

AMENDMENTS TO LB627

Introduced by Business and Labor.

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

3 Section 1. Section 48-1102, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 48-1102 For purposes of the Nebraska Fair Employment Practice Act,
6 unless the context otherwise requires:

7 (1) Person shall include one or more individuals, labor unions,
8 partnerships, limited liability companies, associations, corporations,
9 legal representatives, mutual companies, joint-stock companies, trusts,
10 unincorporated organizations, trustees, trustees in bankruptcy, or
11 receivers;

12 (2) Employer shall mean a person engaged in an industry who has
13 fifteen or more employees for each working day in each of twenty or more
14 calendar weeks in the current or preceding calendar year, any agent of
15 such a person, and any party whose business is financed in whole or in
16 part under the Nebraska Investment Finance Authority Act regardless of
17 the number of employees and shall include the State of Nebraska,
18 governmental agencies, and political subdivisions, but such term shall
19 not include (a) the United States, a corporation wholly owned by the
20 government of the United States, or an Indian tribe or (b) a bona fide
21 private membership club, other than a labor organization, which is exempt
22 from taxation under section 501(c) of the Internal Revenue Code;

23 (3) Labor organization shall mean any organization which exists
24 wholly or in part for one or more of the following purposes: Collective
25 bargaining; dealing with employers concerning grievances, terms, or
26 conditions of employment; or mutual aid or protection in relation to
27 employment;

1 (4) Employment agency shall mean any person regularly undertaking
2 with or without compensation to procure employees for an employer or to
3 procure for employees opportunities to work for an employer and shall
4 include an agent of such a person but shall not include an agency of the
5 United States, except that such term shall include the United States
6 Employment Service and the system of state and local employment services
7 receiving federal assistance;

8 (5) Covered entity shall mean an employer, an employment agency, a
9 labor organization, or a joint labor-management committee;

10 (6) Privileges of employment shall mean terms and conditions of any
11 employer-employee relationship, opportunities for advancement of
12 employees, and plant conveniences;

13 (7) Employee shall mean an individual employed by an employer;

14 (8) Commission shall mean the Equal Opportunity Commission;

15 (9) Disability shall mean (a) a physical or mental impairment that
16 substantially limits one or more of the major life activities of such
17 individual, (b) a record of such an impairment, or (c) being regarded as
18 having such an impairment. Disability shall not include homosexuality,
19 bisexuality, transvestism, transsexualism, pedophilia, exhibitionism,
20 voyeurism, gender-identity disorders not resulting in physical
21 impairments, other sexual behavior disorders, problem gambling,
22 kleptomania, pyromania, or psychoactive substance use disorders resulting
23 from current illegal use of drugs;

24 (10)(a) Qualified individual with a disability shall mean an
25 individual with a disability who, with or without reasonable
26 accommodation, can perform the essential functions of the employment
27 position that such individual holds or desires. Consideration shall be
28 given to the employer's judgment as to what functions of a job are
29 essential, and if an employer has prepared a written description before
30 advertising or interviewing applicants for the job, this description
31 shall be considered evidence of the essential functions of the job;

1 (b) Qualified individual with a disability shall not include any
2 employee or applicant who is currently engaged in the illegal use of
3 drugs when the covered entity acts on the basis of such use; and

4 (c) Nothing in this subdivision shall be construed to exclude as a
5 qualified individual with a disability an individual who:

6 (i) Has successfully completed a supervised drug rehabilitation
7 program or otherwise been rehabilitated successfully and is no longer
8 engaging in the illegal use of drugs;

9 (ii) Is participating in a supervised rehabilitation program and is
10 no longer engaging in such use; or

11 (iii) Is erroneously regarded as engaging in such use but is not
12 engaging in such use;

13 (11) Reasonable accommodation, with respect to disability, shall
14 include making existing facilities used by employees readily accessible
15 to and usable by individuals with disabilities, job-restructuring, part-
16 time or modified work schedules, reassignment to a vacant position,
17 acquisition or modification of equipment or devices, appropriate
18 adjustment or modification of examinations, training manuals, or
19 policies, the provision of qualified readers or interpreters, and other
20 similar accommodations for individuals with disabilities. Reasonable
21 accommodation, with respect to pregnancy, childbirth, or related medical
22 conditions, shall include acquisition of equipment for sitting, more
23 frequent or longer breaks, periodic rest, assistance with manual labor,
24 job restructuring, light duty assignments, modified work schedules,
25 temporary transfers to less strenuous or hazardous work, time off to
26 recover from childbirth, or break time and appropriate facilities for
27 breast-feeding or expressing breast milk. Reasonable accommodation shall
28 not include accommodations which the covered entity can demonstrate
29 require significant difficulty or expense thereby posing an undue
30 hardship upon the covered entity. Factors to be considered in determining
31 whether an accommodation would pose an undue hardship shall include:

