



# NEBRASKA

## QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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*Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.*

## At-Will Employment

Nebraska is an "employment at will" state. That means that the employer or the employee may terminate employment at any time for any reason, as long as no other law is being violated (i.e., workers' compensation, FMLA, discrimination and retaliation laws, etc.). Nebraska recognizes exceptions for a public policy claim when termination clearly violates public policy. *Knapp v. Ruser*, [901 N.W.2d 31 \(Neb. 2017\)](#). Nebraska also recognizes a public policy violation when an employer retaliates against an employee for filing a workers' compensation claim or a retaliatory claim of demotion for filing for workers' compensation. *Jackson v. Morris Communications Corp.*, [657 N.W.2d 634 \(2003\)](#); *Trosper v. Bag 'N' Save*, [734 N.W.2d 704 \(2007\)](#). The public policy exception to at-will employment is narrow, requiring direct evidence of violation of a clear mandate of public policy that contravenes the letter or purpose of constitutional, statutory, or regulatory provision or scheme. *Tepper v. Talent Plus, Inc.*, [561 F.Supp. 3d 846, 853 \(D. Neb. 2021\)](#).

Nebraska passed 2021 Legislative Bill 451 in May 2021, which added characteristics associated with race, culture, and personhood within the definition of race, including hair texture and protected hairstyles, under the Nebraska Fair Employment Practice Act and changing provisions relating to unlawful employment practices. The enactment went into effect in September 2021. [Nebraska 2021 Legislative Bill 451](#).

Nebraska passed 2021 Legislative Bill 260 in May 2021, expanding valid reasons for voluntarily leaving employment with good cause to include individuals who made reasonable efforts to preserve employment but ultimately could not for the purpose of caring for a family member with a serious health condition. The bill went into effect in August 2021. [Nebraska 2021 Legislative Bill 260](#).

## Immigration Verification

Nebraska places no additional employment verification requirements on employers beyond Federal I-9 compliance. Nebraska employers do not have to use E-Verify or an equivalent federal program.

## Drug Testing

Nebraska allows pre-employment drug testing, but failure to continue employment based on drug test results is prohibited unless the results satisfy the requirements established in [Neb. Rev. Stat. § 48-1903](#). Nebraska law prohibits the release of drug test results to the public absent requirement by law. [Neb. Rev. Stat. § 48-1906](#). Release of drug test results to an entity involved in the employee's channel of employment is not considered a release to the public. *Polinski v. Sky Harbor Air Serv., Inc.*, 640 N.W.2d 391 (Neb. 2002).

## Jury Duty Leave

It is unlawful for an employer to persuade or attempt to persuade any juror to avoid jury service; intimidate or to threaten any juror in that respect; or remove or otherwise subject an employee to adverse employment action as a result of jury service if the employee provides reasonable notice of their absence. In addition, it is unlawful for an employer to require or request an employee to use annual, vacation, or sick leave for time spent responding to a summons for jury duty. [Neb. Rev. Stat. § 25-1674](#). Nebraska state law requires the employer to compensate the employee for time taken to serve jury duty minus the amount paid by the court for the employee to attend jury duty. [Neb. Rev. Stat. § 25-1674](#). If jury duty leave would cause undue hardship to either a juror or a juror's employer, a juror can be validly excused from jury duty. [Neb. Rev. Stat. § 25-1650](#).

## Voting Leave

On election days, each employer in the state must schedule the work hours of employees so that each employee will have an opportunity "to exercise the right of franchise," which is the right to vote. Registered voters shall be entitled to be absent from employment for a period of time that will, in addition to their nonworking time, total two consecutive hours between the time of the opening and closing of the polls. [Neb. Rev. Stat. § 32-922](#).

## Parental Leave

No Nebraska state law requires employers to provide their employees with paid parental leave. However, if an employer voluntarily decides to grant parental leave to an employee for a biological newborn child, the employer must grant the same amount of leave for adoptive parents. [Neb. Rev. Stat. § 48-234](#).

## Other Leave

The State of Nebraska does not require private employers to offer paid vacation or sick leave to employees. Nebraska state law also does not private require employers to provide their employees with paid vacation leave. However, employers are subject to the federal [Family Medical Leave Act](#) and its requirements. The State of Nebraska requires state employers to offer employees 96 working hours of vacation with full pay. [Neb. Rev. Stat. § 81-1328](#). State employees who have exceeded five years of continuous employment shall be entitled to 120 hours during their sixth year of employment. The employee will be entitled to eight hours every year thereafter of continuous state employment. Any state employee who works less than 40 hours a week is entitled to a vacation leave proportionate to their regular workweek. [Neb. Rev. Sta. § 81-1328](#). See more at [nebraskalegislature.gov/laws/statutes.php?statute=81-1328](http://nebraskalegislature.gov/laws/statutes.php?statute=81-1328).

## Smoking Laws

The State of Nebraska prohibits smoking in any indoor workplaces, with very limited exceptions, pursuant to the [Nebraska Clean Indoor Air of 2008](#). The law was expanded to apply to e-cigarettes and vaping in 2020. Exemptions to indoor smoking or vaping bans include smoking-specified hotel guestrooms and cigar bars, but do not include tobacco retail outlets. *Big John's Billiards, Inc. v. State*, [852 N.W.2d 727 \(2014\)](#).

