

**NEBRASKA DEPARTMENT OF LABOR**

**WAGE  
PAYMENT  
AND  
COLLECTION  
ACT**

*Neb. Rev. Stat. §§48-1228 to 48-1234*



**PETE RICKETTS, GOVERNOR**

**JOHN H. ALBIN, COMMISSIONER**

[Current Through 2018 Legislature, Regular Session]

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**48-1228. Act, how cited.**

Sections 48-1228 to 48-1234 shall be known and may be cited as the Nebraska Wage Payment and Collection Act.

**Source:** Laws 1977, LB 220A, § 1; Laws 2007, LB255, § 1; Laws 2014, LB560, § 1.

Annotations

- The Nebraska Wage Payment and Collection Act does not prohibit employers from discharging employees, and it does not provide employees with any substantive rights. *Coffey v. Planet Group*, 287 Neb. 834, 845 N.W.2d 255 (2014).
- The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).
- Nebraska Wage Payment and Collection Act does not apply to severance payment which becomes due upon termination of employment. *Babb v. United Food & Commercial Workers Local 271*, 233 Neb. 826, 448 N.W.2d 168 (1989).
- If an employer and employee agree upon a bonus to be paid upon certain conditions and the conditions are fulfilled, the bonus is wages under the Nebraska Wage Payment and Collection Act. *Knutson v. Snyder Industries, Inc.*, 231 Neb. 374, 436 N.W.2d 496 (1989).
- The Nebraska Wage Payment and Collection Act applies only to actions to recover wages due an employee for labor or services performed for an employer. *Heimbouch v. Victorio Ins. Serv., Inc.*, 220 Neb. 279, 369 N.W.2d 620 (1985).

**48-1229. Terms, defined.**

For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (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. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(2) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(3) Federally insured financial institution means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States Government;

(4) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs;

(5) Payroll debit card means a stored-value card issued by or on behalf of a federally insured financial institution that provides an employee with immediate access for withdrawal or transfer of his or her wages through a network of automatic teller machines. Payroll debit card includes payroll debit cards, payroll cards, and paycards; and

(6) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes

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commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

**Source:** Laws 1977, LB 220A, § 2; Laws 1988, LB 1130, § 1; Laws 1989, LB 238, § 1; Laws 1991, LB 311, § 1; Laws 1993, LB 121, § 300; Laws 1999, LB 753, § 1; Laws 2007, LB255, § 2; Laws 2014, LB765, § 1.

### Annotations

- 1. Vacation and sick leave**
- 2. Consideration as wages**
- 3. Miscellaneous**

#### **1. Vacation and sick leave**

- Under the 2007 amendments to this section, unused "paid time off" hours constitute unused vacation leave when the only stipulated condition for earning the hours is the rendering of services and an employee has an absolute right to take this time off for any purpose that he or she wishes. In that circumstance, an employee's unused paid time off hours are wages that an employer must pay upon separation of employment. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).
- The Nebraska Wage Payment and Collection Act does not prohibit an employer from providing a sick leave benefit which may be used only in the event of illness or injury and which has no monetary value upon termination of employment if it is not so used. *Loves v. World Ins. Co.*, 277 Neb. 359, 773 N.W.2d 348 (2009).
- The Nebraska Wage Payment and Collection Act does not prohibit an employer from providing a sick leave benefit which may be used only in the event of illness or injury and which has no monetary value upon termination of employment if it is not so used. *Loves v. World Ins. Co.*, 276 Neb. 936, 758 N.W.2d 640 (2008).
- Under the plain language of subsection (4) of this section, unused sick leave is not a part of wages payable to a separating employee unless there is a specific agreement otherwise. *Loves v. World Ins. Co.*, 276 Neb. 936, 758 N.W.2d 640 (2008).
- Accrued vacation time, which is part of an employment agreement, is due and payable as wages upon termination of employment. *Roseland v. Strategic Staff Mgmt.*, 272 Neb. 434, 722 N.W.2d 499 (2006).

