

# *Labor and Employment Laws in the State of Nevada*



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## **INTRODUCTION**

This book discusses the various Nevada state statutes affecting the employment relationship. While some areas of labor and employment law are governed exclusively by federal law, others are covered by supplemental (or overlapping) state law. In general, federal law serves to establish the threshold of what an employer absolutely must do, and the minimum to which employees are entitled in various situations. State law may still govern if it either establishes a higher, stricter standard for employers than federal law, or applies to a class of employers or employees not covered under federal law. Where there is an overlap between Nevada law and federal law, whichever statute or regulation provides the greater employee protection or is the more restrictive to employers normally will govern.

This book is divided into four main themes, or sections, as follows: 1) the employment relationship; 2) wages and hours; 3) employment discrimination; and 4) workplace safety. Citations to the Nevada Revised Statutes are provided for each law discussed in this form: Nev. Rev. Stat. XXX.XXX.

This book is not meant to be an exhaustive treatment of Nevada employment law in any one area. Neither does it review applicable federal law in these areas. Instead the information is designed and intended to provide a basic reference guide to help employers quickly address common employment issues in accordance with Nevada law.

For additional information about federal employment issues you may want to review the various booklets published by Fisher & Phillips LLP which summarize and explain specific federal laws that govern employers.

This book is no substitute for legal advice. Any questions or concerns relating to these or other employment topics, or specific fact situations, should be referred to a qualified attorney.

### **I. THE EMPLOYMENT RELATIONSHIP**

#### **A. Employment At Will**

##### **1. Generally**

In Nevada, the basic rule is that every employment relationship is presumed to be terminable at the will of either party. This means either the employer or the employee may terminate the employment relationship for a good reason, a bad reason, or no reason at all. Exceptions to this default rule are when the termination violates a statute or public policy. A collective bargaining agreement or other form of employment contract may impose additional limits on the permissible grounds and processes for dismissal.

##### **2. Implied Contracts And Disclaimers**

Even absent any express employment contract there is still the possibility that a court may find that provisions of an employee handbook constitute an implied employment contract. Inserting a disclaimer into such a policy statement or handbook may be sufficient to escape a finding by a

court that an employment contract exists. Any such disclaimer should be clearly visible, in bold type, and should plainly state that the handbook is not a contract and that employment may be terminated at any time. Similarly, any list provided to employees as potential grounds for dismissal or the like should include a conspicuous and clear statement that the list is not intended to be all-inclusive. Any procedures described should be accompanied by a statement that the company may deviate from any or all such procedures at any time.

## **B. Labor Organizations**

### **1. Private Sector Employers, Nev. Rev. Stat. 613.250, et. seq., and 614.010, et seq.**

Labor relations in the private sector are primarily regulated under the federal National Labor Relations Act. There is no similar comprehensive state law governing private sector employer-labor relations in Nevada, although there are a series of narrow laws governing discrete aspects of employer-labor relations. For example, Nevada's Right to Work law prohibits employers from requiring union membership as a condition for obtaining or retaining employment. All forms of union security provisions including an agency shop are also prohibited. Other provisions of the law make it illegal to attempt to compel persons to join a labor organization or to strike against their will by threatened or actual interference with their person, immediate family, or property.

In addition, Nevada law provides for the mediation and arbitration of labor disputes. Either party can request that the governor step in and attempt to mediate and conciliate a labor dispute amicably if the controversy seriously interrupts or threatens to interrupt the employer's business. If the dispute cannot be resolved through mediation, the parties may consent to arbitration with a board of three arbitrators chosen by the employer, the labor union, and/or the governor.

### **2. Public Sector Employees, Nev. Rev. Stat. 288, et seq.**

The Local Government Employee-Management Relations Act essentially grants public sector employees the same right to join a union and enter into collective bargaining as private sector employees. However, the law does place a restriction on police officers or other law enforcement personnel. Law enforcement personnel may be a member of a labor union only if the labor union is composed exclusively of law enforcement officers.

