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STATE

Littler on

Nevada Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Nevada employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

DISCLAIMER

This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.

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1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331U.S. 722 (1947).

3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

Nevada has created a Task Force on Employee Misclassification by statute. This Task Force is composed of representatives from the Offices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General that will communicate information and make recommendations regarding employee misclassification. *Employee misclassification* is defined as the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws, including, but not limited to, the laws governing minimum wage, overtime, unemployment insurance, workers' compensation insurance, temporary disability insurance, wage payment, and payroll taxes.[5]

In Nevada, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1). However, Nevada has a worker classification carve-out to the tests set forth below for the workers' compensation, minimum wage, and overtime laws, which is specific to the construction industry.

A person is conclusively presumed to be an independent contractor if the person is a licensed contractor or subcontractor, or directly compensated by a licensed contractor or subcontractor, for providing labor for which such a license is required to perform, and:

- the person has been and will continue to be free from control or direction over the performance of the services, both under their contract of service and in fact;
- the service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprises for which the service is performed; and

[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15 F.3d 103, 105(8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545F.3d 338, 347(5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A)there is an ABSENCE of control; (B)the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C)the work is CUSTOMARILY performed by independent contractors.

[5] NEV. REV. STAT. § 607.217.

- the service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged, of the same nature as that involved in the contract of service.[6]

However, the fact that a person is not presumed to be an independent contractor under this test does not create a presumption that the person is an employee.[7]

Under these provisions, contractor "is synonymous" with builder.[8] As well, a *contractor* is:

- Any person, except a registered architect or a licensed professional engineer, acting solely in a professional capacity, who undertakes to, offers to undertake to, purports to have the capacity to undertake to, or submits a bid to, or does themself, or itself or by or through an employee or employees of the contractor or of another contractor, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. Evidence of the securing of any permit from a governmental agency or the employment of any person on a construction project is *prima facie* evidence that the person securing that permit or employing any person on a construction project is acting in the capacity of a contractor.
- A contractor includes a subcontractor or specialty contractor, but does not include anyone who merely furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of a contractor.
- A contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.
- A contractor does not include an owner of a planned unit development who enters into one or more oral or written agreements with one or more general building contractors or general engineering contractors to construct a work of improvement in the planned unit development if the general building contractors or general engineering contractors are licensed under Nevada law, and contract with the owner of the planned unit development to construct the entire work of improvement.[9]

Enforcement, Remedies & Penalties. Under Nevada's wage payment laws, misclassification of a worker as an independent contractor is unlawful and subjects an employer to civil penalties.[10] An employer will be issued a warning by the Labor Commissioner for each misclassified employee for a first offence, and up to $5,000 for each willfully misclassified employee for any second and subsequent offense.

[6] NEV. REV. STAT. § 608.0155(2).

[7] NEV. REV. STAT. § 608.0155(3).

[8] NEV. REV. STAT. § 624.020.

[9] NEV. REV. STAT. § 624.020.

[10] NEV. REV. STAT. § 608.400.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Fair Employment Practices Laws	Department of Employment Training & Rehabilitation, Equal Rights Commission	There are no relevant statutes or court decisions concerning independent contractor status.
Income Taxes	Not applicable	Nevada has no personal state income tax.
Unemployment Insurance	Department of Employment, Training & Rehabilitation, Employment Security Division	Statutory test, applying the ABC test. Services performed by a person for wages will be deemed to be employment unless it is shown that the individual is: A. free from control and direction, both under the contract for service and in fact; B. performing services either outside the usual course of the business for which the service is performed, or outside all of the places of the business of the enterprises for which services are performed; and C. customarily engaged in an independently established trade, occupation, profession, or business.[11]
Wage & Hour Laws	Department of Business & Industry, Office of the Nevada Labor Commissioner	Statutory test. A person is presumed to be an independent contractor if the person: • possesses or has applied for an employer identification number or Social Security number, or has filed an income tax return for a business or earnings from self-employment with the federal Internal Revenue Service (IRS) in the previous year (unless the

[11] NEV. REV. STAT. § 612.085. Nevada courts apply the statutory test to determine whether an individual is an employee or an independent contractor: "The aforementioned statute is conjunctive in nature, and thus the putative employer has the burden of proving all three criteria." *Nevada Dep't of Emp't, Training and Rehab. v. Reliable Health Care Servs. of Southern Nev., Inc.*, 983 P.2d 414, 417 (Nev. 1999). "Indicia that characterize control in an employment relationship . . . include, but are not limited to, whether the employer has the right to direct the daily manner and means of a person's work, whether the worker is required to follow the putative employer's instructions, and, whether the worker can refuse work offered without ramification." 983 P.2d at 417.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		person is a legally present foreign national); • is required by the contract to hold any necessary state or local business license and to maintain any necessary occupational license, insurance, or bonding in order to operate in the state; and • satisfies *three or more* of the following criteria: ▪ has control and discretion over the means and manner of the performance and result of any work; ▪ has control over the time the work is performed; ▪ is not required to work exclusively for one principal unless prohibited by law; or if there is a written contract to provide services to only one principal, the duration of which is limited; ▪ is free to hire employee assistants to help with work; and ▪ contributes a *substantial investment*[12] of capital in their business.[13]

[12] A *substantial investment* of capital includes, but is not limited to: (1) the purchase or lease of ordinary tools, material, and equipment regardless of source; (2) the obtaining of a license or other permission from the principal to access the principal's work space to perform the work for which they were engaged; and (3) the leasing of any workspace from the principal required to perform the work for which they were engaged. NEV. REV. STAT. § 608.0155(c)(5). "The determination of whether an investment of capital is substantial for the purpose of this subparagraph [regarding substantial investment of capital] must be made on the basis of the amount of income the person receives, the equipment commonly used and the expenses commonly incurred in the trade or profession in which the person engages." NEV. REV. STAT. § 608.0155(c)(5).