#### **2. Consideration as wages**

- A payment will be considered a wage subject to the Nebraska Wage Payment and Collection Act if (1) it is compensation for labor or services, (2) it was previously agreed to, and (3) all the conditions stipulated have been met. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010).
- Payments pursuant to a severance agreement that were not earned and did not accrue through continued employment are not compensation for labor or services rendered, and therefore, the employee is not entitled to attorney fees. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010).
- Pursuant to subsection (3) of this section, deferred compensation constitutes wages under the Nebraska Wage Payment and Collection Act. *Sindelar v. Canada Transport, Inc.*, 246 Neb. 559, 520 N.W.2d 203 (1994).
- Where an employment contract provides for the sharing of possible financial losses, sums collected under such a provision are not "benefits" which could be considered "wages" under subsection (3) of this section. *Brown v. Clayton Brokerage Co.*, 238 Neb. 646, 472 N.W.2d 381 (1991).
- Where an employment agreement provides for sharing of possible financial losses, sums collected under such a provision are not "benefits" which could be considered "wages" under subsection (3) of this section. *Waite v. A. S. Battiatto Co.*, 238 Neb. 151, 469 N.W.2d 766 (1991).
- An employee's share of the profits of his employer under a profit-sharing plan can be wages within the meaning of subsection (3) of this section. *Suess v. Lee Sapp Leasing*, 229 Neb. 755, 428 N.W.2d 899 (1988).
- Subdivision (4) of this section provides that the term "wages" includes orders on file with the employer at the time of termination of employment. Thus, an employment agreement policy which clearly conflicts with such definition of wages, even though said policy is common within the industry, is void because it is prohibited by the Nebraska Wage Payment and Collection Act. *Sanford v. Clear Channel Broadcasting*, 14 Neb. App. 908, 719 N.W.2d 312 (2006).
- Overtime wages can be claimed under the Nebraska Wage Payment and Collection Act only if those overtime wages were previously agreed to by the employer and the employee. Nonetheless, even in the absence of a previous agreement concerning overtime compensation, compensation for overtime can be claimed under the federal Fair Labor Standards Act for hours worked in excess of 40 during a given week. *Freeman v. Central States Health & Life Co.*, 2 Neb. App. 803, 515 N.W.2d 131 (1994).

#### **3. Miscellaneous**

- The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).
- Statutory definitions applied to facts to reach conclusion that route salesman is an employee within the meaning of the Nebraska Wage Payment and Collection Act. *Rudolf v. Tombstone Pizza Corp.*, 214 Neb. 276, 333 N.W.2d 673 (1983).

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- District court erred in finding that plaintiffs were not employees under the definition provided by this section. *Tracy v. Tracy*, 7 Neb. App. 143, 581 N.W.2d 96 (1998).

### **48-1230. Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; wage statement; use of payroll debit card; conditions; unpaid wages; when due.**

(1) Except as otherwise provided in this section, each employer shall pay all wages due its employees on regular days designated by the employer or agreed upon by the employer and employee. Thirty days' written notice shall be given to an employee before regular paydays are altered by an employer. An employer may deduct, withhold, or divert a portion of an employee's wages only when the employer is required to or may do so by state or federal law or by order of a court of competent jurisdiction or the employer has a written agreement with the employee to deduct, withhold, or divert.

(2) On each regular payday, the employer shall deliver or make available to each employee, by mail or electronically, or shall provide at the employee's normal place of employment during employment hours for all shifts a wage statement showing, at a minimum, the identity of the employer, the hours for which the employee was paid, the wages earned by the employee, and deductions made for the employee. However, the employer need not provide information on hours worked for employees who are exempt from overtime under the federal Fair Labor Standards Act of 1938, under 29 C.F.R. part 541, unless the employer has established a policy or practice of paying to or on behalf of exempt employees overtime, or bonus or a payment based on hours worked, whereupon the employer shall send or otherwise provide a statement to the exempt employees showing the hours the employee worked or the payments made to the employee by the employer, as applicable.