## **C. Background Screening**

### **1. Lie Detector Tests, Nev. Rev. Stat. 613.440, et seq.**

Generally, employers are prohibited from requiring, or even suggesting, that employees or prospective employees take or submit to a lie detector test, subject to a few exceptions. Lie detector tests include such tests as a polygraph, voice stress analyzer, psychological stress evaluator or other similar devices, mechanical or electrical, used to determine a person's honesty or dishonesty. Consequently, it is unlawful for an employer to discharge, discipline, or discriminate against any employee or prospective employee who refuses, declines or fails to take or submit to a lie detector test.

Every employer is required to post a notice summarizing this law in a conspicuous location at the place of employment where notices to employees are customarily posted and read. Any waiver of rights signed by an employee or prospective employee is considered void as against public policy.

- a.** There are several narrow exemptions to the prohibition against lie-detector tests. You may require current employees to take a polygraph examination if:
  - the examination is administered in connection with an ongoing investigation involving economic loss or injury to your business, including theft, embezzlement, misappropriation or an act of unlawful industrial espionage or sabotage;
  - the employee who is the subject of an investigation had access to the property;
  - you had reasonable suspicion that the employee was involved in an incident or activity under investigation; and
  - you provide to the employee, before the examination, a signed written statement that sets forth with particularity the specific incident and items being investigated, which must be retained for at least three years, and which identifies the specific economic loss or injury and the reason for your suspicion.
  
- b.** Employers may also use polygraph examinations on prospective employees who would be employed to protect:
  - facilities, materials or operations affecting the health and safety of the state, or any political subdivision of the state;
  - currency, negotiable securities, precious commodities or instruments or proprietary information requested by the potential employer whose primary business is to provide armored car personnel.
  
- c.** You are also allowed to administer lie-detector tests to:
  - any prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any controlled substance.

- a prospective employee who would be engaged in the design, installation and maintenance of security alarm systems or other security personnel.
- d. Lie-detector examinations must be administered by a person who holds a valid license as a polygraph examiner or intern, or who is qualified as a polygraphic examiner and is exempt from the licensing requirement. Furthermore, the results of a polygraphic examination or the refusal to take a polygraphic examination cannot be used as the *sole* basis upon which an adverse employment action is based.

## **2. Drug And Alcohol Testing, Nev. Rev. Stat. 284.406, et seq.**

There are no laws regulating the use of drug and alcohol testing by private employers, however, public employers are regulated. Public employers can request a current employee to submit to a drug or alcohol screen when it has reasonable suspicion based upon objective facts that the employee is under the influence of drugs or alcohol. You must inform the employees in writing that they may refuse the test, but the refusal may result in dismissal or other disciplinary action. In the case of a law enforcement officer drug tests are authorized if:

- the officer discharges his or her firearm other than by accident; or
- the officer is involved in an auto accident where someone is injured.

Employees refusing to be screened may be subject to disciplinary action which can include dismissal. Public employers may also require drug and alcohol tests of applicants for public safety positions.

Drug and alcohol tests must be conducted by an independent lab certified by the Department of Health and Human Services, and all tests must be administered in such a manner as to protect the person tested from unnecessary embarrassment. If the results of a test are positive, a second test must be conducted to ascertain the specific substances and concentration of those substances. Additionally, the applicant or employee must also be allowed to have the same sample tested at his expense by a laboratory of his choice certified by the Department of Health and Human Services.

Results of drug and alcohol tests must be kept confidential and cannot be disclosed to any person except upon the written consent of the person tested, as required by court order, or as required by medical personnel for the diagnosis or treatment of the person tested if he or she is physically unable to give consent to the disclosure.

## **3. Genetic Testing, Nev. Rev. Stat. 613.345**

Employers are prohibited from asking, encouraging or requiring a prospective or current employee to submit to genetic test as a condition of employment.

#### **4. Criminal Background Checks And Inquiries**

You may generally consider prior criminal convictions in making employment decisions. Although there is no Nevada law that specifically prohibits the use of arrest information for such purposes, the Nevada Equal Rights Commission has issued Pre-Employment Guidelines that discourage employers from inquiring about an applicant's prior arrests.