[13] NEV. REV. STAT. § 608.0155. Even if an individual is not presumed to be an independent contractor for failure to satisfy three or more of the criteria [at No. 3 of the test in Table 1 above], there is no contrary presumption of "employee" status created. NEV. REV. STAT. § 608.0155. In these instances, the former standard, wherein the Nevada Supreme Court adopted the economic realities standard from the Fair Labor Standards Act, will most likely apply. *See Terry v. Sapphire Gentleman's Club*, 336 P.3d 951 (Nev. 2014); *But see Doe Dancer 1 v. La Fuente, Inc.*, 481 P.3d 860 (Nev. 2021) (court-created economic realities test, not statute, determines test to use for determining whether a worker is an employee or independent contractor under Minimum Wage Amendment to the Nevada Constitution).

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		Independent contractor is also defined by the statute on payment of unpaid wages as "a self-employed person who agrees with a client to do work for the client, for a certain fee, according to the means or methods of the self-employed person and not subject to the supervision or control of the client except as to the result of the work."[14] This definition, however, existed before the above test became effective.
Workers' Compensation	Department of Business & Industry, Division of Industrial Relations	Common-law test, giving substantially equal weight to the following factors: 1. the degree of supervision; 2. the source of wages; 3. who has the right to hire and fire; 4. the right to control the hours and location of employment; and 5. the extent to which the workers' activities further the general business concerns of the alleged employer.[15] Moreover, *independent contractor* is defined by statute as "any person who renders service for a specified recompense for a specified result, under the control of the person's principal as to the result of the person's work only and not as to the means by which such result is accomplished."[16]

[14] NEV. ADMIN. CODE § 608.155(4).

[15] *Clark Cnty. v. State Indus. Ins. Sys.*, 724 P.2d 201, 202 (Nev. 1986) (citation omitted). "The test focuses primarily on the amount of control exercised by the employer and whether the employee's work can be considered the normal work of the employer." *State Indus. Ins. Sys. v. E G &G Special Projects*, 738 P.2d 1311, 1313 (Nev. 1987) (quotations omitted).

[16] NEV. REV. STAT. § 616A.255.

Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		In addition, a person is not considered an *employer* if: 1. the person enters into a contract with another person or business that is an independent enterprise; and 2. the person is not in the same trade, business, profession, or occupation as the independent enterprise. *Independent enterprise* is defined as a person who holds themselves out as being engaged in a separate business and holds a business or occupational license in their own name; or owns, rents, or leases property for the business.[17]
Workplace Safety	Nevada Occupational Safety and Health Administration	While Nevada has a state approved plan under the federal Occupational Safety and Health Act, there are no relevant statutes or court decisions concerning independent contractor status in this context.

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a

[17] NEV. REV. STAT. § 616B.603.

computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[18]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[19] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[20]

For more information on these topics, see **LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS**.

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

1.2(b)(i) *Private Employers*

Nevada law prohibits any employer with a Nevada business registration from hiring or employing an unauthorized alien in violation of federal immigration law.[21] Nevada does not, however, require private employers to use an electronic verification system, including E-Verify, to verify the employment eligibility of new hires. Employers should follow federal law requirements.

1.2(b)(ii) *State Enforcement, Remedies & Penalties*

If the Nevada Tax Commission determines an employer that holds a state business registration violated the federal law with respect to the hiring or employing of an unauthorized alien willfully, flagrantly, or otherwise egregiously, the Commission will impose an administrative fine.[22]

In an investigation by the state against an employer for employing an unauthorized worker, the state will consider proof submitted by the employer that demonstrates it attempted to verify the unauthorized worker's Social Security number within six months from the date on which the unauthorized worker was allegedly employed. Such proof may include a print out from the link on the State of Nevada Department

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[18] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see **LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

[19] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[20] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

[21] NEV. REV. STAT. §§ 360.774, 360.796(1).

[22] NEV. REV. STAT. § 360.796(3).

of Business and Industry's website.[23] This may be used as *prima facie* evidence that a violation was not willful, flagrant, or otherwise egregious.[24]

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[25] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Under the Nevada statute regarding records of criminal history, a criminal justice agency must release a prospective employee's or volunteer's criminal history records to a prospective employer, including, but not limited to, arrest records if the prospective employee or volunteer has given written consent to the release of that information by the agency that maintains it.[26] However, the Nevada Equal Rights

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[23] NEV. REV. STAT. § 232.521.

[24] NEV. REV. STAT. § 360.796(1), (2).

[25] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, as amended 42 U.S.C. § 2000e *et seq.* (Apr. 25, 2012), available at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

[26] NEV. REV. STAT. § 179A.100(7)(m); *see also* NEV. REV. STAT. § 179A.070 (defining record of criminal history).

Commission has published a pamphlet about preemployment inquires advising employers not to inquire about arrests.[27]

Records of criminal history must be used solely for the purpose for which the record was requested, and no records of criminal history released to a prospective employer may be disseminated further by the employer without express authority of law or in accordance with a court order.[28]

1.3(a)(iii) *State Guidelines on Employer's Use of Conviction Records*

Similarly, a criminal justice agency must release to a prospective employer any records of criminal convictions[29] with respect to a prospective employee or volunteer, and any records that pertain to an incident for which the prospective employee or volunteer is currently within the system of criminal justice, including parole or probation, upon a name-based inquiry.[30] The release of criminal history records under this provision requires a specific employee or volunteer authorization for each agency providing records.

In its pamphlet regarding preemployment inquires, the Nevada Human Rights Commission advises employers that when asking a question about convictions, the question should be accompanied by a statement that a conviction will not necessarily disqualify an applicant from the job to which the individual has applied.[31]

Sex Offenses. Nevada law expressly prohibits the "use" of information obtained from a sex offender community notification website for any purpose related to employment.[32] The most plausible construction of this provision in relation to the previous requirement may be that an employer cannot make personnel decisions based solely on unconfirmed information from such websites.

