

# Employment Security Law

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***Neb. Rev. Stat. §§48-601 to 48-671***  
and related statutes  
*[Current Through 2011 Regular Session]*



***State of Nebraska***  
DAVE HEINEMAN, Governor

***Department of Labor***  
CATHERINE D. LANG, Commissioner

# NEBRASKA EMPLOYMENT SECURITY LAW

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## TEXT OF THE LAW

### DEFINITIONS

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**48-601. Act, how cited.** Sections 48-601 to 48-671 shall be known and may be cited as the Employment Security Law.

**Source:** Laws 1937, c. 108, § 1, p. 370; Laws 1941, c. 94, § 14, p. 401; C.S.Supp., 1941, § 48-701; R.S. 1943, § 48-601; Laws 1949, c. 163, § 1, p. 417; Laws 1953, c. 167, § 1, p. 520; Laws 1981, LB 470, § 1; Laws 1985, LB 339, § 1; Laws 1985, LB 343, § 1; Laws 1994, LB 1337, § 1; Laws 1996, LB 1072, § 1; Laws 2001, LB 192, § 1; Laws 2005, LB 484, § 2; Laws 2005, LB 739, § 1; Laws 2007, LB 265, § 3; Laws 2010, LB 1020, § 1.

**Operative Date:** July 1, 2011

**Annotations:**

- Appeals to the Supreme Court under the provisions of the Employment Security Law are reviewed de novo on the record. *Smith v. Sorensen*, 222 Neb. 599, 386 N.W.2d 5 (1986).
- The Employment Security Law provides one avenue of judicial appeal when the dispute concerns benefit liability and another when the dispute concerns contribution liability. *Northern Messenger v. Sorensen*, 218 Neb. 846, 359 N.W.2d 787 (1984).
- The state, by its Legislature, has extensively entered the field of labor. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).
- A compensable claim for benefits under the unemployment compensation act must have some relation to, or connection with, the employment which employee has lost. *Woodmen of the World Life Ins. Soc. v. Olsen*, 141 Neb. 776, 4 N.W.2d 923 (1942).

**48-602. Terms, defined.** For purposes of the Employment Security Law, unless the context otherwise requires:

(1) Base period means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that for benefit years beginning on or after July 1, 2011, if the individual is not monetarily eligible for unemployment benefits as determined pursuant to subdivision (5) of section 48-627 based upon wages paid during the first four of the five most recently completed calendar quarters, the department shall make a redetermination of monetary eligibility based upon an alternative base period which consists of the last four completed calendar quarters immediately preceding the first day of the claimant's benefit year;

(2) Benefits means the money payments payable to an individual with respect to his or her unemployment;

(3) Benefit year, with respect to any individual, means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in, within, or during that benefit year which includes the greater part of such week;

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- (4) Calendar quarter means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;
- (5) Client means any individual, partnership, limited liability company, corporation, or other legally recognized entity that contracts with a professional employer organization to obtain professional employer services relating to worksite employees through a professional employer agreement;
- (6) Combined tax means the employer liability consisting of contributions and the state unemployment insurance tax;
- (7) Combined tax rate means the rate which is applied to wages to determine the combined taxes due;
- (8) Commissioner means the Commissioner of Labor;
- (9) Contribution rate means the percentage of the combined tax rate used to determine the contribution portion of the combined tax;
- (10) Contributions means that portion of the combined tax based upon the contribution rate portion of the combined tax rate which is deposited in the state Unemployment Compensation Fund as required by sections 48-648 and 48-649;
- (11) Department means the Department of Labor;
- (12) Employment office means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;
- (13) Fund means the Unemployment Compensation Fund established by section 48-617 to which all contributions and payments in lieu of contributions required and from which all benefits provided shall be paid;
- (14) Hospital means an institution which has been licensed, certified, or approved by the Department of Health and Human Services as a hospital;
- (15) Institution of higher education means an institution which: (a) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; (b) is legally authorized in this state to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's degree or higher or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (d) is a public or other nonprofit institution; notwithstanding any of the foregoing provisions of this subdivision, all colleges and universities in this state are institutions of higher education for purposes of this section;
- (16) Insured work means employment for employers;
- (17) Leave of absence means any absence from work: (a) Mutually and voluntarily agreed to by the employer and the employee; (b) mutually and voluntarily agreed to between the employer and the employee's bargaining agent; or (c) to which the employee is entitled to as a matter of state or federal law;

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(18) Paid vacation leave means a period of time while employed or following separation from employment in which the individual renders no services to the employer but is entitled to receive vacation pay equal to or exceeding his or her base weekly wage;

(19) Payments in lieu of contributions means the money payments to the Unemployment Compensation Fund required by sections 48-649, 48-652, 48-660.01, and 48-661;

(20) Professional employer agreement means a written professional employer services contract whereby:

(a) A professional employer organization agrees to provide payroll services, employee benefit administration, or personnel services for a majority of the employees providing services to the client at a client worksite;

(b) The agreement is intended to be ongoing rather than temporary in nature; and

(c) Employer responsibilities for worksite employees, including those of hiring, firing, and disciplining, are shared between the professional employer organization and the client by contract. The term professional employer agreement shall not include a contract between a parent corporation, company, or other entity and a wholly owned subsidiary;

(21) Professional employer organization means any individual, partnership, limited liability company, corporation, or other legally recognized entity that enters into a professional employer agreement with a client or clients for a majority of a client's workforce at a client worksite. The term professional employer organization does not include an insurer as defined in section 44-103 or a temporary help firm;

(22) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(23) State unemployment insurance tax means that portion of the combined tax which is based upon the state unemployment insurance tax rate portion of the combined tax rate and which is deposited in the State Unemployment Insurance Trust Fund as required by sections 48-648 and 48-649;

(24) State unemployment insurance tax rate means the percentage of the combined tax rate used to determine the state unemployment insurance tax portion of the combined tax;

(25) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm;

(26) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

(27) Unemployed means an individual during any week in which the individual performs no service and with respect to which no wages are payable to the individual or any week of less than full-time work if the wages payable with respect to such week are less than the individual's weekly benefit amount, but does not include any individual on a leave of absence or on paid vacation leave. When an agreement between the employer and a bargaining unit representative does not allocate vacation pay allowance or pay in lieu of vacation to a specified period of time during a period of temporary layoff or plant shutdown, the payment by the employer or his or her designated representative will be deemed to be wages as defined in this section in the week or weeks the vacation is actually taken;

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(28) Unemployment Trust Fund means the trust fund in the Treasury of the United States of America established under section 904 of the federal Social Security Act, 42 U.S.C. 1104, as such section existed on March 2, 2001, which receives credit from the state Unemployment Compensation Fund;

(29) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, means all remuneration for personal services, including commissions and bonuses, remuneration for personal services paid under a contract of hire, and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the commissioner. After December 31, 1985, wages includes tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code as defined in section 49-801.01.

With respect to services performed in employment in agricultural labor as is provided in subdivision (4)(c) of section 48-604, wages means cash remuneration and the cash value of commodities not intended for personal consumption by the worker and his or her immediate family for such services. With respect to services performed in employment in domestic service as is provided in subdivision (4)(d) of section 48-604, wages means cash remuneration for such services.

The term wages does not include:

(a) The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to, or on behalf of, an individual in employment or any of his or her dependents under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of (i) sickness or accident disability, except, in the case of payments made to an employee or any of his or her dependents, this subdivision (i) shall exclude from wages only payments which are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code as defined in section 49-801.01;

(c) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(d) Any payment made to, or on behalf of, an individual or his or her beneficiary

(i) from or to a trust described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01 which is exempt from tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or

(ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code as defined in section 49-801.01;

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(e) Any payment made to, or on behalf of, an employee or his or her beneficiary (i) under a simplified employee pension as defined by the commissioner, (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise, (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner, (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan, or (v) under a cafeteria benefits plan;

(f) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business;

(g) Benefits paid under a supplemental unemployment benefit plan which satisfies the eight points set forth in Internal Revenue Service Revenue Ruling 56-249 as the ruling existed on March 2, 2001, and is in compliance with the standards set forth in Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the rulings existed on March 2, 2001; and

(h) Remuneration for service performed in the employ of any state in the exercise of his or her duties as a member of the Army National Guard or Air National Guard or in the employ of the United States of America as a member of any military reserve unit;

(30) Week means such period of seven consecutive days as the commissioner may by rule and regulation prescribe;

(31) Week of unemployment with respect to any individual means any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount;

(32) Wholly owned subsidiary means a corporation, company, or other entity which has eighty percent or more of its outstanding voting stock or membership owned or controlled, directly or indirectly, by the parent entity; and

(33) (a) Until January 1, 2012, worksite employee means a person receiving wages or benefits from a professional employer organization pursuant to the terms of a professional employer agreement for work performed at a client's worksite.

(b) On and after January 1, 2012, worksite employee has the same meaning as the term covered employee in section 48-2702.

**Source:** Laws 1937, c. 108, § 2, p. 370; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 373; C.S.Supp., 1941, § 48-702; Laws 1943, c. 111, §§ 1, 2, p. 390; R.S. 1943, § 48-602; Laws 1947, c. 175, § 1, p. 563; Laws 1949, c. 163, § 2, p. 417; Laws 1951, c. 156, § 1, p. 626; Laws 1953, c. 167, § 2, p. 520; Laws 1961, c. 235, § 3, p. 695; Laws 1961, c. 238, § 1, p. 701; Laws 1971, LB 651, § 1; Laws 1972, LB 1392, § 1; Laws 1977, LB 509, § 1; Laws 1979, LB 581, § 1; Laws 1980, LB 800, § 1; Laws 1983, LB 248, § 1; Laws 1985, LB 339, § 2; Laws 1986, LB 950, § 1; Laws 1988, LB 1033, § 1; Laws 1992, LB 879, § 1; Laws 1993, LB 121, § 289; Laws 1994, LB 286, § 1; Laws 1994, LB 1337, § 2; Laws 1995, LB 77, § 1; Laws 1995, LB 574, § 51; Laws 1996, LB 1044, § 274; Laws 1999, LB 168, § 1; Laws 1999, LB 608, § 1; Laws 2001, LB 192, § 3; Laws 2002, LB 921, § 1; Laws 2005, LB 484, § 3; Laws 2005, LB 739, § 2; Laws 2007, LB 265, § 4; Laws 2007, LB 296, § 216; Laws 2010, LB 579, § 20; Laws 2010, LB 1020, § 2.

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**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB579, section 20, with LB1020, section 2, to reflect all amendments.

**Note:** Changes made by LB579 became operative July 15, 2010. Changes made by LB1020 became operative July 1, 2011.

**Annotations:**

- Based upon the plain and ordinary meaning of the first definition contained in subsection (27) of this section, two elements must be satisfied to demonstrate unemployment: First, the individual must not perform any services for the relevant time period; and second, no wages may be payable with respect to that time period. *Wadkins v. Lecuona*, 274 Neb. 352, 740 N.W.2d 34 (2007).
- In determining whether wages are payable with respect to a time period, within the meaning of subsection (27) of this section, the test is not in what week the remuneration is received but in what week it is earned or to which it may reasonably be considered to apply. Generally speaking, wages are tied to the week of work and not to the week in which they are paid. *Wadkins v. Lecuona*, 274 Neb. 352, 740 N.W.2d 34 (2007).
- Vacation pay, within the meaning of subsection (18) of this section, is generally regarded, not as a gratuity or gift, but as additional wages for services performed. It is not in the nature of compensation for the calendar days it covers — it is more like a contracted-for bonus for a whole year's work. A "vacation" is also understood to be a respite from active duty, during which activity or work is suspended, purposed for rest, relaxation, and personal pursuits. *Wadkins v. Lecuona*, 274 Neb. 352, 740 N.W.2d 34 (2007).
- Under former law, wages may include noncash benefits under certain circumstances. In-kind benefits received in return for services provided may constitute wages for purposes of determining eligibility for unemployment compensation benefits. *Lecuona v. McCord*, 270 Neb. 213, 699 N.W.2d 403 (2005).
- As a requisite matter, for an entity to be denominated an employee leasing company under subsection (11) of this section, it must be in the business of leasing employees to another entity. *American Employers Group Inc., v. Department of Labor*, 260 Neb. 405, 617 N.W.2d 808 (2000).
- Under the former law, pursuant to subsection (24) of this section, employees who agree to take their earned vacation at a specific period of time for the employer's convenience under the expectation that their employment will continue after that period are not unemployed for the purpose of receiving unemployment insurance benefits. *Vlasic Foods International v. Lecuona*, 260 Neb. 397, 618 N.W.2d 403 (2000).
- One performing services under a contract but not receiving wages, as defined by subsection (16) of this section, performs services under a contract of hire unless one is an independent contractor, as defined by the common law. *Omaha World-Herald v. Dernier*, 253 Neb. 215, 570 N.W.2d 508 (1997).
- A professional symphony musician employed under a seasonal contract rather than an annual contract was entitled to unemployment benefits for the time he was unemployed during the symphony's "off season". *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

**48-603. Employer, defined.** As used in the Employment Security Law, unless the context clearly requires otherwise, employer shall mean:

(1) Any individual or type of organization, including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which is or was an employer as defined by the Employment Security Law immediately prior to May 27, 1971, and after December 31, 1971, any such individual or employing concern which for some portion of a day but not necessarily simultaneously in each of twenty different calendar weeks, whether or not such weeks are or were consecutive, within either the current or preceding calendar year, and for the purpose of this definition, if any week includes both December 31 and January 1, the days up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week, has or had in employment one or more individuals, irrespective of whether the same individuals are or were

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employed in each such day; all individuals performing services for any employer of any person in this state, who maintains two or more separate establishments within this state, shall be deemed to be employed by a single employer; any artifice or device, including any contract or subcontract, by an employer for the performance of work, which is a part of such employer's usual trade, occupation, profession, or business, entered into for the purpose or with the intent of evading the application of this section to such employer, is hereby prohibited and declared to be unlawful;

(2) Any employer of any person in this state who after December 31, 1971, in any calendar quarter in either the current or preceding calendar year has paid wages for employment in the total sum of fifteen hundred dollars or more;

(3) Any individual or employer of any person in this state which acquired the organization, trade, or business, or substantially all the assets thereof, of another employer which, at the time of such acquisition, was an employer subject to the Employment Security Law;

(4) Any employer of any person in this state, which acquired the organization, trade, or business, or substantially all the assets thereof, of another employer of any person in this state, not an employer subject to such law, and which, if subsequent to such acquisition it were treated as a single unit with such other employer, would be an employer under subdivision (1) or (2) of this section;

(5) Any employer of any person in this state which, having become an employer under any provision of the Employment Security Law and which has not, under section 48-661, ceased to be an employer subject to such law;

(6) For the effective period of its election pursuant to section 48-661, any other employer of any person in this state who has elected to become fully subject to the Employment Security Law;

(7) Any employer of any person in this state not an employer by reason of any other subdivision of this section:

(a) for which services in employment are or were performed with respect to which such employer is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or

(b) which, as a condition for approval of the Employment Security Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an employer under the Employment Security Law;

(8) The state or any of its instrumentalities which is or was an employer under the Employment Security Law immediately prior to September 2, 1977, and after December 31, 1977, the state or any political subdivision thereof and any instrumentality of any one or more of the foregoing;

(9) Any organization for which service in employment as defined in section 48-604, subdivision (4)(b) is performed after December 31, 1971;

(10) Any individual or employing unit for which service in employment as defined in section 48-604, subdivision (4)(c), is performed after December 31, 1977;

(11) Any individual or employing unit for which service in employment as defined in section 48-604, subdivision (4)(d), is performed after December 31, 1977; and

(12) (a) In determining whether or not an employing unit for which service other than domestic service

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is also performed is an employer under subdivision (1) or (10) of this section, the wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account; and

(b) In determining whether or not an employing unit for which agricultural labor is also performed is an employer under subdivision (11) of this section, the wages earned or the employment of an employee performing services in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purposes of subdivision (1) of this section.

**Source:** Laws 1937, c. 108, §2, p. 371; Laws 1939, c. 56, §1, p. 229; Laws 1940, Spec. Sess., c. 2, §1, p. 54; Laws 1941, c. 94, §1, p. 374; C.S.Supp.,1941, §48-702; R.S.1943, §48-603; Laws 1945, c. 114, §1, p. 369; Laws 1955, c. 190, §1, p. 538; Laws 1971, LB 651, §2; Laws 1977, LB 509, §2; Laws 1985, LB 339, §3; Laws 1993, LB 121, §290.

### **48-603.01. Indian tribes; applicability of Employment Security Law.**

(1) For purposes of the Employment Security Law, unless the context otherwise requires, the term employer shall include any Indian tribe for which services in employment as provided in subdivision (4)(a) of section 48 604 are performed.

(2) The term employment shall include service performed in the employ of an Indian tribe, as defined in 26 U.S.C. 3306(u), as such section existed on March 2, 2001, if such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of 26 U.S.C. 3306(c)(7), as such section existed on March 2, 2001, and is not otherwise excluded from employment under the Employment Security Law. For purposes of this section, the exclusions from employment in subdivisions (6)(f) and (6)(g) of section 48-604 shall be applicable to services performed in the employment of an Indian tribe.

(3) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other covered employment under the Employment Security Law. Subdivision (8) of section 48-628 shall apply to services performed in an educational institution or educational service agency owned or operated by an Indian tribe.

(4) (a) Indian tribes or tribal units, subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to the Employment Security Law, shall pay combined tax under the same terms and conditions as all other subject employers, unless they elect to make payments in lieu of contributions equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(b) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in subdivision (7) of section 48-649 pertaining to state and local governments subject to the Employment Security Law. Indian tribes shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

(c) Except as provided in subsection (7) of this section, Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

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- (d) At the discretion of the commissioner, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election to:
- (i) Execute and file with the commissioner a surety bond approved by the commissioner; or
  - (ii) Deposit with the commissioner money or securities on the same basis as other employers with the same election option.
- (5) (a) (i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection (4) of this section, for the following tax year unless payment in full is received before combined tax rates for the next tax year are computed.
- (ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision (5)(a)(i) of this section, shall have such option reinstated if, after a period of one year, all combined taxes have been paid timely and no combined tax, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.
- (b) (i) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted will cause services performed for such tribe to not be treated as employment for purposes of subsection (2) of this section.
- (ii) The commissioner may determine that any Indian tribe that loses coverage under subdivision (5)(b)(i) of this section may have services performed for such tribe again included as employment for purposes of subsection (2) of this section if all contributions, payments in lieu of contributions, penalties, and interest have been paid.
- (6) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed timeframe:
- (a) Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act, as the act existed on March 2, 2001;
  - (b) Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and
  - (c) Could cause the Indian tribe to be excepted from the definition of employer, as provided in subsection (1) of this section, and services in the employ of the Indian tribe, as provided in subsection (2) of this section, to be excepted from employment.
- (7) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.
- (8) If an Indian tribe fails to make payments required under this section, including assessments of interest and penalty, within ninety days after a final notice of delinquency, the commissioner shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

**Source:** Laws 2001, LB 192, §2; Laws 2003, LB 199, §1; Laws 2005, LB 739, §4.

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**Effective Date:** September 4, 2005.

**48-604. Employment, defined.** As used in the Employment Security Law, unless the context otherwise requires, employment shall mean:

(1) Any service performed, including service in interstate commerce, for wages under a contract of hire, written or oral, express or implied;

(2) The term employment shall include an individual's entire service, performed within or both within and without this state if

(a) the service is localized in this state,

(b) the service is not localized in any state but some of the service is performed in this state and the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state,

(c) the service shall be deemed to be localized within a state if

(i) the service is performed entirely within such state or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions;

(3) Services performed outside the state and services performed outside the United States as follows:

(a) Services not covered under subdivision (2) of this section and performed entirely without this state, with respect to no part of which contributions are required under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to the Employment Security Law if the commissioner approves the election of the employer, for whom such services are performed, that the entire service of such individual shall be deemed to be employment subject to such law;

(b) Services of an individual wherever performed within the United States or Canada if

(i) such service is not covered under the employment compensation law of any other state or Canada and

(ii) the place from which the service is directed or controlled is in this state;

(c) (i) Services of an individual who is a citizen of the United States, performed outside the United States except in Canada in the employ of an American employer, other than service which is deemed employment under subdivisions (2) and (3)(a) and (b) of this section or the parallel provisions of another state's law, if:

(A) The employer's principal place of business in the United States is located in this state;

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(B) The employer has no place of business in the United States, but the employer is an individual who is a resident of this state; the employer is a corporation or limited liability company which is organized under the laws of this state; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of subdivisions (A) and (B) of this subdivision are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the laws of this state.

(ii) American employer, for the purposes of this subdivision, shall mean:

(A) An individual who is a resident of the United States;

(B) a partnership if two-thirds or more of the partners are residents of the United States;

(C) a trust if all the trustees are residents of the United States; or

(D) a corporation or limited liability company organized under the laws of the United States or of any state.

(iii) The term United States for the purpose of this section includes the states, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico;

(4) (a) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing or any instrumentality which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof and one or more other states or political subdivisions if such service is excluded from employment as defined in the Federal Unemployment Tax Act, as amended, solely by reason of 26 U.S.C. 3306(c)(7), and is not otherwise excluded under this section;

(b) Service performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met:

(i) The service is excluded from employment as defined in the Federal Unemployment Tax Act, as amended, solely by reason of 26 U.S.C. 3306(c)(8), and is not otherwise excluded under this section; and

(ii) the organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(c) (i) Service performed by an individual in agricultural labor as defined in subdivision (6)(a) of this section when such service is performed for a person who during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks

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were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time.

(ii) For purposes of this subdivision:

(A) Any individual who is a member of a crew furnished by a crew leader to perform services in agricultural labor for any other person shall be treated as an employee of such crew leader if such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended, 29 U.S.C. 1801 et seq.; substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and such individual is not an employee of such other person within the meaning of any other provisions of this section;

(B) In case any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subdivision (A) of this subdivision, such other person and not the crew leader shall be treated as the employer of such individual and such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his or her own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person; and

(C) The term crew leader shall mean an individual who furnishes individuals to perform service in agricultural labor for any other person, pays, either on his or her own behalf or on behalf of such other person, the individuals so furnished by him or her for the service in agricultural labor performed by them, and has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person; and

(d) Service performed by an individual in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for a person who paid cash remuneration of one thousand dollars or more in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter;

(5) Services performed by an individual for wages, including wages received under a contract of hire, shall be deemed to be employment unless it is shown to the satisfaction of the commissioner 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 the 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. The provisions of this subdivision are not intended to be a codification of the common law and shall be considered complete as written;

(6) The term employment shall not include:

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(a) Agricultural labor, except as provided in subdivision (4)(c) of this section, including all services performed:

(i) 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;

(ii) 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;

(iii) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the federal Agricultural Marketing Act, as amended, 12 U.S.C. 1141j, 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;

(iv) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which such service is performed, or

(B) in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service described in subdivision (A) of this subdivision, but only if such operators produced more than one-half of the commodity with respect to which such service is performed. Subdivisions (A) and (B) of this subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(v) On a farm operated for profit if such service is not in the course of the employer's trade or business.

As used in this section, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

(b) Domestic service, except as provided in subdivision (4)(d) of this section, in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service and, for the purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if

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(i) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(ii) such individual was regularly employed, as determined under subdivision (i) of this subdivision, by such employer in the performance of such service during the preceding calendar quarter;

(d) Service performed by an individual in the employ of his or her son, daughter, or spouse and service performed by a child under the age of twenty-one in the employ of his or her father or mother;

(e) Service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by sections 48-648 and 48-649, except that, to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the Employment Security Law shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, individuals, and services, except that if this state is not certified for any year by the Secretary of Labor of the United States under section 3304 of the Internal Revenue Code as defined in section 49-801.01, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 48-660, with respect to contributions erroneously collected;

(f) Service performed in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing if such services are performed by an individual in the exercise of his or her duties:

(i) As an elected official;

(ii) as a member of the legislative body or a member of the judiciary of a state or political subdivision thereof;

(iii) as a member of the Army National Guard or Air National Guard;

(iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(v) in a position which, under or pursuant to the state law, is designated a major nontenured policymaking or advisory position, or a policymaking or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week; or

(vi) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars;

(g) For the purposes of subdivisions (4)(a) and (4)(b) of this section, service performed:

(i) In the employ of

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- (A) a church or convention or association of churches or
  - (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;
- (ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of the duties required by such order;
  - (iii) In a facility conducted for the purpose of carrying out a program of rehabilitation for an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for the individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;
  - (iv) As part of an unemployment work relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or
  - (v) By an inmate of a custodial or penal institution;
- (h) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;
  - (i) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01, other than an organization described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01, or under section 521 thereof, if the remuneration for such service is less than fifty dollars;
  - (j) Service performed in the employ of a school, college, or university, if such service is performed
    - (i) by a student who is enrolled, regularly attending classes at, and working for such school, college, or university pursuant to a financial assistance arrangement with such school, college, or university or
    - (ii) by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that
      - (A) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and
      - (B) such employment will not be covered by any program of unemployment insurance;
  - (k) Service performed as a student nurse in the employ of a hospital or nurses training school by an individual who is enrolled and is regularly attending classes in a nurses training school chartered or approved pursuant to state law; and service performed as an intern in the employ of

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a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(l) Service performed by an individual as a real estate salesperson, as an insurance agent, or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission;

(m) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(n) Service performed by an individual in the sale, delivery, or distribution of newspapers or magazines under a written contract in which

(i) the individual acknowledges that the individual performing the service and the service are not covered and

(ii) the newspapers and magazines are sold by him or her at a fixed price with his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(o) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or a group of employers;

(p) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital;

(q) Service performed for a motor carrier, as defined in 49 U.S.C. 13102 or section 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. This shall not preclude the determination of an employment relationship between the lessor and any personnel provided by the lessor in the conduct of the service performed for the lessee;

(r) Service performed by an individual for a business engaged in compilation of marketing data bases if such service consists only of the processing of data and is performed in the residence of the individual;

(s) Service performed by an individual as a volunteer research subject who is paid on a per study basis for scientific, medical, or drug-related testing for any organization other than one described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 or any governmental entity;

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(t) Service performed by a direct seller if:

(i) Such person is engaged in sales primarily in person and is:

(A) Engaged in the trade or business of selling or soliciting the sale of consumer products or services to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment;

(B) Engaged in the trade or business of selling or soliciting the sale of consumer products or services in the home or otherwise than in a permanent retail establishment; or

(C) Engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business;

(ii) Substantially all the remuneration, whether or not paid in cash, for the performance of the services described in subdivision (t)(i) of this subdivision is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(iii) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and the contract provides that the person will not be treated as an employee for federal and state tax purposes. Sales by a person whose business is conducted primarily by telephone or any other form of electronic sales or solicitation is not service performed by a direct seller under this subdivision;

(u) Service performed by an individual who is a participant in the National and Community Service State Grant Program, also known as AmeriCorps, because a participant is not considered an employee of the organization receiving assistance under the national service laws through which the participant is engaging in service pursuant to 42 U.S.C. 12511(30)(B); and

(v) Service performed at a penal or custodial institution by a person committed to a penal or custodial institution;

(7) If the services performed during one-half or more of any pay period by an individual for the person employing him or her constitute employment, all the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for the person employing him or her do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subdivision, the term pay period means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to such individual by the person employing him or her. This subdivision shall not be applicable with respect to services performed in a pay period by an individual for the person employing him or her when any of such service is excepted by subdivision (6)(h) of this section; and

(8) Notwithstanding the foregoing exclusions from the definition of employment, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by

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the Federal Unemployment Tax Act, as amended, is required to be covered under the Employment Security Law.