#### **5. Credit History**

Credit checks of job applicants are generally allowed for pre-employment screening, although the federal Fair Credit Reporting Act, and certain regulations of the Equal Employment Opportunity Commission (EEOC) limit the scope and use of such checks. Again, an employer must get the authorization of the applicant before requesting any credit or background check.

Employers should provide applicants with an authorization form for their signature that is printed on a separate page by itself--not one where a request for authorization is merely included as an item on a more general application. Before taking adverse action based in whole or in part on a credit or background report, you must provide a copy of the report to the employee along with a summary of consumers' rights provided by the credit reporting agency.

#### **D. Employment Of Minors, Nev. Rev. Stat. 609.190, *et seq.***

##### **1. Employment Of Minors Under 16**

Minors under the age of 16 may be employed, but are not allowed to work in certain occupations. Prohibited occupations include:

- a.** Preparation of any composition in which dangerous or poisonous acids are used;
- b.** Manufacturing of paints, colors or lead;
- c.** Dipping, drying or packaging matches;
- d.** Any mine coal breaker, quarry, laundry, tobacco warehouse or factory;
- e.** Distillery, brewery, or other establishment where malt or alcoholic liquors are manufactured, packaged, wrapped or bottled;
- f.** Manufacturing of goods for immoral purposes;
- g.** Any glass furnace, smelter, outside erection, and repair of electric wires, running or management of elevators, or oiling hazardous and dangerous machinery in motion;
- h.** Switch tending, gate tending or track repairing;

- i. brakeman, fireman, engineer, motorman, or conductor upon any railroad in or about establishments where nitroglycerin, dynamite, dualin, guncotton, gunpowder or other high or dangerous explosives are manufactured, compounded or stored; and
- j. Any other employment declared by the labor commissioner to be dangerous to the lives or limbs or injurious to the health or morals of children under the age of 16.

**2. Maximum Hours For Minors Under 16, Nev. Rev. Stat. 609.240**

Minors under the age of 16 cannot work more than 8 hours in any one day and 48 hours in any one week, except if working in domestic service, on a farm, or as a performer in the production of a motion picture.

**3. Employment Of Minors Under 14, Nev. Rev. Stat. 609.245-.260**

Minors under the age of 14 may be employed but require a permit signed by a district court judge of the county of the child's residence, a juvenile master, referee, or a probation officer. Although minors under 14 are allowed to work with a permit, they are not allowed to work during school hours unless a child has 1) been excused from attendance by the school district or juvenile or family court, or 2) the minor is working as a performer in a motion picture.

**4. Employment Of Minors Under 18, Nev. Rev. Stat. 609.230, and 202.057**

No minor under the age of 18 may be employed as a messenger for a telegraph or messenger company in the distribution, transmission or delivery of goods or messages before 5 a.m. or after 10 p.m. of any day. It is also unlawful to employ minors under the age of 18 to distribute promotional materials that include an offer for alcoholic beverages for a business. This does not apply to distribution of publications that include alcoholic beverage advertisements that are incidental to the publication. In addition, minors cannot be employed in brothels. Nor can a minor be used as a messenger for delivering letters, telegrams, packages or bundles to a brothel.

**5. Employment Of Persons Under 21, Nev. Rev. Stat. 463.350**

It is unlawful to employ a person under the age of 21 as a gaming employee, except in a counting room.

**E. Restraints On Competition**

**1. Non-Compete Agreements, Nev. Rev. Stat. 613.200**

Under Nevada law, an employer may not willfully do anything to prevent any person who, for any reason, left or was discharged from its employ from obtaining employment somewhere else in the state. A violation of the provision can result in a fine of up to \$5,000 for each infraction. However, the provision does not prohibit you from entering into and enforcing a non compete agreement with your employee.

A non-compete agreement restricting an employee's ability to compete with a current or former employer is legal in Nevada so long as the agreement does not impose upon the employee any greater restraint than is reasonably necessary to protect the business and good will of the employer. Courts look at the reasonableness of time, territory, and line of business that the agreement covers.

