

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 828

Introduced by Harr, 8.

Read first time January 08, 2016

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Employment Security Law; to amend
- 2 section 48-602, Revised Statutes Supplement, 2015; to redefine
- 3 terms; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-602, Revised Statutes Supplement, 2015, is
2 amended to read:

3 48-602 For purposes of the Employment Security Law, unless the
4 context otherwise requires:

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

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

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

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

1 regulation adopt and promulgate ~~prescribe~~;

2 (5) Client means any individual, partnership, limited liability
3 company, corporation, or other legally recognized entity that contracts
4 with a professional employer organization to obtain professional employer
5 services relating to worksite employees through a professional employer
6 agreement;

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

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

11 (8) Commissioner means the Commissioner of Labor;

12 (9) Contribution rate means the percentage of the combined tax rate
13 used to determine the contribution portion of the combined tax;

14 (10) Contributions means that portion of the combined tax based upon
15 the contribution rate portion of the combined tax rate which is deposited
16 in the state Unemployment Compensation Fund as required by sections
17 48-648 and 48-649;

18 (11) Department means the Department of Labor;

19 (12) Employment office means a free public employment office or
20 branch thereof, operated by this state or maintained as a part of a
21 state-controlled system of public employment offices, including public
22 employment offices operated by an agency of a foreign government;

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

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

30 (15) Institution of higher education means an institution which: (a)
31 Admits as regular students only individuals having a certificate of

1 graduation from a high school or the recognized equivalent of such a
2 certificate; (b) is legally authorized in this state to provide a program
3 of education beyond high school; (c) provides an educational program for
4 which it awards a bachelor's degree or higher or provides a program which
5 is acceptable for full credit toward such a degree, a program of
6 postgraduate or postdoctoral studies, or a program of training to prepare
7 students for gainful employment in a recognized occupation; and (d) is a
8 public or other nonprofit institution; notwithstanding any of the
9 foregoing provisions of this subdivision, all colleges and universities
10 in this state are institutions of higher education for purposes of this
11 section;

12 (16) Insured work means employment for employers;

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

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

22 (19) Payments in lieu of contributions means the money payments to
23 the Unemployment Compensation Fund required by sections 48-649, 48-652,
24 48-660.01, and 48-661;

25 (20) Professional employer agreement means a written professional
26 employer services contract whereby:

27 (a) A professional employer organization agrees to provide payroll
28 services, employee benefit administration, or personnel services for a
29 majority of the employees providing services to the client at a client
30 worksite;

31 (b) The agreement is intended to be ongoing rather than temporary in

1 nature; and

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

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

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

17 (23) State unemployment insurance tax means that portion of the
18 combined tax which is based upon the state unemployment insurance tax
19 rate portion of the combined tax rate and which is deposited in the State
20 Unemployment Insurance Trust Fund as required by sections 48-648 and
21 48-649;

22 (24) State unemployment insurance tax rate means the percentage of
23 the combined tax rate used to determine the state unemployment insurance
24 tax portion of the combined tax;

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

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

31 (27) Unemployed means an individual during any week in which the

1 individual performs no service and with respect to which no wages are
2 payable to the individual or any week of less than full-time work if the
3 wages payable with respect to such week are less than the individual's
4 weekly benefit amount, but does not include any individual on a leave of
5 absence or on paid vacation leave. When an agreement between the employer
6 and a bargaining unit representative does not allocate vacation pay
7 allowance or pay in lieu of vacation to a specified period of time during
8 a period of temporary layoff or plant shutdown, the payment by the
9 employer or his or her designated representative will be deemed to be
10 wages as defined in this section in the week or weeks the vacation is
11 actually taken;

12 (28) Unemployment Trust Fund means the trust fund in the Treasury of
13 the United States of America established under section 904 of the federal
14 Social Security Act, 42 U.S.C. 1104, as such section existed on January
15 1, 2015, which receives credit from the state Unemployment Compensation
16 Fund;

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

29 With respect to services performed in employment in agricultural
30 labor as is provided in subdivision (4)(c) of section 48-604, wages means
31 cash remuneration and the cash value of commodities not intended for

1 personal consumption by the worker and his or her immediate family for
2 such services. With respect to services performed in employment in
3 domestic service as is provided in subdivision (4)(d) of section 48-604,
4 wages means cash remuneration for such services.

5 The term wages does not include:

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

19 (b) The payment by an employer, without deduction from the
20 remuneration of the employee, of the tax imposed upon an employee under
21 section 3101 of the Internal Revenue Code as defined in section
22 49-801.01;

23 (c) Any payment on account of sickness or accident disability, or
24 medical or hospitalization expenses in connection with sickness or
25 accident disability, made by an employer to, or on behalf of, an
26 individual after the expiration of six calendar months following the last
27 calendar month in which such individual worked for such employer;

28 (d) Any payment made to, or on behalf of, an individual or his or
29 her beneficiary (i) from or to a trust described in section 401(a) of the
30 Internal Revenue Code as defined in section 49-801.01 which is exempt
31 from tax under section 501(a) of the Internal Revenue Code as defined in

1 section 49-801.01 at the time of such payment unless such payment is made
2 to an employee of the trust as remuneration for services rendered as such
3 employee and not as a beneficiary of the trust or (ii) under or to an
4 annuity plan which, at the time of such payment, meets the requirements
5 of section 401 of the Internal Revenue Code as defined in section
6 49-801.01;

7 (e) Any payment made to, or on behalf of, an employee or his or her
8 beneficiary (i) under a simplified employee pension as defined by the
9 commissioner, (ii) under or to an annuity contract as defined by the
10 commissioner, other than a payment for the purchase of such contract
11 which is made by reason of a salary reduction agreement, whether
12 evidenced by a written instrument or otherwise, (iii) under or to an
13 exempt governmental deferred compensation plan as defined by the
14 commissioner, (iv) to supplement pension benefits under a plan or trust,
15 as defined by the commissioner, to take into account some portion or all
16 of the increase in the cost of living since retirement, but only if such
17 supplemental payments are under a plan which is treated as a welfare
18 plan, or (v) under a cafeteria benefits plan;

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

21 (g) Benefits paid under a supplemental unemployment benefit plan
22 which satisfies the eight points set forth in Internal Revenue Service
23 Revenue Ruling 56-249 as the ruling existed on January 1, 2015, and is in
24 compliance with the standards set forth in Internal Revenue Service
25 Revenue Rulings 58-128 and 60-330 as the rulings existed on January 1,
26 2015; and

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

31 (30) Week means such period of seven consecutive days as the

1 commissioner may by rule and regulation adopt and promulgate ~~prescribe~~;

2 (31) Week of unemployment with respect to any individual means any
3 week during which he or she performs less than full-time work and the
4 wages payable to him or her with respect to such week are less than his
5 or her weekly benefit amount;

6 (32) Wholly owned subsidiary means a corporation, company, or other
7 entity which has eighty percent or more of its outstanding voting stock
8 or membership owned or controlled, directly or indirectly, by the parent
9 entity; and

10 (33) Worksite employee has the same meaning as the term covered
11 employee in section 48-2702.

12 Sec. 2. Original section 48-602, Revised Statutes Supplement, 2015,
13 is repealed.