1 (a) The nature and the cost of the accommodation needed under the
2 Nebraska Fair Employment Practice Act;

3 (b) The overall financial resources of the facility or facilities
4 involved in the provision of the reasonable accommodation, the number of
5 persons employed at such facility, the effect on expenses and resources,
6 or the impact otherwise of such accommodation upon the operation of the
7 facility;

8 (c) The overall financial resources of the covered entity, the
9 overall size of the business of a covered entity with respect to the
10 number of its employees, and the number, type, and location of its
11 facilities; and

12 (d) The type of operation or operations of the covered entity,
13 including the composition, structure, and functions of the work force of
14 such entity, and the geographic separateness and administrative or fiscal
15 relationship of the facility or facilities in question to the covered
16 entity;

17 (12) Marital status shall mean the status of a person whether
18 married or single;

19 (13) Because of sex or on the basis of sex shall include, but not be
20 limited to, because of or on the basis of pregnancy, childbirth, or
21 related medical conditions;

22 (14) Harass because of sex shall include making unwelcome sexual
23 advances, requesting sexual favors, and engaging in other verbal or
24 physical conduct of a sexual nature if (a) submission to such conduct is
25 made either explicitly or implicitly a term or condition of an
26 individual's employment, (b) submission to or rejection of such conduct
27 by an individual is used as the basis for employment decisions affecting
28 such individual, or (c) such conduct has the purpose or effect of
29 unreasonably interfering with an individual's work performance or
30 creating an intimidating, hostile, or offensive working environment;

31 (15) Unlawful under federal law or the laws of this state shall mean

1 acting contrary to or in defiance of the law or disobeying or
2 disregarding the law;

3 (16) Drug shall mean a controlled substance as defined in section
4 28-401; and

5 (17) Illegal use of drugs shall mean the use of drugs, the
6 possession or distribution of which is unlawful under the Uniform
7 Controlled Substances Act, but shall not include the use of a drug taken
8 under supervision by a licensed health care professional or any other use
9 authorized by the Uniform Controlled Substances Act or other provisions
10 of state law.

11 Sec. 2. Section 48-1107.01, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 48-1107.01 It shall be an unlawful employment practice for a covered
14 entity to:

15 (1) Discriminate ~~discriminate~~ against a qualified individual with a
16 disability because of the disability of such individual in regard to job
17 application procedures, the hiring, advancement, or discharge of
18 employees, employee compensation, job training, and other terms,
19 conditions, and privileges of employment; ~~or -~~

20 (2) Discriminate against an individual affected by pregnancy,
21 childbirth, or related medical conditions in regard to job application
22 procedures, the hiring, advancement, or discharge of employees, employee
23 compensation, job training, and other terms, conditions, and privileges
24 of employment.

25 Sec. 3. Section 48-1107.02, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 48-1107.02 (1) When referring to a qualified individual with a
28 disability, discrimination shall include:

29 (a 1) Limiting, segregating, or classifying a job applicant or
30 employee in a way that adversely affects the opportunities or status of
31 the applicant or employee because of the disability of the applicant or

1 employee;

2 (b 2) Participating in a contractual or other arrangement or
3 relationship that has the effect of subjecting a qualified individual
4 with a disability to discrimination in the application or employment
5 process, including a relationship with an employment agency, a labor
6 union, an organization providing fringe benefits to an employee of the
7 covered entity, or an organization providing training and apprenticeship
8 programs;

9 (c 3) Utilizing standards, criteria, or methods of administration (i
10 a) that have the effect of discrimination on the basis of disability or
11 (ii b) that perpetuate the discrimination against others who are subject
12 to common administrative control;

13 (d 4) Excluding or otherwise denying equal jobs or benefits to a
14 qualified individual with a disability because of the known disability of
15 an individual with whom the qualified individual with a disability is
16 known to have a relationship or association;

17 (e 5) Not making reasonable accommodations to the known physical or
18 mental limitations of an otherwise qualified individual with a disability
19 who is an applicant or employee unless such covered entity can
20 demonstrate that the accommodation would impose an undue hardship on the
21 operation of the business of the covered entity;

22 (f 6) Denying employment opportunities to a job applicant or
23 employee who is otherwise a qualified individual with a disability if the
24 denial is based upon the need of such covered entity to make reasonable
25 accommodation to the physical or mental impairments of the employee or
26 applicant;

