



NEBRASKA BALLOT INITIATIVES: PAID SICK LEAVE AND MEDICAL MARIJAUNA

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NEBRASKA PAID SICK LEAVE INITIATIVE 436

Initiative Measure 436

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County Level Results

Precincts Reporting: 1326/1326

Precincts Partially Reporting: 0/1326

View Map

	Votes	Percent	
For	649,995	74.38%	<div style="width: 74.38%;"></div>
Against	223,909	25.62%	<div style="width: 25.62%;"></div>
Total Votes	873,904	100%	

NEBRASKA PAID SICK LEAVE INITIATIVE 436

What is it?

- Enacts a statute to provide eligible employees the right to earn paid sick time for personal or family health needs
- Benefits depend on Employer Size
 - < 20 Employees: Accrue up to 40 hours of paid sick leave / year*
 - \geq 20 employees: Accrue up to 56 hours of paid sick leave / year*
 - * Can accrue at a higher rate



Who's a covered employer?

Who's an employee?

Who's in an employee's family?

NEBRASKA PAID SICK LEAVE

Employer: Any person or entity who employs at least one employee, but not...

- The United States; or
- The State of Nebraska, or its agencies, departments, or political subdivisions
- Counting Rules for Small Employer Status:
 - Counting to less than 20 requires counting full-time, part-time, and temporary employees
 - You have to have stayed below 20 employees in each of 20 or more calendar weeks in the current AND preceding calendar years

Employee: Someone permitted to work, but not...

- Individuals who work in Nebraska < 80 hours in a calendar year; or
- Someone subject to the Railroad Unemployment Insurance Act



NEBRASKA PAID SICK LEAVE

Family Member: Many defined people, but also: “any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.”

Defined Familial Relationships:

- Biological, adopted, foster, or step- children or legal wards
- Child to whom the employee stands *in loco parentis*
- Biological, adoptive, foster, or step- parent or legal guardian of employee or employee’s spouse
- A person who stood *in loco parentis* to employee or employee’s spouse when either was a minor child
- Legally married spouse
- Grandparent, grandchild, or sibling whether biological, foster, adoptive, or step- of employee or employee’s spouse



NEBRASKA PAID SICK LEAVE

Accrual

- *Amount:* Employees earn 1 hour of paid sick leave for every 30 hours worked. (Employers can choose a faster accrual rate.)
- *Accrual Start Date:* Commencement of employment or October 1, 2025, whichever is later.
- *Process:* Accrue as earned or at the beginning of the year.

What about my
exempt / non-
overtime /
salaried
employees?

I don’t even track
their time.



NEBRASKA PAID SICK LEAVE

Carryover: Two Options

- Accrued paid sick time carries over to the following year.
 - Small businesses (<20 employees) aren't required to permit use of more than 40 hours / year.
 - Other businesses (≥ 20 employees) aren't required to permit use of more than 56 hours / year.
- Pay out unused sick leave at end of year, and make the 40/56 hour sick leave allotment immediately at beginning of next year.



NEBRASKA PAID SICK LEAVE

Use

- *Increments of Use*: One hour or the smallest increment the employer's payroll system uses.
- *Work Coverage*: An employer cannot require an employee to find a replacement worker to cover their hours as a condition of taking paid sick time.

Can I require employees to provide me notice of a need to use paid sick time?

NEBRASKA PAID SICK LEAVE

Notice

- Written policy **must** be provided with reasonable procedures to provide notice.
- If you don't provide the employee a copy of the written policy, you can't deny paid sick time based on non-compliance.

NEBRASKA PAID SICK LEAVE

Documentation

- If an employee uses paid sick time for more than three consecutive *workdays*, an employer can require **“reasonable documentation”** that the time was used for a covered purpose.
 - “Paid sick time ... shall be provided upon the oral request of an employee.”
 - “When possible, the request shall include the expected duration of the absence.”

Great. So at least I can still require a doctor's note...right?

