

Informational Pamphlet
on
Initiative and Referendum Measures
Appearing on the 2024 General Election Ballot



Robert B. Evnen
Nebraska Secretary of State
Phone: (402) 471-2555
Website: sos.nebraska.gov

This pamphlet is intended to provide the voters of Nebraska with additional information about the measures proposed via the initiative and referendum petition process that will appear on the November 5, 2024 General Election ballot.

Each measure contains three portions: the language which will appear on the November ballot, the text of the measure, and arguments supporting and opposing the measure. The arguments are derived from information provided to the Secretary of State from supporters and opponents of these measures.

Additional copies of this pamphlet may be obtained through local election officials or the Office of the Secretary of State. This pamphlet may also be reproduced in whole or in part without prior permission.

INITIATIVE MEASURE 436

Ballot Title and Text for Initiative Measure 436

Proposed by Initiative Petition

A vote "FOR" will enact a statute which: (1) provides eligible employees the right to earn paid sick time for personal or family health needs; (2) entitles employees of employers with fewer than 20 employees to accrue and use up to 40 hours of such time annually and those employed by employers with 20 or more employees to accrue and use up to 56 hours of such time annually; (3) specifies conditions regarding paid sick time; (4) prohibits retaliation against employees for exercising such rights; (5) adopts documentation requirements; and (6) establishes enforcement powers and a civil cause of action for violations.

A vote "AGAINST" means such a statute will not be enacted.

Shall a statute be enacted which: (1) provides eligible employees the right to earn paid sick time for personal or family health needs; (2) entitles employees of employers with fewer than 20 employees to accrue and use up to 40 hours of such time annually and those employed by employers with 20 or more employees to accrue and use up to 56 hours of such time annually; (3) specifies conditions regarding paid sick time; (4) prohibits retaliation against employees for exercising such rights; (5) adopts documentation requirements; and (6) establishes enforcement powers and a civil cause of action for violations?

- For
- Against

Full Text of Proposed Initiative Measure 436

OBJECT STATEMENT: The object of this petition is enact a statute to provide eligible employees the right to earn paid sick time for personal or family health needs, to entitle those employed by employers with fewer than 20 employees to accrue and use up to 40 hours of earned paid sick time per year, to entitle those employed by employers with 20 or more employees to accrue and use up to 56 hours of earned paid sick time per year, to specify conditions for accruing and using earned paid sick time, to prohibit retaliation against an employee for exercising rights granted under the statute, to adopt certain notice and documentation requirements, and to establish enforcement powers and a civil cause of action for violations of the statute.

Proposed Statutory Language

(underscored language indicates added language, ~~strike through~~ indicates language being removed)

TEXT: FOR AN ACT relating to employment; to adopt the Nebraska Healthy Families and Workplaces Act; and to provide severability.

Be it enacted by the people of the State of Nebraska:

Section 1. Act, how cited; declaration of purpose. (1) Sections 1 to 11 of this act shall be known and may be cited as the Nebraska Healthy Families and Workplaces Act. (2) The purpose of the act is to provide eligible employees in Nebraska the right to earn paid sick time for personal or family health needs and provide certain provisions naturally and necessarily related to that purpose.

Sec. 2. Terms, defined. For purposes of the Nebraska Healthy Families and Workplaces Act: (1) Department means the Department of Labor; (2) Employ means to permit to work; (3)(a) Employee means any individual employed by an employer, but does not include an individual who works in Nebraska for fewer than eighty hours in a calendar year. (b) Employee does not include an "employee" as defined by 45 U.S.C. 351(d) who is subject to the federal Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq.; (4)(a) Employer means any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or organized group of persons who employs one or more employees. (b) Employer does not

