

AMENDMENTS TO LB 255

Introduced by Rogert, 16

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Section 48-1228, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           48-1228 Sections 48-1228 to 48-1232 and section 4 of this  
6 act shall be known and may be cited as the Nebraska Wage Payment  
7 and Collection Act.

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

10          48-1229 For purposes of the Nebraska Wage Payment and  
11 Collection Act, unless the context otherwise requires:

12          (1) Employer means the state or any individual,  
13 partnership, limited liability company, association, joint-stock  
14 company, trust, corporation, political subdivision, or personal  
15 representative of the estate of a deceased individual, or the  
16 receiver, trustee, or successor thereof, within or without the  
17 state, employing any person within the state as an employee;

18          (2) Employee means any individual permitted to work by  
19 an employer pursuant to an employment relationship or who has  
20 contracted to sell the goods or services of an employer and to be  
21 compensated by commission. Services performed by an individual for  
22 an employer shall be deemed to be employment, unless it is shown  
23 that (a) such individual has been and will continue to be free

1 from control or direction over the performance of such services,  
2 both under his or her contract of service and in fact, (b) such  
3 service is either outside the usual course of business for which  
4 such service is performed or such service is performed outside of  
5 all the places of business of the enterprise for which such service  
6 is performed, and (c) such individual is customarily engaged in  
7 an independently established trade, occupation, profession, or  
8 business. This subdivision is not intended to be a codification of  
9 the common law and shall be considered complete as written;

10 (3) Fringe benefits includes sick and vacation leave  
11 plans, disability income protection plans, retirement, pension, or  
12 profit-sharing plans, health and accident benefit plans, and any  
13 other employee benefit plans or benefit programs regardless of  
14 whether the employee participates in such plans or programs. Paid  
15 leave, other than earned but unused vacation leave, provided as a  
16 fringe benefit by the employer shall not be included in the wages  
17 due and payable at the time of separation as provided elsewhere in  
18 the Nebraska Wage Payment and Collection Act, unless the employer  
19 and the employee or the employer and the collective bargaining  
20 representative have specifically agreed otherwise; and

21 (4) Wages means compensation for labor or services  
22 rendered by an employee, including fringe benefits, when previously  
23 agreed to and conditions stipulated have been met by the employee,  
24 whether the amount is determined on a time, task, fee, commission,  
25 or other basis. ~~Wages includes commissions on all orders delivered~~  
26 ~~and all orders on file with the employer at the time of termination~~  
27 Unless the employer and employee have specifically agreed otherwise

1 through a contract effective at the commencement of employment or  
2 at least ninety days prior to separation, whichever is later, wages  
3 includes commissions on all orders delivered and all orders on file  
4 with the employer at the time of separation of employment less any  
5 orders returned or canceled at the time suit is filed.

6 Sec. 3. Section 48-1230, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 48-1230 (1) Except as otherwise provided in this section,  
9 each employer shall pay all wages due its employees on regular  
10 days designated by the employer or agreed upon by the employer and  
11 employee. Thirty days' written notice shall be given to an employee  
12 before regular paydays are altered by an employer. An employer  
13 may deduct, withhold, or divert a portion of an employee's wages  
14 only when the employer is required to or may do so by state or  
15 federal law or by order of a court of competent jurisdiction or  
16 the employer has written agreement with the employee to deduct,  
17 withhold, or divert.

18 (2) Except as otherwise provided in section 4 of this  
19 act:

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

24 (b) Whenever a political subdivision separates an  
25 employee from the payroll, the unpaid wages shall become due within  
26 two weeks of the next regularly scheduled meeting of the governing  
27 body of the political subdivision if such employee is separated

1 from the payroll at least one week prior to such meeting, or if -  
2 ~~When~~ an employee of a political subdivision is separated from the  
3 payroll less than one week prior to the next regularly scheduled  
4 meeting of the governing body of the political subdivision, the  
5 unpaid wages shall be due within two weeks of the following  
6 regularly scheduled meeting of the governing body of the political  
7 subdivision.

8           Sec. 4. Whenever an employer separates an employee from  
9 the payroll, the unpaid wages constituting commissions shall become  
10 due on the next regular payday following the employer's receipt of  
11 payment for the goods or services from the customer from which the  
12 commission was generated. The employer shall provide an employee  
13 with a periodic accounting of outstanding commissions, until all  
14 commissions have been paid or the orders have been returned or  
15 canceled by the customer.

16           Sec. 5. Section 48-1232, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           48-1232 If an employee establishes a claim and secures  
19 judgment on such claim under section 48-1231: (1) An amount equal  
20 to the judgment may be recovered from the employer; or (2) if the  
21 nonpayment of wages is found to be willful, an amount equal to  
22 two times the amount of unpaid wages shall be recovered from the  
23 employer. Any amount recovered pursuant to subdivision (1) or (2)  
24 of this section shall be placed in a fund ~~to be distributed to~~  
25 ~~the common schools of this state.~~ remitted to the State Treasurer  
26 for distribution in accordance with Article VII, section 5, of the  
27 Constitution of Nebraska.

- 1                   Sec. 6. This act becomes operative on January 1, 2008.
- 2                   Sec. 7. Original sections 48-1228, 48-1229, 48-1230, and
- 3 48-1232, Reissue Revised Statutes of Nebraska, are repealed.