

AMENDMENTS TO LB276

Introduced by Business and Labor.

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

3 Section 1. (1) For purposes of this section, construction work
4 means work on real property and annexations, including new work,
5 additions, alterations, reconstruction, installations, and repairs
6 performed at one or more different sites which may be dispersed
7 geographically.

8 (2) A person who regularly and customarily performs construction
9 work for others at a location other than the person's own fixed business
10 location shall apply to the administrator of the Nebraska Workers'
11 Compensation Court for certification as an independent contractor unless
12 the person has elected to bring himself or herself within the provisions
13 of the Nebraska Workers' Compensation Act in accordance with subdivision
14 (10) of section 48-115. A certified independent contractor is not
15 entitled to any benefits under the Nebraska Workers' Compensation Act.

16 (3)(a) To request certification as an independent contractor, a
17 person shall submit an application to the administrator of the
18 compensation court in a form and manner prescribed by the administrator.
19 The application shall include the following:

20 (i) The applicant's name, address, and telephone number;

21 (ii) The applicant's social security number and federal employer
22 identification number;

23 (iii) The applicant's regular trade, occupation, business, or
24 profession;

25 (iv) The applicant's business name, business address, and the type
26 of business entity;

27 (v) A completed and signed questionnaire developed by the

1 administrator;

2 (vi) A signed form developed by the administrator acknowledging
3 that, as a certified independent contractor, the applicant is not
4 entitled to any benefits under a policy of workers' compensation
5 insurance pursuant to the Nebraska Workers' Compensation Act;

6 (vii) Any other information required by the administrator; and

7 (viii) A fee to be set by the administrator in an amount sufficient
8 to cover the costs of administering this section. Fees collected pursuant
9 to this section shall be remitted to the State Treasurer for credit to
10 the Compensation Court Cash Fund.

11 (b) The administrator of the compensation court may, at his or her
12 discretion, require documentation or other evidence to support any
13 representations made on an application or questionnaire submitted
14 pursuant to this section.

15 (4) The administrator of the compensation court shall evaluate the
16 application and the applicant's answers to the questionnaire and
17 determine whether the applicant is qualified to be a certified
18 independent contractor. In making such determination, the administrator
19 shall consider the following factors:

20 (a) The extent of control which those for whom work is performed
21 exercise over the details of the work;

22 (b) Whether the applicant is engaged in a distinct business
23 providing services to multiple entities;

24 (c) Whether in the applicant's trade, occupation, business, or
25 profession the work is normally done under the direction of an employer
26 or by a specialist without supervision;

27 (d) The skill required in the applicant's trade, occupation,
28 business, or profession;

29 (e) Whether the applicant or those for whom work is performed supply
30 the instrumentalities, tools, and place of work;

31 (f) Whether the applicant is engaged on an ongoing basis or for a

1 specific project;

2 (g) Whether the applicant is paid on a completed project basis or
3 some other method;

4 (h) Whether the work of the applicant is part of the regular
5 business of those for whom work is performed;

6 (i) Whether the applicant and those for whom work is performed
7 intend the applicant to be an independent contractor and whether the work
8 of the applicant is subject to an agreement designating the applicant as
9 an independent contractor; and

10 (j) Whether those for whom work is performed are or are not in
11 business.

12 (5) If the administrator of the compensation court determines that
13 the applicant is qualified to be a certified independent contractor, the
14 administrator shall issue a certificate to that effect. The certificate
15 shall remain in effect for a period of two years. Any person desiring to
16 continue certification beyond the initial two-year certification period
17 shall submit a new application in accordance with subsection (3) of this
18 section. Such new application shall be evaluated in accordance with
19 subsection (4) of this section.

20 (6) If the administrator of the compensation court determines that
21 the applicant is not qualified to be a certified independent contractor,
22 or if the applicant fails to provide any information required under
23 subsection (3) of this section, the administrator shall deny the
24 application. Any applicant who refuses to accept such denial may request
25 reconsideration by a judge of the Nebraska Workers' Compensation Court.
26 Such request must be filed in the office of the clerk of the compensation
27 court within thirty days after notice of the denial. Appeal from an
28 action by a judge of the compensation court pursuant to this subsection
29 shall be in accordance with section 48-185.

30 (7)(a) A certificate issued by the administrator of the compensation
31 court shall be revoked prior to the expiration of the two-year

1 certification period if:

2 (i) The revocation is requested by the person certified;

3 (ii) The person certified provided false information on an
4 application or questionnaire which the administrator relied upon and the
5 reliance was a substantial factor in the decision to issue the
6 certificate;

7 (iii) The administrator determines that the person certified is no
8 longer qualified to be a certified independent contractor; or

9 (iv) The person certified elects to bring himself or herself within
10 the provisions of the Nebraska Workers' Compensation Act in accordance
11 with subsection (10) of this section.

