

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 248

Introduced by Larson, 40.

Read first time January 16, 2013

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Employment Security Law; to amend sections
2 48-601, 48-602, and 48-628, Reissue Revised Statutes of
3 Nebraska, and section 48-604, Revised Statutes Cumulative
4 Supplement, 2012; to provide for seasonal employers and
5 when benefits are paid to seasonal employees; to
6 harmonize provisions; and to repeal the original
7 sections.

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

1 Section 1. Section 48-601, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-601 Sections 48-601 to 48-671 and section 4 of this
4 act shall be known and may be cited as the Employment Security Law.

5 Sec. 2. Section 48-602, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 48-602 For purposes of the Employment Security Law,
8 unless the context otherwise requires:

9 (1) Base period means the first four of the last five
10 completed calendar quarters immediately preceding the first day of an
11 individual's benefit year, except that for benefit years beginning on
12 or after July 1, 2011, if the individual is not monetarily eligible
13 for unemployment benefits as determined pursuant to subdivision (5)
14 of section 48-627 based upon wages paid during the first four of the
15 five most recently completed calendar quarters, the department shall
16 make a redetermination of monetary eligibility based upon an
17 alternative base period which consists of the last four completed
18 calendar quarters immediately preceding the first day of the
19 claimant's benefit year;

20 (2) Benefits means the money payments payable to an
21 individual with respect to his or her unemployment;

22 (3) Benefit year, with respect to any individual, means
23 the one-year period beginning with the first day of the first week
24 with respect to which the individual first files a valid claim for
25 benefits, and thereafter the one-year period beginning with the first

1 day of the first week with respect to which the individual next files
2 a valid claim for benefits after the termination of his or her last
3 preceding benefit year. Any claim for benefits made in accordance
4 with section 48-629 shall be deemed to be a valid claim for the
5 purpose of this subdivision if the individual has been paid the wages
6 for insured work required under section 48-627. For the purposes of
7 this subdivision a week with respect to which an individual files a
8 valid claim shall be deemed to be in, within, or during that benefit
9 year which includes the greater part of such week;

10 (4) Calendar quarter means the period of three
11 consecutive calendar months ending on March 31, June 30, September
12 30, or December 31, or the equivalent thereof as the Commissioner of
13 Labor may by rule and regulation prescribe;

14 (5) Client means any individual, partnership, limited
15 liability company, corporation, or other legally recognized entity
16 that contracts with a professional employer organization to obtain
17 professional employer services relating to worksite employees through
18 a professional employer agreement;

19 (6) Combined tax means the employer liability consisting
20 of contributions and the state unemployment insurance tax;

21 (7) Combined tax rate means the rate which is applied to
22 wages to determine the combined taxes due;

23 (8) Commissioner means the Commissioner of Labor;

24 (9) Contribution rate means the percentage of the
25 combined tax rate used to determine the contribution portion of the

1 combined tax;

2 (10) Contributions means that portion of the combined tax
3 based upon the contribution rate portion of the combined tax rate
4 which is deposited in the state Unemployment Compensation Fund as
5 required by sections 48-648 and 48-649;

6 (11) Department means the Department of Labor;

7 (12) Employment office means a free public employment
8 office or branch thereof, operated by this state or maintained as a
9 part of a state-controlled system of public employment offices,
10 including public employment offices operated by an agency of a
11 foreign government;

12 (13) Fund means the Unemployment Compensation Fund
13 established by section 48-617 to which all contributions and payments
14 in lieu of contributions required and from which all benefits
15 provided shall be paid;

16 (14) Hospital means an institution which has been
17 licensed, certified, or approved by the Department of Health and
18 Human Services as a hospital;

19 (15) Institution of higher education means an institution
20 which: (a) Admits as regular students only individuals having a
21 certificate of graduation from a high school or the recognized
22 equivalent of such a certificate; (b) is legally authorized in this
23 state to provide a program of education beyond high school; (c)
24 provides an educational program for which it awards a bachelor's
25 degree or higher or provides a program which is acceptable for full

1 credit toward such a degree, a program of postgraduate or
2 postdoctoral studies, or a program of training to prepare students
3 for gainful employment in a recognized occupation; and (d) is a
4 public or other nonprofit institution; notwithstanding any of the
5 foregoing provisions of this subdivision, all colleges and
6 universities in this state are institutions of higher education for
7 purposes of this section;

8 (16) Insured work means employment for employers;

9 (17) Leave of absence means any absence from work: (a)
10 Mutually and voluntarily agreed to by the employer and the employee;
11 (b) mutually and voluntarily agreed to between the employer and the
12 employee's bargaining agent; or (c) to which the employee is entitled
13 to as a matter of state or federal law;

14 (18) Paid vacation leave means a period of time while
15 employed or following separation from employment in which the
16 individual renders no services to the employer but is entitled to
17 receive vacation pay equal to or exceeding his or her base weekly
18 wage;

19 (19) Payments in lieu of contributions means the money
20 payments to the Unemployment Compensation Fund required by sections
21 48-649, 48-652, 48-660.01, and 48-661;

22 (20) Professional employer agreement means a written
23 professional employer services contract whereby:

24 (a) A professional employer organization agrees to
25 provide payroll services, employee benefit administration, or

1 personnel services for a majority of the employees providing services
2 to the client at a client worksite;

3 (b) The agreement is intended to be ongoing rather than
4 temporary in nature; and

5 (c) Employer responsibilities for worksite employees,
6 including those of hiring, firing, and disciplining, are shared
7 between the professional employer organization and the client by
8 contract. The term professional employer agreement shall not include
9 a contract between a parent corporation, company, or other entity and
10 a wholly owned subsidiary;

11 (21) Professional employer organization means any
12 individual, partnership, limited liability company, corporation, or
13 other legally recognized entity that enters into a professional
14 employer agreement with a client or clients for a majority of a
15 client's workforce at a client worksite. The term professional
16 employer organization does not include an insurer as defined in
17 section 44-103 or a temporary help firm;

18 (22) Seasonal employer means an employer that, because of
19 climatic conditions or the seasonal nature of a product or service,
20 customarily operates all or a portion of its business only during a
21 regularly recurring period or periods of less than twenty-six weeks
22 for all seasonal periods during a calendar year. An employer may be a
23 seasonal employer with respect to a portion of its business only if
24 that portion, under the usual and customary practice in the industry,
25 is identifiable as a functionally distinct operation;

