

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 953

FINAL READING

Introduced by Albrecht, 17.

Read first time January 10, 2018

Committee: Business and Labor

1 A BILL FOR AN ACT relating to labor; to amend sections 48-2907 and
2 48-2911, Reissue Revised Statutes of Nebraska, and section 48-139,
3 Revised Statutes Cumulative Supplement, 2016; to change provisions
4 relating to lump-sum settlements; to prohibit contractors with
5 unpaid fines under the Employee Classification Act from contracting
6 with the state or a political subdivision; to change provisions
7 relating to a required affidavit; and to repeal the original
8 sections.

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

1 Section 1. Section 48-139, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 48-139 (1)(a) Whenever an injured employee or his or her dependents
4 and the employer agree that the amounts of compensation due as periodic
5 payments for death, permanent disability, or claimed permanent disability
6 under the Nebraska Workers' Compensation Act shall be commuted to one or
7 more lump-sum payments, such settlement shall be submitted to the
8 Nebraska Workers' Compensation Court for approval as provided in
9 subsection (2) of this section if:

10 (i) The employee is not represented by counsel;

11 (ii) The employee, at the time the settlement is executed, is
12 eligible for medicare, is a medicare beneficiary, or has a reasonable
13 expectation of becoming eligible for medicare within thirty months after
14 the date the settlement is executed;

15 (iii) Medical, surgical, or hospital expenses incurred for treatment
16 of the injury have been paid by medicaid and medicaid will not be
17 reimbursed as part of the settlement;

18 (iv) Medical, surgical, or hospital expenses incurred for treatment
19 of the injury will not be fully paid as part of the settlement; or

20 (v) The settlement seeks to commute amounts of compensation due to
21 dependents of the employee.

22 (b) If such lump-sum settlement is not required to be submitted for
23 approval by the compensation court, a release shall be filed with the
24 compensation court as provided in subsection (3) of this section. Nothing
25 in this section shall be construed to increase the compensation court's
26 duties or authority with respect to the approval of lump-sum settlements
27 under the act.

28 (2)(a) An application for an order approving a lump-sum settlement,
29 signed and verified by both parties, shall be filed with the clerk of the
30 compensation court and shall be entitled the same as an action by such
31 employee or dependents against such employer. The application shall

1 contain a concise statement of the terms of the settlement or agreement
2 sought to be approved with a brief statement of the facts concerning the
3 injury, the nature thereof, the wages received by the injured employee
4 prior thereto, the nature of the employment, a description of the
5 medical, surgical, or hospital expenses incurred for treatment of the
6 injury that will remain unpaid as part of the settlement which are
7 disputed and for which compensability has been denied by the employer,
8 and such other matters as may be reasonably required by the compensation
9 court. The application shall also include a statement that the parties
10 have considered the interests of medicare and have taken reasonable steps
11 to protect any interests of medicare. The application may provide for
12 payment of future medical, surgical, or hospital expenses incurred by the
13 employee. The compensation court may, on its own motion, and shall, on a
14 motion by one of the parties, hold a hearing on the application at a time
15 and place selected by the compensation court, and proof may be adduced
16 and witnesses subpoenaed and examined the same as in an action in equity.

17 (b)(i) ~~(b)~~ If the compensation court finds such lump-sum settlement
18 is made in conformity with the compensation schedule and for the best
19 interests of the employee or his or her dependents under all the
20 circumstances, the compensation court shall make an order approving the
21 same.

22 (ii) If the expenses for medical, surgical, or hospital services
23 provided to the employee are not paid by the employer, or if any person,
24 other than medicaid, who has made any payment to the supplier of medical,
25 surgical, or hospital services provided to the employee, is not
26 reimbursed by the employer, it shall be conclusively presumed that the
27 nonpayment or nonreimbursement of disputed medical, surgical, or hospital
28 expenses, as set forth in the application, is in conformity with the
29 compensation schedule and for the best interests of the employee or his
30 or her dependents, if the employee's attorney elects to affirm and does
31 affirm in the application that the nonpayment or nonreimbursement of

1 disputed medical, surgical, or hospital expenses is in conformity with
2 the compensation schedule and for the best interests of the employee or
3 his or her dependents under all the circumstances.

4 (iii) If the employee, at the time the settlement is executed, is
5 eligible for medicare, is a medicare beneficiary, or has a reasonable
6 expectation of becoming eligible for medicare within thirty months after
7 the date the settlement is executed, and if the employee's attorney
8 elects to affirm and does affirm in the application that the parties'
9 agreement relating to consideration of medicare's interests set forth in
10 such lump-sum settlement is in conformity with the compensation schedule
11 and for the best interests of the employee or his or her dependents under
12 all the circumstances, it shall be conclusively presumed that the
13 parties' agreement relating to consideration of medicare's interests set
14 forth in the application is in conformity with the compensation schedule
15 and for the best interests of the employee or his or her dependents.

16 (iv) If such settlement is not approved, the compensation court may
17 dismiss the application at the cost of the employer or continue the
18 hearing, in the discretion of the compensation court.