**Source:** Laws 1937, c. 108, § 2, p. 372; Laws 1939, c. 56, § 1, p. 230; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 375; C.S.Supp., 1941, § 48-702; R.S. 1943, § 48-604; Laws 1945, c. 115, § 1, p. 376; Laws 1947, c. 175, § 2, p. 566; Laws 1953, c. 167, § 3, p. 523; Laws 1959, c. 228, § 1, p. 795; Laws 1961, c. 238, § 2, p. 704; Laws 1971, LB 651, § 3; Laws 1972, LB 1392, § 2; Laws 1977, LB 509, § 3; Laws 1979, LB 581, § 2; Laws 1983, LB 248, § 2; Laws 1983, LB 319, § 1; Laws 1984, LB 745, § 1; Laws 1985, LB 339, § 4; Laws 1986, LB 799, § 1; Laws 1993, LB 121, § 291; Laws 1994, LB 1337, § 3; Laws 1995, LB 424, § 1; Laws 1995, LB 574, § 52; Laws 1997, LB 79, § 1; Laws 1997, LB 129, § 1; Laws 1997, LB 130, § 1; Laws 1999, LB 168, § 2; Laws 2000, LB 953, § 1; Laws 2001, LB 387, § 1; Laws 2003, LB 199, § 2; Laws 2011, LB 261, § 1.

**Effective Date:** August 27, 2011.

**Annotations:**

- Since subsection (5) of this section refers only to services performed for wages, the ABC test embodied therein does not apply in determining whether one engages in employment under a contract of hire. *Omaha World-Herald v. Dernier*, 253 Neb. 215, 570 N.W.2d 508 (1997).
- For the purpose of determining unemployment tax liability, the common-law definition of independent contractor is superseded by the definition found in this section. *Commissioner of Labor v. Lyric Co.*, 224 Neb. 190, 397 N.W.2d 32 (1986).
- Individuals who provide services for welfare recipients at the request of the Nebraska Department of Public Welfare, now Department of Social Services, pursuant to 42 U.S.C. 1397 (1982) are independent contractors and not employees of the Department of Public Welfare within the meaning of this section. *State v. Saville*, 219 Neb. 81, 361 N.W.2d 215 (1985).
- Where school has certified to an employer that work-study is an integral part of its educational program, the employer should be allowed to rely on that assurance, particularly when such conclusion is adequately supported by the record. The exemption from the term "employment" in section 48-604(6)(o) includes participation in a voluntary work-study program as long as grades and credits received are applied toward high school degree and it is part of an approved course of study. Exclusion of section 48-604(6)(o) is intended to encourage employers to participate in cooperative educational plans. *Seldin Development & Management Co. v. Chizek*, 208 Neb. 315, 303 N.W.2d 300 (1981).
- Where orchestra leader was engaged by hotel for specific services at a fixed price, hired his own employees and paid and controlled them in the performance of their duties without interference, leader was an independent contractor and hotel was not liable for unemployment compensation for member of orchestra. *Hill Hotel Co. v. Kinney*, 138 Neb. 760, 295 N.W. 397 (1940).
- The term "places of business" in subsection (5)(b) of this section includes the jobsites and the office of a construction company. *Bay Constr. Co. v. Dolan*, 2 Neb. App. 739, 513 N.W.2d 555 (1994).

# NEBRASKA EMPLOYMENT SECURITY LAW

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## ADMINISTRATION AND PERSONNEL

**48-605. Commissioner; additional salary.** The commissioner, for his or her services with respect to the administration of the Employment Security Law, shall receive the sum fixed by the Governor, payable monthly, to be paid from the Employment Security Administration Fund in addition to the salary of the commissioner as set out in section 81-103.

**Source:** Laws 1937, c. 108, §10, p. 389; Laws 1939, c. 56, §15, p. 254; Laws 1941, c. 94, §15, p. 401; C.S.Supp.,1941, §48-710; R.S.1943, §48-605; Laws 1947, c. 175, §3, p. 572; Laws 1949, c. 163, §3, p. 420; Laws 1961, c. 239, §1, p. 712; Laws 1984, LB 747, §1; Laws 1985, LB 339, §5.

**48-606. Commissioner; duties; powers; annual report; schedule of fees.**

(1) It shall be the duty of the Commissioner of Labor to administer the Employment Security Law. He or she shall have the power and authority to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she deems necessary or suitable to that end if the same are consistent with the Employment Security Law. The commissioner shall determine his or her own organization and methods of procedure in accordance with such law and shall have an official seal which shall be judicially noticed. Not later than the thirty-first day of December of each year, the commissioner shall submit to the Governor a report covering the administration and operation of such law during the preceding fiscal year and shall make such recommendations for amendments to such law as he or she deems proper. Such report shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he or she shall promptly inform the Governor and the Clerk of the Legislature thereof and make recommendations with respect thereto. Each member of the Legislature shall receive a copy of such information by making a request for it to the commissioner.

(2) The commissioner may establish a schedule of fees to recover the cost of services including, but not limited to, copying, preparation of forms and other materials, responding to inquiries for information, payments for returned check charges and electronic payments not accepted, and furnishing publications prepared by the commissioner pursuant to the Employment Security Law. Fees received pursuant to this subsection shall be deposited in the Employment Security Administration Fund.

(3) Nothing in this section shall be construed to allow the department to charge any fee for making a claim for unemployment benefits or receiving assistance from the state employment service established pursuant to section 48-662 when performing functions within the purview of the federal Wagner-Peyser Act, 29 U.S.C. 49 et seq., as amended.

**Source:** Laws 1937, c. 108, §11, p. 390; Laws 1941, c. 94, §8, p. 396; C.S.Supp.,1941, §48-711; R.S.1943, §48-606; Laws 1953, c. 167, §4(1), p. 529; Laws 1955, c. 231, §8, p. 720; Laws 1979, LB 322, §17; Laws 1985, LB 339, §6; Laws 1987, LB 278, §1; Laws 2003, LB 195, §1; Laws 2007, LB265, §5.

**Operative Date:** July 1, 2007.

**48-606.01 Commissioner; office space; acquire; approval of Department of Administrative Services.** The commissioner, with the written consent of the Department of Administrative Services, is authorized and empowered to use any funds available under either subdivision (1)(a) or (1)(b) of section

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48-621, for the purpose of acquiring suitable office space within the corporate limits of the state capital city for the administration of the Employment Security Law by purchase, contract, or in any other manner including the right to use such funds or any part thereof to assist in financing the construction of any building erected by the State of Nebraska or any of its agencies wherein available space will be provided for the department under lease or contract between the commissioner and the State of Nebraska or such other agency whereby the department will continue to occupy such space rent free after the cost of financing such building has been liquidated. The commissioner, upon approval by the Department of Administrative Services, is authorized and empowered to use any such funds to acquire suitable office space for local employment offices anywhere in the State of Nebraska.

**Source:** Laws 1953, c. 167, §4(2), p. 530; Laws 1955, c. 190, §2, p. 540; Laws 1961, c. 239, §2, p. 713; Laws 1975, LB 359, §1; Laws 1984, LB 747, §2; Laws 1985, LB 339, §7; Laws 1995, LB 1, §1; Laws 2000, LB 953, §2.

**48-607. Rules and regulations; adoption; procedure.** The commissioner shall adopt and promulgate rules and regulations necessary to carry out the Employment Security Law pursuant to the Administrative Procedure Act. This section shall not be construed to invalidate any rules or regulations in effect on September 6, 1985.

**Source:** Laws 1937, c. 108, §11, p. 390; C.S.Supp.,1941, §48-711; R.S.1943, §48-607; Laws 1985, LB 339, §8.

**Cross Reference:** Administrative Procedure Act, see §84-920.

**48-608. Commissioner; distribution; duty.** The Commissioner of Labor shall furnish eight copies of the text of the Employment Security Law and his or her rules and regulations to the Nebraska Publications Clearinghouse.

**Source:** Laws 1937, c. 108, §11, p. 391; C.S.Supp.,1941, §48-711; R.S.1943, §48-608; Laws 1972, LB 1284, §16; Laws 1981, LB 545, §10; Laws 1985, LB 339, §9; Laws 2001, LB 192, §4.

**48-609. Personnel; powers of commissioner; bond or insurance; retirement system.** Subject to other provisions of the Employment Security Law, the Commissioner of Labor is authorized to appoint, fix the compensation of, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his or her duties under such law. The commissioner may delegate to any such person such power and authority as he or she deems reasonable and proper for the effective administration of such law. Employees handling money or signing warrants under such law shall be bonded or insured as required by section 11-201. The commissioner may pay the share of the premium from the Employment Security Administration Fund. The commissioner shall classify positions under such law and shall establish salary schedules and minimum personnel standards for the positions so classified. He or she shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. The commissioner shall adopt, promulgate, and enforce fair and reasonable rules and regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause.

The commissioner may provide for a contributory retirement system for the employees of the department employed prior to July 1, 1984, and paid from funds provided pursuant to Title III of the Social Security Act or funds from other federal sources, or let a contract for such purpose with an insurance company licensed in Nebraska, and pay the employer's share of such system or contract from the Employment Security Administration Fund as long as this fund is wholly financed from Title III of the Social Security Act

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or from other federal sources. The employee's contribution to any such plan shall be deducted from his or her salary. Any person employed by the department after June 30, 1984, and paid from funds provided pursuant to Title III of the Social Security Act or funds from other federal sources shall be enrolled in the State Employees Retirement System of the State of Nebraska when he or she becomes eligible.

**Source:** Laws 1937, c. 108, §11, p. 391; Laws 1939, c. 56, §8, p. 246; C.S.Supp.,1941, §48-711; R.S.1943, §48-609; Laws 1961, c. 240, §1, p. 715; Laws 1978, LB 653, §10; Laws 1984, LB 747, §3; Laws 1985, LB 339, §10; Laws 1987, LB 272, §1; Laws 1989, LB 29, §1; Laws 2004, LB 884, §21.

**Effective Date:** July 16, 2004.

**Cross Reference:** State Employees Retirement Act, see §84-1331.

### **48-610. Repealed.**

**Source:** Laws 2009, LB 631, § 15.

**48-611. Commissioner; general duties.** The Commissioner of Labor, with the advice and aid of advisory councils, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

**Source:** Laws 1937, c. 108, §11, p. 392; C.S.Supp.,1941, §48-711; R.S.1943, §48-611; Laws 1984, LB 747, §4.

### **48-612. Employers; records and reports required; privileged communications; violation; penalty.**

(1) Each employer, whether or not subject to the Employment Security Law, shall keep true and accurate work records containing such information as the Commissioner of Labor may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner and the appeal tribunal may require from any such employer any sworn or unsworn reports, with respect to persons employed by it, which he, she, or it deems necessary for the effective administration of such law. Except as otherwise provided in section 48-612.01, information thus obtained or obtained from any individual pursuant to the administration of such law shall be held confidential.

(2) Any employee of the commissioner who violates any provision of sections 48-606 to 48-616 shall be guilty of a Class III misdemeanor.

(3) All letters, reports, communications, or any other matters, either oral or written, from an employer or his or her workers to each other or to the commissioner or any of his or her agents, representatives, or employees which shall have been written or made in connection with the requirements and administration of the Employment Security Law, or the rules and regulations thereunder, shall be absolutely privileged and shall not be made the subject matter or basis for any suit for slander or libel in any court of this state, unless the same be false in fact and malicious in intent.

**Source:** Laws 1937, c. 108, §11, p. 392; C.S.Supp.,1941, §48-711; R.S.1943, §48-612; Laws 1945, c. 115, §2, p. 381; Laws 1977, LB 40, §290; Laws 1985, LB 339, §11; Laws

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1993, LB 757, §31; Laws 2001, LB 192, §5; Laws 2007, LB265, §6.

**Operative Date:** July 1, 2007.

**Annotations:**

- Information provided to the Department of Labor in connection with the requirements of the Employment Security Law is privileged and cannot be the basis for a libel suit unless the information is both false and malicious. *Molt v. Lindsay Mfg. Co.*, 248 Neb. 81, 532 N.W.2d 11 (1995).

**48-612.01. Employer information; disclosure authorized; costs; prohibited redisclosure; penalty.**

(1) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) Any claimant or employer or representative of a claimant or employer, as a party before an appeal tribunal or court regarding an unemployment claim or tax appeal, shall be supplied with information obtained in the administration of the Employment Security Law, to the extent necessary for the proper presentation of the claim or appeal;

(b) The names, addresses, and identification numbers of employers may be disclosed to the Nebraska Workers' Compensation Court which may use such information for purposes of enforcement of the Nebraska Workers' Compensation Act;

(c) Appeal tribunal decisions rendered pursuant to the Employment Security Law and designated as precedential decisions by the commissioner on the coverage of employers, employment, wages, and benefit eligibility may be published in printed or electronic format if all social security numbers have been removed and such disclosure is otherwise consistent with federal and state law;

(d) To a public official for use in the performance of his or her official duties. For purposes of this subdivision, performance of official duties means the administration or enforcement of law or the execution of the official responsibilities of a federal, state, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public office or to a political party;

(e) To an agent or contractor of a public official to whom disclosure is permissible under subdivision (d) of this subsection;

(f) For use in reports and publications containing information collected exclusively for statistical purposes under a cooperative agreement with the federal Bureau of Labor Statistics. This subdivision does not restrict or impose any condition on the transfer of any other information to the federal Bureau of Labor Statistics under an agreement or the federal Bureau of Labor Statistics' disclosure or use of such information; and

(g) In response to a court order.

(2) Information about an individual or employer obtained pursuant to subsection (1) of section 48-612 may be disclosed to:

(a) One who acts as an agent for the individual or employer when the agent presents a written release from the individual or employer, where practicable, or other evidence of authority to act on behalf of the individual or employer;

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(b) An elected official who is performing constituent services if the official presents reasonable evidence that the individual or employer has authorized such disclosure;

(c) An attorney who presents written evidence that he or she is representing the individual or employer in a matter arising under the Employment Security Law; or

(d) A third party or its agent carrying out the administration or evaluation of a public program, if that third party or agent obtains a written release from the individual or employer to whom the information pertains. To constitute informed consent, the release shall be signed and shall include a statement:

(i) Specifically identifying the information that is to be disclosed;

(ii) That state government files will be accessed to obtain that information;

(iii) Identifying the specific purpose or purposes for which the information is sought and that information obtained under the release will only be used for that purpose or purposes; and

(iv) Identifying and describing all the parties who may receive the information disclosed.

(3) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) To an individual or employer if the information requested pertains only to the individual or employer making the request;

(b) To a local, state, or federal governmental official, other than a clerk of court, attorney, or notary public acting on behalf of a litigant, with authority to obtain such information by subpoena under state or federal law; and

(c) To a federal official for purposes of unemployment compensation program oversight and audits, including disclosures under 20 C.F.R. part 601 and 29 C.F.R. parts 96 and 97 as they existed on January 1, 2007.

(4) If the purpose for which information is provided under subsection (1), (2), or (3) of this section is not related to the administration of the Employment Security Law or the unemployment insurance compensation program of another jurisdiction, the commissioner shall recover the costs of providing such information from the requesting individual or entity prior to providing the information to such individual or entity unless the costs are nominal or the entity is a governmental agency which the commissioner has determined provides reciprocal services.

(5) Any person who receives information under subsection (1) or (2) of this section and rediscloses such information for any purpose other than the purpose for which it was originally obtained shall be guilty of a Class III misdemeanor.

**Source:** Laws 2007, LB265, § 7; Laws 2009, LB631, § 1.

**Effective Date:** May 27, 2009

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

**48-613. Oaths; depositions; subpoenas.** In the discharge of the duties imposed by the Employment

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Security Law, the Commissioner of Labor, an appeal tribunal, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of such law.

**Source:** Laws 1937, c. 108, §11, p. 393; C.S.Supp.,1941, §48-711; R.S.1943, §48-613  
Laws 1985, LB 339, §12; Laws 2001, LB 192, §6.

**48-614. Subpoenas; contumacy or disobedience; punishable as contempt; penalty.** The Commissioner of Labor, an appeal tribunal, or a duly authorized representative of the commissioner or an appeal tribunal may petition a court to enforce a subpoena issued by the commissioner or an appeal tribunal in case of contumacy by any person, or refusal of any person to obey such a subpoena. Any court of this state which has subject matter jurisdiction and has venue jurisdiction of the place where the person guilty of contumacy or refusal to obey is found, resides, or transacts business has jurisdiction to issue such person an order requiring him or her to appear before the commissioner, the appeal tribunal, or a duly authorized representative and to produce evidence or give testimony if so ordered touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as contempt. Any person who without just cause fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his or her power so to do, in obedience to a subpoena of the commissioner, an appeal tribunal, or a duly authorized representative shall be guilty of a Class III misdemeanor. Each day such violation continues shall be a separate offense.

**Source:** Laws 1937, c. 108, §11, p. 393; C.S.Supp.,1941, §48-711; R.S.1943, §48-614  
Laws 1977, LB 40, §291; Laws 2001, LB 192, §7.

**48-615.** Repealed.

**Source:** Laws 1987, LB 277, s. 1.

**48-616. Commissioner of Labor; cooperation with Secretary of Labor of the United States; duties.** In the administration of the Employment Security Law, the Commissioner of Labor shall cooperate, to the fullest extent consistent with such law, with the Secretary of Labor of the United States and is authorized and directed to take such action, through the adoption of appropriate rules and regulations, administrative methods, and standards, as may be necessary to secure to this state and its citizens all advantages available under the Social Security Act, under sections 3303 and 3304 of the Federal Unemployment Tax Act, and under the Act of Congress entitled An act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such system, and for other purposes, approved June 6, 1933, as amended. The commissioner shall comply with the regulations of the Secretary of Labor relating to the receipt or expenditure by this state of money granted under any of such acts and shall make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports. Upon request therefor the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the Employment Security Law. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

**Source:** Laws 1937, c. 108, §11, p. 394; Laws 1939, c. 56, §8, p. 247; Laws 1941, c. 94, §16, p. 401; C.S.Supp.,1941, §48-711; R.S.1943, §48-616; Laws 1961, c. 238, §3, p. 709;  
Laws 1985, LB 339, §13.

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**48-617. Unemployment Compensation Fund; establishment; composition; investment.** There is hereby established as a special fund, separate and apart from all public money or funds of this state, an Unemployment Compensation Fund, which fund shall be administered by the Commissioner of Labor exclusively for the purposes of the Employment Security Law. This fund shall consist of

- (1) all contributions and payments in lieu of contributions collected under such law together with any interest thereon collected pursuant to sections 48-655 to 48-660.01, except as provided in subdivision (1)(b) of section 48-621,
- (2) interest earned upon any money in the fund,
- (3) any property or securities acquired through the use of money belonging to the fund,
- (4) all earnings of such property or securities,
- (5) all money credited to this state's account in the Unemployment Trust Fund pursuant to section 903 of the federal Social Security Act, as amended, and
- (6) all other money received for the fund from any other source. Any money in the Unemployment Compensation 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.

**Source:** Laws 1937, c. 108, §9, p. 387; Laws 1939, c. 56, §7, p. 243; C.S.Supp., 1941, §48-709; R.S. 1943, §48-617; Laws 1947, c. 175, §4, p. 572; Laws 1957, c. 208, §1, p. 728; Laws 1969, c. 584, §48, p. 2374; Laws 1972, LB 1392, §3; Laws 1985, LB 339, §14; Laws 1995, LB 1, §2; Laws 1995, LB 7, §46; Laws 2000, LB 953, §3.

**Cross References:** Nebraska Capital Expansion Act, see §72-1269.  
Nebraska State Funds Investment Act, see §72-1260.

**48-618. Unemployment Compensation Fund; treasurer; accounts; transfer of interest; depositories; bond or insurance.** The Commissioner of Labor shall designate a treasurer and custodian of the fund, who shall be selected in accordance with section 48-609, and who shall administer such fund in accordance with the directions of the commissioner and shall issue his or her warrants upon it in accordance with such rules and regulations as the commissioner shall prescribe. He or she shall maintain within the fund three separate accounts:

- (1) A clearing account,
- (2) an Unemployment Trust Fund account, and
- (3) a benefit account.

All money payable to the fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer who shall immediately deposit the same in the clearing account. Transfers of interest on delinquent contributions pursuant to subdivision (1)(b) of section 48-621 and refunds payable pursuant to section 48-660 may be paid from the clearing account upon warrants issued by the treasurer of the Unemployment Compensation Fund under the direction of the commissioner. After clearance thereof, all other money in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the Unemployment Trust Fund, established and maintained pursuant to section 904 of the Social Security Act, any provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or

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custody of this state to the contrary notwithstanding. The benefit account shall consist of all money requisitioned from this state's account in the Unemployment Trust Fund. Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer under the direction of the commissioner in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall be bonded or insured as required by section 11-201.

**Source:** Laws 1937, c. 108, §9, p. 387; Laws 1939, c. 56, §7, p. 243; Laws 1941, c. 94, §7, p. 395; C.S.Supp.,1941, §48-709; R.S.1943, §48-618; Laws 1947, c. 175, §5, p. 573; Laws 1955, c. 190, §4, p. 541; Laws 1978, LB 653, §11; Laws 1985, LB 339, §15; Laws 1995, LB 1, §3; Laws 2000, LB 953, §4; Laws 2004, LB 884, §22.

**Effective Date:** July 16, 2004.

**48-619. Unemployment Trust Fund; withdrawals.** Money shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits in accordance with lawful rules and regulations prescribed by the Commissioner of Labor, except that subject to the limitations therein contained, money credited to this fund pursuant to section 903 of the federal Social Security Act, as amended, may upon an appropriation duly made by the Legislature, be used for the administration of the Employment Security Law and shall for such purposes and to the extent required be transferred to the Employment Security Administration Fund established in subdivision (1)(a) of section 48-621. The commissioner shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amounts standing to this state's account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such money in the benefit account and shall issue his or her warrants as aforesaid and as provided by law for the payment of benefits solely from such benefit account. Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations. Any balance of money requisitioned from the Unemployment Trust Fund, which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned, shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods or, in the discretion of the commissioner, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the Unemployment Trust Fund, as provided in section 48-618. As used in this section, the term warrant shall include a signature negotiable instrument, electronic funds transfer system, telephonic funds transfer system, electric funds transfer system, funds transfers as provided for in article 4A, Uniform Commercial Code, mechanical funds transfer system, or other funds transfer system established by the treasurer. The warrant, when it is a dual signature negotiable instrument, shall affect the state's cash balance in the bank when redeemed by the treasurer, not when cashed by a financial institution.

**Source:** Laws 1937, c. 108, §9, p. 388; Laws 1939, c. 56, §7, p. 244; C.S.Supp.,1941, §48-709; R.S.1943, §48-619; Laws 1957, c. 208, §2, p. 728; Laws 1985, LB 339, §16; Laws 1995, LB 1, §4; Laws 2000, LB 953, §5; Laws 2005, LB 484, §4.

**48-620. Unemployment Trust Fund; discontinuance; investment.** The provisions of sections 48-617 to 48-619, to the extent that they relate to the Unemployment Trust Fund, shall be operative only so long as such Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such Unemployment Trust Fund, from which no other state is permitted to make withdrawals. If and when such Unemployment Trust Fund ceases to exist or such separate book account is no longer maintained, all money, properties, or securities therein belonging to the Unemployment Compensation Fund of this state shall be transferred to the treasurer of the Unemployment Compensation Fund.

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Any money in the Unemployment Trust 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. If advances to the Unemployment Trust Fund under Title XII of the federal Social Security Act are necessary, any interest required to be paid on such advances shall be paid in a timely manner and shall not be paid by this state, directly or indirectly, by an equivalent reduction in state unemployment taxes or otherwise, from amounts in the Unemployment Compensation Fund.

**Source:** Laws 1937, c. 108, §9, p. 388; Laws 1939, c. 56, §7, p. 245; C.S.Supp.,1941, §48-709; R.S.1943, §48-620; Laws 1969, c. 584, §49, p. 2375; Laws 1984, LB 746, §1; Laws 1995, LB 7, §47.

**Cross References:** Nebraska Capital Expansion Act, see §72-1269.  
Nebraska State Funds Investment Act, see §72-1260.

**48-621. Employment Security Administration Fund; Employment Security Special Contingent Fund; created; use; investment; federal funds; treatment.** (1) The administrative fund shall consist of the Employment Security Administration Fund and the Employment Security Special Contingent Fund. Each fund shall be maintained as a separate and distinct account in all respects, as follows:

(a) There is hereby created in the state treasury a special fund to be known as the Employment Security Administration Fund. All money credited to this fund is hereby appropriated and made available to the Commissioner of Labor. All money in this fund shall be expended solely for the purposes and in the amounts found necessary as defined by the specific federal programs, state statutes, and contract obligations for the proper and efficient administration of all programs of the Department of Labor. The fund shall consist of all money appropriated by this state and all money received from the United States of America or any agency thereof, including the Department of Labor and the Railroad Retirement Board, or from any other source for such purpose. Money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from money in such fund, and any proceeds realized from the sale or disposition of any equipment or supplies which may no longer be necessary for the proper administration of such programs shall also be credited to this fund. All money in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund, except balances of money therein appropriated from the General Fund of this state, shall not lapse at any time but shall be continuously available to the commissioner for expenditure consistent with the Employment Security Law. Any money in the Employment Security Administration 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; and

(b) There is hereby created in the state treasury a special fund to be known as the Employment Security Special Contingent Fund. Any money in the Employment Security Special Contingent 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. All money collected under section 48-655 as interest on delinquent contributions, less refunds, shall be credited to this fund from the clearing account of the Unemployment Compensation Fund at the end of each calendar quarter. Such money shall not be expended or available for expenditure in any manner which would permit its substitution for or a corresponding reduction in federal funds which would in the absence of such money be available to finance expenditures for the administration of the unemployment insurance law, but nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures necessary and proper under

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the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such federal funds when received. The money in this fund may be used by the Commissioner of Labor only as follows:

- (i) To replace within a reasonable time any money received by this state pursuant to section 302 of the federal Social Security Act, as amended, and required to be paid under section 48-622;
  - (ii) To meet special extraordinary and contingent expenses which are deemed essential for good administration but which are not provided in grants from the Secretary of Labor of the United States and, for this purpose, no expenditures shall be made from this fund except on written authorization by the Governor at the request of the Commissioner of Labor;
  - (iii) To be transferred to the Nebraska Community College Aid Cash Fund; and
  - (iv) To be transferred to the Job Training Cash Fund.
- (2) (a) Money credited to the account of this state in the Unemployment Trust Fund by the United States Secretary of the Treasury pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of the Employment Security Law and public employment offices. Such money may be requisitioned pursuant to section 48-619 for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of the Employment Security Law and public employment offices but only pursuant to a specific appropriation by the Legislature and only if the expenses are incurred and the money is requisitioned after the date of enactment of an appropriation law which specifies the purposes for which such money is appropriated and the amounts appropriated therefor. Such appropriation is subject to the following conditions:
- (i) The period within which such money may be obligated is limited to a period ending not more than two years after the effective date of the appropriation law; and
  - (ii) The amount which may be obligated is limited to an amount which does not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to the Employment Security Law and charged against the amounts transferred to the account of this state.
- (b) For purposes of subdivision (2)(a)(ii) of this section, the amounts obligated under an appropriation for the administrative purposes described in such subdivision shall be charged against transferred amounts at the exact time the obligation is entered into.
- (c) The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.
- (d) Money appropriated as provided in this subsection for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be credited to the Employment Security Administration Fund from which such payments shall be made. Money so credited shall, until expended, remain a part of the Employment Security Administration Fund and, if it will not be

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immediately expended, shall be returned promptly to the account of this state in the Unemployment Trust Fund.

(e) Notwithstanding subdivision (2)(a) of this section, money credited with respect to federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the Legislature.

(3) There is hereby appropriated out of the funds made available to this state in federal fiscal year 2002 under section 903(d) of the federal Social Security Act, as amended, the sum of \$6,800,484, or so much thereof as may be necessary, to be used, under the direction of the Department of Labor, for the administration of the Employment Security Law and public employment offices. The expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor. Reed Act distributions appropriated pursuant to this subsection may be amortized with federal grant funds provided pursuant to Title III of the federal Social Security Act and the federal Wagner-Peyser Act for the purpose of administering the state unemployment compensation and employment service programs to the extent allowed under such acts and the regulations adopted pursuant thereto. Except as specifically provided in this subsection, all provisions of subsection (2) of this section, except subdivision (2)(a)(i) of this section, shall apply to this appropriation. The commissioner shall submit an annual report to the Governor, the Speaker of the Legislature, and the chairpersons of the Appropriations Committee and the Business and Labor Committee of the Legislature describing expenditures made pursuant to this subsection.

