

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 441

Introduced by Hansen, M., 26; Hunt, 8.

Read first time January 15, 2021

Committee:

1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
2 amend section 48-1,110, Revised Statutes Cumulative Supplement,
3 2020; to change provisions relating to compensation for certain
4 employees who are affected by COVID-19; to create a fund; to define
5 terms; to harmonize provisions; to repeal the original section; and
6 to declare an emergency.

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

1 Section 1. (1) For purposes of workers' compensation compensability
2 under section 48-101:

3 (a) An essential worker who otherwise qualifies for workers'
4 compensation and (i) is confirmed as COVID-19 positive on or after March
5 13, 2020, either by physician or by test, (ii) has COVID-19 listed as the
6 cause of death on the essential worker's death certificate, or (iii) is
7 quarantined at the direction of the employer due to suspected COVID-19
8 exposure or the display of any COVID-19 symptoms, shall be presumed to
9 have suffered from an accident arising out of and in the course of his or
10 her employment; and

11 (b) A claim shall not be denied to an essential worker described in
12 subdivision (1)(a) of this section on the basis that the accident did not
13 produce unexpected or unforeseen injury happening suddenly and violently
14 and producing at the time objective symptoms of the injury as required
15 under subdivision (2) of section 48-151.

16 (2) An employer may rebut the presumption established in subdivision
17 (1)(a) of this section by affirmatively proving that the employee
18 contracted COVID-19 outside of the workplace.

19 (3) The COVID-19 cases described in subsection (1) of this section
20 shall not be subject to the waiting period under section 48-119 for
21 payment of temporary total disability benefits. Compensation shall begin
22 from the earliest of the first date of quarantine, the date of positive
23 testing, or the date of confirmed diagnosis of COVID-19, and continuing
24 for the duration of the self-quarantine period that prevented the injured
25 essential worker from returning to employment.

26 (4) Under no circumstances shall any COVID-19 case described in
27 subsection (1) of this section increase or adversely affect any
28 employer's workers' compensation insurance premium, experience rating, or
29 modification.

30 (5) For COVID-19 cases described in subsection (1) of this section
31 occurring on or after March 13, 2020, and before the effective date of

1 this act for which a claim for workers' compensation benefits is made
2 after the effective date of this act:

3 (a) The Department of Insurance shall administer the processing of
4 such retroactive COVID-19 workers' compensation claims. The department
5 may, in its discretion, process the claims or may contract with a third
6 party for claims processing. The eligible essential worker shall apply
7 for such retroactive COVID-19 workers' compensation;

8 (b) The same procedures and legal standards as would be used in a
9 typical workers' compensation case shall be used for processing
10 retroactive COVID-19 workers' compensation claims, except as otherwise
11 provided in this section;

12 (c) The Nebraska Workers' Compensation Court shall have jurisdiction
13 to hear disputes;

14 (d) The notice requirement of section 48-133, which ordinarily
15 requires an injured worker to provide notice of the injury to his or her
16 employer as soon as practicable after the injury, shall not apply to
17 retroactive COVID-19 workers' compensation claims. Instead, the essential
18 worker seeking retroactive workers' compensation shall notify his or her
19 employer of the injury no later than two years after the effective date
20 of this act. Such essential worker shall request that his or her employer
21 complete a report of the injury pursuant to section 48-144.01;

22 (e) The employer shall subsequently submit all applicable documents
23 directly to the Department of Insurance, or a workers' compensation
24 insurer covering the retroactive COVID-19 workers' compensation claims,
25 for processing as an injury pursuant to the Nebraska Workers'
26 Compensation Act, in the same manner and form as all other claims filed
27 under the act; and

28 (f) This subsection shall not apply to essential workers who have
29 already filed claims for COVID-19 and received coverage.