1 ~~(22)~~(23) State includes, in addition to the states of
2 the United States of America, any dependency of the United States,
3 the Commonwealth of Puerto Rico, the Virgin Islands, and the District
4 of Columbia;

5 ~~(23)~~(24) State unemployment insurance tax means that
6 portion of the combined tax which is based upon the state
7 unemployment insurance tax rate portion of the combined tax rate and
8 which is deposited in the State Unemployment Insurance Trust Fund as
9 required by sections 48-648 and 48-649;

10 ~~(24)~~(25) State unemployment insurance tax rate means the
11 percentage of the combined tax rate used to determine the state
12 unemployment insurance tax portion of the combined tax;

13 ~~(25)~~(26) Temporary employee means an employee of a
14 temporary help firm assigned to work for the clients of such
15 temporary help firm;

16 ~~(26)~~(27) Temporary help firm means a firm that hires its
17 own employees and assigns them to clients to support or supplement
18 the client's work force in work situations such as employee absences,
19 temporary skill shortages, seasonal workloads, and special
20 assignments and projects;

21 ~~(27)~~(28) Unemployed means an individual during any week
22 in which the individual performs no service and with respect to which
23 no wages are payable to the individual or any week of less than full-
24 time work if the wages payable with respect to such week are less
25 than the individual's weekly benefit amount, but does not include any

1 individual on a leave of absence or on paid vacation leave. When an
2 agreement between the employer and a bargaining unit representative
3 does not allocate vacation pay allowance or pay in lieu of vacation
4 to a specified period of time during a period of temporary layoff or
5 plant shutdown, the payment by the employer or his or her designated
6 representative will be deemed to be wages as defined in this section
7 in the week or weeks the vacation is actually taken;

8 ~~(28)~~(29) Unemployment Trust Fund means the trust fund in
9 the Treasury of the United States of America established under
10 section 904 of the federal Social Security Act, 42 U.S.C. 1104, as
11 such section existed on March 2, 2001, which receives credit from the
12 state Unemployment Compensation Fund;

13 ~~(29)~~(30) Wages, except with respect to services
14 performed in employment as provided in subdivisions (4)(c) and (d) of
15 section 48-604, means all remuneration for personal services,
16 including commissions and bonuses, remuneration for personal services
17 paid under a contract of hire, and the cash value of all
18 remunerations in any medium other than cash. The reasonable cash
19 value of remuneration in any medium other than cash shall be
20 estimated and determined in accordance with rules and regulations
21 prescribed by the commissioner. After December 31, 1985, wages
22 includes tips which are received while performing services which
23 constitute employment and which are included in a written statement
24 furnished to the employer pursuant to section 6053(a) of the Internal
25 Revenue Code as defined in section 49-801.01.

1 With respect to services performed in employment in
2 agricultural labor as is provided in subdivision (4)(c) of section
3 48-604, wages means cash remuneration and the cash value of
4 commodities not intended for personal consumption by the worker and
5 his or her immediate family for such services. With respect to
6 services performed in employment in domestic service as is provided
7 in subdivision (4)(d) of section 48-604, wages means cash
8 remuneration for such services.

9 The term wages does not include:

10 (a) The amount of any payment, including any amount paid
11 by an employer for insurance or annuities or into a fund to provide
12 for such payment, made to, or on behalf of, an individual in
13 employment or any of his or her dependents under a plan or system
14 established by an employer which makes provision for such individuals
15 generally or for a class or classes of such individuals, including
16 any amount paid by an employer for insurance or annuities or into a
17 fund to provide for any such payment, on account of (i) sickness or
18 accident disability, except, in the case of payments made to an
19 employee or any of his or her dependents, this subdivision (i) shall
20 exclude from wages only payments which are received under a workers'
21 compensation law, (ii) medical and hospitalization expenses in
22 connection with sickness or accident disability, or (iii) death;

23 (b) The payment by an employer, without deduction from
24 the remuneration of the employee, of the tax imposed upon an employee
25 under section 3101 of the Internal Revenue Code as defined in section

1 49-801.01;

2 (c) Any payment on account of sickness or accident
3 disability, or medical or hospitalization expenses in connection with
4 sickness or accident disability, made by an employer to, or on behalf
5 of, an individual after the expiration of six calendar months
6 following the last calendar month in which such individual worked for
7 such employer;

8 (d) Any payment made to, or on behalf of, an individual
9 or his or her beneficiary (i) from or to a trust described in section
10 401(a) of the Internal Revenue Code as defined in section 49-801.01
11 which is exempt from tax under section 501(a) of the Internal Revenue
12 Code as defined in section 49-801.01 at the time of such payment
13 unless such payment is made to an employee of the trust as
14 remuneration for services rendered as such employee and not as a
15 beneficiary of the trust or (ii) under or to an annuity plan which,
16 at the time of such payment, meets the requirements of section 401 of
17 the Internal Revenue Code as defined in section 49-801.01;

18 (e) Any payment made to, or on behalf of, an employee or
19 his or her beneficiary (i) under a simplified employee pension as
20 defined by the commissioner, (ii) under or to an annuity contract as
21 defined by the commissioner, other than a payment for the purchase of
22 such contract which is made by reason of a salary reduction
23 agreement, whether evidenced by a written instrument or otherwise,
24 (iii) under or to an exempt governmental deferred compensation plan
25 as defined by the commissioner, (iv) to supplement pension benefits

1 under a plan or trust, as defined by the commissioner, to take into
2 account some portion or all of the increase in the cost of living
3 since retirement, but only if such supplemental payments are under a
4 plan which is treated as a welfare plan, or (v) under a cafeteria
5 benefits plan;

6 (f) Remuneration paid in any medium other than cash to an
7 individual for service not in the course of the employer's trade or
8 business;

9 (g) Benefits paid under a supplemental unemployment
10 benefit plan which satisfies the eight points set forth in Internal
11 Revenue Service Revenue Ruling 56-249 as the ruling existed on March
12 2, 2001, and is in compliance with the standards set forth in
13 Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the
14 rulings existed on March 2, 2001; and

