

AMENDMENTS TO LB627

Introduced by Mello, 5.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

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

5 48-1102 For purposes of the Nebraska Fair Employment Practice Act,
6 unless the context otherwise requires:

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

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

23 (3) Labor organization shall mean any organization which exists
24 wholly or in part for one or more of the following purposes: Collective
25 bargaining; dealing with employers concerning grievances, terms, or
26 conditions of employment; or mutual aid or protection in relation to
27 employment;

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

8 (5) Covered entity shall mean an employer, an employment agency, a
9 labor organization, or a joint labor-management committee;

10 (6) Privileges of employment shall mean terms and conditions of any
11 employer-employee relationship, opportunities for advancement of
12 employees, and plant conveniences;

13 (7) Employee shall mean an individual employed by an employer;

14 (8) Commission shall mean the Equal Opportunity Commission;

15 (9) Disability shall mean (a) a physical or mental impairment that
16 substantially limits one or more of the major life activities of such
17 individual, (b) a record of such an impairment, or (c) being regarded as
18 having such an impairment. Disability shall not include homosexuality,
19 bisexuality, transvestism, transsexualism, pedophilia, exhibitionism,
20 voyeurism, gender-identity disorders not resulting in physical
21 impairments, other sexual behavior disorders, problem gambling,
22 kleptomania, pyromania, or psychoactive substance use disorders resulting
23 from current illegal use of drugs;

24 (10)(a) Qualified individual with a disability shall mean an
25 individual with a disability who, with or without reasonable
26 accommodation, can perform the essential functions of the employment
27 position that such individual holds or desires. Consideration shall be
28 given to the employer's judgment as to what functions of a job are
29 essential, and if an employer has prepared a written description before
30 advertising or interviewing applicants for the job, this description
31 shall be considered evidence of the essential functions of the job;

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

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

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

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

11 (iii) Is erroneously regarded as engaging in such use but is not
12 engaging in such use;

13 (11) Reasonable accommodation, with respect to disability, shall
14 include making existing facilities used by employees readily accessible
15 to and usable by individuals with disabilities, job-restructuring, part-
16 time or modified work schedules, reassignment to a vacant position,
17 acquisition or modification of equipment or devices, appropriate
18 adjustment or modification of examinations, training manuals, or
19 policies, the provision of qualified readers or interpreters, and other
20 similar accommodations for individuals with disabilities. Reasonable
21 accommodation, with respect to pregnancy, childbirth, or related medical
22 conditions, shall include acquisition of equipment for sitting, more
23 frequent or longer breaks, periodic rest, assistance with manual labor,
24 job restructuring, light duty assignments, modified work schedules,
25 temporary transfers to less strenuous or hazardous work, time off to
26 recover from childbirth, or break time and appropriate facilities for
27 breast-feeding or expressing breast milk. Reasonable accommodation shall
28 not include accommodations which the covered entity can demonstrate
29 require significant difficulty or expense thereby posing an undue
30 hardship upon the covered entity. Factors to be considered in determining
31 whether an accommodation would pose an undue hardship shall include:

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

3 (b) The overall financial resources of the facility or facilities
4 involved in the provision of the reasonable accommodation, the number of
5 persons employed at such facility, the effect on expenses and resources,
6 or the impact otherwise of such accommodation upon the operation of the
7 facility;

8 (c) The overall financial resources of the covered entity, the
9 overall size of the business of a covered entity with respect to the
10 number of its employees, and the number, type, and location of its
11 facilities; and

12 (d) The type of operation or operations of the covered entity,
13 including the composition, structure, and functions of the work force of
14 such entity, and the geographic separateness and administrative or fiscal
15 relationship of the facility or facilities in question to the covered
16 entity;

17 (12) Marital status shall mean the status of a person whether
18 married or single;

19 (13) Because of sex or on the basis of sex shall include, but not be
20 limited to, because of or on the basis of pregnancy, childbirth, or
21 related medical conditions;

22 (14) Harass because of sex shall include making unwelcome sexual
23 advances, requesting sexual favors, and engaging in other verbal or
24 physical conduct of a sexual nature if (a) submission to such conduct is
25 made either explicitly or implicitly a term or condition of an
26 individual's employment, (b) submission to or rejection of such conduct
27 by an individual is used as the basis for employment decisions affecting
28 such individual, or (c) such conduct has the purpose or effect of
29 unreasonably interfering with an individual's work performance or
30 creating an intimidating, hostile, or offensive working environment;

