

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 455

FINAL READING

Introduced by Hallstrom, 1; McKeon, 41; Sorrentino, 39.

Read first time January 21, 2025

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend sections 48-144.01 and 48-146.03, Reissue Revised Statutes of
- 3 Nebraska; to provide a duty for the Nebraska Workers' Compensation
- 4 Court; to change provisions relating to certain injury reports; to
- 5 define a term; to change provisions relating to workers'
- 6 compensation insurance policies and deductibles; and to repeal the
- 7 original sections.
- 8 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.

9 (b) Upon receipt of a report filed under this subsection the
10 compensation court shall send a letter to the employee for whom the
11 report is made notifying such employee that a report has been filed and
12 including the following information: The Nebraska Workers' Compensation
13 Court cannot give legal advice. However, if your claim is denied or if
14 you have any questions regarding the handling of your claim, you have the
15 right to contact a Nebraska attorney who accepts workers' compensation
16 cases who can provide guidance on your rights and options.

17 (2)(a) To protect the confidentiality of the employee, a report made
18 under subsection (1) of this section shall not be disclosed, redisclosed,
19 released, disseminated, or otherwise published with the employee's
20 confidential information except as otherwise provided in this subsection
21 or as necessary for the compensation court to administer and enforce or
22 perform its lawful duties under the Nebraska Workers' Compensation Act.

23 (b) The information reported pursuant to subsection (1) of this
24 section may be made available to the employee for whom the report is
25 made, with or without a request from the employee. If the employee is
26 deceased, any right or obligation under this subdivision shall extend to
27 the employee's personal representative as defined in section 30-2209. The
28 compensation court may provide any or all information from that report to
29 the employee or such personal representative.

30 (c) The information reported pursuant to subsection (1) of this
31 section is subject to disclosure by the compensation court pursuant to

1 sections 84-712 to 84-712.09, except as to the employee's confidential
2 information and any other personally identifiable information. A request
3 to obtain a report filed under subsection (1) of this section or for any
4 information contained in such report may be fulfilled by the compensation
5 court pursuant to sections 84-712 to 84-712.09 so long as the
6 confidential information and any other personally identifiable
7 information is redacted from such report or extract.

8 (d) An employee may elect to waive confidentiality of reports under
9 subsection (1) of this section involving such employee. A waiver of
10 confidentiality shall permit disclosure of the employee's confidential
11 information. An election to waive, once made, shall remain in effect
12 notwithstanding any change in employment by such employee unless the
13 election to waive is revoked by the employee. An election to waive
14 confidentiality or revocation of that waiver shall be made in a form and
15 manner prescribed by the administrator of the compensation court.

16 (e) At the discretion of the compensation court, information from
17 the report made pursuant to subsection (1) may be used in any pending
18 matter before the compensation court involving the employee.

19 (f) In response to a public records request pursuant to sections
20 84-712 to 84-712.09, any report made pursuant to subsection (1) of this
21 section that includes the employee's confidential information may be
22 provided by the compensation court:

23 (i) To an attorney or authorized agent representing the employee as
24 to any workers' compensation claim or claim involving personal injury. An
25 attorney or authorized agent representing the employee shall provide a
26 written authorization to obtain a report from the employee if requested
27 by the compensation court;

28 (ii) To the employer, workers' compensation insurer, risk management
29 pool, or third-party administrator involved in the reported injury or an
30 attorney or authorized agent who represents the employer, workers'
31 compensation insurer, risk management pool, or third-party administrator.

1 An attorney or authorized agent representing the employer, workers'
2 compensation insurer, risk management pool, or third-party administrator
3 shall provide a written authorization to obtain a report from the
4 employer, workers' compensation insurer, risk management pool, or third-
5 party administrator if requested by the compensation court;

6 (iii) To an attorney or authorized agent of an insurer or a third-
7 party administrator who is involved in administering any claim for
8 insurance benefits related to any injury of the employee whose report is
9 filed with the compensation court. An attorney or authorized agent of
10 such insurer or third-party administrator shall provide a written
11 authorization to obtain a report from the insurer or third-party
12 administrator if requested by the compensation court;

13 (iv) To an attorney representing a party to a lawsuit filed by or on
14 behalf of the employee whose report is filed with the compensation court.
15 An attorney representing a party to such a lawsuit shall provide a
16 written authorization to obtain a report from the party if requested by
17 the compensation court;

18 (v) To a federal or state governmental unit at the request of the
19 governmental unit if the information sought to be disclosed is necessary
20 for the receiving federal or state governmental unit to operate a program
21 or carry out a purpose specifically authorized by federal or state
22 statute, including, but not limited to, the investigation of a fraud,
23 criminal offense, or licensing or regulatory violation, child support
24 enforcement, or to act upon an application for benefits submitted by the
25 employee who is the subject of the report under subsection (1) of this
26 section;

27 (vi) To a person engaged in bona fide statistical research,
28 including, but not limited to, actuarial studies and health or safety
29 investigations which are authorized by federal or state statute or
30 regulation or other federal or state governmental units. The employee's
31 confidential information or any other personally identifiable information

1 shall not be disclosed unless the researcher has entered into a
2 confidentiality agreement with the compensation court and has agreed that
3 any research findings or reports will not disclose the employee's
4 confidential information or any other personally identifiable
5 information;