15 (h) Remuneration for service performed in the employ of
16 any state in the exercise of his or her duties as a member of the
17 Army National Guard or Air National Guard or in the employ of the
18 United States of America as a member of any military reserve unit;

19 ~~(30)~~ (31) Week means such period of seven consecutive
20 days as the commissioner may by rule and regulation prescribe;

21 ~~(31)~~ (32) Week of unemployment with respect to any
22 individual means any week during which he or she performs less than
23 full-time work and the wages payable to him or her with respect to
24 such week are less than his or her weekly benefit amount;

25 ~~(32)~~ (33) Wholly owned subsidiary means a corporation,

1 company, or other entity which has eighty percent or more of its
2 outstanding voting stock or membership owned or controlled, directly
3 or indirectly, by the parent entity; and

4 ~~(33)(a)~~(34)(a) Until January 1, 2012, worksite employee
5 means a person receiving wages or benefits from a professional
6 employer organization pursuant to the terms of a professional
7 employer agreement for work performed at a client's worksite.

8 (b) On and after January 1, 2012, worksite employee has
9 the same meaning as the term covered employee in section 48-2702.

10 Sec. 3. Section 48-604, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 48-604 As used in the Employment Security Law, unless the
13 context otherwise requires, employment shall mean:

14 (1) Any service performed, including service in
15 interstate commerce, for wages under a contract of hire, written or
16 oral, express or implied;

17 (2) The term employment shall include an individual's
18 entire service, performed within or both within and without this
19 state if (a) the service is localized in this state, (b) the service
20 is not localized in any state but some of the service is performed in
21 this state and the base of operations or, if there is no base of
22 operations, then the place from which such service is directed or
23 controlled is in this state or the base of operations or place from
24 which such service is directed or controlled is not in any state in
25 which some part of the service is performed but the individual's

1 residence is in this state, (c) the service shall be deemed to be
2 localized within a state if (i) the service is performed entirely
3 within such state or (ii) the service is performed both within and
4 without such state, but the service performed without such state is
5 incidental to the individual's service within the state, for example,
6 is temporary or transitory in nature or consists of isolated
7 transactions;

8 (3) Services performed outside the state and services
9 performed outside the United States as follows:

10 (a) Services not covered under subdivision (2) of this
11 section and performed entirely without this state, with respect to no
12 part of which contributions are required under an unemployment
13 compensation law of any other state or of the federal government,
14 shall be deemed to be employment subject to the Employment Security
15 Law if the commissioner approves the election of the employer, for
16 whom such services are performed, that the entire service of such
17 individual shall be deemed to be employment subject to such law;

18 (b) Services of an individual wherever performed within
19 the United States or Canada if (i) such service is not covered under
20 the employment compensation law of any other state or Canada and (ii)
21 the place from which the service is directed or controlled is in this
22 state;

23 (c)(i) Services of an individual who is a citizen of the
24 United States, performed outside the United States except in Canada
25 in the employ of an American employer, other than service which is

1 deemed employment under subdivisions (2) and (3)(a) and (b) of this
2 section or the parallel provisions of another state's law, if:

3 (A) The employer's principal place of business in the
4 United States is located in this state;

5 (B) The employer has no place of business in the United
6 States, but the employer is an individual who is a resident of this
7 state; the employer is a corporation or limited liability company
8 which is organized under the laws of this state; or the employer is a
9 partnership or a trust and the number of the partners or trustees who
10 are residents of this state is greater than the number who are
11 residents of any other state; or

12 (C) None of the criteria of subdivisions (A) and (B) of
13 this subdivision are met, but the employer has elected coverage in
14 this state or, the employer having failed to elect coverage in any
15 state, the individual has filed a claim for benefits based on such
16 service under the laws of this state.

17 (ii) American employer, for the purposes of this
18 subdivision, shall mean: (A) An individual who is a resident of the
19 United States; (B) a partnership if two-thirds or more of the
20 partners are residents of the United States; (C) a trust if all the
21 trustees are residents of the United States; or (D) a corporation or
22 limited liability company organized under the laws of the United
23 States or of any state.

24 (iii) The term United States for the purpose of this
25 section includes the states, the District of Columbia, the Virgin

1 Islands, and the Commonwealth of Puerto Rico;

2 (4)(a) Service performed in the employ of this state or
3 any political subdivision thereof or any instrumentality of any one
4 or more of the foregoing or any instrumentality which is wholly owned
5 by this state and one or more other states or political subdivisions,
6 or any service performed in the employ of any instrumentality of this
7 state or of any political subdivision thereof and one or more other
8 states or political subdivisions if such service is excluded from
9 employment as defined in the Federal Unemployment Tax Act, as
10 amended, solely by reason of 26 U.S.C. 3306(c)(7), and is not
11 otherwise excluded under this section;

12 (b) Service performed by an individual in the employ of a
13 religious, charitable, educational, or other organization, but only
14 if the following conditions are met: (i) The service is excluded from
15 employment as defined in the Federal Unemployment Tax Act, as
16 amended, solely by reason of 26 U.S.C. 3306(c)(8), and is not
17 otherwise excluded under this section; and (ii) the organization had
18 four or more individuals in employment for some portion of a day in
19 each of twenty different weeks, whether or not such weeks were
20 consecutive, within either the current or preceding calendar year,
21 regardless of whether they were employed at the same moment of time;

22 (c)(i) Service performed by an individual in agricultural
23 labor as defined in subdivision (6)(a) of this section when such
24 service is performed for a person who during any calendar quarter in
25 either the current or preceding calendar year paid remuneration in

1 cash of twenty thousand dollars or more to individuals employed in
2 agricultural labor, or for some portion of a day in each of twenty
3 different calendar weeks, whether or not such weeks were consecutive,
4 in either the current or the preceding calendar year, employed in
5 agricultural labor ten or more individuals, regardless of whether
6 they were employed at the same moment of time.

