

Guidance Document

Pursuant to Neb. Rev. Stat. §84-901.03

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NEBRASKA HEALTHY FAMILIES AND WORKPLACES ACT

DISCLAIMER:

This Guidance Document is not intended to take the place of the law. It is intended to provide individuals with a general understanding of how the Nebraska Department of Labor (the Department) will interpret and enforce the Nebraska Healthy Families and Workplaces Act (*Neb. Rev. Stat.* §§ 48-3801 to 48-3811). For additional information on Nebraska Healthy Families and Workplaces Act, individuals may visit dol.nebraska.gov or nebraskalegislature.gov.

OVERVIEW:

The purpose of the Nebraska Healthy Families and Workplaces Act (the Act) is to provide eligible employees in Nebraska the right to earn paid sick time for personal or family health needs and provide certain provisions naturally and necessarily related to that purpose. Pursuant to *Neb. Rev. Stat.* § 48-3807, the Department has been charged with the responsibility to implement and enforce the Act. It is the finding of the legislature that state agencies, such as the Department, should be encouraged to advise the public of current interpretations of law. Acting on this legislative encouragement, the Department has published this guidance document on its interpretation and enforcement of the Act.

EMPLOYMENT RELATIONSHIP:

Whether a business or a worker is covered by the Act depends on whether they meet the legal definitions of “employer” and “employee.” Businesses that qualify as “employers” must give paid sick time to people who qualify as “employees.” Workers who are considered “employees” must earn paid sick time based on the hours they work for an employer in accordance with the requirements of the Act.

According to the Act:

An “**employer**” is:

- “any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or organized group of persons who employs **eleven or more employees.**” *Neb. Rev. Stat.* § 48-3802(4)(a) (emphasis supplied).

An “**employee**” is:

- “any individual employed by an employer[.]” *Neb. Rev. Stat.* § 48-3802(3).

Both definitions use the word “employ.” Whether someone is an employer or employee depends on whether a person is actually being hired and doing work.

According to the Act:

“**Employ**” is:

- “to permit to work by an employer pursuant to an **employment relationship.**” *Neb. Rev. Stat.* § 48-3802(2) (emphasis supplied).

The Act does **not** define what an “employment relationship” is. For purposes of enforcing the Act, the Department will determine there is an employment relationship if a person is performing work for a business and receives payment for the work. Payment includes but is not limited to wages,

salary, commissions, bonuses, goods, or services, as long as both sides agreed to it and the conditions were met.

EMPLOYEE COVERAGE EXCLUSIONS

The Act specifically excludes from the definition of employee the following individuals:

- An individual owner-operator;
- An independent contractor;
- An individual who works in Nebraska for fewer than eighty hours in a calendar year;
- An individual who is employed in agricultural employment of a seasonal or other temporary nature;
- An "employee" as defined by 45 U.S.C. 351(d) who is subject to the federal Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq.; and
- An individual under sixteen years of age. *Neb. Rev. Stat. § 48-3802(3)(a)-(f)*.

The terms, "individual owner-operator," "independent contractor," and, "agricultural employment," are not further defined by the Act. For purposes of enforcing the Act the Department will use the following definitions:

"Individual owner-operator" is:

- an individual performing services for a motor carrier, as defined in 49 U.S.C. 13102 or section *Neb. Rev. Stat. § 75-302*, as amended, by a lessor leasing one or more motor vehicles driven by the lessor or one or more drivers provided by the lessor under a lease, with the motor carrier as lessee, executed pursuant to 49 C.F.R. part 376, Title 291, Chapter 3, as amended, of the rules and regulations of the Public Service Commission, or the rules and regulations of the Division of Motor Carrier Services.

"Independent contractor" is:

- an individual that is performing services for payment where (A) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (B) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (C) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

"Agricultural employment" is:

- services performed by an individual (A) on a farm, in the employ of any employer, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals, and wildlife; (B) in the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a windstorm, if the major part of such service is performed on a farm; or (C) in connection with the production or harvesting of any commodity in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not

owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

The Act does **not** exclude from the definition of “employee” owners of organized businesses such as corporations, limited liability companies and limited liability partnerships. Thus, shareholders, members, partners, individuals participating in an Employee Stock Ownership Plan, and other similar individuals can be considered employees provided all other requirements of the definition of employee are met. A distribution of profits may be considered payment for services if the amount of the distribution is made based upon work performed for the employer.

