

**NEBRASKA DEPARTMENT OF LABOR**

# WORKPLACE SAFETY CONSULTATION LAW

*Neb. Rev. Stat. §§48-443 to 48-449*



**PETE RICKETTS, GOVERNOR**

**JOHN H. ALBIN, COMMISSIONER**

[Current Through 2018 Legislature, Regular Session]

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**48-443. Safety committee; when required; membership; employee rights and remedies.**

(1)(a) Not later than January 1, 1994, every public and private employer subject to the Nebraska Workers' Compensation Act shall establish a safety committee. Such committee shall adopt and maintain an effective written injury prevention program.

(b) A client of a professional employer organization is not relieved of its obligation to establish a safety committee based on its workers being co-employees of the professional employer organization. A professional employer agreement shall not allocate the client's responsibility to establish a safety committee to the professional employer organization. For purposes of this subdivision, the terms client, professional employer organization, and professional employer agreement shall have the same meaning as in section 48-2702. This subdivision becomes operative on January 1, 2012.

(2)(a) For employers subject to collective-bargaining agreements, the establishment of the safety committee shall be accomplished through the collective-bargaining process.

(b) For employers not subject to collective-bargaining agreements, the safety committee shall be composed of an equal number of members representing employees and the employer. Employee members shall not be selected by the employer but shall be selected pursuant to procedures prescribed in rules and regulations adopted and promulgated by the Commissioner of Labor.

(c) The cost of maintaining and operating the safety committee shall be minimal to the employer.

(3) An employer shall compensate employee members of the safety committee at their regular hourly wage plus their regular benefits while the employees are attending committee meetings or otherwise engaged in committee duties.

(4) An employee shall not be discharged or discriminated against by his or her employer because he or she makes any oral or written complaint to the safety committee or any governmental agency having regulatory responsibility for occupational safety and health, and any employee so discharged or discriminated against shall be reinstated and shall receive reimbursement for lost wages and work benefits caused by the employer's action.

**Source:** Laws 1993, LB 757, § 32; Laws 2010, LB579, § 19.

**Cross References**

- **Nebraska Workers' Compensation Act**, see section 48-1,110.

**48-444. Safety committee; failure to establish; violation; penalty.**

If the Commissioner of Labor finds, after notice and hearing, that an employer has failed to establish a safety committee pursuant to section 48-443 within fifteen days after notification by the Commissioner of Labor of the obligation to do so, the Commissioner of Labor may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

**Source:** Laws 1993, LB 757, § 33.

**48-445. Safety committee; rules and regulations.**

The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out sections 48-443 and 48-444.

**Source:** Laws 1993, LB 757, § 34.

**48-446. Workplace Safety Consultation Program; created; inspections and consultations; elimination of hazards; fees; Workplace Safety Consultation Program Cash Fund; created; use; investment; records; violation; penalty; Department of Labor; powers and duties; liability.**

(1) There is hereby created the Workplace Safety Consultation Program. It is the intent of the Legislature that such program help provide employees in Nebraska with safe and healthful workplaces.

(2) Under the Workplace Safety Consultation Program, the Department of Labor may conduct workplace inspections and consultations to determine whether employers are complying with standards issued by the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for safe and healthful workplaces. Workplace inspections and safety consultations shall be performed by employees of the Department of Labor who are knowledgeable and experienced in the occupational safety and health field and who are trained in the federal standards and in the recognition of safety and health hazards. The Department of Labor may employ qualified persons as may be necessary to carry out this section.

