

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1126

Introduced by Vargas, 7.

Read first time January 22, 2020

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to workers' compensation; to amend section
- 2 48-125, Revised Statutes Cumulative Supplement, 2018; to change
- 3 provisions relating to award of attorney's fees or assessment of
- 4 penalties or interest as prescribed; to harmonize provisions; and to
- 5 repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-125, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 48-125 (1) Except as hereinafter provided, all amounts of
4 compensation payable under the Nebraska Workers' Compensation Act shall
5 be payable periodically in accordance with the methods of payment of
6 wages of the employee at the time of the injury or death or by a method
7 of payment as provided in subsection (2) of this section. Such payments
8 shall be sent directly to the person entitled to compensation or his or
9 her designated representative except as otherwise provided in section
10 48-149 or subsection (2) of this section.

11 (2)(a) After an injury or death subject to the Nebraska Workers'
12 Compensation Act, the employer, workers' compensation insurer, or risk
13 management pool and the employee, the other person entitled to
14 compensation, or a legal representative acting on behalf of such employee
15 or other person entitled to compensation may enter into a written or
16 electronic agreement that periodic or lump-sum payments to the employee
17 or other person entitled to compensation may be made by check or by
18 direct deposit, prepaid card, or similar electronic payment system.

19 (b) Payments made by direct deposit, prepaid card, or similar
20 electronic payment system pursuant to this subsection shall not be
21 subject to attachment or garnishment or held liable in any way for any
22 debts, except as provided in section 48-149; and an agreement pursuant to
23 this subsection shall include notice of this fact. If an amount is
24 withheld pursuant to section 48-149, sufficient information to identify
25 the jurisdiction, the case number or similar identifying information, and
26 the amount withheld shall be provided to the employee or other person
27 entitled to compensation or his or her legal representative at or near
28 the time of withholding.

29 (c) Prior to entering into an agreement pursuant to this subsection
30 for payment by prepaid card, the employer, workers' compensation insurer,
31 or risk management pool shall provide to the employee or other person

1 entitled to compensation information regarding the locations where such
2 card may be used by the employee or other person.

3 (d) Pursuant to an agreement under this subsection, compensation may
4 be transferred by electronic funds transfer or other electronic means to
5 the trust account of an attorney representing the employee or other
6 person entitled to compensation, for the benefit of such employee or
7 other person. The payment or transfer shall include or be accompanied by
8 information sufficient to identify the nature of the payment being made,
9 including the employer, workers' compensation insurer, or risk management
10 pool and the employee or other person entitled to compensation.

11 (e) If an employer, workers' compensation insurer, or risk
12 management pool imposes any fees or other charges relating to payment by
13 direct deposit, prepaid card, or a similar electronic payment system,
14 prior to entering into an agreement pursuant to this subsection the
15 employer, workers' compensation insurer, or risk management pool shall
16 disclose such fees or charges to the employee or other person entitled to
17 compensation.

18 (f) Any payment or transfer made pursuant to this subsection by
19 direct deposit, prepaid card, or similar electronic payment system shall
20 be in the full amount of the lump-sum or periodic payment awarded or paid
21 pursuant to section 48-121 to the employee or other person entitled to
22 compensation.

23 (g) A prepaid card offered by the employer, workers' compensation
24 insurer, or risk management pool shall:

25 (i) Allow the employee or other person entitled to compensation to
26 apply, initiate, transfer, and load payments with no charge by the
27 employer, workers' compensation insurer, or risk management pool;

28 (ii) For the initial prepaid card, be distributed or delivered to
29 the employee or other person entitled to compensation with no charge by
30 the employer, workers' compensation insurer, or risk management pool; and

31 (iii) Provide the employee or other person entitled to compensation,

1 with respect to each payment made to the prepaid card in accordance with
2 this subsection, at least one method of accessing the full payment
3 without fees.

4 (h) An employee, another person entitled to compensation, or a legal
5 representative acting on behalf of such employee or other person entitled
6 to compensation may elect at any time to rescind the agreement under this
7 subsection regarding the method of payment by providing written or
8 electronic notice of such rescission to the employer, workers'
9 compensation insurer, or risk management pool that is a party to such
10 agreement. If such election is made, the employer, workers' compensation
11 insurer, or risk management pool shall change the method of payment to
12 the method of payment of wages of the employee at the time of the injury
13 or death under subsection (1) of this section as soon as practicable
14 after receiving the information necessary to do so and in a manner that
15 allows the employer, workers' compensation insurer, or risk management
16 pool to comply with the requirements of subsection (3) of this section
17 without making a delinquent payment. The employer, workers' compensation
18 insurer, or risk management pool is not required to rescind any payment
19 transaction already made or made to comply with subsection (3) of this
20 section.