7 (ii) For purposes of this subdivision:

8 (A) Any individual who is a member of a crew furnished by
9 a crew leader to perform services in agricultural labor for any other
10 person shall be treated as an employee of such crew leader if such
11 crew leader holds a valid certificate of registration under the
12 Migrant and Seasonal Agricultural Worker Protection Act, as amended,
13 29 U.S.C. 1801 et seq.; substantially all the members of such crew
14 operate or maintain tractors, mechanized harvesting or cropdusting
15 equipment, or any other mechanized equipment, which is provided by
16 such crew leader; and such individual is not an employee of such
17 other person within the meaning of any other provisions of this
18 section;

19 (B) In case any individual who is furnished by a crew
20 leader to perform service in agricultural labor for any other person
21 and who is not treated as an employee of such crew leader under
22 subdivision (A) of this subdivision, such other person and not the
23 crew leader shall be treated as the employer of such individual and
24 such other person shall be treated as having paid cash remuneration
25 to such individual in an amount equal to the amount of cash

1 remuneration paid to such individual by the crew leader, either on
2 his or her own behalf or on behalf of such other person, for the
3 service in agricultural labor performed for such other person; and

4 (C) The term crew leader shall mean an individual who
5 furnishes individuals to perform service in agricultural labor for
6 any other person, pays, either on his or her own behalf or on behalf
7 of such other person, the individuals so furnished by him or her for
8 the service in agricultural labor performed by them, and has not
9 entered into a written agreement with such other person under which
10 such individual is designated as an employee of such other person;
11 and

12 (d) Service performed by an individual in domestic
13 service in a private home, local college club, or local chapter of a
14 college fraternity or sorority if performed for a person who paid
15 cash remuneration of one thousand dollars or more in the current
16 calendar year or the preceding calendar year to individuals employed
17 in such domestic service in any calendar quarter;

18 (5) Services performed by an individual for wages,
19 including wages received under a contract of hire, shall be deemed to
20 be employment unless it is shown to the satisfaction of the
21 commissioner that (a) such individual has been and will continue to
22 be free from control or direction over the performance of such
23 services, both under his or her contract of service and in fact, (b)
24 such service is either outside the usual course of the business for
25 which such service is performed or such service is performed outside

1 of all the places of business of the enterprise for which such
2 service is performed, and (c) such individual is customarily engaged
3 in an independently established trade, occupation, profession, or
4 business. The provisions of this subdivision are not intended to be a
5 codification of the common law and shall be considered complete as
6 written;

7 (6) The term employment shall not include:

8 (a) Agricultural labor, except as provided in subdivision
9 (4)(c) of this section, including all services performed:

10 (i) On a farm, in the employ of any employer, in
11 connection with cultivating the soil or in connection with raising or
12 harvesting any agricultural or horticultural commodity, including the
13 raising, shearing, feeding, caring for, training, and management of
14 livestock, bees, poultry, fur-bearing animals, and wildlife;

15 (ii) In the employ of the owner, tenant, or other
16 operator of a farm, in connection with the operation, management,
17 conservation, improvement, or maintenance of such farm and its tools
18 and equipment or in salvaging timber or clearing land of brush and
19 other debris left by a windstorm, if the major part of such service
20 is performed on a farm;

21 (iii) In connection with the production or harvesting of
22 any commodity defined as an agricultural commodity in section 15(g)
23 of the federal Agricultural Marketing Act, as amended, 12 U.S.C.
24 1141j, in connection with the operation or maintenance of ditches,
25 canals, reservoirs, or waterways, not owned or operated for profit,

1 used exclusively for supplying and storing water for farming
2 purposes;

3 (iv)(A) In the employ of the operator of a farm in
4 handling, planting, drying, packing, packaging, processing, freezing,
5 grading, storing, or delivering to storage or to market or to a
6 carrier for transportation to market, in its unmanufactured state,
7 any agricultural or horticultural commodity, but only if such
8 operator produced more than one-half of the commodity with respect to
9 which such service is performed, or (B) in the employ of a group of
10 operators of farms, or a cooperative organization of which such
11 operators are members, in the performance of service described in
12 subdivision (A) of this subdivision, but only if such operators
13 produced more than one-half of the commodity with respect to which
14 such service is performed. Subdivisions (A) and (B) of this
15 subdivision shall not be deemed to be applicable with respect to
16 service performed in connection with commercial canning or commercial
17 freezing or in connection with any agricultural or horticultural
18 commodity after its delivery to a terminal market for distribution
19 for consumption; or

20 (v) On a farm operated for profit if such service is not
21 in the course of the employer's trade or business.

22 As used in this section, the term farm includes stock,
23 dairy, poultry, fruit, fur-bearing animal, and truck farms,
24 plantations, ranches, nurseries, ranges, greenhouses, or other
25 similar structures used primarily for the raising of agricultural or

1 horticultural commodities, and orchards;

2 (b) Domestic service, except as provided in subdivision
3 (4)(d) of this section, in a private home, local college club, or
4 local chapter of a college fraternity or sorority;

5 (c) Service not in the course of the employer's trade or
6 business performed in any calendar quarter by an employee, unless the
7 cash remuneration paid for such service is fifty dollars or more and
8 such service is performed by an individual who is regularly employed
9 by such employer to perform such service and, for the purposes of
10 this subdivision, an individual shall be deemed to be regularly
11 employed by an employer during a calendar quarter only if (i) on each
12 of some twenty-four days during such quarter such individual performs
13 for such employer for some portion of the day service not in the
14 course of the employer's trade or business, or (ii) such individual
15 was regularly employed, as determined under subdivision (i) of this
16 subdivision, by such employer in the performance of such service
17 during the preceding calendar quarter;

18 (d) Service performed by an individual in the employ of
19 his or her son, daughter, or spouse and service performed by a child
20 under the age of twenty-one in the employ of his or her father or
21 mother;

22 (e) Service performed in the employ of the United States
23 Government or an instrumentality of the United States immune under
24 the Constitution of the United States from the contributions imposed
25 by sections 48-648 and 48-649, except that, to the extent that the

1 Congress of the United States shall permit states to require any
2 instrumentalities of the United States to make payments into an
3 unemployment fund under a state unemployment compensation act, all of
4 the Employment Security Law shall be applicable to such
5 instrumentalities and to services performed for such
6 instrumentalities in the same manner, to the same extent, and on the
7 same terms as to all other employers, individuals, and services,
8 except that if this state is not certified for any year by the
9 Secretary of Labor of the United States under section 3304 of the
10 Internal Revenue Code as defined in section 49-801.01, the payments
11 required of such instrumentalities with respect to such year shall be
12 refunded by the commissioner from the fund in the same manner and
13 within the same period as is provided in section 48-660, with respect
14 to contributions erroneously collected;

