

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1029

Introduced by Hunt, 8.

Read first time January 13, 2022

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the Nebraska Fair Employment Practice Act;
2 to amend sections 48-1102, 48-1104, 48-1107, 48-1107.01, 48-1108.01,
3 48-1114, and 48-1121, Reissue Revised Statutes of Nebraska; to
4 define and redefine terms; to prohibit harassment by certain
5 employers; to provide an unlawful employment practice for a covered
6 entity; to harmonize provisions; and to repeal the original
7 sections.
8 Be it enacted by the people of the State of Nebraska,

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

3 48-1102 For purposes of the Nebraska Fair Employment Practice Act,
4 unless the context otherwise requires:

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

10 (2) Employer includes a Class I employer and a Class II employer;

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

23 (4) Class II employer means a person engaged in an industry who has
24 one or more employees for each working day in each of twenty or more
25 calendar weeks in the current or preceding calendar year and any agent of
26 such a person, but such term does not include (a) the United States, a
27 corporation wholly owned by the government of the United States, or an
28 Indian tribe, (b) a bona fide private membership club, other than a labor
29 organization, which is exempt from taxation under section 501(c) of the
30 Internal Revenue Code, or (c) a Class I employer;

31 (5) ~~(3)~~ Labor organization means shall mean any organization which

1 exists wholly or in part for one or more of the following purposes:
2 Collective bargaining; dealing with employers concerning grievances,
3 terms, or conditions of employment; or mutual aid or protection in
4 relation to employment;

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

12 ~~(7)~~ (5) Covered entity means ~~a Class I shall mean~~ an employer, an
13 employment agency, a labor organization, or a joint labor-management
14 committee;

15 ~~(8)~~ (6) Privileges of employment means ~~shall mean~~ terms and
16 conditions of any employer-employee relationship, opportunities for
17 advancement of employees, and plant conveniences;

18 ~~(9)~~ (7) Employee means ~~shall mean~~ an individual employed by an
19 employer;

20 ~~(10)~~ (8) Commission means ~~shall mean~~ the Equal Opportunity
21 Commission;

22 ~~(11)~~ (9) Disability means ~~shall mean~~ (a) a physical or mental
23 impairment that substantially limits one or more of the major life
24 activities of such individual, (b) a record of such an impairment, or (c)
25 being regarded as having such an impairment. Disability does ~~shall~~ not
26 include homosexuality, bisexuality, transvestism, transsexualism,
27 pedophilia, exhibitionism, voyeurism, gender-identity disorders not
28 resulting in physical impairments, other sexual behavior disorders,
29 problem gambling, kleptomania, pyromania, or psychoactive substance use
30 disorders resulting from current illegal use of drugs;

31 ~~(12)(a)~~ (10)(a) Qualified individual with a disability means ~~shall~~

1 ~~mean~~ an individual with a disability who, with or without reasonable
2 accommodation, can perform the essential functions of the employment
3 position that such individual holds or desires. Consideration shall be
4 given to the employer's judgment as to what functions of a job are
5 essential, and if an employer has prepared a written description before
6 advertising or interviewing applicants for the job, this description
7 shall be considered evidence of the essential functions of the job;

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

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

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

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

18 (iii) Is erroneously regarded as engaging in such use but is not
19 engaging in such use;

20 (13) ~~(11)~~ Reasonable accommodation, with respect to disability,
21 includes ~~shall include~~ making existing facilities used by employees
22 readily accessible to and usable by individuals with disabilities, job
23 restructuring, part-time or modified work schedules, reassignment to a
24 vacant position, acquisition or modification of equipment or devices,
25 appropriate adjustment or modification of examinations, training manuals,
26 or policies, the provision of qualified readers or interpreters, and
27 other similar accommodations for individuals with disabilities.
28 Reasonable accommodation, with respect to pregnancy, childbirth, or
29 related medical conditions, includes ~~shall include~~ acquisition of
30 equipment for sitting, more frequent or longer breaks, periodic rest,
31 assistance with manual labor, job restructuring, light-duty assignments,

1 modified work schedules, temporary transfers to less strenuous or
2 hazardous work, time off to recover from childbirth, or break time and
3 appropriate facilities for breast-feeding or expressing breast milk.
4 Reasonable accommodation ~~does shall~~ not include accommodations which the
5 covered entity can demonstrate require significant difficulty or expense
6 thereby posing an undue hardship upon the covered entity. Factors to be
7 considered in determining whether an accommodation would pose an undue
8 hardship shall include:

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

11 (b) The overall financial resources of the facility or facilities
12 involved in the provision of the reasonable accommodation, the number of
13 persons employed at such facility, the effect on expenses and resources,
14 or the impact otherwise of such accommodation upon the operation of the
15 facility;

16 (c) The overall financial resources of the covered entity, the
17 overall size of the business of a covered entity with respect to the
18 number of its employees, and the number, type, and location of its
19 facilities; and