**Source:** Laws 1937, c. 108, §13, p. 397; Laws 1939, c. 56, §10, p. 248; Laws 1941, c. 94, §10, p. 398; C.S.Supp., 1941, §48-712; R.S. 1943, §48-621; Laws 1947, c. 175, §6, p. 574; Laws 1949, c. 163, §5, p. 421; Laws 1957, c. 208, §3, p. 729; Laws 1969, c. 584, §50, p. 2375; Laws 1985, LB 339, §17; Laws 1989, LB 305, §4; Laws 1994, LB 1066, §38; Laws 1995, LB 1, §5; Laws 1996, LB 1072, §3; Laws 1999, LB 608, §2; Laws 2000, LB 953, §6; Laws 2003, LB 197, §1.

**Effective Date:** May 1, 2003.

**Cross References:** Nebraska Capital Expansion Act, see §72-1269.  
Nebraska State Funds Investment Act, see §72-1260.

**48-622. Funds lost and improper expenditures; replacement; reimbursement.** This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future, and applied to the replacement of, any money received from the Secretary of Labor of the United States under Title III of the Social Security Act, any unencumbered balances in the Employment Security Administration Fund, any money granted to this state pursuant to the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the Wagner-Peyser Act, which the Secretary of Labor finds has, because of any action or contingency, been lost or has been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of the Employment Security Law. To the extent possible such money shall be promptly replaced by money appropriated for such purpose from the Employment Security Special Contingent Fund of this state to the Employment Security Administration Fund for expenditure as provided in section 48-621.

**Source:** Laws 1941, c. 94, §10, p. 398; C.S.Supp., 1941, §48-712; R.S. 1943, §48-622; Laws 1949, c. 163, §6, p. 423; Laws 1961, c. 238, §4, p. 710; Laws 1985, LB 339, §18.

**48-622.01. State Unemployment Insurance Trust Fund; created; use; investment; commissioner; powers and duties; cessation of state unemployment insurance tax; effect.** (1) There is hereby created in the state treasury a special fund to be known as the State Unemployment Insurance Trust Fund. All state unemployment insurance tax collected under sections 48-648 to 48-661, less refunds,

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shall be paid into the fund. Such money shall be held in trust for payment of unemployment insurance benefits. 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, except that interest earned on money in the fund shall be credited to the Nebraska Training and Support Trust Fund at the end of each calendar quarter.

(2) The commissioner shall have authority to determine when and in what amounts withdrawals from the State Unemployment Insurance Trust Fund for payment of benefits are necessary. Amounts withdrawn for payment of benefits shall be immediately forwarded to the Secretary of the Treasury of the United States of America to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) If and when the state unemployment insurance tax ceases to exist as determined by the Governor, all money then in the State Unemployment Insurance Trust Fund less accrued interest shall be immediately transferred to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding. The determination to eliminate the state unemployment insurance tax shall be based on the solvency of the state's account in the Unemployment Trust Fund and the need for training of Nebraska workers. Accrued interest in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund.

(4) Upon certification from the commissioner that disallowed costs by the United States Department of Labor for FY2007-08, FY2008-09, and FY2009-10, or any one of them, have been reduced to an amount certain by way of settlement or final judgment, the State Treasurer shall transfer the amount of such settlement or final judgment from the State Unemployment Insurance Trust Fund to the Employment Security Special Contingent Fund. The total amount of such transfers shall not exceed \$2,816,345. The amount of the reappropriation of Federal Funds appropriated in FY2004-05 under section 903(d) of the federal Social Security Act shall be reduced by the amount transferred.

**Source:** Laws 1994, LB 1337, § 4; Laws 1995, LB 7, § 48; Laws 2009, LB631, § 2; Laws 2011, LB378, § 23.

**Effective Date:** May 18, 2011.

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

**48-622.02. Nebraska Training and Support Trust Fund; created; investment; use; Administrative Costs Reserve Account; created; use.** (1) There is hereby created in the state treasury a special fund to be known as the Nebraska Training and Support Trust Fund. 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. All money deposited or paid into the fund is hereby appropriated and made available to the commissioner. No expenditures shall be made from the fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund.

(2) Money in the Nebraska Training and Support Trust Fund shall be used for

(a) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments,

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(b) administrative costs of creating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund,

(c) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers,

(d) recruitment of workers to Nebraska,

(e) training new employees of expanding Nebraska businesses,

(f) the costs of creating a common web portal for the attraction of businesses and workers to Nebraska, and

(g) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require.

(3) There is hereby created within the Nebraska Training and Support Trust Fund a separate account to be known as the Administrative Costs Reserve Account. Money shall be allocated from the Nebraska Training and Support Trust Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subdivisions (2)(a) through (g) of this section. The administrative costs determined to be applicable to creation and operation of the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund shall be paid out of the Administrative Costs Reserve Account.

**Source:** Laws 1994, LB 1337, § 5; Laws 1995, LB 7, § 49; Laws 2009, LB631, § 3.

**Effective Date:** May 27, 2009

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

**48-622.03. Nebraska Worker Training Board; created; members; chairperson; annual program plan; report.** (1) There is hereby created as of January 1, 1996, the Nebraska Worker Training Board consisting of seven members appointed and serving for terms determined by the Governor as follows:

(a) A representative of employers in Nebraska;

(b) A representative of employees in Nebraska;

(c) A representative of the public;

(d) The Commissioner of Labor or a designee;

(e) The Director of Economic Development or a designee;

(f) The Commissioner of Education or a designee; and

(g) The chairperson of the governing board of the Nebraska Community College Association or a designee.

(2) Beginning July 1, 1996, and annually thereafter, the Governor shall appoint a chairperson for the board. The chairperson shall be either the representative of the employers, the representative of the employees, or the representative of the public.

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(3) Beginning July 1, 1996, and annually thereafter the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Trust Fund. The guidelines shall include, but not be limited to, guidelines for certifying training providers, criteria for evaluating requests for the use of money under section 48-622.02, and guidelines for requiring employers to provide matching funds. The guidelines shall give priority to training that contributes to the expansion of the Nebraska workforce and increasing the pool of highly skilled workers in Nebraska.

(4) Beginning September 1, 1997, and annually thereafter, the board shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Trust Fund for the previous fiscal year. The report shall contain an assessment of the effectiveness of the program and its administration.

**Source:** Laws 1994, LB 1337, § 6; Laws 2009, LB631, § 4.

**Effective Date:** May 27, 2009

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## BENEFITS

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**48-623. Benefits; how paid.** All benefits provided in the Employment Security Law shall be payable from the Unemployment Compensation Fund. All benefits shall be paid through employment offices in accordance with such rules and regulations as the Commissioner of Labor may prescribe.

**Source:** Laws 1937, c. 108, §3, p. 374; Laws 1939, c. 56, §2, p. 233; Laws 1941, c. 94, §2, p. 381; C.S.Supp.,1941, §48-703; R.S.1943, §48-623; Laws 1985, LB 339, §19.

**48-624. Benefits; weekly benefit amount; calculation.**

(1) For any benefit year beginning on or after January 1, 2001, through December 31, 2005, an individual's weekly benefit amount shall be one-half his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02.

(2) For any benefit year beginning on or after January 1, 2006, through December 31, 2007, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed two hundred eighty-eight dollars per week.

(3) For any benefit year beginning on or after January 1, 2008, through December 31, 2010, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed the lesser of one-half of the state average weekly wage as annually determined under section 48-121.02 or the previous year's maximum weekly benefit amount plus ten dollars per week.

(4) For any benefit year beginning on or after January 1, 2011, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02.

(5) For purposes of this section, an individual's average weekly wage shall equal the wages paid for insured work in the highest quarter of the base period divided by thirteen.

**Source:** Laws 1937, c. 108, §3, p. 375; Laws 1939, c. 56, §2, p. 233; Laws 1941, c. 94, §2, p. 381; C.S.Supp.,1941, §48-703; R.S.1943, §48-624; Laws 1945, c. 114, §2, p. 371; Laws 1949, c. 163, §1, p. 423; Laws 1951, c. 157, §1, p. 630; Laws 1953, c. 168, §1, p. 541; Laws 1955, c. 190, §5, p. 542; Laws 1957, c. 209, §1, p. 738; Laws 1959, c. 229, §1, p. 802; Laws 1963, c. 291, §1, p. 870; Laws 1965, c. 286, §1, p. 819; Laws 1967, c. 299, §1, p. 814; Laws 1969, c. 401, §1, p. 1394; Laws 1971, LB 651, §4; Laws 1972, LB 1391, §1; Laws 1973, LB 333, §1; Laws 1974, LB 775, §1; Laws 1975, LB 475, §1; Laws 1977, LB 337, §1; Laws 1979, LB 183, §1; Laws 1983, LB 524, §1; Laws 1985, LB 216, §1; Laws 1987, LB 446, §1; Laws 1990, LB 315, §1; Laws 1994, LB 286, §2; Laws 1998, LB 225, §1; Laws 2005, LB 739, §5; Laws 2007, LB265, §8.

**Operative Date:** July 1, 2007.

**48-625. Benefits; weekly payment; how computed.**

(1) For benefit years beginning on or before September 30, 2006, each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-half of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-half of such benefit amount but less than his or her full weekly

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benefit amount, he or she shall be paid an amount equal to one-half of such benefit amount. For any benefit year beginning on or after October 1, 2006, each individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-fourth of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-fourth of such benefit amount, he or she shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. In the event there is any deduction from such individual's weekly benefit amount because of earned wages pursuant to this subsection or as a result of the application of subdivision (5) of section 48-628, the resulting benefit payment, if not an exact dollar amount, shall be computed to the next lower dollar amount.

Any amount of unemployment compensation payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

No deduction shall be made for any supplemental payments received by a claimant under the provisions of subsection (b) of section 408 of Title IV of the Veterans Readjustment Assistance Act of 1952.

The percentage of benefits and the percentage of extended benefits which are federally funded may be adjusted in accordance with the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177.

(2) Vacation leave pay including that received in a lump sum or upon separation from employment shall be prorated in an amount reasonably attributable to each week claimed and considered payable with respect to such week.

**Source:** Laws 1937, c. 108, §3, p. 375; Laws 1939, c. 56, §2, p. 234; Laws 1941, c. 94, §2, p. 382; C.S.Supp.,1941, §48-703; R.S.1943, §48-625; Laws 1949, c. 163, §8, p. 424; Laws 1953, c. 167, §5, p. 531; Laws 1980, LB 800, §2; Laws 1982, LB 801, §1; Laws 1983, LB 248, §3; Laws 1986, LB 950, §2; Laws 1987, LB 461, §1; Laws 1995, LB 1, §6; Laws 1999, LB 608, §3; Laws 2005, LB 739, §8.

**Effective Date:** September 4, 2005.

**48-626. Benefits; maximum annual amount; determination.** Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of:

(1) twenty-six times his or her benefit amount, or

(2) one-third of his or her wages in the employment of each employer per calendar quarter of his or her base period; except that when any individual has been separated from his or her employment with a base period employer under the circumstances under which he or she was or could have been determined disqualified under subdivision (1) or (2) of section 48-628, the total benefit amount based on the employment from which he or she was so separated shall be reduced by an amount equal to the number of weeks for which he or she is or would have been disqualified had he or she filed a claim immediately after the separation, multiplied by his or her weekly benefit amount, but not more than one reduction may be made for each separation. In no event shall the benefit amount based on employment for any employer be reduced to less than one benefit week when the individual was or could have been determined disqualified under subdivision (1) of section 48-628. For purposes of sections 48-623 to 48-626, wages shall be counted as wages for insured work for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer by whom such wages were paid has satisfied the conditions of section 48-603 or subsection (3) of section 48-661 with respect to becoming an employer. In order to determine the benefits due under this section and sections

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48-624 and 48-625, each employer shall make reports, in conformity with reasonable rules and regulations adopted by the commissioner, of the wages of any claimant. If any such employer shall fail to make such report within the time prescribed, the commissioner may accept the statement of such claimant as to his or her wages, and any benefit payments based on such statement of earnings, in the absence of fraud or collusion, will be final as to amount.

**Source:** Laws 1937, c. 108, §3, p. 375; Laws 1939, c. 56, §2, p. 235; Laws 1941, c. 94, §2, p. 382; C.S.Supp., 1941, §48-703; R.S. 1943, §48-626; Laws 1945, c. 114, §3, p. 372; Laws 1949, c. 163, §9, p. 425; Laws 1959, c. 229, §2, p. 802; Laws 1963, c. 291, §2, p. 871; Laws 1967, c. 300, §1, p. 816; Laws 1972, LB 1392, §4; Laws 1980, LB 800, §3; Laws 1985, LB 339, §20; Laws 1986, LB 950, §3; Laws 1995, LB 1, §7.

**Annotations:**

- The duration of maximum benefits is not affected by discharge for ordinary misconduct. *Grand Island Baking Co. v. Frantz*, 141 Neb. 803, 4 N.W.2d 921 (1942).

**48-627. Benefits; eligibility conditions; availability for work; requirements.** An unemployed individual shall be eligible to receive benefits with respect to any week, only if the Commissioner of Labor finds:

(1) He or she has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules and regulations as the commissioner may prescribe, except that the commissioner may, by rule and regulation, waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations, with respect to which he or she finds that compliance with such requirements, would be oppressive, or would be inconsistent with the purposes of the Employment Security Law, except that no such rule or regulation shall conflict with section 48-623;

(2) He or she has made a claim for benefits, in accordance with section 48-629;

(3) He or she is able to work and is available for work. No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because he or she is on vacation without pay during such week, if such vacation is not the result of his or her own action as distinguished from any collective action by a collective-bargaining agent or other action beyond his or her individual control, and regardless of whether he or she has not been notified of the vacation at the time of his or her hiring. An individual who is otherwise eligible shall not be deemed unavailable for work or failing to engage in an active work search solely because such individual is seeking part-time work if the majority of the weeks of work in an individual's base period include part-time work. For purposes of this subdivision, seeking only part-time work shall mean seeking less than full-time work having comparable hours to the individual's part-time work in the base period, except that the individual must be available for work at least twenty hours per week. Receipt of a non-service-connected total disability pension by a veteran at the age of sixty-five or more shall not of itself bar the veteran from benefits as not able to work. An otherwise eligible individual while engaged in a training course approved for him or her by the commissioner shall be considered available for work for the purposes of this section. An inmate in a penal or custodial institution shall be considered unavailable for work for purposes of this section;

(4) He or she has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purpose of this subdivision (a) unless it occurs within the benefit year, which includes the week with respect to which he or she claims payment of benefits, (b) if benefits have been paid with respect thereto, or (c) unless the individual was eligible for benefits with respect thereto, as provided in sections 48-627 and 48-628, except for the requirements of this subdivision and of subdivision (6) of section 48-628;

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(5) (a) For any benefit year beginning on or after January 1, 2006, he or she has, within his or her base period, been paid a total sum of wages for employment by employers equal to not less than two thousand five hundred dollars, of which sum at least eight hundred dollars has been paid in each of two quarters in his or her base period, and subsequent to filing the claim which establishes the previous benefit year, the individual has earned wages in insured work of at least six times his or her weekly benefit amount for the previous benefit year.

(b) For any benefit year beginning on or after July 1, 2011, he or she has (i) within his or her base period, been paid a total sum of wages for employment by employers equal to not less than three thousand seven hundred seventy dollars, of which sum at least one thousand eight hundred fifty dollars has been paid in one quarter in his or her base period and eight hundred dollars has been paid in a second quarter of his or her base period, and (ii) subsequent to filing the claim which establishes the previous benefit year, earned wages in insured work of at least six times his or her weekly benefit amount for the previous benefit year. Commencing January 1, 2012, and each January 1 thereafter, the amount which an individual is required to earn within his or her base period shall be adjusted annually. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the one-year period ending on the previous September 30.

(c) For the purposes of this subdivision (5),

(i) for the determination of monetary eligibility, wages paid within a base period shall not include wages from any calendar quarter previously used to establish a valid claim for benefits,

(ii) wages shall be counted as wages for insured work for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer, by whom such wages were paid, has satisfied the conditions of section 48-603 or subsection (3) of section 48-661, with respect to becoming an employer, and

(iii) with respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work for benefit purposes with respect to any benefit year shall include wages paid for services as defined by subdivision (4)(a), (b), (c), or (d) of section 48-604 to the extent that such services were not services in employment under subdivision (4)(a) of section 48-604 or section 48-661 immediately prior to September 2, 1977, even though the employer by whom such wages were paid had not satisfied the conditions of subdivision (8), (9), (10), or (11) of section 48-603 with respect to becoming an employer at the time such wages were paid except to the extent that assistance under Title II of the federal Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services; and

(6) He or she is participating in reemployment services at no cost to such individual as directed by the commissioner, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by rule and regulation of the commissioner which is in compliance with section 303(j)(1) of the federal Social Security Act, unless the commissioner determines that: (a) The individual has completed such services; or (b) there is justifiable cause for the claimant's failure to participate in such services.

**Source:** Laws 1937, c. 108, § 4, p. 376; Laws 1939, c. 56, § 3, p. 235; Laws 1941, c. 94, § 3, p. 383; C.S.Supp., 1941, § 48-704; R.S. 1943, § 48-627; Laws 1945, c. 115, § 3, p. 382; Laws 1949, c. 163, § 10, p. 425; Laws 1953, c. 167, § 6, p. 531; Laws 1955, c. 190, § 6, p. 543; Laws 1957, c. 209, § 2, p. 739; Laws 1959, c. 230, § 1, p. 804; Laws 1961, c. 241, § 1,

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p. 717; Laws 1963, c. 291, § 3, p. 872; Laws 1963, c. 292, § 1, p. 875; Laws 1971, LB 651, § 5; Laws 1973, LB 372, § 1; Laws 1977, LB 509, § 4; Laws 1981, LB 470, § 2; Laws 1985, LB 339, § 21; Laws 1987, LB 469, § 1; Laws 1987, LB 446, § 2; Laws 1988, LB 1033, § 2; Laws 1995, LB 1, § 8; Laws 1995, LB 240, § 1; Laws 1998, LB 225, § 2; Laws 2005, LB 484, § 5; Laws 2005, LB 739, § 9; Laws 2010, LB1020, § 3.

**Operative Date:** July 1, 2011

**Annotations:**

- Availability is required for eligibility to receive unemployment compensation benefits. *Robinson v. Commissioner of Labor*, 267 Neb. 579, 675 N.W.2d 683 (2004).
- Without an order from the sentencing court granting the privilege to leave the jail for work, an inmate was not "available" for work under this section. *Robinson v. Commissioner of Labor*, 267 Neb. 579, 675 N.W.2d 683 (2004).
- This section describes weekly requirements for continuing eligibility and does not address the reasons why a person became unemployed or threshold questions of eligibility. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).
- A lump-sum severance allowance paid to a claimant is not to be prorated to the calendar quarters immediately following the date of payment in order to determine whether the monetary eligibility requirements of subdivision (e) of this section have been met. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).
- The provision that a claimant earn a certain amount of wages during any benefit year and during each of two quarters thereof is intended to prevent a claimant from electing to simply collect unemployment benefits rather than work. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).
- A professional symphony musician employed under a seasonal contract rather than an annual contract was entitled to unemployment benefits for the time he was unemployed during the symphony's "off season". *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).
- Registration for work alone is not sufficient to show prima facie a right to benefits. *Hunter v. Miller*, 148 Neb. 402, 27 N.W.2d 638 (1947).

**48-628. Benefits; conditions disqualifying applicant; exceptions.** An individual shall be disqualified for benefits:

(1) (a) For the week in which he or she has left work voluntarily without good cause, if so found by the commissioner, and for the thirteen weeks which immediately follow such week. A temporary employee of a temporary help firm has left work voluntarily without good cause if the temporary employee does not contact the temporary help firm for reassignment upon completion of an assignment and the temporary employee has been advised by the temporary help firm of his or her obligation to contact the temporary help firm upon completion of assignments and has been advised by the temporary help firm that the temporary employee may be denied benefits for failure to do so; or

(b) For the week in which he or she has left work voluntarily for the sole purpose of accepting previously secured, permanent, full-time, insured work, which he or she does accept, which offers a reasonable expectation of betterment of wages or working conditions, or both, and for which he or she earns wages payable to him or her, if so found by the commissioner, and for the two weeks which immediately follow such week;

(2) For the week in which he or she has been discharged for misconduct connected with his or her work, if so found by the commissioner, and for the fourteen weeks which immediately follow such week. If the commissioner finds that such individual's misconduct was gross, flagrant, and willful, or was unlawful, the commissioner shall totally disqualify such individual from receiving benefits with respect to wage credits earned prior to discharge for such misconduct. In addition to the fourteen-week benefit disqualification assessed under this subdivision, the commissioner shall cancel all wage credits earned as a result of employment with the discharging employer if the commissioner finds that the individual was discharged for misconduct in connection with the work which was not gross, flagrant, and willful or unlawful but which

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included being under the influence of any intoxicating beverage or being under the influence of any controlled substance listed in section 28-405 not prescribed by a physician licensed to practice medicine or surgery when the individual is so under the influence on the worksite or while engaged in work for the employer;

(3) (a) For any week of unemployment in which he or she has failed, without good cause, to apply for available, suitable work when so directed by the employment office or the commissioner, to accept suitable work offered him or her, or to return to his or her customary self-employment, if any, and the commissioner so finds, and for the twelve weeks which immediately follow such week, and his or her total benefit amount to which he or she is then entitled shall be reduced by an amount equal to the number of weeks for which he or she has been disqualified by the commissioner.

(b) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to the individual's health, safety, and morals, his or her physical fitness and prior training, his or her experience and prior earnings, his or her length of unemployment and prospects for securing local work in his or her customary occupation, and the distance of the available work from his or her residence.

(c) Notwithstanding any other provisions of the Employment Security Law, no work shall be deemed suitable and benefits shall not be denied under such law to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or (iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) Notwithstanding any other provisions in subdivision (3) of this section, no otherwise eligible individual shall be denied benefits with respect to any week in which he or she is in training with the approval of the commissioner, by reason of the application of the provisions in subdivision (3) of this section relating to failure to apply for or a refusal to accept suitable work.

(e) No individual shall be disqualified for refusing to apply for available, full-time work or accept full-time work under subdivision (3)(a) of this section solely because such individual is seeking part-time work if the majority of the weeks of work in an individual's base period include part-time work. For purposes of this subdivision, seeking only part-time work shall mean seeking less than full-time work having comparable hours to the individual's part-time work in the base period, except that the individual must be available for work at least twenty hours per week;

(4) For any week with respect to which the commissioner finds that his or her total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he or she is or was last employed, except that this subdivision shall not apply if it is shown to the satisfaction of the commissioner that

(a) the individual is not participating in, financing, or directly interested in the labor dispute which caused the stoppage of work and

(b) he or she does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating, financing, or directly interested in the dispute. If in any case, separate branches of work, which are commonly conducted as separate businesses

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in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment, or other premises;

- (5) For any week with respect to which he or she is receiving or has received remuneration in the form of
- (a) wages in lieu of notice, or a dismissal or separation allowance,
  - (b) compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States,
  - (c) retirement or retired pay, pension, annuity, or other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer, or
  - (d) a gratuity or bonus from an employer, paid after termination of employment, on account of prior length of service, or disability not compensated under the workers' compensation law. Such payments made in lump sums shall be prorated in an amount which is reasonably attributable to such week. If the prorated remuneration is less than the benefits which would otherwise be due, he or she shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. The prorated remuneration shall be considered wages for the quarter to which it is attributable. Military service-connected disability compensation payable under 38 U.S.C. chapter 11 and primary insurance benefits payable under Title II of the Social Security Act, as amended, or similar payments under any act of Congress shall not be deemed to be disqualifying or deductible from the benefit amount. No deduction shall be made for the part of any retirement pension which represents return of payments made by the individual. In the case of a transfer by an individual or his or her employer of an amount from one retirement plan to a second qualified retirement plan under the Internal Revenue Code, the amount transferred shall not be deemed to be received by the claimant until actually paid from the second retirement plan to the claimant. No deduction shall be made for any benefit received under a supplemental unemployment benefit plan described in subdivision (29)(g) of section 48-602;
- (6) For any week with respect to which or a part of which he or she has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or of the United States finally determines that he or she is not entitled to such unemployment benefits, this disqualification shall not apply;
- (7) For any week of unemployment if such individual is a student. For the purpose of this subdivision, student shall mean an individual registered for full attendance at and regularly attending an established school, college, or university, unless the major portion of his or her wages for insured work during his or her base period was for services performed while attending school, except that attendance for training purposes under a plan approved by the commissioner for such individual shall not be disqualifying;
- (8) For any week of unemployment if benefits claimed are based on services performed:
- (a) In an instructional, research, or principal administrative capacity for an educational institution, if such week commences during the period between two successive academic years or terms, or when an agreement provides instead for a similar period between two regular, but not successive, terms during such period, if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

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(b) In any other capacity for an educational institution, if such week commences during a period between two successive academic years or terms, if such individual performs such services in the first of such academic years or terms, and if there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if benefits are denied to any individual for any week under subdivision (8)(b) of this section and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of subdivision (8)(b) of this section;

(c) In any capacity described in subdivision (8)(a) or (b) of this section if such week commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

(d) In any capacity described in subdivision (8)(a) or (b) of this section in an educational institution while in the employ of an educational service agency, and such individual shall be disqualified as specified in subdivisions (8)(a), (b), and (c) of this section. As used in this subdivision, educational service agency shall mean a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions; and

(e) In any capacity described in subdivision (8)(a) or (b) of this section in an educational institution if such services are provided to or on behalf of the educational institution while in the employ of an organization or entity described in section 3306(c)(7) or 3306(c)(8) of the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7) or (8), and such individual shall be disqualified as specified in subdivisions (8)(a), (b), and (c) of this section;

(9) For any week of unemployment benefits if substantially all the services upon which such benefits are based consist of participating in sports or athletic events or training or preparing to so participate, if such week of unemployment begins during the period between two successive sport seasons or similar periods, if such individual performed such services in the first of such seasons or similar periods, and if there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods;

(10) For any week of unemployment benefits if the services upon which such benefits are based are performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5). Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence;

(11) Notwithstanding any other provisions of the Employment Security Law, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1), nor shall such individual be denied benefits by reason of leaving work to enter such training, if the work left is not suitable employment, or

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because of the application to any such week in training of provisions of the Employment Security Law, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, suitable employment shall mean, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for purposes of such act;

(12) For any week during which the individual is on a leave of absence; and

(13) For any week of unemployment benefits or for waiting week credit if he or she has been disqualified from the receipt of benefits pursuant to section 48-663.01 two or more times in the five-year period immediately prior to filing his or her most recent claim. This subdivision shall not apply if the individual has repaid in full any overpayments established in conjunction with the disqualifications assessed under section 48-663.01 during that five-year period.

**Source:** Laws 1937, c. 108, § 5, p. 377; Laws 1939, c. 56, § 4, p. 236; C.S.Supp., 1941, § 48-705; R.S.1943, § 48-628; Laws 1945, c. 114, § 4, p. 372; Laws 1955, c. 190, § 7, p. 545; Laws 1961, c. 241, § 2, p. 718; Laws 1965, c. 287, § 1, p. 821; Laws 1967, c. 301, § 1, p. 818; Laws 1969, c. 402, § 1, p. 1395; Laws 1971, LB 651, § 6; Laws 1975, LB 370, § 1; Laws 1976, LB 819, § 1; Laws 1977, LB 509, § 5; Laws 1978, LB 128, § 1; Laws 1979, LB 581, § 3; Laws 1980, LB 800, § 4; Laws 1981, LB 470, § 3; Laws 1982, LB 801, § 2; Laws 1983, LB 248, § 4; Laws 1983, LB 432, § 1; Laws 1984, LB 746, § 2; Laws 1985, LB 339, § 2; Laws 1985, LB 341, § 1; Laws 1987, LB 276, § 1; Laws 1987, LB 469, § 2; Laws 1989, LB 605, § 1; Laws 1991, LB 498, § 1; Laws 1992, LB 878, § 1; Laws 1994, LB 286, § 3; Laws 1994, LB 913, § 1; Laws 1995, LB 1, § 9; Laws 1995, LB 77, § 2; Laws 1995, LB 291, § 1; Laws 1995, LB 759, § 1; Laws 1996, LB 633, § 1; Laws 1998, LB 225, § 3; Laws 2000, LB 953, § 7; Laws 2001, LB 192, § 8; Laws 2002, LB 921, § 2; Laws 2005, LB 484, § 6; Laws 2005, LB 739, § 10; Laws 2010, LB1020, § 4.