30 (6) The Retroactive COVID-19 Claims Fund is hereby created. The fund
31 shall be utilized to pay for any costs from retroactive COVID-19 workers'

1 compensation claims brought pursuant to subsection (5) of this section.
2 Any money in the fund available for investment shall be invested by the
3 state investment officer pursuant to the Nebraska Capital Expansion Act
4 and the Nebraska State Funds Investment Act.

5 (7) Federal money which is available to the State of Nebraska and is
6 related to the COVID-19 emergency response may be used to offset state
7 costs under this section, to fund retroactive COVID-19 workers'
8 compensation claims, or to provide relief for affected insurers, if
9 applicable. Such federal money includes, but is not limited to, federal
10 money available pursuant to the Coronavirus Aid, Relief, and Economic
11 Security Act, Public Law 116-136.

12 (8) For purposes of this section:

13 (a) COVID-19 means the coronavirus disease 2019 or a disease, health
14 condition, or threat caused by severe acute respiratory syndrome
15 coronavirus 2 (SARS-CoV-2) or by any virus mutating from severe acute
16 respiratory syndrome coronavirus 2 (SARS-CoV-2); and

17 (b) Essential worker means an employee who is required to report to
18 work, whose job responsibilities include contact with or work in
19 proximity to or in the same space as the public or co-workers in the
20 course of his or her employment, and who performs essential functions for
21 society to continue operating. For purposes of this section, the
22 following individuals are considered essential workers:

23 (i) A person who is required to report to work in one of the
24 following workplaces:

25 (A) An ambulance operation, including advanced mobile emergency care
26 services;

27 (B) A county medical care facility;

28 (C) An emergency response service as defined in section 35-1303;

29 (D) An assisted-living facility as defined in section 71-5903;

30 (E) A hospice as defined in section 71-418;

31 (F) A hospital;

1 (G) A home health agency, visiting nurse association, or other
2 caregivers who are required to provide in-person medical care to patients
3 as described in section 71-9403;

4 (H) An adult day service as defined in section 71-404; and

5 (I) An ambulatory surgical center as defined in section 71-405;

6 (ii) A person working as a physician, physician assistant, licensed
7 practical nurse, registered professional nurse, medical first responder,
8 nurse, emergency medical technician, emergency medical technician
9 specialist, paramedic, pharmacist, respiratory therapist, or other
10 medical professional or employee in a healthcare setting who is required
11 to provide in-person medical care to patients or otherwise work in a
12 healthcare setting;

13 (iii) A peace officer as defined in section 49-801;

14 (iv) A firefighter;

15 (v) A member of an emergency rescue team;

16 (vi) An emergency management worker as defined in section 81-829.39;

17 (vii) An on-call member of a life support agency;

18 (viii) A state or local government employee that is required to work
19 within the secured perimeter of a penal institution, including, but not
20 limited to, correctional facilities, jails, and criminal detention
21 facilities as defined in section 83-4,125;

22 (ix) An employee of a youth rehabilitation and treatment center;

23 (x) An employee of a regional center as defined in section 71-911;

24 (xi) A food processing employee who is employed in a meatpacking
25 operation as defined in section 48-2208;

26 (xii) A public or private school employee;

27 (xiii) A grocery store employee;

28 (xiv) A public works, utilities, or garbage disposal employee;

29 (xv) A truck driver;

30 (xvi) A mortuary or funeral home employee;

31 (xvii) A childcare employee;

1 (xviii) A postal service employee; or

2 (xix) Any other individual employed by an essential or life-
3 sustaining business or occupation.

4 Sec. 2. Section 48-1,110, Revised Statutes Cumulative Supplement,
5 2020, is amended to read:

6 48-1,110 Sections 48-101 to 48-1,117 and section 1 of this act shall
7 be known and may be cited as the Nebraska Workers' Compensation Act.

8 Sec. 3. Original section 48-1,110, Revised Statutes Cumulative
9 Supplement, 2020, is repealed.

10 Sec. 4. Since an emergency exists, this act takes effect when
11 passed and approved according to law.