(3) All employers shall be subject to occupational safety and health inspections covering their Nebraska operations. Employers shall be selected by the Commissioner of Labor for inspection on the basis of factors intended to identify the likelihood of workplace injuries and to achieve the most efficient utilization of safety personnel of the Department of Labor. Such factors shall include:

- (a) The amount of premium paid by the employer for workers' compensation insurance;

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- (b) The experience modification produced by the experience rating system referenced in section 44-7524;
  - (c) Whether the employer is covered by workers' compensation insurance under section 44-3,158;
  - (d) The relative hazard of the employer's type of business as evidenced by insurance rates or loss costs filed with the Director of Insurance for the insurance rating classification or classifications applicable to the employer;
  - (e) The nature, type, or frequency of accidents for the employer as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;
  - (f) Workplace hazards as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;
  - (g) Previous safety and health history;
  - (h) Possible employee exposure to toxic substances;
  - (i) Requests by employers for the Department of Labor to inspect their workplaces or otherwise provide consulting services on a basis by which the employer will reimburse the Department of Labor; and
  - (j) All other relevant factors.
- (4) Hazards identified by an inspection shall be eliminated within a reasonable time as specified by the Commissioner of Labor.
- (5) An employer who refuses to eliminate workplace hazards in compliance with an inspection shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for enforcement.
- (6) At the discretion of the Commissioner of Labor, inspection of an employer may be repeated to ensure compliance by the employer, with the expenses incurred by the Department of Labor to be paid by the employer.
- (7) The Commissioner of Labor shall adopt and promulgate rules and regulations establishing a schedule of fees for consultations and inspections. Such fees shall be established with due regard for the costs of administering the Workplace Safety Consultation Program. The cost of consultations and inspections shall be borne by each employer for which these services are rendered.
- (8) There is hereby created the Workplace Safety Consultation Program Cash Fund. All fees collected pursuant to the Workplace Safety Consultation Program shall be remitted to the State Treasurer for credit to the fund and shall be used for the sole purpose of administering the program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.
- (9) Each employer provided a consultation or inspection by the Department of Labor shall retain up-to-date records for each place of employment as recommended by the inspection or consultation. The employer shall make such records available to the Department of Labor upon request to ensure continued progress of the employer's efforts to comply with the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration standards.
- (10) Any person who knowingly operates or causes to be operated a business in violation of recommendations to correct serious or imminent hazards as identified by the Workplace Safety Consultation Program shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration.
- (11) The Attorney General, acting on behalf of the Commissioner of Labor, or the county attorney in a county in which a business is located or operated may apply to the district court for an order against any employer in violation of this section.
- (12) The Workplace Safety Consultation Program shall not be construed to alter the duty of care or the liability of an owner or a business for injuries or death of any person or damage to any property. The state and its officers and employees shall not be construed to assume liability arising out of an accident involving a business by reason of administration of the Workplace Safety Consultation Program.
- (13) Inspectors employed by the Department of Labor may inspect any place of employment with or without notice during normal hours of operation. Such inspectors may suspend the operation of equipment determined to constitute an imminent danger situation. Operation of such equipment shall not resume until the hazardous or unsafe condition is corrected to the satisfaction of the inspector.
- (14) No person with a reasonable cause to believe the truth of the information shall be subject to civil liability for libel, slander, or any other relevant tort cause of action by virtue of providing information without malice on workplace hazards or the nature, type, or frequency of accidents to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor.
- (15) Safety and health inspectors employed by the Department of Labor shall have the right and power to enter any premise, building, or structure, public or private, for the purpose of inspecting any work area or equipment. A refusal by the employer of entry by a safety and health inspector employed by the Department of Labor shall be a violation of this subsection. If the Commissioner of Labor finds, after notice and hearing, that an employer has violated this subsection, he or she may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.
- (16) The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out this section.

**Source:** Laws 1993, LB 757, § 36; Laws 1994, LB 1066, § 37; Laws 2000, LB 1119, § 41; Laws 2001, LB 180, § 6; Laws 2007, LB117, § 34.

**Cross References**

- **Nebraska Capital Expansion Act**, see section 72-1269.
- **Nebraska State Funds Investment Act**, see section 72-1260.

**48-447. Repealed. Laws 1999, LB 2, § 3.**

**48-448. Repealed. Laws 1999, LB 2, § 3.**

**48-449. Repealed. Laws 1999, LB 2, § 3.**