

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 871

Introduced by Hansen, M., 26.

Read first time January 07, 2022

Committee: Business and Labor

1 A BILL FOR AN ACT relating to labor; to amend sections 48-144.01,
2 48-2207, 48-2208, 48-2209, 48-2210, 48-2211, 48-2212, 48-2213, and
3 48-2214, Reissue Revised Statutes of Nebraska; to change provisions
4 relating to reports under the Nebraska Workers' Compensation Act; to
5 define and redefine terms; to change provisions under the Non-
6 English-Speaking Workers Protection Act relating to duties of
7 employers and meatpacking operations and powers and duties of the
8 meatpacking industry worker rights coordinator and the commissioner
9 of labor, enforcement, and civil actions; to provide for
10 confidentiality and civil penalties; to harmonize provisions; to
11 provide severability; and to repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-144.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 48-144.01 (1)(a) (1) In every case of reportable injury arising out
4 of and in the course of employment, the employer or workers' compensation
5 insurer shall file a report thereof with the Nebraska Workers'
6 Compensation Court. Such report shall be filed within ten days after the
7 employer or insurer has been given notice of or has knowledge of the
8 injury. Such report shall include the employer's primary NAICS code
9 number.

10 (b) The Nebraska Workers' Compensation Court shall track the total
11 number of reportable injuries occurring annually in employees of
12 meatpacking operations; track the commencement and payment of wage
13 indemnity benefits, medical or hospital benefits, and vocation or other
14 benefits arising from such injuries; and provide such data to the
15 coordinator at least annually and in a manner prescribed by the
16 coordinator. Such data shall not include personal identifying information
17 of any employee but shall include and be organized according to the
18 employer's name and primary NAICS code.

19 (2) For purposes of this section:

20 (a) Coordinator means the meatpacking industry worker rights
21 coordinator appointed pursuant to section 48-2213;

22 ~~(a) Reportable injury means an injury or diagnosed occupational~~
23 ~~disease which results in: (i) Death, regardless of the time between the~~
24 ~~death and the injury or onset of disease; (ii) time away from work; (iii)~~
25 ~~restricted work or termination of employment; (iv) loss of consciousness;~~
26 ~~or (v) medical treatment other than first aid;~~

27 ~~(b) Restricted work means the inability of the employee to perform~~
28 ~~one or more of the duties of his or her normal job assignment. Restricted~~
29 ~~work does not occur if the employee is able to perform all of the duties~~
30 ~~of his or her normal job assignment, but a work restriction is assigned~~
31 ~~because the employee is experiencing minor musculoskeletal discomfort and~~

1 ~~for the purpose of preventing a more serious condition from developing;~~

2 ~~(c) Medical treatment means treatment administered by a physician or~~
3 ~~other licensed health care professional; and~~

4 (b) ~~(d)~~ First aid means:

5 (i) Using a nonprescription medication at nonprescription strength.
6 For medications available in both prescription and nonprescription form,
7 a recommendation by a physician or other licensed health care
8 professional to use a nonprescription medication at prescription strength
9 is not first aid;

10 (ii) Administering tetanus immunizations. Administering other
11 immunizations, such as hepatitis B vaccine and rabies vaccine, is not
12 first aid;

13 (iii) Cleaning, flushing, or soaking wounds on the surface of the
14 skin;

15 (iv) Using wound coverings, such as bandages and gauze pads, and
16 superficial wound closing devices, such as butterfly bandages and steri-
17 strips. Using other wound closing devices, such as sutures and staples,
18 is not first aid;

19 (v) Using hot or cold therapy;

20 (vi) Using any nonrigid means of support, such as elastic bandages,
21 wraps, and nonrigid back belts. Using devices with rigid stays or other
22 systems designed to immobilize parts of the body is not first aid;

23 (vii) Using temporary immobilization devices, such as splints,
24 slings, neck collars, and back boards, while transporting accident
25 victims;

26 (viii) Drilling of a fingernail or toenail to relieve pressure or
27 draining fluid from a blister;

28 (ix) Using eye patches;

29 (x) Removing foreign bodies from the eye using only irrigation or a
30 cotton swab;

31 (xi) Removing splinters or foreign material from areas other than

1 the eye by irrigation, tweezers, cotton swabs, or other simple means;

2 (xii) Using finger guards;

3 (xiii) Using massages. Using physical therapy or chiropractic
4 treatment is not first aid; and

5 (xiv) Drinking fluids for relief of heat stress; -

6 (c) Meatpacking operation has the same meaning as in section
7 48-2208;