**Operative Date:** July 1, 2011

### **Annotations:**

- 1. Eligibility for benefits**
- 2. Voluntary termination of employment**
- 3. Stoppage of work**
- 4. Misconduct**
- 5. Miscellaneous**

#### **1. Eligibility for benefits**

- In the circumstances of multiple employment, a decision to voluntarily leave part-time employment without good cause does not disqualify one from receiving full unemployment compensation benefits resulting from being laid off from one's full-time position. *Fountain v. Hanlon*, 214 Neb. 700, 335 N.W.2d 319 (1983).
- When determining if an employee, discharged for violating a company rule forbidding company employees from having contact with prior employees, is to be disqualified from receiving benefits under this statute, it must be determined if the rule has a reasonable relationship to the employer's interest. Rule here held not to be so related to the employer's interest. *Snyder Industries, Inc. v. Otto*, 212 Neb. 40, 321 N.W.2d 77 (1982).
- The disqualification of employees of educational institutions and professional athletes for unemployment benefits under this provision does not include professional symphony musicians. The provisions of the unemployment compensation act should be liberally construed in favor of those claiming benefits under it. *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

#### **2. Voluntary termination of employment**

- In the context of subsection (1)(a) of this section, to leave work voluntarily means to sever the employment relationship with the intent not to return to, or to intentionally

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terminate, the employment. Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor, 260 Neb. 108, 615 N.W.2d 441 (2000).

- Pursuant to subsection (1)(a) of this section, a court will separately consider the circumstances under which each of multiple employments was terminated in determining the benefits against which the statutory disqualification shall apply. Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor, 260 Neb. 108, 615 N.W.2d 441 (2000).
- Pursuant to subsection (1)(a) of this section, a paraeducator comes within the scope of this statutory provision. Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor, 260 Neb. 108, 615 N.W.2d 441 (2000).
- Pursuant to subsection (1)(a) of this section, an employee has "good cause" for voluntarily leaving employment if the employee's decision to leave is prompted by a circumstance which has some justifiably reasonable connection with or relation to the conditions of the employment. Lancaster Cty. Sch. Dist. No. 0001 v. State Dept. of Labor, 260 Neb. 108, 615 N.W.2d 441 (2000).
- For purposes of subsection (a)(1) of this section, an employee has not "left work voluntarily without good cause" when the employee voluntarily resigns from work but is subsequently terminated by the employer during the notice period. Dillard Dept. Stores v. Polinsky, 247 Neb. 821, 530 N.W.2d 637 (1995).
- An employee who has engaged in no misconduct and who desires to keep his or her employment, but nonetheless resigns because the employer has clearly manifested that the employment will be terminated, has not left his or her employment "voluntarily," as that term is used in subsection (a)(1) of this section. Perkins v. Equal Opportunity Comm., 234 Neb. 359, 451 N.W.2d 91 (1990).
- An employee has good cause for voluntarily leaving employment if the employee's decision to leave is prompted by a circumstance which has some justifiably reasonable connection with or relation to the conditions of the employment. Stackley v. State, 222 Neb. 767, 386 N.W.2d 884 (1986).
- A change in work hours, absent some compelling circumstance, does not constitute good cause for leaving employment under subsection (a)(1) of this section. Montclair Nursing Center v. Wills, 220 Neb. 547, 371 N.W.2d 121 (1985).
- Employee failed to meet burden of proof as to good cause of employment termination where employee failed to offer competent medical evidence to substantiate claim that her health would be affected by a change in work hours. Montclair Nursing Center v. Wills, 220 Neb. 547, 371 N.W.2d 121 (1985).
- An employer acts within the meaning of subsection (a) of this section by removing duties after a job change due to the physical incapacity to carry out those particular duties. Norman v. Sorensen, 220 Neb. 408, 370 N.W.2d 147 (1985).
- To leave work voluntarily means to intentionally terminate the employment, but such leaving is with good cause if it has some justifiably reasonable connection with or relation to the conditions of employment. McClemens v. United Parcel Serv., 218 Neb. 689, 358 N.W.2d 748 (1984).
- The burden of proof is on the employee to show that he involuntarily left his employment or did so with good cause. Taylor v. Collateral Control Corp., 218 Neb. 432, 355 N.W.2d 788 (1984).
- One is disqualified for benefits if, by leaving work voluntarily and without good cause, one thereby makes oneself unemployed. Each job and the facts of its termination must be considered separately with regard to disqualification for benefits. Gilbert v. Hanlon, 214 Neb. 676, 335 N.W.2d 548 (1983).
- Evidence held to show that claimant left work voluntarily. To leave work voluntarily under this section means to intentionally sever the employment relationship with the intent not to return to, or to intentionally terminate, the employment. Gastineau v. Tomahawk Oil Co., Limited, 211 Neb. 537, 319 N.W.2d 107 (1982).
- An employee who desires to retain his employment but resigns because the employer has clearly indicated that if he does not resign his employment will be terminated has not left his employment voluntarily. School Dist. No. 20 v. Commissioner of Labor, 208 Neb. 663, 305 N.W.2d 367 (1981).
- A wife who voluntarily leaves her employment for the sole and only reason of being with her husband in another city does so without good cause and disqualifies herself as a claimant for unemployment benefits. Woodmen of the World Life Ins. Soc. v. Olsen, 141 Neb. 776, 4 N.W.2d 923 (1942).

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- An employee who leaves work voluntarily has the burden to prove that he or she left employment with good cause. *Speedway Motors v. Commissioner of Labor*, 1 Neb. App. 606, 510 N.W.2d 341 (1993).

### 3. Stoppage of work

- A work stoppage cannot be determined solely on the basis of the proportionate number of employees affected. *Bell Fed. Credit Union v. Christianson*, 237 Neb. 519, 466 N.W.2d 546 (1991).
- Depending on the facts of the case, various factors become relevant as to the determination of a work stoppage within the meaning of subsection (d) of this section. *Bell Fed. Credit Union v. Christianson*, 237 Neb. 519, 466 N.W.2d 546 (1991).
- One disqualified from receiving benefits under subdivision (d) of this section can avoid continued disqualification if the employer fails to prove that for the week in question, the cause of work stoppage is the labor dispute. *IBP, Inc. v. Aanenson*, 234 Neb. 603, 452 N.W.2d 59 (1990).
- No work stoppage occurred where workers' refusing to cross a picket line resulted in a four and nine-tenths percent loss in production, together with a two and nine-tenths percent loss of total work hours; there was no total operational shutdown at the plant; ninety-eight percent of the affected positions were filled by the end of the first week following the establishment of the picket line; and the company informed the Department of Labor that no work stoppage had occurred. *George A. Hormel & Co. v. Hair*, 229 Neb. 284, 426 N.W.2d 281 (1988).
- One who is a member of the same grade or class of workers participating in a labor dispute is ineligible for unemployment compensation benefits. *Laursen v. Kiewit Constr. Co.*, 223 Neb. 471, 390 N.W.2d 534 (1986).
- Members of nonstriking unions and nonunion employees who are not participating in or financing or directly interested in a labor dispute which caused a work stoppage and who do not belong to a grade or class of workers who, immediately before the commencement of the stoppage, were members employed at the premises at which the stoppage occurs, and are participating in, financing, or directly interested in the labor dispute, are not disqualified from receiving benefits. An employee is not directly interested in a labor dispute within the meaning of this provision merely because the employee may obtain a benefit by reason of the labor dispute. *Gilmore Constr. Co. v. Miller*, 213 Neb. 133, 327 N.W.2d 628 (1982).
- Disqualification for benefits exists when unemployment is due to stoppage of work because of a labor dispute. *A. Borchman Sons v. Carpenter*, 166 Neb. 322, 89 N.W.2d 123 (1958).
- Where a labor dispute develops into a strike, causing a substantial stoppage of work in the business of the employer, the employees striking are not entitled to benefits under the Unemployment Compensation Act. *Magner v. Kinney*, 141 Neb. 122, 2 N.W.2d 689 (1942).
- The term stoppage of work, as used in Unemployment Compensation Act, means a substantial curtailment of work in an employing establishment. *Deshler Broom Factory v. Kinney*, 140 Neb. 889, 2 N.W.2d 332 (1942).

### 4. Misconduct

- Misconduct has been defined, pursuant to this section, as behavior evidencing (1) wanton and willful disregard of the employer's interests, (2) deliberate violation of rules, (3) disregard of standards of behavior which the employer can rightfully expect from the employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. *Douglas Cty. Sch. Dist. 001 v. Dutcher*, 254 Neb. 317, 576 N.W.2d 469 (1998).
- In order for a violation of an employer's rule to constitute misconduct, the rule must bear a reasonable relationship to the employer's interests. *Dolan v. Svitak*, 247 Neb. 410, 527 N.W.2d 621 (1995).
- Under subsection (b) of this section, conduct of a governmental employee which evinces a conscious and intentional disregard of standards of behavior which his or her governmental employer would have a right to expect from such employee constitutes misconduct in connection with the employee's employment, where continued employment would create a genuine threat to the integrity of the

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governmental employer and reflect unfavorably upon the governmental employer in the eyes of the general public. *Poore v. City of Minden*, 237 Neb. 78, 464 N.W.2d 791 (1991).

- An employee who is discharged for misconduct may be disqualified from unemployment compensation benefits. *Caudill v. Surgical Concepts, Inc.*, 236 Neb. 266, 460 N.W.2d 662 (1990).
- The term "misconduct," as used in subsection (b) of this section, includes behavior that evidences wanton and willful disregard of the employer's interests; deliberate violations of rules; disregard of standards of behavior rightfully expected from the employee; or negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. *Jensen v. Mary Lanning Memorial Hosp.*, 233 Neb. 66, 443 N.W.2d 891 (1989).
- Where an employee has close personal contact with persons served by the employer, it is not unreasonable for the employer to require the employee to report to work without the odor of alcohol on his breath. Violation of the requirement, after warnings to the employee, is misconduct under subsection (b) of the statute. *Jensen v. Mary Lanning Memorial Hosp.*, 233 Neb. 66, 443 N.W.2d 891 (1989).
- Misconduct for which a disqualification from receiving unemployment benefits under subsection (b) of this section may result must be committed in connection with the employee's work. Failure to cooperate with an employer which is attempting to furnish a smoke-free environment by a good faith trial and error method constitutes misconduct in connection with the employee's work sufficient to disqualify the employee from receiving unemployment compensation benefits. Failure to furnish medical justification for prolonged absences from employment, when an employee has stated that such justification will be furnished, also constitutes sufficient misconduct in connection with the employee's work. *Tuma v. Omaha Public Power Dist.*, 226 Neb. 19, 409 N.W.2d 306 (1987).
- Misconduct for which a disqualification from receiving unemployment benefits may result must be committed in connection with the employee's work. Conduct of an employee in so acting as to create a situation where garnishments are filed with his or her employer is not "misconduct connected with his or her work" and therefore will not disqualify a discharged employee from receiving unemployment compensation benefits. *Great Plains Container Co. v. Hiatt*, 225 Neb. 558, 407 N.W.2d 166 (1987).
- While absences due to illness may not constitute an employee's misconduct, an employee's chronic and excessive absenteeism demonstrates a wanton and willful disregard of the employer's interests for the purpose of this section. *O'Keefe v. Tabitha, Inc.*, 224 Neb. 574, 399 N.W.2d 798 (1987).
- Misconduct under subsection (b) of this section is defined as behavior which evidences (1) wanton and willful disregard of the employer's interests, (2) deliberate violation of rules, (3) disregard of standards of behavior which the employer can rightfully expect from the employee, or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. *Smith v. Sorensen*, 222 Neb. 599, 386 N.W.2d 5 (1986).
- The falsifying of entries by an employee of his employer's work records constitutes misconduct. What constitutes misconduct is a fact question. In order for a violation of an employer's rules to constitute misconduct, it is necessary that the rule be a reasonable one. *Smith v. Sorensen*, 222 Neb. 599, 386 N.W.2d 5 (1986).
- Misconduct within the meaning of this statute is a deliberate, willful, or wanton disregard of an employer's interest or of the standards of behavior which the employer has a right to expect of his employees, or carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design. *Barada v. Sorensen*, 222 Neb. 391, 383 N.W.2d 799 (1986).
- Excessive absences from work, except when excused or authorized by employment rules, may constitute misconduct. *McCorison v. City of Lincoln*, 215 Neb. 474, 339 N.W.2d 294 (1983).
- Misconduct, under this section, is the deliberate, willful, or wanton disregard of an employer's interest or of the standards of behavior which the employer has a right to expect of his employees, or carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design. *Bristol v. Hanlon*, 210 Neb. 37, 312 N.W.2d 694 (1981).

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### 5. Miscellaneous

- The language of subsection (5)(b) of this section in its current form does not include temporary total disability as a disqualifying event for the receipt of unemployment benefits. *Memorial Hosp. of Dodge Cty. v. Porter*, 251 Neb. 327, 557 N.W.2d 21 (1996).
- In an appeal regarding disqualification under subsection (b) of this section, the Supreme Court retries factual questions de novo on the record and reaches conclusions independent of those reached by the district court. *Jensen v. Mary Lanning Memorial Hosp.*, 233 Neb. 66, 443 N.W.2d 891 (1989).
- Subsection (c) of this section disqualifies unemployed persons refusing suitable work from receiving benefits. This subsection does not apply to employed persons who reject demotions. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).
- The correct inquiry in cases where an employed person refuses a demotion and quits is whether the employee left with or without good cause. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).
- In an appeal regarding disqualification of benefits under this section, the Supreme Court retries factual questions de novo on the record and reaches conclusions independent of those reached by the district court. *O'Keefe v. Tabitha, Inc.*, 224 Neb. 574, 399 N.W.2d 798 (1987).
- The burden of proof under subsection (a)(1) of this section is upon the employee to show that he or she left his or her employment for good cause. *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).
- The requirement of subdivision (e) of this section, that a lump-sum severance allowance be prorated, is intended to prevent a claimant from receiving double payments for the same period of time in the form of unemployment benefits and severance compensation. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).
- Subsection (c) of this section provides an employer with an additional reason for disqualification from benefits when a person refuses suitable work, and work is suitable when duties are excused upon the employee's showing of physical incapacity to perform the particular duties. *Norman v. Sorensen*, 220 Neb. 408, 370 N.W.2d 147 (1985).
- Regular terms refers to definite period representing regular division of academic year and does not include six-week summer program. *School Dist. No. 21 v. Ochoa*, 216 Neb. 191, 342 N.W.2d 665 (1984).
- "Good cause" as used herein does not include a mere disappointment at not being assigned to a particular job or task. *Heimsoth v. Kellwood Co.*, 211 Neb. 167, 318 N.W.2d 1 (1982).
- Up to the point of appeal to district court, interpretation and application of law to facts in each case is made by administrative agency. *Beecham v. Falstaff Brewing Corporation*, 150 Neb. 792, 36 N.W.2d 233 (1949).
- The receipt of workers' compensation benefits for temporary total disability is not a disqualifying event for unemployment benefits. *Memorial Hosp. of Dodge Cty. v. Porter*, 4 Neb. App. 716, 548 N.W.2d 361 (1996).

**48-628.01. Good cause for voluntarily leaving employment, defined.** Good cause for voluntarily leaving employment shall include, but not be limited to, the following reasons:

(1) An individual has made all reasonable efforts to preserve the employment but voluntarily leaves his or her work for the necessary purpose of escaping abuse at the place of employment or abuse as defined in section 42-903 between household members;

(2) An individual left his or her employment voluntarily due to a bona fide non-work-connected illness or injury that prevented him or her from continuing the employment or from continuing the employment without undue risk of harm to the individual;

(3) An individual left his or her employment to accompany his or her spouse to the spouse's employment in a different city or new military duty station;

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- (4) An individual left his or her employment because his or her employer required the employee to relocate;
- (5) (a) An individual is a construction worker and left his or her employment voluntarily for the purpose of accepting previously secured insured work in the construction industry if the commissioner finds that:
- (i) (A) The quit occurred within thirty days immediately prior to the established termination date of the job which the individual voluntarily leaves,
  - (B) the specific starting date of the new job is prior to the established termination date of the job which the worker quits,
  - (C) the new job offered employment for a longer period of time than remained available on the job which the construction worker voluntarily quit, and
  - (D) the worker had worked at least twenty days or more at the new job after the established termination date of the previous job unless the new job was terminated by a contract cancellation; or
  - (ii) (A) The construction worksite of the job which the worker quit was more than fifty miles from his or her place of residence,
  - (B) the new construction job was fifty or more miles closer to his or her residence than the job which he or she quit, and
  - (C) the worker actually worked twenty days or more at the new job unless the new job was terminated by a contract cancellation.
- (b) The provisions of this subdivision (5) shall not apply if the individual is separated from the new job under conditions resulting in a disqualification from benefits under subdivision (1) or (2) of section 48-628;
- (6) An individual accepted a voluntary layoff to avoid bumping another worker;
- (7) An individual left his or her employment as a result of being directed to perform an illegal act;
- (8) An individual left his or her employment because of unlawful discrimination or workplace harassment on the basis of race, sex, or age;
- (9) An individual left his or her employment because of unsafe working conditions; or
- (10) Equity and good conscience demand a finding of good cause.

**Source:** Laws 2005, LB 739, §7.

**Effective Date:** September 4, 2005.

**48-628.02. Extended benefits; terms, defined; weekly extended benefit amount; payment of emergency unemployment compensation.**

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(1) As used in the Employment Security Law, unless the context otherwise requires:

(a) Extended benefit period means a period which begins with the third week after a week for which there is a state "on" indicator and ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state "off" indicator or

(ii) the thirteenth consecutive week of such period, except that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state;

(b) Extended benefits means benefits, including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85, payable to an individual for weeks of unemployment in his or her eligibility period;

(c) Eligibility period of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Notwithstanding any other provision of the Employment Security Law, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year multiplied by the individual's weekly benefit amount for extended benefits;

(d) Exhaustee means an individual who, with respect to any week of unemployment in his or her eligibility period:

(i) (A) Has received, prior to such week, all of the regular benefits that were available to him or her under the Employment Security Law of this state or under the unemployment insurance law of any other state, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen or ex-servicewomen under 5 U.S.C. chapter 85, in his or her current benefit year that includes such week, except for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits that were available to him or her although as a result of a pending appeal with respect to wages or employment or both wages and employment that were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular benefits; or

(B) his or her benefit year having expired prior to such week, has no, or insufficient, wages or employment or both wages and employment on the basis of which he or she could establish a new benefit year that would include such week;

(ii) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

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(iii) Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is considered an exhaustee;

(e) Rate of insured unemployment means the percentage, used by the commissioner in determining whether there is a state "on" or state "off" indicator, derived by dividing

(i) the average weekly number of individuals filing claims for regular compensation under the Employment Security Law for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his or her reports to the United States Secretary of Labor, by

(ii) the average monthly employment covered under the Employment Security Law for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period;

(f) Regular benefits means benefits payable to an individual under the Employment Security Law of this state or under the unemployment insurance law of any other state, including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85, other than extended benefits;

(g) State "off" indicator means a week that the commissioner determines that, for the period consisting of such week and the immediately preceding twelve weeks, neither subdivision (1)(h)(i) or (1)(h)(ii) of this section was satisfied; and

(h) State "on" indicator means a week that the commissioner determines that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under the Employment Security Law:

(i) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent or

(ii) equaled or exceeded six percent.

(2) Except when the result would be inconsistent with the other provisions of this section, as provided in the rules and regulations of the commissioner, the provisions of the Employment Security Law which apply to claims for or payment of regular benefits shall apply to claims for and payment of extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the commissioner finds that with respect to such week:

(a) Such individual is an exhaustee;

(b) such individual has satisfied the requirements of the Employment Security Law for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits;

(c) sections 48-628.03 and 48-628.04 do not apply; and

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(d) such individual has been paid wages for insured work during the individual's base period equal to at least one and one-half times the wages paid in that calendar quarter of the individual's base period in which such wages were highest.

(3) The weekly extended benefit amount payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to the weekly benefit amount payable to him or her during his or her applicable benefit year. The total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts: Fifty percent of the total amount of regular benefits which were payable to him or her under the Employment Security Law in his or her applicable benefit year; or thirteen times his or her weekly benefit amount which was payable to him or her under the Employment Security Law for a week of total unemployment in the applicable benefit year.

(4) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the commissioner shall make an appropriate public announcement. Computations required to determine the rate of insured unemployment shall be made by the commissioner in accordance with regulations prescribed by the United States Secretary of Labor. Any amount of extended benefits payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

(5) Notwithstanding any other provision of the Employment Security Law, during an extended benefit period, the Governor may provide for the payment of emergency unemployment compensation pursuant to Public Law 110-252, as amended, or any substantially similar federal unemployment compensation paid entirely from federal funds to individuals prior to the payment of extended benefits pursuant to sections 48-628.02 to 48-628.04.

**Source:** Laws 1971, LB 651, § 7; Laws 1972, LB 1392, § 5; Laws 1977, LB 509, § 6; Laws 1979, LB 581, § 4; Laws 1981, LB 470, § 4; Laws 1982, LB 801, § 3; Laws 1984, LB 746, § 3; Laws 1985, LB 339, § 23; Laws 2010, LB1055, § 1.

**Effective Date:** July 15, 2010

### **48-628.03. Extended benefits; eligibility; seek or accept suitable work; suitable work, defined.**

(1) An individual shall be ineligible for payment of extended benefits for any week of unemployment in his or her eligibility period if the commissioner finds that during such period

(a) he or she failed to accept any offer of suitable work or failed to apply for any suitable work to which he or she was referred by the commissioner or

(b) he or she failed to actively engage in seeking work as prescribed under subsection (5) of this section.

(2) Any individual who has been found ineligible for extended benefits by reason of subsection (1) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he or she

(a) has been employed in each of four subsequent weeks, whether or not consecutive, and

(b) has earned remuneration equal to not less than four times the extended weekly benefit amount.

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(3) For purposes of this section, the term suitable work shall mean, with respect to any individual, any work which is within such individual's capabilities and for which the gross average weekly remuneration payable for the work exceeds the sum of the individual's average weekly benefit amount payable to him or her during his or her applicable benefit year, plus the amount, if any, of supplemental unemployment compensation benefits as defined in section 501(c)(17)(D) of the Internal Revenue Code payable to such individual for such week. Such work must also pay wages equal to the higher of the federal minimum wage or the applicable state or local minimum wage. No individual shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitability contained in this subsection if

(a) the position was not offered to such individual in writing or was not listed with the employment service,

(b) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subdivision (3) of section 48-628, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection, or

(c) the individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in subdivision (3) of section 48-628 without regard to the definition specified by this subsection.

(4) Notwithstanding the provisions of subsection (3) of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth under subdivision (3)(c) of section 48-628, nor shall an individual be denied benefits if such benefits would be deniable by reason of the provision set forth in subdivision (3)(d) of section 48-628.

(5) For the purposes of subsection (1) of this section, an individual shall be treated as actively engaged in seeking work during any week if the individual has engaged in a systematic and sustained effort to obtain work during such week and the individual furnishes tangible evidence that he or she has engaged in such effort during such week.

(6) The state employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in subsection (3) of this section.

(7) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if such individual has been disqualified for benefits under subdivision (1), (2), or (3) of section 48-628 unless such individual has earned wages for services performed in subsequent employment in an amount not less than four hundred dollars.

**Source:** Laws 1981, LB 470, § 5; Laws 1982, LB 801, § 4; Laws 1993, LB 47, § 1; Laws 1995, LB 1, § 10; Laws 1995, LB 574, § 53; Laws 2000, LB 953, § 8; Laws 2010, LB1055, § 2.

**Effective Date:** July 15, 2010

### **48-628.04. Extended benefits; payments not required; when.**

(1) Except as provided in subsection (2) of this section, payment of extended benefits shall not be made to any individual for any week if:

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(a) extended benefits would, but for this section, have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan, and

(b) an extended benefit period is not in effect for such week in such state.

(2) Subsection (1) of this section shall not apply with respect to the first two weeks for which extended benefits are payable, determined without regard to this section, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the benefit year.

**Source:** Laws 1981, LB 470, §6.

**48-628.05. Additional unemployment benefits; conditions; amount; when benefits payable.** (1) In addition to any other unemployment benefits to which an individual is entitled under the Employment Security Law, an individual who has exhausted all regular unemployment benefits for which he or she has been determined eligible shall continue to be eligible for up to twenty-six additional weeks of unemployment benefits if such individual:

(a) (i) Was involuntarily separated from employment as a result of a permanent reduction of operations at the individual's place of employment or (ii) is unemployed as the result of a separation from a declining occupation;

(b) Is enrolled and making satisfactory progress in a

(i) training program approved for him or her by the commissioner or

(ii) job training program authorized under the federal Workforce Investment Act of 1998, as amended;

(c) Is receiving training which is preparing the individual for entry into a high-demand occupation;

(d) Is enrolled in training no later than the end of the benefit year established with respect to the separation that makes the individual eligible for the training benefit. Individuals shall be notified of the enrollment requirement at the time of their initial determination of eligibility for regular benefits; and

(e) Is not receiving similar stipends or other training allowances for nontraining costs. Similar stipend means an amount provided under a program with similar aims, such as providing training to increase employability, and in approximately the same amounts.

(2) The amount of unemployment benefits payable to an individual for a week of unemployment under this section shall be equal to the amount of unemployment benefits which he or she has been determined eligible for under section 48-624 less any deductions or offsets authorized under the Employment Security Law.

(3) If an individual begins to receive unemployment benefits under this section while enrolled in a training program described in subsection (1) of this section during a benefit year, such individual shall continue to receive such benefits so long as he or she continues to make satisfactory progress in such training program, except that such benefits shall not exceed twenty-six times the individual's weekly benefit amount for the most recent benefit year as determined under section 48-624.

(4) No benefits shall be payable under this section until the individual has exhausted all

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- (a) regular unemployment benefits,
- (b) extended benefits as defined in subdivision (1)(b) of section 48-628.02, and
- (c) unemployment benefits paid entirely from federal funds to which he or she is entitled, including, but not limited to, trade readjustment assistance, emergency unemployment compensation, or other similar federally funded unemployment benefits.

(5) For purposes of this section, regular unemployment benefits means all unemployment benefits for which an individual is eligible payable under sections 48-624 to 48-626, extended unemployment benefits payable under section 48-628.02, and any unemployment benefits funded solely by the federal government.

**Source:** Laws 2010, LB1020, § 5.

**Operative Date:** July 1, 2011

**48-629. Claims; rules and regulations for filing.** Claims for benefits shall be made in accordance with such rules and regulations as the commissioner may prescribe. Each employer shall post and maintain printed statements of such rules and regulations in places readily accessible to individuals in his or her service and shall make available to each such individual at the time he or she becomes unemployed, a printed statement of such rules and regulations. Such printed statements shall be supplied by the commissioner to each employer without cost to the employer.

**Source:** Laws 1937, c. 108, §6, p. 378; Laws 1941, c. 94, §4, p. 384; C.S.Supp.,1941, §48-706; R.S.1943, §48-629; Laws 1985, LB 339, §24.

**Annotations:**

- Claims for benefits were filed under this section. A. Borchman Sons v. Carpenter, 166 Neb. 322, 89 N.W.2d 123 (1958).

