

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 324

Introduced by Lautenbaugh, 18.

Read first time January 17, 2013

Committee:

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
2 amend section 48-144.01, Reissue Revised Statutes of
3 Nebraska, and sections 48-125 and 48-1,110, Revised
4 Statutes Cumulative Supplement, 2012; to change interest
5 rate provisions on certain compensation court awards; to
6 change provisions relating to first injury reports; to
7 deny compensation in situations of false representation;
8 to eliminate a sunset provision; to harmonize provisions;
9 to provide operative dates; to repeal the original
10 sections; and to outright repeal section 48-1,111,
11 Reissue Revised Statutes of Nebraska.

12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-125, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 48-125 (1)(a) Except as hereinafter provided, all amounts
4 of compensation payable under the Nebraska Workers' Compensation Act
5 shall be payable periodically in accordance with the methods of
6 payment of wages of the employee at the time of the injury or death.
7 Such payments shall be sent directly to the person entitled to
8 compensation or his or her designated representative except as
9 otherwise provided in section 48-149.

10 (b) Fifty percent shall be added for waiting time for all
11 delinquent payments after thirty days' notice has been given of
12 disability or after thirty days from the entry of a final order,
13 award, or judgment of the Nebraska Workers' Compensation Court,
14 except that for any award or judgment against the state in excess of
15 one hundred thousand dollars which must be reviewed by the
16 Legislature as provided in section 48-1,102, fifty percent shall be
17 added for waiting time for delinquent payments thirty days after the
18 effective date of the legislative bill appropriating any funds
19 necessary to pay the portion of the award or judgment in excess of
20 one hundred thousand dollars.

21 (2)(a) Whenever the employer refuses payment of
22 compensation or medical payments subject to section 48-120, or when
23 the employer neglects to pay compensation for thirty days after
24 injury or neglects to pay medical payments subject to such section
25 after thirty days' notice has been given of the obligation for

1 medical payments, and proceedings are held before the compensation
2 court, a reasonable attorney's fee shall be allowed the employee by
3 the compensation court in all cases when the employee receives an
4 award. Attorney's fees allowed shall not be deducted from the amounts
5 ordered to be paid for medical services nor shall attorney's fees be
6 charged to the medical providers.

7 (b) If the employer files an appeal from an award of a
8 judge of the compensation court and fails to obtain any reduction in
9 the amount of such award, the Court of Appeals or Supreme Court shall
10 allow the employee a reasonable attorney's fee to be taxed as costs
11 against the employer for such appeal.

12 (c) If the employee files an appeal from an order of a
13 judge of the compensation court denying an award and obtains an award
14 or if the employee files an appeal from an award of a judge of the
15 compensation court when the amount of compensation due is disputed
16 and obtains an increase in the amount of such award, the Court of
17 Appeals or Supreme Court may allow the employee a reasonable
18 attorney's fee to be taxed as costs against the employer for such
19 appeal.

20 (d) A reasonable attorney's fee allowed pursuant to this
21 subsection shall not affect or diminish the amount of the award.

22 (3) When an attorney's fee is allowed pursuant to this
23 section, there shall further be assessed against the employer an
24 amount of interest on the final award obtained, computed from the
25 date compensation was payable, as provided in section 48-119, until

1 the date payment is made by the employer, at a rate equal to the rate
2 of interest allowed ~~per annum under section 45-104.01, as provided in~~
3 section 45-103, as such rate may from time to time be adjusted by the
4 Legislature. Interest shall apply only to those weekly compensation
5 benefits awarded which have accrued as of the date payment is made by
6 the employer. If the employer pays or tenders payment of
7 compensation, the amount of compensation due is disputed, and the
8 award obtained is greater than the amount paid or tendered by the
9 employer, the assessment of interest shall be determined solely upon
10 the difference between the amount awarded and the amount tendered or
11 paid.

12 Sec. 2. Section 48-144.01, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 48-144.01 (1) In every case of reportable injury arising
15 out of and in the course of employment, the employer or workers'
16 compensation insurer shall file a report thereof with the Nebraska
17 Workers' Compensation Court. Such report shall be filed within ten
18 days after the employer or insurer has been given notice of or has
19 knowledge of the injury.

20 (2) For purposes of this section:

21 (a) Reportable injury means an injury or diagnosed
22 occupational disease which results in: (i) Death, regardless of the
23 time between the death and the injury or onset of disease; (ii) time
24 away from work; (iii) restricted work or termination of employment;
25 (iv) loss of consciousness; or (v) medical treatment other than first

1 aid;

2 (b) Restricted work means the inability of the employee
3 to perform one or more of the duties of his or her normal job
4 assignment. Restricted work does not occur if the employee is able to
5 perform all of the duties of his or her normal job assignment, but a
6 work restriction is assigned because the employee is experiencing
7 minor musculoskeletal discomfort and for the purpose of preventing a
8 more serious condition from developing;

9 (c) Medical treatment means treatment administered by a
10 physician or other licensed health care professional; and

11 (d) First aid means:

12 (i) Using a nonprescription medication at nonprescription
13 strength. For medications available in both prescription and
14 nonprescription form, a recommendation by a physician or other
15 licensed health care professional to use a nonprescription medication
16 at prescription strength is not first aid;

