

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 436

Introduced by Ebke, 32.

Read first time January 17, 2017

Committee: Business and Labor

1 A BILL FOR AN ACT relating to labor; to amend sections 48-106, 48-220,
2 48-234, 48-236, 48-237, 48-902, 48-1002, 48-1202, 48-1902, and
3 48-2208, Reissue Revised Statutes of Nebraska, and sections 48-603,
4 48-1102, 48-1220, 48-1229, 48-2302, and 48-3502, Revised Statutes
5 Cumulative Supplement, 2016; to change the definition of employer to
6 exclude certain franchisors for purposes of various labor statutes;
7 to define and redefine terms; to harmonize provisions; to provide a
8 duty for the Revisor of Statutes; and to repeal the original
9 sections.

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

1 Section 1. (1) For purposes of sections 48-106, 48-220, 48-234,
2 48-236, 48-237, 48-603, 48-902, 48-1002, 48-1102, 48-1202, 48-1220,
3 48-1229, 48-1902, 48-2208, 48-2302, and 48-3502, except as provided in
4 subsection (2) of this section, a franchisor shall not be considered to
5 be an employer of a franchisee or a franchisee's employees.

6 (2) Subsection (1) of this section does not prevent a franchisor
7 from being considered an employer of a franchisee or a franchisee's
8 employees in a specific case if the franchisor is found to have exercised
9 a type or degree of control over the franchisee or the franchisee's
10 employees that is not customarily exercised by a franchisor for the
11 purpose of protecting the franchisor's trademarks and brand.

12 (3) For purposes of this section, the terms franchisee and
13 franchisor have the same meanings as in 16 C.F.R. 436.1.

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

16 48-106 (1) The Nebraska Workers' Compensation Act shall apply to the
17 State of Nebraska, to every governmental agency created by the state,
18 and, except as provided in this section, to every resident employer in
19 this state and nonresident employer performing work in this state who
20 employs one or more employees in the regular trade, business, profession,
21 or vocation of such employer.

22 (2) The act shall not apply to:

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

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

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

29 (d) Service performed by a worker when performed for an employer who
30 is engaged in an agricultural operation and employs unrelated employees
31 unless such service is performed for an employer who during any calendar

1 year employs ten or more unrelated, full-time employees, whether in one
2 or more locations, on each working day for thirteen calendar weeks,
3 whether or not such weeks are consecutive. The act shall apply to an
4 employer thirty days after the thirteenth such week; and

5 (e) Service performed by a person who is engaged in an agricultural
6 operation, or performed by his or her related employees, when the service
7 performed is (i) occasional and (ii) for another person who is engaged in
8 an agricultural operation who has provided or will provide reciprocal or
9 similar service.

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

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

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

31 (6) An employer who is exempt from the act under subsection (2) of

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

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

31 (8) An exclusion from coverage in any health, accident, or other

1 insurance policy covering a person employed by an employer who is exempt
2 from the act under this section which provides that coverage under the
3 health, accident, or other insurance policy does not apply if such person
4 is entitled to workers' compensation coverage is void as to such person
5 if such employer has not elected to bring the employees of such employer
6 within the act as provided in subsection (6) of this section.

7 (9) For purposes of the Nebraska Workers' Compensation Act, the term
8 employer shall only include a franchisor as provided in section 1 of this
9 act.

10 (10) (9) For purposes of this section:

11 (a) Agricultural operation means (i) the cultivation of land for the
12 production of agricultural crops, fruit, or other horticultural products
13 or (ii) the ownership, keeping, or feeding of animals for the production
14 of livestock or livestock products;

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

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

27 Sec. 3. Section 48-220, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 48-220 As used in sections 48-220 to 48-223, unless the context
30 otherwise requires, employer shall mean and include an individual, a
31 partnership, a limited liability company, an association, a corporation,

1 a legal representative, a trustee, a receiver, a trustee in bankruptcy,
2 and any common carrier by rail, motor, water, air, or express company
3 doing business in or operating within the state. The term employer shall
4 only include a franchisor as provided in section 1 of this act.

5 Sec. 4. Section 48-234, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 48-234 (1) Except as provided in subsection (2) of this section,
8 whenever an employer, including a governmental agency, permits an
9 employee to take a leave of absence upon the birth of the employee's
10 child, an adoptive parent, following the commencement of the parent-child
11 relationship, is entitled to the same leave upon the same terms.

12 (2) The adoptive parent leave of absence is not required if the
13 child being adopted is a special needs child over eighteen years of age,
14 a child who is over eight years of age and is not a special needs child,
15 a stepchild being adopted by his or her stepparent, a foster child being
16 adopted by his or her foster parent, or a child who was originally under
17 a voluntary placement for purposes other than adoption without assistance
18 from an attorney, physician, or other individual or agency which later
19 results in a petition for the adoption of the child by the person with
20 whom the voluntary placement was made.