**48-629.01. Claims; advisement to claimant; amounts deducted; how treated.**

(1) An individual filing a new claim for unemployment compensation shall, at the time of the filing of such claim, be advised that:

- (a) Unemployment compensation is subject to federal and state income tax;
- (b) Requirements exist pertaining to estimated tax payments;
- (c) The individual may elect to have federal income tax withheld from the individual's payment of unemployment compensation at the amount specified in the Internal Revenue Code; and
- (d) The individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the Unemployment Compensation Fund until transferred to the federal Internal Revenue Service as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld under this section only after amounts are deducted and

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withheld for any overpayments of unemployment compensation, child support obligations, or any other amounts required to be withheld under the Employment Security Law.

**Source:** Laws 1996, LB 1072, §2.

**48-630. Claims; determinations by deputy.** A determination upon a claim filed pursuant to section 48-629 shall be made promptly by a representative designated by the commissioner, hereinafter referred to as a deputy, and shall include a statement as to whether and in what amount claimant is entitled to benefits for the week with respect to which the determination is made and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under subdivision (5) of section 48-627, and, if so, the first day of the benefit year, his or her weekly benefit amount, and the maximum total amount of benefits payable to him or her with respect to such benefit year. Any benefits to which a claimant has been found eligible shall not be withheld because of the filing of an appeal under section 48-634 and such benefits shall be paid until the appeal tribunal has rendered its decision modifying or reversing the determination allowing such benefits if the claimant is otherwise eligible. Any benefits received by any person to which, under a redetermination or decision pursuant to sections 48-630 to 48-640, he or she has been found not entitled shall be treated as excessive payments in accordance with the provisions of section 48-665. Whenever any claim involves the application of the provisions of subdivision (4) of section 48-628, the deputy shall promptly transmit his or her full findings of fact, with respect to that subdivision, to the commissioner, who, on the basis of the evidence submitted and such additional evidence as he or she may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issue involved under the subdivision, which shall be deemed to be the decision of the deputy. All claims arising out of the same alleged labor dispute may be considered at the same time. The parties shall be promptly notified of the determination, together with the reasons therefor, and such determination shall be deemed to be the final decision on the claim, unless an appeal is filed with the appeal tribunal in the manner prescribed in section 48-634.

**Source:** Laws 1937, c. 108, §6, p. 379; Laws 1941, c. 94, §4, p. 384; C.S.Supp.,1941, §48-706; R.S.1943, §48-630; Laws 1969, c. 403, §1, p. 1399; Laws 1972, LB 1392, §6; Laws 1985, LB 338, §1; Laws 1995, LB 1, §11; Laws 1995, LB 240, §2.

**Annotations:**

- Deputy commissioner of labor is agent who is required initially to make determination of case. *Beecham v. Falstaff Brewing Corporation*, 150 Neb. 792, 36 N.W.2d 233 (1949).

**48-631. Claims; redetermination; time; notice; appeal.** The deputy may reconsider a determination whenever he or she finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to such determination, but not considered in connection therewith, have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentations of fact, but no such redetermination shall be made after two years from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in section 48-630 with respect to notice of an original determination. If the amount of benefits is increased or decreased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase or decrease may be filed in the manner and subject to the limitations provided in section 48-634. Subject to the same limitations and for the same reasons, the Commissioner of Labor may reconsider the determination, in any case in which the final decision has been rendered by an appeal tribunal or a court, and may apply to the tribunal or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

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**Source:** Laws 1941, c. 94, § 4, p. 385; C.S.Supp.,1941, § 48-706; R.S.1943, § 48-631; Laws 1961, c. 238, § 5, p. 711; Laws 2011, LB11, § 1.

**Effective Date:** August 27, 2011.

**48-632. Claims; determination; notice; persons entitled.** Notice of a determination upon a claim shall be promptly given to the claimant by delivery thereof or by mailing such notice to his or her last-known address. In addition, notice of any determination, together with the reasons therefor, shall be promptly given in the same manner to any employer by whom claimant was employed on or after the first day of his or her base period, and who has indicated prior to the determination, in such manner as required by rule and regulation of the commissioner, that such individual may be ineligible or disqualified under any provision of the Employment Security Law.

**Source:** Laws 1941, c. 94, §4, p. 385; C.S.Supp.,1941, §48-706; R.S.1943, §48-632; Laws 1985, LB 339, §25.

**48-633. Appeal tribunals; qualifications; powers; duties.**

(1) To hear and decide disputed claims, the commissioner shall appoint one or more impartial appeal tribunals consisting in each case of an administrative law judge, who shall be an attorney selected in accordance with section 48-609.

(2) Whenever the commissioner finds that the hearing of an appeal will be unreasonably delayed by the unavailability of an administrative law judge appointed in accordance with subsection (1) of this section, he or she may appoint a special administrative law judge to conduct the hearing. Such special administrative law judge may be appointed without regard to the qualifications set forth in subsection (1) of this section and shall have all the powers and perform all the duties of an administrative law judge appointed in accordance with subsection (1) of this section.

(3) Recognizing that a clear separation of functions and the protection of fair and impartial hearings are fundamental to the integrity of the adjudicative process, administrative oversight of the appeal tribunal and its administrative law judges shall be the responsibility of the commissioner. The commissioner shall provide the appeal tribunals with proper facilities and assistants for the execution of their functions. Notwithstanding any delegation of administrative oversight, the commissioner shall maintain the appeal tribunal and its staff as an identifiable unit within the division or office to which it is assigned, under the supervision of a chief administrative law judge. In determining eligibility of a claimant for unemployment benefits, an appeal tribunal shall not be bound by department policy or interpretations that are not part of a duly adopted regulation or that have not been approved by a court of competent jurisdiction. No administrative law judge shall be subject to discipline, poor evaluation, or loss of pay or pay increase for failure to follow a department policy or interpretation on unemployment benefit eligibility that has not been adopted as a regulation or approved by a court of competent jurisdiction. An attorney employed by the commissioner shall not appear before an appeal tribunal in any appeal hearing presided over by an administrative law judge for whom he or she is the immediate supervisor.

**Source:** Laws 1937, c. 108, §6, p. 380; Laws 1941, c. 94, §4, p. 386; C.S.Supp.,1941, §48-706; R.S.1943, §48-633; Laws 1947, c. 175, §7, p. 576 ; Laws 1955, c. 190, §8, p. 547; Laws 1967, c. 298, §2, p. 813; Laws 1982, LB 410, §1; Laws 2001, LB 192, §9.

**48-634. Administrative appeal; notice; time allowed; hearing; parties.** The claimant or any other party entitled to notice of a determination as provided in section 48-632, may file an appeal from such determination with an appeal tribunal. Notice of appeal must be in writing or in accordance with rules and regulations adopted and promulgated by the commissioner and must be delivered and received within

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twenty days after the date of mailing of the notice of determination to his or her last-known address or, if such notice is not mailed, after the date of delivery of such notice of determination. For good cause shown, the tribunal may also take jurisdiction over appeals filed outside the prescribed appeal period. Unless the appeal is withdrawn, the appeal tribunal, after affording the parties reasonable opportunities for a fair hearing, shall make findings and conclusions and on the basis thereof affirm, modify, or reverse such determination. If an appeal involves a question as to whether services were performed by the claimant in employment or for an employer, the tribunal shall give special notice of such issue and of the pendency of the appeal to the employer and to the commissioner, both of whom shall be parties to the proceeding and be afforded a reasonable opportunity to adduce evidence bearing on such question. The parties shall be promptly notified of the tribunal's decision and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision.

**Source:** Laws 1941, c. 94, §4, p. 386; C.S.Supp.,1941, §48-706; R.S.1943, §48-634; Laws 1979, LB 328, §1; Laws 1995, LB 239, §1; Laws 2001, LB 192, §10.

**Annotations:**

- Before appeal tribunal of Labor Department may take jurisdiction over appeal filed beyond limitation date for newly discovered evidence, appellant must demonstrate new evidence would make a valid claim or defense. *Nicholson v. City of Bellevue*, 215 Neb. 540, 339 N.W.2d 758 (1983).
- A notice of appeal filed pursuant to this section, which is properly addressed and to which sufficient postage has been affixed, shall be valid if it is deposited in the United States mail within ten days after the mailing of the notice of the deputy's determination. *Parson v. Chizek*, 201 Neb. 754, 272 N.W.2d 48 (1978).
- Administrative appeal within division is provided. *A. Borchman Sons v. Carpenter*, 166 Neb. 322, 89 N.W.2d 123 (1958).

**48-635. Administrative appeals; procedure; rules of evidence; record.** The manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with rules and regulations prescribed by the commissioner for determining the rights of the parties, whether or not such rules and regulations conform to common-law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with the disputed claims. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

**Source:** Laws 1937, c. 108, §6, p. 380; Laws 1941, c. 94, §4, p. 387; C.S.Supp.,1941, §48-706; R.S.1943, §48-635; Laws 1985, LB 339, §26.

**48-636. Administrative appeals; decisions; conclusiveness.** Except insofar as reconsideration of any determination is had under sections 48-630 to 48-632, any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal which has become final, shall be conclusive for all the purposes of the Employment Security Law as between the Commissioner of Labor, the claimant, and all employers who had notice of such determination, redetermination, or decision. Subject to appeal proceedings and judicial review as provided in sections 48-633 to 48-644, any determination, redetermination, or decision as to rights to benefits shall be conclusive for all the purposes of such law and shall not be subject to collateral attack by any employer.

**Source:** Laws 1941, c. 94, §4, p. 387; C.S.Supp.,1941, §48-706; R.S.1943, §48-636; Laws 1953, c. 167, §7, p. 533; Laws 1985, LB 339, §27.

**Annotations:**

- A determination made pursuant to the Employment Security Law is conclusive only for the purpose of proceedings governed by the Employment Security Law. *Ballard v. Giltner Pub. Sch.*, 241 Neb. 970, 492 N.W.2d 855 (1992).
- Denial of unemployment compensation benefits on ground of employee misconduct

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was not res judicata precluding employee's action for breach of employment contract. A determination made pursuant to Employment Security Law is conclusive only for purpose of proceedings governed by Employment Security Law. *Ballard v. Giltner Public Schools, School District No. 2, Hamilton County*, 241 Neb. 970, 492 N.W.2d 855 (1992).

- Administrative law judge's decision reversing finding at initial unemployment determination that employees were guilty of willful intentional misconduct was not entitled to res judicata effect in employees' subsequent action against their employer challenging their discharge. *White v. Ardan, Inc.*, 230 Neb. 11, 430 N.W.2d 27 (1988).

**48-637. Administrative appeals; decisions; effect in subsequent proceedings; certification of questions.** The final decisions of an appeal tribunal, and the principles of law declared by it in arriving at such decisions, unless expressly or impliedly overruled by a later decision of the tribunal or by a court of competent jurisdiction, shall be binding upon the commissioner and any deputy in subsequent proceedings which involve similar questions of law; PROVIDED, that if in connection with any subsequent proceeding the commissioner or a deputy has serious doubt as to the correctness of any principle so declared he may certify his findings of fact in such case, together with the question of law involved to the appeal tribunal, which, after giving notice and reasonable opportunity for hearing upon the law to all parties to such proceedings, shall thereupon certify to the commissioner, such deputy and such parties its answer to the question submitted. If the question thus certified to the appeal tribunal arises in connection with a claim for benefits, the tribunal in its discretion may remove to itself the entire proceedings on such claim, and, after proceeding in accordance with the requirements of sections 48-633 to 48-643 with respect to proceedings before an appeal tribunal, shall render its decision upon the entire claim.

**Source:** Laws 1941, c. 94, §4, p. 387; C.S.Supp., 1941, §48-706.

**Annotations:**

- Provision is made for appeal to district court from determination of appeal tribunal. *Beecham v. Falstaff Brewing Corporation*, 150 Neb. 792, 36 N.W.2d 233 (1949).

**48-638. Appeal to district court; procedure.** Any party to the proceedings before the appeal tribunal may appeal the tribunal's decision by filing a petition:

(1) in the district court of the county in which the individual claiming benefits claims to have been last employed or in which such claimant resides,

(2) in any district court of this state upon which the parties may agree, or

(3) if neither subdivision (1) or (2) of this section applies, then in the district court of Lancaster County. If the commissioner is not the petitioning party, he or she shall be a party defendant in every appeal. Such appeal shall otherwise be governed by the Administrative Procedure Act.

**Source:** Laws 1941, c. 94, §4, p. 388; C.S.Supp., 1941, §48-706; R.S. 1943, §48-638; Laws 1945, c. 115, §4, p. 384; Laws 1957, c. 208, §4, p. 731; Laws 1979, LB 328, §2; Laws 1986, LB 950, §4; Laws 1988, LB 352, §85; Laws 1996, LB 1072, §4.

**Cross Reference:** Administrative Procedure Act, see §84-920.

**Annotations:**

- In an appeal to the district court under this section by the Commissioner of Labor the filing of the transcript required by the statute is not jurisdictional. The transcript filing requirement in this section is distinguishable from that in an error proceeding because it applies only to the commissioner, review in the district court is de novo, and the statute permits the introduction of additional evidence in the review proceeding. *Sorensen v. Bernhardt*, 223 Neb. 395, 389 N.W.2d 583 (1986).
- The Employment Security Law provides one avenue of judicial appeal when the dispute concerns benefit liability and another when the dispute concerns contribution

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- liability. Northern Messenger v. Sorensen, 218 Neb. 846, 359 N.W.2d 787 (1984).
- Appeal from decision of appeal tribunal is provided. A. Borchman Sons v. Carpenter, 166 Neb. 322, 89 N.W.2d 123 (1958).
- The Commissioner of Labor is an interested party in any action under the provisions of the Unemployment Compensation Act, and may appeal when he feels himself aggrieved. Woodmen of the World Life Ins. Soc. v. Olsen, 141 Neb. 12, 2 N.W.2d 353 (1942).
- An employee who has established rights to benefits under the Unemployment Compensation Act is a necessary party for a review of the decision on appeal. Brown v. Haith, 140 Neb. 717, 1 N.W.2d 825 (1942).

### **48-639. Repealed.**

**Source:** Laws 1988, LB 352, s. 190.

### **48-640. Appeal; procedure.** An appeal may be taken from the decision of the district court to the Court of Appeals in accordance with the Administrative Procedure Act.

**Source:** Laws 1941, c. 94, §4, p. 389; C.S.Supp.,1941, §48-706; R.S.1943, §48-640; Laws 1985, LB 338, §3; Laws 1985, LB 339, §28; Laws 1988, LB 352, §86; Laws 1991, LB 732, §114.

**Cross Reference:** Administrative Procedure Act, see §84-920.

#### **Annotations:**

- The Supreme Court reviews appeals under this section in the same manner as the court reviews appeals in civil cases. IBP, Inc. v. Aanenson, 234 Neb. 603, 452 N.W.2d 59 (1990).
- Supreme Court considers appeal de novo upon the record and court will reach independent conclusion on statutory interpretation question. School Dist. No. 21 v. Ochoa, 216 Neb. 191, 342 N.W.2d 665 (1984).
- This section contemplates that the Supreme Court will review de novo on the record, and it is the duty of the Supreme Court to retry the issues of fact involved in the findings complained of and to reach an independent conclusion thereon. Heimsoth v. Kellwood Co., 211 Neb. 167, 318 N.W.2d 1 (1982).
- An appeal from proceedings under this section, the Employment Security Law, is considered by the Supreme Court de novo on the record. Glionna v. Chizek, 204 Neb. 37, 281 N.W.2d 220 (1979).
- Supreme Court considers appeal de novo upon the record. A. Borchman Sons v. Carpenter, 166 Neb. 322, 89 N.W.2d 123 (1958).

### **48-641. Appeals generally; bond and filing fees not required; costs.** No bond shall be required as a condition of initiating a proceeding for judicial review or entering an appeal from the decision of the court upon such review. Costs which would be otherwise taxed to a claimant shall be taxed in such courts to the commissioner regardless of the result of any such action unless justice and equity otherwise require. Notwithstanding any general statute to the contrary, no filing fee shall be charged by an appeal tribunal or by the clerk of any court for any service required by sections 48-634 to 48-640.

**Source:** Laws 1941, c. 94, §4, p. 389; C.S.Supp.,1941, §48-706; R.S.1943, §48-641; Laws 1947, c. 175, §8, p. 577; Laws 1988, LB 352, §87.

### **48-642. Appeals; commissioner a party; representation on judicial review.** The commissioner shall be a party entitled to notice in any proceeding involving a claim for benefits before an appeal tribunal. In any proceeding for judicial review pursuant to sections 48-638 to 48-640 the commissioner may be represented by any qualified attorney employed and designated by him for that purpose, or at the commissioner's request by the Attorney General.

**Source:** Laws 1941, c. 94, §4, p. 389; C.S.Supp.,1941, §48-706.

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**48-643. Witnesses; fees.** Witnesses subpoenaed pursuant to sections 48-629 to 48-644 shall be allowed fees at a rate fixed by the commissioner and not exceeding the amount allowed for witness fees in district court. Such fees shall be deemed a part of the expense of administering the Employment Security Law.

**Source:** Laws 1937, c. 108, §6, p. 380; Laws 1941, c. 94, §4, p. 389; C.S.Supp.,1941, §48-706; R.S.1943, §48-643; Laws 1985, LB 339, §29.

**Cross Reference:** For witness fees in district court, see §33-139.

**48-644. Benefits; payment; appeal not a supersedeas; exception.** Benefits shall be promptly paid in accordance with a determination or redetermination. If pursuant to a determination or redetermination benefits are payable in any amount as to which there is no dispute, such amount of benefits shall be promptly paid regardless of any appeal. The commencement of a proceeding for judicial review pursuant to section 48-638 shall not operate as a supersedeas or stay. If a decision allowing benefits is finally reversed, no employer's account shall be charged with benefits paid pursuant to the erroneous determination, and benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal.

**Source:** Laws 1941, c. 94, §4, p. 389; C.S.Supp.,1941, §48-706; R.S.1943, §48-644; Laws 1972, LB 1392, §7.

**Annotations:**

- Generally, where there has been an award of benefits, the employee is not to be left without those benefits during appeal. *Gibson v. Kurt Mfg.*, 255 Neb. 255, 583 N.W.2d 767 (1998).

**48-645. Benefits; waiver, release, and deductions void; discrimination in hire or tenure unlawful; penalty.** Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under the Employment Security Law shall be void. Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under such law from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or her, or require or accept any waiver of any right hereunder by any individual in his or her employ, or discriminate in regard to the hiring, rehiring, or tenure of work of any individual on account of any claim made by such individual for benefits under the Employment Security Law, or in any manner obstruct or impede the filing of claims for benefits. Any employer, officer, or agent of an employer who violates any provision of this section shall be guilty of a Class II misdemeanor.

**Source:** Laws 1937, c. 108, §15, p. 399; Laws 1941, c. 94, §11, p. 399; C.S.Supp.,1941, §48-714; R.S.1943, §48-645; Laws 1977, LB 40, §292; Laws 1985, LB 339, §30

**48-646. Benefits; action to recover; fees; representation.** No individual claiming benefits shall be charged fees of any kind in any proceeding under the Employment Security Law except as provided herein. Any individual claiming benefits in any proceeding before the commissioner or an appeal tribunal or his, her, or its representative may be represented by counsel, any other duly authorized agent, or a person of his or her choice. Any individual claiming benefits in any proceeding before a court may be represented by counsel. Such counsel may charge a reasonable fee for such services.

**Source:** Laws 1937, c. 108, §15, p. 399; C.S.Supp.,1941, §48-714; R.S.1943, §48-646; Laws 1947, c. 175, §9, p. 577; Laws 1949, c. 163, §11, p. 427; Laws 1977, LB 40, §293; Laws 1982, LB 410, §2; Laws 1985, LB 339, §31; Laws 1986, LB 950, §5.

**Annotations:**

- This statute requires that the amount of attorney fees charged by a lawyer to his client

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be approved by the Commissioner of Labor. It does not authorize the district court to award attorney fees for which approval by the commissioner has not been sought. School Dist. No. 20 v. Commissioner of Labor, 208 Neb. 663, 305 N.W.2d 367 (1981).

**48-647. Benefits; assignments void; exemption from legal process; exception; child support obligations; Supplemental Nutrition Assistance Program benefits overissuance; disclosure required; collection.** (1) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 48-623 to 48-626 shall be void except as set forth in this section. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his or her spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. Any assignment, pledge, or encumbrance of any right or claim to contributions or to any money credited to any employer's reserve account in the Unemployment Compensation Fund shall be void, and the same shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and any waiver of any exemption provided for in this section shall be void.

(2) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes child support obligations as defined under subdivision (h) of this subsection. If such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the Department of Health and Human Services that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation otherwise payable to an individual disclosing child support obligations:

(i) The amount specified by the individual to the commissioner to be deducted under this subsection, if neither subdivision (ii) nor (iii) of this subdivision is applicable;

(ii) The amount, if any, determined pursuant to an agreement between the Department of Health and Human Services and such individual owing the child support obligations to have a specified amount withheld and such agreement being submitted to the commissioner, unless subdivision (iii) of this subdivision is applicable; or

(iii) The amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in subdivision (2)(i) of this section, properly served upon the commissioner.

(c) Any amount deducted and withheld under subdivision (b) of this subsection shall be paid by the commissioner to the Department of Health and Human Services.

(d) Any amount deducted and withheld under subdivision (b) or (g) of this subsection shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the Department of Health and Human Services in satisfaction of his or her child support obligations.

(e) For purposes of subdivisions (a) through (d) and (g) of this subsection, the term unemployment compensation shall mean any compensation payable under the Employment Security Law and including amounts payable by the commissioner pursuant to an agreement by

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any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection shall apply only if appropriate arrangements have been made for reimbursement by the Department of Health and Human Services for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the department.

(g) The Department of Health and Human Services and the commissioner shall develop and implement a collection system to carry out the intent of this subdivision. The collection system shall, at a minimum, provide that:

(i) The commissioner shall periodically notify the Department of Health and Human Services of the information listed in section 43-1719 with respect to individuals determined to be eligible for unemployment compensation during such period;

(ii) Unless the county attorney, the authorized attorney, or the Department of Health and Human Services has sent a notice on the same support order under section 43-1720, upon the notification required by subdivision (2)(g)(i) of this section, the Department of Health and Human Services shall send notice to any such individual who owes child support obligations and who is subject to income withholding pursuant to subdivision (2)(a), (2)(b)(ii), or (2)(b)(iii) of section 43-1718.01. The notice shall be sent by certified mail to the last-known address of the individual and shall state the same information as required under section 43-1720;

(iii) (A) If the support obligation is not based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the Department of Health and Human Services shall hold a hearing within fifteen days of the date of receipt of the request. The hearing shall be in accordance with the Administrative Procedure Act. The assignment shall be held in abeyance pending the outcome of the hearing. The department shall notify the individual and the commissioner of its decision within fifteen days of the date the hearing is held; and

(B) If the support obligation is based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the county attorney or authorized attorney shall apply the procedures described in sections 43-1732 to 43-1742;

(iv) (A) If no hearing is requested by the individual under this subsection or pursuant to a notice sent under section 43-1720,

(B) if after a hearing under this subsection or section 43-1721 the Department of Health and Human Services determines that the assignment should go into effect,

(C) in cases in which the court has ordered income withholding for child support pursuant to subsection (1) of section 43-1718.01, or

(D) in cases in which the court has ordered income withholding for child support pursuant to section 43-1718.02 and the case subsequently becomes one in which child support collection services are being provided under Title IV-D of the

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federal Social Security Act, as amended, the Department of Health and Human Services shall certify to the commissioner the amount to be withheld for child support obligations from the individual's unemployment compensation. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child support when added to the amount withheld to pay current support shall not exceed such maximum amount;

(v) The collection system shall comply with the requirements of Title III and Title IV-D of the federal Social Security Act, as amended;

(vi) The collection system shall be in addition to and not in substitution for or derogation of any other available remedy; and

(vii) The Department of Health and Human Services and the commissioner shall adopt and promulgate rules and regulations to carry out subdivision (2)(g) of this section.

(h) For purposes of this subsection, the term child support obligations shall include only obligations which are being enforced pursuant to a plan described in section 454 of the federal Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the federal Social Security Act.

(i) For purposes of this subsection, the term legal process shall mean any writ, order, summons, or other similar process in the nature of garnishment, which:

(i) Is issued by a court of competent jurisdiction of any state, territory, or possession of the United States or an authorized official pursuant to order of such a court of competent jurisdiction or pursuant to state law. For purposes of this subdivision, the chief executive officer of the Department of Health and Human Services shall be deemed an authorized official pursuant to order of a court of competent jurisdiction or pursuant to state law; and

(ii) Is directed to, and the purpose of which is to compel, the commissioner to make a payment for unemployment compensation otherwise payable to an individual in order to satisfy a legal obligation of such individual to provide child support.

(j) Nothing in this subsection shall be construed to authorize withholding from unemployment compensation of any support obligation other than child support obligations.

(3) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes an uncollected overissuance, as defined in 7 U.S.C. 2022(c)(1) as such section existed on January 1, 2009, of Supplemental Nutrition Assistance Program benefits, if not otherwise known or disclosed to the state Supplemental Nutrition Assistance Program agency. The commissioner shall notify the state Supplemental Nutrition Assistance Program agency enforcing such obligation of any individual disclosing that he or she owes an uncollected overissuance whom the commissioner determines is eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance

(i) the amount specified by the individual to the commissioner to be deducted and

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withheld under this subsection,

(ii) the amount, if any, determined pursuant to an agreement submitted to the state Supplemental Nutrition Assistance Program agency under 7 U.S.C. 2022(c)(3)(A) as such section existed on January 1, 2009, or

(iii) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to 7 U.S.C. 2022(c)(3)(B) as such section existed on January 1, 2009.

(c) Any amount deducted and withheld under this subsection shall be paid by the commissioner to the state Supplemental Nutrition Assistance Program agency.

(d) Any amount deducted and withheld under subdivision (b) of this subsection shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by such individual to the state Supplemental Nutrition Assistance Program agency as repayment of the individual's uncollected overissuance.

(e) For purposes of this subsection, unemployment compensation means any compensation payable under the Employment Security Law, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection applies only if arrangements have been made for reimbursement by the state Supplemental Nutrition Assistance Program agency for the administrative costs incurred by the commissioner under this subsection which are attributable to the repayment of uncollected overissuances to the state Supplemental Nutrition Assistance Program agency.

**Source:** Laws 1937, c. 108, § 15, p. 400; C.S.Supp.,1941, § 48-714; R.S.1943, § 48-647; Laws 1982, LB 801, § 5; Laws 1985, LB 339, § 32; Laws 1985, Second Spec. Sess., LB 7, § 76; Laws 1990, LB 974, § 1; Laws 1993, LB 523, § 26; Laws 1994, LB 1224, § 81; Laws 1995, LB 240, § 3; Laws 1996, LB 1044, § 275; Laws 1996, LB 1155, § 21; Laws 1997, LB 307, § 106; Laws 1997, LB 864, § 5; Laws 1998, LB 1073, § 56; Laws 2007, LB296, § 217; Laws 2009, LB288, § 15.

**Operative Date:** August 30, 2009

**Cross References:** Administrative Procedure Act, see section 84-920.

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### CONTRIBUTIONS

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**48-648. Combined tax; employer; payment; rules and regulations governing; related corporations or limited liability companies; professional employer organization.** (1) Combined tax shall accrue and become payable by each employer not otherwise entitled to make payments in lieu of contributions for each calendar year in which he or she is subject to the Employment Security Law, with respect to wages for employment. Such combined tax shall become due and be paid by each employer to the commissioner for the State Unemployment Insurance Trust Fund and the Unemployment Trust Fund in such manner and at such times as the commissioner may, by rule and regulation, prescribe and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. In the payment of any combined tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. If the combined tax due for any reporting period is less than five dollars, the employer need not remit the combined tax.

(2) If two or more related corporations or limited liability companies concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations or limited liability companies, each such corporation or limited liability company shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations or limited liability companies. An employee of a wholly owned subsidiary shall be considered to be concurrently employed by the parent corporation, company, or other entity and the wholly owned subsidiary whether or not both companies separately provide remuneration.