31 (15) Unlawful under federal law or the laws of this state shall mean

1 acting contrary to or in defiance of the law or disobeying or
2 disregarding the law;

3 (16) Drug shall mean a controlled substance as defined in section
4 28-401; ~~and~~

5 (17) Illegal use of drugs shall mean the use of drugs, the
6 possession or distribution of which is unlawful under the Uniform
7 Controlled Substances Act, but shall not include the use of a drug taken
8 under supervision by a licensed health care professional or any other use
9 authorized by the Uniform Controlled Substances Act or other provisions
10 of state law; ~~and~~ -

11 (18) Individual who is pregnant, who has given birth, or who has a
12 related medical condition shall mean an individual with a known
13 limitation who, with or without reasonable accommodation, can perform the
14 essential functions of the employment position that such individual
15 holds, desires, or may be temporarily assigned to. Consideration shall be
16 given to the employer's judgment as to what functions of a job are
17 essential, and if an employer has prepared a written description before
18 advertising or interviewing applicants for the job, this description
19 shall be considered evidence of the essential functions of the job.

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

22 48-1107.01 It shall be an unlawful employment practice for a covered
23 entity to:

24 (1) Discriminate ~~discriminate~~ against a qualified individual with a
25 disability because of the disability of such individual in regard to job
26 application procedures, the hiring, advancement, or discharge of
27 employees, employee compensation, job training, and other terms,
28 conditions, and privileges of employment; ~~or~~ -

29 (2) Discriminate against an individual who is pregnant, who has
30 given birth, or who has a related medical condition in regard to job
31 application procedures, the hiring, advancement, or discharge of

1 employees, employee compensation, job training, and other terms,
2 conditions, and privileges of employment.

3 Sec. 3. Section 48-1107.02, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 48-1107.02 (1) When referring to a qualified individual with a
6 disability, discrimination shall include:

7 (a 1) Limiting, segregating, or classifying a job applicant or
8 employee in a way that adversely affects the opportunities or status of
9 the applicant or employee because of the disability of the applicant or
10 employee;

11 (b 2) Participating in a contractual or other arrangement or
12 relationship that has the effect of subjecting a qualified individual
13 with a disability to discrimination in the application or employment
14 process, including a relationship with an employment agency, a labor
15 union, an organization providing fringe benefits to an employee of the
16 covered entity, or an organization providing training and apprenticeship
17 programs;

18 (c 3) Utilizing standards, criteria, or methods of administration (i
19 a) that have the effect of discrimination on the basis of disability or
20 (ii b) that perpetuate the discrimination against others who are subject
21 to common administrative control;

22 (d 4) Excluding or otherwise denying equal jobs or benefits to a
23 qualified individual with a disability because of the known disability of
24 an individual with whom the qualified individual with a disability is
25 known to have a relationship or association;

26 (e 5) Not making reasonable accommodations to the known physical or
27 mental limitations of an otherwise qualified individual with a disability
28 who is an applicant or employee unless such covered entity can
29 demonstrate that the accommodation would impose an undue hardship on the
30 operation of the business of the covered entity;

31 (f 6) Denying employment opportunities to a job applicant or

1 employee who is otherwise a qualified individual with a disability if the
2 denial is based upon the need of such covered entity to make reasonable
3 accommodation to the physical or mental impairments of the employee or
4 applicant;

5 (g 7) Using qualification standards, employment tests, or other
6 selection criteria that screen out or tend to screen out an individual
7 with a disability or a class of individuals with disabilities unless the
8 standard, test, or other selection criteria, as used by the covered
9 entity, is shown to be job-related for the position in question and is
10 consistent with business necessity;

11 (h 8) Failing to select and administer tests concerning employment
12 in the most effective manner to ensure that, when the test is
13 administered to a job applicant or employee who has a disability that
14 impairs sensory, manual, or speaking skills, the test results accurately
15 reflect the skills, aptitude, or whatever other factor of the applicant
16 or employee that the test purports to measure rather than reflecting the
17 impaired sensory, manual, or speaking skills of the employee or applicant
18 except when such skills are the factors that the test purports to
19 measure;