1.3(a)(iv) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

A person whose arrest or conviction records have been sealed may respond to any inquiry, including an inquiry relating to an application for employment, as though the arrest, conviction, dismissal, or acquittal and the related events and proceedings did not occur.[33]

Juvenile Records. Likewise, a person whose juvenile records have been sealed may respond to inquiries as though the proceedings and underlying actions did not occur.[34]

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[27] This pamphlet is available from the Nevada Equal Rights Commission: https://cms.detr.nv.gov/Content/Media/Pre%20Employment%20Guiderev2.pdf.

[28] NEV. REV. STAT. § 179A.110.

[29] The discharge and dismissal of certain first time drug offenses, after the accused has completed probation and any required treatment or educational programs, does not constitute a conviction for purposes of employment. The person may not be held guilty of perjury or for giving a false statement for failing to acknowledge or disclose the arrest, indictment, or trial in response to any inquiry. NEV. REV. STAT. § 453.3363(4).

[30] NEV. REV. STAT. § 179A.100(3).

[31] *See* http://op.bna.com/hrlw.nsf/r?Open=tbue-9arrd2.

[32] NEV. REV. STAT. § 179B.270.

[33] NEV. REV. STAT. § 179.285(1)(a).

[34] NEV. REV. STAT. § 62H.170(1).

1.3(a)(v) *State Enforcement, Remedies & Penalties*

An employer is guilty of a misdemeanor if it: (1) willfully requests, obtains, or seeks criminal history records under false pretenses; (2) willfully communicates or attempts to communicate such records with anyone in an unlawful manner; or (3) willfully falsifies any criminal history record or record related to criminal history.[35]

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[36] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[37] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[38]

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[35] NEV. REV. STAT. § 179A.900.

[36] 15 U.S.C. §§ 1681 *et seq*.

[37] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

[38] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Nevada law severely restricts the use of consumer credit reports as a basis for making employment decisions. A *consumer credit report* is defined as any written, oral, or other communication of information by a consumer reporting agency bearing on the credit worthiness, credit standing, or credit capacity of a person.[39] An employer cannot:

- directly or indirectly, require, request, suggest, or cause any employee or prospective employee to submit a consumer credit report or other credit information as a condition of employment; or
- use, accept, refer to, or inquire concerning a consumer credit report or other credit information.[40]

Exceptions. An employer can request or consider a consumer credit report or other credit information for the purpose of evaluating an employee or prospective employee for employment, promotion, reassignment, or retention only if:

- the employer is required or authorized, pursuant to state or federal law, to use a consumer credit report or other credit information for that purpose;
- the employer reasonably believes that the employee or prospective employee has engaged in specific activity which may constitute a violation of state or federal law; or
- the information contained in the consumer credit report or other credit information is reasonably related to the position for which the employee or prospective employee is being evaluated for employment, promotion, reassignment, or retention as an employee.[41]

The information in the consumer credit report or other credit information is deemed *reasonably related* to such an evaluation if the duties of the position involve:

- the care, custody, and handling of, or responsibility for, money, financial accounts, corporate credit or debit cards, or other assets;
- access to trade secrets or other proprietary or confidential information;
- managerial or supervisory responsibility;
- the direct exercise of law enforcement authority as an employee of a state or local law enforcement agency;
- the care, custody, and handling of, or responsibility for, the personal information of another person;
- access to the personal financial information of another person;
- employment with a financial institution that is chartered under state or federal law, including a subsidiary or affiliate of such a financial institution; or

[39] NEV. REV. STAT. § 613.530.

[40] NEV. REV. STAT. § 613.570(1)-(2).

[41] NEV. REV. STAT. § 613.580.

- employment with a licensed gaming establishment.[42]

Adverse Action. Any employer that denies employment or otherwise makes any decision for employment purposes that adversely affects any current or prospective employee based in whole or in part on information in a consumer credit report must provide the employee or prospective employee with:

- written notice of the adverse action;
- the name, address, and telephone number of the consumer credit-reporting agency that furnished the report; and
- a written notice of the employee's or prospective employee's rights to obtain a free copy of the consumer credit report and to dispute the accuracy of the report.[43]

Antiretaliation Provisions. Nevada employers are also prohibited from discriminating or retaliating against an employee in connection with the employee's rights regarding consumer credit reports. An employer cannot discharge, discipline, discriminate against in any manner, or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee:

- who refuses, declines, or fails to submit a consumer credit report or other credit information; or
- on the basis of the results of a consumer credit report or other credit information.[44]

Further, an employer cannot discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee who has:

- filed any complaint or instituted or caused to be instituted any legal proceeding pursuant to the law;
- testified or may testify in any legal proceeding instituted under the law; or
- exercised their rights, or has exercised on behalf of another person the rights afforded pursuant to the law.[45]

1.3(b)(iii) *State Enforcement, Remedies & Penalties*

An employer that violates the credit history discrimination provisions[46] is liable to the aggrieved employee or prospective employee for any legal or equitable relief as may be appropriate, including employment of a prospective employee, reinstatement, or promotion of an employee, and payment of lost wages and benefits. An aggrieved employee or prospective employee can also file a lawsuit against the employer, individually or on behalf of others similarly situated. If successful, the court may award reasonable costs and attorneys' fees.[47]

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[42] NEV. REV. STAT. § 613.580.

[43] NEV. REV. STAT. §§ 598C.020, 598C.170.

[44] NEV. REV. STAT. § 613.570(3).

[45] NEV. REV. STAT. § 613.570(4).

[46] NEV. REV. STAT. §§ 613.520 to 613.600.

