

LEGISLATIVE BILL 1016

Approved by the Governor July 24, 2020

Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to labor; to amend sections 48-1228, 48-1231, 48-2107, and 48-2907, Revised Statutes Cumulative Supplement, 2018, and sections 48-622.03 and 48-1234, Revised Statutes Supplement, 2019; to change reporting requirements for the Department of Labor; to prohibit retaliation or discrimination by employers as prescribed; to provide and change requirements for claims under the Nebraska Wage Payment and Collection Act; to provide restrictions on employers with unpaid citations under the act; to require public posting of certain information related to compliance with the act; to change fee provisions under the Contractor Registration Act; to change enforcement provisions under the Employee Classification Act; to eliminate provisions related to service letters, high voltage lines, and private employment agencies; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 48-209, 48-210, 48-211, 48-440, 48-501.01, 48-503, 48-504, 48-505, 48-506, 48-507, 48-508, 48-510, 48-511, 48-512, 48-513, 48-514, 48-515, 48-516, 48-517, 48-518, 48-519, 48-520, 48-521, 48-523, and 48-524, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 48-622.03, Revised Statutes Supplement, 2019, is amended to read:

48-622.03 (1) There is hereby created the Nebraska Worker Training Board. The board shall consist of seven members appointed and serving for terms determined by the Governor as follows:

- (a) A representative of employers in Nebraska;
- (b) A representative of employees in Nebraska;
- (c) A representative of the public;
- (d) The Commissioner of Labor or a designee;
- (e) The Director of Economic Development or a designee;
- (f) The Commissioner of Education or a designee; and
- (g) The chairperson of the governing board of the Nebraska Community College Association or a designee.

(2) The chairperson of the Nebraska Worker Training Board shall be the representative of the employers in Nebraska.

(3) By July 1 of each year, the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Cash Fund. The guidelines shall include, but not be limited to, guidelines for certifying training providers, criteria for evaluating requests for the use of money under section 48-622.02, and guidelines for requiring employers to provide matching funds. The guidelines shall give priority to training that contributes to the expansion of the Nebraska workforce and increasing the pool of highly skilled workers in Nebraska.

(4) By December 31 July 1 of each year, the Department of Labor shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Cash Fund for the previous fiscal year. The report shall contain an assessment of the effectiveness of the program and its administration.

Sec. 2. Section 48-1228, Revised Statutes Cumulative Supplement, 2018, is amended to read:

48-1228 Sections 48-1228 to 48-1234 and sections 3 and 6 of this act shall be known and may be cited as the Nebraska Wage Payment and Collection Act.

Sec. 3. An employer shall not retaliate or discriminate against an employee because the employee:

- (1) Files a suit or complaint under the Nebraska Wage Payment and Collection Act; or
- (2) Testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of the act.

Sec. 4. Section 48-1231, Revised Statutes Cumulative Supplement, 2018, is amended to read:

48-1231 (1) An employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court. If an employee establishes a claim and secures judgment on the claim, such employee shall be entitled to recover (a) the full amount of the judgment and all costs of such suit, including reasonable attorney's fees and (b) if such employee has employed an attorney in the case, an amount for attorney's fees assessed by the court, which fees shall not be less than twenty-five percent of the unpaid wages. If the cause is taken to an appellate court and the employee plaintiff recovers a judgment, the appellate court shall award reasonable attorney's fees to the employee tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court, which fees shall not be less than

~~twenty-five percent of the unpaid wages.~~ If the employee fails to recover a judgment in excess of the amount that may have been tendered within thirty days of the regular payday by an employer, such employee shall not recover the attorney's fees provided by this subsection section. If the court finds that no reasonable dispute existed as to the fact that wages were owed or as to the amount of such wages, the court may order the employee to pay the employer's attorney's fees and costs of the action as assessed by the court.

(2) If an employee works for an employer that is not subject to the Nebraska Fair Employment Practice Act and such employee is aggrieved by a violation of section 3 of this act, the employee may bring a suit against such employer in the proper court to recover the damages sustained by reason of such violation. If an employee prevails in a suit brought pursuant to this subsection, such employee shall be entitled to recover the full amount of the judgment and all costs of such suit, including reasonable attorney's fees. If the cause is taken to an appellate court and the employee recovers a judgment, the appellate court shall award reasonable attorney's fees to the employee.

(3) (2) An employer who fails to furnish a wage statement under subsection (2) of section 48-1230 shall be guilty of an infraction as defined in section 29-431 and shall be subject to a fine pursuant to section 29-436.

(4) If an employee institutes suit against an employer under subsection (1) or (2) of this section, any citation that is issued against such employer under section 48-1234 and that relates directly to the facts in dispute shall be admitted into evidence unless specifically excluded by the court. If a citation has been contested as described in subsection (3) of section 48-1234, it shall not be admitted into evidence under this subsection until after such contest has been resolved.

Sec. 5. Section 48-1234, Revised Statutes Supplement, 2019, is amended to read:

48-1234 (1) The Commissioner of Labor shall issue a citation to an employer when an investigation reveals that the employer may have violated the Nebraska Wage Payment and Collection Act, other than a violation of subsection (2) of section 48-1230.