21 (3) For purposes of this section, commencement of the parent-child
22 relationship means when the child is placed with the employee for the
23 purposes of adoption.

24 (4) Whenever an employer, including a governmental agency, refuses
25 to extend a child-care leave of absence to an adoptive parent in
26 violation of this section, an aggrieved adoptive parent may bring an
27 action for equitable relief and damages. In all actions brought pursuant
28 to this section, reasonable attorney's fees, as determined by the court,
29 shall be awarded to the prevailing party if the prevailing party is the
30 adoptive parent.

31 (5) For purposes of this section, the term employer shall only

1 include a franchisor as provided in section 1 of this act.

2 Sec. 5. Section 48-236, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 48-236 (1) For purposes of this section:

5 (a) Employee does not include an individual employed in the domestic
6 service of any person;

7 (b) Employer means a person who has one or more employees but shall
8 only include a franchisor as provided in section 1 of this act;

9 (c) Genetic information means information about a gene, gene
10 product, or inherited characteristic derived from a genetic test; and

11 (d) Genetic test means the analysis of human DNA, RNA, and
12 chromosomes and those proteins and metabolites used to detect heritable
13 or somatic disease-related genotypes or karyotypes for clinical purposes.
14 A genetic test must be generally accepted in the scientific and medical
15 communities as being specifically determinative for the presence,
16 absence, or mutation of a gene or chromosome in order to qualify under
17 this definition. Genetic test does not include a routine physical
18 examination or a routine analysis, including a chemical analysis, of body
19 fluids unless conducted specifically to determine the presence, absence,
20 or mutation of a gene or chromosome.

21 (2) Except as otherwise required by federal law, an employer shall
22 not:

23 (a) Fail or refuse to hire, recruit, or promote an employee or
24 applicant for employment because of genetic information that is unrelated
25 to the ability to perform the duties of a particular job or position;

26 (b) Discharge or otherwise discriminate against an employee or
27 applicant with respect to compensation or the terms, conditions, or
28 privileges of employment because of genetic information that is unrelated
29 to the ability to perform the duties of a particular job or position;

30 (c) Limit, segregate, or classify an employee or applicant for
31 employment in a way which deprives or tends to deprive an employee or

1 applicant of employment opportunities or otherwise adversely affects the
2 status of an employee or applicant because of genetic information that is
3 unrelated to the ability to perform the duties of a particular job or
4 position; or

5 (d) Require an employee or applicant for employment to submit to a
6 genetic test or to provide genetic information as a condition of
7 employment or promotion.

8 (3) Subsection (2) of this section does not prohibit an employee
9 from voluntarily providing to an employer genetic information that is
10 related to the employee's health or safety in the workspace. Subsection
11 (2) of this section does not prohibit an employer from using genetic
12 information received from an employee under this subsection to protect
13 the employee's health or safety.

14 (4) This section shall not apply to the employment of an individual
15 by his or her parent, spouse, or child.

16 Sec. 6. Section 48-237, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 48-237 (1) For purposes of this section:

19 (a) Employer means a person which employs any individual within this
20 state as an employee but shall only include a franchisor as provided in
21 section 1 of this act;

22 (b) Employee means any individual permitted to work by an employer
23 pursuant to an employment relationship or who has contracted to sell the
24 goods of an employer and to be compensated by commission. Services
25 performed by an individual for an employer shall be deemed to be
26 employment, unless it is shown that (i) such individual has been and will
27 continue to be free from control or direction over the performance of
28 such services, both under his or her contract of service and in fact,
29 (ii) such service is either outside the usual course of business for
30 which such service is performed or such service is performed outside of
31 all the places of business of the enterprise for which such service is

1 performed, and (iii) such individual is customarily engaged in an
2 independently established trade, occupation, profession, or business.
3 This subdivision is not intended to be a codification of the common law
4 and shall be considered complete as written;

5 (c) Person means the state or any individual, partnership, limited
6 liability company, association, joint-stock company, trust, corporation,
7 political subdivision, or personal representative of the estate of a
8 deceased individual, or the receiver, trustee, or successor thereof;

9 (d) Temporary employee means an employee of a temporary help firm
10 assigned to work for the clients of such temporary help firm; and

11 (e) Temporary help firm means a firm that hires its own employees
12 and assigns them to clients to support or supplement the client's
13 workforce in work situations such as employee absences, temporary skill
14 shortages, seasonal workloads, and special assignments and projects.