[47] NEV. REV. STAT. § 613.590.

Additionally, the state labor department may impose an administrative penalty against the employer for each violation. It may also bring a lawsuit against the employer, and a court may issue, without bond, a temporary or permanent restraining order or injunction to require compliance with the law, including any legal or equitable relief that may be appropriate, such as employment of a prospective employee, reinstatement, or promotion of an employee, and payment of lost wages and benefits.[48]

1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

Nevada restricts an employer's ability to access an applicant's social media accounts. *Social media account* is defined as "any electronic service or account or electronic content, including, without limitation, videos, photographs, blogs, video blogs, podcasts, instant and text messages, electronic mail programs or services, online services or Internet website profiles."[49] An employer cannot directly or indirectly require, request, suggest, or cause an employee or prospective employee to disclose a username, password, or other information providing access to their personal social media account.[50] Further, an employer cannot threaten to or actually discharge, discipline, discriminate in any manner, or deny employment or promotion to an employee or prospective employee who refuses, declines, or fails to disclose a username, password, or any other information providing access to their personal social media account.[51]

[48] NEV. REV. STAT. § 613.600.

[49] NEV. REV. STAT. § 613.135(4).

[50] NEV. REV. STAT. § 613.135(1)(a).

[51] NEV. REV. STAT. § 613.135(1)(b).

Exceptions. The statute does not prevent an employer from complying with state or federal statutes or regulations, or with rules of a self-regulatory organization.[52]

An employer can also require an employee to disclose a username, password, or other information to an account of service (other than a personal social media account), to access the employer's internal computer or information system.[53]

1.3(c)(iii) *State Enforcement, Remedies & Penalties*

It is an unlawful employment practice for Nevada employers to violate the social media provisions.[54]

1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[55] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

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[52] NEV. REV. STAT. § 613.135(3).

[53] NEV. REV. STAT. § 613.135(2).

[54] NEV. REV. STAT. § 613.135.

[55] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Nevada law strictly controls a private employer's ability to utilize lie detectors. *Lie detector* is defined to include polygraphs, voice stress analyzers, psychological stress evaluators, or any other similar device, whether mechanical or electrical, that can be used, or the results of which can be used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.[56]

With specific exemptions, Nevada employers are prohibited from:

- requiring, requesting, or suggesting that an employee or prospective employee take any lie detector test;
- using, accepting, referring to, or inquiring concerning the results of any lie detector test taken by any employee or prospective employee; or
- discharging, disciplining, discriminating against, refusing to hire or promote, or threatening any such action against any employee or prospective employee who refuses, declines, or fails to take any lie detector test or based on the results of any such test.[57]

Unless stipulated in a written settlement agreement signed by all parties to a pending action or complaint, any waiver of the rights and procedures provided by the law is against public policy and void.[58]

Exemptions. The following employers are exempt from the prohibitions of the lie detector statutes:

1. An employer that seeks to use polygraph examinations on prospective employees who would be employed to protect facilities, materials, or operations having a significant impact on the health or safety of the state or any political subdivision, or currency, negotiable securities, precious commodities or instruments, or proprietary information.
2. An employer whose primary business is to provide armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems or other security personnel.
3. Any employer authorized to manufacture, distribute, or dispense a controlled substance, if the examination is administered to a prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any controlled substance or the examination is administered to a current employee in connection with an ongoing investigation of misconduct involving a controlled substance manufactured, distributed, or dispensed by the employer.
4. Any employer that requests an employee submit to a polygraph examination if:
    a. the examination is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, including theft, embezzlement, misappropriation, or an act of unlawful industrial espionage or sabotage;
    b. the employee had access to the property that is the subject of the investigation;

[56] NEV. REV. STAT. § 613.440.

[57] NEV. REV. STAT. § 613.480(1)-(3).

[58] NEV. REV. STAT. § 613.470.

c. the employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation; and

d. the employer provides to the employee, before the examination, a written statement that:

   i. sets forth with particularity the specific incident or activity being investigated;

   ii. is signed by the employer or an agent of the employer;

   iii. is retained by the employer for at least three years; and

   iv. contains an identification of the specific economic loss or injury to the business, a statement indicating that the employee had access to the property, and a statement describing the basis of the employer's reasonable suspicion that the employee was involved in the incident.[59]

However, these exemptions apply only if the lie detector examination is administered by a person licensed or qualified to be licensed as a polygraph examiner and the result of the lie detector examination or the refusal to take such an examination is not used as the sole basis on which an adverse employment action is taken.[60]

Antiretaliation Provisions. It is also unlawful for an employer to retaliate against an employee or prospective employee for bringing a complaint for violation of the statutory prohibitions on the use of lie detectors, for testifying regarding such a violation, or for otherwise exercising their rights or those of other persons under the lie detector statutes.[61]

1.3(d)(iii) *State Enforcement, Remedies & Penalties*

The affected applicant or employee has an action against an employer or prospective employer that violates the provisions of Nevada's lie detector law. The employer will be liable for any legal or equitable relief as may be appropriate, including employment of a prospective employee, reinstatement, or promotion of an employee and the payment of lost wages and benefits as well as attorneys' fees.[62] A class action is expressly authorized.[63] In addition, the Labor Commissioner may impose administrative fines or pursue a court action for injunctive and other equitable relief and damages.[64]

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[65] The Drug-

[59] NEV. REV. STAT. § 613.510.

[60] NEV. REV. STAT. § 613.510.

[61] NEV. REV. STAT. § 613.480(4).

[62] NEV. REV. STAT. § 613.490.

[63] NEV. REV. STAT. § 613.490.

[64] NEV. REV. STAT. § 613.500.