27 (g 7) Using qualification standards, employment tests, or other
28 selection criteria that screen out or tend to screen out an individual
29 with a disability or a class of individuals with disabilities unless the
30 standard, test, or other selection criteria, as used by the covered
31 entity, is shown to be job-related for the position in question and is

1 consistent with business necessity;

2 (h 8) Failing to select and administer tests concerning employment
3 in the most effective manner to ensure that, when the test is
4 administered to a job applicant or employee who has a disability that
5 impairs sensory, manual, or speaking skills, the test results accurately
6 reflect the skills, aptitude, or whatever other factor of the applicant
7 or employee that the test purports to measure rather than reflecting the
8 impaired sensory, manual, or speaking skills of the employee or applicant
9 except when such skills are the factors that the test purports to
10 measure;

11 (i 9) Conducting a medical examination or making inquiries of a job
12 applicant as to whether the applicant is an individual with a disability
13 or as to the nature or severity of the disability, except that:

14 (i a) A covered entity may make preemployment inquiries into the
15 ability of an applicant to perform job-related functions;

16 (ii b) A test to determine the illegal use of drugs shall not be
17 considered a medical examination; and

18 (iii e) A covered entity may require a medical examination after an
19 offer of employment has been made to a job applicant and prior to the
20 commencement of the employment duties of the applicant and may condition
21 an offer of employment on the results of the examination if:

22 (A i) All entering employees are subjected to such an examination
23 regardless of disability;

24 (B ii) Information obtained regarding the medical condition or
25 history of the applicant is collected and maintained on separate forms
26 and in separate medical files and is treated as a confidential medical
27 record, except that (I A) supervisors and managers may be informed
28 regarding necessary restrictions on the work or duties of the employee
29 and necessary accommodations, (II B) first-aid and safety personnel may
30 be informed, when appropriate, if the disability might require emergency
31 treatment, (III G) government officials investigating compliance with the

1 Nebraska Fair Employment Practice Act shall be provided relevant
2 information on request, and (~~IV D~~) information shall be made available in
3 accordance with the Nebraska Workers' Compensation Act; and

4 (~~C iii~~) The results of the examination are used only in a manner not
5 inconsistent with the Nebraska Fair Employment Practice Act; and

6 (~~j 10~~) Requiring a medical examination or making inquiries of an
7 employee as to whether the employee is an individual with a disability or
8 as to the nature or severity of the disability, unless the examination or
9 inquiry is shown to be job-related and consistent with business
10 necessity. A test to determine the illegal use of drugs shall not be
11 considered a medical examination. A covered entity may conduct voluntary
12 medical examinations, including voluntary medical histories, which are
13 part of an employee health program available to employees at the worksite
14 and may make inquiries into the ability of an employee to perform job-
15 related functions if the information obtained regarding the medical
16 condition or history of the employee is subject to the requirements in
17 subdivisions (~~1~~)(~~i~~)(~~iii~~)(~~B~~) (~~9~~)(~~c~~)(~~ii~~) and (~~C iii~~) of this section.

18 (~~2~~) When referring to an individual affected by pregnancy,
19 childbirth, or related medical conditions, discrimination shall include:

20 (~~a~~) Limiting, segregating, or classifying a job applicant or
21 employee in a way that adversely affects the opportunities or status of
22 the applicant or employee because of the pregnancy, childbirth, or
23 related medical conditions of the applicant or employee;

24 (~~b~~) Participating in a contractual or other arrangement or
25 relationship that has the effect of subjecting an individual affected by
26 pregnancy, childbirth, or related medical conditions to discrimination in
27 the application or employment process, including a relationship with an
28 employment agency, a labor union, an organization providing fringe
29 benefits to an employee of the covered entity, or an organization
30 providing training and apprenticeship programs;

31 (~~c~~) Utilizing standards, criteria, or methods of administration (i)

1 that have the effect of discrimination on the basis of pregnancy,
2 childbirth, or related medical conditions or (ii) that perpetuate the
3 discrimination against others who are subject to common administrative
4 control;

5 (d) Not making reasonable accommodations to the known physical
6 limitations of an individual affected by pregnancy, childbirth, or
7 related medical conditions who is an applicant or employee unless such
8 covered entity can demonstrate that the accommodation would impose an
9 undue hardship on the operation of the business of the covered entity;

10 (e) Denying employment opportunities to a job applicant or employee
11 who is affected by pregnancy, childbirth, or related medical conditions
12 if the denial is based upon the need of such covered entity to make
13 reasonable accommodation to the physical limitations due to the
14 pregnancy, childbirth, or related medical conditions of the employee or
15 applicant;

