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STATE

Littler on

Nebraska Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Nebraska employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

DISCLAIMER

This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

In Nebraska, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).[5]

The Nebraska Department of Labor (NDOL) has entered into a partnership with the U.S. Department of Labor (DOL), Wage and Hour Division to work cooperatively through information sharing, joint enforcement efforts, and coordinated outreach and education efforts in order to reduce instances of misclassification of employees as independent contractors.[6]

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	Nebraska Equal Opportunity Commission (NEOC)	Multi-factor balancing test considering the following factors: "(1) the extent of control which, by the agreement, the employer may exercise over the details of the work;

[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15 F.3d 103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] Nebraska enacted the Employee Classification Act (ECA) in 2010. However, the ECA applies only to the misclassification of individuals performing delivery services for a contractor, or performing construction labor for a contractor. *See* NEB. REV. STAT. §§ 48-2901 to 48-2912. Under the ECA, these individuals are presumed to be employees rather than independent contractors. NEB. REV. STAT. § 48-2903. More information about the ECA is available from the Nebraska Department of Labor, Labor Standards and Worker Rights, at https://dol.nebraska.gov/LaborStandards/WorkerRights/EmployeeClassificationAct ("Effective July 15, 2010 the [ECA] provides for protection of workers in construction and delivery services from misclassification as subcontractors for the purposes of tax withholding, unemployment insurance and workers' compensation insurance benefits.").

[6] More information about the DOL Misclassification Initiative is available at https://www.dol.gov/whd/workers/misclassification/#stateDetails. The Memorandum of Understanding with the NDOL is available at https://www.dol.gov/whd/workers/MOU/ne.pdf.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		(2) whether the one employed is engaged in a distinct occupation or business; (3) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (4) the skill required in the particular occupation; (5) whether the employer or the one employed supplies the instrumentalities, tools, and the place of work for the person doing the work; (6) the length of time for which the one employed is engaged; (7) the method of payment, whether by the time or by the job; (8) whether the work is part of the regular business of the employer; (9) whether the parties believe they are creating an agency relationship; and (10) whether the employer is or is not in business."[7]
Income Taxes	Nebraska Department of Revenue	There are no relevant statutory definitions or case law identifying a test for independent contractor status in this context.
Wage & Hour Laws	NDOL, Labor Standards Worker Rights	ABC test.

[7] *Haag v. Bongers*, 589 N.W.2d 318, 332 (Neb. 1999) (citations omitted). No state or administrative decision was located concerning what test is applied for determining whether an individual is an independent contractor under the Nebraska Fair Employment Practice Act (NFEPA). However, the state attorney general has applied the ten-factor test cited above, which is also used in workers' compensation cases, in determining if individuals are employees or independent contractors under the NFEPA. Neb. Op. Att'y Gen. No. 10, 2001 WL 276853 (Office of Att'y Gen. Mar. 9, 2001) (responding to a request from Director of the NEOC concerning agricultural seasonal field inspectors' employment status; concluding they are independent contractors; and acknowledging they are not covered by the NFEPA). Previously, the attorney general opined that the NFEPA does not apply to independent contractors: "Although the Nebraska Supreme Court has not approached this issue, Nebraska statutes, a past Nebraska Attorney General's Opinion, and case law from other states have indicated that independent contractors should be distinguished from employees." Neb. Op. Att'y Gen. No. 54, 1989 WL 409287, at *1 (Office the Att'y Gen. July 17, 1989).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		Under Nebraska's Wage Payment and Collection Act, *employee* is defined as "any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission."[8] An employment relationship is presumed unless and until it is shown that: "(a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his/her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business."[9] The statute specifies explicitly that it "is not intended to be a codification of the common law and shall be considered complete as written."[10]
Unemployment Insurance	NDOL, Office of Unemployment Insurance	ABC test. *Employment* means "[a]ny service performed, including service in interstate commerce, for wages under a contract of hire, written or oral, express or implied."[11] Services performed by an individual for

[8] NEB. REV. STAT. § 48-1229(1). Under Nebraska's Wage and Hour Act, *employee* is defined as "any individual employed by any employer." NEB. REV. STAT. § 48-1202. There is no explicit exception for independent contractors under the Wage and Hour Act.

[9] NEB. REV. STAT. § 48-1229(1).

[10] NEB. REV. STAT. § 48-1229(1).

[11] NEB. REV. STAT. § 48-604(1).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		wages, including wages received under a contract of hire, are presumed to be employment unless it is shown that: "(a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his/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."[12] The statute specifies explicitly that it is "not intended to be a codification of the common law and shall be considered complete as written."[13]

[12] NEB. REV. STAT. § 48-604(5). Failure to satisfy any prong of the ABC test will result in a determination that an individual is an employee and not an independent contractor under the Employment Security Law. *Bay Constr. Co. v. Dolan*, 513 N.W.2d 555, 559 (Neb. Ct. App. 1994); *see also* NDOL, Unemployment Ins. Tax, *Employer's Guide to Unemployment Insurance Independent Contractors (Contract Labor)*, *available at* https://dol.nebraska.gov/UITax (noting that all three prongs must be met to be considered "Contract Labor"). With respect to the A prong, in *Commissioner of Labor v. Lyric Co.*, the alleged employer was found not to have satisfied the control prong: "The salespeople had no set hours, no set duties, no reporting responsibility," and the court found "no evidence in the record of *any* training or instruction provided by [the employer] to its employees." 397 N.W.2d 32, 34 (Neb. 1986) (emphasis in original). With respect to the B prong, in *Bay Construction Co.*, the Nebraska Court of Appeals held that it interpreted "places of business" to include not only the employer's office headquarters or premises, but also jobsites. 513 N.W.2d at 560. However, two years later, in *Metro Renovation, Inc. v. Department of Labor*, the Nebraska Supreme Court held that *Bay Construction Co.*'s rationale "is not persuasive, and it is rejected" because it "precludes any construction company from ever meeting the requirements [of part B] with regard to tradespeople hired for construction work." 543 N.W.2d 715, 722 (Neb. 1996), *overruled on other grounds by State v. Nelson*, 739 N.W.2d 199 (Neb. 2007). With respect to the C prong, if an individual can work for whomever else they want, that individual can satisfy part C of the ABC test. *Lyric Co.*, 397 N.W.2d at 34-35; *see also Department of Public Welfare v. Saville*, 361 N.W.2d 215, 220 (Neb. 1985).

[13] NEB. REV. STAT. § 48-604(5).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Workers' Compensation	Nebraska Workers' Compensation Court	Multi-factor balancing test, as set forth in the fair employment practices section above.[14] "[W]hen there is a written contract between the parties which denominates and describes the relationship as that of independent contractor, and nothing in the manner of performance by the parties is inconsistent with the relationship described, then the independent contractor is not deemed to be an employee as a matter of law."[15] If a written contract exists, it is "considered and may be of prime importance," but "a writing which merely denominates the relationship may not be used to conceal the true arrangement."[16]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status. Nebraska does not have an approved state plan under the federal Occupational Safety and Health Act.

[14] *Haag v. Bongers*, 589 N.W.2d 318, 332 (Neb. 1999); *see also Hemmerling v. Happy Cab Co.*, 530 N.W.2d 916, 922 (Neb. 1995). It is the *right to control* that is the key factor in finding an individual is an employer versus an independent contractor. *Hemmerling*, 530 N.W.2d at 920. However, "although control or the right of control is the chief factor to be considered when identifying one acting on behalf of another as an employee or an independent contractor, it is not the conclusive factor." *Hemmerling*, 530 N.W.2d at 921. The deduction of Social Security taxes and income tax withholding are generally indicative of an employment relationship; the failure to deduct or withhold is generally indicative of independent contractor status. *Hemmerling*, 530 N.W.2d at 923. Under the Workers' Compensation Act, *employee* is defined as "[e]very person in the service of an employer who is engaged in any trade, occupation, business, or profession . . . under any contract of hire, expressed or implied, oral or written." NEB. REV. STAT. § 48-115(2). However, the definition excludes "any person whose employment is not in the usual course of the trade, business, profession, or occupation" of the employer. NEB. REV. STAT. § 48-115(2).

[15] *Hemmerling*, 530 N.W.2d at 921 (citation omitted).

[16] *Hemmerling*, 530 N.W.2d at 921 (quotation omitted).

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[17]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[18] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[19]

For more information on these topics, see **LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS**.

[17] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see **LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

[18] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[19] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

1.2(b)(i) *Private Employers*

Nebraska does not have a generally applicable employment eligibility or verification statute. Therefore, private-sector employers in Nebraska should follow federal law requirements regarding employment eligibility and verification.

Recipients of State Tax Incentives. Employers receiving state tax incentives or grants under the Nebraska Advantage Transformational Tourism and Redevelopment Act, the Nebraska Advantage Act, the Nebraska Advantage Research and Development Act, the Nebraska Advantage Microenterprise Tax Credit Act, or the Nebraska Advantage Rural Development Act are required to electronically verify the work eligibility status of all newly-hired employees employed in Nebraska as a condition of receipt.[20]

1.2(b)(ii) *State Contractors*

Every public employer and public contractor must register with and use E-Verify to determine the work eligibility status of new employees who are physically performing services in Nebraska. As well, every contract between a public employer and public contractor must contain a provision requiring the public contractor to use E-Verify to determine the work eligibility status of new employees physically performing services within the state.[21]

For these purposes, *public contractor* means "any contractor or his or her subcontractor who is awarded a contract by a public employer for the physical performance of services within the State of Nebraska."[22] *Public employer* means any agency or political subdivision of the state.[23]

These requirements do not apply to contracts awarded by a public employer before October 1, 2009.[24]

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[25] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

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[20] NEB. REV. STAT. §§ 77-1029, 77-5722.01, 77-5808, 77-5908, and 77-27,188.03.

[21] NEB. REV. STAT. § 4-114(2).

[22] NEB. REV. STAT. § 4-114(1)(b).

[23] NEB. REV. STAT. § 4-114(1)(c).

[24] NEB. REV. STAT. § 4-114(4).

[25] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Except under limited circumstances, Nebraska employers may not obtain records of arrests. Criminal history information consisting of a notation of arrest is available only to employers with a notarized request by the subject of the record for the release of such record to a specific person.[26]

Notations of arrest will be removed from the public record as follows:

1. In the case of an arrest for which no charges are filed as a result of the determination of the prosecuting attorney, the arrest will not be part of the public record after one year from the date of the arrest, citation in lieu of arrest, or referral from prosecution without citation;
2. In the case of an arrest for which charges are not filed as a result of a completed diversion, the criminal record information will not be part of the public record after two years from the date of arrest, citation in lieu of arrest, or referral for prosecution without citation; and
3. In the case of an arrest for which charges are filed but dismissed by the court on motion of a prosecuting attorney, as a result of a hearing not the subject of pending appeal, after acquittal, or after completion of certain programs, the criminal history information will not be part of the public record after a specified period.[27]

Again, however, these limitations do not apply if the employer has obtained a notarized release from the employee or applicant.[28]

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[26] NEB. REV. STAT. § 29-3523(1)(c). Criminal history information is also available if the subject of the record is currently the subject of prosecution or correctional control as the result of a separate arrest or is an announced candidate for or holder of public office, as well as anonymously for surveying law enforcement agency activity or practices. NEB. REV. STAT. § 29-3523(a)-(b), (d).

[27] NEB. REV. STAT. § 29-3523(3).

[28] NEB. REV. STAT. § 29-3523(3).

Criminal history record information is defined as: "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release." The definition also includes "any judgment against or settlement with the state as a result of a wrongful conviction pursuant to the Nebraska Claims for Wrongful Conviction and Imprisonment Act". Criminal history record information does not include intelligence or investigative information.[29]

Ban-the-Box Law. Nebraska has not implemented a "ban-the-box" law covering private employers.

1.3(a)(iii) *State Guidelines on Employer's Use of Conviction Records*

Nebraska places no statutory restrictions on a private employer's use of conviction records.