If a court were to find the contract unreasonable in time, territory, or line of business, the court may modify the agreement and enforce it to the extent reasonable, however, the court might also declare the agreement void and unenforceable in its entirety. Territorial restrictions are generally considered reasonable when they are limited to the territory in which your company actually does business and has good will. Additionally, courts have typically upheld restrictions of two years or less as reasonable.

## **2. Nevada Uniform Trade Secrets Act, Nev. Rev. Stat. 600A.010, *et seq.***

Nevada's Uniform Trade Secrets Act is based on the federal Uniform Trade Secrets Act. There are subtle differences that appear to be changes in form and style rather than substance. Under Nevada law, the misappropriation of an employer's trade secrets is prohibited. A person who misappropriates trade secrets may be enjoined from using the trade secret, may be liable for damages, and may face criminal charges.

"Misappropriation" means the acquisition of a trade secret of another by a person who knows, or has reason to know, that the trade secret was acquired by improper means; or disclosure or use of a trade secret of another by a person who knows, or has reason to know that the trade secret was acquired by improper means.

A "trade secret" is defined as "information, including a formula, pattern, compilation, program, device, method, technique or process that a) derives independent economic value, present or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

## **F. Continuation Of Health Insurance Benefits, Nev. Rev. Stat. 689C.340, *et seq.***

There is no Nevada or federal law requiring an employer to provide health insurance as an employee benefit. However, once an employer chooses to offer health insurance to employees there are state and federal laws impacting the continuation of medical benefits.

- 1.** The federal COBRA law applies to employers with 20 or more employees and requires "qualified beneficiaries" who would ordinarily lose coverage under the employer's group health plan due to certain "qualifying events" be given the chance to purchase continued coverage under the employer's plan for 18-36 months at a rate of up to 102% of the applicable group rate. COBRA applies to any employer group health care plan that provides medical, dental, vision, or prescriptions drug benefits, but does not apply to disability or life insurance plans.

2. Similarly, Nevada law requires employers with fewer than 20 employees that maintain a health insurance benefit plan to include a provision in the plan that allows employees, their spouses and/or dependent children, to purchase continued identical coverage under the plan (excluding vision and dental care) due to the following qualifying events:
  - the employee is terminated for any reason other than gross misconduct;
  - the employee's number of working hours is reduced so that he or she ceases to be eligible for coverage;
  - the employee dies;
  - the employee and his or her spouse divorce or legally separate;
  - the dependent child ceases to be eligible for coverage under the terms of the plan; or
  - the spouse ceases to be eligible for coverage after becoming eligible for Medicare.

The continued coverage period is limited to 18 months for an employee and 36 months for an employee's dependents. The law does not cover an employee (or any dependents) who voluntarily leaves employment, nor does the law cover employees unless they were covered under a policy of the employer for at least 12 consecutive months before the termination of coverage.

**G. Uniform Arbitration Act Nev. Rev. Stat. 38.015, *et seq.***

Under Nevada law, arbitration agreements in employment contracts are valid and enforceable unless the agreement is otherwise unenforceable upon a ground that exists at law or in equity for the revocation of a contract. Courts are reluctant to set aside an arbitrator's award but will do so when the arbitrator's decisions were in "manifest disregard" of the law. In addition, the statute itself cites grounds for setting aside an arbitration decision. Awards will be vacated when:

- the award is procured by corruption, fraud or other undue means;
- the arbitrator displays partiality, corruption, or misconduct so severe that it substantially prejudices the rights of a party;
- the arbitrator exceeds his or her powers;
- the arbitrator refuses to postpone the hearing after a party has shown good cause for postponement;
- the arbitrator refuses to hear evidence material to the controversy.