include the United States or the State of Nebraska or its agencies, departments, or political subdivisions; (5) Family member means: (a) Any of the following, regardless of age: A biological, adopted, or foster child, a stepchild, a legal ward, or a child to whom the employee stands in loco parentis; (b) A biological, foster, step, or adoptive parent or a legal guardian of an employee or an employee's spouse; (c) A person who stood in loco parentis to the employee or the employee's spouse when the employee or employee's spouse was a minor child; (d) A person to whom the employee is legally married under the laws of any state; (e) A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of the employee or the employee's spouse; or (f) Any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship; (6) Health care professional means any person licensed under any federal or state law to provide medical or emergency services; (7) Paid sick time means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee typically earns during hours worked and that is provided by an employer to an employee for the purposes described in section 4 of this act, and in no case shall the amount of this hourly rate be less than that provided under section 48-1203; (8) Public health emergency means a declaration or proclamation related to a public health threat, risk, disaster, or emergency that is made or issued by a federal, state, or local official with the authority to make or issue such a declaration or proclamation; (9) Retaliatory personnel action means a denial of any right guaranteed under the Nebraska Healthy Families and Workplaces Act and any threat, discharge, suspension, demotion, reduction of hours or pay, or other adverse action against an employee for exercising or attempting to exercise any right guaranteed in the Nebraska Healthy Families and Workplaces Act; (10)(a) Small business means an employer with fewer than twenty employees during a given week, including full-time, part-time, or temporary employees. (b) Small business does not include an employer that maintained twenty or more employees on its payroll in each of twenty or more calendar weeks in the current or preceding calendar year; and (11) Year means a regular and consecutive twelve-month period as determined by the employer.

Sec. 3. Accrual and carryover of paid sick time; paid sick time following transfer or return after separation from employment. (1) All employees shall accrue a minimum of one hour of paid sick time for every thirty hours worked. Unless the

employer selects a higher limit, this section does not entitle an employee to earn or use more than: (a) Forty hours of paid sick time in a year for an employee of a small business; or (b) Fifty-six hours of paid sick time in a year for an employee of an employer that is not a small business. (2) Employees who are exempt from overtime requirements under 29 U.S.C. 213(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. 201 et seq., shall be assumed to work forty hours in each workweek for purposes of paid sick time accrual unless their typical workweek is less than forty hours, in which case paid sick time accrues based upon that typical workweek. (3) Paid sick time as provided in this section shall begin to accrue at the commencement of employment or October 1, 2025, whichever is later. An employee shall be entitled to use paid sick time as it is accrued. An employer may provide all paid sick time that an employee is expected to accrue in a year at the beginning of the year. (4) Accrued paid sick time shall be carried over to the following year. A small business is not required to permit an employee to use more than forty hours of paid sick time per year, and other employers are not required to permit an employee to use more than fifty-six hours of paid sick time per year. Alternatively, in lieu of carryover of unused paid sick time provided pursuant to this section from one year to the next, an employer may pay an employee for unused paid sick time provided pursuant to this section at the end of a year and provide the employee with an amount of paid sick time that meets or exceeds the requirements of subsections (1) and (3) of this section that is available for the employee's immediate use at the beginning of the subsequent year. (5) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the requirements of the Nebraska Healthy Families and Workplaces Act that may be used for the same purposes and under the same conditions as paid sick time under the act is not required to provide additional paid sick time under the act. (6) At its discretion, an employer may loan paid sick time to an employee in advance of accrual by such employee. (7) If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee is entitled to all paid sick time accrued at the prior division, entity, or location and is entitled to use all paid sick time as provided in the Nebraska Healthy Families and Workplaces Act. When there is a separation from employment and the employee is rehired within twelve months of separation by the same employer, previously accrued paid sick time that had not been used shall be reinstated. The employee shall be entitled to

use accrued paid sick time and accrue additional paid sick time at the recommencement of employment.

Sec. 4. Use of paid sick time; employee notice and documentation; multiemployer paid sick time fund, plan, or program. (1) Paid sick time shall be provided to an employee by an employer for: (a) An employee's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care; (b) Care of a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; care of a family member who needs preventive medical care; or in the case of a child, to attend a meeting necessitated by the child's mental or physical illness, injury, or health condition, at a school or place where the child is receiving care; or (c) Closure of the employee's place of business by order of a public official due to a public health emergency; an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or an employee's need to self-isolate or care for the employee or a family member when it has been determined by the health authorities having jurisdiction or by a health care professional that the employee's or family member's presence in the community may jeopardize the health of others because of exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease. (2) Paid sick time under this section shall be provided upon the oral request of an employee. When possible, the request shall include the expected duration of the absence. (3) An employer that requires notice of the need to use paid sick time in accordance with this section shall provide a written policy that contains reasonable procedures for employees to provide notice. An employer that has not provided to the employee a copy of such written policy shall not deny paid sick time to the employee based on noncompliance with such a policy. (4) An employer shall not require, as a condition of an employee's taking paid sick time under this section, that the employee search for or find a replacement worker to cover the hours during which the employee is using paid sick time. (5) Paid sick time under this section may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time. (6) For use of paid sick time for more than three consecutive