17 (ii) Administering tetanus immunizations. Administering
18 other immunizations, such as hepatitis B vaccine and rabies vaccine,
19 is not first aid;

20 (iii) Cleaning, flushing, or soaking wounds on the
21 surface of the skin;

22 (iv) Using wound coverings, such as bandages and gauze
23 pads, and superficial wound closing devices, such as butterfly
24 bandages and steri-strips. Using other wound closing devices, such as
25 sutures and staples, is not first aid;

1 (v) Using hot or cold therapy;

2 (vi) Using any nonrigid means of support, such as elastic
3 bandages, wraps, and nonrigid back belts. Using devices with rigid
4 stays or other systems designed to immobilize parts of the body is
5 not first aid;

6 (vii) Using temporary immobilization devices, such as
7 splints, slings, neck collars, and back boards, while transporting
8 accident victims;

9 (viii) Drilling of a fingernail or toenail to relieve
10 pressure or draining fluid from a blister;

11 (ix) Using eye patches;

12 (x) Removing foreign bodies from the eye using only
13 irrigation or a cotton swab;

14 (xi) Removing splinters or foreign material from areas
15 other than the eye by irrigation, tweezers, cotton swabs, or other
16 simple means;

17 (xii) Using finger guards;

18 (xiii) Using massages. Using physical therapy or
19 chiropractic treatment is not first aid; and

20 (xiv) Drinking fluids for relief of heat stress.

21 (3) An employee has the right, prior to an injury, to
22 elect that the report filed with the Nebraska Workers' Compensation
23 Court under this section be kept confidential and not open to public
24 inspection or copying, except as otherwise provided in this section
25 and as necessary for the compensation court to administer and enforce

1 other provisions of the Nebraska Workers' Compensation Act. An
2 election, once made, shall remain in effect notwithstanding any
3 change in employment by such employee, until and unless the election
4 is revoked by the employee. An election or revocation shall be made
5 in a form and manner established by the compensation court. The
6 compensation court shall deny any request to inspect or copy the
7 report for which an election has been made under this section unless:
8 (a) The requester is the employee who is the subject of the report or
9 an attorney or authorized agent of that employee. An attorney or
10 authorized agent of the employee shall provide a written
11 authorization for inspection or copying from the employee if
12 requested by the compensation court; (b) the requester is the
13 employer, workers' compensation insurer, risk management pool, or
14 third-party administrator that is a party to the report or an
15 attorney or authorized agent of such party. An attorney or authorized
16 agent of a party shall provide a written authorization for inspection
17 or copying from the party if requested by the compensation court; (c)
18 the requester is (i) an attorney or an authorized agent of an insurer
19 or a third-party administrator who is involved in administering any
20 claim for insurance benefits related to any injury of the employee
21 whose report is filed with the compensation court or (ii) an attorney
22 representing a party to a lawsuit filed by or on behalf of the
23 employee whose report is filed with the compensation court. An
24 attorney or authorized agent of such insurer or third-party
25 administrator or an attorney representing a party to such a lawsuit

1 shall provide a written authorization for inspection or copying from
2 the insurer, third-party administrator, or party, as applicable, if
3 requested by the compensation court; (d) the report will be used for
4 the purpose of state or federal investigation or examinations or for
5 the state or federal government to compile statistical information;
6 (e) the report requested is sought for the purpose of identifying the
7 number and nature of any injuries to any employees of an employer
8 identified in the request and the compensation court is able to and
9 does redact any information revealing the identity of the employee
10 prior to releasing the report; (f) the report requested is a pleading
11 filed with the compensation court or an exhibit submitted with a
12 pleading filed with the compensation court; (g) release of the report
13 is ordered by a court of competent jurisdiction; or (h) a revocation
14 of such election has been made by the employee in a form and a manner
15 established by the compensation court. Any request to inspect or copy
16 a report pursuant to this section shall be submitted to the
17 compensation court on a form prescribed by the compensation court.

18 Sec. 3. No compensation shall be allowed if, at the time
19 of or in the course of entering into employment or at the time of
20 receiving notice of the removal of conditions from a conditional
21 offer of employment: (1) The employee knowingly and willfully made a
22 false representation as to his or her physical or medical condition;
23 (2) the employer relied upon the false representation and the
24 reliance was a substantial factor in the hiring; and (3) a causal
25 connection existed between the false representation and the injury.

1 Sec. 4. Section 48-1,110, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 48-1,110 Sections 48-101 to 48-1,117 and section 3 of
4 this act shall be known and may be cited as the Nebraska Workers'
5 Compensation Act.

6 Sec. 5. Section 7 of this act becomes operative on June
7 30, 2014. The other sections of this act become operative on their
8 effective date.

9 Sec. 6. Original section 48-144.01, Reissue Revised
10 Statutes of Nebraska, and sections 48-125 and 48-1,110, Revised
11 Statutes Cumulative Supplement, 2012, are repealed.

12 Sec. 7. The following section is outright repealed:
13 Section 48-1,111, Reissue Revised Statutes of Nebraska.