## **H. Open Personnel Records, Nev. Rev. Stat. 613.075 and 618.370.**

Under Nevada law, employees must be given, upon request, a reasonable opportunity to inspect and copy their employment records concerning their qualifications and discipline they have received, including termination. However, you are not required to grant employees access to confidential reports from prior employers or investigative agencies, other confidential investigative files concerning the employee or concerning the investigation, or criminal information, nor are you required to provide copies of any employment records to former employees who were employed less than 60 days.

Employees are, however, entitled to access any records in their employer's possession that indicate their exposure to toxic materials or harmful physical agents. If an employee or former employee requests such records, an employer must provide them within 72 hours of the request.

## **I. Liability For Disclosure Of Employee Information, Nev. Rev. Stat. 41.755, *et seq.***

Employers who provide accurate information about a former employee's job performance to a prospective employer are immune from civil liability and other consequences of the disclosure so long as the employer did not act with malice or ill will. An employer acts with ill will or malice when it knowingly, recklessly, or intentionally discloses false or misleading information to a prospective employer and it can be liable to a former employee for damages. Additionally, you may not disclose information that federal law requires be kept confidential, or information that you have agreed with an employee will be kept confidential.

## **II. WAGES AND HOURS**

### **A. Wage Payment, Nev. Rev. Stat. 608.005, *et seq.***

#### **1. Minimum Wage, Nev. Admin. Code. Sec. 608.110, *et seq.***

##### **a. How Much**

The current adult minimum wage is \$5.15 per hour. Nevada does allow an employee under the age of 18 to be paid at a rate of \$0.77 less per hour (\$4.38), however, federal law limits this "opportunity wage" to only the first ninety consecutive calendar days of employment.

### **b. Covered Employees**

Nevada's minimum wage law applies to all private sector employees with the following exceptions:

- casual babysitters;
- domestic service employees who live in the household where they work;
- outside salespersons whose earnings are based on commissions;
- agricultural employees of an employer who did not use more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year;
- taxicab and limousine drivers; and
- severely handicapped persons whose disabilities have diminished their productive capacity in a specific job.

### **c. Handicapped Workers**

Handicapped persons whose productive capacity is impaired by a physical or mental disability may be paid below the minimum wage to fairly reflect such reduced capacity, provided the employer obtains a certificate from the Nevada Rehabilitation Division of the Department of Employment, Training and Rehabilitation.

## **2. Overtime Wages, Nev. Rev. Stat. 608, et. seq.**

### **a. How Much**

You must pay non-exempt employees one and one half of their regular pay for all hours actually worked in excess of 8 hours in any one workday, or in excess of 40 hours in a scheduled week of work unless, by mutual agreement, the employee works a scheduled 10 hour day for 4 calendar days within any scheduled work week. Non-exempt employees are those workers, hourly and salaried, not specifically exempt from being paid overtime.

### **b. Covered Employees**

The overtime provisions do not apply to employees who are exempted from the minimum wage provisions. Employees exempt from the overtime provisions include:

- employees who are compensated at not less than one and one-half times the minimum wage rate;
- outside buyers;

- salesmen earning commissions in a retail business if their regular rate is more than one and one-half times the minimum wage, and more than one-half their compensation comes from commissions;
- employees who are employed in bona fide executive, administrative or professional capacities;
- employees covered by collective bargaining agreements which provide otherwise for overtime;
- drivers, drivers' helpers, loaders and mechanics for motor carriers already subject to the Motor Carrier Act of 1935;
- railroad employees;
- airline employees;
- drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan;
- drivers of taxicabs or limousines;
- agricultural employees;
- employees of business enterprises having a gross sales volume of less than \$250,000 per year;
- any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment;

**3. Payment Of Wages In Certain Occupations, Nev. Rev. Stat. 608.0165**

Wages or compensation paid to employees whose duties include the manufacture of an explosive, or the use, processing, handling, on-site movement or storage of an explosive must be based solely on the hours the employees works, except if the employee works in the mining industry.

