

Unintended Consequences for Employees and Employers of the Nebraska Healthy Families and Workplaces Act (the “Act”)

How LB415 Improves Compliance for Employees and Employers

PTO Programs in Jeopardy

Many employers have combined their traditional paid sick leave (PSL) and paid vacation time offerings into comprehensive paid time off (PTO) policies. These comprehensive policies are preferred by many employees because of the flexibility, reduced complexity, and easier trackability they provide. However, the Act will likely force employers of all sizes and types to rethink these existing PTO policies. Because the Act is not clear as to whether combined PTO programs satisfy the requirements of the Act, employers will likely revert to separating their paid vacation and paid sick leave programs to comply with the Act, even though most employees prefer flexible PTO programs.

Our Ask:

1. Explicitly clarify that any PTO program that provides at least as much time to employees as they are afforded under the Act satisfies the Act’s requirements. (Section 1, subsection (7); section 2, subsection (7))
2. Permit existing PTO programs to retain their annual caps on total earnings to allow these programs to remain in place. The Act currently caps annual employee accrual of PSL, so this change would be consistent with the Act’s intent. (Section 2, subsection (7))

Independent Contractors, Owners/Operators

The Act defines an employee as anyone who is “permitted to work.” Due to the extremely broad and vague nature of this definition, independent contractors and owner/operators are almost certainly included as employees under the Act and are therefore subject to its requirements. If this stands, everyday Nebraskans will soon need to track hours, and potentially offer PSL, to their lawncare crews, babysitters, and rideshare drivers. Because of these compliance challenges, it is standard practice in employment benefits laws to create exceptions for independent contractors and owner/operators as it relates to benefits.

Our Ask: Exempt independent contractors and owner/operators from the requirements of the Act. (Section 1, subsection (3))

Uncertainty at End of Employment

Current Nebraska law states that PSL does not need to be paid out when employment ends. The Act creates ambiguity about whether PSL must be paid out, which is inconsistent with current law.

Our Ask: Clarify employers are not required to pay out accumulated PSL upon the end of employment. (Section 2, subsection (10))

Nebraska Chamber of Commerce & Industry