NEBRASKA PAID SICK LEAVE

Reasonable Documentation

- Documentation signed by a health professional; or
- If the employee/family member didn't get services of health professional or if documentation can't be obtained in reasonable time or without added expense, then "a written statement from the employee indicating that the employee is taking or took paid sick time for a qualifying purpose" is sufficient.



NEBRASKA PAID SICK LEAVE

All this discussion of use, notice, and reasonable documentation...my employee is trying to tell me that he doesn't have to give me details about the health condition at issue. That can't be right...can it?

“Unless otherwise required by law, an employer cannot 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.”



NEBRASKA PAID SICK LEAVE

Permitted Reasons for Leave

- An employee's:
 - Mental or physical illness, injury, or health condition;
 - Need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
 - Need for preventative medical care.



NEBRASKA PAID SICK LEAVE

Permitted Reasons for Leave

- Care of a family member who:
 - Has a mental or physical illness, injury, or health condition;
 - Needs care for a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition;
 - Needs care for preventative medical care; or
 - *In the case of a child*, needs 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.



NEBRASKA PAID SICK LEAVE

Permitted Reasons for Leave

- Public Health Emergency (PHE) Related Reasons
 - Closure of the employee's place of business by order of a public official due to a PHE;
 - 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 PHE; 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.



NEBRASKA PAID SICK LEAVE

Employer Notice Requirements to Employees by Sept. 15, 2025:

- The notice must state that beginning October 1, 2025, employees are entitled to paid sick time; identify the amount of paid sick time; and state the terms of its use guaranteed under the Nebraska Healthy Families and Workplaces Act.
- Retaliatory action against employees who request or use paid sick time is prohibited.
- There's a right to file a suit or complaint if paid sick time is denied or retaliation occurs.
- Provide the contact information for the department where questions about rights and responsibilities under the act can be answered.
- Retaliation against employees who request or use paid sick time is prohibited.



NEBRASKA PAID SICK LEAVE

Additional Notice Requirements:

- Regular Paycheck must include:
 - Amount of Paid Sick Time Available
 - Amount of Paid Sick Time Taken To-Date that Year
 - Amount of Pay Received as Paid Sick Time
- Poster at Each Establishment with Employees
- If No Physical Workplace or Employee is WFH, then Electronic Notice or Posting in Web-Based Platform is Required



NEBRASKA PAID SICK LEAVE

Confidentiality

- Any health information an employer possesses regarding an employee or employee's family member must be:
 - Maintained on a separate form and in a separate file from other personnel information.
 - Treated as confidential medical records.
 - Not be disclosed except to the affected employee or with the express permission of the affected employee.

NEBRASKA PAID SICK LEAVE

Miscellaneous

- Employers can “loan” sick leave in advance of accrual.
- The Leave is “*Sticky*”
 - Follows employee through divisions, entities, or locations so long as the employee remains employed by the same employer.
 - At employment separation, previously accrued, but unused sick leave must be reinstated if the employee is re-hired within 12 months by the same employer.

What happens when someone quits before they accrue the leave they took early?

I'm thinking about hiring someone for a second tour of duty. But, the other applicant is new and doesn't come in with 20+ hours of sick leave. I think I'll hire the new person. Issues?

NEBRASKA PAID SICK LEAVE

○ Miscellaneous

- Be careful with neutrally-applied “point” systems.

“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.”



NEBRASKA PAID SICK LEAVE

○ Alternative to All of That

- Have a generalized PTO policy that meets or exceeds these requirements.
- Must be allowed to be used “for the same purposes and under the same conditions as paid sick time under the act.”



NEBRASKA PAID SICK LEAVE

Administrative Penalties

- Monetary
 - First Violation: No more than \$500
 - Second + Violations: No more than \$5,000
- Short contest period (15 working days) if notified of citation or penalty
- Citations and names of violators will be available to public upon request
 - Violations being contested are excluded



NEBRASKA PAID SICK LEAVE

Civil Penalties

- Private right of action for “legal and equitable relief.”
- Attorney fees can be ordered to a plaintiff.
- Administrative citation is admissible as evidence unless the citation was contested and shall not be admitted until that contest is resolved.
- Four-year statute of limitations
(Context: 300-day SOL for discrimination/harassment suits)



EMPLOYMENT CONSIDERATIONS

- **Review your leave policies.**
 - Even if the total amount of leave provided is greater than 40 or 56 hours, do the usage/notice/documentation policies comply?
 - Do you want to consider moving from PTO to a mix of vacation and sick leave?
- **Review your attendance policies.**
 - Ensure you’re not penalizing anyone for use of sick time.



