

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 255

FINAL READING

(SECOND)

Introduced by Rogert, 16; Pirsch, 4

Read first time January 10, 2007

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 48-1228, 48-1229,
2 48-1230, and 48-1232, Reissue Revised Statutes of
3 Nebraska; to change provisions of the Nebraska Wage
4 Payment and Collection Act; to redefine terms; to provide
5 for unpaid wages constituting commissions; to harmonize
6 provisions; to repeal the original sections; and to
7 declare an emergency.

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

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

3 48-1228 Sections 48-1228 to 48-1232 and section 4 of this
4 act shall be known and may be cited as the Nebraska Wage Payment
5 and Collection Act.

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

8 48-1229 For purposes of the Nebraska Wage Payment and
9 Collection Act, unless the context otherwise requires:

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

16 (2) Employee means any individual permitted to work by
17 an employer pursuant to an employment relationship or who has
18 contracted to sell the goods or services of an employer and to be
19 compensated by commission. Services performed by an individual for
20 an employer shall be deemed to be employment, unless it is shown
21 that (a) such individual has been and will continue to be free
22 from control or direction over the performance of such services,
23 both under his or her contract of service and in fact, (b) such
24 service is either outside the usual course of business for which
25 such service is performed or such service is performed outside of

1 all the places of business of the enterprise for which such service
2 is performed, and (c) such individual is customarily engaged in
3 an independently established trade, occupation, profession, or
4 business. This subdivision is not intended to be a codification of
5 the common law and shall be considered complete as written;

6 (3) Fringe benefits includes sick and vacation leave
7 plans, disability income protection plans, retirement, pension, or
8 profit-sharing plans, health and accident benefit plans, and any
9 other employee benefit plans or benefit programs regardless of
10 whether the employee participates in such plans or programs; and

11 (4) Wages means compensation for labor or services
12 rendered by an employee, including fringe benefits, when previously
13 agreed to and conditions stipulated have been met by the employee,
14 whether the amount is determined on a time, task, fee, commission,
15 or other basis. Paid leave, other than earned but unused vacation
16 leave, provided as a fringe benefit by the employer shall not be
17 included in the wages due and payable at the time of separation,
18 unless the employer and the employee or the employer and the
19 collective-bargaining representative have specifically agreed
20 otherwise. Wages includes commissions on all orders delivered and
21 all orders on file with the employer at the time of termination
22 Unless the employer and employee have specifically agreed otherwise
23 through a contract effective at the commencement of employment or
24 at least ninety days prior to separation, whichever is later, wages
25 includes commissions on all orders delivered and all orders on file

1 with the employer at the time of separation of employment less any
2 orders returned or canceled at the time suit is filed.

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

5 48-1230 (1) Except as otherwise provided in this section,
6 each employer shall pay all wages due its employees on regular
7 days designated by the employer or agreed upon by the employer and
8 employee. Thirty days' written notice shall be given to an employee
9 before regular paydays are altered by an employer. An employer
10 may deduct, withhold, or divert a portion of an employee's wages
11 only when the employer is required to or may do so by state or
12 federal law or by order of a court of competent jurisdiction or
13 the employer has written agreement with the employee to deduct,
14 withhold, or divert.

15 (2) Except as otherwise provided in section 4 of this
16 act:

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

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

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

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

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

17 48-1232 If an employee establishes a claim and secures
18 judgment on such claim under section 48-1231: (1) An amount equal
19 to the judgment may be recovered from the employer; or (2) if the
20 nonpayment of wages is found to be willful, an amount equal to
21 two times the amount of unpaid wages shall be recovered from the
22 employer. Any amount recovered pursuant to subdivision (1) or (2)
23 of this section shall be placed in a fund to be distributed to
24 ~~the common schools of this state.~~ remitted to the State Treasurer
25 for distribution in accordance with Article VII, section 5, of the

1 Constitution of Nebraska.

2 Sec. 6. Original sections 48-1228, 48-1229, 48-1230, and
3 48-1232, Reissue Revised Statutes of Nebraska, are repealed.

4 Sec. 7. Since an emergency exists, this act takes effect
5 when passed and approved according to law.