[65] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense,

Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[66] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

It is unlawful for Nevada employers to fail or refuse to hire a prospective employee because the individual submitted to a screening test and the results of the screening test indicate the presence of marijuana. An exception applies if the prospective employee is applying for a position that, in the determination of the employer, could adversely affect the safety of others, among other exceptions.[67] For additional information on drug or alcohol testing, see **3.2(b)(ii)**.

1.3(f) *Additional State Guidelines on Preemployment Conduct*

1.3(f)(i) *State Restrictions on Inquiries Regarding Salary History*

Nevada law limits an employer's ability to ask about a job applicant's compensation history and use that information to determine the applicant's starting wage or salary.[68] The law provides that an employer or an employment agency cannot, orally or in writing, personally or through an agent:

- seek an applicant's wage or salary history;
- rely on an applicant's wage or salary history to determine whether to offer employment to an applicant or the applicant's rate of pay; or
- refuse to interview, hire, promote, or employ an applicant, or discriminate or retaliate against an applicant if the applicant does not provide wage or salary history.

Wage or salary history means the wages or salary paid to an applicant for employment by the applicant's current or former employer. The term includes, without limitation, any compensation and benefits received by the applicant from their current or former employer.

However, an employer is not prohibited from asking an applicant for employment about their wage or salary expectations for the position for which the applicant is applying. In addition, an employer must provide the wage or salary range or rate for a position to an applicant for employment who has completed an interview for the position. An employer must also provide the wage or salary range or rate for a promotion or transfer to a new position to an employee who has:

- applied for the promotion or transfer;

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the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[66] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[67] NEV. REV. STAT. § 613.132(2)(a)-(d).

[68] NEV. REV. STAT. § 613.133.

- completed an interview for the promotion or transfer or been offered the promotion or transfer; and
- requested the wage or salary range or rate for the promotion or transfer.

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[69] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[70] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[71] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[72]
Benefits & Leave Documents: Consolidated Omnibus	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under

[69] 26 U.S.C. § 36B.

[70] 42 U.S.C. § 18071.

[71] 29 U.S.C. § 218b.

[72] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Budget Reconciliation Act (COBRA)	group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[73] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[74]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[75] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[76] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[77]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically

[73] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[74] 29 C.F.R. § 2590.606-1.

[75] 29 C.F.R. § 825.300(a).

[76] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

[77] 29 C.F.R. § 825.300(a).

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[78] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[79]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[80]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[81]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

[78] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[79] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[80] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

[81] 29 C.F.R. § 531.59.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	No notice requirement located.
Fair Employment Practices Documents	**Nevada Pregnant Workers' Fairness Act.** Employers with 15 or more employees must provide written or electronic notice to employees that they have the right to be free from discriminatory or unlawful employment practices under the Nevada Pregnant Workers' Fairness Act and Nevada Revised Statutes section 613.335. The notice must include a statement that a female employee has the right to a reasonable accommodation for a condition of the employee relating to pregnancy, childbirth, or a related medical condition. An employer must provide the notice: • to a new employee upon commencement of employment; and, • to a pregnant employee, within 10 days after the employee notifies their immediate supervisor that they are pregnant. In addition, an employer must post the notice requirement in a conspicuous place at the place of business of the employer, in an area accessible to employees.[82]
Tax Documents	No notice requirement located. Nevada has no personal state income tax.
Workplace Safety	Employers must, upon hiring an employee, provide the employee with a document or videotape setting forth the rights and responsibilities of employers and employees to promote safety in the workplace. The document, or evidence of receipt of the videotape, must be signed by the employer and employee and placed in the employee's personnel file. The document or videotape is not be deemed to be a part of any employment contract.[83]

[82] NEV. REV. STAT. § 613. The Nevada Pregnant Workers' Fairness Act poster is available at: https://cms.detr.nv.gov/Content/Media/Nevada_Pregnant_Workers_Fairness_Act.pdf.

[83] NEV. REV. STAT. ANN. § 618.376. The Department of Administration, Risk Management, has prepared a brochure summarizing employee and employer rights and responsibilities, which includes a model acknowledgement form that can be used to satisfy this requirement. The brochure is available at http://4safenv.state.nv.us/sites/default/files/assets/docs/R-R-English-Brochure.pdf.

2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[84] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[85]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;

[84] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

[85] 42 U.S.C. § 653a.

- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[86] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Nevada's new hire reporting law.[87]

Who Must Be Reported. Employers must report employees newly hired or rehired to work, for whom a federal Form W-4 is required by the Internal Revenue Service (IRS).

Report Timeframe. Reporting must take place within 20 days of hire, or twice per month if submitted magnetically.

Information Required. The report must include the employee's name, address, Social Security number, date of hire, date of birth, and state of hire, as well as the employer's name, address, federal tax identification number, contact name, and contact telephone number.

Form & Submission of Report. IRS Form W-4 or written information in any format as long as it contains the required data elements. Reports may be submitted by first-class mail, fax, electronically, or magnetically.

[86] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[87] NEV. REV. STAT. § 606.120.

Location to Send Information.

Department of Employment, Training and Rehabilitation Employment Security Division
500 East Third Street
Carson City, NV 89713-003
(888) 639-7241
(775) 684-8685
(775) 684-8681 (fax)
https://ui.nv.gov/ESSHTML/new_hire_info.htm

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[88] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS.

