska Workers' Compensation Act, reports of
9 injury or death, a statement of rights, benefits, and obligations
10 required by section 1 of this act, and such other blanks as may be
11 deemed proper and advisable. Forms and statements shall be made
12 available in both English and Spanish. The compensation court
13 shall provide rules and regulations for the distribution of the
14 ~~blanks forms and statements~~ so prepared. It shall be the duty of
15 the employers to constantly keep on hand a sufficient supply of
16 such ~~blanks forms and statements~~. The compensation court may
17 charge a fee ~~for such forms~~ sufficient to pay the costs incurred by
18 the compensation court in the preparation and delivery of the forms
19 and statements.

20 Sec. 4. Section 48-172, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 48-172. Except as provided in sections 48-138 and
23 48-139, there shall be no filing fees charged by the Nebraska
24 Workers' Compensation Court. When a reasonable attorney's fee is
25 allowed the employee against the employer as provided in section
26 48-125 or when an action involves an employer who transported,
27 enticed, or actively recruited an employee as defined in section
28 48-2201, the compensation court shall further assess against the

1 employer as costs of the employee the cost of depositions if
2 admitted into evidence and may further assess against the employer
3 the fees and mileage for necessary witnesses attending the
4 proceedings at the instance of the employee. Both the necessity
5 for the witness and the reasonableness of the fees shall be
6 approved by the compensation court. Such witnesses shall be
7 reimbursed for their necessary mileage at the rate provided in
8 section 81-1176.

9 Sec. 5. Section 48-1,110, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 48-1,110. (1) Sections 48-101 to 48-1,117 and section 1
12 of this act shall be known and may be cited as the Nebraska
13 Workers' Compensation Act.

14 (2) It is the intent of the Legislature that the changes
15 made in Laws 1986, LB 811, shall not affect or alter any rights,
16 privileges, or obligations existing immediately prior to July 17,
17 1986.

18 Sec. 5. Original sections 48-165, 48-172, and 48-1,110,
19 Reissue Revised Statutes of Nebraska, and section 48-121, Revised
20 Statutes Supplement, 1999, are repealed.