EMPLOYMENT CONSIDERATIONS

- **Consider how you're going to track hours/use for sick leave.**
 - Exempt / Salaried Workers v. Hourly Workers
 - What is a sick leave hour v. vacation hour?

- **Retain sick leave attendance records for at least 4 years post-termination.**



EMPLOYMENT CONSIDERATIONS

- **What about Executive Order 13706 (paid sick leave for federal contractors)?**
 - Applies to contracts for construction covered by Davis-Bacon Act (NOT: DBRA) and Service Contract Act (and others)
 - Accrual of up to 56 hours (1 for every 30 worked)
 - "With respect to state or local paid sick time laws, the Final Rule explains that contractors must comply with both any such law that applies as well as the Order and Final Rule, but contractors may satisfy their EO obligations by providing paid sick time that also fulfills the requirements of a State or local law provided that the paid sick time is accrued and may be used in a manner that meets or exceeds all of the requirements of the EO and Final Rule."

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/PaidLeaveFS.pdf>

MEDICAL MARIJUANA INITIATIVES 437 AND 438

Initiative Measure 437			
<input type="checkbox"/> Follow This Contest			
Precincts Reporting: 1326/1326		Precincts Partially Reporting: 0/1326	
County Level Results			
View Map			
	Votes	Percent	
For	625,391	70.88%	<div style="width: 70.88%;"></div>
Against	256,889	29.12%	<div style="width: 29.12%;"></div>
Total Votes	882,280	100%	
Initiative Measure 438			
<input type="checkbox"/> Follow This Contest			
Precincts Reporting: 1326/1326		Precincts Partially Reporting: 0/1326	
County Level Results			
View Map			
	Votes	Percent	
For	589,164	67.11%	<div style="width: 67.11%;"></div>
Against	288,714	32.89%	<div style="width: 32.89%;"></div>
Total Votes	877,878	100%	

BUT WHAT ABOUT THE DOT RULES?

DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE

Recently, the Department of Justice (DOJ) issued guidelines for Federal prosecutors in states that have enacted laws authorizing the use of "medical marijuana."

We have had several inquiries about whether the DOJ advice to Federal prosecutors regarding pursuing criminal cases will have an impact upon the Department of Transportation's longstanding regulation about the use of marijuana by safety-sensitive transportation employees – pilots, school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, transit fire-armed security personnel, ship captains, and pipeline emergency response personnel, among others.

We want to make it perfectly clear that the DOJ guidelines will have no bearing on the Department of Transportation's regulated drug testing program. We will not change our regulated drug testing program based upon these guidelines to Federal prosecutors.

The Department of Transportation's Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize "medical marijuana" under a state law to be a valid medical explanation for a transportation employee's positive drug test result.

That section states:

§ 40.151 What are MBOs prohibited from doing as part of the verification process?

As an MBO, you are prohibited from doing the following as part of the verification process:

(2) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act (e.g., under a state law that purports to authorize such recommendations, such as the "medical marijuana" laws that some states have adopted.)

Therefore, Medical Review Officers will not verify a drug test as negative based upon information that a physician recommended that the employee use "medical marijuana." Please note that marijuana remains a drug listed in Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation's drug testing regulations to use marijuana.

We want to assure the traveling public that our transportation system is the safest it can possibly be.

Jim L. Swart
Director
Office of the Secretary of Transportation
Office of Drug and Alcohol
Policy and Compliance
Department of Transportation
October 22, 2009

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The Department of Transportation's Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize "medical marijuana" under a state law to be a valid medical explanation for a transportation employee's positive drug test result.