6 (vii) To a nonprofit organization that certifies to the
7 administrator of the compensation court under penalty of perjury that the
8 purpose of using the confidential information is to offer financial
9 assistance to dependents of the employee or to send condolences to,
10 provide memorials for, or offer grief counseling to family members of an
11 employee whose injury or death was caused by a workplace incident;

12 (viii) When release of the report is ordered by a court of competent
13 jurisdiction;

14 (ix) When a request to obtain a report filed under subsection (1) of
15 this section is made by a treating physician or other health care
16 provider who has rendered treatment to an employee or is seeking
17 authorization for treatment or special services and the information
18 sought to be disclosed relates to the compensability of a claim related
19 to such treatment or authorization for special services or billing for
20 services provided; or

21 (x) When more than sixty days have passed since the date the report
22 was filed.

23 (g) Any request to obtain a report filed under subsection (1) of
24 this section shall be made in a form and manner prescribed by the
25 administrator of the compensation court.

26 (3) {2} For purposes of this section:

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

1 (b) Restricted work means the inability of the employee to perform
2 one or more of the duties of his or her normal job assignment. Restricted
3 work does not occur if the employee is able to perform all of the duties
4 of his or her normal job assignment, but a work restriction is assigned
5 because the employee is experiencing minor musculoskeletal discomfort and
6 for the purpose of preventing a more serious condition from developing;

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

9 (d) First aid means:

10 (i) Using a nonprescription medication at nonprescription strength.
11 For medications available in both prescription and nonprescription form,
12 a recommendation by a physician or other licensed health care
13 professional to use a nonprescription medication at prescription strength
14 is not first aid;

15 (ii) Administering tetanus immunizations. Administering other
16 immunizations, such as hepatitis B vaccine and rabies vaccine, is not
17 first aid;

18 (iii) Cleaning, flushing, or soaking wounds on the surface of the
19 skin;

20 (iv) Using wound coverings, such as bandages and gauze pads, and
21 superficial wound closing devices, such as butterfly bandages and steri-
22 strips. Using other wound closing devices, such as sutures and staples,
23 is not first aid;

24 (v) Using hot or cold therapy;

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

28 (vii) Using temporary immobilization devices, such as splints,
29 slings, neck collars, and back boards, while transporting accident
30 victims;

31 (viii) Drilling of a fingernail or toenail to relieve pressure or

1 draining fluid from a blister;

2 (ix) Using eye patches;

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

5 (xi) Removing splinters or foreign material from areas other than
6 the eye by irrigation, tweezers, cotton swabs, or other simple means;

7 (xii) Using finger guards;

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

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

11 (e) Confidential information means an employee's name, address,
12 telephone number, and email address.

13 **Sec. 2.** Section 48-146.03, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 48-146.03 (1) Each workers' compensation insurance policy issued by
16 an insurer pursuant to the Nebraska Workers' Compensation Act:

17 (a) Shall offer, at the option of the insured employer, a deductible
18 for medical benefits in the amount of five hundred dollars to two
19 thousand five hundred dollars per claim in increments of five hundred
20 dollars; or

21 (b) May offer, at the option of the insured employer and the
22 workers' compensation insurer, a deductible for all amounts paid by the
23 insurer as long as the deductible is not more than forty percent of the
24 insured employer's otherwise applicable annual workers' compensation
25 insurance premium at rates approved for the insurer but not less than
26 fifty thousand dollars.

27 The insured employer, if choosing to exercise one of such options
28 listed in this subsection, may choose only one of the amounts as the
29 deductible. The provisions of this section shall be fully disclosed to
30 each prospective purchaser in writing.

31 (2) The deductible form shall provide that the workers' compensation

1 insurer shall remain liable for and shall pay the entire cost of medical
2 benefits for each claim directly to the medical provider, shall remain
3 liable for and pay the entire cost of benefits, claims, and expenses as
4 required by the policy irrespective of the deductible provision, and
5 shall then be reimbursed by the employer for any deductible amounts paid
6 by the workers' compensation insurer. The employer shall be liable for
7 reimbursement up to the limit of the deductible.

8 (3) Beginning January 1, 2027, losses reimbursed by the employer
9 under the deductible shall be credited against the employer's experience
10 modification while the deductible option is used, unless the employer
11 elects to purchase a gross reportable deductible policy.

12 (4) (3) A workers' compensation insurer shall not be required to
13 offer a deductible if, as a result of a credit investigation, the insurer
14 determines that the employer does not have the financial ability to be
15 responsible for the payment of deductible amounts.

16 (5) (4) A workers' compensation insurer shall service and, if
17 necessary, defend all claims that arise during the policy period,
18 including those claims payable in whole or in part from the deductible
19 amount, and shall make such reports to the compensation court of payments
20 made, including payments made under the deductible provisions, as may be
21 required by the compensation court.

22 (6) (5) A person who is employed by a policyholder which chooses to
23 exercise the option of a deductible policy shall not be required to pay
24 any of the deductible amount, and any such policyholder shall not require
25 or attempt to require the employee to give up his or her right of
26 selection of physician set out in section 48-120. Any violation of this
27 subsection shall be a Class II misdemeanor.

28 **Sec. 3.** Original sections 48-144.01 and 48-146.03, Reissue Revised
29 Statutes of Nebraska, are repealed.