1.3(a)(iv) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

In any application for employment, a person cannot be questioned with respect to any arrest or taking into custody for which the record is sealed. If an inquiry is made in violation of the law, the person may respond as if the sealed arrest or taking into custody did not occur, and the person may not be subject to any adverse action because of the arrest, the taking into custody, or the response.[30]

Juvenile Records. If a court orders the records of a juvenile sealed, the juvenile who is the subject of the order may reply that no record exists in response to any public inquiry into the matter.[31] In any application for employment, a person cannot be questioned with respect to any sealed record. If an inquiry is made in violation of the law, the person may respond as if the offense did not occur.[32]

Applications for employment must contain specific language informing applicants that they are not obligated to disclose a sealed juvenile record or sentence. Employers cannot ask if an applicant has had a juvenile record sealed.[33]

1.3(a)(v) *State Enforcement, Remedies & Penalties*

A person who violates the provisions regarding sealed juvenile records may be held in contempt of court.[34]

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[35] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[36] regarding job applicants for use in

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[29] NEB. REV. STAT. § 29-3506.

[30] NEB. REV. STAT. § 29-3523(5).

[31] NEB. REV. STAT. § 43-2,108.05(2).

[32] NEB. REV. STAT. § 43-2,108.05(5).

[33] NEB. REV. STAT. § 43-2,108.05(5).

[34] NEB. REV. STAT. § 43-2,108.05(6).

[35] 15 U.S.C. §§ 1681 *et seq*.

[36] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing,

hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[37]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Nebraska does not have a mini-FCRA law, and there are no additional state provisions specifically restricting a private employer's use of credit information and history.

1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded

character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

[37] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.

- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

Under Nebraska's Workplace Privacy Act, an employer cannot require or request that an employee or applicant:

- provide or disclose a username or password or any other related account information to gain access to the individual's personal internet account via an electronic communication device;
- log into a personal internet account via an electronic communication device in the employer's presence in a manner that enables the employer to observe the account's contents or provides the employer access to the account; or
- add anyone, including the employer, to the account's contacts list or require or otherwise coerce an individual to change their account's privacy settings.[38]

Electronic communication device "means a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device."[39] *Personal internet account* "means an individual's online account that requires login information to access or control the account."[40]

An employer is prohibited from taking adverse action against, failing to hire, or otherwise penalizing an employee or applicant for not providing or disclosing any of the information protected by the Workplace Privacy Act.[41] *Adverse action* is defined as a discharge, a threat against an employee, or any other act against an employee that negatively affects the individual's employment.[42]

An employer cannot require an employee or applicant to waive or limit any protection granted under the Workplace Privacy Act as a condition of continued employment or of applying for or receiving an offer of employment. Any such agreement is against public policy, void, and unenforceable.[43]

Antiretaliation Provisions. Additionally, an employer is prohibited from retaliating or discriminating against an employee or applicant because the employee of applicant: (1) files a complaint under the

[38] NEB. REV. STAT. § 48-3503(1)-(3).

[39] NEB. REV. STAT. § 48-3502(1).

[40] NEB. REV. STAT. § 48-3502(6)(a).

[41] NEB. REV. STAT. § 48-3503(4).

[42] NEB. REV. STAT. § 48-3502(1).

[43] NEB. REV. STAT. § 48-3504.

Workplace Privacy Act; or (2) testifies, assists, or participates in an investigation, proceeding, or action concerning a violation of the law.[44]

Exceptions. An employer can access information about an employee or applicant that is in the public domain or is otherwise obtained in compliance with the law.[45] Moreover, the law does not preclude an employer from complying with requirements to screen employees or applicants before hiring or to monitor or retain employee communications that are established by state or federal law or by a self-regulatory organization, or to comply with a law enforcement investigation conducted by a law enforcement agency.[46]

The law also does not affect an employer's rights or obligations to conduct an investigation or require an employee to cooperate in an investigation under any of the following circumstances:

- to ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct, if the employer has specific information about potentially wrongful activity taking place on the employee's personal internet account; or
- if the employer has specific information about an unauthorized download or transfer of the employer's private proprietary information, private financial data, or other confidential information to an employee's personal internet account.[47]

Employees are prohibited from downloading or transferring an employer's private proprietary information or private financial data to a personal internet account without the employer's authorization. This does not apply if information or data is otherwise disclosed by the employer to the public pursuant to other provisions of law or practice.[48] An employer can take adverse action against an employee for downloading or transferring an employer's private proprietary information or private financial data to a personal internet account without the employer's authorization.[49]

Rules for Employer-Provided Devices & Online Accounts. The statutory definition of *personal internet account* does not include: (1) an online account an employer supplies or pays for (except when the employer pays only for additional features or enhancements to the account); or (2) an online account used exclusively for the employer's business purpose.[50] Moreover, an employer can create and maintain lawful workplace policies governing use of its electronic equipment, including policies regarding internet and personal internet account use.[51]

As well, the Workplace Privacy Act allows an employer to:

- request or require an employee or applicant to disclose access information to the employer to gain access to or operate: (1) an electronic communication device supplied by or paid

[44] NEB. REV. STAT. § 48-3505.

[45] NEB. REV. STAT. § 48-3507(5).

[46] NEB. REV. STAT. §§ 48-3507(8)-(9), 48-3508.

[47] NEB. REV. STAT. §§ 48-3506, 48-3507(6).

[48] NEB. REV. STAT. §§ 48-3506, 48-3507(7).

[49] NEB. REV. STAT. § 48-3507(7).

[50] NEB. REV. STAT. § 48-3502(6)(b).

[51] NEB. REV. STAT. § 48-3507(1).

wholly or partially by the employer; or (2) an account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes;

- restrict or prohibit an employee's access to certain websites while using an electronic communication device supplied by or paid wholly or partially by the employer or while using an employer's network or resources, to the extent permissible under applicable laws; and
- monitor, review, access, or block electronic data stored on an electronic communication device supplied by or paid wholly or partially by the employer or stored on an employer's network, to the extent permissible under applicable laws.[52]

However, if an employer inadvertently learns the username, password, or other means of access to an employee's or applicant's personal internet account through using otherwise lawful technology that monitors the employer's computer network or employer-provided electronic communication devices for service quality or security purposes, it is not liable for obtaining the information, but cannot use it to access the account or share the information with anyone. The employer must delete such information as soon as practicable.[53]

Liability. The Workplace Privacy Act does not create a duty for an employer to search or monitor the activity of a personal internet account. In addition, an employer is not liable under the law for failing to request or require that an employee or applicant grant access to, allow observation of, or disclose information that allows access to or observation of, the individual's personal internet account.[54]

1.3(c)(iii) *State Enforcement, Remedies & Penalties*

Under Nebraska's social media law, an aggrieved employee or applicant can file a civil action within one year after the violation occurred or was discovered, whichever is later. If successful, the individual is entitled to appropriate relief, including temporary or permanent injunctive relief, general and special damages, reasonable attorneys' fees, and costs.[55]

1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[56] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;

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[52] NEB. REV. STAT. § 48-3507(2)-(4).

[53] NEB. REV. STAT. § 48-3510.

[54] NEB. REV. STAT. § 48-3509.

[55] NEB. REV. STAT. § 48-3511.

[56] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Employers cannot require that a person submit to a truth and deception examination as a condition of employment or as a condition for continued employment, unless employment involves public law enforcement.[57]

Voluntary Examinations. However, the law allows an employer *to ask* an employee or applicant to submit to a truth and deception examination if:

- no questions are asked during the truth and deception examination concerning the individual's sexual practices, labor union, political or religious affiliations, or marital relationships;
- the individual is given written and oral notice that the examination is voluntary and that the individual may discontinue the examination at any time;
- the employer has the individual sign a form stating that the examination is being taken voluntarily;
- questions asked of *applicants* are job related;
- *applicants* are not preselected for a truth and deception examination in a discriminatory manner;
- an *employee* is only requested to submit to a truth and deception examination if such examination concerns itself with a specific investigation;
- the results of a truth and deception examination are not the sole determinant in terminating employment; and
- all questions asked during a truth and deception examination and the responses of the individual are kept on file by the employer for one year.[58]

[57] NEB. REV. STAT. § 81-1932.

[58] NEB. REV. STAT. § 81-1932.

The following definitions are relevant under the polygraph law. *Polygraph* means "any mechanical or electronic instrument which uses attached sensors to record psychophysiological responses for the purpose of attempting to determine truth or deception and which records permanently and simultaneously at least three physiological responses. The physiological responses recorded shall include, but not be limited to, respiratory pattern, cardiovascular pattern, and galvanic skin response."[59] *Voice stress analyzer* means "a mechanical or electronic instrument capable of recording the human voice, which detects and measures pitch, amplitude, frequency, and other components of the human voice for the purpose of attempting to determine truth or deception, and whose records are permanently and simultaneously recorded."[60]

1.3(d)(iii) *State Enforcement, Remedies & Penalties*

Violation of the polygraph law is a Class II misdemeanor.[61]

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[62] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[63] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Nebraska has a drug testing law that covers voluntary testing by private employers with six or more full- or part-time employees, as well as by public employers.[64] This law regulates drug and alcohol testing of employees but does not contain provisions specific to applicants. For more information about drug and alcohol testing of current employees, see **3.2(b)**.

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[59] NEB. REV. STAT. § 81-1907.

[60] NEB. REV. STAT. § 81-1909.

[61] NEB. REV. STAT. § 81-1933.

[62] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[63] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[64] NEB. REV. STAT. §§ 48-1901 *et seq*.

1.3(f) *Additional State Guidelines on Preemployment Conduct*

1.3(f)(i) *State Restrictions on Job Application Fees, Deductions, or Other Charges*

Employers cannot require job applicants to pay the cost of medical examinations required by the employer as a condition of employment. When the employer requests an applicant for a position to submit to a medical examination, the employer must assume the cost.[65]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[66] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[67] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[68] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[69]

[65] NEB. REV. STAT. § 48-221.

[66] 26 U.S.C. § 36B.

[67] 42 U.S.C. § 18071.

[68] 29 U.S.C. § 218b.

[69] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[70] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[71]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[72] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[73] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[74]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature.

[70] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[71] 29 C.F.R. § 2590.606-1.

[72] 29 C.F.R. § 825.300(a).

[73] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

[74] 29 C.F.R. § 825.300(a).

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[75] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[76]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[77]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[78]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

[75] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[76] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[77] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[78] 29 C.F.R. § 531.59.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	No notice requirement located.
Fair Employment Practices Documents	No notice requirement located.
Notice to Non-English Speaking Hourly Employees	Additional notice requirements apply to an employer that: (1) has at least 100 employees; (2) actively recruits any non-English speaking persons for employment in Nebraska; and (3) has a workforce that includes more than 10% non-English speaking employees who speak the same non-English language. Such employers must file with the commissioner a written statement signed by the employer and each such employee which provides relevant information regarding the position of employment, including: • the minimum number of hours the employee can expect to work on a weekly basis; • the hourly wages of the position of employment including the starting hourly wage; • a description of the responsibilities and tasks of the position of employment; • a description of the transportation and housing to be provided, if any, including any costs to be charged for housing or transportation, the length of time such housing is to be provided, and whether or not such housing is in compliance with all applicable state and local housing standards; and • any occupational physical demands and hazards of the position of employment which are known to the employer. The statement must be written in English and in the identified language of the non-English-speaking employee. The employer or the representative must explain in detail the contents of the statement prior to obtaining the employee's signature. A copy of the statement must be given to the employee.[79]
Tax Documents	State form W-4N is the equivalent to the federal form W-4 and is Used to determine "the number of allowances that the employer uses in conjunction with the Nebraska Circular EN to calculate the Nebraska income tax withholding."[80]

[79] NEB. REV. STAT. § 48-2210.

[80] Nebraska Dep't of Revenue, *Frequently Asked Questions About Nebraska Income Tax Withholding*, *available at* https://revenue.nebraska.gov/about/frequently-asked-questions/income-tax-withholding-faqs. The value of the Nebraska allowance is listed in the Nebraska Circular EN.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Wage & Hour Documents	No notice requirement located.

