

LEGISLATIVE BILL 343

Approved by the Governor May 2, 1973

Introduced by Chambers, 11

AN ACT to amend sections 48-1204 and 48-1206, Reissue Revised Statutes of Nebraska, 1943, and sections 48-1202 and 48-1203, Revised Statutes Supplement, 1972, relating to labor; to change the definition of employee; to increase the minimum rate of wages paid to employees; to provide the Commissioner of labor with additional authority; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-1202, Revised Statutes Supplement, 1972, be amended to read as follows:

48-1202. As used in sections 48-1201 to 48-1209, unless the context otherwise requires:

- (1) Employ includes to permit to work;
- (2) Employer includes any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing four or more employees at any one time except for seasonal employment of not more than twenty weeks in any calendar year, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States, the state or any political subdivision thereof;
- (3) Employee includes any individual employed by any employer, but shall not include:
 - (a) Any individual employed in agriculture;
 - (b) Any individual employed as a babysitter in or about a private home;
 - (c) Any individual employed in a bona fide executive, administrative, or professional capacity, and or foremen, superintendents, ~~and~~ or supervisors;
 - (d) Any individual employed by the United States, or by the state or any political subdivision thereof;

(e) Any individual engaged in the activities of an educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organization are on a voluntary basis;

~~(f) Students regularly enrolled in primary and secondary schools; working after school hours or on vacation;~~

(g) ~~(f)~~ Apprentices and learners otherwise provided by law;

~~(h) Inexperienced workers who have worked less than three months for any one employer;~~

(i) ~~(g)~~ Veterans in training under supervision of the Veterans' Administration;

(j) ~~(h)~~ A child in the employment of his parent or a parent in the employment of his child; or

~~(k) (i) Any person who, directly or indirectly, is receiving any form of federal, state, county, or local aid or welfare and who is physically or mentally disabled and employed in a program of rehabilitation, who shall receive a wage at a level consistent with his health, efficiency, and general well-being; and~~

(4) Occupational classification shall mean a classification established by the Dictionary of Occupational Titles, prepared by the United States Department of Labor; and

(5) Wages shall mean all remuneration for personal services, including commissions and bonuses and the cash value of all remunerations in any medium other than cash.

Sec. 2. That section 48-1203, Revised Statutes Supplement, 1972, be amended to read as follows:

48-1203. Every employer shall pay to each of his employees, as defined in section 48-1202, wages at the minimum rate of one dollar and forty cents per hour from July 1, 1973 to December 31, 1973; one dollar and fifty cents per hour from January 1, 1974 to July 1, 1974; and one dollar and sixty cents per hour thereafter; Provided, that as to persons compensated primarily by way of gratuities such as waitresses, waiters, hotel bellmen, porters, and shoeshine boys, the employer shall pay wages at the minimum rate of seventy-five ninety cents per hour, plus all gratuities given to them for services

rendered. In determining whether or not the individual is compensated primarily by way of gratuities, the burden of proof shall be upon the employer.

Sec. 3. That section 48-1204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1204. In the event of a recession or other catastrophe adversely affecting industrial or mercantile classifications, the Commissioner of Labor, on application of an interested party, shall hold a public hearing to determine whether or not such a condition exists, and if so, he may set a minimum lower than that established by section 48-1203 for that classification only, but in no event less than eighty one dollar and twenty cents per hour.

Sec. 4. That section 48-1206, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1206. {1} The Commissioner of Labor shall have the authority to subpoena records and witnesses related to the enforcement of the provisions of this act. He or his agent may inspect all related records and gather testimony on any matter relative to the enforcement of sections 48-1201 to 48-1209.

~~{1}~~ {2} Any employer who violates any of the provisions of sections 48-1203 and 48-1204 shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than fifty dollars nor more than five hundred dollars.

~~{2}~~ {3} It shall be the duty of the county attorney for the county wherein any violation of sections 48-1201 to 48-1209 occurs to prosecute the same in the district court in the county where the offense occurred.

~~{3}~~ {4} Any employer who violates any provision of section 48-1203 shall be liable to the employees affected in the amount of their unpaid minimum wages, as the case may be.

~~{4}~~ {5} Action to recover unpaid minimum wages as provided in subsection ~~{3}~~ {4} of this section may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated.

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The court in which any action is brought under this subsection shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney's fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this subsection, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

Sec. 5. That original sections 48-1204 and 48-1206, Reissue Revised Statutes of Nebraska, 1943, and sections 48-1202 and 48-1203, Revised Statutes Supplement, 1972, are repealed.