20 (d) The type of operation or operations of the covered entity,
21 including the composition, structure, and functions of the work force of
22 such entity, and the geographic separateness and administrative or fiscal
23 relationship of the facility or facilities in question to the covered
24 entity;

25 ~~(14) (12)~~ Marital status means ~~shall mean~~ the status of a person
26 whether married or single;

27 ~~(15) (13)~~ Because of sex or on the basis of sex includes ~~shall~~
28 ~~include~~, but is not be limited to, because of or on the basis of
29 pregnancy, childbirth, or related medical conditions;

30 ~~(16)(a) (14)~~ Harass because of sex includes ~~shall include~~ making
31 unwelcome sexual advances, requesting sexual favors, and engaging in

1 other verbal or physical conduct of a sexual nature if (i) ~~(a)~~ submission
2 to such conduct is made either explicitly or implicitly a term or
3 condition of an individual's employment, (ii) ~~(b)~~ submission to or
4 rejection of such conduct by an individual is used as the basis for
5 employment decisions affecting such individual, or (iii) ~~(c)~~ such conduct
6 has the purpose or effect of unreasonably interfering with an
7 individual's work performance or creating an intimidating, hostile, or
8 offensive working environment;

9 (b) Harass, when used in relation to race, color, religion,
10 disability, marital status, or national origin, means conduct which has
11 the purpose or effect of unreasonably interfering with an employee's work
12 performance or creating an intimidating, hostile, or offensive working
13 environment;

14 (17) (15) Unlawful under federal law or the laws of this state means
15 ~~shall mean~~ acting contrary to or in defiance of the law or disobeying or
16 disregarding the law;

17 (18) (16) Drug means shall mean a controlled substance as defined in
18 section 28-401;

19 (19) (17) Illegal use of drugs means shall mean the use of drugs,
20 the possession or distribution of which is unlawful under the Uniform
21 Controlled Substances Act, but does shall not include the use of a drug
22 taken under supervision by a licensed health care professional or any
23 other use authorized by the Uniform Controlled Substances Act or other
24 provisions of state law;

25 (20) (18) Individual who is pregnant, who has given birth, or who
26 has a related medical condition means shall mean an individual with a
27 known limitation who, with or without reasonable accommodation, can
28 perform the essential functions of the employment position that such
29 individual holds, desires, or may be temporarily assigned to.
30 Consideration shall be given to the employer's judgment as to what
31 functions of a job are essential, and if an employer has prepared a

1 written description before advertising or interviewing applicants for the
2 job, this description shall be considered evidence of the essential
3 functions of the job;

4 (21) ~~(19)~~ Race is inclusive of characteristics such as skin color,
5 hair texture, and protective hairstyles; and

6 (22) ~~(20)~~ Protective hairstyles includes braids, locks, and twists.

7 Sec. 2. Section 48-1104, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 48-1104 (1) It shall be an unlawful employment practice for a Class
10 I ~~an~~ employer:

11 (a) ~~(1)~~ To fail or refuse to hire, to discharge, or to harass any
12 individual, or otherwise to discriminate against any individual with
13 respect to compensation, terms, conditions, or privileges of employment,
14 because of such individual's race, color, religion, sex, disability,
15 marital status, or national origin; or

16 (b) ~~(2)~~ To limit, advertise, solicit, segregate, or classify
17 employees in any way which would deprive or tend to deprive any
18 individual of employment opportunities or otherwise adversely affect such
19 individual's status as an employee, because of such individual's race,
20 color, religion, sex, disability, marital status, or national origin.

21 (2) It shall be an unlawful employment practice for a Class II
22 employer to harass any employee because of such employee's race, color,
23 religion, sex, disability, marital status, or national origin.

24 Sec. 3. Section 48-1107, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 48-1107 It shall be an unlawful employment practice for any Class I
27 employer, labor organization, or joint labor-management committee
28 controlling apprenticeship or other training or retraining, including on-
29 the-job training programs to discriminate against any individual because
30 of race, color, religion, sex, disability, marital status, or national
31 origin in admission to, or employment in, any program established to

1 provide apprenticeship or other training.

2 Sec. 4. Section 48-1107.01, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 48-1107.01 It shall be an unlawful employment practice for a covered
5 entity to:

6 (1) Discriminate against a qualified individual with a disability
7 because of the disability of such individual in regard to job application
8 procedures, the hiring, advancement, or discharge of employees, employee
9 compensation, job training, and other terms, conditions, and privileges
10 of employment; ~~or~~

11 (2) Discriminate against an individual who is pregnant, who has
12 given birth, or who has a related medical condition in regard to job
13 application procedures, the hiring, advancement, or discharge of
14 employees, employee compensation, job training, and other terms,
15 conditions, and privileges of employment; or -

16 (3) Discriminate against an individual, because of the known
17 disability of an individual with whom the individual is known to have a
18 relationship or association, in regard to job application procedures, the
19 hiring, advancement, or discharge of employees, employee compensation,
20 job training, and other terms, conditions, and privileges of employment.