(3) When an employer elects to pay wages with a payroll debit card, the employer shall comply with the compulsory-use requirements prescribed in 15 U.S.C. 1693k. Additionally, the employer shall allow an employee at least one means of fund access withdrawal per pay period, but not more frequently than once per week, at no cost to the employee for an amount up to and including the total amount of the employee's net wages, as stated on the employee's earnings statement. An employer shall not require an employee to pay any fees or costs incurred by the employer in connection with paying wages with a payroll debit card.

(4) Except as otherwise provided in section 48-1230.01:

(a) Whenever an employer, other than a political subdivision, separates an employee from the payroll, the unpaid wages shall become due on the next regular payday or within two weeks of the date of termination, whichever is sooner; and

(b) Whenever a political subdivision separates an employee from the payroll, the unpaid wages shall become due within two weeks of the next regularly scheduled meeting of the governing body of the political subdivision if such employee is separated from the payroll at least one week prior to such meeting, or if an employee of a political subdivision is separated from the payroll less than one week prior to the next regularly scheduled meeting of the governing body of the political subdivision, the unpaid wages shall be due within two weeks of the following regularly scheduled meeting of the governing body of the political subdivision.

**Source:** Laws 1977, LB 220A, § 3; Laws 1988, LB 1130, § 2; Laws 2007, LB255, § 3; Laws 2010, LB884, § 2; Laws 2014, LB560, § 4; Laws 2014, LB765, § 2.

#### Annotations

- The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).
- Application of the Wage Payment and Collection Act does not affect the need to satisfy the requisites of pursuing a claim against a city of the metropolitan class. *Thompson v. City of Omaha*, 235 Neb. 346, 455 N.W.2d 538 (1990).

### **48-1230.01. Employer; unpaid wages constituting commissions; duties.**

Whenever an employer separates an employee from the payroll, the unpaid wages constituting commissions shall become due on the next regular payday following the employer's receipt of payment for the goods or services from the customer from which the commission was generated. The employer shall provide an employee with a periodic

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accounting of outstanding commissions until all commissions have been paid or the orders have been returned or canceled by the customer.

**Source:** Laws 2007, LB255, § 4.

### **48-1231. Employee; claim for wages; suit; judgment; costs and attorney's fees; failure to furnish wage statement; penalty.**

(1) An employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court. If an employee establishes a claim and secures judgment on the claim, such employee shall be entitled to recover (a) the full amount of the judgment and all costs of such suit and (b) if such employee has employed an attorney in the case, an amount for attorney's fees assessed by the court, which fees shall not be less than twenty-five percent of the unpaid wages. If the cause is taken to an appellate court and the plaintiff recovers a judgment, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court, which fees shall not be less than twenty-five percent of the unpaid wages. If the employee fails to recover a judgment in excess of the amount that may have been tendered within thirty days of the regular payday by an employer, such employee shall not recover the attorney's fees provided by this section. If the court finds that no reasonable dispute existed as to the fact that wages were owed or as to the amount of such wages, the court may order the employee to pay the employer's attorney's fees and costs of the action as assessed by the court.

(2) An employer who fails to furnish a wage statement under subsection (2) of section 48-1230 shall be guilty of an infraction as defined in section 29-431 and shall be subject to a fine pursuant to section 29-436.

**Source:** Laws 1977, LB 220A, § 4; Laws 1991, LB 311, § 2; Laws 2010, LB884, § 3; Laws 2014, LB560, § 5.

#### Annotations

- A court has discretion to award attorney fees higher than the statutory minimum required under this section, and an award of fees above the statutory minimum does not depend upon the presence of employer's unreasonable defenses or vexatious counterclaims. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).
- An appellate court reviews a lower court's award of attorney fees under this section for an abuse of discretion. *Fisher v. PayFlex Systems USA*, 285 Neb. 808, 829 N.W.2d 703 (2013).
- A party has no viable claim to a wage that has not yet been received. *Law Offices of Ronald J. Palagi v. Howard*, 275 Neb. 334, 747 N.W.2d 1 (2008).
- In a wage claim brought under section 15-841 against a city of the primary class, there is nothing in the plain language of this section that requires an employee to plead a specific cause of action for attorney fees or to file a separate proceeding for attorney fees in order to receive an award of attorney fees under the Nebraska Wage Payment and Collection Act. *Rauscher v. City of Lincoln*, 269 Neb. 267, 691 N.W.2d 844 (2005).
- The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).
- Employers will not be awarded attorney fees under the Nebraska Wage Payment and Collection Act if the employer has not tendered an amount to the employee within 30 days of the employee's regular payday. *Brockley v. Lozier Corp.*, 241 Neb. 449, 488 N.W.2d 556 (1992).
- Unpaid wages means wages which are not paid within 30 days of the regular payday designated or agreed upon. *Polly v. Ray D. Hilderman & Co.*, 225 Neb. 662, 407 N.W.2d 751 (1987).