**4. Form And Timing Of Payment, Payment Of Wages Upon Resignation/Termination, Nev. Rev. Stat. 608.020-.030, 608.060, 608.120**

Private sector employees must be paid at least semi-monthly, and must be paid in cash, check, or draft. An employee who resigns must be paid his earned and unpaid wages and compensation no later than the day on which he would have regularly been paid the wages or compensation, or seven days after he resigns or quits, whichever is earlier. If an employer terminates an employee, all earned and unpaid wages and compensation must be paid immediately at the time of discharge.

**5. Prohibition Against Retaliation, Nev. Rev. Stat. 608.015**

Employers cannot retaliate against employees or otherwise attempt to induce employees to refrain from testifying in any investigation or proceeding relating to or arising out of Nevada's wage payment laws.

**6. Wage Garnishment, Nev. Rev. Stat. 31.249 et. seq.**

Garnishments involve a court proceeding regarding the non-payment of a debt in which a court instructs the employer to withhold the proper amount from the employee's pay and send it directly to the creditor. Employers should notify an employee of any withholding. In Nevada, the maximum amount of an employee's disposable earnings subject to garnishment depends on numerous factors.

- a. Generally, the amount subject to garnishment cannot exceed 25% of disposable earnings (the part of earnings remaining after taxes are deducted) in a pay period; or the amount by which disposable earnings for each week of that period exceed 30 times the federal minimum hourly wage, whichever is less.
- b. If the garnishment is for a bankruptcy, or a state or federal tax lien, there is no restriction on the amount subject to garnishment.
- c. If the garnishment is for the support of a person, the maximum amount of disposable earnings subject to garnishment cannot exceed 50% for a person supporting a spouse or child other than the spouse or child for whom the order of support was rendered. If the employee is not supporting a child or spouse, the amount increases to 60%.

Employers are allowed a \$3.00 fee from the person receiving the garnished wages for each withholding made from an employee's earnings.

**7. Deductions And Withholding A Portion Of Wages, Nev. Rev. Stat. 608.110**

You are permitted to make deductions, withhold dues, rates or assessments for any benefit of an employee only if such deductions are authorized in writing by the employee. Each employee must receive, at the time of payment, an itemized list showing the respective deductions made from the total amount of his wages.

**8. Required Notices, Nev. Rev. Stat. 608.013**

Employers are required to post and maintain, in a conspicuous place on the premises, a printed abstract of Nevada's wage and hour statute, to be provided by the labor commissioner.

## **B. Work Hours**

### **1. Meal And Rest Periods, Nev. Rev. Stat. 608.019**

Nevada law requires that employees who work at least 8 continuous hours be permitted a meal period of at least 30 uninterrupted minutes, but it does not require this be paid time. All employees must also be allowed to take rest periods of 10 minutes for each 4 hours continuously worked as paid time. The rest periods should occur in the middle of each work period. The law does not apply to situations where only one person is employed at a particular place of employment or to employees covered by a collective bargaining agreement.

### **2. Record Keeping Requirements, Nev. Rev. Stat. 608.115**

Nevada law requires employers to establish and maintain records of wages for the benefit of its employees, showing for each pay period: gross wage or salary other than compensation in the form of services, food, housing or clothing; deductions; net cash wage or salary; total hours employed in the pay period; and date of payment. You must maintain these records for 2 years.

### **3. Holidays, Nev. Rev. Stat. 236.015, et seq.**

There are eleven legal holidays for Nevada state, county, and city government offices, including all 10 federal holidays. If January 1, July 4, November 11, or December 25 fall upon a Sunday, the holiday will be observed the Monday following; if any fall on a Saturday, the holiday will be observed the preceding Friday. The legally recognized holidays are as follows:

New Year's Day*	January 1 <sup>st</sup>
Martin Luther King Jr.'s Birthday*	Observed 3 <sup>rd</sup> Monday in January
Washington's Birthday/Presidents'*	Observed 3 <sup>rd</sup> Monday in February
Memorial Day*	Last Monday in May
Independence Day*	July 4 <sup>th</sup>
Labor Day*	1 <sup>st</sup> Monday in September
Nevada Day	Observed last Friday in October
Veteran's Day*	November 11 <sup>th</sup>
Thanksgiving Day*	4 <sup>th</sup> Thursday in November
Family Day	Friday following 4 <sup>th</sup> Thursday in November
Christmas Day*	December 25 <sup>th</sup>

\* Federal holidays.

