

Human Resources Best Practices, Policies and Procedures

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At-Will Employment	
Federal	No Law regarding
Nebraska	Nebraska is an Employment at Will state – Employer and the employee have equal rights to terminate employment at any time and for any reason, <i>so long as</i> , no other law is being violated.
Practice	Include that <i>at-will employment</i> Offer Letters; Handbook and Handbook Acknowledgement Page
Anti-Harassment & Nondiscrimination or EEOC	
Federal	<p>Title VII of Civil Rights Act of 1964;</p> <ul style="list-style-type: none"> • race, color, religion, national origin, or sex • sex includes gender identity and sexual orientation (Bostock v. Clayton County, US Supreme Court, June 15, 2020) make sure update policies! • includes sexual harassment: <ul style="list-style-type: none"> ○ Quid-pro-quo ○ Hostile Work Environment • Equal Pay Act of 1963 • Age Discrimination in Employment Act of 1967 29 USC§621-634 • Pregnancy Discrimination Act of 1978 • Title I Americans with Disabilities Act of 1990 • Genetic Information Nondiscrimination Act of 2008
Nebraska	<p>Fair Employment Practices Act (§§48-1101 et al)</p> <ul style="list-style-type: none"> • Nebraska Age Discrimination Act (§48-1001) • Equal Pay Act (§48-1219) • NEOC
Practice	Hear employee’s complaints. <i>“I hear your complaint. How can I help you/What would make this better for you?”</i> Then begin assessing.
Retaliation	
Federal	All of the statutes listed above have provisions that prohibit retaliation against an employee for raising valid concerns.
Nebraska	Same
Practice	Make sure that not punishing the messenger



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Employment Classification	
Federal	<p>Fair Labor Standards Act of 1938 29 U.S.C. § 203 (FLSA)</p> <ul style="list-style-type: none"> establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments For Exempt Employees must meet salary benchmark and must meet one of statutory exemptions. <ul style="list-style-type: none"> https://www.dol.gov/agencies/whd/flsa
Nebraska	Subject to FLSA
Practice	<p>Job Descriptions detail the Exempt Category for all Exempt Employees</p> <ul style="list-style-type: none"> Benefit Eligibility Requirements may not be consistent with Employment Classifications – make clear in policy that benefits are subject to plan documents! Check back as Administration changes
Leave and/or Paid Time Off	
Federal	<p>Law does not require employers to have paid time off (PTO)/vacation policies*. Based on size of employer, must comply with the following:</p> <ul style="list-style-type: none"> Family Medical Leave Act of 1993 (FMLA) Family First Coronavirus Response Act of 2020 ADA – make sure request for time off is not a request for reasonable accommodation. <p><i>*FFCRA does have paid time off mandates</i></p>
Nebraska	<p>Not required to have PTO or vacation or sick policies</p> <ul style="list-style-type: none"> if have them, must pay out PTO/Vacation upon termination – next pay period or 2 weeks whichever is first.
Practice	<p><i>Remember: if exempt employee work any of his/her/their work week must be paid entire weekly wages – can require use of paid time off from bank.</i></p> <ul style="list-style-type: none"> FMLA – make sure providing Notice and Designation <ul style="list-style-type: none"> bond with child – no need for Medical Certification FFCRA – set to expire on 12/31/2020 – expect a continuation and new allotment of time <ul style="list-style-type: none"> The definition of “healthcare worker” has been tightened – make sure not exempting entire organization.
Meals & Breaks -	

<p>Federal</p>	<p>Federal law does not require lunch or coffee breaks. However, when employers do offer short breaks (usually lasting about 5 to 20 minutes), federal law considers the breaks as <u>compensable work hours</u> that would be included in the sum of hours worked during the work week and considered in determining if overtime was worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and <u>unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished.</u></p> <p>Bona fide meal periods (typically lasting at least 30 minutes), serve a different purpose than coffee or snack breaks and, thus, are not work time and are not compensable</p> <p>https://www.dol.gov/agencies/whd/fact-sheets/22-flsa-hours-worked</p>
<p>Nebraska</p>	<p>Breaks are not mandated by law for healthcare facilities §48-212. Lunch hour; requirements; applicability.</p> <ul style="list-style-type: none"> • assembling plant, workshop, or mechanical establishment employing one or more persons
<p>Practice</p>	<p>Make sure your policies are clear and make sure supervisors/managers or those approving time are aware of when time is compensable and when it is not.</p> <p>Example: Nonexempt employee eating at their desk while still working is compensable time.</p>
<p>Time Keeping & Payroll</p>	
<p>Federal</p>	<p>29 CFR §3.5</p> <ul style="list-style-type: none"> • deductions in compliance with the state, federal, local law • deduction for prepayment of wages • deductions required by court • benefits elected • voluntary and written consent of the employee and not prohibited by law
<p>Nebraska</p>	<p>§48-1230</p> <p>An employer may not withhold or deduct wages from an employee's paycheck, unless:</p>