8 (d) Medical treatment means treatment administered by a physician or
9 other licensed health care professional;

10 (e) NAICS means the North American Industry Classification System
11 established by the United States Department of Commerce;

12 (f) Reportable injury means an injury or diagnosed occupational
13 disease which results in: (i) Death, regardless of the time between the
14 death and the injury or onset of disease; (ii) time away from work; (iii)
15 restricted work or termination of employment; (iv) loss of consciousness;
16 or (v) medical treatment other than first aid; and

17 (g) Restricted work means the inability of the employee to perform
18 one or more of the duties of his or her normal job assignment. Restricted
19 work does not occur if the employee is able to perform all of the duties
20 of his or her normal job assignment, but a work restriction is assigned
21 because the employee is experiencing minor musculoskeletal discomfort and
22 for the purpose of preventing a more serious condition from developing.

23 Sec. 2. Section 48-2207, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 48-2207 Sections 48-2207 to 48-2214 and sections 10 and 11 of this
26 act shall be known and may be cited as the Non-English-Speaking Workers
27 Protection Act.

28 Sec. 3. Section 48-2208, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 48-2208 For purposes of the Non-English-Speaking Workers Protection
31 Act, unless the context otherwise requires:

1 (1) Actively recruit means any affirmative act, as defined by the
2 department, done by or on behalf of an employer for the purpose of
3 recruitment or hiring of non-English-speaking employees ~~who reside more~~
4 ~~than five hundred miles from the place of employment;~~

5 (2) Commissioner means the Commissioner of Labor;

6 (3) Complaint means any work-related grievance regarding a
7 meatpacking operation communicated by an employee to the coordinator or
8 an agent of the coordinator;

9 (4) ~~(3)~~ Coordinator means the meatpacking industry worker rights
10 coordinator appointed pursuant to section 48-2213;

11 (5) ~~(4)~~ Department means the Department of Labor;

12 (6) ~~(5)~~ Employ means to permit to work;

13 (7) ~~(6)~~ Employee means any individual employed by any employer but
14 does not include:

15 (a) Any individual employed in agriculture; or

16 (b) Any individual employed as a child care provider in or for a
17 private home;

18 (8)(a) ~~(7)~~ Employer means any individual, partnership, limited
19 liability company, association, corporation, business trust, legal
20 representative, or organized group of persons which either:

21 (i) Employs ~~employing~~ one hundred or more employees at any one time,
22 except for seasonal employment of not more than twenty weeks in any
23 calendar year; or

24 (ii) Is a meatpacking operation;

25 (b) Employer also includes a ,—or person acting directly or
26 indirectly in the interest of an employer described in subdivision (8)(a)
27 of this section in relation to an employee;

28 (c) Employer ~~but~~ does not include the United States, the state, or
29 any political subdivision thereof;

30 (9) ~~(8)~~ Meatpacking operation means a business with ten or more
31 employees in which slaughtering, butchering, meat canning, meatpacking,

1 meat manufacturing, poultry canning, poultry packing, poultry
2 manufacturing, egg production, pet food manufacturing, processing of
3 meatpacking products, or rendering is carried on;

4 (10) (9) Meatpacking products includes livestock products and
5 poultry products as such terms are defined in section 54-1902; and

6 (11) NAICS means the North American Industry Classification System
7 established by the United States Department of Commerce;

8 (12) (10) Non-English-speaking employee means an employee who does
9 not speak, read, or understand English to the degree necessary for
10 comprehension of the terms, conditions, and daily responsibilities of
11 employment; and -

12 (13) Personnel action means dismissing, demoting, transferring,
13 reassigning, suspending, reprimanding, admonishing, reducing in rank, or
14 reclassifying an employee; withholding work from an employee; requiring
15 an employee to submit to a fitness-for-duty examination or take
16 disability retirement; any adverse employment action or discrimination in
17 the terms or conditions of employment; any other involuntary, employment-
18 related action taken against an employee; or any threat to carry out any
19 of such actions against an employee.

20 Sec. 4. Section 48-2209, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 48-2209 (1) Subject to subsection (2) of this section, if If an
23 employer or a representative of an employer actively recruits any non-
24 English-speaking persons for employment in this state and if more than
25 five ten percent of the employees of an employer are non-English-speaking
26 employees and speak the same non-English language, the employer shall
27 provide a bilingual employee who is conversant in English and the
28 identified non-English language and available at the worksite for each
29 shift during which a non-English-speaking employee is employed to (a) (1)
30 explain and respond to questions regarding the terms, conditions, and
31 daily responsibilities of employment and (b) (2) serve as a referral

1 agent to community services for the non-English-speaking employees.