2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[81] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[82]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must

[81] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

[82] 42 U.S.C. § 653a.

notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;
- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[83] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Nebraska's new hire reporting law.

Who Must Be Reported. Employers should report employees newly hired, rehired, or returned to work after being laid off, furloughed, separated, granted an unpaid leave, or terminated after 60 days. Termination does not include temporary separations such as unpaid medical leave, an unpaid leave of absence, a temporary layoff of less than 60 days in length, or an absence for disability or maternity.[84]

Report Timeframe. The report must be made within 20 days after date of hire or rehire and should be submitted magnetically or electronically. The report may be submitted twice per month if necessary, not less than 12 days or more than 16 days apart.[85]

[83] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[84] NEB. REV. STAT. § 48-2302(1), (7).

[85] NEB. REV. STAT. § 48-2302(2).

Information Required. The report must include the employee's name, address, Social Security number, and date of hire or rehire, along with the employer's name, address, and federal tax identification number.[86]

Form & Submission of Report. The Form W-4 (with date of hire or rehire), the Nebraska New Hire Reporting Form, or a printed list of all new hires are acceptable forms for reporting. The report may be submitted by first-class mail, fax, magnetic tape, diskette, electronically, or any other means approved by the department.[87]

Location to Send Information.

Nebraska State Directory of New Hires
P.O. Box 483
Norwell, MA 02061
(888) 256-0293
(866) 808-2007 (fax)
https://ne-newhire.com/

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[88] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under

[86] NEB. REV. STAT. § 48-2302(1).

[87] NEB. REV. STAT. § 48-2302(1).

[88] 18 U.S.C. §§ 1832 *et seq.*

the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS.

2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

Nebraska does not have a statute that generally applies to restrictive covenants or noncompetition agreements. Nebraska courts, however, have set standards for determining the legality of noncompete agreements. Generally, contracts that restrain trade are against public policy and void.

Covenants not to compete, as partial restraints on trade, are enforceable if the covenant is reasonable. In determining whether a covenant not to compete is valid, a court considers whether the restriction is: (1) reasonable in the sense that it is not injurious to the public; (2) not greater than is reasonably necessary to protect the employer in some legitimate interest; and (3) not unduly harsh and oppressive on the employee.[89]

An employer has a legitimate business interest in protection against a former employee's competition by improper and unfair means, but is not entitled to protection against ordinary competition from a former employee. In addition, an employer does not ordinarily have a legitimate business interest in the postemployment preclusion of an employee's use of some general skill.[90]

For the restriction to be reasonable, the area covered by a noncompete agreement must be no greater than the area in which the employee worked for the employer. A covenant is valid only if it restricts the former employee from working for or soliciting the former employer's clients or accounts with whom the former employee actually did business and has personal contact.[91] Further, an employer has a legitimate interest in protecting only its existing client base; no such protectable interest exists with respect to potential clients or former clients.[92]

Enforceability Following Employee Discharge. Nebraska courts have not specifically addressed whether the employer's termination of employment relationship renders a noncompete void.

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

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89 *Gaver v. Schneider's O.K. Tire Co.*, 856 N.W.2d 121, 127 (Neb. 2014).

90 856 N.W.2d at 123.

91 *Polly v. Ray D. Hilderman & Co.*, 407 N.W.2d 751, 756 (Neb. 1987).

92 407 N.W.2d at 756; *accord H&R Block Tax Servs. v. Circle A Enter., Inc.*, 693 N.W.2d 548 (Neb. 2005).

In Nebraska, sufficient consideration for an agreement will be found if there is some benefit to one of the parties and a detriment to the other. Nebraska courts have not directly ruled on whether employment is sufficient consideration for noncompetes entered into at the inception of employment, or whether continued employment, without more, constitutes sufficient consideration. However, Nebraska courts have found a change in terms of employment can create the requisite consideration required, where an employee executes a noncompete agreement during employment.[93]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

In Nebraska, noncompete agreements are not subject to reformation: "it is not the function of courts to reform unreasonable covenants for the purpose of making them enforceable."[94]

2.3(b)(iv) *State Trade Secret Law*

In addition to noncompetition agreements, Nebraska law provides other means for employers to protect themselves from a recently departed employee's misuse of proprietary information acquired from the employer. Specifically, Nebraska has adopted a version of the Uniform Trade Secrets Act.[95]

Definition of a Trade Secret. Under the Nebraska Trade Secrets Act (NTSA), a *trade secret* is defined as

> information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that:
>
> (a) Derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[96]

Under Nebraska law, the definition of trade secret is narrow and if an alleged trade secret is ascertainable by any means that are not improper, the would-be trade secret is peremptorily excluded from coverage

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[93] *See Aon Consulting, Inc. v. Midlands Fin. Benefits, Inc.*, 748 N.W.2d 626, 638 (Neb. 2008).

[94] *Whitten, D.D.S., P.C. v. Malcolm*, 541 N.W.2d 45, 47 (Neb. 1995). *See also Unlimited Opportunity, Inc. v. Waadah*, 861 N.W.2d 437 (Neb. 2015).

[95] NEB. REV. STAT. §§ 87-501 *et seq*.

[96] NEB. REV. STAT. § 87-502(4).

under the act.[97] Courts will consider the following factors in determining whether information is considered a trade secret:

- extent to which information is known outside particular employer's business;
- extent to which it is known by employees and others involved in his business;
- extent of measures taken by the individual to guard secrecy of it;
- value of such information to them and their competitors;
- amount of effort or money expended by the individual in developing the information; and
- ease or difficulty with which the information could be properly acquired or duplicated by others.[98]

Misappropriation of a Trade Secret. Under the Nebraska Trade Secrets Act, liability attaches if the trade secret is misappropriated. *Misappropriation* is defined as:

1. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. disclosure or use of a trade secret of another without express or implied consent by a person who:
    a. used improper means to acquire knowledge of the trade secret; or
    b. at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
        i. derived from or through a person who had utilized improper means to acquire it;
        ii. acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
        iii. derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
    c. before a material change of their position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[99]

Remedies. Actual or threatened misappropriation may be enjoined.[100] Damages may include both the actual loss caused by the misappropriation and any additional unjust enrichment.[101]

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Nebraska does not have statutory guidelines addressing the ownership of employee inventions and ideas.

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[97] *Infogroup, Inc. v. Database L.L.C.*, 95 F. Supp. 3d 1170 (D. Neb. 2015).

[98] *Garner Tool & Die v. Laux*, 285 N.W.2d 219 (Neb. 1979).

[99] NEB. REV. STAT. § 87-502(2).

[100] NEB. REV. STAT. § 87-503.

[101] NEB. REV. STAT. § 87-504.

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

Table 5. Federal Posting & Notice Requirements

Poster or Notice	Notes
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[102]
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[103]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[104]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[105]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language

[102] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[103] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[104] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[105] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	common to migrant or seasonal agricultural workers who are not fluent or literate in English.[106]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[107]
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[108]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[109]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[110] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[111]

[106] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[107] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[108] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[109] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[110] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[111] 41 C.F.R. §§ 60-300.44, 60-741.44.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[112]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[113]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[114]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[115]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[116]

[112] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[113] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

[114] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[115] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[116] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[117]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[118] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[119]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[120]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where

[117] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[118] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

[119] 29 C.F.R. § 13.5.

[120] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
(contracts entered into on or after January 30, 2022)	accessible to employees, summarizing the applicable minimum wage rate and other required information.[121]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Child Labor	An employer employing minors must post conspicuous notice, in every room where minors work, a notice stating the hours required of them per day, beginning and ending times for work, and time allowed for meals.[122]
Fair Employment Practices: Discrimination is Prohibited	Employers with 15 or more employees must post conspicuous notice informing applicants, employees, and the public that discrimination is prohibited in employment, housing, and public accommodations and how to file complaints.[123]
Fair Employment Practices: Equal Pay	Employers with 15 or more employees must post conspicuous notice informing applicants and employees of the state equal pay law.[124]
Fair Employment Practices: Lincoln	In Lincoln, Nebraska, employers (and their agents) employing four or more employees for each working day in 20 or more calendar weeks in the current or preceding calendar year must post a workplace poster covering the city's local fair employment protections.[125]

[121] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

[122] NEB. REV. STAT. § 48-310. This poster is available at https://dol.nebraska.gov/LaborStandards/WorkerRights/EmploymentOfMinors.

[123] NEB. REV. STAT. § 48-1121. This poster is available in English at http://www.neoc.ne.gov/education/pdf/PosterEnglish.pdf and in Spanish at http://www.neoc.ne.gov/education/pdf/PosterSpanish.pdf. It is also included in the "3 in 1" poster available in English and Spanish at https://dol.nebraska.gov/LaborStandards/Compliance/RequiredPosters. Additional resources are available at http://www.neoc.ne.gov/education/education.html.

[124] NEB. REV. STAT. § 48-1226. This notice is included in the "3 in 1" poster available in English and Spanish at https://dol.nebraska.gov/LaborStandards/Compliance/RequiredPosters.

[125] LINCOLN, NEB., MUN. CODE § 11.08.150.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Human Trafficking Informational Poster	Certain employers are obligated to post notice concerning human trafficking and resources available to combat it and assist victims. Notice is required for rest stops and strip clubs. Notice may also be placed voluntarily in high schools, postsecondary educational institutions, gas stations, hotels, hospitals, health care clinics, urgent care centers, airports, train stations, and bus stations. Notice must be posted in English, Spanish, and any other language deemed appropriate by the state task force.[126]
Unemployment Compensation	All employers must post and maintain notice, where readily accessible, informing employees about unemployment insurance coverage and how to file a claim for benefits.[127]
Wages, Hours & Payroll	Employers with four or more employees (except for seasonal employment of not more than 20 weeks a year) must post conspicuous notice informing employees of the state minimum wage law.[128]
Workplace Safety: No Smoking Signs	Generally speaking, smoking is prohibited in indoor places of employment in Nebraska.[129] Employers must post "No Smoking" signs at all entrances to inform employees, applicants, and the public of the restriction.[130]

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

[126] NEB. REV. STAT. § 81-1430. Posters are provided in various languages by the Department of Labor. Employers may call 402-471-2239 for more information.

[127] NEB. REV. STAT. § 48-629. This poster is available in English at https://dol.nebraska.gov/LaborStandards/Compliance/RequiredPosters and in Spanish at https://dol.nebraska.gov/webdocs/Resources/Items/UI%20Advisement%20of%20Benefit%20Rights_Spanish.pdf. It is also included in the "3 in 1" poster available in English and Spanish at https://dol.nebraska.gov/LaborStandards/Compliance/RequiredPosters.

[128] NEB. REV. STAT. § 48-1205. This poster is available in English at https://dol.nebraska.gov/webdocs/Resources/Items/Minimum%20Wage%20Poster.pdf and in Spanish at https://dol.nebraska.gov/webdocs/Resources/Items/Minimum%20Wage%20Poster_Spanish.pdf. It is also included in the "3 in 1" poster available in English and Spanish at https://dol.nebraska.gov/LaborStandards/Compliance/RequiredPosters.

[129] NEB. REV. STAT. § 71-5729; 178 NEB. ADMIN. CODE § 7-001 *et seq*.

[130] NEB. REV. STAT. § 71-5735; 178 NEB. ADMIN. CODE § 7-003.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[131]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[132]	At least 1 year from the date of the personnel action to which any records relate.
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[133]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants;	At least 1 year from the date the records were made, or

[131] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[132] 29 C.F.R. § 1627.3(b).

[133] 29 C.F.R. § 1627.3(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(ADA): Personnel Records	• other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[134]	from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[135]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[136]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity	At least 3 years following the date on which the polygraph examination was conducted.

[134] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[135] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[136] 29 C.F.R. § 1602.7.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[137]	
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[138]	At least 6 years after documents are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[139]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[140]	At least 2 years.
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code;	3 years from the last day of entry.

[137] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[138] 29 U.S.C. § 1027.

