

## LEGISLATIVE BILL 879

Approved by the Governor March 4, 1992

Introduced by Coordsen, 32

AN ACT relating to the Employment Security Law; to amend sections 48-602 and 48-648, Reissue Revised Statutes of Nebraska, 1943; to define employee leasing company; to require contributions and reports as prescribed; and to repeal the original sections.

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

Section 1. That section 48-602, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-602. As used in For purposes of the Employment Security Law, unless the context otherwise requires:

(1) Base period shall mean the last four completed calendar quarters immediately preceding the first day of an individual's benefit year, except that the commissioner may prescribe by rule and regulation that base period shall mean the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

(2) Benefits shall mean the money payments payable to an individual with respect to his or her unemployment;

(3) Benefit year, with respect to any individual, shall mean the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in, within, or during that benefit year which includes the greater part of such week;

(4) Calendar quarter shall mean the period of

three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;

(5) Commissioner shall mean the Commissioner of Labor;

(6) Contributions shall mean the money payments to the state Unemployment Compensation Fund as required by sections 48-648 and 48-649;

(7) Department shall mean the Department of Labor;

(8) Employee leasing company shall mean an independently established business entity which engages in the business of providing leased employees to a client-lessee. Client-lessee shall mean any other employer, individual, organization, partnership, corporation, or other legal entity;

(9) Employment office shall mean a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

{9} (10) Fund shall mean the Unemployment Compensation Fund established by section 48-617 to which all contributions and payments in lieu of contributions required and from which all benefits provided shall be paid;

{10} (11) Hospital shall mean an institution which has been licensed, certified, or approved by the Department of Health as a hospital;

{11} (12) Institution of higher education shall mean an institution which: (a) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; (b) is legally authorized in this state to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's degree or higher or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (d) is a public or other nonprofit institution; notwithstanding any of the foregoing provisions of this subdivision, all colleges and universities in this state are institutions of higher education for purposes of this section;

{12} (13) Insured work shall mean employment

for employers;

~~(13)~~ (14) Payments in lieu of contributions shall mean the money payments to the Unemployment Compensation Fund required by sections 48-649, 48-652, 48-660.01, and 48-661;

~~(14)~~ (15) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

~~(15)~~ (16) Wages, except with respect to services performed in employment as provided in ~~section 48-604~~, subdivisions (4)(c) and (d) of section 48-604, shall mean all remuneration for personal services, including commissions and bonuses and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the commissioner. After December 31, 1985, wages shall include tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954, as amended. With respect to services performed in employment in agricultural labor as is provided in ~~section 48-604~~, subdivision (4)(c), of section 48-604 or in domestic service as is provided in ~~section 48-604~~, subdivision (4)(d) of section 48-604, wages shall mean cash remuneration for such services, except that as used in sections 48-648 and 48-649 only, prior to January 1, 1978, the term wages shall not include that part of the remuneration which, after remuneration equal to four thousand two hundred dollars, subsequent to December 31, 1977, after remuneration equal to six thousand dollars, and subsequent to December 31, 1982, after remuneration equal to seven thousand dollars has been paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during any calendar year, is paid to such individual by such employer during such calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

The term wages shall not include: (a) ~~the~~ The amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for such payment, made to, or on behalf of, an

individual in employment, or any of his or her dependents, under a plan or system established by an employer which makes provision for such individuals generally, or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, on account of (i) sickness or accident disability, except, in the case of payments made to an employee or any of his or her dependents, subdivision ~~(15)(a)(i)~~ (16)(a)(i) of this section shall exclude from wages only payments which are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death; (b) the payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1954, as amended; (c) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer; (d) any payment made to, or on behalf of, an individual or his or her beneficiary (i) from or to a trust described in section 401(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code of 1954; (e) any payment made to, or on behalf of, an employee or his or her beneficiary: (i) Under a simplified employee pension as defined by the commissioner; (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise; (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner; (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan; or (v) under a

cafeteria benefits plan; and (f) remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business;

~~(16)~~ (17) Week shall mean such period of seven consecutive days, as the commissioner may by rule and regulation prescribe; and

~~(17)~~ (18) Week of unemployment with respect to any individual shall mean any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount.

Sec. 2. That section 48-648, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-648. (1) Contributions shall accrue and become payable by each employer not otherwise entitled to make payments in lieu of contributions for each calendar year in which he or she is subject to the Employment Security Law, with respect to wages for employment. Such contributions shall become due and be paid by each employer to the commissioner for the fund in such manner and at such times as the commissioner may, by rule and regulation, prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(2) ~~For wages paid after December 31, 1981, if~~ If two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(3) An employee leasing company which places employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee shall be liable for contributions on wages paid by the employee leasing company to employees performing services for client-lessees at the contribution rate for the employee leasing company. An employee leasing company shall comply with this section and section 48-649 and shall maintain separate records and submit separate quarterly contribution and quarterly wage reports for each client-lessee. The contributions

and reports shall be made under the tax identification number of the employee leasing company. If any agreement between an employee leasing company and a client-lessee is terminated or if an employee leasing company fails to pay a contribution or submit a report, the client-lessee shall be liable for all contributions on the leased employees and shall be treated as a new employer without a previous employment record unless the client-lessee is eligible for a rate computation. Each employee leasing company shall maintain a list of its client-lessees and employees who have been assigned to work for each client-lessee. The list shall include the social security number of each employee. A copy of the list shall be provided to the department by June 30 and December 31. The provisions of this section shall apply to any employment agency which only provides employees on a temporary basis if the employment agency is liable for the payment of contributions on wages paid to such employees.

Sec. 3. That original sections 48-602 and 48-648, Reissue Revised Statutes of Nebraska, 1943, are repealed.