20 (i 9) Conducting a medical examination or making inquiries of a job
21 applicant as to whether the applicant is an individual with a disability
22 or as to the nature or severity of the disability, except that:

23 (i a) A covered entity may make preemployment inquiries into the
24 ability of an applicant to perform job-related functions;

25 (ii b) A test to determine the illegal use of drugs shall not be
26 considered a medical examination; and

27 (iii c) A covered entity may require a medical examination after an
28 offer of employment has been made to a job applicant and prior to the
29 commencement of the employment duties of the applicant and may condition
30 an offer of employment on the results of the examination if:

31 (A d) All entering employees are subjected to such an examination

1 regardless of disability;

2 (B ~~ii~~) Information obtained regarding the medical condition or
3 history of the applicant is collected and maintained on separate forms
4 and in separate medical files and is treated as a confidential medical
5 record, except that (I A) supervisors and managers may be informed
6 regarding necessary restrictions on the work or duties of the employee
7 and necessary accommodations, (II B) first-aid and safety personnel may
8 be informed, when appropriate, if the disability might require emergency
9 treatment, (III C) government officials investigating compliance with the
10 Nebraska Fair Employment Practice Act shall be provided relevant
11 information on request, and (IV D) information shall be made available in
12 accordance with the Nebraska Workers' Compensation Act; and

13 (C ~~iii~~) The results of the examination are used only in a manner not
14 inconsistent with the Nebraska Fair Employment Practice Act; and

15 (j ~~10~~) Requiring a medical examination or making inquiries of an
16 employee as to whether the employee is an individual with a disability or
17 as to the nature or severity of the disability, unless the examination or
18 inquiry is shown to be job-related and consistent with business
19 necessity. A test to determine the illegal use of drugs shall not be
20 considered a medical examination. A covered entity may conduct voluntary
21 medical examinations, including voluntary medical histories, which are
22 part of an employee health program available to employees at the worksite
23 and may make inquiries into the ability of an employee to perform job-
24 related functions if the information obtained regarding the medical
25 condition or history of the employee is subject to the requirements in
26 subdivisions ~~(1)(i)(iii)(B) (9)(c)(ii)~~ and (C ~~iii~~) of this section.

27 (2) When referring to an individual who is pregnant, who has given
28 birth, or who has a related medical condition, discrimination shall
29 include:

30 (a) Limiting, segregating, or classifying a job applicant or
31 employee in a way that adversely affects the opportunities or status of

1 the applicant or employee because of the pregnancy, childbirth, or
2 related medical conditions of the applicant or employee;

3 (b) Participating in a contractual or other arrangement or
4 relationship that has the effect of subjecting an individual who is
5 pregnant, who has given birth, or who has a related medical condition to
6 discrimination in the application or employment process, including a
7 relationship with an employment agency, a labor union, an organization
8 providing fringe benefits to an employee of the covered entity, or an
9 organization providing training and apprenticeship programs;

10 (c) Utilizing standards, criteria, or methods of administration (i)
11 that have the effect of discrimination on the basis of pregnancy,
12 childbirth, or related medical conditions or (ii) that perpetuate the
13 discrimination against others who are subject to common administrative
14 control;

15 (d) Not making reasonable accommodations to the known physical
16 limitations of an individual who is pregnant, who has given birth, or who
17 has a related medical condition and who is an applicant or employee
18 unless such covered entity can demonstrate that the accommodation would
19 impose an undue hardship on the operation of the business of the covered
20 entity;

21 (e) Denying employment opportunities to a job applicant or employee
22 who is pregnant, who has given birth, or who has a related medical
23 condition if the denial is based upon the need of such covered entity to
24 make reasonable accommodation to the physical limitations due to the
25 pregnancy, childbirth, or related medical conditions of the employee or
26 applicant;

27 (f) Using qualification standards, employment tests, or other
28 selection criteria that screen out or tend to screen out an individual or
29 a class of individuals who are pregnant, who have given birth, or who
30 have a related medical condition unless the standard, test, or other
31 selection criteria, as used by the covered entity, is shown to be job-