The Act does **not** exclude from the definition of “employee” part-time or temporary workers. The Department will consider an individual to be an employee regardless of whether they are full-time, part-time, or temporary.

SMALL BUSINESS

Employers that meet the definition of “small business” are subject to lesser requirements under the Act. To qualify as a “small business” under the Act, the employer must employ between **11 and 19** employees in a given week, including full-time, part-time, or temporary employees. *Neb. Rev. Stat. § 48-3802(10)(a)*. For purposes of enforcing the Act, a given week means a calendar week starting on Sunday. A calendar year will begin with the first full calendar week of January. An employer does not qualify as a “small business” if, at any point during the current or previous calendar year, it had **20 or more** employees on payroll for 20 or more calendar weeks, even if it currently has only between 11 and 19 employees.

“Small business” employers are required to provide one hour of paid sick time for every 30 hours worked by an employee up to a potential maximum of 40 hours of paid sick time in a year for each employee. *Neb. Rev. Stat. § 48-3803(1)*. This does not prevent an employer from providing an employee with more than 40 hours of paid sick time in a year if it chooses to do so. A “small business” employer must allow an employee to accrue and use up to 40 hours of paid sick time in a year, but may allow more. However, all accrued paid sick time, but not necessarily time provided under a combined paid leave policy, must be carried over to the next year if not paid out by the employer. *Neb. Rev. Stat. § 48-3803(5), (6)*.

Any employer who does not meet the definition of a “small business” is considered a “large business,” and must meet the full requirements of the Act. An employer may start as a “small business” and later become a “large business” under the Act. If this happens, the Department will consider the accrual of additional paid sick time up to the required 56 hours to be prospective from the date that the employer no longer meets the definition of “small business.”

Examples:

- (1) ABC Company currently employs 15 individuals. ABC Company employed 23 individuals for 10 weeks last year but has never employed more than 19 employees in any week in the current year. Under this scenario, ABC Company is a “small business” employer. ABC Company must meet the “small business” requirements of the Act.
- (2) XYZ Company currently employs 15 individuals, but they employed 23 individuals in 20 weeks in the previous calendar year. Under this scenario XYZ Company is a “large business.” XYZ Company must meet the “large business” requirements of the Act.

- (3) ABC Company had been a “small business” for the previous 2 calendar years with a consistent team size of 15 to 19 employees. On November 3, 2025, ABC Company expanded to a team of 25 employees. They keep a team of 25 to 30 employees through calendar year 2026. ABC Company no longer meets the definition of a “small business”. They are a “large business” under the Act with the calendar week beginning May 24, 2026. Effective May 24, 2026, ABC Company must meet the “large business” requirements of the Act.

PAID SICK TIME ACCRUAL

Employees must begin accruing paid sick time after 80 hours of consecutive employment. Employees must accrue at least one hour of paid sick time for every 30 hours worked.

For purposes of enforcing the Act, the Department will use the following definitions:

“Consecutive employment” is:

- an unbroken or continuous period of employment with the same employer.

“Hours worked” is:

- an hour of services performed for payment within the state of Nebraska.

Further, when there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, the previously accrued paid sick time that had not been used or paid out to the employee **MUST** be reinstated. Additionally, the employee **MUST** be entitled to use accrued paid sick time **and** accrue additional paid sick time at the recommencement of employment. This accrual requirement for rehires includes individuals who remained employed with their same employment but their employer was no longer subject to the Act and then becomes subject to the Act again within 12 months.

Examples:

- (1) ABC company is an employer who employs 50 employees in Nebraska who work 12 hour shifts 3 days per calendar week and 25 employees who work 8a to 5p Monday through Friday of each week. This model of employment for both groups of employees is considered “consecutive employment.”