15 (2) Except as otherwise provided in subsection (3) of this section,
16 an employer shall not:

17 (a) Publicly post or publicly display in any manner more than the
18 last four digits of an employee's social security number, including
19 intentional communication of more than the last four digits of the social
20 security number or otherwise making more than the last four digits of the
21 social security number available to the general public or to an
22 employee's coworkers;

23 (b) Require an employee to transmit more than the last four digits
24 of his or her social security number over the Internet unless the
25 connection is secure or the information is encrypted;

26 (c) Require an employee to use more than the last four digits of his
27 or her social security number to access an Internet web site unless a
28 password, unique personal identification number, or other authentication
29 device is also required to access the Internet web site; or

30 (d) Require an employee to use more than the last four digits of his
31 or her social security number as an employee number for any type of

1 employment-related activity.

2 (3)(a) Except as otherwise provided in subdivision (b) of this
3 subsection, an employer shall be permitted to use more than the last four
4 digits of an employee's social security number only for:

5 (i) Compliance with state or federal laws, rules, or regulations;

6 (ii) Internal administrative purposes, including provision of more
7 than the last four digits of social security numbers to third parties for
8 such purposes as administration of personnel benefit provisions for the
9 employer and employment screening and staffing; and

10 (iii) Commercial transactions freely and voluntarily entered into by
11 the employee with the employer for the purchase of goods or services.

12 (b) The following uses for internal administrative purposes
13 described in subdivision (a)(ii) of this subsection shall not be
14 permitted:

15 (i) As an identification number for occupational licensing;

16 (ii) As an identification number for drug-testing purposes except
17 when required by state or federal law;

18 (iii) As an identification number for company meetings;

19 (iv) In files with unrestricted access within the company;

20 (v) In files accessible by any temporary employee unless the
21 temporary employee is bonded or insured under a blanket corporate surety
22 bond or equivalent commercial insurance; or

23 (vi) For posting any type of company information.

24 (4) An employer who violates this section is guilty of a Class V
25 misdemeanor.

26 (5) Evidence of a conviction under this section is admissible in
27 evidence at a civil trial as evidence of the employer's negligence.

28 Sec. 7. Section 48-603, Revised Statutes Cumulative Supplement,
29 2016, is amended to read:

30 48-603 As used in the Employment Security Law, unless the context
31 clearly requires otherwise, employer shall mean:

1 (1) Any individual or type of organization, including any
2 partnership, limited liability company, association, trust, estate,
3 joint-stock company, insurance company or corporation, whether domestic
4 or foreign, or the receiver, trustee in bankruptcy, trustee or successor
5 thereof, or the legal representative of a deceased person, which for some
6 portion of a day but not necessarily simultaneously in each of twenty
7 different calendar weeks, whether or not such weeks are or were
8 consecutive, within either the current or preceding calendar year, and
9 for the purpose of this definition, if any week includes both December 31
10 and January 1, the days up to January 1 shall be deemed one calendar week
11 and the days beginning January 1 another such week, has or had in
12 employment one or more individuals, irrespective of whether the same
13 individuals are or were employed in each such day; all individuals
14 performing services for any employer of any person in this state, who
15 maintains two or more separate establishments within this state, shall be
16 deemed to be employed by a single employer; any artifice or device,
17 including any contract or subcontract, by an employer for the performance
18 of work, which is a part of such employer's usual trade, occupation,
19 profession, or business, entered into for the purpose or with the intent
20 of evading the application of this section to such employer, is hereby
21 prohibited and declared to be unlawful;

22 (2) Any employer of any person in this state who in any calendar
23 quarter in either the current or preceding calendar year has paid wages
24 for employment in the total sum of fifteen hundred dollars or more;

25 (3) Any individual or employer of any person in this state which
26 acquired the organization, trade, or business, or substantially all the
27 assets thereof, of another employer which, at the time of such
28 acquisition, was an employer subject to the Employment Security Law;

29 (4) Any employer of any person in this state, which acquired the
30 organization, trade, or business, or substantially all the assets
31 thereof, of another employer of any person in this state, not an employer

1 subject to such law, and which, if subsequent to such acquisition it were
2 treated as a single unit with such other employer, would be an employer
3 under subdivision (1) or (2) of this section;

4 (5) Any employer of any person in this state which, having become an
5 employer under any provision of the Employment Security Law and which has
6 not, under section 48-661, ceased to be an employer subject to such law;

7 (6) For the effective period of its election pursuant to section
8 48-661, any other employer of any person in this state who has elected to
9 become fully subject to the Employment Security Law;