2 (2) This section only applies to an employer, including a
3 meatpacking operation, with one hundred or more employees.

4 Sec. 5. Section 48-2210, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 48-2210 (1)(a) Subject to subsection (3) of this section, an ~~(1)~~ An
7 employer or a representative of an employer who actively recruits any
8 non-English-speaking persons for employment in this state and whose work
9 force is more than five ~~ten~~ percent non-English-speaking employees who
10 speak the same non-English language shall file with the commissioner a
11 written statement signed by the employer and each such employee which
12 provides relevant information regarding the position of employment,
13 including:

14 (i) ~~(a)~~ The minimum number of hours the employee can expect to work
15 on a weekly basis;

16 (ii) ~~(b)~~ The hourly wages of the position of employment including
17 the starting hourly wage;

18 (iii) ~~(c)~~ A description of the responsibilities and tasks of the
19 position of employment;

20 (iv) ~~(d)~~ A description of the transportation and housing to be
21 provided, if any, including any costs to be charged for housing or
22 transportation, the length of time such housing is to be provided, and
23 whether or not such housing is in compliance with all applicable state
24 and local housing standards; and

25 (v) ~~(e)~~ Any occupational physical demands and hazards of the
26 position of employment which are known to the employer.

27 (b) The statement shall be written in English and in the identified
28 language of the non-English-speaking employee, and the employer or the
29 representative shall explain in detail the contents of the statement
30 prior to obtaining the employee's signature. A copy of the statement
31 shall be given to the employee.

1 (c) It is a violation of this subsection if an employer or
2 representative knowingly and willfully provides false or misleading
3 information on the statement or regarding the contents of the statement.

4 (2) Subject to subsection (3) of this section, an ~~an~~ employer shall
5 provide transportation for a recruited employee, at no cost to the
6 employee, to the location from which the employee was recruited if the
7 employee:

8 (a) Resigns from employment within four weeks after the initial date
9 of employment; ~~and~~

10 (b) Requests transportation within not more than three days after
11 the employee's last day of employment with the employer which recruited
12 the employee; and ~~-~~

13 (c) Resided more than five hundred miles from the place of
14 employment at the time of recruitment.

15 (3) This section only applies to an employer, including a
16 meatpacking operation, with one hundred or more employees.

17 Sec. 6. Section 48-2211, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 48-2211 Any employer who violates the Non-English-Speaking Workers
20 Protection Act ~~section 48-2209 or 48-2210~~ or the rules and regulations
21 adopted and promulgated pursuant thereto is guilty of a Class IV
22 misdemeanor.

23 Sec. 7. Section 48-2212, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 48-2212 Any person aggrieved as a result of a violation of the Non-
26 English-Speaking Workers Protection Act ~~section 48-2209 or 48-2210~~ or the
27 rules and regulations adopted and promulgated pursuant thereto may file
28 suit in any district court of this state. If the court finds that the
29 respondent has intentionally violated the Non-English-Speaking Workers
30 Protection Act ~~section 48-2209 or 48-2210~~ or the rules and regulations
31 adopted and promulgated pursuant thereto, the court may award damages up

1 to and including an amount equal to the original damages and provide
2 injunctive relief.

3 Sec. 8. Section 48-2213, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 48-2213 (1) The position of meatpacking industry worker rights
6 coordinator is established as a full-time position within the department.
7 The coordinator shall be appointed by the commissioner. The coordinator
8 shall be a peace officer as defined in section 29-831.

9 (2) The duties of the coordinator shall be to inspect and review the
10 practices and procedures of meatpacking operations in the State of
11 Nebraska as they relate to the provisions of the Governor's Nebraska
12 Meatpacking Industry Workers Bill of Rights, which rights are outlined as
13 follows:

14 (a) The right to organize;

15 (b) The right to a safe workplace;

16 (c) The right to adequate facilities and the opportunity to use
17 them;

18 (d) The right to complete information;

19 (e) The right to understand the information provided;

20 (f) The right to existing state and federal benefits and rights;

21 (g) The right to be free from discrimination;

22 (h) The right to continuing training, including training of
23 supervisors;

24 (i) The right to compensation for work performed; and

25 (j) The right to seek state help.