12 (b) Any person who refuses to accept a revocation by the
13 administrator pursuant to subdivision (7)(a)(ii) or (7)(a)(iii) of this
14 section may request reconsideration by a judge of the Nebraska Workers'
15 Compensation Court. Such request must be filed in the office of the clerk
16 of the compensation court within thirty days after notice of the
17 revocation. Appeal from an action by a judge of the compensation court
18 pursuant to this subdivision shall be in accordance with section 48-185.

19 (8) Failure to apply for certification under this section or a
20 denial or revocation of certification shall not create a presumption that
21 the person is an employee for purposes of the Nebraska Workers'
22 Compensation Act unless such person has elected to bring himself or
23 herself within the provisions of the act in accordance with subdivision
24 (10) of section 48-115.

25 (9) Any person who knowingly provides false information on an
26 application or questionnaire submitted pursuant to this section shall be
27 guilty of a Class IV misdemeanor. Any person who requires an employee to
28 provide false information on an application or questionnaire in order for
29 the employee to obtain status as a certified independent contractor shall
30 be guilty of a Class IV misdemeanor.

31 (10) A certified independent contractor may, at any time, elect to

1 bring himself or herself within the provisions of the Nebraska Workers'
2 Compensation Act in accordance with subdivision (10) of section 48-115.
3 Such election shall automatically terminate certification. Notification
4 of such election shall be given to the administrator of the compensation
5 court by the person certified.

6 (11) The Nebraska Workers' Compensation Court may adopt and
7 promulgate rules and regulations necessary to implement this section.

8 Sec. 2. Section 48-106, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 48-106 (1) The Nebraska Workers' Compensation Act shall apply to the
11 State of Nebraska, to every governmental agency created by the state,
12 and, except as provided in this section, to every resident employer in
13 this state and nonresident employer performing work in this state who
14 employs one or more employees in the regular trade, business, profession,
15 or vocation of such employer.

16 (2) The act shall not apply to:

17 (a) A railroad company engaged in interstate or foreign commerce;

18 (b) Service performed by a worker who is a household domestic
19 servant in a private residence;

20 (c) Service performed by a worker when performed for an employer who
21 is engaged in an agricultural operation and employs only related
22 employees;

23 (d) Service performed by a worker when performed for an employer who
24 is engaged in an agricultural operation and employs unrelated employees
25 unless such service is performed for an employer who during any calendar
26 year employs ten or more unrelated, full-time employees, whether in one
27 or more locations, on each working day for thirteen calendar weeks,
28 whether or not such weeks are consecutive. The act shall apply to an
29 employer thirty days after the thirteenth such week;~~and~~

30 (e) Service performed by a person who is engaged in an agricultural
31 operation, or performed by his or her related employees, when the service

1 performed is (i) occasional and (ii) for another person who is engaged in
2 an agricultural operation who has provided or will provide reciprocal or
3 similar service; and -

4 (f) Service performed by an independent contractor who is certified
5 pursuant to section 1 of this act.

6 (3) If the employer is the state or any governmental agency created
7 by the state, the exemption from the act under subdivision (2)(d) of this
8 section does not apply.

9 (4) If the act applies to an employer because the employer meets the
10 requirements of subdivision (2)(d) of this section, all unrelated
11 employees shall be covered under the act and such employees' wages shall
12 be considered for premium purposes.

13 (5) If an employer to whom the act applies because the employer
14 meets the requirements of subdivision (2)(d) of this section subsequently
15 does not employ ten or more unrelated, full-time employees, such employer
16 shall continue to provide workers' compensation insurance coverage for
17 the employees for the remainder of the calendar year and for the next
18 full calendar year. When the required coverage period has expired, such
19 employer may elect to return to exempt status by (a) posting,
20 continuously in a conspicuous place at the employment locations of the
21 employees for a period of at least ninety days, a written or printed
22 notice stating that the employer will no longer carry workers'
23 compensation insurance for the employees and the date such insurance will
24 cease and (b) thereafter no longer carrying a policy of workers'
25 compensation insurance. Failure to provide notice in accordance with this
26 subsection voids an employer's attempt to return to exempt status.

27 (6) An employer who is exempt from the act under subsection (2) of
28 this section may elect to bring the employees of such employer under the
29 act. Such election is made by the employer obtaining a policy of workers'
30 compensation insurance covering such employees. Such policy shall be
31 obtained from a corporation, association, or organization authorized and

1 licensed to transact the business of workers' compensation insurance in
2 this state. If such an exempt employer procures a policy of workers'
3 compensation insurance which is in full force and effect at the time of
4 an accident to an employee of such employer, such procurement is
5 conclusive proof of the employer's and employee's election to be bound by
6 the act. Such an exempt employer who has procured a policy of workers'
7 compensation insurance may elect to return to exempt status by (a)
8 posting, continuously in a conspicuous place at the employment locations
9 of the employees for a period of at least ninety days, a written or
10 printed notice stating that the employer will no longer carry workers'
11 compensation insurance for the employees and the date such insurance will
12 cease and (b) thereafter no longer carrying a policy of workers'
13 compensation insurance. Failure to provide notice in accordance with this
14 subsection voids an employer's attempt to return to exempt status.