10 (7) Any employer of any person in this state not an employer by
11 reason of any other subdivision of this section (a) for which services in
12 employment are or were performed with respect to which such employer is
13 liable for any federal tax against which credit may be taken for
14 contributions required to be paid into a state unemployment compensation
15 fund; or (b) which, as a condition for approval of the Employment
16 Security Law for full tax credit against the tax imposed by the Federal
17 Unemployment Tax Act, is required, pursuant to such act, to be an
18 employer under the Employment Security Law;

19 (8) The state or any political subdivision thereof and any
20 instrumentality of any one or more of the foregoing;

21 (9) Any organization for which service in employment as defined in
22 subdivision (4)(b) of section 48-604 is performed;

23 (10) Any individual or employing unit for which service in
24 employment as defined in subdivision (4)(c) of section 48-604 is
25 performed;

26 (11) Any individual or employing unit for which service in
27 employment as defined in subdivision (4)(d) of section 48-604 is
28 performed; ~~and~~

29 (12)(a) In determining whether or not an employing unit for which
30 service other than domestic service is also performed is an employer
31 under subdivision (1) or (10) of this section, the wages earned or the

1 employment of an employee performing domestic service shall not be taken
2 into account; and

3 (b) In determining whether or not an employing unit for which
4 agricultural labor is also performed is an employer under subdivision
5 (11) of this section, the wages earned or the employment of an employee
6 performing services in agricultural labor shall not be taken into
7 account. If an employing unit is determined an employer of agricultural
8 labor, such employing unit shall be determined an employer for the
9 purposes of subdivision (1) of this section; and -

10 (13) A franchisor, but only as provided in section 1 of this act.

11 Sec. 8. Section 48-902, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 48-902 As used in sections 48-901 to 48-912, unless the context
14 otherwise requires:

15 (1) Labor organization shall mean any organization, association, or
16 group of any kind, or any agency or employee representation committee or
17 plan, whether incorporated or unincorporated, which exists for the
18 purpose, in whole or in part, of dealing with employers concerning
19 grievances, labor disputes, wages, rates of pay, hours of employment, or
20 conditions of work;

21 (2) Labor dispute shall mean any controversy between an employer and
22 the majority of his or her employees concerning the right or process or
23 details of collective bargaining or the designation of an employee
24 representative. Any organization with which either the employer or such
25 majority is affiliated may be considered a party to the labor dispute;

26 (3) Employer shall mean a person who engages the services of an
27 employee, and includes any person acting on behalf of an employer within
28 the scope of his or her authority, express or implied, but shall not
29 include the state or any political subdivision thereof, or any labor
30 organization or anyone acting in behalf of such organization other than
31 when it is acting as an employer in fact. The term employer shall only

1 include a franchisor as provided in section 1 of this act;

2 (4) Person shall include one or more individuals, partnerships,
3 limited liability companies, associations, corporations, legal
4 representatives, trustees, or receivers; and

5 (5) Secondary boycott shall mean combining or conspiring to cause or
6 threaten to cause injury to one with whom no labor dispute exists,
7 whether by (a) withholding patronage, labor, or other beneficial business
8 intercourse, or by intentionally and unreasonably hindering or delaying
9 the same, (b) picketing, (c) refusing to handle, install, use, or work on
10 particular materials, equipment, or supplies, (d) hindering or
11 preventing, by threats, intimidation, force, coercion or sabotage, the
12 obtaining, use, or disposition of materials, equipment, or services, or
13 (e) by any other unlawful means, in order to bring him or her against his
14 or her will into a concerted plan to coerce or inflict damage upon
15 another.

16 Sec. 9. Section 48-1002, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 48-1002 For purposes of the Age Discrimination in Employment Act:

19 (1) Person includes one or more individuals, partnerships, limited
20 liability companies, associations, labor organizations, corporations,
21 business trusts, legal representatives, or any organized group of
22 persons;

23 (2) Employer means any person having in his or her employ twenty or
24 more employees for each working day in each of twenty or more calendar
25 weeks in the current or preceding calendar year and includes the State of
26 Nebraska, governmental agencies, and political subdivisions, regardless
27 of the number of employees, any person acting for or in the interest of
28 an employer, directly or indirectly, and any party whose business is
29 financed in whole or in part under the Nebraska Investment Finance
30 Authority Act, but such term does not include (a) the United States, (b)
31 a corporation wholly owned by the government of the United States, or (c)

1 an Indian tribe. The term employer shall only include a franchisor as
2 provided in section 1 of this act;

3 (3) Labor organization means any organization of employees which
4 exists for the purpose, in whole or in part, of collective bargaining or
5 of dealing with employers concerning grievances, terms, or conditions of
6 employment, or for other mutual aid or protection in connection with
7 employment;

8 (4) Employee means an individual employed by any employer; and

9 (5) Employment agency means any person regularly undertaking with or
10 without compensation to procure employees for an employer or to procure
11 for employees opportunities to work for an employer and includes an agent
12 of such a person, but does not include an agency of the United States,
13 except that such term does include the United States Employment Service
14 and the system of state and local employment services receiving federal
15 assistance.