work days, an employer may require reasonable documentation that the paid sick time has been used for a purpose covered by subsection (1) of this section. Reasonable documentation shall include (a) documentation signed by a health care professional indicating that paid sick time is or was necessary or (b) if the employee or a family member did not receive services from a health care professional, or if documentation cannot be obtained from a health care professional in reasonable time or without added expense, a written statement from the employee indicating that the employee is taking or took paid sick time for a qualifying purpose covered by subsection (1) of this section. (7) An employer signatory to a multiemployer collective-bargaining agreement may fulfill its obligations under the Nebraska Healthy Families and Workplaces Act by making contributions to a multiemployer paid sick time fund, plan, or program based on the hours each employee accrues pursuant to the act while working under the multiemployer collective-bargaining agreement, if the fund, plan, or program enables employees to collect paid sick time from the fund, plan, or program based on hours they have worked under the multiemployer collective-bargaining agreement and for the purposes specified under the act. Employees who work under a multiemployer collective-bargaining agreement into which their employers make contributions as provided in this subsection may collect from the paid sick time fund, plan, or program based on hours they have worked under the multiemployer collective-bargaining agreement and for the purposes specified under the act.

Sec. 5. Exercise of rights protected; retaliatory personnel action prohibited. (1) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under the Nebraska Healthy Families and Workplaces Act. (2) An employer shall not take retaliatory personnel action against an employee or former employee because the person has exercised or attempted to exercise rights protected under the act. Such rights include, but are not limited to, the right to request or use paid sick time pursuant to the act; the right to file a suit or complaint or inform any person about any employer's alleged violation of the act; the right to participate in an investigation, hearing, or proceeding or cooperate with or assist the department in its investigations of alleged violations of the act; and the right to inform any person of the person's potential rights under the act. (3) It shall be unlawful for an employer's

absence control policy to count paid sick time taken under the act as an absence that may lead to or result in a retaliatory personnel action or any other adverse action.

Sec. 6. Notice and posting. (1) Employers shall give employees written notice of the following at the commencement of employment or by September 15, 2025, whichever is later: That beginning October 1, 2025, employees are entitled to paid sick time; the amount of paid sick time; the terms of its use guaranteed under the Nebraska Healthy Families and Workplaces Act; that retaliatory personnel action against employees who request or use paid sick time is prohibited; that each employee has the right to file a suit or complaint if paid sick time as required by the act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking paid sick time; and the contact information for the department where questions about rights and responsibilities under the act can be answered. (2) The notices required in subsection (1) of this section shall be provided in: (a) English; and (b) Any language that is the first language spoken by at least five percent of the employer's workforce if the department has provided a model notice in such language. (3) The amount of paid sick time available to the employee, the amount of paid sick time taken by the employee to date in the year, and the amount of pay the employee has received as paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck. (4) Employers shall display a poster that contains the information required in subsection (1) of this section in a conspicuous and accessible place in each establishment where such employees are employed. If an employer does not maintain a physical workplace or an employee teleworks or performs work through a web-based or app-based platform, the employer shall provide notice of such information via electronic communication or a conspicuous posting in the web-based or app-based platform. The poster displayed shall be in: (a) English; and (b) Any language that is the first language spoken by at least five percent of the employer's workforce if the department has provided posters in such language. (5) The department shall create and make available to employers, in all languages spoken by at least five percent of Nebraska's workforce and any language deemed appropriate by the department, model notices and posters that contain the information required under subsection (1) of this section and for employers' use in complying with subsections (1) and (4) of this section.

Sec. 7. Department of Labor; enforcement and implementation powers; rules and regulations.

(1) The department shall be responsible for implementation and enforcement of the Nebraska Healthy Families and Workplaces Act. The department may adopt and promulgate rules and regulations as necessary to carry out the act. (2) The Commissioner of Labor may subpoena records and witnesses related to the enforcement of the act. The commissioner or his or her agent may inspect all related records and gather testimony on any matter relative to the enforcement of the act when the information sought is relevant to a lawful investigative purpose and is reasonable in scope.

Sec. 8. Enforcement.