[139] 29 C.F.R. § 1620.32(a).

[140] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[141] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070);	

[141] 29 C.F.R. §§ 516.2, 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[142]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[143]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j);	At least 3 years from the last effective date.

[142] 29 C.F.R. § 516.28.

[143] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[144]	
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[145]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement.	At least 3 years.

[144] 29 C.F.R. § 516.5.

[145] 29 C.F.R. § 516.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Covered employers with no eligible employees must only maintain the following records: • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in	

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[146]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[147]	At least 4 years after the date the tax is due or paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[148]	3 years after the date of hire or 1 year following the termination

[146] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

[147] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[148] 8 C.F.R. § 274a.2.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[149]	Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[150]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[151]	As long as it is in effect and at least 4 years thereafter.

[149] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[150] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[151] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[152]	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results,	At least 30 years.

[152] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[153]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[154]	Duration of employment plus 30 years.
Workplace Safety: Analyses Using Medical	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual	At least 30 years.

[153] 29 C.F.R. § 1910.1020(d).

[154] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
and Exposure Records	employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[155]	
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[156]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[157]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not

[155] 29 C.F.R. § 1910.1020(d).

[156] 29 C.F.R. §§ 1904.33, 1904.44.

[157] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[158]	have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[159]	Until final disposition of the complaint, compliance review or action.

[158] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[159] 41 C.F.R. §§ 60-1.12, 60-741.80.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[160]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee	During the course of the covered contract as well as after the end of the contract.

[160] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[161]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[162]	At least 3 years after the work.
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage;	At least 3 years from the completion of the work records

[161] 29 C.F.R. § 13.25.

[162] 29 C.F.R. § 5.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[163]	containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[164]	At least 3 years from the last date of entry.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Fair Employment Practices: Apprenticeships & Training Programs	*Employers that control apprenticeship or other training programs must maintain records, including:* • a list of applicants for the program, in chronological order of receipt; and	For period of time to be specified by the commission, but no pertinent regulation found.

[163] 29 C.F.R. § 4.6.

[164] 41 C.F.R. § 50-201.501.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• a detailed description of the manner in which applicants are selected to participate.[165]	
Fair Employment Practices: General	*Employers must keep records relevant to the determination of whether unlawful employment practices have been or are being committed.*[166] *Under the equal pay law, the following specific records must be maintained:* • wage and wage rates; • job classifications; and • other terms and conditions of employment.[167]	For period of time to be specified by the commission, but no pertinent regulation found.
Income Tax	*Employers must keep some tax records permanently, including:* • the Nebraska Withholding Identification Certificate; and • copies of all reconciliations filed with the Department of Revenue.[168] *Employers must also keep copies of all forms prepared by employer and furnished to an employee, for three years.*[169]	Certificate and reconciliations are retained permanently. Forms furnished to employees must be retained for 3 years.
Polygraph Examination Records	Employers must retain on file all questions that are asked during a voluntary truth and deception examination, as well as the responses of the examinee, as discussed in **1.3(d)(ii)**.[170]	1 year.
Wage, Hours & Payroll	*All employers must keep true and accurate work records. Such records must include, for each worker:* • name and Social Security number; • state of residence; • nature of services and places where services are performed; • date of hire, rehire, or return to work after temporary layoff; • date and reasons for separation;	Not less than 4 complete calendar years.

[165] NEB. REV. STAT. § 48-1117(5).

[166] NEB. REV. STAT. § 48-1117(5).

[167] NEB. REV. STAT. § 48-1225.

[168] 316 NEB. ADMIN. CODE § 21-003.02.

[169] 316 NEB. ADMIN. CODE § 21-013.05.

[170] NEB. REV. STAT. § 81-1932.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• gross remuneration paid for the workers' services and the period for which paid, showing separately cash remuneration and the reasonable cash value of other remuneration; and • amounts paid as allowance or reimbursement for business expenses, and period for which paid. *Such records must include, in general*: • beginning and ending date of each pay period; • total amount of remuneration and total amount paid in each calendar quarter; and • date in each calendar week on which there was largest number of workers employed and number of such workers.[171]	
Workplace Safety	*All employers must retain up-to-date records, including:* • written injury prevention program; • accident, illness, and injury records (OSHA Form 300 and/or first report on injury NWCC Form 1); and • written minutes of all safety committee meetings.[172] In addition, the Department of Labor may recommend additional records, after inspection or consultation.[173]	At least 3 years, or longer if advised by the Department.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

3.1(c)(ii) *State Guidelines on Personnel Files*

Nebraska law does not address access to personnel files for private-sector employees.

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see 1.3.

[171] NEB. REV. STAT. § 48-612; 221 NEB. ADMIN. CODE § 1-002.

[172] 230 NEB. ADMIN. CODE § 6-002(F).

[173] NEB. REV. STAT. § 48-446.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

For information on state law related to background screening of current employees, see **1.3**.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

Nebraska employers with six or more employees have statutory authority to conduct drug and alcohol testing on employees. Nebraska employers that voluntarily conduct drug and alcohol testing must follow specific testing procedures established by the Nebraska Department of Health and Human Services. Employers that do not comply with the state's drug-testing provision cannot use these test results to take any disciplinary action.[174]

Testing Guidelines. Employers can use body-fluid and breath samples to test for drugs and alcohol under state law. Body-fluid test specimens that produce a positive result must be refrigerated and preserved in a sufficient quantity for retesting for at least 180 days.[175] Employers must maintain a written record of each body-fluid test specimen's chain of custody from the time of collection until the time of disposal.[176]

Nebraska employers that voluntarily conduct drug and alcohol testing in compliance with state law can use the test results for disciplinary purposes only if positive test results are confirmed. Positive drug tests must be confirmed by gas chromatography-mass spectrometry or another scientific testing technique approved by the state health department. Positive alcohol tests must be confirmed by gas chromatography with a flame ionization detector, or another technique approved by the state health department (body-fluid samples), or by a breath-testing device used by a qualified operator.[177]

The Nebraska Department of Health and Human Services has issued rules and regulations that specify the techniques approved for workplace-related drug and alcohol testing, including confirmation drug testing by gas chromatography-mass spectrometry, preliminary alcohol screening with breath-testing devices, and confirmatory alcohol testing on blood samples. The regulations also establish the licensing requirements for personnel conducting the tests and generally require that testing be performed in a federally licensed clinic, hospital, or laboratory, or a laboratory accredited by the College of American Pathologists. Approved and prescribed "checklist" techniques to be followed are included with the regulations.[178]

Employers must keep all information concerning employee drug and alcohol tests confidential, unless the employee consents to release of the information, the disclosure is to the employer's agents and is disclosed for reasons connected to employment, or as required by law.[179]

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[174] NEB. REV. STAT. §§ 48-1901 *et seq*.

[175] NEB. REV. STAT. § 48-1904.

[176] NEB. REV. STAT. § 48-1905.

[177] NEB. REV. STAT. § 48-1903.

[178] NEB. REV. STAT. § 48-1903.

[179] NEB. REV. STAT. § 48-1906.

Employers may terminate or otherwise discipline employees who refuse to undergo drug or alcohol testing or who tamper with bodily fluids to alter test results.[180]

3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[181]

3.2(c)(ii) *State Guidelines on Marijuana*

There is no statute addressing medical or recreational use of marijuana in Nebraska.

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[182]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[183]

3.2(d)(ii) *State Data Security Breach Guidelines*

When a covered entity becomes aware of a breach of the security system, it must conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be used for an unauthorized purpose. If the investigation determines that the use of information

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[180] NEB. REV. STAT. §§ 48-1908, 48-1909.

[181] 21 U.S.C. §§ 811-12, 841 *et seq*.

[182] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015), *available at* https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[183] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015).

about a Nebraska resident for an unauthorized purpose has occurred, or is reasonable likely to occur, the covered entity must give notice.[184]

Covered Entities & Information. An individual or a commercial entity that conducts business in Nebraska and that owns or licenses computerized data that includes personal information about a resident of Nebraska is considered a covered entity. Waivers of the data breach notification statute are void.[185] Under the statute, *personnel information* means an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number;
- motor vehicle operator's license number or state identification number;
- any account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account;
- unique electronic identification number or routing code, in combination with any required security code, access code, or password;
- unique biometric data, such as a fingerprint, voice print, or retina or iris image, or other unique physical representation; or
- a username or email address in combination with a password or security question and answer that would permit access to an online account.[186]

Personal information does not include data that is encrypted, redacted, or otherwise altered by any method or technology in such a manner that the name or data elements are unreadable. The statute also does not cover information that is lawfully available publicly through federal, local, or state government records.[187]

Content & Form of Notice. Notice may be in one of the following formats:

- written notice;
- telephonic notice;
- electronic notice, if it is compliant with the federal e-sign act; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $75,000;
  - the affected class of persons to be notified exceeds 100,000; or
  - the covered entity does not have sufficient contact information.[188]

Substitute notice must consist of all of the following:

[184] NEB. REV. STAT. §§ 87-801 *et seq*.

[185] NEB. REV. STAT. § 87-803(1).

[186] NEB. REV. STAT. § 87-802(5).

[187] NEB. REV. STAT. § 87-802(5).

[188] NEB. REV. STAT. § 87-802(4).

- email notice when the covered entity has an electronic mail address for members of the affected class of Nebraska residents;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media.[189]

If the covered entity required to provide notice has 10 employees or fewer, and demonstrates that the cost of providing notice will exceed $10,000, substitute notice for smaller entities may be used. Substitute notice for smaller entities requires all of the following:

- email notice if the covered entity has email addresses for the members of the affected class of Nebraska residents;
- notification by a paid advertisement in a local newspaper that is distributed in the geographic area in which the covered entity is located, if the advertisement is large enough to cover at least ¼ of a page in the newspaper and is published in the newspaper at least once a week for three consecutive weeks;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification to major media outlets in the geographic area in which the individual or commercial entity is located.[190]

There are exceptions to the notice requirement. A covered entity is deemed compliant with the state notification requirement if it maintains and complies with a notification procedure as part of its own information security policy for the treatment of personal information, as long as that policy affords the same or greater protection to the affected individuals as the statute. In addition, an entity is compliant with the statute if it complies with the notification requirements or security breach procedures of a primary or functional federal regulator.[191]

Timing of Notice. Notice must be given as soon as possible and without unreasonable delay. Notification may be delayed if:

- a law enforcement agency indicates that notification will impede a criminal investigation;
- a covered entity needs time to determine the scope of the breach; or
- a covered entity needs time to restore the reasonable integrity of the data system.[192]

Additional Provisions. The covered entity must also notify the state attorney general no later than when notice is provided to the Nebraska residents.[193]

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[189] NEB. REV. STAT. § 87-802(4)(d).

[190] NEB. REV. STAT. § 87-802(4)(e).

[191] NEB. REV. STAT. §§ 87-804.

[192] NEB. REV. STAT. § 87-803(4).

[193] NEB. REV. STAT. § 87-803(2).

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[194] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[195]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[196]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[197]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[198] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.3(b) *State Guidelines on Minimum Wage Obligations*

3.3(b)(i) *State Minimum Wage*

The Nebraska Wage and Hour Act, which includes the state's minimum wage provisions, applies to employers of four or more employees at any one time, except for seasonal employment of not more than

[194] 29 U.S.C. § 218(a).

[195] 29 U.S.C. § 206.

[196] 29 U.S.C. §§ 203, 206.

[197] 29 U.S.C. § 3(m)(2)(B).

[198] 29 U.S.C. § 207.

20 weeks in any calendar year.[199] The minimum wage in Nebraska is currently $12.00 per hour.[200] However, due to a successful November 2022 ballot measure, the minimum wage is set to increase in future years, see Table 9 in **3.2(b)(ii)** Tipped Employees, and, beginning on January 1, 2027, and occurring each subsequent January 1, the state will increase the minimum wage based on the rate of inflation, rounded up to the nearest multiple of 5 cents.