21 Sec. 5. Section 48-1108.01, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 48-1108.01 It shall not be an unlawful employment practice for a
24 covered entity or a Class II employer to:

25 (1) Prohibit the illegal use of drugs and the use of alcohol at the
26 workplace by all employees;

27 (2) Require that employees not be under the influence of alcohol or
28 be engaging in the illegal use of drugs at the workplace;

29 (3) Require employees to comply with any federal regulations
30 concerning the use of alcohol or the illegal use of drugs which are
31 applicable to the position of the employee or to the industry involved;

1 or

2 (4) Hold an employee who engages in the illegal use of drugs or who
3 is an alcoholic to the same qualification standards for employment or job
4 performance and behavior that such entity holds other employees even if
5 any unsatisfactory performance or behavior is related to the drug use or
6 alcoholism of such employee.

7 Sec. 6. Section 48-1114, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 48-1114 (1) It shall be an unlawful employment practice for an
10 employer to discriminate against any of his or her employees or
11 applicants for employment, for an employment agency to discriminate
12 against any individual, or for a labor organization to discriminate
13 against any member thereof or applicant for membership, because he or she
14 has:

15 (a) Opposed ~~has opposed~~ any practice made an unlawful employment
16 practice by the Nebraska Fair Employment Practice Act; or ~~or~~

17 (b) Made ~~has made~~ a charge, testified, assisted, or participated in
18 any manner in an investigation, proceeding, or hearing under the act. ~~or~~

19 (2) It shall be an unlawful employment practice for a Class I
20 employer to discriminate against any of his or her employees or
21 applicants for employment, for an employment agency to discriminate
22 against any individual, or for a labor organization to discriminate
23 against any member thereof or applicant for membership, because he or she
24 ~~(c)~~ has opposed any practice or refused to carry out any action unlawful
25 under federal law or the laws of this state.

26 (3)(a) It shall be an unlawful employment practice for a Class I
27 employer to discriminate against any of his or her employees or
28 applicants for employment, for an employment agency to discriminate
29 against any individual, or for a labor organization to discriminate
30 against any member thereof or applicant for membership, because he or
31 she ~~, or (d)~~ has inquired about, discussed, or disclosed information

1 regarding employee wages, benefits, or other compensation.

2 (b) This subsection ~~subdivision~~ (d) shall not apply to instances in
3 which an employee who has authorized access to the information regarding
4 wages, benefits, or other compensation of other employees as a part of
5 such employee's job functions discloses such information to a person who
6 does not otherwise have authorized access to such information, unless
7 such disclosure is in response to a charge or complaint or in furtherance
8 of an investigation, proceeding, hearing, or other action, including an
9 investigation conducted by the employer.

10 (c) ~~(2)~~ Nothing in this subsection or ~~subdivision~~ ~~(1)(d)~~ of this
11 ~~section~~ shall be contrary to applicable state or federal law or:

12 (i) ~~(a)~~ Create an obligation for any employer or employee to
13 disclose information regarding employee wages, benefits, or other
14 compensation;

15 (ii) ~~(b)~~ Permit an employee, without the written consent of the
16 employer, to disclose proprietary information, trade secret information,
17 or information that is otherwise subject to a legal privilege or
18 protected by law. For purposes of this subdivision, proprietary
19 information does not include information regarding employee wages,
20 benefits, or other compensation;

21 (iii) ~~(c)~~ Permit an employee to disclose information regarding
22 wages, benefits, or other compensation of other employees to a competitor
23 of the employer;

24 (iv) ~~(d)~~ Apply to a Class II employer or an employer ~~employers~~ which
25 is ~~are~~ exempt from the Nebraska Fair Employment Practice Act under
26 section 48-1102;

27 (v) ~~(e)~~ Permit an employee to discuss information regarding employee
28 wages, benefits, or other compensation during working hours, as defined
29 in existing workplace policies, or in violation of specific contractual
30 obligations; or

31 (vi) ~~(f)~~ Permit an employee to disseminate information regarding

1 employee wages, benefits, or other compensation to the general public.
2 For purposes of this subdivision, general public does not include public
3 officials, judicial officers, legislators, trade associations, or other
4 reasonable third parties for the employee's mutual aid or protection.

5 ~~(4) (3)~~ The changes made to this section by Laws 2019, LB217, shall
6 not be construed so as to impair or affect the obligation of any lawful
7 contract in existence prior to September 1, 2019.

8 Sec. 7. Section 48-1121, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 48-1121 Every Class I employer, employment agency, and labor
11 organization subject to the Nebraska Fair Employment Practice Act shall
12 post in a conspicuous place or places on his, her, or its premises a
13 notice to be prepared or approved by the commission which shall set forth
14 excerpts of the act and such other relevant information which the
15 commission deems necessary to explain the act.

16 Sec. 8. Original sections 48-1102, 48-1104, 48-1107, 48-1107.01,
17 48-1108.01, 48-1114, and 48-1121, Reissue Revised Statutes of Nebraska,
18 are repealed.