The employees working Monday through Friday will all have worked 80 hours of consecutive employment after 2 weeks. Once this threshold is met, ABC company must meet the paid sick time requirements of the Act. The 50 employees who work 12-hour shifts will have worked 80 hours of consecutive employment sometime during their third week of work. The exact day will vary depending on the days worked by each employee. ABC company must let each employee begin accruing once they work 80 hours.

- (2) XYZ Company employs 50 employees who perform duties throughout the year in both Nebraska and Iowa. At some point during the calendar year, all 50 employees worked at least 80 hours in Nebraska and began accruing paid sick time in accordance with the Act. Subsequently, 20 of these employees were assigned to a project in Iowa. While working in Iowa, these 20 employees are not required to accrue paid sick time.

(3) ABC Company employed 11 workers starting in January 2026. On March 15, 2026 ABC Company reduced its workforce to 10 workers. Effective March 15, 2026, the remaining workers are no longer considered employees for purposes of the Act because the business is no longer considered an employer as defined in *Neb. Rev. Stat. § 48-3802(4)*. On June 1, 2026, ABC Company hires an additional worker which now brings the total to 11 workers. The new worker has not yet worked 80 hours in consecutive employment, so the business is still not an employer for purposes of the Act. Beginning the week of June 14, 2026, the new worker has worked 80 hours in consecutive employment. ABC Company once again is considered an employer, and all 11 workers are considered employees. The 10 remaining original employees are considered to have recommenced their employment and all previously accrued paid sick time that had not been used or paid out to the employees shall be reinstated by the business.

- a. Employee Jane Doe worked for ABC Company since January 2026, prior to March 15, 2026, she had accrued 20 hours of paid sick time and used no hours. Starting June 14, 2026, Jane Doe's sick leave balance must be restored to 20 hours. Additionally, Jane Doe must begin accruing paid sick time for hours worked for the employer until she accrues at least 40 hours of paid sick time.
- b. Employee John Doe worked for ABC Company since January 2026, prior to March 15, 2026, he had accrued 40 hours of paid sick time and used 10 hours. Starting June 14, 2026, John Doe's sick leave balance must be restored to 30 hours. Additionally, there is no requirement for John Doe to begin accruing paid sick time for hours worked for the employer because he has already accrued 40 hours for the year.

TIPPED EMPLOYEES

The Act requires that paid sick time be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee typically earns during hours worked. The Act further provides that, "in no case shall the amount of this hourly rate be less than that provided under section 48-1203." *Neb. Rev. Stat. § 48-3802(7)*. For purposes of enforcing the Act, the Department will not consider tips or other similar gratuities received by employees who are ordinarily paid less than full minimum wage due to a tip credit or wage adjustment as described in *Neb. Rev. Stat. § 48-1203* to be part of the employee's hourly rate. If the employee's standard hourly rate excluding tips does not meet the minimum required by the Act, the Department will consider such an employee's hourly rate to be the greater of the full state or local minimum wage.

Example:

- (1) ABC company is a restaurant that employs 30 employees in Nebraska. The local minimum wage is \$14.00 per hour and the full state minimum wage is \$13.50 per hour. ABC company pays their servers a base wage of \$2.13 per hour. Including tips, most servers for ABC company average around \$20.00 per hour. Server Jane takes paid sick time under the Act for 10 hours. ABC company must pay Server Jane at least \$14.00 per hour for her paid sick time for a total of \$140.00.

OTHER PAID LEAVE

The Act does not require an employer to provide paid sick time in addition to a separate paid leave policy if that policy makes available an amount of paid leave that equals or exceeds the amounts required by the Act and that may be used in accordance with *Neb. Rev. Stat. § 48-3803*. While the Act does not obligate such an employer to allow an employee to accrue or carryover benefits beyond

the employer's existing paid leave policy, the policy must still provide enough leave so that its employees have available for their use the same amount of leave made available to an employee who accrues paid sick time solely under the Act.

An unlimited paid time off policy may potentially meet the requirements of the Act, but the policy must meet or exceed the accrual and usage requirements of the Act.

If the employer implements a paid leave policy, and the paid leave policy can only be used for purposes of the Act, then the paid leave policy will be considered paid sick time by the Department.