(1) The Commissioner of Labor shall issue a citation to an employer when an investigation reveals that the employer may have violated the Nebraska Healthy Families and Workplaces Act. (2) When a citation is issued, the commissioner shall notify the employer of the proposed administrative penalty, if any, by certified mail, by any other manner of delivery by which the United States Postal Service can verify delivery, or by any method of service recognized under Chapter 25, article 5. The administrative penalty shall not be more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation. (3) The employer has fifteen working days after the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing in accordance with the Administrative Procedure Act. (4) Any employer who has an unpaid citation for a violation of the Nebraska Healthy Families and Workplaces Act shall be barred from contracting with the state or any political subdivision until such citation is paid. If a citation has been contested as described in subsection (3) of this section, it shall not be considered an unpaid citation under this subsection until after such contest has been resolved. (5) Citations issued under this section and the names of employers who have been issued a citation shall be made available to the public upon request, except that this subsection shall not apply to any citations that are being contested as described in subsection (3) of this section. (6) An employee having a claim for a violation of the Nebraska Healthy Families and Workplaces Act may institute suit for legal and equitable relief in the proper court. In any action brought to enforce the Nebraska Healthy Families and Workplaces Act, the court shall have jurisdiction to grant such legal or equitable relief as the court deems appropriate to effectuate the purposes of the act. If an employee establishes a claim and secures

judgment on the claim, such employee shall also be entitled to recover the full amount of the judgment and all costs of such suit, including reasonable attorney's fees. (7) If an employee institutes suit against an employer under subsection (6) of this section, any citation that is issued against an employer under subsection (1) of this section and that relates directly to the facts in dispute shall be admitted into evidence unless specifically excluded by the court. If a citation has been contested as described in subsection (3) of this section, it shall not be admitted into evidence under this subsection until such contest has been resolved. (8) A civil action brought under this section shall be commenced no later than four calendar years after the cause of action accrues.

Sec. 9. Confidentiality and nondisclosure. (1) Unless otherwise required by law, an employer shall not require disclosure of the details of an employee's or an employee's family member's health information as a condition of providing paid sick time under the Nebraska Healthy Families and Workplaces Act. (2) Unless otherwise required by law, any health information possessed by an employer regarding an employee or employee's family member shall: (a) Be maintained on a separate form and in a separate file from other personnel information; (b) Be treated as confidential medical records; and (c) Not be disclosed except to the affected employee or with the express permission of the affected employee.

Sec. 10. No effect on more generous paid sick time policies or laws; nonwaiver of rights and remedies. (1) The Nebraska Healthy Families and Workplaces Act provides minimum requirements pertaining to paid sick time, and nothing in the act shall be construed to: (a) Prohibit an employer from the adoption or retention of a paid sick time policy more generous than the one required by the act; (b) Diminish the obligation of an employer to comply with any contract, collective-bargaining agreement, employment benefit plan, or other agreement providing more generous paid sick time to an employee than required by the act; (c) Diminish the rights of public employees regarding paid sick time or use of paid sick time as provided in state or local law; or (d) Preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick time or that extends other protections to employees. (2) The rights and remedies under the Nebraska Healthy

Families and Workplaces Act shall not be waived by any agreement, policy, form, or condition of employment. Any such waiver shall be void and unenforceable.

Sec. 11. Severability. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Arguments For and Against Initiative Measure 436

Supporters contend:

No Nebraskan should have to choose between their paycheck and their health or the health of their family. But right now, too many hardworking Nebraskans do not get any paid sick days. Working families are the engine that drives our economy, and paid sick leave will benefit hardworking Nebraskans and businesses. It's time to support working Nebraskans so they can take care of their health without losing pay. Initiative 436 would allow Nebraska workers to earn one hour of paid sick leave for every 30 hours worked. This will benefit full-time, part-time and temporary employees creating healthier workplaces, families, and communities. If passed by the majority of voters, Initiative 436 would go into effect on October 1, 2025.

Opponents contend:

Government-mandated paid leave will hurt small and medium-sized businesses by driving up their cost of doing business and making it harder for them to compete with large national and multinational corporations. Because mandates passed by petition must be written narrowly, this proposal disproportionately hurts small businesses located in rural and lower income areas because it does not account for differences in labor availability, cost-of-living, or other variances across the state. This initiative is a one-size-fits-all government mandate, backed by millions of dollars from outside Nebraska. If passed, it will drive up compliance costs and increase prices for consumers who would otherwise like to shop at local retailers.