(2) When a citation is issued, the commissioner shall notify the employer of the proposed administrative penalty, if any, by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery or by any method of service recognized under Chapter 25, article 5. The administrative penalty shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation.

(3) The employer has fifteen working days after the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing in accordance with the Administrative Procedure Act.

(4) Any employer who has an unpaid citation for a violation of the Nebraska Wage Payment and Collection Act shall be barred from contracting with the state or any political subdivision until such citation is paid. If a citation has been contested as described in subsection (3) of this section, it shall not be considered an unpaid citation under this subsection until after such contest has been resolved.

(5) Citations issued under this section and the names of employers who have been issued a citation shall be made available to the public upon request, except that this subsection shall not apply to any citations that are being contested as described in subsection (3) of this section.

Sec. 6. No later than December 1 of each year, the Department of Labor shall post information on its web site regarding compliance with and enforcement of the Nebraska Wage Payment and Collection Act and shall provide notice to the Legislature that the information was posted. The information shall include, but not be limited to, (1) the total number of reports of unpaid wages filed with the department in the prior calendar year, (2) the total number of reports investigated in the prior calendar year, (3) the results of all investigations completed in the prior calendar year, including, but not limited to, the number of cases in which wages were found to be owed to an employee, the number of cases in which the employer paid wages owed to the employee during the course of the investigation, and the number of cases in which it was found that no wages were owed to an employee, (4) the number of citations issued pursuant to section 48-1234 in the prior calendar year, (5) the total amount of wages owed to employees according to the citations issued in the prior calendar year, (6) the number of employers with more than two citations in the previous five years, and (7) the number and names of employers with at least one unpaid citation from the previous five years.

Sec. 7. Section 48-2107, Revised Statutes Cumulative Supplement, 2018, is amended to read:

48-2107 (1) Each application or renewal under section 48-2105 shall be signed by the applicant and accompanied by a fee ~~not to exceed~~ of forty dollars. The commissioner may adopt and promulgate rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures. The commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established. The fee shall not be required when an amendment to an application is submitted. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the Contractor and Professional Employer Organization Registration Cash Fund.

(2) A contractor shall not be required to pay the fee under subsection (1) of this section if (a) the contractor is self-employed and does not pay more than three thousand dollars annually to employ other persons in the business and the application contains a statement made under oath or equivalent affirmation setting forth such information or (b) the contractor only engages in the construction of water wells or installation of septic systems. At any time that a contractor no longer qualifies for exemption from the fee, the fee shall be paid to the department. Any false statement made under subdivision (2) (a) of this section shall be a violation of section 28-915.01.

(3) The commissioner shall charge an additional fee of twenty-five dollars for the registration of each nonresident contractor and a fee of twenty-five dollars for the registration of each contract to which a nonresident contractor is a party if the total contract price or compensation to be received is more than ten thousand dollars. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the General Fund.

Sec. 8. Section 48-2907, Revised Statutes Cumulative Supplement, 2018, is amended to read:

48-2907 (1) In addition to any other fines or penalties provided by law, if the commissioner may issue a citation to a contractor when an investigation reveals finds, after notice and hearing, that a contractor has violated the Employee Classification Act, , the contractor shall be assessed, by the commissioner, a five hundred dollar fine

(2) When a citation is issued, the commissioner shall notify the contractor of the proposed administrative penalty, if any, by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery or by any method of service recognized under Chapter 25, article 5. The administrative penalty shall be not more than five hundred dollars per each misclassified individual for the first offense and not more than five thousand dollars a five thousand dollar fine per each misclassified individual for each second or and subsequent offense.

(3) The contractor has fifteen working days after the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing in accordance with the Administrative Procedure Act.

(4) A contractor who is assessed an administrative penalty for a violation of the Employee Classification Act shall pay such administrative penalty no later than ten days after the date the penalty becomes final and not subject to further appeal. A (2) Any contractor who has an unpaid administrative penalty in violation of this subsection fines for a violation of the Employee Classification Act shall be barred from contracting with the state or any political subdivision until such administrative penalty is fines are paid.

Sec. 9. Sections 2, 3, 4, 5, 6, and 11 of this act become operative on October 1, 2020. The other sections of this act become operative on their effective date.

Sec. 10. Original sections 48-2107 and 48-2907, Revised Statutes Cumulative Supplement, 2018, and section 48-622.03, Revised Statutes Supplement, 2019, are repealed.

Sec. 11. Original sections 48-1228 and 48-1231, Revised Statutes Cumulative Supplement, 2018, and section 48-1234, Revised Statutes Supplement, 2019, are repealed.

Sec. 12. The following sections are outright repealed: Sections 48-209, 48-210, 48-211, 48-440, 48-501.01, 48-503, 48-504, 48-505, 48-506, 48-507, 48-508, 48-510, 48-511, 48-512, 48-513, 48-514, 48-515, 48-516, 48-517, 48-518, 48-519, 48-520, 48-521, 48-523, and 48-524, Reissue Revised Statutes of Nebraska.

Sec. 13. Since an emergency exists, this act takes effect when passed and approved according to law.