15 (f) Service performed in the employ of this state or any
16 political subdivision thereof or any instrumentality of any one or
17 more of the foregoing if such services are performed by an individual
18 in the exercise of his or her duties: (i) As an elected official;
19 (ii) as a member of the legislative body or a member of the judiciary
20 of a state or political subdivision thereof; (iii) as a member of the
21 Army National Guard or Air National Guard; (iv) as an employee
22 serving on a temporary basis in case of fire, storm, snow,
23 earthquake, flood, or similar emergency; (v) in a position which,
24 under or pursuant to the state law, is designated a major nontenured
25 policymaking or advisory position, or a policymaking or advisory

1 position, the performance of the duties of which ordinarily does not
2 require more than eight hours per week; or (vi) as an election
3 official or election worker if the amount of remuneration received by
4 the individual during the calendar year for services as an election
5 official or election worker is less than one thousand dollars;

6 (g) For the purposes of subdivisions (4)(a) and (4)(b) of
7 this section, service performed:

8 (i) In the employ of (A) a church or convention or
9 association of churches or (B) an organization which is operated
10 primarily for religious purposes and which is operated, supervised,
11 controlled, or principally supported by a church or convention or
12 association of churches;

13 (ii) By a duly ordained, commissioned, or licensed
14 minister of a church in the exercise of his or her ministry or by a
15 member of a religious order in the exercise of the duties required by
16 such order;

17 (iii) In a facility conducted for the purpose of carrying
18 out a program of rehabilitation for an individual whose earning
19 capacity is impaired by age or physical or mental deficiency or
20 injury, or providing remunerative work for the individuals who
21 because of their impaired physical or mental capacity cannot be
22 readily absorbed in the competitive labor market, by an individual
23 receiving such rehabilitation or remunerative work;

24 (iv) As part of an unemployment work relief or work-
25 training program assisted or financed in whole or in part by any

1 federal agency or an agency of a state or political subdivision
2 thereof, by an individual receiving such work relief or work
3 training; or

4 (v) By an inmate of a custodial or penal institution;

5 (h) Service with respect to which unemployment
6 compensation is payable under an unemployment compensation system
7 established by an act of Congress;

8 (i) Service performed in any calendar quarter in the
9 employ of any organization exempt from income tax under section
10 501(a) of the Internal Revenue Code as defined in section 49-801.01,
11 other than an organization described in section 401(a) of the
12 Internal Revenue Code as defined in section 49-801.01, or under
13 section 521 thereof, if the remuneration for such service is less
14 than fifty dollars;

15 (j) Service performed in the employ of a school, college,
16 or university, if such service is performed (i) by a student who is
17 enrolled, regularly attending classes at, and working for such
18 school, college, or university pursuant to a financial assistance
19 arrangement with such school, college, or university or (ii) by the
20 spouse of such student, if such spouse is advised, at the time such
21 spouse commences to perform such service, that (A) the employment of
22 such spouse to perform such service is provided under a program to
23 provide financial assistance to such student by such school, college,
24 or university and (B) such employment will not be covered by any
25 program of unemployment insurance;

1 (k) Service performed as a student nurse in the employ of
2 a hospital or nurses training school by an individual who is enrolled
3 and is regularly attending classes in a nurses training school
4 chartered or approved pursuant to state law; and service performed as
5 an intern in the employ of a hospital by an individual who has
6 completed a four-year course in a medical school chartered or
7 approved pursuant to state law;

8 (l) Service performed by an individual as a real estate
9 salesperson, as an insurance agent, or as an insurance solicitor, if
10 all such service performed by such individual is performed for
11 remuneration solely by way of commission;

12 (m) Service performed by an individual under the age of
13 eighteen in the delivery or distribution of newspapers or shopping
14 news, not including delivery or distribution to any point for
15 subsequent delivery or distribution;

16 (n) Service performed by an individual in the sale,
17 delivery, or distribution of newspapers or magazines under a written
18 contract in which (i) the individual acknowledges that the individual
19 performing the service and the service are not covered and (ii) the
20 newspapers and magazines are sold by him or her at a fixed price with
21 his or her compensation being based on the retention of the excess of
22 such price over the amount at which the newspapers or magazines are
23 charged to him or her, whether or not he or she is guaranteed a
24 minimum amount of compensation for such service, or is entitled to be
25 credited with the unsold newspapers or magazines turned back;

1 (o) Service performed by an individual who is enrolled at
2 a nonprofit or public educational institution which normally
3 maintains a regular faculty and curriculum and normally has a
4 regularly organized body of students in attendance at the place where
5 its educational activities are carried on, as a student in a full-
6 time program, taken for credit at such institution, which combines
7 academic instruction with work experience, if such service is an
8 integral part of such program, and such institution has so certified
9 to the employer, except that this subdivision shall not apply to
10 service performed in a program established for or on behalf of an
11 employer or a group of employers;

12 (p) Service performed in the employ of a hospital, if
13 such service is performed by a patient of the hospital;

14 (q) Service performed for a motor carrier, as defined in
15 49 U.S.C. 13102 or section 75-302, as amended, by a lessor leasing
16 one or more motor vehicles driven by the lessor or one or more
17 drivers provided by the lessor under a lease, with the motor carrier
18 as lessee, executed pursuant to 49 C.F.R. part 376, Title 291,
19 Chapter 3, as amended, of the rules and regulations of the Public
20 Service Commission, or the rules and regulations of the Division of
21 Motor Carrier Services. This shall not preclude the determination of
22 an employment relationship between the lessor and any personnel
23 provided by the lessor in the conduct of the service performed for
24 the lessee;

25 (r) Service performed by an individual for a business

1 engaged in compilation of marketing data bases if such service
2 consists only of the processing of data and is performed in the
3 residence of the individual;