(3) The professional employer organization shall report and pay combined tax, penalties, and interest owed upon wages earned by worksite employees under the client's employer account number using the client's combined tax rate. The client is liable for the payment of unpaid combined tax, penalties, and interest owed upon wages paid to worksite employees, and the worksite employees shall be considered employees of the client for purposes of the Employment Security Law.

**Source:** Laws 1937, c. 108, § 7, p. 382; Laws 1941, c. 94, § 5, p. 390; C.S.Supp., 1941, § 48-707; R.S. 1943, § 48-648; Laws 1971, LB 651, § 8; Laws 1981, LB 279, § 1; Laws 1985, LB 339, § 33; Laws 1992, LB 879, § 2; Laws 1994, LB 1337, § 7; Laws 1998, LB 834, § 1; Laws 2002, LB 921, § 3; Laws 2005, LB 484, § 7; Laws 2009, LB 631, § 5.

**Effective Date:** May 27, 2009

**48-648.01. Employer; submit quarterly wage reports; when.** The Commissioner of Labor may require by rule and regulation that each employer subject to the Employment Security Law shall submit to the commissioner quarterly wage reports on such forms and in such manner as the commissioner may prescribe. For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded

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five hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work a hardship on the employer. The quarterly wage reports shall be used by the commissioner to make monetary determinations of claims for benefits.

**Source:** Laws 1985, LB 343, § 2; Laws 1986, LB 950, § 6; Laws 2005, LB 484, § 8; Laws 2009, LB631, § 6.

**Effective Date:** May 27, 2009

**48-648.02. Wages, defined.** As used in sections 48-648 and 48-649 only, the term wages shall not include that part of the remuneration paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during a calendar year which exceeds

(1) seven thousand dollars in calendar year 2005,

(2) eight thousand dollars in calendar year 2006, and

(3) nine thousand dollars in calendar year 2007 and each calendar year thereafter unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

**Source:** Laws 2005, LB 739, §6.

**Effective Date:** September 4, 2005.

**48-649. Combined tax rate; how computed.** The commissioner shall, for each calendar year, determine the combined tax rate applicable to each employer on the basis of his or her actual experience in the payment of contributions and with respect to benefits charged against his or her separate experience account, in accordance with the following requirements:

(1) The commissioner shall, by December 1 of each calendar year, and based upon information available through the department, determine the state unemployment insurance tax rate for the following year. The state unemployment insurance tax rate shall be zero percent if:

(a) The average balance in the State Unemployment Insurance Trust Fund at the end of any three months in the preceding calendar year is greater than one percent of state taxable wages for the same preceding year; or

(b) The balance in the State Unemployment Insurance Trust Fund equals or exceeds thirty percent of the average month end balance of the state's account in the Unemployment Trust Fund for the three lowest calendar months in the preceding year.

(2) (a) If the state unemployment insurance tax rate is not zero percent as determined in this section, the combined tax rate shall be divided so that not less than eighty percent of the combined tax rate equals the contribution rate and not more than twenty percent of the combined tax rate equals the state unemployment insurance tax rate except for employers who are assigned a combined tax rate of five and four-tenths percent or more. For those employers, the state

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unemployment insurance tax rate shall equal zero and their combined tax rate shall equal their contribution rate.

(b) When the state unemployment insurance tax rate is determined to be zero percent pursuant to subdivision (1) of this section, the contribution rate for all employers shall equal one hundred percent of the combined tax rate;

(3) In calendar year 2005, an employer's combined tax rate shall be three and five-tenths percent of his or her annual payroll unless and until

(a) benefits have been payable from and chargeable to his or her experience account throughout the preceding one calendar year and

(b) contributions have been payable to the fund and credited to his or her experience account with respect to the two preceding calendar years. Subject to fair and reasonable rules and regulations of the commissioner issued with due regard for the solvency of the fund, in calendar year 2005 the combined tax rate required of each employer who meets the requirements of subdivisions (a) and (b) of this subdivision shall be based directly on his or her contributions to and benefit experience of his or her experience account and shall be determined by the commissioner for each calendar year at its beginning. Such rate shall not be greater than three and five-tenths percent of his or her annual payroll if his or her experience account exhibits a positive balance as of the beginning of such calendar year, but for any employer who has been subject to the payment of contributions for any two preceding calendar years, regardless of whether such years are consecutive, and whose experience account exhibits a negative balance as of the beginning of such calendar year, the rate shall be greater than three and five-tenths percent of his or her annual payroll but not greater than five and four-tenths percent of his or her annual payroll until such time as the experience account exhibits a positive balance, and thereafter the rate shall not be greater than three and five-tenths percent of his or her annual payroll. For calendar year 2005, the standard rate shall be five and four-tenths percent of the employer's annual payroll. As used in this subdivision, standard rate shall mean the rate from which all reduced rates are calculated;

(4) (a) Effective January 1, 2006, an employer's combined tax rate

(i) for employers other than employers engaged in the construction industry shall be the lesser of the state's average combined tax rate as determined pursuant to subdivisions (4)(e), (4)(f), and (4)(g) of this section or two and five-tenths percent and

(ii) for employers in the construction industry shall be the category twenty rate determined pursuant to subdivisions (4)(e) and (4)(f) of this section, unless and until:

(A) Benefits have been payable from and chargeable to his or her experience account throughout the preceding four calendar quarters; and

(B) Wages for employment have been paid by the employer in each of the two preceding four-calendar-quarter periods.

For purposes of this subdivision (4)(a), employers engaged in the construction industry means all employers primarily engaged in business activities classified as sector 23 business activities under the North American Industry Classification System.

(b) In no event shall the combined tax rate for employers who fail to meet the requirements of

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subdivision (4)(a) of this section be less than one and twenty-five hundredths percent.

(c) For any employer who has not paid wages for employment during each of the two four-calendar-quarter periods ending on September 30 of any year, but has paid wages for employment in any two four-calendar-quarter periods, regardless of whether such four-calendar-quarter periods are consecutive, such employer's combined tax rate for the following tax year shall be:

(i) The highest combined tax rate for employers with a positive experience account balance if the employer's experience account balance exhibits a positive balance as of September 30 of the year of rate computation; or

(ii) The standard rate if the employer's experience account exhibits a negative balance as of September 30 of the year of rate computation.

(d) Beginning with rate calculations for calendar year 2006 and each year thereafter, the combined tax rate for employers who meet the requirements of subdivision (4)(a) of this section shall be calculated according to subdivisions (4)(e), (4)(f), and (4)(g) of this section and shall be based upon the employer's experience rating record and determined from the employer's reserve ratio, which is the percent obtained by dividing the amount by which, if any, the employer's contributions credited from the time the employer first or most recently became an employer, whichever date is later, and up to and including September 30 of the year the rate computation is made, plus any part of the employer's contributions due for that year paid on or before October 31 of such year, exceed the employer's benefits charged during the same period, by the employer's average annual taxable payroll for the sixteen-consecutive-calendar-quarter period ending September 30 of the year in which the rate computation is made. For an employer with less than sixteen consecutive calendar quarters of contribution experience, the employer's average taxable payroll shall be determined based upon the four-calendar-quarter periods for which contributions are payable.

(e) Each eligible experience rated employer shall be assigned to one of twenty rate categories with a corresponding experience factor as follows:

<u>Category</u>	<u>Experience Factor</u>
1	0.00
2	0.25
3	0.40
4	0.45
5	0.50
6	0.60
7	0.65
8	0.70
9	0.80
10	0.90
11	0.95
12	1.00
13	1.05
14	1.10
15	1.20
16	1.35

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<u>Category</u>	<u>Experience Factor</u>
17	1.55
18	1.80
19	2.15
20	2.60

Eligible experience rated employers shall be assigned to rate categories from highest to lowest according to their experience reserve ratio with category one being assigned to accounts with the highest reserve ratios and category twenty being assigned to accounts with the lowest reserve ratios. Each category shall be limited to no more than five percent of the state's total taxable payroll, except that:

- (i) Any employer which has a portion of its taxable wages fall into one category and a portion into the next higher category shall be assigned to the lower category;
- (ii) No employer with a reserve ratio calculated to five decimal places equal to another employer similarly calculated shall be assigned to a higher rate than the employer to which it has the equal reserve ratio; and
- (iii) No employer with a positive experience account balance shall be assigned to category twenty.

(f) The state's reserve ratio shall be calculated by dividing the amount available to pay benefits in the Unemployment Trust Fund and the State Unemployment Insurance Trust Fund as of September 30, 2005, and each September 30 thereafter, less any outstanding obligations and amounts appropriated therefrom by the state's total wages from the four calendar quarters ending on such September 30. For purposes of this section, total wages means all remuneration paid by an employer in employment. The state's reserve ratio shall be applied to the table in this subdivision to determine the yield factor for the upcoming rate year.

<u>State's Reserve Ratio</u>	=	<u>Yield Factor</u>
1.45 percent and above	=	0.70
1.30 percent up to but not including 1.45	=	0.75
1.15 percent up to but not including 1.30	=	0.80
1.00 percent up to but not including 1.15	=	0.90
0.85 percent up to but not including 1.00	=	1.00
0.70 percent up to but not including 0.85	=	1.10
0.60 percent up to but not including 0.70	=	1.20
0.50 percent up to but not including 0.60	=	1.25
0.45 percent up to but not including 0.50	=	1.30
0.40 percent up to but not including 0.45	=	1.35
0.35 percent up to but not including 0.40	=	1.40
0.30 percent up to but not including 0.35	=	1.45
Below 0.30 percent	=	1.50

Once the yield factor for the upcoming rate year has been determined, it is multiplied by the amount of unemployment benefits paid from combined tax during the four calendar quarters ending September 30 of the preceding year. The resulting figure is the planned yield for the rate year. The planned yield is divided by the total taxable wages for the four calendar quarters ending September 30 of the previous year and carried to four decimal places to create the average

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combined tax rate for the rate year.

(g) The average combined tax rate is assigned to rate category twelve as established in subdivision (4)(e) of this section. Rates for each of the remaining nineteen categories are determined by multiplying the average combined tax rate by the experience factor associated with each category and carried to four decimal places. Employers who are delinquent in filing their combined tax reports as of October 31 of any year shall be assigned to category twenty for the following calendar year unless the delinquency is corrected prior to December 31 of the year of rate calculation.

(h) As used in this subdivision (4) of this section, standard rate means the rate assigned to category twenty for that year. For calendar years 2006 and thereafter, the standard rate shall be not less than five and four-tenths percent of the employer's annual taxable payroll;

(5) Any employer may at any time make voluntary contributions up to the amount necessary to qualify for one rate category reduction, additional to the required contributions, to the fund to be credited to his or her account. Voluntary contributions received after March 10, 2005, for rate year 2005 or January 10 for rate year 2006 and thereafter shall not be used in rate calculations for the same calendar year;

(6) As used in sections 48-648 to 48-654, the term payroll means the total amount of wages during a calendar year, except as otherwise provided in section 48-654, by which the combined tax was measured; and

(7) (a) The state or any of its instrumentalities shall make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of the state or any of its instrumentalities. The commissioner after the end of each calendar quarter shall notify any state instrumentality or other public employer of the amount of regular benefits and one-half the amount of extended benefits paid that are attributable to service in its employment and the instrumentality or public employer so notified shall reimburse the fund within thirty days after receipt of such notice. For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to pay the reimbursement by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment of the reimbursement by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to pay the reimbursement by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment of the reimbursement by an electronic method would work a hardship on the employer.

(b) After December 31, 1977, the state or any of its political subdivisions and any instrumentality of one or more of the foregoing or any other governmental entity for which services in employment as is provided by subdivision (4)(a) of section 48-604 are performed shall be required to pay contributions and after December 31, 1996, combined tax on wages paid for services rendered in its or their employment on the same basis as any other employer who is liable for the payment of combined tax under the Employment Security Law, unless the state or any political subdivision thereof and any instrumentality of one or more of the foregoing or any other governmental entity for which such services are performed files with the commissioner its written election not later than January 31, 1978, or if such employer becomes subject to this section after January 1, 1978, not later than thirty days after such subjectivity begins, to become

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liable to make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer prior to December 31, 1978, and in an amount equal to the full amount of regular benefits plus the full amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer after January 1, 1979. Eligible employers electing to make payments in lieu of contributions shall not be liable for state unemployment insurance tax payments. The commissioner, after the end of each calendar quarter, shall notify any such employer that has so elected of the amount of benefits for which it is liable to pay pursuant to its election that have been paid that are attributable to service in its employment and the employer so notified shall reimburse the fund within thirty days after receipt of such notice.

(c) Any employer which makes an election in accordance with subdivision (b) of this subdivision to become liable for payments in lieu of contributions shall continue to be liable for payments in lieu of contributions for all benefits paid based upon wages paid for service in employment of such employer while such election is effective and such election shall continue until such employer files with the commissioner, not later than December 1 of any calendar year, a written notice terminating its election as of December 31 of that year and thereafter such employer shall again be liable for the payment of contributions and for the reimbursement of such benefits as may be paid based upon wages paid for services in employment of such employer while such election was effective.

**Source:** Laws 1937, c. 108, § 7, p. 382; Laws 1939, c. 56, § 5, p. 239; Laws 1941, c. 94, § 5, p. 390; C.S.Supp., 1941, § 48-707; R.S.1943, § 48-649; Laws 1947, c. 175, § 10, p. 577; Laws 1949, c. 163, § 12, p. 427; Laws 1953, c. 167, § 8, p. 533; Laws 1955, c. 190, § 9, p. 548; Laws 1972, LB 1392, § 8; Laws 1976, LB 819, § 2; Laws 1977, LB 509, § 7; Laws 1984, LB 249, § 1; Laws 1985, LB 339, § 34; Laws 1994, LB 1337, § 8; Laws 1995, LB 334, § 1; Laws 2005, LB 484, § 9; Laws 2005, LB 739, § 11; Laws 2007, LB265, § 9; Laws 2009, LB631, § 7.

**Effective Date:** May 27, 2009

**Annotations:**

- Under the Nebraska Employment Security Law, the contribution type of financing as provided by section 48-649, R.R.S.1943, and reimbursement financing under section 48-660.01, R.R.S.1943, are separate and distinct systems, and a nonprofit organization must elect to use one or the other. West Nebraska General Hospital v. Hanlon, 208 Neb. 173, 302 N.W.2d 694 (1981).

**48-649.01.** Repealed.

**Source:** Laws 2007, LB 265, §39.

**48-650. Combined tax rate; determination of employment; notice; review; redetermination; proceedings; appeal.** The commissioner shall determine the rate of combined tax applicable to each employer pursuant to section 48-649 and may determine, at any time during the year, whether services performed by an individual were employment or for an employer. Any such determination shall become conclusive and binding upon the employer unless, within thirty days after the prompt mailing of notice thereof to his or her last-known address or in the absence of mailing within thirty days after the delivery of such notice, the employer files an appeal with an appeal tribunal. No employer shall have standing, in any proceeding involving his or her combined tax rate or combined tax liability, to contest the chargeability to his or her account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to sections 48-629 to 48-644 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him or her and only in the event that he or she was not a party to such determination, redetermination, or

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decision or to any other proceedings under the Employment Security Law in which the character of such services was determined. A full and complete record shall be kept of all proceedings in connection with such hearing. All testimony at any such hearing shall be recorded but need not be transcribed unless there is a further appeal. The employer shall be promptly notified of the appeal tribunal's decision which shall become final unless the employer or the commissioner appeals within thirty days after the date of service of the decision of the appeal tribunal. The appeal shall otherwise be governed by the Administrative Procedure Act.

**Source:** Laws 1941, c. 94, §5, p. 391; C.S.Supp.,1941, §48-707; R.S.1943, §48-650; Laws 1985, LB 339, §35; Laws 1985, LB 342, §1; Laws 1988, LB 352, §88; Laws 1994, LB 1337, §9; Laws 2001, LB 192, §11.

**Cross Reference:** Administrative Procedure Act, see §84-920.

**Annotations:**

- A petition for judicial review of the Nebraska Commissioner of Labor's determination of an employer's unemployment insurance contributions must be filed in the county where the first adjudicated hearing of a disputed claim took place. *Metro Renovation v. State*, 249 Neb. 337, 543 N.W.2d 715 (1996).
- The Employment Security Law provides one avenue of judicial appeal when the dispute concerns benefit liability and another when the dispute concerns contribution liability. *Northern Messenger v. Sorensen*, 218 Neb. 846, 359 N.W.2d 787 (1984).
- Judicial review of decision of the Nebraska Appeal Tribunal reviewing a decision under this section of the Nebraska Department of Labor, Division of Employment, may only be had in the District Court of Lancaster County. *Whitehouse Energy Savers v. Hanlon*, 214 Neb. 572, 334 N.W.2d 802 (1983).

**48-651. Employer's account; benefit payments; notice; effect.** The commissioner may provide by rule and regulation for periodic notification to employers of benefits paid and chargeable to their accounts or of the status of such accounts, and for notification to all base period employers of any individual of the establishment of such individual's benefit year, and any such notification, in the absence of an application for redetermination filed in such manner and with such period as the commissioner may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redeterminations, made after notice and opportunity for hearing, and the commissioner's findings of fact in connection therewith may be introduced in any subsequent administrative or judicial proceedings involving the determination of the combined tax rate of any employer for any calendar year.

**Source:** Laws 1941, c. 94, §5, p. 392; C.S.Supp.,1941, §48-707; R.S.1943, §48-651; Laws 1985, LB 339, §36; Laws 1994, LB 1337, §10.

**48-652. Employer's experience account; reimbursement account; contributions by employer; liability; termination; reinstatement.**

(1) (a) A separate experience account shall be established for each employer who is liable for payment of contributions. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other.

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account and such employer shall be billed for and shall be liable for the payment of the amount charged when billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are

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liable for payments in lieu of contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. The commissioner shall prescribe such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. State unemployment insurance tax payments shall not be credited to the experience account of each employer. Partial payments of combined tax shall be credited so that at least eighty percent of the combined tax payment excluding interest and penalty is credited first to contributions due. In addition to contributions credited to the experience account, each employer's account shall be credited as of June 30 of each calendar year with interest at a rate determined by the commissioner based on the average annual interest rate paid by the Secretary of the Treasury of the United States of America upon the state's account in the Unemployment Trust Fund for the preceding calendar year multiplied by the balance in his or her experience account at the beginning of such calendar year. If the total credits as of such date to all employers' experience accounts are equal to or greater than ninety percent of the total amount in the Unemployment Compensation Fund, no interest shall be credited for that year to any employer's account. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning of the calendar year. All voluntary contributions which are received on or before January 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3) (a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if

(i) such benefits were paid on the basis of a period of employment from which the claimant

(A) left work voluntarily without good cause,

(B) left work voluntarily due to a nonwork-connected illness or injury,

(C) left work voluntarily with good cause to escape abuse as defined in section 42-903 between household members as provided in subdivision (1) of section 48-628.01,

(D) left work from which he or she was discharged for misconduct connected with his or her work,

(E) left work voluntarily and is entitled to unemployment benefits without disqualification in accordance with subdivision (3) or (5) of section 48-628.01, or

(F) was involuntarily separated from employment and such benefits were paid pursuant to section 48-628.05, and

(ii) the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner. No benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of wages paid in the base period that are wages for insured work solely by reason of subdivision (5)(c)(iii) of section 48-627. No benefits shall be charged to the experience account of any employer if such benefits were paid during a week when the individual

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was participating in training approved under section 236(a)(1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a)(1).

(b) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of subdivision (5) of section 48-627.

(c) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall by rules and regulations prescribe the manner in which benefits shall be charged against the account of several employers for whom an individual performed employment during the same quarter or during the same base period. Any benefit check duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the Unemployment Compensation Fund, except that a substitute check may be issued and charged to the fund on proper showing at any time within the year next following. Any charge made to an employer's account for any such invalidated check shall stand as originally made.

(4) (a) An employer's experience account shall be deemed to be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or limited liability company members or the majority stockholder into the armed forces of the United States, or of any of its allies, after July 1, 1950, such employer's account shall not be terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

(b) An experience account terminated pursuant to this subsection shall be reinstated if

(i) the employer becomes subject again to the Employment Security Law within one calendar year after termination of such experience account and the employer makes a written application for reinstatement of such experience account to the commissioner within two calendar years after termination of such experience account and

(ii) the commissioner finds that the employer is operating substantially the same business as prior to the termination of such experience account.

(5) All money in the Unemployment Compensation Fund shall be kept mingled and undivided. The payment of benefits to an individual shall in no case be denied or withheld because the experience account of any employer does not have a total of contributions paid in excess of benefits charged to such experience account.

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(6) A contributory or reimbursable employer shall be relieved of charges if the employer was previously charged for wages and the same wages are being used a second time to establish a new claim as a result of the October 1, 1988, change in the base period.

(7) If an individual's base period wage credits represent part-time employment for a contributory employer and the contributory employer continues to employ the individual to the same extent as during the base period, then the contributory employer's experience account shall not be charged if the contributory employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner.

**Source:** Laws 1937, c. 108, § 7, p. 383; Laws 1939, c. 56, § 5, p. 240; Laws 1941, c. 94, § 5, p. 392; C.S.Supp., 1941, § 48-707; R.S.1943, § 48-652; Laws 1947, c. 175, § 11, p. 579; Laws 1949, c. 163, § 13, p. 428; Laws 1953, c. 167, § 9, p. 534; Laws 1957, c. 208, § 5, p. 732; Laws 1971, LB 651, § 9; Laws 1977, LB 509, § 8; Laws 1980, LB 800, § 5; Laws 1984, LB 995, § 1; Laws 1985, LB 339, § 37; Laws 1986, LB 901, § 1; Laws 1987, LB 275, § 1; Laws 1988, LB 1033, § 3; Laws 1993, LB 121, § 292; Laws 1994, LB 884, § 65; Laws 1994, LB 1337, § 11; Laws 1995, LB 1, § 12; Laws 1995, LB 240, § 4; Laws 2000, LB 953, § 9; Laws 2001, LB 418, § 1; Laws 2005, LB 739, § 12; Laws 2007, LB265, § 10; Laws 2008, LB500, § 1; Laws 2009, LB631, § 8; Laws 2010, LB1020, § 6.

**Operative Date:** July 1, 2011

**Annotations:**

- Where employees have left work voluntarily without good cause or have been discharged for misconduct, an employer is not charged with benefits paid to its employees. *Fauss v. Messerly*, 200 Neb. 326, 263 N.W.2d 668 (1978).

**48-653. Repealed.**

**Source:** Laws 1949, c. 163, s. 19.

**48-654. Employer's experience account; acquisition by transferee-employer; transfer; contribution rate.** Subject to section 48-654.01, any employer that acquires the organization, trade, or business, or substantially all the assets thereof, of another employer shall immediately notify the commissioner thereof, and prior to September 6, 1985, shall, and on and after September 6, 1985, may, pursuant to rules and regulations prescribed by the commissioner, assume the position of such employer with respect to the resources and liabilities of such employer's experience account as if no change with respect to such employer's experience account has occurred. The commissioner may provide by rule and regulation for partial transfers of experience accounts, except that such partial transfers of accounts shall be construed to allow computation and fixing of contribution rates only on and after January 1, 1953, where an employer has transferred at any time subsequent to or on January 1, 1950, a definable and segregable portion of his or her payroll and business to a transferee-employer. For an acquisition which occurs during either of the first two calendar quarters of a calendar year or during the fourth quarter of the preceding calendar year, a new rate of contributions, payable by the transferee-employer with respect to wages paid by him or her after midnight of the last day of the calendar quarter in which such acquisition occurs and prior to midnight of the following September 30, shall be computed in accordance with this section. For the purpose of computing such new rate of contributions, the computation date with respect to any such acquisition shall be September 30 of the preceding calendar year and the term payroll shall mean the total amount of wages by which contributions to the transferee's account and to the transferor's account were measured for four calendar quarters ending September 30 preceding the computation date.

**Source:** Laws 1937, c. 108, § 7, p. 385; Laws 1941, c. 94, § 5, p. 394; C.S.Supp., 1941, § 48-707; R.S.1943, § 48-654; Laws 1945, c. 115, § 6, p. 386; Laws 1947, c. 175, § 13, p. 582; Laws 1953, c. 169, § 1, p. 543; Laws 1985, LB 336, § 1; Laws 1985, LB 339, § 38; Laws 2005, LB 484, § 10; Laws 2009, LB631, § 9.

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**Effective Date:** May 27, 2009

**Annotations:**

- This section, which allows an acquiring organization to assume the position of its predecessor with respect to the latter's experience account, is referring to the contribution rate of that employer. The experience account balance is used to determine the rate at which the employer must contribute, and it is not a cash account which may be treated as a liquid asset. *West Nebraska General Hospital v. Hanlon*, 208 Neb. 173, 302 N.W.2d 694 (1981).

**48-654.01. Employer's experience account; transferable; when; violation; penalty.**

(1) For purposes of this section:

- (a) Knowingly means having actual knowledge of or acting with deliberate ignorance or reckless disregard of the prohibition involved;
- (b) Person means an individual, a partnership, a limited liability company, a corporation, or any other legally recognized entity;
- (c) Trade or business includes the employer's workforce; and
- (d) Violates or attempts to violate includes intent to evade, misrepresentation, or willful nondisclosure.

(2) Notwithstanding any other provision of law, the following shall apply regarding assignment of combined tax rates and transfer of an employer's experience account:

(a) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the employer's experience account attributable to the transferred trade or business shall be transferred to the employer to whom such business is transferred. The rates of both employers shall be recalculated in accordance with section 48-654. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce and such trade or business is performed by the employer to whom the workforce is transferred. If, following a transfer of experience under this subdivision, the commissioner determines that a substantial purpose of the transfer of trade or business was to obtain a lower combined tax rate, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account; or

(b) Whenever a person is not an employer at the time it acquires the trade or business of an employer, the employer's experience account of the acquired business shall not be transferred to such person if the commissioner finds that the business was acquired solely or primarily for the purpose of obtaining a lower combined tax rate. Instead, such person shall be assigned the new employer combined tax rate under section 48-649. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower combined tax rate, the commissioner shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such

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business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to the acquisition.

(3) (a) If a person knowingly violates or attempts to violate this section, or if a person knowingly advises another person in a way that results in a violation of this section and:

(i) The person is an employer, such employer shall be assigned the highest combined tax rate assignable under section 48-649 for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such rate year. However, if the person's business is already at the highest combined tax rate or if the amount of increase in the combined tax rate would be less than two percent, then a penalty combined tax rate of two percent of taxable wages shall be imposed for the rate year during which the violation or attempted violation occurred and for the three rate years immediately following such year; or

(ii) The person is not an employer, such person shall be subject to a civil penalty of not more than five thousand dollars.

(b) In addition to any civil penalties that may apply under this subsection, such person shall be guilty of a Class IV felony.

(4) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of evading combined tax liability.

**Source:** Laws 2005, LB 484, §11.

### **48-655. Combined taxes; payments in lieu of contributions; collections; setoffs; interest; actions; offset against federal income tax refund; procedure.**

(1) Combined taxes or payments in lieu of contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one and one-half percent per month from such date until payment, plus accrued interest, is received by the commissioner, except that no interest shall be charged subsequent to the date of the erroneous payment of an amount equal to the amount of the delayed payment into the unemployment trust fund of another state or to the federal government. Interest collected pursuant to this section shall be paid in accordance with subdivision (1)(b) of section 48-621. If, after due notice, any employer defaults in any payment of combined taxes or payments in lieu of contributions or interest thereon, the amount due may be collected

(a) by civil action in the name of the commissioner and the employer adjudged in default shall pay the costs of such action or

(b) by setoff against any state income tax refund due the employer pursuant to sections 77-27,197 to 77-27,209.

Civil actions brought under this section to collect combined taxes or interest thereon or payments in lieu of contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 48-638.

(2) The commissioner may by rule and regulation provide for the offset from a person's personal federal income tax refund of contributions, penalties, and interest due and payable for which the commissioner

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has determined the person to be liable due to fraud and which remain uncollected for not more than ten years. Such rules and regulations shall comply with Public Law 110-328 (2008) and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor, by certified mail return receipt requested, that the commissioner plans to recover the debt through offset against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or not due to fraud. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and due to fraud before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to offset does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed offset.