[88] 18 U.S.C. §§ 1832 *et seq.*

2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

By statute, Nevada specifically allows employers and employees to enter into enforceable covenants not to compete. The statute, in pertinent part, reads as follows:

> The provisions of this section do not prohibit a person, association, company, corporation, agent or officer from negotiating, executing and enforcing an agreement with an employee of the person, association, company or corporation which, upon termination of the employment, prohibits the employee from disclosing any trade secrets, business methods, lists of customers, secret formulas or processes or confidential information learned or obtained during the course of his or her employment with the person, association, company or corporation if the agreement is supported by valuable consideration and is otherwise reasonable in its scope and duration.[89]

In the 2017 legislative session, the Nevada Legislature passed a statute that codifies that a noncompete will be void and unenforceable *unless* the covenant:

1. is supported by valuable consideration;
2. does not impose any restraint that is greater than is required for the protection of the employer for whose benefit the restraint is imposed;
3. does not impose any undue hardship on the employee; and
4. imposes restrictions that are appropriate in relation to the valuable consideration supporting the noncompete.[90]

The first three requirements were already present to some measure under existing case law.[91] The fourth requirement is discussed in more depth in **2.3(b)(ii)**.

The law also affects noncompete agreements with nonsolicitation restrictions preventing an employee from providing service to a former customer or client.[92] Such a restriction cannot be imposed if: (1) the former employee did not instigate contact with and solicit the former customer or client; (2) the customer or client voluntarily chose to leave and seek services from the former employee; and (3) the former employee is otherwise complying with the noncompetition agreement's restrictions.

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[89] NEV. REV. STAT. § 613.200(4).

[90] NEV. REV. STAT. § 613.195(1)(a)-(d).

[91] *See, e.g.*, *Camco, Inc. v. Baker*, 936 P.2d 829, 834 (Nev. 1997) (holding that covenants not to compete are only reasonable if they protect "existing" goodwill or customer contacts, and refusing to modify or enforce the agreement because it was too broad as to "future territory for possible expansion"); *Hansen v. Edwards*, 426 P.2d 792 (Nev. 1967) (refusing to enforce any restriction that is greater than necessary to protect the business and goodwill of the employer). *See also Finkel v. Cashman Prof., Inc.*, 270 P.3d 1259, 1263 (Nev. 2012) (in the context of the sale of a business, greater restraint allowed to protect the new owner of a business from a competing seller with established goodwill in the industry and area).

[92] NEV. REV. STAT. § 613.195(2).

Noncompetition agreements may not apply to an employee paid only on an hourly wage basis, exclusive of any tips or gratuities.[93]

Enforceability Following Employee Discharge. The Nevada Legislature added a provision stating that if an employee is terminated as a result of a reduction in force, reorganization, or similar restructuring, a noncompete is only enforceable during the time the employer is paying the employee's salary, benefits, or equivalent compensation, including severance pay.[94]

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

Nevada law requires that noncompetes be supported by valuable consideration.[95] In 2017, the Nevada legislature added that a noncompete is unenforceable unless it imposes restrictions that are commensurate with its consideration. In other words, the valuable consideration supporting the noncompete must also be measured against its restriction for a determination of appropriateness—a balancing of the cost to the employee (the restriction) and the benefit (the consideration, such as a raise). Therefore, the broader the geographic area, scope of activity, and duration restrictions in the noncompete, the more valuable the consideration the employer may need to offer to make the covenant enforceable.

Prior to the 2017 enactment of Nevada's noncompete law, the Nevada Supreme Court held that adding $.50 an hour to an employee's hourly rate satisfied the consideration requirement.[96] The Nevada Supreme Court also held that "continued employment is valid consideration for an at-will employee's post-hire agreement not to compete."[97] Given the new requirement that consideration be balanced against the noncompete's restrictions, the state of the law in this area remains in flux.

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts

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93 NEV. REV. STAT. § 613.195.

94 NEV. REV. STAT. § 613.195(5).

95 NEV. REV. STAT. § 613.195(1)(a).

96 *Jones v. Deeter*, 913 P.2d 1272 (Nev. 1996).

97 *Camco, Inc. v. Baker*, 936 P.2d 829 (Nev. 1997).

attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

Reacting to a 2016 Nevada Supreme Court case holding that an unreasonable provision in a noncompete could render the entire noncompete wholly unenforceable and restricting the authority of courts to "blue pencil" the contract to make it reasonable,[98] the Nevada Legislature reversed course in its 2017 noncompete law.[99] Specifically, the law states that if a noncompetition agreement is challenged and a court finds that it imposes restraints greater than are necessary for the employer's protection and imposes undue hardship on the employee, the court is *required* to revise the covenant (*i.e.*, "blue pencil") to the extent necessary and enforce the covenant as revised. For agreements entered into prior to the statute's June 17, 2017 effective date, courts have the authority to reform overly broad agreements if the agreements contains a provision allowing for such a modification or reformation.[100]

2.3(b)(iv) *State Trade Secret Law*

When an employee leaves a business after having signed a covenant not to compete, the employee will sometimes take valuable information that the covenant sought to protect. In addition to covenants not to compete, Nevada law provides other means for employers to protect themselves from a recently departed employee's misuse of proprietary information acquired from the employer. Trade secrets, which are partially defined by Nevada statutes, can be protected in a variety of ways. As a starting point, the employer must determine whether the information thought to be taken by the employee is a protected trade secret.

Definition of a Trade Secret. Nevada has adopted the Uniform Trade Secrets Act. Nevada law defines a *trade secret* to include information that:

> (a) [d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and
> (b) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[101]

The definition specifically does not include "any information that a manufacturer is required to report pursuant to [the act], information that a pharmaceutical sales representative is required to report pursuant to [the act], information that a pharmacy benefit manager is required to report pursuant to [the act], or information that a wholesaler is required to report pursuant to [the act], to the extent that such information is required to be disclosed by those sections."[102]

Although there is no published Nevada decision construing the statutory definition of *independent economic value*, the Ninth Circuit Court of Appeals has stated in relevant part that:

> This statutory element carries forward the common law requirement of competitive advantage . . . . This does not mean . . . that the owner of the trade secret must be the

[98] *Golden Road Motor Inn, Inc. v. Islam*, 376 P.3d 151 (Nev. 2016).

[99] NEV. REV. STAT. § 613.195(6).