19 (c) Every such lump-sum settlement approved by order of the
20 compensation court shall be final and conclusive unless procured by
21 fraud. An order approving an application under this subsection shall, in
22 any case in which the employee is represented by counsel and in which the
23 application contains a description of the medical, surgical, or hospital
24 expenses incurred for treatment of the injury that will remain unpaid as
25 part of the settlement which are disputed and for which compensability
26 has been denied by the employer, provide that the employer is not liable
27 for such expenses. Upon paying the amount approved by the compensation
28 court, the employer (i) shall be discharged from further liability on
29 account of the injury or death, other than liability for the payment of
30 future medical, surgical, or hospital expenses if such liability is
31 approved by the compensation court on the application of the parties, and

1 ~~(ii) shall be entitled to a duly executed release. Upon filing the~~
2 ~~release, the liability of the employer under any agreement, award,~~
3 ~~finding, or decree shall be discharged of record.~~

4 (d) An exclusion from coverage in any health, accident, or other
5 insurance policy covering an employee which provides that coverage under
6 such insurance policy does not apply if such employee is entitled to
7 workers' compensation coverage is void as to such employee if his or her
8 employer is not liable for medical, surgical, or hospital expenses
9 incurred for treatment of an injury that will remain unpaid as part of
10 the settlement pursuant to an order entered under subdivision (2)(c) of
11 this section.

12 (3) If such lump-sum settlement is not required to be submitted for
13 approval by the compensation court, a release shall be filed with the
14 compensation court in accordance with this subsection that is signed and
15 verified by the employee and the employee's attorney. The release shall
16 be made on a form approved by the compensation court and shall contain a
17 statement signed and verified by the employee that:

18 (a) The employee understands and waives all rights under the
19 Nebraska Workers' Compensation Act, including, but not limited to:

20 (i) The right to receive weekly disability benefits, both temporary
21 and permanent;

22 (ii) The right to receive vocational rehabilitation services;

23 (iii) The right to receive future medical, surgical, and hospital
24 services as provided in section 48-120, unless such services are
25 specifically excluded from the release; and

26 (iv) The right to ask a judge of the compensation court to decide
27 the parties' rights and obligations;

28 (b) The employee is not eligible for medicare, is not a current
29 medicare beneficiary, and does not have a reasonable expectation of
30 becoming eligible for medicare within thirty months after the date the
31 settlement is executed;

1 (c) There are no medical, surgical, or hospital expenses incurred
2 for treatment of the injury which have been paid by medicaid and not
3 reimbursed to medicaid by the employer as part of the settlement; and

4 (d) There are no medical, surgical, or hospital expenses incurred
5 for treatment of the injury that will remain unpaid after the settlement.

6 (4) Upon the entry of an order of dismissal with prejudice, a A
7 release filed with the compensation court in accordance with subsection
8 (3) of this section shall be final and conclusive as to all rights waived
9 in the release unless procured by fraud. Amounts to be paid by the
10 employer to the employee pursuant to such release shall be paid within
11 thirty days of filing the release with the compensation court. Fifty
12 percent shall be added for payments owed to the employee if made after
13 thirty days after the date the release is filed with the compensation
14 court. Upon making payment owed by the employer as set forth in the
15 release and upon the entry of an order of dismissal with prejudice, as to
16 all rights waived in the release, such release shall be a full and
17 complete discharge from further liability for the employer on account of
18 the injury, including future medical, surgical, or hospital expenses,
19 unless such expenses are specifically excluded from the release, ~~and the~~
20 ~~court shall enter an order of dismissal with prejudice as to all rights~~
21 ~~waived in the release.~~

22 (5) The fees of the clerk of the compensation court for filing,
23 docketing, and indexing an application for an order approving a lump-sum
24 settlement or filing a release as provided in this section shall be
25 fifteen dollars. The fees shall be remitted by the clerk to the State
26 Treasurer for credit to the Compensation Court Cash Fund.

27 Sec. 2. Section 48-2907, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 48-2907 (1) In addition to any other fines or penalties provided by
30 law, if the commissioner finds, after notice and hearing, that a
31 contractor has violated the Employee Classification Act, the contractor

1 shall be assessed, by the commissioner, a five-hundred-dollar fine per
2 each misclassified individual for the first offense and a five-thousand-
3 dollar fine per each misclassified individual for each second and
4 subsequent offense.

5 (2) Any contractor who has unpaid fines for a violation of the
6 Employee Classification Act shall be barred from contracting with the
7 state or any political subdivision until such fines are paid.

8 Sec. 3. Section 48-2911, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 48-2911 Any contract between the state or a political subdivision
11 and a contractor shall require that each contractor who performs
12 construction or delivery service pursuant to the contract submit to the
13 state or political subdivision an affidavit attesting that (1) each
14 individual performing services for such contractor is properly classified
15 under the Employee Classification Act, (2) such contractor has completed
16 a federal I-9 immigration form and has such form on file for each
17 employee performing services, (3) such contractor has complied with
18 section 4-114, (4) such contractor has no reasonable basis to believe
19 that any individual performing services for such contractor is an
20 undocumented worker, and (5) as of the time of the contract, such
21 contractor is not barred from contracting with the state or any political
22 subdivision pursuant to section 48-2907 or 48-2912. Such contract shall
23 also require that the contractor follow the provisions of the Employee
24 Classification Act. A violation of the act by a contractor is grounds for
25 rescission of the contract by the state or political subdivision.

26 Sec. 4. Original sections 48-2907 and 48-2911, Reissue Revised
27 Statutes of Nebraska, and section 48-139, Revised Statutes Cumulative
28 Supplement, 2016, are repealed.