26 (3)(a) (3) The coordinator and his or her designated representatives
27 shall have access to all meatpacking operations in the State of Nebraska
28 at any time meatpacking products are being processed and industry ~~workers~~
29 employees are on the job.

30 (b) A collective bargaining representative authorized by the
31 employees of a meatpacking operation shall be given the opportunity, with

1 at least seven days prior notice, to accompany the coordinator if the
2 coordinator will be physically present in the meatpacking operation for
3 the purpose of assessing the fair treatment of employees or to complete
4 the report required by subsection (6) of this section. If there is no
5 such authorized collective bargaining representative, the coordinator or
6 the coordinator's designated representative shall consult with a
7 reasonable number of employees concerning the treatment of employees or
8 matters covered by the report.

9 (4) Necessary office space, furniture, equipment, and supplies as
10 well as necessary assistance for the coordinator shall be provided by the
11 commissioner.

12 (5) Preference shall be given to applicants for the coordinator
13 position who are fluent in the Spanish language.

14 (6) The coordinator shall, on or before June 30 ~~December 1~~ of each
15 year, electronically submit a report to the members of the Legislature
16 and the Governor regarding any recommended actions the coordinator deems
17 necessary or appropriate to provide for the fair treatment of employees
18 ~~workers~~ in the meatpacking industry. The report shall also include: The
19 ~~report submitted to the members of the Legislature shall be submitted~~
20 ~~electronically.~~

21 (a) The total number of complaints received by the coordinator
22 during the preceding year. These complaints shall be categorized as
23 complaints relating to:

24 (i) Rights and protections under the federal Family and Medical
25 Leave Act of 1993, 29 U.S.C. 2601 et seq.;

26 (ii) Human resources or other administrative concerns;

27 (iii) Termination, wrongful or otherwise;

28 (iv) The adequacy of employee training;

29 (v) The adequacy of facilities for the convenience or comfort of
30 employees, including, but not limited to, locker rooms, restrooms, and
31 lactation rooms;

- 1 (vi) Wages;
2 (vii) Breaks;
3 (viii) Retaliation;
4 (ix) Sexual harassment;
5 (x) Mistreatment; and
6 (xi) Anything else the coordinator determines necessary to report;
7 (b) For all meatpacking operations under a NAICS code of 112310,
8 311111, 311119, 311611, 311612, 311613, 311615, or 316110, as such codes
9 existed on January 1, 2022, a compilation of the following information
10 for the preceding year, organized by company name and NAICS code:
11 (i) The total number of reportable injuries in meatpacking
12 operations as reported under section 48-144.01;
13 (ii) The total number of subsequent reports filed with the Nebraska
14 Workers' Compensation Court, pursuant to Rule 30 of the Nebraska Workers'
15 Compensation Court Rules of Procedure, disaggregated by the type of
16 benefit, indicating the commencement of payment of:
17 (A) Wage indemnity benefits;
18 (B) Medical or hospital benefits; and
19 (C) Vocational or other benefits;
20 (iii) The total number of the following experienced by employees as
21 a result of activities in a meatpacking operation: Deaths; injuries;
22 injuries resulting in days away from work, job transfer, or job
23 restriction; and poisonings, respiratory conditions, skin disorders,
24 hearing loss, and other illnesses;
25 (iv) The total number of the days away from work or days on which an
26 employee was working under a job transfer or job restriction as a result
27 of activities in a meatpacking operation;
28 (v) The average annual number of employees at each meatpacking
29 operation; and
30 (vi) The total number of hours worked in meatpacking operations;
31 (c) For any meatpacking operation employing more than five hundred

1 employees, the following information for each plant, as made available by
2 the meatpacking operation:

3 (i) The total number of employees who do not speak, read, or
4 understand English to the degree necessary for the comprehension of the
5 terms, conditions, and daily responsibilities of employment;

6 (ii) A list identifying all languages other than English spoken by
7 five percent or more of the meatpacking operation's employees;

8 (iii) A list identifying the services provided to all employees
9 described in subdivision (6)(c)(i) of this section;

10 (iv) The average number of overtime hours worked per week;

11 (v) The number of instances in which an employee worked more than
12 six consecutive days; and

13 (vi) The total number of animals or eggs processed per week,
14 disaggregated by species;

15 (d) The number of visits the coordinator made to each meatpacking
16 operation in the preceding year; and

17 (e) The number of employees interviewed by the coordinator in the
18 preceding year.