4 (s) Service performed by an individual as a volunteer
5 research subject who is paid on a per study basis for scientific,
6 medical, or drug-related testing for any organization other than one
7 described in section 501(c)(3) of the Internal Revenue Code as
8 defined in section 49-801.01 or any governmental entity;

9 (t) Service performed by a direct seller if:

10 (i) Such person is engaged in sales primarily in person
11 and is:

12 (A) Engaged in the trade or business of selling or
13 soliciting the sale of consumer products or services to any buyer on
14 a buy-sell basis or a deposit-commission basis for resale, by the
15 buyer or any other person, in the home or otherwise than in a
16 permanent retail establishment;

17 (B) Engaged in the trade or business of selling or
18 soliciting the sale of consumer products or services in the home or
19 otherwise than in a permanent retail establishment; or

20 (C) Engaged in the trade or business of the delivering or
21 distribution of newspapers or shopping news, including any services
22 directly related to such trade or business;

23 (ii) Substantially all the remuneration, whether or not
24 paid in cash, for the performance of the services described in
25 subdivision (t)(i) of this subdivision is directly related to sales

1 or other output, including the performance of services, rather than
2 to the number of hours worked; and

3 (iii) The services performed by the person are performed
4 pursuant to a written contract between such person and the person for
5 whom the services are performed and the contract provides that the
6 person will not be treated as an employee for federal and state tax
7 purposes. Sales by a person whose business is conducted primarily by
8 telephone or any other form of electronic sales or solicitation is
9 not service performed by a direct seller under this subdivision;

10 (u) Service performed by an individual who is a
11 participant in the National and Community Service State Grant
12 Program, also known as AmeriCorps, because a participant is not
13 considered an employee of the organization receiving assistance under
14 the national service laws through which the participant is engaging
15 in service pursuant to 42 U.S.C. 12511(30)(B); and

16 (v) Service performed at a penal or custodial institution
17 by a person committed to a penal or custodial institution;

18 (7) Services performed for a seasonal employer only if
19 benefits are allowed pursuant to section 4 of this act;

20 ~~(7)~~(8) If the services performed during one-half or more
21 of any pay period by an individual for the person employing him or
22 her constitute employment, all the services of such individual for
23 such period shall be deemed to be employment, but if the services
24 performed during more than one-half of any such pay period by an
25 individual for the person employing him or her do not constitute

1 employment, then none of the services of such individual for such
2 period shall be deemed to be employment. As used in this subdivision,
3 the term pay period means a period, of not more than thirty-one
4 consecutive days, for which a payment of remuneration is ordinarily
5 made to such individual by the person employing him or her. This
6 subdivision shall not be applicable with respect to services
7 performed in a pay period by an individual for the person employing
8 him or her when any of such service is excepted by subdivision (6)(h)
9 of this section; and

10 ~~(8)~~(9) Notwithstanding the foregoing exclusions from the
11 definition of employment, services shall be deemed to be in
12 employment if with respect to such services a tax is required to be
13 paid under any federal law imposing a tax against which credit may be
14 taken for contributions required to be paid into a state unemployment
15 compensation fund or which as a condition for full tax credit against
16 the tax imposed by the Federal Unemployment Tax Act, as amended, is
17 required to be covered under the Employment Security Law.

18 Sec. 4. (1) For weeks of unemployment occurring after
19 October 1, 2013, benefits may be paid to an individual on the basis
20 of service performed in seasonal employment only if the claim is
21 filed within the operating period of the seasonal employment. If the
22 claim is filed outside the operating period of the seasonal
23 employment, benefits shall be paid on the basis of nonseasonal wages
24 only.

25 (2) An employer shall file an application for a seasonal

1 determination with the commissioner on forms prescribed by the
2 commissioner. The commissioner shall determine if the employer is a
3 seasonal employer and if so the normal seasonal period or periods of
4 the employer and if the seasonal employer designation applies to all
5 or to a portion of the employer's business. A seasonal determination
6 shall be made within ninety days after the filing of such an
7 application. Until a seasonal determination by the commissioner has
8 been made in accordance with this section, no employer or employee
9 shall be considered seasonal.

10 (3) Any interested party may file an appeal regarding a
11 seasonal determination in the manner provided in section 48-634.

12 (4) Whenever an employer is determined to be a seasonal
13 employer, the following provisions apply:

14 (a) The seasonal determination becomes effective the
15 first day of the calendar quarter commencing after the date of the
16 seasonal determination; and

17 (b) The seasonal determination does not affect any
18 benefit rights of seasonal employees with respect to employment
19 before the effective date of the seasonal determination.

20 (5) If a seasonal employer, after the date of its
21 seasonal determination, operates its business or its seasonal
22 operation during a period or periods of twenty-six weeks or more in a
23 calendar year, the employer shall be determined by the commissioner
24 to have lost its seasonal status with respect to that business or
25 operation effective at the end of the then current calendar quarter.

1 The redetermination shall be reported in writing to the employer. Any
2 interested party may file an appeal in the manner provided in section
3 48-634.

4 (6) Seasonal employers shall keep account of wages paid
5 to seasonal workers within the seasonal period as determined by the
6 commissioner and shall report these wages on a special seasonal
7 quarterly report form provided by the commissioner.

8 (7) An employee who performs services for the same
9 seasonal employer outside the employer's designated seasonal period
10 or periods shall not be considered a seasonal employee for any
11 period, and all wages paid by the seasonal employer to such employee
12 shall be considered nonseasonal wages. If a seasonal employee
13 performs services for the same seasonal employer outside the
14 employer's designated seasonal period or periods thereby resulting in
15 the loss of the employee's seasonal status and if such employee is
16 not thereafter employed by such employer between any two following
17 designated seasonal periods, the employee may thereafter be
18 reemployed by such seasonal employer and regain such employee's
19 status as a seasonal employee.

20 (8) The commissioner may adopt and promulgate rules and
21 regulations applicable to seasonal employers for determining their
22 normal seasonal period or periods.