3.3(b)(ii) *Tipped Employees*

Tipped employees are paid differently. If an employee earns tips, an employer must pay a minimum cash wage per hour of $2.13 per hour, and may take a maximum tip credit of $9.87 per hour. Note that if an employee does not make the tip credit amount in tips per hour, the employer must make up the difference between the wage actually made and the minimum wage. The employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[201]

Table 9. Minimum Wage for Tipped Employees

Date	Minimum Wage	Minimum Cash Wage	Maximum Tip Credit
January 1, 2024	$12.00	$2.13	$9.87
January 1, 2025	$13.50	$2.13	$11.37
January 1, 2026	$15.00	$2.13	$12.87
January 1, 2027	TBD	$2.13	TBD

3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

The Wage and Hour Act provides for sub-minimum wages applicable to certain types of employees. Student learners employed as part of a *bona fide* vocational training program may be paid at a rate of at least 75% of the current minimum wage rate.[202]

An employer may pay a new employee a training wage of at least 75% of the federal minimum wage if the employee is under age 20 and is not a seasonal or migrant worker. The training wage may be applied for the first 90 days of employment, and for an additional 90 days if the new employee is participating in on-the-job training that: (1) requires technical, personal, or other skills which are necessary to the employment; and (2) is approved by the Commissioner of Labor. However, an employer cannot pay the training wage rate if the hours of any other employee are reduced or if any other employee is laid off and the hours or position to be filled by the new employee are substantially similar to the hours or position of

[199] NEB. REV. STAT. § 48-1203.

[200] NEB. REV. STAT. § 48-1203.

[201] NEB. REV. STAT. § 48-1203; *see also, e.g.*, *Mays v. Midnite Dreams, Inc.*, 300 Neb. 485 (2018) ("[U]nlike the FLSA, § 48-1203(2) does not require any prior notification for an employee to be a tipped employee. Instead, an employer must merely prove the employee received tips sufficient to compensate the employee at a rate greater than or equal to the minimum wage.").

[202] NEB. REV. STAT. § 48-1203.

the previous employee. Further, an employer cannot dismiss or reduce the hours of any employee with the intention of replacing that employee with a new employee receiving the training wage rate.[203]

3.3(c) *State Guidelines on Overtime Obligations*

Nebraska has no overtime provisions. Therefore, the payment of overtime in Nebraska is regulated by the FLSA, which establishes a 40-hour overtime standard for covered employees.

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[204] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[205]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[206] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[207] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public,

[203] NEB. REV. STAT. § 48-1203.01.

[204] 29 C.F.R. § 785.19.

[205] 29 C.F.R. § 785.18.

[206] 29 U.S.C. § 218d.

[207] 29 U.S.C. § 218d(b)(2).

which may be used by an employee to express breast milk.[208] Exemptions apply for smaller employers and air carriers.[209]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[210] Lactation is considered a related medical condition.[211] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[212] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

Meal Periods. There are no generally applicable meal period requirements for adults in Nebraska, although there are requirements applicable to a certain subset of Nebraska employees.

Employees of assembly plant, workshop, and mechanical establishments must be allowed at least 30 consecutive minutes for lunch in each eight-hour shift.[213] During meal periods it is unlawful for an employer to require employees to remain in buildings or on the premises where their labor is performed.[214] This meal period provision does not apply to employment that is covered by a written agreement between an employer and employee, or to employment governed by a valid collective bargaining agreement.[215]

Exempt Employees. The meal period requirements apply to exempt employees. The meal period statute does not define the term *employee*, nor is there a generally applicable definitions statute. Accordingly, in the absence of an express definition, coupled with the fact the legislature specifically exempted other types of workers from the meal period statute's requirements, the law should be interpreted as applying to exempt employees.[216]

Rest Periods. There are no generally applicable rest period requirements for adults in Nebraska.

3.4(b)(ii) *State Meal & Rest Periods for Minors*

There are no generally applicable meal and rest period requirements for minors in Nebraska. As mentioned in **0**, however, employers must post in a conspicuous place in every room where minors under

[208] 29 U.S.C. § 218d(a).

[209] 29 U.S.C. § 218d(c), (d).

[210] 42 U.S.C. § 2000gg–1.

[211] 29 C.F.R. § 1636.3.

[212] 29 C.F.R. § 1636.3.

[213] NEB. REV. STAT. § 48-212.

[214] NEB. REV. STAT. § 48-212.

[215] NEB. REV. STAT. § 48-212.

[216] *See* NEB. REV. STAT. § 48-212.

age 16 are employed a notice with the hours required of them each day, the hours of commencing and stopping work, and the time allowed for meals.[217]

3.4(b)(iii) *State Enforcement, Remedies & Penalties*

Assembly plant, workshop, and mechanical establishment employers that violate the meal period requirement will be guilty of a Class III misdemeanor.[218] The maximum punishment for a Class III misdemeanor is three months' imprisonment, a $500 fine, or both.[219]

3.4(b)(iv) *Lactation Accommodation Under State Law*

An individual is entitled to breast feed their baby in any place of public accommodation where the individual is permitted to be.[220] Moreover, as discussed in **3.1(c)(ii)**, the Nebraska Fair Employment Practice Act makes it an unlawful employment practice for an employer with at least 15 employees to discriminate against an individual who is pregnant, who has given birth, or who has a related medical condition.[221] *Discrimination* includes not making reasonable accommodations to the known physical limitations of such an individual and denying employment opportunities based on the covered entity's need to make a reasonable accommodation.[222] *Reasonable accommodation* expressly includes providing break time and appropriate facilities for breast feeding or expressing breast milk.[223]

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[224] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[225]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time

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[217] NEB. REV. STAT. § 48-310.

[218] NEB. REV. STAT. § 48-213.

[219] NEB. REV. STAT. § 28-106.

[220] NEB. REV. STAT. § 20-170.

[221] NEB. REV. STAT. § 48-1107.01.

[222] NEB. REV. STAT. § 48-1107.02.

[223] NEB. REV. STAT. § 48-1102.

[224] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

[225] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

Nebraska law does not define what work activities are considered to be compensable activities, and state law does not address reporting time, on-call pay, travel time, split shifts, and other circumstances where the compensability of an employee's activities may be in question. Employers covered by the FLSA should consult the federal provisions.

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[226] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[227] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. Nebraska restricts the employment of minors under age 16, both by age and by the type of job (see Table 10). Note that Nebraska law does not prohibit any occupation for those 16 and 17 years of age. Employers should adhere to the more stringent federal standard in order to ensure full compliance.

Table 10. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under Age 16	Minors under age 16 cannot perform work that is dangerous to their life or limb or that can injure health or deprave their morals. Additional health and safety requirements exist for machinery to be used by minors.[228]

[226] 29 C.F.R. §§ 570.36, 570.50.

[227] 29 C.F.R. § 570.6.

[228] NEB. REV. STAT. § 48-301 to 48-313.

Table 10. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	Minors under 16 can be employed in corn detasseling if the work is performed outside school hours during summer months (subject to additional requirements).[229] Minors under 16 cannot be employed in door-to-door soliciting unless they are newspaper carriers or self-employed in an individual entrepreneurial endeavor.[230]
Under Age 12	Minors under age 12 cannot be engaged in corn detasseling.[231]

Restrictions on Selling or Serving Alcohol. In Nebraska, individuals under age 19 cannot serve or sell alcohol in the course of employment. However, individuals that are age 16 or older can:

- carry alcohol from licensed establishments when they are accompanied by a person who is not a minor;
- handle alcohol in the course of their employment; and
- remove and dispose of alcohol containers for the convenience of their employer and customers in the course of their employment.[232]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

Under Age 16. In Nebraska, minors under age 16 cannot work more than eight hours in one day, or more than 48 hours in one week.[233]

Ages 14 to 16. In Nebraska, minors between the ages of 14 and 16 cannot work before 6:00 A.M. or after 10:00 P.M. However, the state labor department may grant an exemption allowing the minor to be employed after 10:00 P.M. if there is no school scheduled for the following day, the employee has consented, and the employer has obtained a special permit.[234]

Under Age 14. In Nebraska, minors under age 14 cannot work before 6:00 A.M. or after 8:00 P.M.[235]

3.6(b)(iii) *State Child Labor Exceptions*

Nebraska's work permit requirements, discussed in **3.6(b)(iv)**, do not apply to minors employed as golf caddies or minors employed by a parent or guardian.[236]

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[229] NEB. REV. STAT. §§ 48-302.03, 48-302.04.

[230] NEB. REV. STAT. § 48-310.

[231] NEB. REV. STAT. §§ 48-302.03, 48-302.04.

[232] NEB. REV. STAT. § 53-168.06.

[233] NEB. REV. STAT. § 48-310.

[234] NEB. REV. STAT. § 48-310.

[235] NEB. REV. STAT. § 48-310.

[236] NEB. REV. STAT. §§ 48-302.01, 48-302.02.

3.6(b)(iv) *Waivers or Permit Requirements*

In Nebraska, work permits are issued by the school superintendent if school records have been filed demonstrating the minor has completed the sixth grade, and the minor's age has been verified. The principal of the school the minor attends must approve the employment certificate. If there is no principal at the school, the approval must be provided by a person authorized by the chief administrative officer of the school or the superintendent of the school district in which the minor resides.[237]

For each minor under age 16, an employer must procure and keep on file an employment certificate, and keep a complete list of all such minors employed in the building on file in the building. When employment terminates, an employer must send the certificate to the person who authorized the certificate, and it must be turned over to the minor upon demand.[238]

Special permits may be granted for minors in the performing arts.[239]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

The Nebraska Department of Labor and the attendance officers of local school districts enforce the state's child labor laws. Attendance officers, or agents or employees of the Department of Labor, are authorized to visit places of employment to ascertain whether any children are employed in violation of the Nebraska child labor laws, and the attendance officers must report any cases of illegal employment to the Department of Labor and to the county attorney.[240] An employer's failure to produce an employment certificate or list of minors employed constitutes *prima facie* evidence of the illegal employment of any minor whose employment certificate is not produced or whose name is not listed.[241]

An employer that employs a minor in a manner that violates the child labor laws is guilty of a Class I misdemeanor. An employer that continues to employ a minor in violation of the child labor laws, after being notified by an attendance officer or by the Department of Labor, is guilty of a Class I misdemeanor for every day thereafter that the violation continues.[242] The maximum punishment for a Class I misdemeanor is one year imprisonment, a $1,000 fine, or both.[243]

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

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[237] NEB. REV. STAT. §§ 48-303, 48-304.

[238] NEB. REV. STAT. § 48-302.

[239] NEB. REV. STAT. § 48-310.01.

[240] NEB. REV. STAT. § 48-312.

[241] NEB. REV. STAT. § 48-311.

[242] NEB. REV. STAT. § 48-311.

[243] NEB. REV. STAT. § 28-106.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[244]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[245]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[246]

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[247] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[248]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement

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[244] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[245] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

[246] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[247] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[248] 12 C.F.R. § 1005.2(b)(3)(i)(A).

that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[249] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[250]

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[251]

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[252]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in **3.7(a)(ii)**, wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

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[249] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[250] 12 C.F.R. § 1005.18.

[251] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

[252] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[253] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[254] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[255] tools and equipment,[256] and business transportation and travel.[257] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[258]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[259]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[260]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[261]

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[253] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[254] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[255] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[256] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[257] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[258] 29 C.F.R. § 778.217.

[259] 29 C.F.R. § 531.38.

[260] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[261] 29 C.F.R. § 531.40.

- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[262]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[263] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[264]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[265]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[266] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is

[262] 29 C.F.R. § 531.40.

[263] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[264] 29 C.F.R. § 825.213.

[265] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[266] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[267]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[268]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[269]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[270]

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

The Nebraska Wage Payment and Collection Act does not generally specify how employees must be paid.

