

NEBRASKA DEPARTMENT OF LABOR

EMPLOYEE CLASSIFICATION ACT

Neb. Rev. Stat. §§48-2901 TO 48-2912



PETE RICKETTS, GOVERNOR

JOHN H. ALBIN, COMMISSIONER

[Current Through 2018 Legislature, Regular Session]

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48-2901. Act, how cited.

Sections 48-2901 to 48-2912 shall be known and may be cited as the Employee Classification Act.

Source: Laws 2010, LB563, § 1.

48-2902. Terms, defined.

For purposes of the Employee Classification Act:

- (1) Commissioner means the Commissioner of Labor;
- (2) Construction has the same meaning as in section 48-2103;
- (3) Contractor means an individual, partnership, limited liability company, corporation, or other business entity engaged in a delivery service or a construction contractor business, as contractor is defined in section 48-2103, and includes any subcontractor performing services for a contractor;
- (4) Delivery service means the transport and delivery of goods, products, supplies, or raw materials upon the highways of this state;
- (5) Department means the Department of Labor; and
- (6) Performing services means the performance of construction labor or delivery services for remuneration.

Source: Laws 2010, LB563, § 2.

48-2903. Presumption; act; how construed.

(1) An individual performing construction labor services for a contractor is presumed an employee and not an independent contractor for purposes of the Employee Classification Act, unless:

- (a) The individual meets the criteria found in subdivision (5) of section 48-604;
- (b) The individual has been registered as a contractor pursuant to the Contractor Registration Act prior to commencing construction work for the contractor; and
- (c) The individual has been assigned a combined tax rate pursuant to sections 48-649 to 48-649.04 or is exempted from unemployment insurance coverage pursuant to subdivision (6) of section 48-604.

(2) An individual performing delivery services for a contractor is presumed an employee and not an independent contractor for purposes of the Employee Classification Act, unless the individual meets the criteria found in subdivision (5) of section 48-604 or is exempted from unemployment insurance coverage pursuant to subdivision (6) of section 48-604.

(3) The Employee Classification Act shall not be construed to affect or apply to a common-law or statutory action providing for recovery in tort and shall not be construed to affect or change the common-law interpretation of independent contractor status as it relates to tort liability or a workers' compensation claim. The act shall also not be construed to affect or alter the use of the term independent contractor as interpreted by the Department of Revenue and shall not be construed to affect any action brought pursuant to the Nebraska Revenue Act of 1967.

Source: Laws 2010, LB563, § 3; Laws 2017, LB172, § 84.

Operative Date: January 1, 2018

Cross References

- **Contractor Registration Act**, see section 48-2101.
- **Nebraska Revenue Act of 1967**, see section 77-2701.

48-2904. Violation.

It is a violation of the Employee Classification Act for a contractor to designate an individual as an independent contractor who would be properly classified as an employee under section 48-2903.

Source: Laws 2010, LB563, § 4.

48-2905. Reports of suspected violations; department; duties; confidentiality.

The department shall establish and operate a hotline and web site for individuals to report suspected violations of the Employee Classification Act. The hotline and web site may be operated in conjunction with the requirements of the Contractor Registration Act. At a minimum, the department shall require the reporting individual to provide contact information and a description of the suspected violation including the name of the business and job site location. Except to the extent needed in any administrative hearing, civil action, or criminal proceeding brought to enforce the Employment Security Law, Nebraska Revenue Act of 1967, or Nebraska Workers' Compensation Act, information

obtained by the department under this section or obtained from any individual pursuant to the administration of the Employee Classification Act shall be held confidential.

Source: Laws 2010, LB563, § 5.

Cross References

- **Contractor Registration Act**, see section 48-2101.
- **Employment Security Law**, see section 48-601.
- **Nebraska Revenue Act of 1967**, see section 77-2701.
- **Nebraska Workers' Compensation Act**, see section 48-1,110.

48-2906. Investigations.

The department shall timely investigate all credible reports made pursuant to section 48-2905.

Source: Laws 2010, LB563, § 6.

48-2907. Fines; unpaid fines; effect.

(1) In addition to any other fines or penalties provided by law, if the commissioner finds, after notice and hearing, that a contractor has violated the Employee Classification Act, the contractor shall be assessed, by the commissioner, a five-hundred-dollar fine per each misclassified individual for the first offense and a five-thousand-dollar fine per each misclassified individual for each second and subsequent offense.

(2) Any contractor who has unpaid fines for a violation of the Employee Classification Act shall be barred from contracting with the state or any political subdivision until such fines are paid.

Source: Laws 2010, LB563, § 7; Laws 2018, LB953, § 2.

Effective Date: July 19, 2018

48-2908. Action to collect unpaid combined taxes plus interest; additional investigation and enforcement action.

Upon finding a contractor has violated the Employee Classification Act, the commissioner shall instigate proceedings pursuant to the Employment Security Law to collect any unpaid combined taxes plus interest. The commissioner shall share any violations with the Department of Revenue for analysis of violations of the Nebraska Revenue Act of 1967 and with the Nebraska Workers' Compensation Court. Upon receipt, the Department of Revenue shall promptly investigate and, if appropriate, proceed with the collection of any income tax not withheld plus interest and penalties. The commissioner, Department of Revenue, and Nebraska Workers' Compensation Court shall refer any violation reasonably believed to be a civil or criminal violation of the Employment Security Law, the Nebraska Revenue Act of 1967, the Nebraska Workers' Compensation Act, or another law to the appropriate prosecuting authority for appropriate action.

Source: Laws 2010, LB563, § 8.

Cross References

- **Employment Security Law**, see section 48-601.
- **Nebraska Revenue Act of 1967**, see section 77-2701.
- **Nebraska Workers' Compensation Act**, see section 48-1,110.

48-2909. Report; contents.

The department shall provide electronically an annual report to the Legislature regarding compliance with and enforcement of the Employee Classification Act. The report shall include, but not be limited to, the number of reports received from both its hotline and web site, the number of investigated reports, the findings of the reports, the amount of combined tax, interest, and fines collected, the number of referrals to the Department of Revenue, Nebraska Workers' Compensation Court, and appropriate prosecuting authority, and the outcome of such referrals.

Source: Laws 2010, LB563, § 9; Laws 2012, LB782, § 67.

48-2910. Contractor; post notice.

Every contractor shall post in a conspicuous place at the job site or place of business in English and Spanish the following notice:

(1) Every individual working for a contractor has the right to be properly classified by the contractor as an employee rather than an independent contractor if the individual does not meet the requirements of an independent contractor under the law known as the Employee Classification Act.

(2) If you believe you or someone else has not been properly classified as an employee or an independent contractor under the Employee Classification Act, contact the Department of Labor.

Source: Laws 2010, LB563, § 10.

48-2911. Contracts; affidavit required; rescission.

Any contract between the state or a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the state or political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with section 4-114, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to section 48-2907 or 48-2912. Such contract shall also require that the contractor follow the provisions of the Employee Classification Act. A violation of the act by a contractor is grounds for rescission of the contract by the state or political subdivision.

Source: Laws 2010, LB563, § 11; Laws 2018, LB953, § 3.

Effective Date: July 19, 2018

48-2912. Contractor; false affidavit; penalties.

Any contractor who knowingly provides a false affidavit under section 48-2911 to the state or political subdivision shall be subject to the penalties of perjury and upon a second or subsequent violation shall be barred from contracting with the state or any political subdivision for a period of three years after the date of discovery of the falsehood.

Source: Laws 2010, LB563, § 12.

Cross References

- **Perjury**, penalty, see section 28-915.