[100] *Duong v. Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.,* 478 P.3d 380 (Nev. 2020).

[101] NEV. REV. STAT. § 600A.030(5).

[102] NEV. REV. STAT. § 600A.030.

> only one in the market . . . . If an outsider would obtain a valuable share of the market by gaining certain information, then that information may be a trade secret if it is not known or readily ascertainable.[103]

Also, in *Frantz v. Johnson*, the Nevada Supreme Court held that the determination of whether corporate information, such as customer and pricing information, constitutes a trade secret is a question of fact to be determined by reference to certain factors:[104]

1. the extent to which the information is known outside of the business and the ease or difficultly with which the acquired information could be properly acquired by others;
2. whether the information was confidential or secret;
3. the extent and manner in which the employer guarded the secrecy of the information; and
4. the former employee's knowledge of customer's buying habits and other customer data and whether this information is known by the employer's competitors.[105]

Trade secrets developed by an employee are the sole property of the employer if the employee developed the trade secret during the course and scope of their employment and if the trade secret relates to the work performed for the employer. In Nevada, any trade secret developed on company time that relates to company business belongs to the company.[106]

On the issue of whether the information is "readily ascertainable," a Nevada federal court held that, although a proprietary interest may exist in an idea, such an idea must be "novel."[107] According to the district court, the concept or idea of developing a replica of a Roman Coliseum at an already Roman themed hotel/casino was not novel.[108] The threshold for showing that information was readily ascertainable is not a high one, and if the information is generally known in the industry, or readily ascertainable from other public sources, the statute would not protect it even if it was previously unknown to the recipient.[109]

Once an employer has determined information has independent economic value, it must consistently treat the information confidentially to maintain trade secret status. The second prong of the definition of trade secrets set forth in the statute requires the information be subject to efforts that are reasonable under the circumstances to maintain its secrecy. The statute specifically provides for a presumption that the owner of the trade secret has made reasonable efforts to maintain its secrecy if the owner of the trade secret has placed the word "Confidential" or "Private" or some other indication of secrecy in a "reasonably noticeable manner" on any medium or container that describes or includes any portion of the trade

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[103] *Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1090 (9th Cir. 1986) (emphasis added) (quoting *Electro-Craft Corp. v. Controlled Motion*, *Inc.*, 332 N.W.2d 890, 900 (Minn. 1983)).

[104] 999 P.2d 351 (Nev. 2000).

[105] 999 P.2d at 358-59; *see also Finkel v. Cashman Prof., Inc.*, 270 P.3d 1259, 1264 (Nev. 2012) (reaffirming the factors set forth in *Frantz* and further explaining that while "not necessarily dispositive of an item's trade-secret status," a party's admission that information constituted a trade secret "may be considered as a factor weighing towards such classification").

[106] NEV. REV. STAT. § 600.500.

[107] *Caesars World*, *Inc. v. Milanian*, 247 F. Supp. 2d 1171 (D. Nev. 2003).

[108] 247 F. Supp. 2d at 1204.

[109] *Eastridge Personnel of Las Vegas, Inc. v. Du-Orpilla*, 2008 WL 872905 (D. Nev. Mar. 27, 2008).

secret.[110] The presumption created can only be rebutted by clear and convincing evidence that the owner of the trade secret did not take reasonable efforts to maintain the secrecy of the information.[111]

Misappropriation of a Trade Secret. *Misappropriation* is defined in the statute as:

> The disclosure or use of a trade secret of another without express or implied consent by a person who, at the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was (1) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (2) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.[112]

The elements of a claim for misappropriation of a trade secret are:

1. a valuable commercial design;
2. a confidential relationship between the party asserting trade secret protection and the party that disclosed the information; and
3. the key features of the design that were the creative product of the party asserting protection.[113]

For example, where an individual leaves their job at one company, becomes employed by another company, and utilizes trade secrets of the first company in performing services for the benefit of the subsequent employer, misappropriation has occurred.[114] When an employer has demonstrated that it possessed a trade secret and that the former employee is using the trade secret in breach of an agreement, in violation of a duty of confidentiality, or as a result of discovery by improper means, the employer has likely set forth evidence sufficient to succeed on its trade secret claim.[115]

The decision in *Frantz v. Johnson*, is instructive on this issue as well. Although there was no direct testimony by customers that they stopped doing business with the employer because of conduct by the former employee, the court held that circumstantial evidence was sufficient to show a misappropriation and use of the trade secret information by the former employee. In that case, the court found the following circumstantial evidence compelling: (1) the employer testified that there were pricing lists missing after the employee left and that sales dropped 40% thereafter; (2) the former employee testified that after she left the employer she sent out faxes and letters to the employer's customers offering "more competitive pricing" from the competitor; (3) phone records indicating over 200 phone calls by the former employee to the new employer after she had been temporarily enjoined from competing; and (4) a customer's testimony that he was contacted by the former employee after the temporary restraining order and instructed to contact the new employer if they needed anything.[116]

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[110] NEV. REV. STAT. § 600A.032.

[111] NEV. REV. STAT. § 600A.032.

[112] NEV. REV. STAT. § 600A.030(2)(c).

[113] *See, e.g., Hutchison v. KFC Corp.*, 809 F. Supp. 68, 71 (D. Nev. 1992).

[114] Las Vegas Novelty, Inc. v. Fernandez, 787 P.2d 772 (Nev. 1990).

[115] *Videotronics, Inc. v. Bend Elecs.*, 564 F. Supp. 1471, 1475 (D. Nev. 1983).

[116] *Frantz v. Johnson*, 999 P.2d 351, 359 (Nev. 2000).