16 Sec. 10. Section 48-1102, Revised Statutes Cumulative Supplement,
17 2016, is amended to read:

18 48-1102 For purposes of the Nebraska Fair Employment Practice Act,
19 unless the context otherwise requires:

20 (1) Person shall include one or more individuals, labor unions,
21 partnerships, limited liability companies, associations, corporations,
22 legal representatives, mutual companies, joint-stock companies, trusts,
23 unincorporated organizations, trustees, trustees in bankruptcy, or
24 receivers;

25 (2) Employer shall mean a person engaged in an industry who has
26 fifteen or more employees for each working day in each of twenty or more
27 calendar weeks in the current or preceding calendar year, any agent of
28 such a person, and any party whose business is financed in whole or in
29 part under the Nebraska Investment Finance Authority Act regardless of
30 the number of employees and shall include the State of Nebraska,
31 governmental agencies, and political subdivisions, but such term shall

1 not include (a) the United States, a corporation wholly owned by the
2 government of the United States, or an Indian tribe or (b) a bona fide
3 private membership club, other than a labor organization, which is exempt
4 from taxation under section 501(c) of the Internal Revenue Code. The term
5 employer shall only include a franchisor as provided in section 1 of this
6 act;

7 (3) Labor organization shall mean any organization which exists
8 wholly or in part for one or more of the following purposes: Collective
9 bargaining; dealing with employers concerning grievances, terms, or
10 conditions of employment; or mutual aid or protection in relation to
11 employment;

12 (4) Employment agency shall mean any person regularly undertaking
13 with or without compensation to procure employees for an employer or to
14 procure for employees opportunities to work for an employer and shall
15 include an agent of such a person but shall not include an agency of the
16 United States, except that such term shall include the United States
17 Employment Service and the system of state and local employment services
18 receiving federal assistance;

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

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

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

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

26 (9) Disability shall mean (a) a physical or mental impairment that
27 substantially limits one or more of the major life activities of such
28 individual, (b) a record of such an impairment, or (c) being regarded as
29 having such an impairment. Disability shall not include homosexuality,
30 bisexuality, transvestism, transsexualism, pedophilia, exhibitionism,
31 voyeurism, gender-identity disorders not resulting in physical

1 impairments, other sexual behavior disorders, problem gambling,
2 kleptomania, pyromania, or psychoactive substance use disorders resulting
3 from current illegal use of drugs;

4 (10)(a) Qualified individual with a disability shall mean an
5 individual with a disability who, with or without reasonable
6 accommodation, can perform the essential functions of the employment
7 position that such individual holds or desires. Consideration shall be
8 given to the employer's judgment as to what functions of a job are
9 essential, and if an employer has prepared a written description before
10 advertising or interviewing applicants for the job, this description
11 shall be considered evidence of the essential functions of the job;

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

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

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

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

22 (iii) Is erroneously regarded as engaging in such use but is not
23 engaging in such use;

24 (11) Reasonable accommodation, with respect to disability, shall
25 include making existing facilities used by employees readily accessible
26 to and usable by individuals with disabilities, job restructuring, part-
27 time or modified work schedules, reassignment to a vacant position,
28 acquisition or modification of equipment or devices, appropriate
29 adjustment or modification of examinations, training manuals, or
30 policies, the provision of qualified readers or interpreters, and other
31 similar accommodations for individuals with disabilities. Reasonable

1 accommodation, with respect to pregnancy, childbirth, or related medical
2 conditions, shall include acquisition of equipment for sitting, more
3 frequent or longer breaks, periodic rest, assistance with manual labor,
4 job restructuring, light-duty assignments, modified work schedules,
5 temporary transfers to less strenuous or hazardous work, time off to
6 recover from childbirth, or break time and appropriate facilities for
7 breast-feeding or expressing breast milk. Reasonable accommodation shall
8 not include accommodations which the covered entity can demonstrate
9 require significant difficulty or expense thereby posing an undue
10 hardship upon the covered entity. Factors to be considered in determining
11 whether an accommodation would pose an undue hardship shall include:

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

14 (b) The overall financial resources of the facility or facilities
15 involved in the provision of the reasonable accommodation, the number of
16 persons employed at such facility, the effect on expenses and resources,
17 or the impact otherwise of such accommodation upon the operation of the
18 facility;