1 related for the position in question and is consistent with business
2 necessity;

3 (g) Conducting a medical examination or making inquiries of a job
4 applicant as to whether the applicant is pregnant, has given birth, or
5 has a related medical condition, except that:

6 (i) A covered entity may make preemployment inquiries into the
7 ability of an applicant to perform job-related functions;

8 (ii) A test to determine the illegal use of drugs shall not be
9 considered a medical examination; and

10 (iii) A covered entity may require a medical examination after an
11 offer of employment has been made to a job applicant and prior to the
12 commencement of the employment duties of the applicant and may condition
13 an offer of employment on the results of the examination if:

14 (A) All entering employees are subjected to such an examination;

15 (B) Information obtained regarding the medical condition or history
16 of the applicant is collected and maintained on separate forms and in
17 separate medical files and is treated as a confidential medical record,
18 except that (I) supervisors and managers may be informed regarding
19 necessary restrictions on the work or duties of the employee and
20 necessary accommodations, (II) first-aid and safety personnel may be
21 informed, when appropriate, if the pregnancy, childbirth, or related
22 medical conditions might require emergency treatment, (III) government
23 officials investigating compliance with the Nebraska Fair Employment
24 Practice Act shall be provided relevant information on request, and (IV)
25 information shall be made available in accordance with the Nebraska
26 Workers' Compensation Act; and

27 (C) The results of the examination are used only in a manner not
28 inconsistent with the Nebraska Fair Employment Practice Act;

29 (h) Requiring a medical examination or making inquiries of an
30 employee as to whether the employee is pregnant, has given birth, or has
31 a related medical condition unless the examination or inquiry is shown to

1 be job-related and consistent with business necessity. A test to
2 determine the illegal use of drugs shall not be considered a medical
3 examination. A covered entity may conduct voluntary medical examinations,
4 including voluntary medical histories, which are part of an employee
5 health program available to employees at the worksite and may make
6 inquiries into the ability of an employee to perform job-related
7 functions if the information obtained regarding the medical condition or
8 history of the employee is subject to the requirements in subdivisions
9 (2)(g)(iii)(B) and (C) of this section;

10 (i) Requiring an employee to take leave under any leave law or
11 policy of the covered entity if another reasonable accommodation can be
12 provided to the known limitations related to the pregnancy, childbirth,
13 or related medical conditions of the employee; and

14 (j) Taking adverse action against an employee in the terms,
15 conditions, or privileges of employment for requesting or using a
16 reasonable accommodation to the known limitations related to the
17 pregnancy, childbirth, or related medical conditions of the employee.

18 Sec. 4. Section 48-1111, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 48-1111 (1) Except as otherwise provided in the Nebraska Fair
21 Employment Practice Act, it shall not be an unlawful employment practice
22 for an employer to apply different standards of compensation, or
23 different terms, conditions, or privileges of employment pursuant to a
24 bona fide seniority or merit system or a system which measures earnings
25 by quantity or quality of production or to employees who work in
26 different locations, if such differences are not the result of an
27 intention to discriminate because of race, color, religion, sex,
28 disability, marital status, or national origin, nor shall it be an
29 unlawful employment practice for an employer to give and to act upon the
30 results of any professionally developed ability test if such test, its
31 administration, or action upon the results is not designed, intended, or

1 used to discriminate because of race, color, religion, sex, disability,
2 marital status, or national origin.

3 It shall not be an unlawful employment practice for a covered entity
4 to deny privileges of employment to an individual with a disability when
5 the qualification standards, tests, or selection criteria that screen out
6 or tend to screen out or otherwise deny a job or benefit to an individual
7 with a disability:

8 (a) Have been shown to be job-related and consistent with business
9 necessity and such performance cannot be accomplished by reasonable
10 accommodation, as required by the Nebraska Fair Employment Practice Act
11 and the federal Americans with Disabilities Act of 1990; or

12 (b) Include a requirement that an individual shall not pose a direct
13 threat, involving a significant risk to the health or safety of other
14 individuals in the workplace, that cannot be eliminated by reasonable
15 accommodation.

16 It shall not be an unlawful employment practice to refuse employment
17 based on a policy of not employing both husband and wife if such policy
18 is equally applied to both sexes.