**Source:** Laws 1937, c. 108, § 14, p. 398; Laws 1939, c. 56, § 11, p. 249; C.S.Supp., 1941, § 48-713; R.S. 1943, § 48-655; Laws 1947, c. 175, § 14, p. 582; Laws 1949, c. 163, § 14(1), p. 429; Laws 1971, LB 651, § 10; Laws 1985, LB 337, § 1; Laws 1986, LB 811, § 137; Laws 1993, LB 46, § 14; Laws 1994, LB 1337, § 12; Laws 1995, LB 1, § 13; Laws 2000, LB 953, § 10; Laws 2009, LB 631, § 10.

**Effective Date:** May 27, 2009

**48-655.01. State; jurisdiction over employer; when.** Employing one or more individuals to perform service within this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such employer in any action under sections 48-655 to 48-655.02.

**Source:** Laws 1949, c. 163, §14(2), p. 430; Laws 1957, c. 208, §6, p. 734; Laws 1983, LB 447, §71.

**48-655.02. Combined taxes; courts; jurisdiction; actions.** The courts of this state shall in the manner provided in sections 48-655 to 48-655.02 entertain actions to collect combined taxes or interest thereon for which liability has accrued under the employment security law of any other state or of the federal government.

**Source:** Laws 1949, c. 163, §14(3), p. 430; Laws 1994, LB 1337, §13 .

**48-656. Combined taxes; report or return; requirements; assessment; notice; protest; penalty.**

(1) If any employer fails to file a report or return required by the commissioner for the determination of combined taxes, the commissioner may make such reports or returns or cause them to be made and determine the combined taxes payable, on the basis of such information as he or she may be able to obtain, and shall collect the combined taxes as determined together with any interest thereon due under section 48-655. The commissioner shall immediately notify the employer of the assessment, in writing, by registered or certified mail, in the usual course, and such assessment shall be final unless the employer protests such assessment within fifteen days after the mailing of the notice. If the employer protests such assessment, the employer shall have an opportunity to be heard by an appeal tribunal upon written request therefor. After the hearing the appeal tribunal shall immediately notify the employer in writing of its decision, and the assessment, if any, shall be final upon issuance of such notice.

(2) If any employer files a report or return required by the commissioner for the determination of combined taxes but fails to pay all or some part of the combined taxes actually due for the reported period, the commissioner may determine the combined taxes actually payable on the basis of such information as he or she may be able to obtain and shall collect the combined taxes as determined together with any interest due under section 48-655. The commissioner shall immediately notify the employer of the

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assessment, in writing by registered or certified mail in the usual course, and such assessment shall be final unless the employer protests such assessment within fifteen days after the mailing of the notice. If the employer protests such assessment, the employer shall have an opportunity to be heard by an appeal tribunal upon a written request therefor. After the hearing, the appeal tribunal shall immediately notify the employer in writing of its decision and the assessment, if any, shall be final upon issuance of such notice.

(3) Beginning with the first calendar quarter of 1990, any employer or any officer or agent of an employer who fails to file a required quarterly combined tax report and wage schedule by the tenth day of the second month following the end of the calendar quarter shall pay a penalty to the commissioner of one-tenth of one percent of the total wages paid during the quarter, except that the penalty shall not be less than twenty-five nor more than two hundred dollars. For good cause shown, the commissioner may waive the penalty in accordance with rules and regulations adopted and promulgated by the commissioner. The commissioner shall remit any penalty collected to the State Treasurer who shall credit it to the pool account of the Employment Security Special Contingent Fund.

**Source:** Laws 1939, c. 56, §11, p. 249; C.S.Supp.,1941, §48-713; R.S.1943, §48-656; Laws 1957, c. 208, §7, p. 735 ; Laws 1989, LB 414, §1; Laws 1994, LB 1337, §14; Laws 2001, LB 192, §12.

### **48-657. Combined tax or interest; default; lien; contracts for public works; requirements.**

(1) (a) If any employer defaults in any payment of combined tax or interest, the commissioner may make in any manner feasible and cause to be filed as a secured transaction as provided in article 9, Uniform Commercial Code, and in the real estate mortgage records of any county in which such employer is engaged in business or owns real or personal property, a statement, under oath, showing the amount of combined tax and interest in default, which statement, when filed for record, shall operate as a lien and mortgage on all of the real and personal property of the employer, subject only to the liens of prior record, and the property of such employer shall be subject to seizure and sale for the payment of such combined taxes and interest. Such lien on personal property may be enforced or dissolved in the manner provided by article 9, Uniform Commercial Code, and such liens on real estate may be enforced or dissolved in the manner provided by Chapter 25, article 21, in the enforcing and dissolving of real estate mortgages. This subdivision shall only apply to liens filed prior to May 1, 1999.

(b) A lien for unpaid combined taxes filed or recorded pursuant to subdivision (a) of this subsection shall lapse at the earlier of its expiration date or the fifth anniversary of the filing or recording date, unless the commissioner files a notice of continuation in the place of the original filing or recording and with the appropriate filing officer in the manner provided for in the Uniform State Tax Lien Registration and Enforcement Act before such lien lapses. A notice of continuation shall include all of the information required by the act, the date of the filing or recording of the original lien, and a statement that the original lien is to be continued for ten years. Thereafter, such lien shall be enforced and notices of continuation filed in accordance with the act.

(c) On and after May 1, 1999, if any employer defaults in any payment of combined tax or interest, the commissioner may file a lien against such employer in accordance with the Uniform State Tax Lien Registration and Enforcement Act. Such liens shall set forth the amount of combined tax and interest in default and shall be continued and enforced as provided in the Uniform State Tax Lien Registration and Enforcement Act.

(2) It shall be the duty of the State of Nebraska, or any department or agency thereof, county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract by public bidding for the erecting and finishing or the repairing of any public building,

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bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract to provide in such contract that the person, persons, firm, or corporation to whom the contract is awarded will pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of such contract.

(3) No contract referred to in subsection (2) of this section shall be entered into by the State of Nebraska, a department or agency thereof, an officer or officers, or a board referred to in such subsection unless the contract contains the proviso mentioned in such subsection.

(4) Before final payment may be made on the final three percent of any such contract awarded on or after June 1, 1957, the State of Nebraska, department or agency thereof, officer or officers, or board awarding the contract must have received from the contractor a written clearance from the commissioner certifying that all payments then due of combined tax or interest which may have arisen under such contract have been made by the contractor or his or her subcontractor to the Unemployment Compensation Fund.

(5) The final three percent of any such contract referred to in subsection (4) of this section may be paid if the contractor has supplied a bond with a satisfactory surety company guaranteeing full payment to the Unemployment Compensation Fund and the State Unemployment Insurance Trust Fund of all combined tax and interest due under the Employment Security Law.

**Source:** Laws 1937, c. 108, §14, p. 398; Laws 1939, c. 56, §11, p. 250; C.S.Supp., 1941, §48-713; R.S. 1943, §48-657; Laws 1957, c. 208, §8, p. 735; Laws 1969, c. 404, §1, p. 1401; Laws 1969, c. 405, §1, p. 1403; Laws 1985, LB 339, §39; Laws 1993, LB 604, §1; Laws 1994, LB 1337, §15; Laws 1999, LB 165, §1; Laws 1999, LB 550, §10; Laws 2001, LB 192, §13.

**Cross Reference:** Uniform State Tax Lien Registration and Enforcement Act, see §77-3901.

**Annotations:**

- Statutory lien for unemployment taxes, even though recorded, was subject to lien for federal income taxes. In re Kobiela, 152 F.Supp. 489 (D. Neb. 1957).

**48-658. Combined tax; transfer of business; notice; succeeding employer's liability; action.** Any person, group of individuals, partnership, limited liability company, corporation, or employer which acquires the organization, trade, or business or substantially all the assets thereof of an employer shall notify the commissioner thereof in writing by registered or certified mail not later than five days prior to the acquisition. Unless such notice is given such acquisition shall be void as against the commissioner if, at the time of the acquisition, any combined tax is due and unpaid by the previous employer. The commissioner shall have the right to proceed against such person, group of individuals, partnership, limited liability company, corporation, or employer and the assets so acquired.

**Source:** Laws 1939, c. 56, §11, p. 250; C.S.Supp., 1941, §48-713; R.S. 1943, §48-658; Laws 1957, c. 208, §9, p. 737; Laws 1993, LB 121, §293; Laws 1994, LB 1337, §16.

**48-659. Combined tax and interest; legal distribution of employer's assets; priorities.** In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including dissolution, reorganization, administration of estates of decedents, receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, any claims for combined tax and interest thereon due or accrued under the Employment Security Law which have not been reduced to a lien in accordance with section 48-657 shall receive the priority of a tax.

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**Source:** Laws 1937, c. 108, §14, p. 398; Laws 1939, c. 56, §11, p. 251; C.S.Supp., 1941, §48-713; R.S.1943, §48-659; Laws 1953, c. 167, §10, p. 536; Laws 1985, LB 339, §40; Laws 1994, LB 1337, §17.

**48-660. Combined tax or interest; adjustments; refunds.** If more than the correct amounts of combined tax or interest are collected, then, under rules and regulations made under section 48-607, proper adjustments with respect thereto shall be made, without interest, in connection with subsequent combined tax. If such adjustment cannot be made within a reasonable time, the commissioner shall refund the excess from the appropriate fund. Applications for adjustments or refunds shall be made within four years after the date of such overcollection.

**Source:** Laws 1937, c. 108, §14, p. 399; Laws 1939, c. 56, §11, p. 251; C.S.Supp., 1941, §48-713; R.S.1943, §48-660; Laws 1945, c. 115, §7, p. 386; Laws 1985, LB 339, §41; Laws 1994, LB 1337, §18.

**48-660.01. Benefits; nonprofit organizations; combined tax; payments in lieu of contributions; election; notice; appeal; liability.**

(1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with this section. For the purpose of this section, a nonprofit organization is an organization, or group of organizations, described in subdivision (9) of section 48-603.

(2) (a) Any nonprofit organization which is, or becomes, subject to the Employment Security Law on or after January 1, 1972, shall pay contributions under sections 48-648 to 48-661 and after December 31, 1995, shall pay combined tax under such sections unless it elects, in accordance with this subdivision, to pay to the commissioner for the unemployment fund an amount, equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(b) Any nonprofit organization which is, or becomes, subject to the Employment Security Law on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one taxable year beginning with January 1, 1972, if it files with the commissioner a written notice of its election within the thirty-day period immediately following such date or within a like period immediately following the date of enactment of this subdivision, whichever occurs later. Any eligible employer electing to become liable for payments in lieu of contributions shall not be liable for state unemployment insurance tax.

(c) Any nonprofit organization which becomes subject to the Employment Security Law after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(d) Any nonprofit organization which makes an election in accordance with subdivision (b) or (c) of this subsection shall continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(e) Any nonprofit organization which has been paying contributions or combined tax under the Employment Security Law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of

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contributions. Such election shall not be terminable by the organization for that and the next year.

(f) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(g) The commissioner, in accordance with such rules and regulations as he or she may adopt and promulgate, shall notify each nonprofit organization of any determination which he or she may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to redetermination and appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) Payments in lieu of contributions shall be made in accordance with this subsection as follows:

(a) At the end of each calendar quarter, or at the end of any other period as determined by the commissioner, the commissioner shall bill each nonprofit organization, or group of such organizations, which has elected to make payment in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization;

(b) Payment of any bill rendered under subdivision (a) of this subsection shall be made not later than thirty days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it unless there has been an application for review and redetermination in accordance with subdivision (d) of this subsection;

(c) Payments made by any nonprofit organization under this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization;

(d) The amount due specified in any bill from the commissioner shall be conclusive on the organization unless, not later than thirty days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the commissioner setting forth the grounds for such application. The commissioner shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless the organization appeals the redetermination, and the appeal shall be in accordance with the Administrative Procedure Act; and

(e) Past-due payments of amounts in lieu of contributions shall be subject to the same interest that, pursuant to section 48-655, applies to past-due contributions, and the commissioner may file a lien against such nonprofit organization in accordance with the Uniform State Tax Lien Registration and Enforcement Act. Such liens shall set forth the amount of payments in lieu of contributions and interest in default and shall be enforced as provided in the Uniform State Tax Lien Registration and Enforcement Act.

(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under subsection (3) of this section, the commissioner may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

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(5) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with section 48-652.

**Source:** Laws 1971, LB 651, §11; Laws 1985, LB 339, §42; Laws 1988, LB 352, §89; Laws 1994, LB 1337, §19; Laws 1999, LB 165, §2.

**Cross References:** Administrative Procedure Act, see §84-920. Uniform State Tax Lien Registration and Enforcement Act, see §77-3901.

**Annotations:**

- Under the Nebraska Employment Security Law, the contribution type of financing as provided by section 48-649, R.R.S.1943, and reimbursement financing under section 48-660.01, R.R.S.1943, are separate and distinct systems, and a nonprofit organization must elect to use one or the other. *West Nebraska General Hospital v. Hanlon*, 208 Neb. 173, 302 N.W.2d 694 (1981).

**48-661. Employer; election to become subject to Employment Security Law; written election to become or cease to be an employer; termination of coverage.**

(1) Except as otherwise provided in subsections (2) and (3) of this section, any employer not otherwise subject to the Employment Security Law, who is or becomes an employer subject to such law within any calendar year, shall be subject to such law during the whole of such calendar year.

(2) Except as otherwise provided in subsection (3) of this section, an employer, other than an employer subject by reason of subdivision (4)(a) of section 48-604, shall cease to be an employer subject to the Employment Security Law only as of January 1 of any calendar year, if he or she files with the commissioner, on or before January 31 of such year, a written application for termination of coverage, and the commissioner finds:

(a) That there were no twenty different days, each day being in a different calendar week, within the preceding calendar year within which such employer employed one or more individuals in employment subject to such law and there was no calendar quarter within the preceding calendar year in which such employer paid wages for employment in the total sum of fifteen hundred dollars or more;

(b) if the employer is subject by reason of subdivision (9) of section 48-603 there were no twenty different days, each being in a different calendar week, within the preceding calendar year within which such employer employed four or more individuals in employment subject to that section;

(c) if the employer is subject by reason of subdivision (10) of section 48-603 there were no twenty different days, each being in a different calendar week, within the preceding calendar year within which such employer employed ten or more individuals in employment subject to that section and there was no calendar quarter within the preceding calendar year in which such employer paid remuneration in cash for employment subject to that section in the total sum of twenty thousand dollars or more; or

(d) if the employer is subject by reason of subdivision (11) of section 48-603 there was no calendar quarter within the preceding calendar year in which such employer paid cash remuneration in the total sum of one thousand dollars or more for services in employment subject to that section. The commissioner may on his or her motion terminate the coverage of any

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employer who has not made such written request, but is otherwise eligible to terminate. Any employer whose entire experience account has been transferred to another employer under section 48-654 may request termination as of the date of such transfer if such request is made within thirty days after the determination is made allowing the transfer.

(3) An employer not otherwise subject to the Employment Security Law, who files with the commissioner his or her written election to become an employer subject thereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject thereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject thereto as of January 1 of any calendar year subsequent to such two calendar years, only if on or before January 31 of such year, he or she has filed with the commissioner a written notice to that effect. Any employer of any person in this state for whom services that do not constitute employment as defined in section 48-604 are performed, may file with the commissioner a written election that all such services performed by individuals in his or her employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of the Employment Security Law for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to such law from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if on or before January 31 of such year such employer has filed with the commissioner a written notice to that effect.

**Source:** Laws 1937, c. 108, §8, p. 386; Laws 1939, c. 56, §6, p. 243; Laws 1941, c. 94, §6, p. 394; C.S.Supp.,1941, §48-708; R.S.1943, §48-661; Laws 1953, c. 167, §11, p. 537; Laws 1955, c. 190, §10, p. 549; Laws 1963, c. 293, §1, p. 878; Laws 1967, c. 302, §1, p. 821; Laws 1971, LB 651, §12; Laws 1973, LB 35, §1; Laws 1977, LB 509, §9; Laws 1985, LB 339, §43; Laws 1995, LB 1, §14.

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### STATE EMPLOYMENT SERVICE

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**48-662. State employment service; establishment; functions; funds available; agreements authorized.** The state employment service is hereby established in the Department of Labor, State of Nebraska. The commissioner of such department, in the conduct of such service, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of the Employment Security Law and for the purpose of performing such functions as are within the purview of the Act of Congress entitled An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes, approved June 6, 1933, (48 Stat. 113; 29 U.S.C. 49 (c)), as amended, herein referred to as the Wagner-Peyser Act. The provisions of the Act of Congress are hereby accepted by this state and the Department of Labor is hereby designated and constituted the agency of this state for the purposes of such act. All money received by this state under the Act of Congress shall be paid into the Employment Security Administration Fund and shall be expended solely for the maintenance of the state system of public employment offices. There shall also be credited to the Employment Security Administration Fund for the same purpose, any sums appropriated by the Legislature from the General Fund of the state for the purposes of maintaining public employment offices or of matching funds granted under the Wagner-Peyser Act. For the purpose of establishing and maintaining free public employment offices and promoting the use of their facilities, the commissioner is authorized to enter into agreements with the Railroad Retirement Board, any other agency of the United States or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of such sections, any political subdivision of this state, or any private nonprofit organization and as a part of such agreements may accept money, services, or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed. All money received for such purposes shall be paid into the Employment Security Administration Fund.

**Source:** Laws 1941, c. 94, §17, p. 402; C.S.Supp.,1941, §48-726; R.S.1943, §48-662; Laws 1949, c. 163, §15, p. 430; Laws 1961, c. 239, §3, p. 713; Laws 1984, LB 747, §5; Laws 1985, LB 339, §44.

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## VIOLATIONS AND PENALTIES

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**48-663. Benefits; prohibited acts by employee; penalty; limitation of time for prosecution.** Whoever obtains or increases any benefit or other payment under sections 48-623 to 48-629 or under an employment security law of any other state, the federal government, or a foreign government, either for himself or herself or for any other person,

(1) by making a false statement or representation knowing it to be false by oral, written, or electronic communication that can be attributed to such person by use of a personal identification number or other identification process or

(2) by knowingly failing to disclose a material fact

shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

Prosecution under this section may be instituted within three years after the time the offense was committed in any county where any part of the crime was committed, including the county in which the person received the benefits.

**Source:** Laws 1937, c. 108, §16, p. 400; C.S.Supp.,1941, §48-715; R.S.1943, §48-663; Laws 1949, c. 163, §16(1), p. 432; Laws 1953, c. 167, §12, p. 538; Laws 1957, c. 208, §10, p. 737; Laws 1977, LB 40, §294; Laws 1985, LB 340, §1; Laws 1986, LB 950, §7; Laws 2001, LB 192, §14.

**48-663.01. Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; levy authorized; procedure; failure or refusal to honor levy; liability.**

(1) Notwithstanding any other provision of this section, or of section 48-627 or 48-663, an individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her or who willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, shall forfeit all or part of his or her benefit rights, as determined by a deputy, with respect to uncharged wage credits accrued prior to the date of such failure or to the date of such falsifications. An appeal may be taken from any such determination in the manner provided in section 48-634.

(2) (a) If any person liable to repay an overpayment of unemployment benefits resulting from a determination under subsection (1) of this section fails or refuses to repay such overpayment within twelve months after the date the overpayment determination becomes final, the commissioner may issue a levy on salary, wages, or other regular payments due to or received by such person and such levy shall be continuous from the date the levy is served until the amount of the levy is satisfied. Notice of the levy shall be mailed to the person whose salary, wages, or other regular payment is levied upon at his or her last-known address not later than the date that the levy is served. Exemptions or limitations on the amount of salary, wages, or other regular payment that can be garnished or levied upon by a judgment creditor shall apply to levies made pursuant to this section. Appeal of a levy may be made in the manner provided in section 48-634, but such appeal shall not act as a stay of the levy.

(b) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the person liable to repay the overpayment that are under the control of the person upon whom the levy is served at the time of service and thereafter.

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**Source:** Laws 1949, c. 163, §16(2), p. 432; Laws 2007, LB265, § 11.

**Operative Date:** July 1, 2007.

**48-664. Benefits; false statements by employer; penalty; failure or refusal to make combined tax payment.** Any employer, whether or not subject to the Employment Security Law, or any officer or agent of such an employer or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, to obtain benefits for an individual not entitled thereto, to avoid becoming or remaining subject to such law, or to avoid or reduce any contribution or other payment required from an employer under sections 48-648 and 48-649, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required under the Employment Security Law or to produce or permit the inspection or copying of records as required under such law, shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense. An individual employer, partner, corporate officer, or member of a limited liability company or limited liability partnership who willfully fails or refuses to make any combined tax payment shall be jointly and severally liable for the payment of such combined tax and any penalties and interest owed thereon. When an unemployment benefit overpayment occurs, in whole or in part, as the result of a violation of this section by an employer, the amount of the overpayment recovered shall not be credited back to such employer's experience account.

**Source:** Laws 1937, c. 108, §16, p. 400; C.S.Supp.,1941, §48-715; R.S.1943, §48-664; Laws 1953, c. 167, §13, p. 539; Laws 1977, LB 40, §295; Laws 1985, LB 339, §45; Laws 2005, LB 484, §12; Laws 2007, LB265, §12.

**Operative Date:** July 1, 2007.

**48-665. Benefits; erroneous payments; recovery; offset against federal income tax refund; procedure.** (1) Any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled shall be liable to repay such sum to the commissioner for the fund. Any such erroneous benefit payments shall be collectible (a) without interest by civil action in the name of the commissioner, (b) by offset against any future benefits payable to the claimant with respect to the benefit year current at the time of such receipt or any benefit year which may commence within three years after the end of such current benefit year, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, or (c) by setoff against any state income tax refund due the claimant pursuant to sections 77-27,197 to 77-27,209.

(2) The commissioner may by rule and regulation provide for the offset from a person's personal federal income tax refund of any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled as a result of fraud and which remain uncollected for not more than ten years. Such rules and regulations shall comply with Public Law 110-328 (2008) and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through offset against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or not due to fraud. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and due to fraud before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal

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income tax refund is not subject to offset does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed offset.

**Source:** Laws 1937, c. 108, § 16, p. 401; Laws 1941, c. 94, § 12, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-665; Laws 1953, c. 167, § 14(1), p. 539; Laws 1969, c. 403, § 2, p. 1400; Laws 1980, LB 798, § 1; Laws 1985, LB 339, § 46; Laws 1986, LB 950, § 8; Laws 1993, LB 46, § 15; Laws 2009, LB631, § 11.

**Effective Date:** May 27, 2009

**48-666. Violations; general penalty.** Any person who shall willfully violate any provision of the Employment Security Law or any order, rule, or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of such law, and for which a penalty is neither prescribed in such law nor provided by any other applicable statute, shall be guilty of a Class III misdemeanor. Each day such violation continues shall be a separate offense.

**Source:** Laws 1937, c. 108, §16, p. 401; C.S.Supp.,1941, §48-715; R.S.1943, §48-666; Laws 1977, LB 40, §296; Laws 1985, LB 339, §47.

**48-667. Commissioner of Labor; civil and criminal actions; representation.** (1) In any civil action to enforce the Employment Security Law, the commissioner and the state may be represented by any qualified attorney who is employed by the commissioner and is designated by him or her for this purpose or at the commissioner's request by the Attorney General.

(2) All criminal actions for violation of any provision of the Employment Security Law or of any rules or regulations issued pursuant thereto shall be prosecuted by the county attorney of any county in which the violation, or a part thereof, occurred.

**Source:** Laws 1937, c. 108, §17, p. 402; C.S.Supp.,1941, §48-716; R.S.1943, §48-667; Laws 1953, c. 167, §15, p. 540; Laws 1985, LB 339, §48.

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### RECIPROCAL AGREEMENTS

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**48-668. Unemployment compensation; services performed in another state; arrangements with other states.** (1) The commissioner is hereby authorized to enter into arrangements with the appropriate and duly authorized agencies of other states or the federal government, or both, whereby:

(a) Services performed by an individual for a single employer for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states in which

(i) any part of such individual's service is performed,

(ii) such individual has his or her residence, or

(iii) the employer maintains a place of business, if there is in effect, as to such services, an election by an employer with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which services performed by such individual for such employer are deemed to be performed entirely within such state;

(b) Service performed by not more than three individuals, on any portion of a day but not necessarily simultaneously, for a single employer which customarily operates in more than one state shall be deemed to be service performed entirely within the state in which such employer maintains the headquarters of his or her business if there is in effect, as to such service, an approved election by an employer with the affirmative consent of each such individual, pursuant to which service performed by such individual for such employer is deemed to be performed entirely within such state;

(c) Potential rights to benefits under the Employment Security Law may constitute the basis for payment of benefits by another state or the federal government and potential rights to benefits accumulated under the law of another state or the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under the Employment Security Law or under the law of such state or the federal government or under such combination of the provisions of both laws, as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such benefits as are paid on the basis of wages and service subject to the law of another state or the federal government, and provision for reimbursement from the fund for such benefits as are paid by another state or the federal government on the basis of wages and service subject to the Employment Security Law. Reimbursements paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law; and

(d) Wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his or her benefits under the Employment Security Law; and wages for insured work, on the basis of which an individual may become entitled to benefits under the Employment Security Law, shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the federal government. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such of the benefits paid under the Employment Security Law upon the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law upon the basis of wages for insured work, as the commissioner finds will be

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fair and reasonable to all affected interests. Reimbursement paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law.

(2) Notwithstanding any other provisions of this section, the commissioner shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under the Employment Security Law with his or her wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for

(a) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws and

(b) avoiding the duplicate use of wages and employment by reason of such combining. However, no benefits paid pursuant to an agreement to combine wages entered into under this subsection shall be charged against any employer's experience account if the employer's experience account, under the same or similar circumstances, would not be charged under the Employment Security Law. Benefits received by a claimant pursuant to an agreement entered into under this subsection to which he or she is not entitled shall be credited to an employer's experience account or reimbursement account in the same manner as claims paid based solely upon the laws of this state.

**Source:** Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp., 1941, § 48-717; R.S. 1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(1), p. 432; Laws 1971, LB 651, § 13; Laws 1985, LB 339, § 49; Laws 2009, LB631, § 12.

**Effective Date:** May 27, 2009

**48-668.01. Unemployment compensation; services performed in another state; arrangements with other states; alter.** If after entering into an arrangement provided by sections 48-668 to 48-668.03 the commissioner finds that the employment security law of any state or of the federal government participating in such arrangement has been changed in a material respect, the commissioner shall make a new finding as to whether such arrangement shall be continued with such state or with the federal government.

**Source:** Laws 1949, c. 163, §17(2), p. 434.

**48-668.02. Unemployment compensation; services performed in another state; reimbursements to and from other states.** Reimbursements paid from the fund pursuant to subdivisions (1)(c) and (1)(d) of section 48-668 shall be deemed to be benefits for the purposes of the Employment Security Law. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal agencies reimbursements from or to the fund in accordance with arrangements entered into pursuant to section 48-668.

**Source:** Laws 1937, c. 108, § 18, p. 402; Laws 1939, c. 56, § 12, p. 251; C.S.Supp., 1941, § 48-717; R.S. 1943, § 48-668; Laws 1945, c. 115, § 8, p. 387; Laws 1949, c. 163, § 17(3), p. 434; Laws 1985, LB 339, § 50; Laws 2009, LB631, § 13.

**Effective Date:** May 27, 2009

**48-668.03. Unemployment compensation; services performed in foreign country; facilities and services; utilize.** To the extent permissible under the laws and Constitution of the United States, the

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commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under the Employment Security Law and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the unemployment insurance law of this state or under a similar law of such government.

**Source:** Laws 1937, c. 108, §18, p. 402; Laws 1939, c. 56, §12, p. 251; C.S.Supp.,1941, §48-717; R.S.1943, §48-668 ; Laws 1945, c. 115, §8, p. 387; Laws 1949, c. 163, §17(4), p. 434; Laws 1985, LB 339, §51.