## Break Time to Express Milk

Nebraska law requires employers to provide reasonable accommodations for employees to express milk. This includes providing the appropriate break time and facilities to express milk. [Neb. Rev. Stat. § 48-1102\(11\)](#). Employers may avoid accommodation if the accommodation posed would be an undue hardship on the employer.

## Meal Breaks

Nebraska labor laws require employers to provide employees in assembling plants, mechanical establishments, and workshops with a 30-minute lunch period in each shift of at least eight hours. [Neb. Rev. Stat. § 48-212](#). For all other businesses, such lunch periods or any other type of break are given solely at the discretion of the employer, regardless of the length of the work shift. However, in accordance with federal law, if an employer chooses to provide additional breaks, they must be paid if they are of the type usually lasting less than 20 minutes. Meal or lunch periods (usually 30 minutes or more) do not have to be paid, as long as the employee is free to do as they wish during the meal or lunch period. A structured meal break such as a half-hour period at end of workday where employee is required to remain on the premises is not a "bona fide meal period," but instead a "period of work time" compensable under the Fair Labor Standards Act. *Banks v. Mercy Villa Care Center*, [407 N.W.2d 793, 797 \(1987\)](#).

## Minimum Wage, Overtime, and Wage Recordkeeping

Beginning January 1, 2016, the State of Nebraska set minimum wage at not less than \$9 per hour. [Neb. Rev. Stat. § 48-1203](#). Employers must still comply with federal wage laws and regulations. The employer can pay tipped employees \$2.13 per hour as long as the employee's tips bring the total hourly wage up to or exceed the state minimum wage.

Any employer employing student-learners under the age of 20 as part of a bona fide vocational training program may pay such student-learners' wages at a rate of at least 75 percent of the federal minimum wage for 90 days from the date the new employee was hired.

Generally, if an employee works more than 40 hours, they must be compensated at a rate of one and one-half times the regular rate of pay at which they are employed as provided under the FLSA. This does not apply to agricultural employees. Provisions governing overtime pay can be found at <https://www.employmentlawhandbook.com/employment-and-labor-laws/federal/flsa/>.

All employers with at least two employees must make and keep, for a period of not less than four years, in or about the premises wherein any employee is employed, a record of the name, Social Security number, residence, nature of services performed, date of hire, gross pay, and amounts paid as reimbursement for business expenses. [Neb. Rev. Stat. § 48-1225](#).

## Final Payments

The State of Nebraska requires an employer to issue a final paycheck on the next regular payday or within two weeks of the date of termination, whichever is sooner. [Neb. Rev. Stat. § 48-1230\(4\)\(a\)](#).

## Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Unemployment benefits are administered by the Nebraska Department of Labor, and additional information regarding the benefits may be accessed at [fileunemployment.org/nebraska/](http://fileunemployment.org/nebraska/). Compensatory time is payable with respect to the weeks in which it was earned, not the weeks during which it is paid, and thus does not disqualify a laid-off employee from unemployment benefits, even if the payments occur simultaneously. *Wadkins v. Lecuona*, [740 N.W.2d 34, 43 \(2007\)](#).

## Workers' Compensation

The Nebraska Workers' Compensation Act, [Neb. Rev. Stat. § 48-101](#), applies to every employer in Nebraska with three or more employees, or to those in the construction industry. Employees who suffer injuries and/or occupational diseases arising out of and in the course of their employment may be eligible to receive several types of benefits under the Act. Under the Act, a workplace injury must be immediately reported to the employer; failing to report an injury on a timely basis may result in a denial of benefits. The Act is administered by the Nebraska Workers' Compensation Commission and additional information regarding the Act may be accessed at [doi.nebraska.gov/](http://doi.nebraska.gov/). Finally, unlike some states, Nebraska recognizes a private cause of action for retaliation under the Act. *Jackson v. Morris Communications Corp.*, [657 N.W.2d 634 \(2003\)](#); *Trosper v. Bag 'N Save*, [734 N.W.2d 704 \(2007\)](#). If an employer discriminates against an employee because they have asserted their rights under the Act, the employer may have to pay a fine to the Second Injury Trust Fund.

Independent contractors do not qualify for unemployment benefits. *Wright v. H & S Cont., Inc.*, [956 N.W.2d 329, 336 \(2021\)](#).

## Child Labor

Generally, 14 years old is the minimum age for employment under Nebraska state law. At age 16, a child may be employed for most work unless the work is declared hazardous by the U.S. Department of Labor. There are restrictions for places of work dealing with minors, as well as restrictions on the hours of the day the minor may work. The restrictions may be found at [Neb. Rev. Stat. § 48-302](#).

## Gun Laws

Nebraska law allows an employer to prohibit employees or other people who are permitholders from carrying concealed handguns in vehicles owned by the employer. [Neb. Rev. Stat. § 69-2441](#). An employer may also directly request the gun owner to remove the gun from the employer's premises. [Neb. Rev. St. §§ 69-2441\(1\)\(a\), \(2\)](#).

## Whistleblower Protection

The Nebraska Fair Employment Practice Act prohibits employers from retaliating against employees for reporting on unlawful practices by their employer. [Neb. Rev. Stat. § 48-1102](#). This protection does not extend to complaints filed by an employee regarding actions taken by other employees. *Baker-Heser v. State*, [963 N.W.2d 59, 68 \(2021\)](#).