19 (2) Except as otherwise provided in the Nebraska Fair Employment
20 Practice Act, women ~~women~~ affected by pregnancy, childbirth, or related
21 medical conditions shall be treated the same for all employment-related
22 purposes, including receipt of employee benefits, as other persons not so
23 affected but similar in their ability or inability to work, and nothing
24 in this section shall be interpreted to provide otherwise.

25 This section shall not require an employer to provide employee
26 benefits for abortion except when medical complications have arisen from
27 an abortion.

28 Nothing in this section shall preclude an employer from providing
29 employee benefits for abortion under fringe benefit programs or otherwise
30 affect bargaining agreements in regard to abortion.

31 Sec. 5. Section 48-1117, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 48-1117 The commission shall have the following powers and duties:

3 (1) To receive, investigate, and pass upon charges of unlawful
4 employment practices anywhere in the state;

5 (2) To hold hearings, subpoena witnesses, compel their attendance,
6 administer oaths, and take the testimony of any person under oath and, in
7 connection therewith, to require the production for examination of any
8 books and papers relevant to any allegation of unlawful employment
9 practice pending before the commission. The commission may make rules as
10 to the issuance of subpoenas, subject to the approval by a constitutional
11 majority of the elected members of the Legislature;

12 (3) To cooperate with the federal government and with local agencies
13 to effectuate the purposes of the Nebraska Fair Employment Practice Act,
14 including the sharing of information possessed by the commission on a
15 case that has also been filed with the federal government or local
16 agencies if both the employer and complainant have been notified of the
17 filing;

18 (4) To attempt to eliminate unfair employment practices by means of
19 conference, mediation, conciliation, arbitration, and persuasion;

20 (5) To require that every employer, employment agency, and labor
21 organization subject to the act shall (a) make and keep such records
22 relevant to the determinations of whether unlawful employment practices
23 have been or are being committed, (b) preserve such records for such
24 periods, and (c) make such reports therefrom, as the commission shall
25 prescribe by regulation or order, after public hearing, as reasonable,
26 necessary, or appropriate for the enforcement of the act or the
27 regulations or orders thereunder. The commission shall, by regulation,
28 require each employer, labor organization, and joint labor-management
29 committee subject to the act which controls an apprenticeship or other
30 training program to maintain such records as are reasonably necessary to
31 carry out the purposes of the act, including, but not limited to, a list

1 of applicants who wish to participate in such program, including the
2 chronological order in which such applications were received, and to
3 furnish to the commission, upon request, a detailed description of the
4 manner in which persons are selected to participate in the apprenticeship
5 or other training program. Any employer, employment agency, labor
6 organization, or joint labor-management committee which believes that the
7 application to it of any regulation or order issued under this section
8 would result in undue hardship may either apply to the commission for an
9 exemption from the application of such regulation or order or bring a
10 civil action in the district court for the district where such records
11 are kept. If the commission or the court, as the case may be, finds that
12 the application of the regulation or order to the employer, employment
13 agency, or labor organization in question would impose an undue hardship,
14 the commission or the court, as the case may be, may grant appropriate
15 relief;

16 (6) To report, not less than once every two years, to the Clerk of
17 the Legislature and the Governor, on the hearings it has conducted and
18 the decisions it has rendered, the other work performed by it to carry
19 out the purposes of the act, and to make recommendations for such further
20 legislation concerning abuses and discrimination because of race, color,
21 religion, sex, disability, marital status, or national origin, as may be
22 desirable. The report shall also include the number of complaints filed
23 under the act alleging a violation of subdivision (2) of section
24 48-1107.01 and the resolution of such complaints. The report submitted to
25 the Clerk of the Legislature shall be submitted electronically. Each
26 member of the Legislature shall receive an electronic copy of the report
27 required by this subdivision by making a request for it to the
28 chairperson of the commission; and

29 (7) To adopt and promulgate rules and regulations necessary to carry
30 out the duties prescribed in the act.

31 Sec. 6. Original sections 48-1102, 48-1107.01, 48-1107.02, and

- 1 48-1111, Reissue Revised Statutes of Nebraska, and section 48-1117,
- 2 Revised Statutes Cumulative Supplement, 2014, are repealed.