Nonetheless, the statute permits payment by payroll debit card only if certain conditions are satisfied. A *payroll debit card* is a stored-value card issued by or on behalf of a federally insured financial institution that provides employees immediate access to wages via ATMs for withdrawal or transfer purposes. This term includes payroll debit cards, payroll cards, and paycards.[271] To pay employees via payroll debit card, an employer must comply with the following requirements:

- an employer cannot, as a condition of employment, require employees to establish an account at a particular financial institution to receive electronic fund transfers;
- employees must be able to withdraw their entire net wages for free at least once per pay period, but no more frequently than once per week; and

[267] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[268] 29 C.F.R. § 531.36.

[269] 29 C.F.R. § 531.37.

[270] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[271] NEB. REV. STAT. § 48-1229.

- an employer cannot require employees to pay fees or costs the employer incurs in connection with paying wages via payroll debit card.[272]

3.7(b)(ii) *Frequency of Payment Under State Law*

Employers must pay all wages on regular paydays. Paydays must be designated by the employer or agreed upon by the employer and employee.[273] Accordingly, employers are free to pay employees on a semi-monthly or monthly basis.

3.7(b)(iii) *Final Payment Under State Law*

Whenever an employee is separated from the payroll—whether the employee was discharged or left employment voluntarily—wages are due on the next regular payday or within two weeks of the date of termination, whichever is sooner.[274]

Unpaid commissions are due on the next regular payday following the employer's receipt of payment for the goods or services from the customer from which the commission was generated. Employers must provide employees with a periodic accounting of outstanding commissions until all commissions have been paid or the orders have been returned or cancelled by the customer.[275]

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

On each regular payday, an employer must make available to employees a wage statement showing, at a minimum:

- the employer's identity;
- hours worked;
- wages earned; and
- deductions made.[276]

An employer *makes available* a wage statement by providing the statement by mail, electronically, or in person at the employee's normal place of employment during employment hours for all shifts.[277]

For employees that are exempt from overtime under the federal FLSA, an employer does not have to indicate hours worked unless it has established a policy or practice of paying said employees overtime or a bonus/payment based on hours worked. In such instances, an employer must send or otherwise provide a statement to the exempt employee showing the hours the employee worked or the payments made to the employee.[278]

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[272] NEB. REV. STAT. § 48-1230(3).

[273] NEB. REV. STAT. § 48-1230(1).

[274] NEB. REV. STAT. § 48-1230(4)(a).

[275] NEB. REV. STAT. § 48-1230.01.

[276] NEB. REV. STAT. § 48-1230(2).

[277] NEB. REV. STAT. § 48-1230(2).

[278] NEB. REV. STAT. § 48-1230(2).

3.7(b)(v) *Wage Transparency*

It is an unlawful employment practice for an employer to discriminate or retaliate against an employee who has inquired about, discussed, or disclosed information regarding employee wages, benefits, or other compensation.[279] However, this prohibition does not apply to instances in which an employee who has authorized access to the information regarding wages, benefits, or other compensation of other employees as a part of such employee's job functions discloses such information to a person who does not otherwise have authorized access to such information, unless the disclosure is in response to a charge or complaint or in furtherance of an investigation, proceeding, hearing, or other action, including an investigation conducted by the employer.[280]

The wage transparency provision does not:

- create an obligation for any employer or employee to disclose information regarding employee wages, benefits, or other compensation;
- permit an employee, without the written consent of the employer, to disclose proprietary information, trade secret information, or information that is otherwise subject to a legal privilege or protected by law, but proprietary information does not include information regarding employee wages, benefits, or other compensation;
- permit an employee to disclose information regarding wages, benefits, or other compensation of other employees to a competitor of the employer;
- apply to employers that are exempt from the Nebraska Fair Employment Practice Act;
- permit an employee to discuss information regarding employee wages, benefits, or other compensation during working hours, as defined in existing workplace policies, or in violation of specific contractual obligations; or
- permit an employee to disseminate information regarding employee wages, benefits, or other compensation to the general public. "General public" does not include public officials, judicial officers, legislators, trade associations, or other reasonable third parties for the employee's mutual aid or protection.[281]

The law does not affect any obligation under a lawful contract in existence prior to the law's effective date, September 6, 2019.[282]

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

Nebraska employers must give employees written notice at least 30 days in advance of a change in the regular payday.[283]

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[279] NEB. REV. STAT. § 48-1114.

[280] NEB. REV. STAT. § 48-1114.

[281] NEB. REV. STAT. § 48-1114.

[282] NEB. REV. STAT. § 48-1114.

[283] NEB. REV. STAT. § 48-1230(1).

There are no statutory general notice requirements for changes to an employee's rate of pay. Nonetheless, the state labor department requires that employees receive written notice of a reduction in pay before any hours are worked at the lower rate.[284] Such advance notice is therefore recommended.

3.7(b)(vii) *Paying for Expenses Under State Law*

In Nebraska, there is no general obligation to indemnify an employee for business expenses. Further, state law contains no express provisions addressing how uniform, tool, and/or equipment expenses incurred during employment are treated in the wage payment, minimum wage, and/or overtime contexts.

3.7(b)(viii) *Wage Deductions Under State Law*

Permissible Deductions. An employer can deduct, withhold, or divert a portion of an employee's wages only if:

- required or permitted to do so by state or federal law;
- required or permitted to do so by court order; or
- the employer has a written agreement with an employee to deduct, withhold, or divert a portion of the employee's wages.[285]

Prohibited Deductions. According to the Department of Labor, employers may not deduct money from an employee's paycheck for breakage of an employer's property or for failing to return a work uniform or similar items without the employee's specific written authorization to make the deduction. Under any circumstances, such a deduction may not reduce an employee's wages below the required minimum wage rate.[286]

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Orders of Support. A Nebraska employer that receives an order requiring income withholding for child or spousal support must begin withholding no later than the first pay period that occurs receiving the order. The employer must remit each withholding to the appropriate state agency within seven days of each payday.[287] The amount withheld cannot exceed the maximum amount permitted to be withheld under the federal Consumer Credit Protection Act.[288] The employer is also permitted to deduct an administrative fee of $2.50 for any calendar month in which the employer withholds an employee's wages pursuant to an order of support.[289] Within 30 days of the employee's termination, the employer must notify the state agency and provide the employee's last known home address and the new employer's name, if known.[290] The statute prohibits an employer from discriminating, demoting, disciplining, or terminating an employee because the employee wages are subject to an order of support.[291]

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[284] Nebraska Dep't of Labor, *Frequently Asked Questions*, *available at* https://dol.nebraska.gov/LaborStandards/FAQ/GeneralFAQs.

[285] NEB. REV. STAT. § 48-1230(1).

[286] Nebraska Dep't of Labor, *Frequently Asked Questions.*

[287] NEB. REV. STAT. § 43-1718.02.

[288] NEB. REV. STAT. § 43-1718.02; *see* 15 U.S.C. § 1673(b).

[289] NEB. REV. STAT. § 43-1718.02.

[290] NEB. REV. STAT. § 43-1718.02.

[291] NEB. REV. STAT. § 43-1718.02.

Debt Collection. Nebraska limits the amount of an employee's income that may be subject to garnishment to recover a debt. Nebraska law borrows the federal garnishment limits; garnishments may not exceed the lesser of 25% of the employee's disposable earnings or 30 times the federal minimum wage. If the employee is the head of a household, the maximum amount that is subject to garnishment is 15% of the employee's disposable earnings.[292] An employer is prohibited from discharging any employee because the employee's earnings are subject to garnishment for indebtedness.[293]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

Wage and Hour Act. The Nebraska Department of Labor enforces the Wage and Hour Act. An employer that violates the state minimum wage provisions is guilty of a Class IV misdemeanor and is subject to a fine of between $100 and $500.[294] The statute permits an employee to file suit for unpaid minimum wages, and an employee may also file a class action on behalf of themself and similarly situated employees.[295] The employee must file suit within four years of the alleged violation[296] and may recover all unpaid minimum wages as well as attorneys' fees and costs.[297]

Wage Payment and Collection Act. The Department of Labor also enforces the Wage Payment and Collection Act (WPCA).[298] The WPCA permits an employee to file suit for unpaid wages.[299] Such an action must be filed within four years of the alleged violation.[300] A prevailing employee may recover all unpaid wages plus court costs and attorneys' fees of less than 25% of the unpaid wages.[301] Nebraska courts have the authority to award higher attorneys' fees than the statutory minimum.[302] If the court finds that an employer's nonpayment of wages was willful, the court may impose a penalty of double the amount of unpaid wages.[303]

For violations other than wage statement violations, the Commissioner of Labor may issue a citation to an employer when an investigation reveals that the employer may have violated the WPCA. A citation results in an administrative penalty of not more than $500 for the first violation and not more than $5,000 for second or subsequent violations. An employer that fails to furnish a wage statement is guilty of an infraction and is subject to a fine of $100 for the first offense, $100 to $300 for a second offense within a two-year period, and $200 to $500 for a third or subsequent offense within a two-year period.[304]

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[292] NEB. REV. STAT. § 25-1558.

[293] NEB. REV. STAT. § 25-1558.

[294] NEB. REV. STAT. § 48-1206.

[295] NEB. REV. STAT. § 48-1206.

[296] NEB. REV. STAT. § 25-206.

[297] NEB. REV. STAT. § 48-1206.

[298] NEB. REV. STAT. § 48-1233.

[299] NEB. REV. STAT. § 48-1231.

[300] NEB. REV. STAT. § 25-206.

[301] NEB. REV. STAT. § 48-1231.

[302] *Fisher v. PayFlex Sys. USA*, 829 N.W.2d 703 (Neb. 2013).

[303] NEB. REV. STAT. § 48-1232.

[304] NEB. REV. STAT. § 48-1231.

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[305] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[306] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[307]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

Nebraska law does not require an employer to offer employees other benefit compensation such as vacation pay, holiday pay, personal time off, bonuses, severance pay, or pensions. However, once an employer establishes a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice.

In Nebraska, *wages* include fringe benefits, such as vacation pay, when previously agreed to and when conditions stipulated have been met by the employee.[308] There is no statutory or regulatory provision concerning accrual caps or during-employment "use-it-or-lose-it" provisions. Although, informally, the state labor department has consistently stated employers can cap vacation accrual, it has, at different times, provided different, conflicting responses on the validity of during employment use-it-or-lose-it provisions.[309]

Under Nebraska law, a policy cannot require forfeiture of accrued vacation (or leave treated like vacation, *e.g.*, paid time off).[310] In other words, payout is required when employment ends.[311] However, a policy

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[305] 29 U.S.C. § 1002.

[306] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[307] 490 U.S. 107, 119 (1989).

[308] NEB. REV. STAT. § 48-1229.

[309] Email conversation, Jan Baker, Labor Law Program Manager, Nebraska Department of Labor (Aug. 19, 2016); Phone conversation, Justin Schroeder, Labor Standards Program Manager, Nebraska Department of Labor (July 21, 2021).

[310] *But see Drought v. Marsh*, 304 Neb. 860 (Neb. 2020) (condition precedent for entitlement to PTO not satisfied).

[311] Nebraska Dep't of Labor, *Frequently Asked Questions*, *available at* https://dol.nebraska.gov/LaborStandards/FAQ/GeneralFAQs#:~:text=out%20upon%20separation%3F-,Yes.,no%20exception%20to%20this%20requirement.

can require forfeiture of accrued paid leave that is not vacation (or leave treated like vacation). Paid leave *other* than earned but unused vacation leave that is provided as a fringe benefit by the employer is not included in wages due and payable when employment, ends unless the employer and the employee have specifically agreed otherwise.[312]

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

Nebraska does not require employers to provide employees with a day of rest each week, or compensate employees at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[313] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[314] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[315] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

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[312] NEB. REV. STAT. § 48-1229.

[313] 29 U.S.C. § 1144.

[314] 29 U.S.C. § 1161.

[315] 29 U.S.C. § 1167(3).

3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

Nebraska does not recognize either domestic partnerships or civil unions. Accordingly, state law does not address the issue of whether an employee's domestic partner or civil union partner would be considered an eligible dependent for purposes of employee benefits.

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[316]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[317]
- to take medical leave when the employee is unable to work because of a serious health condition;[318]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[319] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[320] For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Nebraska law does not address family and medical leave for private-sector employees.