23 Sec. 5. Section 48-628, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 48-628 An individual shall be disqualified for benefits:

1 (1)(a) For the week in which he or she has left work
2 voluntarily without good cause, if so found by the commissioner, and
3 for the thirteen weeks which immediately follow such week. A
4 temporary employee of a temporary help firm has left work voluntarily
5 without good cause if the temporary employee does not contact the
6 temporary help firm for reassignment upon completion of an assignment
7 and the temporary employee has been advised by the temporary help
8 firm of his or her obligation to contact the temporary help firm upon
9 completion of assignments and has been advised by the temporary help
10 firm that the temporary employee may be denied benefits for failure
11 to do so; or

12 (b) For the week in which he or she has left work
13 voluntarily for the sole purpose of accepting previously secured,
14 permanent, full-time, insured work, which he or she does accept,
15 which offers a reasonable expectation of betterment of wages or
16 working conditions, or both, and for which he or she earns wages
17 payable to him or her, if so found by the commissioner, and for the
18 two weeks which immediately follow such week;

19 (2) For the week in which he or she has been discharged
20 for misconduct connected with his or her work, if so found by the
21 commissioner, and for the fourteen weeks which immediately follow
22 such week. If the commissioner finds that such individual's
23 misconduct was gross, flagrant, and willful, or was unlawful, the
24 commissioner shall totally disqualify such individual from receiving
25 benefits with respect to wage credits earned prior to discharge for

1 such misconduct. In addition to the fourteen-week benefit
2 disqualification assessed under this subdivision, the commissioner
3 shall cancel all wage credits earned as a result of employment with
4 the discharging employer if the commissioner finds that the
5 individual was discharged for misconduct in connection with the work
6 which was not gross, flagrant, and willful or unlawful but which
7 included being under the influence of any intoxicating beverage or
8 being under the influence of any controlled substance listed in
9 section 28-405 not prescribed by a physician licensed to practice
10 medicine or surgery when the individual is so under the influence on
11 the worksite or while engaged in work for the employer;

12 (3)(a) For any week of unemployment in which he or she
13 has failed, without good cause, to apply for available, suitable work
14 when so directed by the employment office or the commissioner, to
15 accept suitable work offered him or her, or to return to his or her
16 customary self-employment, if any, and the commissioner so finds, and
17 for the twelve weeks which immediately follow such week, and his or
18 her total benefit amount to which he or she is then entitled shall be
19 reduced by an amount equal to the number of weeks for which he or she
20 has been disqualified by the commissioner.

21 (b) In determining whether or not any work is suitable
22 for an individual, the commissioner shall consider the degree of risk
23 involved to the individual's health, safety, and morals, his or her
24 physical fitness and prior training, his or her experience and prior
25 earnings, his or her length of unemployment and prospects for

1 securing local work in his or her customary occupation, and the
2 distance of the available work from his or her residence.

3 (c) Notwithstanding any other provisions of the
4 Employment Security Law, no work shall be deemed suitable and
5 benefits shall not be denied under such law to any otherwise eligible
6 individual for refusing to accept new work under any of the following
7 conditions: (i) If the position offered is vacant due directly to a
8 strike, lockout, or other labor dispute; (ii) if the wages, hours, or
9 other conditions of the work offered are substantially less favorable
10 to the individual than those prevailing for similar work in the
11 locality; or (iii) if, as a condition of being employed, the
12 individual would be required to join a company union or to resign
13 from or refrain from joining any bona fide labor organization.

14 (d) Notwithstanding any other provisions in subdivision
15 (3) of this section, no otherwise eligible individual shall be denied
16 benefits with respect to any week in which he or she is in training
17 with the approval of the commissioner, by reason of the application
18 of the provisions in subdivision (3) of this section relating to
19 failure to apply for or a refusal to accept suitable work.

20 (e) No individual shall be disqualified for refusing to
21 apply for available, full-time work or accept full-time work under
22 subdivision (3)(a) of this section solely because such individual is
23 seeking part-time work if the majority of the weeks of work in an
24 individual's base period include part-time work. For purposes of this
25 subdivision, seeking only part-time work shall mean seeking less than

1 full-time work having comparable hours to the individual's part-time
2 work in the base period, except that the individual must be available
3 for work at least twenty hours per week;

4 (4) For any week with respect to which the commissioner
5 finds that his or her total unemployment is due to a stoppage of work
6 which exists because of a labor dispute at the factory,
7 establishment, or other premises at which he or she is or was last
8 employed, except that this subdivision shall not apply if it is shown
9 to the satisfaction of the commissioner that (a) the individual is
10 not participating in, financing, or directly interested in the labor
11 dispute which caused the stoppage of work and (b) he or she does not
12 belong to a grade or class of workers of which, immediately before
13 the commencement of the stoppage, there were members employed at the
14 premises at which the stoppage occurs, any of whom are participating,
15 financing, or directly interested in the dispute. If in any case,
16 separate branches of work, which are commonly conducted as separate
17 businesses in separate premises, are conducted in separate
18 departments of the same premises, each such department shall, for the
19 purposes of this subdivision, be deemed to be a separate factory,
20 establishment, or other premises;

21 (5) For any week with respect to which he or she is
22 receiving or has received remuneration in the form of (a) wages in
23 lieu of notice, or a dismissal or separation allowance, (b)
24 compensation for temporary disability under the workers' compensation
25 law of any state or under a similar law of the United States, (c)

1 retirement or retired pay, pension, annuity, or other similar
2 periodic payment under a plan maintained or contributed to by a base
3 period or chargeable employer, or (d) a gratuity or bonus from an
4 employer, paid after termination of employment, on account of prior
5 length of service, or disability not compensated under the workers'
6 compensation law. Such payments made in lump sums shall be prorated
7 in an amount which is reasonably attributable to such week. If the
8 prorated remuneration is less than the benefits which would otherwise
9 be due, he or she shall be entitled to receive for such week, if
10 otherwise eligible, benefits reduced by the amount of such
11 remuneration. The prorated remuneration shall be considered wages for
12 the quarter to which it is attributable. Military service-connected
13 disability compensation payable under 38 U.S.C. chapter 11 and
14 primary insurance benefits payable under Title II of the Social
15 Security Act, as amended, or similar payments under any act of
16 Congress shall not be deemed to be disqualifying or deductible from
17 the benefit amount. No deduction shall be made for the part of any
18 retirement pension which represents return of payments made by the
19 individual. In the case of a transfer by an individual or his or her
20 employer of an amount from one retirement plan to a second qualified
21 retirement plan under the Internal Revenue Code, the amount
22 transferred shall not be deemed to be received by the claimant until
23 actually paid from the second retirement plan to the claimant. No
24 deduction shall be made for any benefit received under a supplemental
25 unemployment benefit plan described in subdivision ~~(29)(g)~~ (30)(g) of

