LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 441

Introduced by Hansen, M., 26; Hunt, 8.
Read first time January 15, 2021
Committee: Business and Labor

A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to amend section 48-1,110, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to compensation for certain employees who are affected by COVID-19; to create a fund; to define terms; to harmonize provisions; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. (1) For purposes of workers' compensation compensability under section 48-101:

(a) An essential worker who otherwise qualifies for workers' compensation and (i) is confirmed as COVID-19 positive on or after March 13, 2020, either by physician or by test, (ii) has COVID-19 listed as the cause of death on the essential worker's death certificate, or (iii) is quarantined at the direction of the employer due to suspected COVID-19 exposure or the display of any COVID-19 symptoms, shall be presumed to have suffered from an accident arising out of and in the course of his or her employment; and

(b) A claim shall not be denied to an essential worker described in subdivision (1)(a) of this section on the basis that the accident did not produce unexpected or unforeseen injury happening suddenly and violently and producing at the time objective symptoms of the injury as required under subdivision (2) of section 48-151.

(2) An employer may rebut the presumption established in subdivision (1)(a) of this section by affirmatively proving that the employee contracted COVID-19 outside of the workplace.

(3) The COVID-19 cases described in subsection (1) of this section shall not be subject to the waiting period under section 48-119 for payment of temporary total disability benefits. Compensation shall begin from the earliest of the first date of quarantine, the date of positive testing, or the date of confirmed diagnosis of COVID-19, and continuing for the duration of the self-quarantine period that prevented the injured essential worker from returning to employment.

(4) Under no circumstances shall any COVID-19 case described in subsection (1) of this section increase or adversely affect any employer's workers' compensation insurance premium, experience rating, or modification.

(5) For COVID-19 cases described in subsection (1) of this section occurring on or after March 13, 2020, and before the effective date of
this act for which a claim for workers' compensation benefits is made
after the effective date of this act:

(a) The Department of Insurance shall administer the processing of
such retroactive COVID-19 workers' compensation claims. The department
may, in its discretion, process the claims or may contract with a third
party for claims processing. The eligible essential worker shall apply
for such retroactive COVID-19 workers' compensation;

(b) The same procedures and legal standards as would be used in a
typical workers' compensation case shall be used for processing
retroactive COVID-19 workers' compensation claims, except as otherwise
provided in this section;

(c) The Nebraska Workers' Compensation Court shall have jurisdiction
to hear disputes;

(d) The notice requirement of section 48-133, which ordinarily
requires an injured worker to provide notice of the injury to his or her
employer as soon as practicable after the injury, shall not apply to
retroactive COVID-19 workers' compensation claims. Instead, the essential
worker seeking retroactive workers' compensation shall notify his or her
employer of the injury no later than two years after the effective date
of this act. Such essential worker shall request that his or her employer
complete a report of the injury pursuant to section 48-144.01;

(e) The employer shall subsequently submit all applicable documents
directly to the Department of Insurance, or a workers' compensation
insurer covering the retroactive COVID-19 workers' compensation claims,
for processing as an injury pursuant to the Nebraska Workers'
Compensation Act, in the same manner and form as all other claims filed
under the act; and

(f) This subsection shall not apply to essential workers who have
already filed claims for COVID-19 and received coverage.

(6) The Retroactive COVID-19 Claims Fund is hereby created. The fund
shall be utilized to pay for any costs from retroactive COVID-19 workers'
compensation claims brought pursuant to subsection (5) of this section.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) Federal money which is available to the State of Nebraska and is related to the COVID-19 emergency response may be used to offset state costs under this section, to fund retroactive COVID-19 workers' compensation claims, or to provide relief for affected insurers, if applicable. Such federal money includes, but is not limited to, federal money available pursuant to the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136.

(8) For purposes of this section:

(a) COVID-19 means the coronavirus disease 2019 or a disease, health condition, or threat caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or by any virus mutating from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2); and

(b) Essential worker means an employee who is required to report to work, whose job responsibilities include contact with or work in proximity to or in the same space as the public or co-workers in the course of his or her employment, and who performs essential functions for society to continue operating. For purposes of this section, the following individuals are considered essential workers:

(i) A person who is required to report to work in one of the following workplaces:

(A) An ambulance operation, including advanced mobile emergency care services;

(B) A county medical care facility;

(C) An emergency response service as defined in section 35-1303;

(D) An assisted-living facility as defined in section 71-5903;

(E) A hospice as defined in section 71-418;

(F) A hospital;
(G) A home health agency, visiting nurse association, or other caregivers who are required to provide in-person medical care to patients as described in section 71-9403;

(H) An adult day service as defined in section 71-404; and

(I) An ambulatory surgical center as defined in section 71-405;

(ii) A person working as a physician, physician assistant, licensed practical nurse, registered professional nurse, medical first responder, nurse, emergency medical technician, emergency medical technician specialist, paramedic, pharmacist, respiratory therapist, or other medical professional or employee in a healthcare setting who is required to provide in-person medical care to patients or otherwise work in a healthcare setting;

(iii) A peace officer as defined in section 49-801;

(iv) A firefighter;

(v) A member of an emergency rescue team;

(vi) An emergency management worker as defined in section 81-829.39;

(vii) An on-call member of a life support agency;

(viii) A state or local government employee that is required to work within the secured perimeter of a penal institution, including, but not limited to, correctional facilities, jails, and criminal detention facilities as defined in section 83-4,125;

(ix) An employee of a youth rehabilitation and treatment center;

(x) An employee of a regional center as defined in section 71-911;

(xi) A food processing employee who is employed in a meatpacking operation as defined in section 48-2208;

(xii) A public or private school employee;

(xiii) A grocery store employee;

(xiv) A public works, utilities, or garbage disposal employee;

(xv) A truck driver;

(xvi) A mortuary or funeral home employee;

(xvii) A childcare employee;
(xviii) A postal service employee; or
(xix) Any other individual employed by an essential or life-sustaining business or occupation.

Sec. 2. Section 48-1,110, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

Sec. 3. Original section 48-1,110, Revised Statutes Cumulative Supplement, 2020, is repealed.

Sec. 4. Since an emergency exists, this act takes effect when passed and approved according to law.