16 (f) Using qualification standards, employment tests, or other
17 selection criteria that screen out or tend to screen out an individual or
18 a class of individuals who are affected by pregnancy, childbirth, or
19 related medical conditions unless the standard, test, or other selection
20 criteria, as used by the covered entity, is shown to be job-related for
21 the position in question and is consistent with business necessity;

22 (g) Conducting a medical examination or making inquiries of a job
23 applicant as to whether the applicant is affected by pregnancy,
24 childbirth, or related medical conditions, except that:

25 (i) A covered entity may make preemployment inquiries into the
26 ability of an applicant to perform job-related functions;

27 (ii) A test to determine the illegal use of drugs shall not be
28 considered a medical examination; and

29 (iii) A covered entity may require a medical examination after an
30 offer of employment has been made to a job applicant and prior to the
31 commencement of the employment duties of the applicant and may condition

1 an offer of employment on the results of the examination if:

2 (A) All entering employees are subjected to such an examination;

3 (B) Information obtained regarding the medical condition or history
4 of the applicant is collected and maintained on separate forms and in
5 separate medical files and is treated as a confidential medical record,
6 except that (I) supervisors and managers may be informed regarding
7 necessary restrictions on the work or duties of the employee and
8 necessary accommodations, (II) first-aid and safety personnel may be
9 informed, when appropriate, if the pregnancy, childbirth, or related
10 medical conditions might require emergency treatment, (III) government
11 officials investigating compliance with the Nebraska Fair Employment
12 Practice Act shall be provided relevant information on request, and (IV)
13 information shall be made available in accordance with the Nebraska
14 Workers' Compensation Act; and

15 (C) The results of the examination are used only in a manner not
16 inconsistent with the Nebraska Fair Employment Practice Act;

17 (h) Requiring a medical examination or making inquiries of an
18 employee as to whether the employee is affected by pregnancy, childbirth,
19 or related medical conditions unless the examination or inquiry is shown
20 to be job-related and consistent with business necessity. A test to
21 determine the illegal use of drugs shall not be considered a medical
22 examination. A covered entity may conduct voluntary medical examinations,
23 including voluntary medical histories, which are part of an employee
24 health program available to employees at the worksite and may make
25 inquiries into the ability of an employee to perform job-related
26 functions if the information obtained regarding the medical condition or
27 history of the employee is subject to the requirements in subdivisions
28 (2)(g)(iii)(B) and (C) of this section;

29 (i) Requiring a job applicant or employee affected by pregnancy,
30 childbirth, or related medical conditions to accept an accommodation that
31 such applicant or employee chooses not to accept if such applicant or

1 employee does not have a known limitation related to pregnancy,
2 childbirth, or related medical conditions or if such accommodation is
3 unnecessary for the applicant or employee to perform the essential duties
4 of the job;

5 (j) Requiring an employee to take leave under any leave law or
6 policy of the covered entity if another reasonable accommodation can be
7 provided to the known limitations related to the pregnancy, childbirth,
8 or related medical conditions of the employee; and

9 (k) Taking adverse action against an employee in the terms,
10 conditions, or privileges of employment for requesting or using a
11 reasonable accommodation to the known limitations related to the
12 pregnancy, childbirth, or related medical conditions of the employee.

13 Sec. 4. Section 48-1111, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 48-1111 (1) Except as otherwise provided in the Nebraska Fair
16 Employment Practice Act, it shall not be an unlawful employment practice
17 for an employer to apply different standards of compensation, or
18 different terms, conditions, or privileges of employment pursuant to a
19 bona fide seniority or merit system or a system which measures earnings
20 by quantity or quality of production or to employees who work in
21 different locations, if such differences are not the result of an
22 intention to discriminate because of race, color, religion, sex,
23 disability, marital status, or national origin, nor shall it be an
24 unlawful employment practice for an employer to give and to act upon the
25 results of any professionally developed ability test if such test, its
26 administration, or action upon the results is not designed, intended, or
27 used to discriminate because of race, color, religion, sex, disability,
28 marital status, or national origin.

29 It shall not be an unlawful employment practice for a covered entity
30 to deny privileges of employment to an individual with a disability when
31 the qualification standards, tests, or selection criteria that screen out

1 or tend to screen out or otherwise deny a job or benefit to an individual
2 with a disability:

3 (a) Have been shown to be job-related and consistent with business
4 necessity and such performance cannot be accomplished by reasonable
5 accommodation, as required by the Nebraska Fair Employment Practice Act
6 and the federal Americans with Disabilities Act of 1990; or

7 (b) Include a requirement that an individual shall not pose a direct
8 threat, involving a significant risk to the health or safety of other
9 individuals in the workplace, that cannot be eliminated by reasonable
10 accommodation.