1 section 48-602;

2 (6) For any week with respect to which or a part of which
3 he or she has received or is seeking unemployment benefits under an
4 unemployment compensation law of any other state or of the United
5 States, except that if the appropriate agency of such other state or
6 of the United States finally determines that he or she is not
7 entitled to such unemployment benefits, this disqualification shall
8 not apply;

9 (7) For any week of unemployment if such individual is a
10 student. For the purpose of this subdivision, student shall mean an
11 individual registered for full attendance at and regularly attending
12 an established school, college, or university, unless the major
13 portion of his or her wages for insured work during his or her base
14 period was for services performed while attending school, except that
15 attendance for training purposes under a plan approved by the
16 commissioner for such individual shall not be disqualifying;

17 (8) For any week of unemployment if benefits claimed are
18 based on services performed:

19 (a) In an instructional, research, or principal
20 administrative capacity for an educational institution, if such week
21 commences during the period between two successive academic years or
22 terms, or when an agreement provides instead for a similar period
23 between two regular, but not successive, terms during such period, if
24 such individual performs such services in the first of such academic
25 years or terms and if there is a contract or reasonable assurance

1 that such individual will perform services in any such capacity for
2 any educational institution in the second of such academic years or
3 terms;

4 (b) In any other capacity for an educational institution,
5 if such week commences during a period between two successive
6 academic years or terms, if such individual performs such services in
7 the first of such academic years or terms, and if there is a
8 reasonable assurance that such individual will perform such services
9 in the second of such academic years or terms, except that if
10 benefits are denied to any individual for any week under subdivision
11 (8)(b) of this section and such individual was not offered an
12 opportunity to perform such services for the educational institution
13 for the second of such academic years or terms, such individual shall
14 be entitled to a retroactive payment of the benefits for each week
15 for which the individual filed a timely claim for benefits and for
16 which benefits were denied solely by reason of subdivision (8)(b) of
17 this section;

18 (c) In any capacity described in subdivision (8)(a) or
19 (b) of this section if such week commences during an established and
20 customary vacation period or holiday recess if such individual
21 performs such services in the period immediately before such vacation
22 period or holiday recess, and there is a reasonable assurance that
23 such individual will perform such services in the period immediately
24 following such vacation period or holiday recess;

25 (d) In any capacity described in subdivision (8)(a) or

1 (b) of this section in an educational institution while in the employ
2 of an educational service agency, and such individual shall be
3 disqualified as specified in subdivisions (8)(a), (b), and (c) of
4 this section. As used in this subdivision, educational service agency
5 shall mean a governmental agency or governmental entity which is
6 established and operated exclusively for the purpose of providing
7 services to one or more educational institutions; and

8 (e) In any capacity described in subdivision (8)(a) or
9 (b) of this section in an educational institution if such services
10 are provided to or on behalf of the educational institution while in
11 the employ of an organization or entity described in section 3306(c)
12 (7) or 3306(c)(8) of the Federal Unemployment Tax Act, 26 U.S.C.
13 3306(c)(7) or (8), and such individual shall be disqualified as
14 specified in subdivisions (8)(a), (b), and (c) of this section;

15 (9) For any week of unemployment benefits if
16 substantially all the services upon which such benefits are based
17 consist of participating in sports or athletic events or training or
18 preparing to so participate, if such week of unemployment begins
19 during the period between two successive sport seasons or similar
20 periods, if such individual performed such services in the first of
21 such seasons or similar periods, and if there is a reasonable
22 assurance that such individual will perform such services in the
23 later of such seasons or similar periods;

24 (10) For any week of unemployment benefits if the
25 services upon which such benefits are based are performed by an alien

1 unless such alien is an individual who was lawfully admitted for
2 permanent residence at the time such services were performed, was
3 lawfully present for purposes of performing such services, or was
4 permanently residing in the United States under color of law at the
5 time such services were performed, including an alien who was
6 lawfully present in the United States as a result of the application
7 of section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C.
8 1182(d)(5). Any data or information required of individuals applying
9 for benefits to determine whether benefits are not payable to them
10 because of their alien status shall be uniformly required from all
11 applicants for benefits. In the case of an individual whose
12 application for benefits would otherwise be approved, no
13 determination that benefits to such individual are not payable
14 because of his or her alien status shall be made except upon a
15 preponderance of the evidence;

16 (11) Notwithstanding any other provisions of the
17 Employment Security Law, no otherwise eligible individual shall be
18 denied benefits for any week because he or she is in training
19 approved under section 236(a)(1) of the federal Trade Act of 1974, 19
20 U.S.C. 2296(a)(1), nor shall such individual be denied benefits by
21 reason of leaving work to enter such training, if the work left is
22 not suitable employment, or because of the application to any such
23 week in training of provisions of the Employment Security Law, or any
24 applicable federal unemployment compensation law, relating to
25 availability for work, active search for work, or refusal to accept

1 work. For purposes of this subdivision, suitable employment shall
2 mean, with respect to an individual, work of a substantially equal or
3 higher skill level than the individual's past adversely affected
4 employment, as defined for purposes of the federal Trade Act of 1974,
5 and wages for such work at not less than eighty percent of the
6 individual's average weekly wage as determined for purposes of such
7 act;

8 (12) For any week during which the individual is on a
9 leave of absence; and

10 (13) For any week of unemployment benefits or for waiting
11 week credit if he or she has been disqualified from the receipt of
12 benefits pursuant to section 48-663.01 two or more times in the five-
13 year period immediately prior to filing his or her most recent claim.
14 This subdivision shall not apply if the individual has repaid in full
15 any overpayments established in conjunction with the
16 disqualifications assessed under section 48-663.01 during that five-
17 year period.

18 Sec. 6. Original sections 48-601, 48-602, and 48-628,
19 Reissue Revised Statutes of Nebraska, and section 48-604, Revised
20 Statutes Cumulative Supplement, 2012, are repealed.