For purposes of enforcing the Act, the Department will only find an employer's paid leave meets the requirements of *Neb. Rev. Stat. § 48-3803(7)* if the following conditions of the Act are met:

- Paid sick time must be compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee typically earns during hours worked. *Neb. Rev. Stat. § 48-3802(7)*.
- Employees shall accrue a minimum of one hour of paid sick time for every 30 hours worked up to at least 40 hours of paid sick time in a year for an employee of a "small business" and 56 hours of paid sick time in a year for an employee of a "large business". *Neb. Rev. Stat. § 48-3803(1)*.
- An employee shall be entitled to use paid sick time as it is accrued. *Neb. Rev. Stat. § 48-3803(3)*.
- If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee is entitled to all paid sick time accrued at the prior division, entity, or location and is entitled to use all paid sick time as provided in the Act. *Neb. Rev. Stat. § 48-3803(9)*.
- When there is a separation from employment and the employee is rehired within 12 months of separation by the same employer, previously accrued paid sick time that had not been used or paid out to the employee shall be reinstated. The employee shall be entitled to use accrued paid sick time and accrue additional paid sick time at the recommencement of employment. *Neb. Rev. Stat. § 48-3803(9)*.
- An employer's absence control policy may not count paid sick time as an absence that may lead to or result in a retaliatory personnel action or any other adverse action. *Neb. Rev. Stat. § 48-3805(3)*.
- The rights and remedies under the Act cannot be waived by any agreement, policy, form, or condition of employment and any such waiver is void and unenforceable. *Neb. Rev. Stat. § 48-3803(10)*.
- Unless otherwise required by law, an employer shall not require disclosure of the details of an employee's or an employee's family member's health information as a condition of providing paid sick time under the Act. *Neb. Rev. Stat. § 48-3803(1)*.

Examples:

- (1) XYZ Company's paid leave policy compensates its employees during time taken for paid leave at their same hourly rate. However, XYZ Company makes no health insurance

contributions that it would normally make if the employee was actively providing services. This policy does not meet the requirements of *Neb. Rev. Stat. § 48-3802(7)*. The amount of paid leave paid out to the employee is less than what is required by the Act.

- (2) ABC Company is a “small business” employer who holds a paid leave policy where employees accrue 2 hours of paid leave for every 30 hours worked, but caps the amount of paid leave that an employee may accrue at 40 hours in a year. This policy meets the requirements of *Neb. Rev. Stat. § 48-3803(1)*.
- (3) XYZ Company’s paid leave policy requires that an employee wait 3 weeks after the paid leave is earned before an employee may request to use the paid leave for time off. This policy makes an amount of paid leave available to the employee that is less than what is required by *Neb. Rev. Stat. § 48-3803(3)*. Under the *Neb. Rev. Stat. § 48-3803(3)*, the amount of paid sick time available to an employee for use must equal the total amount the employee has accrued up to 40 or 56 hours in a year.
- (4) ABC Company’s paid leave policy allows its employees to use paid leave immediately after it is accrued but caps the amount of leave an employee may use in a year at 40 hours. ABC Company qualifies as a “small business” employer under the Act. Employee John Doe has accrued 10 hours of paid leave; to date he has taken no hours of leave. He requests 8 hours of paid sick time. To meet the requirements of the Act, the employer must allow employee John Doe to take this leave.
- (5) ABC Company is a “small business” employer with a paid leave policy that includes an attendance point system serving as its absence control policy. Under this system, an employee is subject to termination upon accruing 3 points within a calendar year. Points are only assessed after the employee has exhausted the lesser of: (1) all accrued paid leave, or (2) 40 hours of accrued paid leave in a year. ABC Company’s absence control policy provides a paid leave amount consistent with the requirements of the Act.

Separation from Employment

The Act does not require that paid sick time be paid out to an employee upon the employee’s separation from employment. Paid leave other than paid sick time that is used to meet an employer’s obligations under the Act may be required to be paid out to an employee upon separation from employment under other laws. Keep in mind, if not paid out, an employee that is rehired within 12 months must have all accrued paid sick time reinstated.