19 (c) The overall financial resources of the covered entity, the
20 overall size of the business of a covered entity with respect to the
21 number of its employees, and the number, type, and location of its
22 facilities; and

23 (d) The type of operation or operations of the covered entity,
24 including the composition, structure, and functions of the work force of
25 such entity, and the geographic separateness and administrative or fiscal
26 relationship of the facility or facilities in question to the covered
27 entity;

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

30 (13) Because of sex or on the basis of sex shall include, but not be
31 limited to, because of or on the basis of pregnancy, childbirth, or

1 related medical conditions;

2 (14) Harass because of sex shall include making unwelcome sexual
3 advances, requesting sexual favors, and engaging in other verbal or
4 physical conduct of a sexual nature if (a) submission to such conduct is
5 made either explicitly or implicitly a term or condition of an
6 individual's employment, (b) submission to or rejection of such conduct
7 by an individual is used as the basis for employment decisions affecting
8 such individual, or (c) such conduct has the purpose or effect of
9 unreasonably interfering with an individual's work performance or
10 creating an intimidating, hostile, or offensive working environment;

11 (15) Unlawful under federal law or the laws of this state shall mean
12 acting contrary to or in defiance of the law or disobeying or
13 disregarding the law;

14 (16) Drug shall mean a controlled substance as defined in section
15 28-401;

16 (17) Illegal use of drugs shall mean the use of drugs, the
17 possession or distribution of which is unlawful under the Uniform
18 Controlled Substances Act, but shall not include the use of a drug taken
19 under supervision by a licensed health care professional or any other use
20 authorized by the Uniform Controlled Substances Act or other provisions
21 of state law; and

22 (18) Individual who is pregnant, who has given birth, or who has a
23 related medical condition shall mean an individual with a known
24 limitation who, with or without reasonable accommodation, can perform the
25 essential functions of the employment position that such individual
26 holds, desires, or may be temporarily assigned to. Consideration shall be
27 given to the employer's judgment as to what functions of a job are
28 essential, and if an employer has prepared a written description before
29 advertising or interviewing applicants for the job, this description
30 shall be considered evidence of the essential functions of the job.

31 Sec. 11. Section 48-1202, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 48-1202 For purposes of the Wage and Hour Act, unless the context
3 otherwise requires:

4 (1) Employ shall include to permit to work;

5 (2) Employer shall include any individual, partnership, limited
6 liability company, association, corporation, business trust, legal
7 representative, or organized group of persons employing four or more
8 employees at any one time except for seasonal employment of not more than
9 twenty weeks in any calendar year, acting directly or indirectly in the
10 interest of an employer in relation to an employee, but shall not include
11 the United States, the state, or any political subdivision thereof. The
12 term employer shall only include a franchisor as provided in section 1 of
13 this act;

14 (3) Employee shall include any individual employed by any employer
15 but shall not include:

16 (a) Any individual employed in agriculture;

17 (b) Any individual employed as a baby-sitter in or about a private
18 home;

19 (c) Any individual employed in a bona fide executive,
20 administrative, or professional capacity or as a superintendent or
21 supervisor;

22 (d) Any individual employed by the United States or by the state or
23 any political subdivision thereof;

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

28 (f) Apprentices and learners otherwise provided by law;

29 (g) Veterans in training under supervision of the United States
30 Department of Veterans Affairs;

31 (h) A child in the employment of his or her parent or a parent in

1 the employment of his or her child; or

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

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

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

13 Sec. 12. Section 48-1220, Revised Statutes Cumulative Supplement,
14 2016, is amended to read:

15 48-1220 As used in sections 48-1219 to 48-1227.01, unless the
16 context otherwise requires:

17 (1) Employee shall mean any individual employed by an employer,
18 including individuals employed by the state or any of its political
19 subdivisions including public bodies;

20 (2) Employer shall mean any person engaged in an industry who has
21 two or more employees for each working day in each of twenty or more
22 calendar weeks in the current or preceding calendar year, any agent of
23 such person, and any party whose business is financed in whole or in part
24 under the Nebraska Investment Finance Authority Act, and includes the
25 State of Nebraska, its governmental agencies, and political subdivisions,
26 regardless of the number of employees, but such term shall not include
27 the United States, a corporation wholly owned by the government of the
28 United States, or an Indian tribe. The term employer shall only include a
29 franchisor as provided in section 1 of this act;

30 (3) Wage rate shall mean all compensation for employment including
31 payment in kind and amounts paid by employers for employee benefits as

1 defined by the commission in regulations issued under sections 48-1219 to
2 48-1227;

3 (4) Employ shall include to suffer or permit to work;

4 (5) Commission shall mean the Equal Opportunity Commission; and

5 (6) Person shall include one or more individuals, partnerships,
6 limited liability companies, corporations, legal representatives,
7 trustees, trustees in bankruptcy, or voluntary associations.

