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Nebraska / Employers right to
bring claim.**48-118. Third-party claims; subrogation**

West's Revised Statutes of Nebraska Annotated Chapter 48. Labor (Approx. 2 pages)

Part II. Elective Compensation

(b) Rights and Liabilities of Third Persons

Neb.Rev.St. § 48-118

48-118. Third-party claims; subrogation

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Search term

When a third person is liable to the employee or to the dependents for the injury or death of the employee, the employer shall be subrogated to the right of the employee or to the dependents against such third person. The recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his or her dependents should have been entitled to recover.

Any recovery by the employer against such third person, in excess of the compensation paid by the employer after deducting the expenses of making such recovery, shall be paid forthwith to the employee or to the dependents and shall be treated as an advance payment by the employer on account of any future installments of compensation.

Nothing in the Nebraska Workers' Compensation Act shall be construed to deny the right of an injured employee or of his or her personal representative to bring suit against such third person in his or her own name or in the name of the personal representative based upon such liability, but in such event an employer having paid or paying compensation to such employee or his or her dependents shall be made a party to the suit for the purpose of reimbursement, under the right of subrogation, of any compensation paid.

Credits

Laws 1913, ch. 198, § 18, p. 585; Laws 1929, ch. 135, § 1, p. 489; Laws 1963, ch. 283, § 1, p. 844; Laws 1986, LB 811, § 37; Laws 1994, LB 594, § 1; Laws 1997, LB 854, § 1; Laws 2000, LB 1221, § 2; Laws 2005, LB 13, § 2; Laws 2005, LB 238, § 2.

Codifications: R.S. 1913, § 3659; C.S. 1922, § 3041; C.S. 1929, § 48-118; R.S. 1943, § 48-118.

Relevant Notes of Decisions (115)

View all 153

Notes of Decisions listed below contain your search terms.

Construction and operation of statutes

Statutory amendment which changed workers' compensation subrogation interest of employers and insurers, such that they were subrogated for amount judicially determined to be a fair and equitable division of claimant's settlement with third-party tortfeasor, was a substantive change that could not be retroactively applied to claimants whose accident occurred prior to enactment of amendment, and thus employer's dollar-for-dollar subrogation interest under prior statute included both reimbursement for workers' compensation already paid and a credit against any future payments. Neb.Rev.St. § 48-118. *Turney v. Werner Enterprises, Inc.*, 2000, 618 N.W.2d 437, 260 Neb. 440. Workers' Compensation — 58

Amendment to provision of Workers' Compensation Act governing manner of distribution of third-party settlement proceeds between an employee and employer, or between an employee and the employer's insurer, effected a substantive rather than procedural claim and applies prospectively only, and thus did not apply to subrogation claim asserted by workers' compensation insurer which arose from injury occurring prior to amendment's effective date. Neb.Rev.St. § 48-118. *Combined Ins. v. Shurter*, 2000, 607 N.W.2d 492, 258

NOTES OF DECISIONS (153)

Action against third persons for employee's injury or death, generally
Admissibility of evidence
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Allowance and payment from funds in court
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Waiver

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Amendment to workers' compensation subrogation provisions, giving employer or its insurer right to equitable share of third-party settlement rather than dollar-for-dollar recovery, did not merely change way in which subrogation rights were exercised, it actually changed nature of subrogation interest itself and was, therefore, a substantive change in the law, which applied prospectively only. Neb.Rev.St. § 48-118. *Jackson v. Branick Industries, Inc.*, 1998, 254 Neb. 950, 581 N.W.2d 53. **Workers' Compensation** ➤ 58

Law governing

Employer's subrogated workers' compensation interest in the proceeds from claimants' settlement agreement with third-party tortfeasors was governed by law of Nebraska, rather than by law of state which was identified in settlement agreement and in which accident had occurred, where claimants received benefits under Nebraska workers' compensation statutes and still had a claim for benefits pending before the Nebraska Workers' Compensation Court. Neb.Rev.St. § 48-118. *Turney v. Werner Enterprises, Inc.*, 2000, 618 N.W.2d 437, 260 Neb. 440. **Workers' Compensation** ➤ 74

Equitable subrogation

Where insurer settled compensation claim for \$2,000 upon agreement for subrogation against doctor charged with malpractice resulting in death, and plaintiff settled action against doctor for \$2,500 without prejudice to insurer's rights, doctrine of "equitable subrogation" applied and insurer was entitled to judgment against doctor for \$2,000 irrespective of sufficiency of evidence to warrant submission to jury of alleged malpractice, and fact that insurance carrier proceeded on cross-petition and attempted to establish liability did not constitute "estoppel". Comp.St.1929, § 48-101 et seq., and § 48-118. *Burks v. Packer*, 1943, 143 Neb. 373, 9 N.W.2d 471. **Estoppel** ➤ 3(3); **Workers' Compensation** ➤ 2213

Contingent and unmaturred claims

An injured employee's right of action against deceased fellow-employee for injuries caused by negligence was not a "contingent claim" required by statute to be first made absolute by district court before presentation against estate of fellow-employee in county court. R.S.1943, §§ 30-704 to 30-706, 30-714, 30-801, 48-118. *Rehn v. Bingaman*, 1949, 151 Neb. 196, 36 N.W.2d 856, appeal dismissed 70 S.Ct. 79, 338 U.S. 806, 94 L.Ed. 488, rehearing denied 70 S.Ct. 157, 338 U.S. 882, 94 L.Ed. 541, motion to recall mandate denied 152 Neb. 171, 40 N.W.2d 673. **Executors And Administrators** ➤ 202.2

Rights of action against executors or administrators

An injured employee's cause of action against fellow-employee for injuries, and employer's right to subrogation are "actions for the recovery of money only" which cannot be brought against executor or administrator. R.S.1943, §§ 30-704 to 30-706, 30-714, 30-801, 48-118. *Rehn v. Bingaman*, 1949, 151 Neb. 196, 36 N.W.2d 856, appeal dismissed 70 S.Ct. 79, 338 U.S. 806, 94 L.Ed. 488, rehearing denied 70 S.Ct. 157, 338 U.S. 882, 94 L.Ed. 541, motion to recall mandate denied 152 Neb. 171, 40 N.W.2d 673. **Executors And Administrators** ➤ 429

Conclusiveness of adjudication

Metropolitan utilities district which was sued by corporation for damage arising out of explosion and fire and which sought to avoid liability on theories of collateral estoppel and res judicata because of failure of corporation's employee, which had joined corporation as required by statute, to recover for personal injuries from district as result of the same explosion and fire was deemed to know that corporation did not appear on its own account in employee's action. R.R.S.1943, § 48-118. *American Province of Servants of Mary Real Estate Corp. v. Metropolitan Utilities Dist.*, 1965, 178 Neb. 348, 133 N.W.2d 466. **Judgment** ➤ 696

Judgment against corporation's employee which had sued metropolitan utilities district for injuries received in explosion and fire and which had joined corporation as required by statute for purpose of reimbursement of compensation was not res judicata in corporation's action against the district for property damage caused by the explosion and fire, in view of appearance of corporation in employee's action solely for benefit of the carrier. R.R.S.1943, § 48-118. *American Province of Servants of Mary Real Estate Corp. v. Metropolitan Utilities Dist.*, 1965, 178 Neb. 348, 133 N.W.2d 466. **Judgment** ➤ 696