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	<ul style="list-style-type: none"> permitted to do so by state or federal law, required to do so, or the employee has given written consent. <p>An employer can only deduct the following items from an employee's pay check if the employee has <u>consented to the deduction in writing</u>:</p> <ul style="list-style-type: none"> cash shortages breakage, damage, or loss of the employer's property required uniforms required tools other items necessary for employment
Practice	<ul style="list-style-type: none"> Make sure your policy includes prohibition of improper deductions Make sure policy includes a complaint procedure and timeline for corrections!
Record Keeping Personnel	
Federal	<p>29 CFR Part 516</p> <p>Must maintain a file on each employee including:</p> <ul style="list-style-type: none"> Employee's full name and social security number. Address, including zip code. Birth date, if younger than 19. Sex and occupation. Time and day of week when employee's workweek begins. Hours worked each day. Total hours worked each workweek. Basis on which employee's wages are paid (e.g., "\$9 per hour", "\$440 a week", "piecework") Regular hourly pay rate. Total daily or weekly straight-time earnings. Total overtime earnings for the workweek. All additions to or deductions from the employee's wages. Total wages paid each pay period. Date of payment and the pay period covered by the payment. <p>https://www.dol.gov/agencies/whd/fact-sheets/21-flsa-recordkeeping</p>
Nebraska	<p>Neb. Rev. Stat. §48-1225; Neb. Admin. Code 221</p> <ul style="list-style-type: none"> make, keep, and maintain such records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed shall establish records with respect to employment performed for it as hereinafter indicated and shall preserve these records for a period

	<ul style="list-style-type: none"> • of not less than four complete calendar years. <ol style="list-style-type: none"> 1. Name; 2. Social security account number; 3. Residence (by State); 4. Nature of services and place or places in which services are performed and, if there is more than one such place, the worker's base of operations or, if none, place of direction or control; 5. Date on which the worker was hired, rehired, or returned to work after temporary layoff and date separated from work and reasons therefor. 6. The gross remuneration paid for the worker's services and period for which paid, showing separately: <ol style="list-style-type: none"> i) Cash remuneration, including special payments; and ii) Reasonable cash value of remuneration in any medium other than cash (determined in accordance with Title 220, Chapter 2) including special payments; and 7. Amounts paid him as allowance or reimbursement for traveling or other business expenses, and period for which paid. <ul style="list-style-type: none"> - also maintain <ol style="list-style-type: none"> i) Beginning and ending dates of each pay period; ii) Total amount of remuneration and the total amount paid in each calendar quarter; and iii) Date in each calendar week on which there was largest number of workers employed and number of such workers.
Conditions of Participation	Appendix W - §485.608(d) <ul style="list-style-type: none"> • personnel required to be licensed by the State, that the CAH has established, and follows, procedures for determining that personnel providing patient care services are properly licensed.
Practice	Clear procedure for maintaining licensure of licensed employees; Maintain file for each pay period;
Employee Conduct	
Practice	This is a great opportunity to clearly delineate the behaviors that are acceptable based on the company's mission, vision, and values. A code of conduct will lay the foundation for your organization.
Discipline	
Federal	No legal mandate for discipline policies *Must apply consistently*
Nebraska	Same requirements.



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Practice	Progressive Discipline Policies are widely used and understood. Document, document, document – within documentation clarify not modifying employment at-will and reserving the right to discipline up to and including termination.
Social Media	
Federal	National Labor Relations Board – Title VII rights of employees to act together to address conditions at work, with or without a union. This protection extends to certain work-related conversations conducted on social media, such as Facebook and Twitter. Provisions were found to be unlawful when they interfered with the rights of employees under the National Labor Relations Act, such as the right to discuss wages and working conditions with co-workers. https://www.nlrb.gov/about-nlrb/rights-we-protect/your-rights/the-nlrb-and-social-media
Nebraska	Currently no case law addressing use of social media
Practice	Social Media is not going anywhere. Best to clarify Review policy nothing to imply employees cannot discuss work conditions Posts must be consistent with discrimination, harassment, and Privacy/HIPAA policies
I-9 Employment Eligibility Verification	
Federal	Immigration Reform and Control Act of 1986 <ul style="list-style-type: none"> • ensure completing these forms completely <ul style="list-style-type: none"> ○ https://www.uscis.gov/i-9 • keep separate from Personnel File and <i>for as long as employee employed</i> <ul style="list-style-type: none"> ○ destroy later of date of termination or three (3) years from date of hire
Practice	E-Verify useful tool for ensuring eligibility to work <ul style="list-style-type: none"> • Binder sorted alphabetically for current employees; binder for terminated sorted by date of destruction
Mandatory Posting	
Federal	FLSA, OSHA, FMLA, EEOC, USERRA (can be done in handbook or otherwise) https://webapps.dol.gov/elaws/firststep/poster_direct.htm?p_eeo=1&_ga=2.57686498.959040332.1605281036-1295769215.1582834758

	E-Verify if you use it!
Nebraska	Minimum Wage, NEOC, Unemployment Insurance Advisement https://dol.nebraska.gov/LaborStandards/Compliance/RequiredPosters
Job Descriptions	
Practice	Need to ensure addressing whether the work can be performed from home/telecommuting. If allowing it during the pandemic, make sure documenting what is working and what is not about those positions have allowed.



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