19 (7) In collecting information required to be reported under
20 subdivisions (6)(b)(iii), (iv), (v), and (vi) of this section, the
21 coordinator shall rely on information publicly available and released by
22 the federal Occupational Safety and Health Administration.

23 (8) In compiling the report required by this section, the
24 coordinator shall visit each meatpacking operation with more than five
25 hundred employees at least once each year.

26 (9) The department shall make the report publicly available on the
27 department's website.

28 (10) Each meatpacking operation shall post at the operation, in a
29 conspicuous location, a copy of the Governor's Nebraska Meatpacking
30 Industry Workers Bill of Rights. Copies shall be posted in English and in
31 all languages spoken by five percent or more of the employees at such

1 meatpacking operation.

2 Sec. 9. Section 48-2214, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 48-2214 (1) The commissioner shall adopt and promulgate rules and
5 regulations necessary to carry out the Non-English-Speaking Workers
6 Protection Act. The commissioner or a representative of the commissioner,
7 including the coordinator, may:

8 (a) With respect to an employer which is in violation of the act or
9 has supplied inaccurate information:

10 (i) ~~(1)~~ Inspect employment records of an employer relating to the
11 total number of employees, the total number of non-English-speaking
12 employees, and the services provided to non-English-speaking employees;
13 and

14 (ii) Inspect employment records relating to the total number of
15 overtime hours worked, the total number of instances where an employee
16 worked more than six consecutive days, and, if applicable, the number of
17 animals or eggs processed; and

18 (b) ~~(2)~~ Interview an employer, or any representative, any agent, or
19 an employee of an the employer during working hours or at other
20 reasonable times. An interview of an employee shall be conducted
21 privately and without the employee's supervisor present.

22 (2) The commissioner or the commissioner's representative, including
23 the coordinator, shall have the authority to subpoena records related to
24 the enforcement of this act.

25 (3) If the commissioner or a representative of the commissioner,
26 including the coordinator, learns of a reportable violation under the
27 federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et
28 seq., or of a violation relating to other state or federal labor or
29 worker protection laws, through an interview or otherwise, a
30 representative of the commissioner shall be available to assist an
31 employee in filing a formal complaint with the federal Occupational

1 Safety and Health Administration or the appropriate state or federal
2 enforcement agency.

3 (4) No employer may take personnel action against an employee for
4 participating in an interview or for any concerns the employee raises in
5 the interview or otherwise communicates to the commissioner or a
6 representative of the commissioner, including the coordinator.

7 (5)(a) Prior to an inspection under this section, the commissioner
8 or the commissioner's representative, including the coordinator, shall
9 make reasonable efforts to obtain the employer's consent to inspect
10 records. If such consent is denied, the commissioner or representative
11 may apply to a court of record in the county in which the employer or the
12 offices or facilities of the employer are located for an inspection
13 warrant pursuant to sections 29-830 to 29-835 to allow the commissioner
14 or representative to enter such offices and facilities and inspect
15 records as necessary to carry out the Non-English-Speaking Workers
16 Protection Act or the rules and regulations adopted and promulgated
17 pursuant to the act.

18 (b) No person shall refuse entry or access to the commissioner or
19 the commissioner's representative upon a request for entry for purposes
20 of inspection and presentation of appropriate credentials and an
21 inspection warrant, and no person shall obstruct, hamper, or interfere
22 with any such inspection.

23 (c) Entry upon any property pursuant to the act shall not be
24 considered to be trespass, and no damage shall be recoverable on that
25 account alone.

26 Sec. 10. The commissioner and any representative of the
27 commissioner, including the coordinator, shall maintain the
28 confidentiality of the name and identity of any employee communicating
29 with the commissioner or representative.

30 Sec. 11. The coordinator may issue a citation to any employer which
31 is found to interfere with any of the duties of the coordinator as set

1 forth in the Non-English-Speaking Workers Protection Act or section
2 48-144.01. If the commissioner finds, after notice and hearing, that an
3 employer has so interfered, the commissioner may assess a civil penalty
4 of not more than one thousand dollars for each violation. Each day of
5 continued violation shall constitute a separate violation.

6 Sec. 12. If any section in this act or any part of any section is
7 declared invalid or unconstitutional, the declaration shall not affect
8 the validity or constitutionality of the remaining portions.

9 Sec. 13. Original sections 48-144.01, 48-2207, 48-2208, 48-2209,
10 48-2210, 48-2211, 48-2212, 48-2213, and 48-2214, Reissue Revised Statutes
11 of Nebraska, are repealed.