### **48-1232. Employee; claim; judgment; additional recovery from employer; when.**

If an employee establishes a claim and secures judgment on such claim under subsection (1) of section 48-1231: (1) An amount equal to the judgment may be recovered from the employer; or (2) if the nonpayment of wages is found to be willful, an amount equal to two times the amount of unpaid wages shall be recovered from the employer. Any amount recovered pursuant to subdivision (1) or (2) of this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1977, LB 220A, § 5; Laws 1989, LB 238, § 2; Laws 1990, LB 1178, § 1; Laws 2007, LB255, § 5; Laws 2010, LB884, § 4.

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### Annotations

- It is in the court's discretion whether to order an employer to pay to the common schools fund an amount equal to the judgment. There was a reasonable dispute concerning whether payment for unused vacation leave was due to the employees. *Roseland v. Strategic Staff Mgmt.*, 272 Neb. 434, 722 N.W.2d 499 (2006).
- The amount of penalty ordered to be paid to a fund to be distributed to the common schools of the state is a matter left to the discretion of the trial court, subject to the limitations prescribed by statute. *Kinney v. H.P. Smith Ford*, 266 Neb. 591, 667 N.W.2d 529 (2003).
- The Nebraska Wage Payment and Collection Act does not represent a very clear mandate of public policy which would warrant recognition of an exception to the employment-at-will doctrine. *Malone v. American Bus. Info.*, 262 Neb. 733, 634 N.W.2d 788 (2001).
- It is discretionary with the court whether to order the employer to pay to the common school fund an amount equal to the judgment. This section should not be invoked where there is a reasonable dispute as to the fact that wages are owed or as to the amount of the wages. *Morris v. Rochester Midland Corp.*, 259 Neb. 870, 612 N.W.2d 921 (2000).
- It is discretionary with the court whether to order the employer to pay to the common school fund an amount equal to the judgment. *Suess v. Lee Sapp Leasing*, 229 Neb. 755, 428 N.W.2d 899 (1988).
- The award of an attorney fee of not less than twenty-five percent of the unpaid wages is mandatory under this act. *Barbour v. Jenson Commercial Distributing Co.*, 212 Neb. 512, 323 N.W.2d 824 (1982).

### **48-1233. Commissioner of Labor; enforcement powers.**

The Commissioner of Labor shall have the authority to subpoena records and witnesses related to the enforcement of the Nebraska Wage Payment and Collection Act. The commissioner or his or her agent may inspect all related records and gather testimony on any matter relative to the enforcement of the act when the information sought is relevant to a lawful investigative purpose and is reasonable in scope.

**Source:** Laws 2014, LB560, § 2.

### **48-1234. Commissioner of Labor; citation; notice of penalty; employer contest; hearing.**

(1) The Commissioner of Labor shall issue a citation to an employer when an investigation reveals that the employer may have violated the Nebraska Wage Payment and Collection Act, other than a violation of subsection (2) of section 48-1230.

(2) When a citation is issued, the commissioner shall notify the employer of the proposed administrative penalty, if any, by certified mail or any other manner of delivery by which the United States Postal Service can verify delivery. The administrative penalty shall be not more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation.

(3) The employer has fifteen working days after the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing in accordance with the Administrative Procedure Act.

**Source:** Laws 2014, LB560, § 3.

### Cross References

- **Administrative Procedure Act**, see section 84-920.