

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 829

FINAL READING

Introduced by Rogert, 16.

Read first time January 08, 2010

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act;
2 to amend section 48-106, Revised Statutes Supplement,
3 2009; to change certain notice requirements relating to
4 coverage under the act; to repeal the original section;
5 and to declare an emergency.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-106, Revised Statutes Supplement,
2 2009, is amended to read:

3 48-106 (1) The Nebraska Workers' Compensation Act shall
4 apply to the State of Nebraska, to every governmental agency
5 created by the state, and, except as provided in this section,
6 to every resident employer in this state and nonresident employer
7 performing work in this state who employs one or more employees
8 in the regular trade, business, profession, or vocation of such
9 employer.

10 (2) The act shall not apply to:

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

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

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

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

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

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

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

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

1 of workers' compensation insurance. Failure to provide notice in
2 accordance with this subsection voids an employer's attempt to
3 return to exempt status.

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

25 (7) Every employer exempted under subdivision (2) (d) of

1 this section who does not elect to provide workers' compensation
2 insurance under subsection (6) of this section shall give all
3 unrelated employees at the time of hiring or at any time more than
4 thirty calendar days prior to the time of injury the following
5 written notice which shall be signed by the unrelated employee
6 and retained by the employer: "In this employment you will not
7 be covered by the Nebraska Workers' Compensation Act and you will
8 not be compensated under the act if you are injured on the job
9 or suffer an occupational disease. You should plan accordingly."
10 Failure to provide the notice required by this subsection subjects
11 an employer to liability under and inclusion in the act for all
12 ~~unrelated employees on the basis of failure to give such notice.~~
13 any unrelated employee to whom such notice was not given.

14 (8) An exclusion from coverage in any health, accident,
15 or other insurance policy covering a person employed by an employer
16 who is exempt from the act under this section which provides that
17 coverage under the health, accident, or other insurance policy
18 does not apply if such person is entitled to workers' compensation
19 coverage is void as to such person if such employer has not elected
20 to bring the employees of such employer within the act as provided
21 in subsection (6) of this section.

22 (9) For purposes of this section:

23 (a) Agricultural operation means (i) the cultivation of
24 land for the production of agricultural crops, fruit, or other
25 horticultural products or (ii) the ownership, keeping, or feeding

1 of animals for the production of livestock or livestock products;

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

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

17 Sec. 2. Original section 48-106, Revised Statutes
18 Supplement, 2009, is repealed.

19 Sec. 3. Since an emergency exists, this act takes effect
20 when passed and approved according to law.