15 (7) Every employer exempted under subdivision (2)(d) of this section
16 who does not elect to provide workers' compensation insurance under
17 subsection (6) of this section shall give all unrelated employees at the
18 time of hiring or at any time more than thirty calendar days prior to the
19 time of injury the following written notice which shall be signed by the
20 unrelated employee and retained by the employer: "In this employment you
21 will not be covered by the Nebraska Workers' Compensation Act and you
22 will not be compensated under the act if you are injured on the job or
23 suffer an occupational disease. You should plan accordingly." Failure to
24 provide the notice required by this subsection subjects an employer to
25 liability under and inclusion in the act for any unrelated employee to
26 whom such notice was not given.

27 (8) An exclusion from coverage in any health, accident, or other
28 insurance policy covering a person employed by an employer who is exempt
29 from the act under this section which provides that coverage under the
30 health, accident, or other insurance policy does not apply if such person
31 is entitled to workers' compensation coverage is void as to such person

1 if such employer has not elected to bring the employees of such employer
2 within the act as provided in subsection (6) of this section.

3 (9) For purposes of this section:

4 (a) Agricultural operation means (i) the cultivation of land for the
5 production of agricultural crops, fruit, or other horticultural products
6 or (ii) the ownership, keeping, or feeding of animals for the production
7 of livestock or livestock products;

8 (b) Full-time employee means a person who is employed to work one-
9 half or more of the regularly scheduled hours during each pay period; and

10 (c) Related employee means a spouse of an employer and an employee
11 related to the employer within the third degree by blood or marriage.
12 Relationship by blood or marriage within the third degree includes
13 parents, grandparents, great grandparents, children, grandchildren, great
14 grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and
15 spouses of the same. If the employer is a partnership, limited liability
16 company, or corporation in which all of the partners, members, or
17 shareholders are related within the third degree by blood or marriage,
18 then related employee means any employee related to any such partner,
19 member, or shareholder within the third degree by blood or marriage.

20 Sec. 3. Section 48-116, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 48-116 Any person, firm, or corporation creating or carrying into
23 operation any scheme, artifice, or device to enable him or her, them, or
24 it to execute work without being responsible to the workers for the
25 provisions of the Nebraska Workers' Compensation Act shall be included in
26 the term employer, and with the immediate employer shall be jointly and
27 severally liable to pay the compensation herein provided for and be
28 subject to all the provisions of such act. This section, however, shall
29 not be construed as applying to (1) an owner who lets a contract to a
30 contractor in good faith, or a contractor, who, in good faith, lets to a
31 subcontractor a portion of his or her contract, if the owner or principal

1 contractor, as the case may be, requires the contractor or subcontractor,
2 respectively, to procure a policy or policies of insurance from an
3 insurance company licensed to write such insurance in this state, which
4 policy or policies of insurance shall guarantee payment of compensation
5 according to the Nebraska Workers' Compensation Act to injured workers or
6 (2) service performed by an independent contractor who is certified
7 pursuant to section 1 of this act.

8 Sec. 4. Section 48-1,110, Revised Statutes Cumulative Supplement,
9 2014, is amended to read:

10 48-1,110 Sections 48-101 to 48-1,117 and section 1 of this act shall
11 be known and may be cited as the Nebraska Workers' Compensation Act.

12 Sec. 5. Section 48-1,116, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 48-1,116 The Compensation Court Cash Fund is hereby created. The
15 fund shall be used to aid in providing for the expense of administering
16 the Nebraska Workers' Compensation Act and the payment of the salaries
17 and expenses of the personnel of the Nebraska Workers' Compensation
18 Court, ~~except that transfers may be made from the fund to the General~~
19 ~~Fund at the direction of the Legislature through June 30, 2011.~~

20 All fees received pursuant to sections 48-120, 48-120.02, 48-138,
21 48-139, 48-145.04, and 48-165 and section 1 of this act shall be remitted
22 to the State Treasurer for credit to the Compensation Court Cash Fund.
23 The fund shall also consist of amounts credited to the fund pursuant to
24 sections 48-1,113, 48-1,114, and 77-912. The State Treasurer may receive
25 and credit to the fund any money which may at any time be contributed to
26 the state or the fund by the federal government or any agency thereof to
27 which the state may be or become entitled under any act of Congress or
28 otherwise by reason of any payment made from the fund.

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

1 Sec. 6. Original sections 48-106, 48-116, and 48-1,116, Reissue
2 Revised Statutes of Nebraska, and section 48-1,110, Revised Statutes
3 Cumulative Supplement, 2014, are repealed.