### **48-669. Claimant; benefit amounts; how computed.**

(1) With respect to any claimant for whom there is current a benefit year, which has not expired prior to the effective date of any change in the weekly benefit amounts prescribed in section 48-624 or the maximum annual benefit amount prescribed in section 48-626, the weekly benefit amount and the maximum annual benefit amount shall be those amounts determined prior to the effective date of such change.

(2) After December 31, 1995, any changes in the weekly benefit amounts prescribed in section 48-624 or in the maximum annual benefit amount prescribed in section 48-626 shall become effective on January 1 of the year following such legislative enactment.

(3) After December 31, 2000, any change in the weekly benefit amounts prescribed in section 48-624 or any change in the maximum annual benefit amount prescribed in section 48-626 shall be applicable for the calendar year following the annual determination made pursuant to section 48-121.02.

**Source:** Laws 1949, c. 163, §18, p. 435; Laws 1951, c. 157, §2, p. 631; Laws 1953, c. 168, §2, p. 542; Laws 1955, c. 190, §11, p. 551; Laws 1957, c. 209, §3, p. 741; Laws 1959, c. 229, §3, p. 803; Laws 1961, c. 235, §4, p. 698; Laws 1963, c. 291, §4, p. 874; Laws 1965, c. 286, §2, p. 820; Laws 1967, c. 299, §2, p. 815; Laws 1969, c. 401, §2, p. 1394; Laws 1971, LB 651, §14; Laws 1972, LB 1391, §2; Laws 1973, LB 333, §2; Laws 1974, LB 775, §2; Laws 1975, LB 475, §2; Laws 1977, LB 337, §2; Laws 1979, LB 183, §2; Laws 1983, LB 524, §2; Laws 1985, LB 216, §2; Laws 1987, LB 446, §3; Laws 1994, LB 286, §4; Laws 1998, LB 225, §4; Laws 2005, LB 739, §13.

**Effective Date:** September 4, 2005.

**48-670. Federal law; adjudged unconstitutional, invalid, or stayed; effect.** If Public Law 94-566 or the federal acts it amends is adjudged unconstitutional or invalid in its application or stayed pendente lite by any court of competent jurisdiction, then the coverage under the Employment Security Law of those employees of any political subdivision is automatically stayed or repealed.

**Source:** Laws 1977, LB 509, §10; Laws 1985, LB 339, §52 .

**48-671. City or village; levy a tax; when; limitation.** Any city or village of the state which makes any contributions or payments required to be made by the Employment Security Law shall levy a tax in order to defray the cost to such city or village in meeting the obligations arising by reason of such law. Such tax shall be in excess of and in addition to all other taxes now or hereafter authorized to be levied by such city. The revenue so raised shall be limited to the amount needed to defray the cost to such city or village in meeting the obligations arising by reason of the Employment Security Law and shall be used for no other purpose.

**Source:** Laws 1977, LB 509, §11; Laws 1985, LB 339, §53 .

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## RELATED STATUTES

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**25-510.02. Service on state or political subdivision.** (1) The State of Nebraska, any state agency as defined in section 81-8,210, and any employee of the state as defined in section 81-8,210 sued in an official capacity may be served by leaving the summons at the office of the Attorney General with the Attorney General, deputy attorney general, or someone designated in writing by the Attorney General, or by certified mail or designated delivery service addressed to the office of the Attorney General.

(2) Any county, city, or village of this state may be served by personal, residence, certified mail, or designated delivery service upon the chief executive officer or clerk.

(3) Any political subdivision of this state, as defined in subdivision (1) of section 13-903, other than a county, city, or village, may be served by personal, residence, certified mail, or designated delivery service upon the chief executive officer, clerk, secretary, or other official whose duty it is to maintain the official records, or any member of the governing board or body, or by certified mail or designated delivery service to the principal office of the political subdivision.

**Source:** Laws 1983, LB 447, § 27; Laws 2011, LB669, § 12.

**Operative Date:** May 27, 2011.

**Annotations:**

- When this section applies, a summons must be served on the Attorney General in order to institute judicial review under the Administrative Procedure Act, sections 84-901 through 84-920. *Concordia Teachers College v. Neb. Dept. of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).
- This section provides the acceptable methods of service of summons upon the Attorney General, but although some discretion is granted as to the mode of service, no discretion is granted as to the entity to be served. *Nebraska Methodist Health Sys. v. Dept. of Health*, 249 Neb. 405, 543 N.W.2d 466 (1996).
- When this section applies, in order to institute judicial review under the Administrative Procedure Act, service must be had on the Attorney General. *Becker v. Nebraska Acct. & Disclosure Comm.*, 249 Neb. 28, 541 N.W.2d 36 (1995).
- In cases in which this section applies, a summons must be served on the Attorney General in order to institute judicial review under the Administrative Procedure Act. *Glass v. Nebraska Dept. of Motor Vehicles*, 248 Neb. 501, 536 N.W.2d 344 (1995).
- Pursuant to subsection (1), when a party commences an action against the State, that party's service must be served in one of the four following ways to be effective: (1) By leaving summons at the Attorney General's office with the Attorney General, (2) by leaving summons at the Attorney General's office with a deputy attorney general, (3) by leaving summons at the Attorney General's office with someone designated in writing by the Attorney General to receive summons, or (4) by sending summons by certified mail addressed to the Attorney General's office. *Twiss v. Trautwein*, 247 Neb. 535, 529 N.W.2d 24 (1995).
- Pursuant to this section, the Attorney General must be served on behalf of the committee and that service may be accomplished by one of the methods for which provision is made in subsection (1). *Ray v. Nebraska Crime Victim's Reparations Comm.*, 1 Neb. App. 130, 487 N.W.2d 590 (1992).

**77-27,197. Legislative intent.** It is the intent of the Legislature to establish and maintain a procedure to set off against a debtor's income tax refund any debt owed to the Department of Labor which has accrued as a result of an individual's liability for the repayment of unemployment insurance benefits determined to be in overpayment pursuant to sections 48-665 and 48-665.01 or an employer's liability for combined tax determined to be due and owing pursuant to sections 48-655 and 48-656.

**Source:** Laws 1993, LB 46, §1; Laws 1997, LB 129, §3.

**77-27,198. Collection system; departments implement.** The Department of Revenue, the Department

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of Administrative Services, and the Department of Labor shall develop and implement a collection system to carry out the intent of section 77-27,197.

**Source:** Laws 1993, LB 46, §2.

**77-27,199. Terms, defined.** For purposes of sections 77-27,197 to 77-27,209:

(1) Debt means combined tax due and payable to the Department of Labor pursuant to sections 48-655 and 48-656 or erroneous benefit payments due and payable to the department pursuant to sections 48-665 and 48-665.01; and

(2) Refund means any Nebraska state income tax refund which the Department of Revenue determines to be due an individual, corporate, or business taxpayer. In the case of a joint income tax return, it shall be presumed that each partner to the marriage submitting such return contributed one-half of the earnings upon which the refund is based. The presumption may be contested by the state, the debtor, and the innocent spouse by virtue of the hearing process prescribed in section 77-27,203.

**Source:** Laws 1993, LB 46, §3; Laws 1997, LB 129, §4.

**77-27,200. Collection remedy; cumulative.** The collection remedy authorized by sections 77-27,197 to 77-27,209 shall be in addition to and not in substitution for any other remedy available by law.

**Source:** Laws 1993, LB 46, §4.

**77-27,201. Debt; submission for collection; when.** The Department of Labor may submit any debt of twenty-five dollars or more to the Department of Revenue for collection pursuant to sections 77-27,197 to 77-27,209 except when the validity of the debt has not been finally determined by the debtor's exercise or failure to exercise all applicable appeal rights.

**Source:** Laws 1993, LB 46, §5.

**77-27,202. Department of Labor; Department of Revenue; notifications required.**

(1) If a debtor identified by the Department of Labor pursuant to section 77-27,201 is determined by the Department of Revenue to be entitled to a refund of twenty-five dollars or more, the Department of Revenue shall notify the Department of Labor that a refund is pending.

(2) Upon receipt of the notification, the Department of Labor shall, within twenty days, send written notification to the debtor of an assertion of its rights to all or a portion of the debtor's refund.

(3) The notification to the debtor shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the Department of Labor within twenty days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and notice that failure to apply for a hearing in writing within the twenty-day period will be deemed a waiver of the opportunity to contest the claim, causing a setoff by default. In the case of a joint income tax return, the notice shall also state the name of the taxpayer named in the return against whom no debt is claimed. There shall be no affirmative duty placed upon the non-owing spouse to initiate an action to receive payment of the noninterceptable amount.

**Source:** Laws 1993, LB 46, §6.

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**77-27,203. Application for hearing; adjustment to debt.** A written application pursuant to section 77-27,202 by a debtor for a hearing shall be effective upon receipt of the application by the Department of Labor. If the department receives a timely written application contesting its claim to a refund, it shall grant a hearing to the taxpayer to determine whether the claim is valid. If the amount asserted as due and owing is not correct, an adjustment to the claimed amount shall be made. No hearing shall be granted upon issues which have been finally determined.

**Source:** Laws 1993, LB 46, §7.

**77-27,204. Appeal; procedure.** Any appeal of an action taken or as a result of a hearing held pursuant to section 77-27,203 shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1993, LB 46, §8.

**Cross References:** Administrative Procedure Act, see §84-920.

**77-27,205. Final determination; certification of debt; Department of Administrative Services; duties.** Upon the final determination of the amount and validity of the debt due and owing, by means of the hearing provided for in section 77-27,203 or by the taxpayer's default through failure to request a hearing, the Department of Labor shall certify the debt to the Department of Administrative Services within twenty days from the date of the final determination. Upon receipt of the certified debt amount from the Department of Labor, the Department of Administrative Services shall deduct an amount equal to the certified debt from the refund due the debtor, up to the amount of the refund, and shall transfer such amount to the Department of Labor. The Department of Administrative Services shall refund any remaining balance to the debtor as if the setoff had not occurred.

**Source:** Laws 1993, LB 46, §9.

**77-27,206. Notification to debtor; contents.** When the Department of Labor receives all or a portion of a certified debt pursuant to section 77-27,205, the department shall notify the debtor of the completion of the setoff and amount received. Such notice shall include the final amount of the refund to which the debtor was entitled prior to the setoff, the amount of the certified debt, and the amount of the refund in excess of the debt, if any.

**Source:** Laws 1993, LB 46, §10.

**77-27,207. Reimbursement of costs.** The Department of Labor shall reimburse the Department of Revenue and the Department of Administrative Services for all reasonable and necessary costs incurred in setting off debts pursuant to sections 77-27,197 to 77-27,209.

**Source:** Laws 1993, LB 46, §11.

**77-27,208. Setoffs; priorities.** Setoffs against state income tax refunds shall have priority in the following order:

- (1) Setoffs by the Department of Health and Human Services;
- (2) Setoffs by the Internal Revenue Service;
- (3) Setoffs by the Department of Labor; and
- (4) Setoffs by the Department of Motor Vehicles.

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**Source:** Laws 1993, LB 46, §12; Laws 1996, LB 1044, §810; Laws 1997, LB 307, §211; Laws 1997, LB 720, §24.

**77-27,209. Rules and regulations.** The Department of Labor shall adopt and promulgate rules and regulations necessary to carry out sections 77-27,197 to 77-27,209.

**Source:** Laws 1993, LB 46, §13.

**84-917. Contested case; appeal; right to cross-appeal; procedure.**

(1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2) (a) (i) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in section 25-510.02. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(ii) The filing of a petition for review shall vest in a responding party of record the right to a cross-appeal against any other party of record. A respondent shall serve its cross-appeal within thirty days after being served with the summons and petition for review.

(b) A petition for review shall set forth:

(i) The name and mailing address of the petitioner;

(ii) the name and mailing address of the agency whose action is at issue;

(iii) identification of the final decision at issue together with a duplicate copy of the final decision;

(iv) identification of the parties in the contested case that led to the final decision;

(v) facts to demonstrate proper venue;

(vi) the petitioner's reasons for believing that relief should be granted; and

(vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health,

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safety, or welfare, the court may not grant relief unless the court finds that:

- (a) The applicant is likely to prevail when the court finally disposes of the matter;
- (b) without relief, the applicant will suffer irreparable injuries;
- (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and
- (d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the agency. Such official record shall include:

- (a) Notice of all proceedings;
- (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case;
- (c) the transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and
- (d) the final order appealed from. The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record.

(5) (a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the review shall be conducted by the court without a jury on the record of the agency, and review may not be obtained of any issue that was not raised before the agency unless such issue involves one of the grounds for reversal or modification enumerated in subdivision (6)(a) of this section. When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency.

(b) (i) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.

(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with the rules of pleading in civil actions promulgated by the Supreme Court pursuant to section 25-801.01 within

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thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.

- (6) (a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the agency decision is:
- (i) In violation of constitutional provisions;
  - (ii) In excess of the statutory authority or jurisdiction of the agency;
  - (iii) Made upon unlawful procedure;
  - (iv) Affected by other error of law;
  - (v) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or
  - (vi) Arbitrary or capricious.
- (b) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.
- (7) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

**Source:** Laws 1963, c. 531, § 1, p. 1664; Laws 1969, c. 838, § 2, p. 3162; Laws 1983, LB 447, § 102; Laws 1987, LB 253, § 19; Laws 1988, LB 352, § 186; Laws 1989, LB 213, § 1; Laws 1997, LB 165, § 5; Laws 2006, LB 1115, § 42; Laws 2008, LB1014, § 69; Laws 2009, LB35, § 32.

**Operative Date:** August 30, 2009

### **Annotations**

#### **1. Applicability of section**

#### **2. Review by court**

#### **3. Miscellaneous**

#### **1. Applicability of section**

- Sections 84-917 to 84-919 govern appeals from rulings of the State Racing Commission. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).
- This section covers appeal to district court by the children of a crime victim from a denial of their application to the Nebraska Crime Victim's Reparations Board. *Lambert v. Nebraska Cr. Vict. Rep. Bd.*, 214 Neb. 817, 336 N.W.2d 320 (1983).
- Review of orders of the Department of Public Welfare is governed by the criteria of this section. *Gosney v. Department of Public Welfare*, 206 Neb. 137, 291 N.W.2d 708 (1980).
- The State Board of Education hearing appeals under section 79-1103.05 acts in a quasi-judicial capacity and, therefore either party may appeal its decision under this section or under section 25-1901. *Richardson v. Board of Education*, 206 Neb. 18, 290 N.W.2d 803 (1980).
- Section 71-1,132.34 provides a specific method of appeal to the district court for the Board of Nursing and whether this section affords an alternative method is not

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decided. *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976).

- This section governs appeal by licensee from order of suspension by the Nebraska Liquor Control Commission. *Happy Hour, Inc. v. Nebraska Liquor Control Commission*, 186 Neb. 533, 184 N.W.2d 630 (1971).
- This section governs proper venue of an appeal from a license suspension ordered by the Nebraska Liquor Control Commission. *The Flamingo, Inc. v. Nebraska Liquor Control Commission*, 185 Neb. 22, 173 N.W.2d 369 (1969).

## 2. Review by court

- In accordance with subsection (5)(a) of this section, when reviewing a final decision of an administrative agency in a contested case under the Administrative Procedure Act, a court may not take judicial notice of an adjudicative fact that was not presented to the agency, because the taking of such evidence would impermissibly expand the court's statutory scope of review de novo on the record of the agency. *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).
- Under subsection (6)(b) of this section, a district court has discretion concerning the disposition of an appeal from an administrative agency. *Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm.*, 272 Neb. 390, 722 N.W.2d 10 (2006).
- It constitutes plain error for a district court to conduct a review under subsection (6)(a) of this section where the proceedings for review of an administrative hearing are initiated after July 1, 1989. *Zwygart v. State*, 270 Neb. 41, 699 N.W.2d 362 (2005).
- An application to the Nebraska Quality Jobs Board is not a "contested case" requiring review pursuant to this section. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).
- Pursuant to subsection (5)(a) of this section, the standard of review that courts without a jury must apply to clearly contested cases that are quasi-judicial in nature filed on or after July 1, 1989, is de novo on the record of the agency. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).
- Subsection (3) of this section provides that upon the filing of a petition for review, an agency may order a stay or the court may order a stay. Such stay may only be granted, however, when the court finds that (1) the applicant is likely to prevail when the court finally disposes of the matter, (2) without relief, the appellant will suffer irreparable injuries, (3) the grant of relief to the applicant will not substantially harm other parties to the proceedings, and (4) the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the agency's action in the circumstances. Under subsection (5)(a) of this section, when a petition instituting proceedings for review under the Administrative Procedure Act is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency. *Miller v. Horton*, 253 Neb. 1009, 574 N.W.2d 112 (1998).
- Pursuant to subsection (5) of this section, the district court's review of a decision of the Department of Insurance is de novo on the record. *Norwest Corp. v. State, Dept. of Insurance*, 253 Neb. 574, 571 N.W.2d 628 (1997).
- Pursuant to subsection (5)(a) of this section, in reviewing a final decision of an administrative agency in a contested case under the Administrative Procedure Act, a court may not take judicial notice of an adjudicative fact which was not presented to the agency because the taking of such evidence would impermissibly expand the court's statutory scope of review "de novo on the record of the agency". *Wolgammott v. Abramson*, 253 Neb. 350, 570 N.W.2d 818 (1997).
- On an appeal from an adverse decision of an administrative agency, subsection (2)(a) of this section requires that a summons be served within 30 days of the filing of a petition for review as a prerequisite to the exercise by the district court of its subject matter jurisdiction. *Concordia Teachers College v. Neb. Dept. of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).
- Under subsection (2)(a) of this section, if the agency whose decision is appealed from is not a party of record, it is a jurisdictional prerequisite that the petitioner serve a copy of the petition and a request for preparation of the official record upon the agency within 30 days of the filing of the petition. *Payne v. Nebraska Dept. of Corr. Servs.*, 249 Neb. 150, 542 N.W.2d 694 (1996).
- Pursuant to this section, a district court is required to conduct a true de novo review of agency determinations on the record of the agency. *Slack Nsg. Home v. Department of Soc. Servs.*, 247 Neb. 452, 528 N.W.2d 285 (1995).

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- Where the proceedings for review of an administrative hearing are initiated in the district court after July 1, 1989, the review will be conducted by the district court "without a jury de novo on the record of the agency" as required by this section. *Styskal v. Wright*, 246 Neb. 513, 519 N.W.2d 543 (1994).
- Under subsection (5)(a) of this section, an appeal to the district court of a decision by the State Personnel Board is reviewed on the record of the agency if the petition was filed in district court before July 1, 1989. *Nebraska Dept. of Correctional Servs. v. Hansen*, 238 Neb. 233, 470 N.W.2d 170 (1991).
- In an appeal from an administrative agency taken under this section of the Administrative Procedure Act, the district court's review is limited to determining whether the agency's action is (1) in violation of constitutional provisions, (2) in excess of the statutory authority or jurisdiction of the agency, (3) made upon unlawful procedure, (4) affected by other errors of law, (5) unsupported by competent, material, and substantial evidence in view of the entire record as made on review, or (6) arbitrary or capricious; however, the Nebraska Supreme Court reviews the district court's decision de novo on the record made before the agency. *Meier v. State*, 227 Neb. 376, 417 N.W.2d 771 (1988).
- Although the Supreme Court reviews an agency's decision under the Administrative Procedure Act de novo on the record, a district court's standard of review is prescribed by subsection (6) of this section. *Haeffner v. State*, 220 Neb. 560, 371 N.W.2d 658 (1985).
- Under this section, where a judicial review is made of the decision of an administrative agency, the reviewing court is authorized to consider the validity of the agency's criterion in order to assess whether the decision was within the statutory authority or jurisdiction of the agency. *Beatrice Manor v. Department of Health*, 219 Neb. 141, 362 N.W.2d 45 (1985).
- Review under sections 84-917 to 84-919 by the Supreme Court is limited to a review of the record created before the administrative agency in question. *Adams Central School Dist. v. Deist*, 214 Neb. 307, 334 N.W.2d 775 (1983).
- The district court review of order of State Personnel Board is limited to record of agency. Therefore, objections to appellant's requests in district court for discovery were properly sustained. *Devine v. Dept. of Public Institutions*, 211 Neb. 113, 317 N.W.2d 783 (1982).
- In appeal from the Liquor Control Commission, the Supreme Court determines only whether findings of the commission are supported by substantial evidence and whether district court applied the proper statutory criteria. *The 20's, Inc. v. Nebraska Liquor Control Commission*, 190 Neb. 761, 212 N.W.2d 344 (1973).
- The power of courts to review the action of a professional board of examiners in its refusal to recommend reinstatement of a revoked license is not decided, but if such power exists, it is limited to a determination based on whether or not the board's action was arbitrary or capricious. *Coil v. Department of Health*, 189 Neb. 606, 204 N.W.2d 167 (1973).
- Review under the Administrative Procedure Act is on the record of the agency only. *Harnett v. City of Omaha*, 188 Neb. 449, 197 N.W.2d 375 (1972).
- A district court conducting a review under subsection (5)(a) of this section cannot base a reversal of the agency decision under review on grounds not raised in the petition for review. *Moore v. Nebraska Dept. of Corr. Servs. Appeals Bd.*, 8 Neb. App. 69, 589 N.W.2d 861 (1999).
- The filing of the petition and the service of summons pursuant to this section are the two actions necessary to establish the jurisdiction of the district court to review the final decision of an administrative agency. *McLaughlin v. Jefferson Cty. Bd. of Equal.*, 5 Neb. App. 781, 567 N.W.2d 794 (1997).
- Pursuant to subsection (2)(a) of this section, timely service of a request for the preparation of the official record upon the agency is mandatory to confer jurisdiction on the district court. *Payne v. Nebraska Dept. of Corr. Servs.*, 3 Neb. App. 969, 536 N.W.2d 656 (1995).
- In order to perfect an appeal under the Administrative Procedure Act, the party instituting the proceedings for review must file a petition in the district court for the county where the action is taken within 30 days after the service of the final decision by the agency, and cause summons to be served within 30 days of the filing of the petition. *Northern States Beef v. Stennis*, 2 Neb. App. 340, 509 N.W.2d 656 (1993).

### 3. Miscellaneous

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- Any aggrieved party seeking judicial review of an administrative decision under the Administrative Procedure Act must file a petition within 30 days after service of that decision, pursuant to this section. The Administrative Procedure Act makes no mention of an extended or different deadline for filing a cross-petition in the district court. *Ahmann v. Correctional Ctr. Lincoln*, 276 Neb. 590, 755 N.W.2d 608 (2008).
- Where the Public Service Commission has the authority to set conditions on certifications, resolve disputes, investigate complaints, issue orders, and enforce orders, it is not a neutral factfinding body. *In re Application of Metropolitan Util. Dist.*, 270 Neb. 494, 704 N.W.2d 237 (2005).
- Neither section 60-6,208 (transferred to section 60-498.04) nor subsection (2)(a) of this section provides that its jurisdictional provisions are exclusive. *Reiter v. Wimes*, 263 Neb. 277, 640 N.W.2d 19 (2002).
- Subsection (5)(a) of this section does not violate the separation of powers doctrine, and *Scott v. State ex rel. Board of Nursing*, 196 Neb. 681, 244 N.W.2d 683 (1976), is overruled insofar as it implies that this statute violates the separation of powers doctrine. *Langvardt v. Horton*, 254 Neb. 878, 581 N.W.2d 60 (1998).
- For a district court to have jurisdiction over an administrative agency's decision, that decision must be final. *Big John's Billiards, Inc. v. Balka*, 254 Neb. 528, 577 N.W.2d 294 (1998).
- Subsection (5)(b) of this section does not empower a district court to retain jurisdiction over an action remanded by the court to an administrative agency for a new hearing. *Concordia Teachers College v. Neb. Dept. of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).
- The phrase "county where the action is taken" in subsection (2)(a) of this section refers to the site of the first adjudicated hearing of a disputed claim. *Essman v. Nebraska Law Enforcement Training Ctr.*, 252 Neb. 347, 562 N.W.2d 355 (1997).
- The phrase "action taken," as used in subsection (2) of this section, is defined by the site of the first adjudicated hearing of a disputed claim. *Metro Renovation v. State*, 249 Neb. 337, 543 N.W.2d 715 (1996).
- The filing of the petition and the service of summons are the two actions that are necessary to establish jurisdiction pursuant to the Administrative Procedure Act. The filing of the transcript is not jurisdictional. *James v. Harvey*, 246 Neb. 329, 518 N.W.2d 150 (1994).
- This section makes no provision for reconsideration of the State Racing Commission's final decision so as to toll the thirty-day appeal time within which appellants had the opportunity to avail themselves of a judicial challenge of the commission's decision. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986).
- The Tax Commissioner is not a person aggrieved and therefore does not have the right to appeal a decision of the State Board of Equalization and Assessment. *Karnes v. Wilkinson Mfg.*, 220 Neb. 150, 368 N.W.2d 788 (1985).
- Filing of a transcript, which is the duty of the state agency, is not jurisdictional for appeal under this section, and the appellant is not entitled to reversal of the agency decision merely because of the agency's failure to timely file a proper transcript, and the district court may order a supplemental transcript. Where appeals are taken under this section, the certified transcript as prepared by the administrative agency and transmitted to the court is considered to be before the court and need not be formally offered into evidence by either party. *Maurer v. Weaver*, 213 Neb. 157, 328 N.W.2d 747 (1982).
- An appeal from an order of the director of the Department of Motor Vehicles is commenced or perfected by filing a petition within thirty days of the service of the final decision of the director and causing a summons to issue on the petition and be served within six months of such filing. Making an administrative agency a party defendant in an appeal under the provisions of § 60-420 or subsection (2) of this section is not an action against the state within the meaning of § 24-319 et seq. so as to require service of summons on the Governor and Attorney General. *Leach v. Dept. of Motor Vehicles*, 213 Neb. 103, 327 N.W.2d 615 (1982).
- On appeal from State Board of Education order that county board make tuition payments for Nebraska school children attending school in South Dakota, the district court having proper jurisdiction is the one in which the state board took the action in question; that court being Lancaster County District Court. *Bd. of Ed. of Keya Paha County v. State Board of Education*, 212 Neb. 448, 323 N.W.2d 89 (1982).
- If, after a district court review, an administrative agency's decision which had fallen into legal error is remanded to the agency, new evidence can be received by the agency if it is necessary, in the agency's judgment, to discharge its duty. *Phelps*

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County Savings Co. v. Dept. of Banking & Finance, 211 Neb. 683, 320 N.W.2d 99 (1982).

- This section, in 1978, did not provide a right of appeal from a declaratory ruling of an administrative agency issued pursuant to section 84-912, R.R.S.1943. But see 1979 amendment to section 84-912, which provides such appeal. Gretna Public School v. State Board of Education, 201 Neb. 769, 272 N.W.2d 268 (1978).
- Orders of the Department of Public Welfare made pursuant to section 68-1016, may be reviewed by petition in error as well as by appeal. Downer v. Ihms, 192 Neb. 594, 223 N.W.2d 148 (1974).
- Prior to hearing before Director of Banking, protestants requested that rules of evidence applicable to the district court be made binding and district court on appeal made findings in accordance with applicable statute and affirmed order of the director. Gateway Bank v. Department of Banking, 192 Neb. 109, 219 N.W.2d 211 (1974).
- Where errors assigned require review of evidence they cannot be considered on either appeal or error proceedings in absence of a bill of exceptions. Lanc v. Douglas County Welfare Administration, 189 Neb. 651, 204 N.W.2d 387 (1973).
- For district court to obtain jurisdiction under this section, petition must be filed and summonses must be issued during the appeal period. Norris P.P. Dist. v. State ex rel. Jones, 183 Neb. 489, 161 N.W.2d 869 (1968).
- The rebuttable presumption of validity regarding actions of administrative agencies which results in the burden of proof resting on the party challenging the agency's actions does not apply in cases involving the termination of the employment of a public employee. Trackwell v. Nebraska Dept. of Admin. Servs., 8 Neb. App. 233, 591 N.W.2d 95 (1999).

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## Y

## Z