11 It shall not be an unlawful employment practice to refuse employment
12 based on a policy of not employing both husband and wife if such policy
13 is equally applied to both sexes.

14 (2) Except as otherwise provided in the Nebraska Fair Employment
15 Practice Act, women ~~women~~ affected by pregnancy, childbirth, or related
16 medical conditions shall be treated the same for all employment-related
17 purposes, including receipt of employee benefits, as other persons not so
18 affected but similar in their ability or inability to work, and nothing
19 in this section shall be interpreted to provide otherwise.

20 This section shall not require an employer to provide employee
21 benefits for abortion except when medical complications have arisen from
22 an abortion.

23 Nothing in this section shall preclude an employer from providing
24 employee benefits for abortion under fringe benefit programs or otherwise
25 affect bargaining agreements in regard to abortion.

26 Sec. 5. Section 48-1117, Revised Statutes Cumulative Supplement,
27 2014, is amended to read:

28 48-1117 The commission shall have the following powers and duties:

29 (1) To receive, investigate, and pass upon charges of unlawful
30 employment practices anywhere in the state;

31 (2) To hold hearings, subpoena witnesses, compel their attendance,

1 administer oaths, and take the testimony of any person under oath and, in
2 connection therewith, to require the production for examination of any
3 books and papers relevant to any allegation of unlawful employment
4 practice pending before the commission. The commission may make rules as
5 to the issuance of subpoenas, subject to the approval by a constitutional
6 majority of the elected members of the Legislature;

7 (3) To cooperate with the federal government and with local agencies
8 to effectuate the purposes of the Nebraska Fair Employment Practice Act,
9 including the sharing of information possessed by the commission on a
10 case that has also been filed with the federal government or local
11 agencies if both the employer and complainant have been notified of the
12 filing;

13 (4) To attempt to eliminate unfair employment practices by means of
14 conference, mediation, conciliation, arbitration, and persuasion;

15 (5) To require that every employer, employment agency, and labor
16 organization subject to the act shall (a) make and keep such records
17 relevant to the determinations of whether unlawful employment practices
18 have been or are being committed, (b) preserve such records for such
19 periods, and (c) make such reports therefrom, as the commission shall
20 prescribe by regulation or order, after public hearing, as reasonable,
21 necessary, or appropriate for the enforcement of the act or the
22 regulations or orders thereunder. The commission shall, by regulation,
23 require each employer, labor organization, and joint labor-management
24 committee subject to the act which controls an apprenticeship or other
25 training program to maintain such records as are reasonably necessary to
26 carry out the purposes of the act, including, but not limited to, a list
27 of applicants who wish to participate in such program, including the
28 chronological order in which such applications were received, and to
29 furnish to the commission, upon request, a detailed description of the
30 manner in which persons are selected to participate in the apprenticeship
31 or other training program. Any employer, employment agency, labor

1 organization, or joint labor-management committee which believes that the
2 application to it of any regulation or order issued under this section
3 would result in undue hardship may either apply to the commission for an
4 exemption from the application of such regulation or order or bring a
5 civil action in the district court for the district where such records
6 are kept. If the commission or the court, as the case may be, finds that
7 the application of the regulation or order to the employer, employment
8 agency, or labor organization in question would impose an undue hardship,
9 the commission or the court, as the case may be, may grant appropriate
10 relief;

11 (6) To report, not less than once every two years, to the Clerk of
12 the Legislature and the Governor, on the hearings it has conducted and
13 the decisions it has rendered, the other work performed by it to carry
14 out the purposes of the act, and to make recommendations for such further
15 legislation concerning abuses and discrimination because of race, color,
16 religion, sex, disability, marital status, or national origin, as may be
17 desirable. The report shall also include the number of complaints filed
18 under the act alleging a violation of subdivision (2) of section
19 48-1107.01 and the resolution of such complaints. The report submitted to
20 the Clerk of the Legislature shall be submitted electronically. Each
21 member of the Legislature shall receive an electronic copy of the report
22 required by this subdivision by making a request for it to the
23 chairperson of the commission; and

24 (7) To adopt and promulgate rules and regulations necessary to carry
25 out the duties prescribed in the act.

26 Sec. 6. Original sections 48-1102, 48-1107.01, 48-1107.02, and
27 48-1111, Reissue Revised Statutes of Nebraska, and section 48-1117,
28 Revised Statutes Cumulative Supplement, 2014, are repealed.