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316 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

317 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

318 29 C.F.R. §§ 825.112, 825.113.

319 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

320 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[321] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

Nebraska law does not address paid sick leave for private-sector employees.

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[322] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for their own serious health condition, such as severe morning sickness.[323] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

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321 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

322 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

323 29 C.F.R. § 825.202.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[324] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

As discussed in **3.1(c)(ii)**, the Nebraska Fair Employment Practice Act requires covered employers to make reasonable accommodations to an applicant or employee's known physical limitations related to giving birth, pregnancy, or a related medical condition. A reasonable accommodation may include time off of work to recover from childbirth, among other things. It is unlawful for an employer to require an employee to take leave if another reasonable accommodation can be provided.

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

In Nebraska, the law requires an employer that permits employees to take a leave of absence upon the birth of a child to provide the same leave, upon the same terms, to an adoptive parent following the commencement of the parent-child relationship. A leave of absence is not required, however, if the child being adopted is:

- a special needs child over 18;
- a child over eight who is not a special needs child;
- a stepchild being adopted by a stepparent;
- a foster child being adopted by a foster parent; or

[324] EEOC, Notice 915.003, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; *see also* EEOC, *Facts About Pregnancy Discrimination* (Sept. 8, 2008), *available at* https://www.eeoc.gov//facts/fs-preg.html.

- a child under voluntary placement who is being adopted by the person with whom the voluntary placement was made.[325]

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

Nebraska law does not address school activities leave for private-sector employees.

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

Nebraska law does not mandate blood, organ, or bone marrow donation leave for private-sector employees. Nonetheless, employers are encouraged to grant paid leaves of absence to employees who seek to undergo a medical procedure to donate bone marrow.[326]

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

Nebraska's voting time guidelines provide time off for both voters and election workers.

Voters. Employees that are registered voters and do not have two consecutive nonworking hours available to vote between the opening and closing of the polls are to be given up to two consecutive hours of leave. An employer can add nonworking and working time to meet the two consecutive hour requirement. For example, if the polls open one hour before an employee's shift begins, and close one hour after the shift ends, an employer can satisfy its requirement by providing one hour of leave during working hours at, for example, the shift's beginning or end. An employer may specify when leave may be taken. If proper notice is provided, the employee's leave must be paid. No deductions may be made from an employee's salary or wages, nor can employers penalize employees, for taking leave. An employee must request leave prior to or on election day.[327]

Election Workers. An employee that is a judge or clerk of election, a precinct or district inspector, a canvassing board member, or any other election worker is also covered under the law. Such an employee is entitled to leave for the hours the employee is required to serve. If the employee is required to serve eight hours or more, the employee is excused from work for the eight hours prior to and following the hours of service. An employee cannot be subject to actual or threatened discharge, loss of pay, loss of

[325] NEB. REV. STAT. § 48-234.

[326] NEB. REV. STAT. § 71-4820.

[327] NEB. REV. STAT. § 32-922.

overtime pay, loss of sick leave, or loss of vacation time due to serving as an election worker if reasonable notice is provided of the appointment. If reasonable notice is provided, the leave must be paid. However, an employer may reduce an employee's pay by the expenses paid to the employee by the county for their service. An employee must provide reasonable notice of the employee's appointment as an election worker. Reasonable notice requirements are waived for judges or clerks of election on the day of an election to fill a vacancy.[328]

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Nebraska law does not address leave for private-sector employees to participate in political activities.

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[329] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[330] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. An employee must be excused from work, upon request, on a day when the employee is required to serve as a juror. An employee summoned to serve on a jury shall not be subject to discharge or any other penalty as a result of the employee's absence, provided the employee gave their employer reasonable notice of the summons. An employee must not be subject to a loss of pay, loss of sick leave, or loss of vacation for an absence due to jury duty, except that the employer may reduce the employee's compensation in an amount equal to the fees (but not expenses) paid by the court.[331]

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[328] NEB. REV. STAT. § 32-241.

[329] 28 U.S.C. § 1875.

[330] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[331] NEB. REV. STAT. § 25-1640.

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Nebraska law does not address leave for private-sector employees who are victims of crime or domestic violence.

Notably, however, crime victims have the right to be provided with employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process, in order to minimize an employee's loss of pay and other benefits resulting from court appearances.[332]

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[333]

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2)

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[332] NEB. REV. STAT. § 81-1848.

[333] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[334] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.335 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Military Leave. Nebraska has adopted USERRA as its state law and the law is applicable to all persons employed in Nebraska. These protections are provided to any person employed in Nebraska who is a member of the National Guard of another state and who is called into service by the governor of that state.[336] For information on USERRA, see **3.9(k)(i)**.

Family Military Leave. Employers with 15 to 50 employees (including independent contractors) are required to provide up to 15 days of unpaid family military leave to the parent or spouse of a person being called to federal or state active duty for longer than 179 days. Employers with more than 50 employees must provide up to 30 days of unpaid family military leave. To be eligible, the employee must have worked for the employer for at least 12 months prior to the requested leave and must have worked at least 1,250 hours during that period.[337]

An employee who requests leave for longer than five days is required to give the employer at least 14 calendar days' notice prior to the time the leave is to begin. Where able, the employee must consult with the employer to schedule the leave so as to not unduly disrupt the operations of the employer. Employees taking leave for less than five consecutive days must give the employer advanced notice as is practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the requested leave.[338]

During leave, the employer must make it possible for employees to continue their benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain the

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[334] 29 C.F.R. § 825.126(a).

[335] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

[336] NEB. REV. STAT. § 55-161.

[337] NEB. REV. STAT. §§ 55-502, 55-503.

[338] NEB. REV. STAT. § 55-503.

benefits at its expense. Taking leave cannot result in the loss of any employee benefit accrued before the date upon which leave commenced.[339]

When the leave ends, the employee must be restored to the position previously held or to a position with equivalent seniority status, benefits, pay, etc., except when the employer proves the employee is not restored due to reasons unrelated to taking leave.[340]

Other Military-Related Protections: Spousal Unemployment. Although not a leave entitlement, under Nebraska's unemployment compensation law, good cause exists for voluntarily leaving work if an individual left their employment to accompany their spouse to the spouse's employment in a different city or new military duty station.[341] Therefore, the individual will still be eligible for the state's unemployment benefits.

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(l)(ii) *State Guidelines on Other Leaves*

Volunteer Emergency Responder Leave. Employers with 10 or more employees may not terminate or discipline an employee who has been approved to serve any volunteer fire department or volunteer first-aid rescue, ambulance, or emergency squad for being absent or late to work as a result of responding to an emergency as a volunteer. An employee need not be paid for time off. An employee must provide their employer a written statement, signed by the individual in charge of the volunteer department, notifying the employer of the employee's service as an emergency responder.[342]

A "reasonable effort" must be made by the employee to notify the employer that they may be absent from or late to work in order to respond to an emergency. An employer may request that a volunteer emergency responder supply a statement from the individual in charge of the volunteer department indicating that the employee responded to an emergency call. The signed, written statement must be provided within seven days of the request, and must include the date and time of both the emergency and when the employee completed their volunteer duties.[343]

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to

[339] NEB. REV. STAT. §§ 55-504, 55-505.

[340] NEB. REV. STAT. § 55-504.

[341] NEB. REV. STAT. § 48-628.01(3).

[342] NEB. REV. STAT. §§ 35-1401 *et seq*.

[343] NEB. REV. STAT. §§ 35-1405, 35-1406.

employees.[344] Employers are also required to comply with all applicable occupational safety and health standards.[345] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see **LITTLER ON WORKPLACE SAFETY**.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[346] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Nebraska does not have an approved state plan under the Fed-OSH Act that covers public or private-sector employees. Accordingly, employers must abide by the Fed-OSH Act. Notably, Nebraska's Department of Labor administers a Workplace Safety Consultation Program that conducts workplace inspections at an employer's request.[347]

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

Drivers in Nebraska may not operate a motor vehicle while using a handheld wireless communication device to read, type, or send a written communication. However, this restriction does not apply to the use of an electronic device that is part of or permanently attached to the vehicle, or a hands-free wireless communication device.[348]

This prohibition applies to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, the restriction.

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

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[344] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[345] 29 U.S.C. § 654(a)(2).

[346] 29 U.S.C. § 667(c)(2).

[347] NEB. REV. STAT. § 48-446.

[348] NEB. REV. STAT. § 60-6,179.01.

3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

Firearms in the Workplace. An employer may prohibit carrying a concealed handgun into a workplace or premises, but must either:

- post conspicuous notice that carrying a concealed handgun is prohibited in or on the place or premises; or
- make a request, directly or through an authorized representative or management personnel, that the individual remove the concealed handgun from the place or premises.[349]

A conspicuous notice should be clearly posted at each public entrance to a place or premises open to the public and must clearly state that concealed handguns are not allowed in the place or on the premises.[350]

Firearms in Company Parking Lots. While an employer may prohibit carrying a concealed handgun into a workplace or premises, concealed carry permit holders are allowed to bring a firearm into a company parking lot under certain circumstances. An individual with a concealed carry permit may carry a concealed handgun in a vehicle or on their person while riding in a vehicle into the employer's parking area, if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, a hardened compartment securely attached to the motorcycle.[351]

An employer may prohibit employees or other persons who are permit holders from carrying concealed handguns in vehicles owned by the employer.[352]

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

Smoking is prohibited in indoor places of employment in Nebraska.[353] *Smoking* is defined as inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. The term includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.[354]

Employers may apply for a waiver of Nebraska's Clean Indoor Air Act. A waiver will be granted if an employer can show good cause and can provide for appropriate protection of the employees' health and safety.[355]

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[349] NEB. REV. STAT. § 28-1202.01(5).

[350] 272 NEB. ADMIN. CODE § 21-002.13.

[351] NEB. REV. STAT. § 28-1202.01(6).

[352] NEB. REV. STAT. § 28-1202.01(7).

[353] NEB. REV. STAT § 71-5729; 178 NEB. ADMIN. CODE § 7-001 *et seq*.

[354] NEB. REV. STAT. § 71-5727.

[355] 178 NEB. ADMIN. CODE § 7-007.01.

Antiretaliation Provisions. Employers may not discharge or retaliate against an employee due to the employee reporting a violation or otherwise exercising their rights under this law.[356]

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Nebraska law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

Nebraska law does not address employer workplace violence protection orders.

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[357] (2) the Americans with Disabilities Act (ADA);[358] (3) the Age Discrimination in Employment Act (ADEA);[359] (4) the Equal Pay Act;[360] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[361] (6) the Civil Rights Acts of 1866 and 1871;[362] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;

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[356] NEB. REV. STAT. § 71-5732.

[357] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[358] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[359] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[360] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

[361] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[362] 42 U.S.C. §§ 1981, 1983.

- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity):[363]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[364] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[365]

3.11(a)(ii) *State FEP Protections*

Nebraska's Fair Employment Practice Act (NFEPA) prohibits an employer from discriminating against any individual on the basis of:

- race (including characteristics such as skin color, hair texture, and protective hairstyles, such as braids, locks, and twists);
- color;
- religion;
- sex;
- disability;
- marital status;
- national origin; or
- pregnancy, childbirth, or related medical conditions.[366]

Employers with at least 15 employees, as well as those whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, are covered under the NFEPA.[367]

Schools, colleges, universities, or other educational institutions may hire and employ employees of a particular religion if the institution is controlled or managed by a particular religion or by a particular

[363] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

[364] The EEOC's website is available at http://www.eeoc.gov/.

[365] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

[366] NEB. REV. STAT. §§ 48-1104, 48-1107.02.

