

## LEGISLATIVE BILL 780

Approved by the Governor April 14, 2010

Introduced by Lathrop, 12; Wallman, 30; Cornett, 45.

FOR AN ACT relating to the Nebraska Workers' Compensation Act; to amend section 48-151, Reissue Revised Statutes of Nebraska, and section 48-1,110, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to personal injuries; to provide applicability; to harmonize provisions; and to repeal the original sections.

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

Section 1. (1) Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder if such first responder:

(a) Establishes, by a preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(b) Establishes, by a preponderance of the evidence, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.

(2) For purposes of this section, mental injuries and mental illness arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer and employee relations, including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations.

(3) For purposes of this section, first responder means a sheriff, a deputy sheriff, a police officer, an officer of the Nebraska State Patrol, a volunteer or paid firefighter, or a volunteer or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Sec. 2. Section 48-151, Reissue Revised Statutes of Nebraska, is amended to read:

48-151 Throughout the Nebraska Workers' Compensation Act, the following words and phrases shall be considered to have the following meaning, respectively, unless the context clearly indicates a different meaning in the construction used:

(1) Physician means any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry in the State of Nebraska or in the state in which the physician is practicing;

(2) Accident means an unexpected or unforeseen injury happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. The claimant has the burden of proof to establish by a preponderance of the evidence that such unexpected or unforeseen injury was in fact caused by the employment. There is no presumption from the mere occurrence of such unexpected or unforeseen injury that the injury was in fact caused by the employment;

(3) Occupational disease means only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment and excludes all ordinary diseases of life to which the general public is exposed;

(4) Injury and personal injuries mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom and personal injuries described in section 1 of this act. The terms include disablement resulting from occupational disease arising out of and in the course of the employment in which the employee was engaged and which was contracted in such employment. The terms include an aggravation of a preexisting occupational disease, the employer being liable only for the degree of aggravation of the preexisting occupational disease. The terms do not include disability or death due to natural causes but occurring while the employee is at work and do not include an injury, disability, or death that is the result of a natural progression of any preexisting condition;

(5) Death, when mentioned as a basis for the right to compensation, means only death resulting from such violence and its resultant effects or from occupational disease;

(6) Without otherwise affecting either the meaning or the interpretation of the abridged clause, personal injuries arising out of and in

the course of employment, it is hereby declared not to cover workers except while engaged in, on, or about the premises where their duties are being performed or where their service requires their presence as a part of such service at the time of the injury and during the hours of service as such workers, and not to cover workers who on their own initiative leave their line of duty or hours of employment for purposes of their own. Property maintained by an employer is considered the premises of such employer for purposes of determining whether the injury arose out of employment;

(7) Willful negligence consists of (a) a deliberate act, (b) such conduct as evidences reckless indifference to safety, or (c) intoxication at the time of the injury, such intoxication being without the consent, knowledge, or acquiescence of the employer or the employer's agent;

(8) Intoxication includes, but is not limited to, being under the influence of a controlled substance not prescribed by a physician;

(9) Prospective loss costs means prospective loss costs as defined in section 44-7504 and prepared, filed, or distributed by an advisory organization which has been issued a certificate of authority pursuant to section 44-7518; and

(10) Whenever in the Nebraska Workers' Compensation Act the singular is used, the plural is considered included; when the masculine gender is used, the feminine is considered included.

Sec. 3. Section 48-1,110, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-1,110 Sections 48-101 to 48-1,117 and sections 1 and 4 of this act shall be known and may be cited as the Nebraska Workers' Compensation Act.

Sec. 4. The changes made by this legislative bill to the Nebraska Workers' Compensation Act apply only to personal injuries that occurred on or after the effective date of this act and before June 30, 2014.

Sec. 5. Original section 48-151, Reissue Revised Statutes of Nebraska, and section 48-1,110, Revised Statutes Cumulative Supplement, 2008, are repealed.