8 Sec. 13. Section 48-1229, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 48-1229 For purposes of the Nebraska Wage Payment and Collection
11 Act, unless the context otherwise requires:

12 (1) Employee means any individual permitted to work by an employer
13 pursuant to an employment relationship or who has contracted to sell the
14 goods or services of an employer and to be compensated by commission.
15 Services performed by an individual for an employer shall be deemed to be
16 employment, unless it is shown that (a) such individual has been and will
17 continue to be free from control or direction over the performance of
18 such services, both under his or her contract of service and in fact, (b)
19 such service is either outside the usual course of business for which
20 such service is performed or such service is performed outside of all the
21 places of business of the enterprise for which such service is performed,
22 and (c) such individual is customarily engaged in an independently
23 established trade, occupation, profession, or business. This subdivision
24 is not intended to be a codification of the common law and shall be
25 considered complete as written;

26 (2) Employer means the state or any individual, partnership, limited
27 liability company, association, joint-stock company, trust, corporation,
28 political subdivision, or personal representative of the estate of a
29 deceased individual, or the receiver, trustee, or successor thereof,
30 within or without the state, employing any person within the state as an
31 employee. The term employer shall only include a franchisor as provided

1 in section 1 of this act;

2 (3) Federally insured financial institution means a state or
3 nationally chartered bank or a state or federally chartered savings and
4 loan association, savings bank, or credit union whose deposits are
5 insured by an agency of the United States Government;

6 (4) Fringe benefits includes sick and vacation leave plans,
7 disability income protection plans, retirement, pension, or profit-
8 sharing plans, health and accident benefit plans, and any other employee
9 benefit plans or benefit programs regardless of whether the employee
10 participates in such plans or programs;

11 (5) Payroll debit card means a stored-value card issued by or on
12 behalf of a federally insured financial institution that provides an
13 employee with immediate access for withdrawal or transfer of his or her
14 wages through a network of automatic teller machines. Payroll debit card
15 includes payroll debit cards, payroll cards, and paycards; and

16 (6) Wages means compensation for labor or services rendered by an
17 employee, including fringe benefits, when previously agreed to and
18 conditions stipulated have been met by the employee, whether the amount
19 is determined on a time, task, fee, commission, or other basis. Paid
20 leave, other than earned but unused vacation leave, provided as a fringe
21 benefit by the employer shall not be included in the wages due and
22 payable at the time of separation, unless the employer and the employee
23 or the employer and the collective-bargaining representative have
24 specifically agreed otherwise. Unless the employer and employee have
25 specifically agreed otherwise through a contract effective at the
26 commencement of employment or at least ninety days prior to separation,
27 whichever is later, wages includes commissions on all orders delivered
28 and all orders on file with the employer at the time of separation of
29 employment less any orders returned or canceled at the time suit is
30 filed.

31 Sec. 14. Section 48-1902, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 48-1902 For purposes of sections 48-1901 to 48-1910, unless the
3 context otherwise requires:

4 (1) Alcohol means any product of distillation of any fermented
5 liquid, whether rectified or diluted, whatever may be the origin thereof,
6 synthetic ethyl alcohol, the four varieties of liquor, alcohol, spirits,
7 wine, and beer, as defined in sections 53-103.01, 53-103.03, 53-103.38,
8 and 53-103.42, every liquid or solid, patented or not, containing
9 alcohol, spirits, wine, or beer, and alcohol used in the manufacture of
10 denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical,
11 scientific, culinary, and toilet preparations;

12 (2) Breath-testing device means intoxilyzer model 4011AS or other
13 scientific testing equivalent as approved by and operated in accordance
14 with the department rules and regulations;

15 (3) Breath-testing-device operator means a person who has obtained
16 or been issued a permit pursuant to the department rules and regulations;

17 (4) Department means the Department of Health and Human Services;

18 (5) Department rules and regulations means the techniques and
19 methods authorized pursuant to section 60-6,201;

20 (6) Drug means any substance, chemical, or compound as described,
21 defined, or delineated in sections 28-405 and 28-419 or any metabolite or
22 conjugated form thereof, except that any substance, chemical, or compound
23 containing any product as defined in subdivision (1) of this section may
24 also be defined as alcohol;

25 (7) Employee means any person who receives any remuneration,
26 commission, bonus, or other form of wages in return for such person's
27 actions which directly or indirectly benefit an employer; and

28 (8) Employer means the State of Nebraska and its political
29 subdivisions, all other governmental entities, or any individual,
30 association, corporation, or other organization doing business in the
31 State of Nebraska unless it, he, or she employs a total of less than six

1 full-time and part-time employees at any one time. The term employer
2 shall only include a franchisor as provided in section 1 of this act.