[367] NEB. REV. STAT. § 48-1102.

religious entity, or if the curriculum of the institution is directed toward the propagation of a particular religion.[368] Additionally, private membership clubs with *bona fide* tax exempt status are not covered under the law.[369]

3.11(a)(iii) *State Enforcement Agency & Civil Enforcement Procedures*

Agency Enforcement. Nebraska's Equal Opportunity Commission (NEOC) enforces the state's discrimination laws. Employees have 300 days from the date of the discriminatory act to file a complaint with the NEOC.[370] The NEOC then serves the charge on the employer within 10 days.[371] The employer then has 30 days to file a response.[372] Both parties are given an opportunity to participate in the NEOC's alternative dispute resolution program, which involves either mediation or a predetermination settlement procedure.[373] If the complaint is not resolved at this stage (or the parties choose not to participate in the alternative dispute resolution program), the NEOC investigates the complaint.[374]

After the investigation, the NEOC issues a formal determination letter. If no reasonable cause is found, there is no appeal process. If reasonable cause is found, the parties go to the Director of Conciliation to attempt to resolve the case. The parties negotiate the specific relief that would make the complainant whole.[375] If no agreement is reached, the parties may have a public hearing or have the case sent to the national EEOC.[376] If there is a public hearing, the NEOC acts as the hearing officer.[377]

Exclusivity of Remedy. A complainant may file an action in state court at any time while the complaint is pending. If it does so, the NEOC will close the case immediately.[378]

3.11(a)(iv) *Additional Discrimination Protections*

In addition to the NFEPA, Nebraska law provides additional protections to certain protected categories.

Age. The Nebraska Age Discrimination in Employment Act prohibits discrimination based on age.[379] Employers with 20 or more employees, or whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act are covered under this law.[380]

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[368] NEB. REV. STAT. § 48-1108.

[369] NEB. REV. STAT. § 48-1102.

[370] NEB. REV. STAT. § 48-1118(2).

[371] NEB. REV. STAT. § 48-1118(1).

[372] NEB. REV. STAT. § 48-1118(3).

[373] 138 NEB. ADMIN. CODE § 2-002 *et seq*.; *see also* Nebraska Equal Opportunity Comm'n, *Eliminating Discrimination in Nebraska, Complaint Process*, *available at* http://www.neoc.ne.gov/complaint/complaint.html.

[374] 138 NEB. ADMIN. CODE § 2-002.

[375] 138 NEB. ADMIN. CODE § 2-003.

[376] 138 NEB. ADMIN. CODE § 2-003.

[377] 138 NEB. ADMIN. CODE § 2-004.

[378] 138 NEB. ADMIN. CODE § 2-002.

[379] NEB. REV. STAT. § 48-1002.

[380] NEB. REV. STAT. § 48-1002.

Genetic Information & HIV/AIDS Status. Nebraska law also prohibits employment discrimination based on an individual's genetic information and HIV/AIDS status.[381]

3.11(a)(v) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in Omaha or Lincoln are subject to local fair employment practices ordinances.

- **Omaha.** Employers (and their agents) employing six or more employees, excluding the employer's parents, spouse, children, or domestic servants, must extend antidiscrimination protections on the basis of: race; color; creed; religion; sex (includes but is not limited to pregnancy, childbirth, or related medical conditions); marital status; sexual orientation; gender identity; national origin; age (40-70 years); and disability.[382] A charge must be filed with the Director of the City of Omaha Human Rights and Relations Department within 180 days after the alleged unlawful practice occurred or within 180 days after the charge party should reasonably have known about the alleged unlawful practice.[383]
- **Lincoln.** Protected classifications include: race; color; religion; sex (includes but is not limited to pregnancy, childbirth, or related medical conditions); disability; national origin; ancestry; age (40 years and older); and marital status. The antidiscrimination provisions apply to employers (and their agents) employing four or more employees for each working day in 20 or more calendar weeks in the current or preceding calendar year.[384] An employer must post a workplace poster covering these protections.[385] Any person claiming to be aggrieved by an unlawful discriminatory practice may file a verified complaint with the Commission on Human Rights of the City of Lincoln within one year of the date upon which complainant has knowledge of such discriminatory practice.[386]

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and

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[381] NEB. REV. STAT. §§ 48-236, 20-168.

[382] OMAHA, NEB., CODE OF ORDINANCES §§ 13-82 (definitions), 13-88 (additional definitions), 13-89, 13-92 (training programs), 13-93 (advertisements, includes *bona fide* occupational qualification exemption), 13-94 (applications, includes *bona fide* occupational qualification exemption), 13-95 (authorized exceptions, including *bona fide* occupational qualifications), and 13-97 (religious and religious educational exceptions).

[383] OMAHA, NEB., CODE OF ORDINANCES § 13-135.

[384] LINCOLN, NEB., MUN. CODE §§ 11.01.010 (exceptions include *bona fide* private membership clubs, other than labor organizations, which are exempt from taxation under the Internal Revenue Code), 11.08.030 (exceptions, including religious), 11.08.040, 11.08.075 (discrimination against qualified individuals with disabilities), 11.08.080 (lawful employment practices, including *bona fide* occupational qualifications and religious institutions), and 11.08.090 (national security exception).

[385] LINCOLN, NEB., MUN. CODE § 11.08.150.

[386] LINCOLN, NEB., MUN. CODE § 11.02.060.

responsibility, and which are performed under similar working conditions."[387] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[388]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

Nebraska law prohibits employers of two or more employees from paying employees of one sex at a lesser rate than employees of the opposite sex for comparable work on jobs which require equal skill, effort, and responsibility under similar working conditions.[389] Differences in pay are permitted only where the disparity is based on: (1) an established seniority system; (2) a merit increase system; or (3) a system that measures earnings by quantity or quality of production or any factor other than sex. An employer paying a wage differential in violation of this law may not reduce the wages of any employee in order to comply with the statute.

An employee alleging a violation may file a civil action within four years of the alleged violation.[390]

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;

[387] 29 U.S.C. § 206(d)(1).

[388] 42 U.S.C. § 2000e-5.

[389] NEB. REV. STAT. §§ 48-1220, 48-1221.

[390] NEB. REV. STAT. §§ 48-1223, 48-1224.

- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[391]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[392]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

An employee seeking a reasonable accommodation must request an accommodation.[393] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[394] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[395]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters

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[391] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[392] 29 C.F.R. § 1636.3.

[393] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[394] 29 C.F.R. § 1636.3.

[395] 29 C.F.R. § 1636.4.

the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[396]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[397]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

The Nebraska Fair Employment Practice Act covers employers of 15 or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. Such employers must make reasonable accommodations to an applicant or employee's known physical limitations related to giving birth, pregnancy, or a related medical condition.[398]

A reasonable accommodation includes:

- acquiring equipment for sitting;

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[396] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[397] 29 C.F.R. § 1636.3.

[398] NEB. REV. STAT. §§ 48-1102(3), 48-1107.02(2)(d).

- more frequent or longer breaks;
- periodic rest;
- assistance with manual labor;
- job restructuring;
- light-duty assignments;
- modified work schedules;
- temporary transfers to less strenuous or hazardous work;
- time off to recover from childbirth; or
- break time and appropriate facilities for breastfeeding or expressing breast milk.[399]

Reasonable accommodation does not include accommodations which the employer can demonstrate require significant difficulty or expense, thereby posing an undue hardship upon the employer.[400] Thus, accommodation is not required if the employer can demonstrate the accommodation would impose an undue hardship on the operation of its business.

It is an unlawful employment practice to:

- deny employment opportunities to an applicant or employee if the denial is based upon the employer's need to make reasonable accommodation to the physical limitations due to the applicant or employee's pregnancy, childbirth, or related medical conditions;
- require an employee to take leave if another reasonable accommodation can be provided; and
- take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation.[401]

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[402] Multiple decisions of the U.S. Supreme Court[403] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important

[399] NEB. REV. STAT. § 48-1102(11).

[400] NEB. REV. STAT. §§ 48-1102(11), 48-1107.02(2)(d).

[401] NEB. REV. STAT. § 48-1107.02(2)(e), (i), and (j).

[402] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[403] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526 (1999).

role that training plays in establishing a legal defense to harassment and discrimination claims.[404] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

There are no antiharassment training and education requirements mandated for private employers in Nebraska.

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

3.12(a)(ii) *State Guidelines on Whistleblowing*

Nebraska law makes it unlawful for an employer to discriminate against any individual because the individual has "opposed any practice or refused to carry out any action unlawful under federal law" or the laws of Nebraska.[405]

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[406] and the Railway Labor Act (RLA)[407] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible

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[404] EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, June 18, 1999, *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also* EEOC, *Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

[405] NEB. REV. STAT. § 48-1114.

[406] 29 U.S.C. §§ 151 to 169.

[407] 45 U.S.C. §§ 151 *et seq*.

for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

Nebraska is a right-to-work state. Under Nebraska law, no worker may be denied employment because of affiliation with a union or because of their refusal to join or pay a fee to a union. Entities may not enter into a contract to exclude persons from employment because of their membership or nonmembership in a union.[408]

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[409] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[410] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

Nebraska does not have a mini-WARN law requiring advance notice to employees of a plant closing.

4.1(c) *State Mass Layoff Notification Requirements*

Nebraska does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff.

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[408] NEB. CONST. art. XV, § 13; NEB. REV. STAT. § 48-217.

[409] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

[410] 20 C.F.R. §§ 639.4, 639.6.

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under federal law.

Table 11. Federal Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[411] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[412]

4.2(b) *State Guidelines on Documentation at End of Employment*

Table 12 lists the documents that must be provided when employment ends under state law.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits, Mini-COBRA, etc.	Not later than 10 days following the date of termination of employment of the employee, an employer must send a notice by certified mail with return receipt requested to the terminated employee at their home address as shown on the records of the employer. Such notice must set forth: • the right of the terminated employee to elect to continue coverage and the election form to be used in exercising such right;

[411] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[412] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
	• the amount of each monthly premium to be paid by the terminated employee; and • the manner, time, and to whom the election form must be completed and returned and each monthly premium must be paid.[413]
Unemployment Notice	**Generally.** When any employee becomes unemployed, a Nebraska employer must provide a printed statement informing employees about unemployment insurance coverage and how to file a claim for benefits.[414] **Multistate Workers.** Whenever an individual covered by an election is separated from employment, an employer must again notify that individual forthwith as to the jurisdiction under whose unemployment compensation law those services have been covered. If, at the time of termination, the individual is not located in the elected jurisdiction, an employer must notify that individual as to the procedure for filing interstate benefit claims.[415] In addition to this notice requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

In Nebraska, an employer may disclose certain information about a current or former employee's employment to a prospective employer upon written consent of the current or former employee. An employer may disclose the current or former employee's:

- dates and duration of employment;
- pay rate and wage history;
- job description and duties;
- most recent performance evaluation;

[413] NEB. REV. STAT. § 44-1641.

[414] NEB. REV. STAT. § 48-629. This poster is available in English at https://dol.nebraska.gov/LaborStandards/Compliance/RequiredPosters and in Spanish at https://dol.nebraska.gov/webdocs/Resources/Items/UI%20Advisement%20of%20Benefit%20Rights_Spanish.pdf. It is also included in the "3 in 1" poster available in English and Spanish at https://dol.nebraska.gov/LaborStandards/Compliance/RequiredPosters.

[415] 221 NEB. ADMIN. CODE § 6-005.

- attendance information;
- results of drug or alcohol tests administered within one year of the request;
- threats of violence or harassment directed at another employee or related to the workplace;
- circumstances regarding separation, whether voluntarily or involuntarily separated and the reasons for the separation; and
- whether the employee is eligible for rehiring.[416]

The current or former employee's consent must be either separate from an employment application form, or, if included in the application form, must be in bold letters and in larger typeface than the largest type in the text of the form. The statute provides the following language as an example of such consent:

> I, (applicant), hereby give consent to any and all prior employers of mine to provide information with regard to my employment with prior employers to (prospective employer).

The consent must be signed and dated by the applicant and is valid for no longer than six months.[417]

Employers that provide the above information are presumed to be acting in good faith and are immune from civil liability for the disclosure of the information.[418]

[416] NEB. REV. STAT. § 48-201(1)(a).

[417] NEB. REV. STAT. § 48-201(2).

[418] NEB. REV. STAT. § 48-201(1)(b).