### III. EMPLOYMENT DISCRIMINATION

#### A. Protected Classes

##### 1. Generally, Nev. Rev. Stat. 613.320, *et seq.*

Generally, employers may be held accountable for practices that discriminate against a legally protected class, whether purposely discriminatory or merely having an unintended discriminatory effect. In general, you should be prepared to explain your reasoning whenever a member of a protected class is terminated, not hired, does not receive or is not considered for a promotion, is recalled from a layoff or strike in any order other than by seniority, or is compensated differently than other employees of substantially equal skill, responsibility or experience.

Nevada's equal opportunities law covers employment practices of all employers, public and private, with fifteen or more employees for each working day in 20 or more calendar weeks in the current or preceding year, but it excludes from coverage the U.S. government, Indian tribes, and private membership clubs with 501(c)(3) tax exempt status. Specifically, it is unlawful to discharge or fail to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's:

- race;
- color;
- sex;
- age (40 or over);
- national origin;
- religion;
- disability; and
- sexual orientation (does not apply to organizations with federal 501(c)(3) tax exempt status).

It is also unlawful under Nevada law to ask or encourage a prospective employee to submit to a genetic test or to require or administer a genetic test as a condition of employment. Nor may you deny employment, alter the terms, conditions or privileges of employment, or terminate employment based on genetic information.

These actions are unlawful not only for employers, but also for any employment agency or labor organization, or in the admission into any program established to provide apprenticeship or other training. In addition, such organizations are required to permit employees with aural or visual

disabilities to keep their guide dog, hearing dog, or other service animal with them at all times in their place of employment.

It is not unlawful to take or fail to take action on the basis of religion, sex, sexual orientation, national origin, age, or disability (but not race) in certain instances in which such status is a bona fide occupational qualification reasonably necessary for the normal operation of that particular business or enterprise. Nor is it unlawful for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment based on a bona fide seniority, merit, or piecework system so long as those differences are not the result of an intention to discriminate based on one of the protected categories.

An employee must file a charge of discrimination with the Nevada Equal Rights Commission within 180 days of the act complained of. Accordingly, you should make it a practice to retain job applications and other relevant records of rejected applicants for at least a year after the decision not to hire, and at least a year after terminating an employee.

## **2. Disability, Nev. Rev. Stat. 613.310**

Because of the nearly identical language of the Nevada disability law and the Americans with Disabilities Act, Nevada courts will look to federal ADA cases in applying the Nevada anti discrimination statute. Under Nevada law, disability is defined as, with respect to a person:

- a physical or mental impairment that substantially limits one or more of the major life activities of the person;
- a record of such an impairment; or
- being regarded as having such impairment.

## **3. Pregnancy, Nev. Rev. Stat. 613.335**

Nevada law requires that, if an employer grants leave with pay, leave without pay, or leave without loss of seniority to its employees for sickness or disability because of a medical condition, it must extend the same benefits to pregnant female employees. Female employees must be allowed to use the leave before and after childbirth, miscarriage, or other natural resolution to their pregnancy.

## **B. Protected Employee Activities**

### **1. Time Off For Jury Duty, Nev. Rev. Stat. 6.190, *et seq.***

Employers are required to allow employees time off work in accordance with a jury summons. An employer who terminates or threatens to terminate an employee as a consequence of service as a juror is guilty of a gross misdemeanor. An employee discharged because of jury service can file a lawsuit and obtain the following relief: lost wages and benefits, reinstatement without loss of position, seniority or benefits; reasonable attorney's fees and punitive or exemplary damages of not more than \$50,000.

You are also required to allow time off to an employee who has been summoned to appear as a witness in a judicial or administrative proceeding without the loss of employment. A discharged employee can obtain any wages and benefits lost, an order of reinstatement, and reasonable attorneys fees.