3 Sec. 15. Section 48-2208, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 48-2208 For purposes of the Non-English-Speaking Workers Protection
6 Act, unless the context otherwise requires:

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

11 (2) Commissioner means the Commissioner of Labor;

12 (3) Coordinator means the meatpacking industry worker rights
13 coordinator appointed pursuant to section 48-2213;

14 (4) Department means the Department of Labor;

15 (5) Employ means to permit to work;

16 (6) Employee means any individual employed by any employer but does
17 not include:

18 (a) Any individual employed in agriculture; or

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

21 (7) Employer means any individual, partnership, limited liability
22 company, association, corporation, business trust, legal representative,
23 or organized group of persons employing one hundred or more employees at
24 any one time, except for seasonal employment of not more than twenty
25 weeks in any calendar year, or person acting directly or indirectly in
26 the interest of an employer in relation to an employee but does not
27 include the United States, the state, or any political subdivision
28 thereof. The term employer shall only include a franchisor as provided in
29 section 1 of this act;

30 (8) Meatpacking operation means a business in which slaughtering,
31 butchering, meat canning, meatpacking, meat manufacturing, poultry

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

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

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

9 Sec. 16. Section 48-2302, Revised Statutes Cumulative Supplement,
10 2016, is amended to read:

11 48-2302 For purposes of the New Hire Reporting Act:

12 (1) Date of hire means the day an employee begins employment with an
13 employer;

14 (2) Department means the Department of Health and Human Services;

15 (3) Employee means an independent contractor or a person who is
16 compensated by or receives income from an employer or other payor,
17 regardless of how such income is denominated;

18 (4) Employer means any individual, partnership, limited liability
19 company, firm, corporation, association, political subdivision, or
20 department or agency of the state or federal government, labor
21 organization, or any other entity with an employee. The term employer
22 shall only include a franchisor as provided in section 1 of this act;

23 (5) Income means compensation paid, payable, due, or to be due for
24 labor or personal services, whether denominated as wages, salary,
25 earnings, income, commission, bonus, or otherwise;

26 (6) Payor includes a person, partnership, limited partnership,
27 limited liability partnership, limited liability company, corporation, or
28 other entity doing business or authorized to do business in the State of
29 Nebraska, including a financial institution, or a department or an agency
30 of state, county, or city government; and

31 (7) Rehire means the first day an employee begins employment with

1 the employer following a termination of employment with such employer.
2 Termination of employment does not include temporary separations from
3 employment, such as an unpaid medical leave, an unpaid leave of absence,
4 a temporary layoff of less than sixty days in length, or an absence for
5 disability or maternity.

6 Sec. 17. Section 48-3502, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 48-3502 For purposes of the Workplace Privacy Act:

9 (1) Adverse action means the discharge of an employee, a threat
10 against an employee, or any other act against an employee that negatively
11 affects the employee's employment;

12 (2) Applicant means a prospective employee applying for employment;

13 (3) Electronic communication device means a cellular telephone,
14 personal digital assistant, electronic device with mobile data access,
15 laptop computer, pager, broadband personal communication device, two-way
16 messaging device, electronic game, or portable computing device;

17 (4) Employee means an individual employed by an employer;

18 (5) Employer means a public or nonpublic entity or an individual
19 engaged in a business, an industry, a profession, a trade, or other
20 enterprise in the state, including any agent, representative, or designee
21 acting directly or indirectly in the interest of such an employer. The
22 term employer shall only include a franchisor as provided in section 1 of
23 this act; and

24 (6)(a) Personal Internet account means an individual's online
25 account that requires login information in order to access or control the
26 account.

27 (b) Personal Internet account does not include:

28 (i) An online account that an employer or educational institution
29 supplies or pays for, except when the employer or educational institution
30 pays only for additional features or enhancements to the online account;

31 or

1 (ii) An online account that is used exclusively for a business
2 purpose of the employer.

3 Sec. 18. The Revisor of Statutes shall assign section 1 of this act
4 to Chapter 48, article 2.

5 Sec. 19. Original sections 48-106, 48-220, 48-234, 48-236, 48-237,
6 48-902, 48-1002, 48-1202, 48-1902, and 48-2208, Reissue Revised Statutes
7 of Nebraska, and sections 48-603, 48-1102, 48-1220, 48-1229, 48-2302, and
8 48-3502, Revised Statutes Cumulative Supplement, 2016, are repealed.