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## **Nevada Mandates Employer Provided Leave and Accommodations for Victims of Domestic Violence**

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The 2017 Nevada Legislature saw a flurry of proposed legislation directly and indirectly affecting private employment in the state of Nevada. One of the proposed measures is Senate Bill 361 which was approved by Governor Sandoval on March 8, 2017. Senate Bill 361, designated simply as an Act relating to domestic violence, becomes fully effective January 1, 2018.

The Act amends Chapter 608 of the Nevada Revised Statutes (“NRS”) to require Nevada employers to provide leave to employees who are victims of domestic violence, or whose family or household members are victims of domestic violence. The Act also imposes certain record keeping requirements on Nevada employers regarding domestic violence leave. Finally, the Act amends NRS Chapter 613 to require employers to provide reasonable accommodations for, and prohibit, certain discriminatory acts against these same employees.

Section 1 of the Act provides that the term “domestic violence” has the meaning ascribed in NRS 33.018. NRS 33.018, which deals with orders for protection against domestic violence, defines domestic violence as any of the certain prohibited acts that are committed against specified persons. The prohibited acts include assault, battery, sexual assault, compelling by force or threat of force, false imprisonment, and unlawful or forcible entry of a residence if there is a reasonably foreseeable risk of harm. The list of prohibited acts also includes purposeful or reckless conduct intended to harass such as stalking, arson, trespass, larceny, destruction of property, injuring or killing an animal, or carrying a concealed weapon without a permit. The foregoing acts constitute domestic violence if committed by a person upon the person’s: spouse, former spouse and any other person related by blood or marriage. It also includes persons with whom the person is residing or has resided, has or has had a dating relationship, or with whom the person has a child in common. It also includes the minor

child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child.

The term "family or household member" is defined to mean spouse, domestic partner; minor child; or parent or other adult person who is related within the first degree of consanguinity or affinity to the employee, or other adult person who is or was actually residing with the employee at the time of the act which constitutes domestic violence.

## **Leave Obligations**

An employee who has been employed by the employer for at least 90 days and is a victim of domestic violence or whose family or household member is a victim of domestic violence is entitled to domestic violence leave under the Act. However, an employee is not entitled to leave where a family or household member is the victim and the employee is the alleged perpetrator. Under the Act, an eligible employee may take up to 160 hours of leave within 12 months immediately following the date on which domestic violence occurred. Leave may be paid or unpaid and may be used consecutively or intermittently. Leave under the Act must be deducted from leave permitted by the Family and Medical Leave Act of 1993 (FMLA) where the domestic violence leave is used for a reason for which leave may also be taken under the FMLA.

Under the Act, an eligible employee may take leave for specifically enumerated reasons related to an act of domestic violence against the employee or the employee's family or household member:

- for the diagnosis, care or treatment of a health condition;
- to obtain counseling or assistance;
- to participate in a court proceedings; or
- to establish a safety plan, including any action to increase the safety of the employee or the employee's family or household member.

Employers may require an employee seeking domestic violence leave to provide documentation such as police reports, copies of applications for protection orders, affidavits from victims' organizations, or documentation from a physician to support the employee's use of leave. The documentation must be kept confidential and be maintained consistent with the requirements of the FMLA. While the new law does not appear to require an employee to provide advance notice prior to taking initial leave following an occurrence of violence, after the initial leave employees must provide 48 hours' notice to their employers if they wish to take additional hours of leave.

## **Recordkeeping**

Employers are required to maintain a record of the hours of leave taken pursuant to this law for each employee for a two year period following the entry of such information in the record. Upon request, employers must make these records available for inspection by the Nevada Labor Commissioner. Employers must exclude the names of the employees from the records requested, unless a request for a record is for the purpose of an investigation. These records should be kept confidential.

## **Accommodation Obligations**

In addition to leave rights, employers must also provide reasonable accommodations for employees who are victims of domestic violence or whose family or a household member is a victim of domestic violence. The employer may require documentation that supports an employee's request for accommodation.

Potential accommodations include:

- transfers or reassignments;
- modified schedules;
- new work telephone numbers; or
- other reasonable accommodations that do not create undue hardships and that are necessary to ensure the safety of the employee and the workplace.

While the Act is clear that the employer is not required to make an accommodation that constitutes an undue hardship it does not define the term. That said, the Nevada Legislature defined “undue hardship” in the Nevada Pregnant Workers’ Fairness Act which amended NRS 613.335. This definition may provide guidance to employers in interpreting undue hardship under this Act relating to domestic violence.

### **Unlawful Practices**

Sections 1 and 7 of Act prescribe several related and overlapping discriminatory and unlawful acts. Section 1 specifies that an employer may not deny an employee the right to use leave, require an employee to find a replacement worker or retaliate against an employee for using leave. Section 1 of the Act which includes the leave provisions will be codified in NRS Chapter 608 and will be enforced by the Labor Commissioner pursuant under NRS 608.180. Pursuant to NRS 608.195 a violation of Section 1 may result in a criminal misdemeanor. In addition to other remedies, the Labor Commissioner may impose an administrative penalty up to \$5,000 for a violation of Section 1.

On the other hand, the accommodation obligations under Sections 6 and the unlawful practice provisions of Section 7 of the Act will be codified in Chapter 613. Section 7 provides that it is unlawful for an employer to discharge or discriminate against or threaten to take action against an employee because of one of the following reasons:

- The employee requested to use hours of leave;
- The employee participated as a witness or interested party in court proceedings related to an act of domestic violence which triggered leave;
- The employee requested an accommodation; or
- An act of domestic violence was committed against the employee in the workplace.

### **Effective Date and Notice**

The Act went into effect on June 8, 2017 for purposes of adopting regulations and performing administrative tasks to carry out its provisions. It becomes effective for all other purposes on January 1, 2018.

The Nevada Labor Commissioner has been tasked with preparing a bulletin which sets forth the rights to benefits under this law and will post this bulletin on the Office of Labor Commissioner website once it is available. Employers will be required to post this bulletin in a conspicuous location in each workplace maintained by the employer.