**2. Military Service, Nev. Rev. Stat. 412; 281.145**

Employers may not terminate an employee because the employee is ordered to active service or duty in the Nevada National Guard. Such employee is entitled to be immediately reinstated without loss of any seniority or benefits and to receive all wages lost as a result of the termination.

Public employees who perform active military service are entitled to a leave for absence without pay for the duration of their military service plus an additional 90 days. Such employees must be reinstated to their former class of positions, or the nearest approximation of their positions, consistent with the circumstances. Employees can take up to fifteen days of leave with compensation in any calendar year.

**3. Disaster Service Volunteer Leave, Nev. Rev. Stat. Sec. 281.147, et seq.**

Public employees who have been classified as disaster technicians by the American National Red Cross must be relieved of their duties upon the request of the American National Red Cross and the approval of their employers to assist the American National Red Cross during an emergency or disaster which occurs in Nevada, California, Oregon, Idaho, Utah or Arizona. Employees can take up to fifteen days of leave with compensation in any calendar year.

**4. Time Off For Voting, Nev. Rev. Stat. 293.463, et seq.**

All employees eligible to vote in an election are entitled to take paid time off from work sufficient to vote if it is impracticable to vote before or after normal work hours. If the distance between an employee's employment and the polling place is 2 miles or less, the employee is entitled to one hour. If the distance is more than two miles, but not more than 10 miles, the employee is entitled to two hours. If the distance is more than 10 miles, then the employee is entitled to three hours.

Employees who take time off to vote cannot be discharged, disciplined, or penalized, nor receive any deduction in wages for doing so. Violations of this provision are a misdemeanor, punishable by not more than six months in jail, and a fine of not more than \$1,000.

You also may not prohibit employees from participating in political activities, or from becoming a candidate for any state public office. Violators of this provision face fines of up to \$5,000.

**5. Retaliation For Making A Complaint, Nev. Rev. Stat. 613.340, 281.611, et seq.**

Employers need to be cautious about how they treat employees who have made complaints, or who have participated in employment related investigations. It is unlawful to discriminate against employees because they have opposed any unlawful employment practice, inclusive of making a charge, testifying, or assisting or participating in any manner an investigation, proceeding, or hearing. It is also unlawful to terminate an employee for filing a worker's compensation claim.

The law also prohibits retaliation against public employees for reporting violations of state and/or federal laws or regulations, gross waste of funds, abuse of authority, or substantial danger to public health or safety.

**IV. WORKPLACE SAFETY**

**A. Nevada Occupational Safety And Health Act, Nev. Rev. Stat. 618.005, et seq.**

The Nevada Occupational Safety and Health Act is administered by the Nevada Division of Occupational Safety and Health/Department of Industrial Relations. Under the law, employers are required to provide safe places of employment free from known hazards likely to cause death or serious injury. You must also assign at least one person to be in charge of occupational safety and health. When new employees are hired, you must provide them with a video or document of the employer's rights and responsibilities in promoting safety in the workplace. Additionally, employers with 11 or more employees must provide a safety training program.

An employer is required to post notices throughout its workplace informing employees of their rights under the law. Penalties for failing to have the required notices can result in fines of up to \$7,000, and repeated and willful violations can result in fines of up to \$70,000.

In addition, employers must label or post warning signs regarding hazards in its workplace, including information on precautions, symptoms, and emergency treatment in case of exposure to harmful or toxic substances. You must also promptly notify employees of their potential exposure to toxic or hazardous materials and what corrective action has been taken.

**CONCLUSION**

Employers in Nevada are subject to numerous state and federal laws regulating nearly every area of labor and employee relations. This book provides a basic summary of Nevada employment law under which employers must operate their business or workplace. Our hope is that by providing this summary we will provide a useful reference to help employers quickly answer some of the common, everyday employment questions that can and do arise. Any questions about the information contained in this book or application of these laws to specific fact situations should be directed to an attorney.

*For further information about this book contact any attorney in the Las Vegas office of Fisher & Phillips LLP.*