

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 909

Introduced by Lautenbaugh, 18.

Read first time January 09, 2012

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
2 amend sections 48-101, 48-107, and 48-151, Reissue
3 Revised Statutes of Nebraska; to provide an affirmative
4 defense for employers for misrepresentation in obtaining
5 employment; to harmonize provisions; and to repeal the
6 original sections.

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

1 Section 1. Section 48-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-101 When personal injury is caused to an employee by
4 accident or occupational disease, arising out of and in the course of
5 his or her employment, such employee shall receive compensation
6 therefor from his or her employer if the employee was not willfully
7 negligent in obtaining such employment or at the time of receiving
8 such injury.

9 Sec. 2. Section 48-107, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 48-107 In all actions at law brought pursuant to sections
12 48-101 to 48-108 the burden of proof to establish willful negligence,
13 as defined in section 48-151, of the ~~injured~~ employee shall be on the
14 defendant.

15 Sec. 3. Section 48-151, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 48-151 Throughout the Nebraska Workers' Compensation Act,
18 the following words and phrases shall be considered to have the
19 following meaning, respectively, unless the context clearly indicates
20 a different meaning in the construction used:

21 (1) Physician means any person licensed to practice
22 medicine and surgery, osteopathic medicine, chiropractic, podiatry,
23 or dentistry in the State of Nebraska or in the state in which the
24 physician is practicing;

25 (2) Accident means an unexpected or unforeseen injury

1 happening suddenly and violently, with or without human fault, and
2 producing at the time objective symptoms of an injury. The claimant
3 has the burden of proof to establish by a preponderance of the
4 evidence that such unexpected or unforeseen injury was in fact caused
5 by the employment. There is no presumption from the mere occurrence
6 of such unexpected or unforeseen injury that the injury was in fact
7 caused by the employment;

8 (3) Occupational disease means only a disease which is
9 due to causes and conditions which are characteristic of and peculiar
10 to a particular trade, occupation, process, or employment and
11 excludes all ordinary diseases of life to which the general public is
12 exposed;

13 (4) Injury and personal injuries mean only violence to
14 the physical structure of the body and such disease or infection as
15 naturally results therefrom and personal injuries described in
16 section 48-101.01. The terms include disablement resulting from
17 occupational disease arising out of and in the course of the
18 employment in which the employee was engaged and which was contracted
19 in such employment. The terms include an aggravation of a preexisting
20 occupational disease, the employer being liable only for the degree
21 of aggravation of the preexisting occupational disease. The terms do
22 not include disability or death due to natural causes but occurring
23 while the employee is at work and do not include an injury,
24 disability, or death that is the result of a natural progression of
25 any preexisting condition;

1 (5) Death, when mentioned as a basis for the right to
2 compensation, means only death resulting from such violence and its
3 resultant effects or from occupational disease;

4 (6) Without otherwise affecting either the meaning or the
5 interpretation of the abridged clause, personal injuries arising out
6 of and in the course of employment, it is hereby declared not to
7 cover workers except while engaged in, on, or about the premises
8 where their duties are being performed or where their service
9 requires their presence as a part of such service at the time of the
10 injury and during the hours of service as such workers, and not to
11 cover workers who on their own initiative leave their line of duty or
12 hours of employment for purposes of their own. Property maintained by
13 an employer is considered the premises of such employer for purposes
14 of determining whether the injury arose out of employment;

15 (7) Willful negligence consists of (a) a deliberate act,
16 (b) such conduct as evidences reckless indifference to safety, or (c)
17 intoxication at the time of the injury, such intoxication being
18 without the consent, knowledge, or acquiescence of the employer or
19 the employer's agent. It is willful negligence in obtaining
20 employment for an employee, as an applicant, to knowingly make false
21 statements about his or her physical condition in an employment
22 application or preemployment questionnaire;

23 (8) Intoxication includes, but is not limited to, being
24 under the influence of a controlled substance not prescribed by a
25 physician;

1 (9) Prospective loss costs means prospective loss costs
2 as defined in section 44-7504 and prepared, filed, or distributed by
3 an advisory organization which has been issued a certificate of
4 authority pursuant to section 44-7518;

5 (10) Client means client as defined in section 48-2702;

6 (11) Professional employer organization means
7 professional employer organization as defined in section 48-2702;

8 (12) Multiple coordinated policy means multiple
9 coordinated policy as defined in section 48-2702;

10 (13) Master policy means master policy as defined in
11 section 48-2702; and

12 (14) Whenever in the Nebraska Workers' Compensation Act
13 the singular is used, the plural is considered included; when the
14 masculine gender is used, the feminine is considered included.

15 Sec. 4. Original sections 48-101, 48-107, and 48-151,
16 Reissue Revised Statutes of Nebraska, are repealed.