21 (i) An employer, a workers' compensation insurer, or a risk
22 management pool or an agent of any such entity shall not engage in
23 unfair, deceptive, or abusive practices in relation to the method of
24 payment. No employer, workers' compensation insurer, risk management
25 pool, or agent of any such entity shall discharge, penalize, or in any
26 other manner discriminate against any employee or other person entitled
27 to compensation because such employee or other person has not consented
28 to receive payments by check or by direct deposit, prepaid card, or a
29 similar electronic payment system.

30 (j) An employer, workers' compensation insurer, or risk management
31 pool that elects to make payment using a prepaid card shall comply with

1 the requirements of 12 C.F.R. part 1005, as such part existed on April 1,
2 2018.

3 (3) Fifty percent shall be added for waiting time for all delinquent
4 payments after thirty days' notice has been given of disability or after
5 thirty days from the entry of a final order, award, or judgment of the
6 Nebraska Workers' Compensation Court, except that for any award or
7 judgment against the state in excess of one hundred thousand dollars
8 which must be reviewed by the Legislature as provided in section
9 48-1,102, fifty percent shall be added for waiting time for delinquent
10 payments thirty days after the effective date of the legislative bill
11 appropriating any funds necessary to pay the portion of the award or
12 judgment in excess of one hundred thousand dollars.

13 (4)(a) Whenever the employer refuses payment of compensation or
14 medical payments subject to section 48-120, or when the employer neglects
15 to pay compensation for thirty days after injury or neglects to pay
16 medical payments subject to such section after thirty days' notice has
17 been given of the obligation for medical payments, and proceedings are
18 held before the compensation court, a reasonable attorney's fee shall be
19 allowed the employee by the compensation court in all cases when the
20 employee receives an award. Attorney's fees allowed shall not be deducted
21 from the amounts ordered to be paid for medical services nor shall
22 attorney's fees be charged to the medical providers.

23 (b) If the employer files an appeal from an award of a judge of the
24 compensation court and fails to obtain any reduction in the amount of
25 such award, the Court of Appeals or Supreme Court shall allow the
26 employee a reasonable attorney's fee to be taxed as costs against the
27 employer for such appeal.

28 (c) If the employee files an appeal from an order of a judge of the
29 compensation court denying an award and obtains an award or if the
30 employee files an appeal from an award of a judge of the compensation
31 court when the amount of compensation due is disputed and obtains an

1 increase in the amount of such award, the Court of Appeals or Supreme
2 Court may allow the employee a reasonable attorney's fee to be taxed as
3 costs against the employer for such appeal.

4 (d) A reasonable attorney's fee allowed pursuant to this subsection
5 shall not affect or diminish the amount of the award.

6 (5) When an attorney's fee is allowed pursuant to this section,
7 there shall further be assessed against the employer an amount of
8 interest on the final award obtained, computed from the date compensation
9 was payable, as provided in section 48-119, until the date payment is
10 made by the employer. For any injury occurring prior to August 30, 2015,
11 the interest rate shall be equal to the rate of interest allowed per
12 annum under section 45-104.01, as such rate may from time to time be
13 adjusted by the Legislature. For any injury occurring on or after August
14 30, 2015, the interest rate shall be equal to six percentage points above
15 the bond investment yield, as published by the Secretary of the Treasury
16 of the United States, of the average accepted auction price for the first
17 auction of each annual quarter of the twenty-six-week United States
18 Treasury bills in effect on the date of entry of the judgment. Interest
19 shall apply only to those weekly compensation benefits awarded which have
20 accrued as of the date payment is made by the employer. If the employer
21 pays or tenders payment of compensation, the amount of compensation due
22 is disputed, and the award obtained is greater than the amount paid or
23 tendered by the employer, the assessment of interest shall be determined
24 solely upon the difference between the amount awarded and the amount
25 tendered or paid.

26 (6) No attorney's fee, penalty, or interest shall be awarded or
27 assessed if a reasonable controversy existed at the time of a delinquent
28 payment described in subsection (3) of this section or a refusal to pay
29 described in subsection (4) of this section.

30 (7) The compensation court may award an attorney's fee for a failure
31 to authorize or provide assurance of payment for treatment pursuant to

1 section 48-120 if there is no reasonable controversy regarding treatment
2 within thirty days of the request for authorization or assurance of
3 payment. The compensation court may also, in its discretion, assess a
4 penalty under this subsection not to exceed five hundred dollars per day
5 for each day that authorization is delayed without reasonable
6 controversy.

7 (8) ~~(6)~~ For purposes of this section:

8 (a) Direct deposit means the transfer of payments into an account of
9 a financial institution chosen by the employee or other person entitled
10 to compensation; and

11 (b) Prepaid card means a prepaid debit card that provides access to
12 an account with a financial institution established directly or
13 indirectly by the employer, workers' compensation insurer, or risk
14 management pool to which payments are transferred.

15 Sec. 2. Original section 48-125, Revised Statutes Cumulative
16 Supplement, 2018, is repealed.