“[M]arijuana remains a drug listed in Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation's drug testing regulations to use marijuana.”

<https://www.transportation.gov/sites/dot.gov/files/images/ODAPC%20Medical%20Marijuana%20Notice.pdf>

MEDICAL MARIJUANA INITIATIVES 437 AND 438

What are these initiatives, and why are there two?

Initiative 437: Nebraska Medical Cannabis Patient Protection Act

Initiative 438: Nebraska Medical Cannabis Regulation Act



437: MEDICAL CANNABIS PATIENT PROTECTION ACT

It legalizes the use, possession, and acquisition of cannabis for medical purposes for qualified patients.

- **Qualified Patient:** Someone with a written recommendation from a health care practitioner, and in the case of someone < 18, written permission of parent or legal guardian.
- **Health Care Practitioner:** Can be a physician, osteopathic physician, physician's assistant, or nurse practitioner.
- **What drugs are covered?**
 - The allowable amount of cannabis is up to 5 ounces.
 - Cannabis includes marijuana, hashish, and concentrated cannabis.
 - It does not include hemp, certain parts of the plant, or cannabidiol (CBD) contained in a drug product approved by the federal FDA.



437: MEDICAL CANNABIS PATIENT PROTECTION ACT

What constitutes written recommendation?

- “[S]igned and dated declaration from a health care practitioner stating that, in the health care practitioner’s professional judgment, the potential benefits of cannabis outweigh the potential harms for the alleviation of a patient’s medical condition, its symptoms, or side effects of the condition’s treatment.”
- Valid for two years after the date of issuance or for a period of time specified by the health care practitioner on the written recommendation.



438: MEDICAL CANNABIS REGULATION ACT

Regulates the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered cannabis establishments in the state.

- **Keys to Note:**
 - The word “use” is not included in this statement.
 - There is no reference to users. Rather, this initiative is regulating the possession, manufacture, distribution, delivery, and dispensing of the drug.
- **Key Dates:**
 - By **July 1, 2025**: Commission must establish criteria to accept or deny applications for registrations
 - By **October 1, 2025**: Commission must begin granting/denying registrations to applicants

INTERACTION OF 437 AND 438

- The use of medical marijuana does not seem to be tied in any way to the regulation of those entities that distribute/manufacture it.
- *But...how can someone legally obtain the drug without doing so from an authorized distributor?*

Can medical marijuana usage start before the regulations on distribution / manufacture?

- Issues: Transport across state lines.
Not yet legal to buy in Nebraska.



EFFECTIVE DATES

- **Ballot measures take effect upon the Governor's proclamation of election results.**
 - Canvass is certified on the 4th Monday after the election (December 2, 2024)
 - Proclamation must be made within 10 days of the completion of the election results canvass. (December 12, 2024)
 - Neb. Rev. Stat. § 32-1037 and § 32-1414
- **Medical marijuana initiatives are facing legal challenges re: signature collection process.**
 - Trial in Lancaster County District Court finished November 4, 2024
 - Decision rendered in favor of ballot initiatives going into effect
 - Appeals could still follow



EMPLOYMENT CONSIDERATIONS

- **Marijuana is still illegal at federal level and classified as a Schedule 1 Drug under federal law.**
 - Federal ADA would not protect state-authorized marijuana usage at this time.
- **Unlike other states:**
 - There's no express provision that would allow employers to prohibit marijuana usage among employees.
 - There's no express provision to the contrary, either.
 - **So:** Consider state anti-discrimination laws relating to disabilities.
 - We don't know how that issue will be decided.
 - States have decided both ways.



EMPLOYMENT CONSIDERATIONS

- Review your drug testing policy and safety policies.
- Consider whether modifications are needed:
 - Consider safety sensitive positions vs. all other positions.
 - Talk to your drug testing facility.
 - Enforce standards consistently.
 - Consider the impact on recruitment/retention of employees if you prohibit the use of medical marijuana.



EMPLOYMENT CONSIDERATIONS

There's a lot we don't know yet!

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