The court in *Frantz* also scrutinized the conduct of the new employer to determine if it acted in a manner that reflected its use of the trade secrets. Again, the court relied on circumstantial evidence where a representative of the new employer told a witness: (1) he intended to compete with the former employer and put it out of business by taking all of its customers; and (2) the testimony of a former employee of the new employer that the same company representative had hired him away from a competitor and asked him to use his knowledge of his former employer's pricing structure and customer base to compete against his former employer.[117]

Remedies for Misappropriation. The Nevada Uniform Trade Secrets Act provides for criminal prosecution and penalties of not less than one year and no more than 10 years in prison, as well as a maximum fine of $10,000 against any "person who, with intent to injure an owner of a trade secret or with reason to believe that his/her actions will injure an owner of a trade secret," does any of the following:

1. steals, misappropriates, takes, or conceals a trade secret or obtains a trade secret through fraud, artifice, or deception;
2. wrongfully copies, duplicates, sketches, draws, photographs, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys a trade secret;
3. receives, buys, or possesses a trade secret with knowledge or reason to know that the trade secret was obtained as described in subsection 1 or 2;
4. attempts to commit an offense described in subsection 1, 2, or 3;
5. solicits another person to commit an offense described in subsection 1, 2, or 3; or
6. conspires to commit an offense described in subsection 1, 2, or 3, and one of the conspirators performs an act to further the conspiracy.[118]

Under Nevada law, actual or threatened misappropriation may be enjoined in a civil action.[119] When a former employee has misappropriated trade secrets, injunctive relief prohibiting the former employee from utilizing the trade secrets is appropriate.[120]

Further, under Nevada law, injunctive relief for disclosure of confidential information or trade secrets may also be granted if the disclosure causes irreparable injury and the trade secret owner is able to demonstrate probable success on the merits of its claims.[121] Irreparable injury is defined as disclosure of a trade secret that deprives the trade secret owner of a property interest and allows his competitors to reproduce his work without an equivalent investment of time and money.[122]

Nevada law also states that recovery for monetary damages in a civil action is an available remedy for misappropriation of trade secrets.[123] Damages include any actual loss caused by the misappropriation and

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[117] 999 P.2d at 360.

[118] NEV. REV. STAT. § 600A.035.

[119] NEV. REV. STAT. § 600A.040.

[120] *Lamb W. Inc. v. McCain Foods Ltd.*, 941 F.2d 970, 973 (9th Cir. 1991); *accord MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 522 (9th Cir. 1993).

[121] *Saini v. International Game Tech.*, 434 F. Supp. 2d 913 (D. Nev. 2006).

[122] 434 F. Supp. 2d at 919.

[123] NEV. REV. STAT. § 600A.050(1).

any unjust enrichment that is not taken into account in computing the loss.[124] The court in *Frantz* held that compensatory damages need not be shown with mathematical exactitude, but that expert testimony that is not speculative but that is based on facts known to the expert will be sufficient.[125] However, the *Frantz* court stated that damages must be related to the period of time in which the court finds that the misappropriated trade secret was actually being used in unfair competition and was having an effect on the former employer's business. As an alternative to actual damages and unjust enrichment, the statute allows for the recovery of a reasonable royalty for the unauthorized disclosure or use of the trade secret.[126]

Exemplary or punitive damages not to exceed twice the amount of actual damages or reasonable royalty awarded are available if the misappropriation or disregard of the rights of the owner of the trade secret is found to be willful, wanton or reckless.[127] Reasonable attorneys' fees may be awarded to the employer in a trade secret action if the misappropriation is found to be willful and malicious or if the employee makes a bad faith motion to terminate an injunction.[128] However, if the court finds that the claim of misappropriation made by the employer was in bad faith, or that the employer resists a motion to terminate an injunction in bad faith, the employer is subject to an award of reasonable attorneys' fees.[129]

While the Nevada Uniform Trade Secrets Act preempts tort and restitutionary state law claims, the Act does not preclude contractual remedies, whether or not based upon the misappropriation of a trade secret, or other civil remedies that are not based upon the misappropriation of a trade secret.[130] Thus, an employer may still seek available contract damages against a former employee who breaches contractual obligations (such as a noncompete or confidentiality agreement) and the covenant of good faith and fair dealing that is inferred into every contractual agreement.[131]

In addition, an emerging theory for restricting employees from unfairly competing with their former employers is that by doing so they may be breaching fiduciary duties owed to the employer. Based on the holding in *Frantz v. Johnson*, however, the Nevada Supreme Court has stated that no tort claim for breach of fiduciary duty may be brought where the alleged breach involves the misappropriation of a trade secret.[132] Therefore, unless the breach of fiduciary duty is based on conduct other than the misappropriation of a trade secret as defined by the Nevada Uniform Trade Secrets Act, such a claim is precluded by section 600A.090. It should be noted that a cause of action for breach of the implied covenant of good faith and fair dealing is not preempted by the Uniform Trade Secrets Act because the covenant is found in every Nevada contract.[133]

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[124] NEV. REV. STAT. § 600A.050(1).

[125] *Frantz v. Johnson*, 999 P.2d 351, 360 (Nev. 2000).

[126] 999 P.2d at 360.

[127] NEV. REV. STAT. § 600A.050(2).

[128] *Frantz*, 999 P.2d at 361 (citing NEV. REV. STAT. § 600A.060).

[129] NEV. REV. STAT. § 600A.060.

[130] NEV. REV. STAT. § 600A.090(2).

[131] *Frantz v. Johnson*, 999 P.2d 351, 357 (Nev. 2000).

[132] 999 P.2d at 358 n.3.

[133] 999 P.2d at 358 n.4; *Custom Teleconnect, Inc. v. International Tele-Servs., Inc*., 254 F. Supp. 2d 1173, 1180 (D. Nev. 2003).

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Nevada law regulates employee inventions and ideas. Under Nevada law, except as otherwise provided in an express written agreement, "an employer is the sole owner of any patentable invention or trade secret development by his or her employee during the course and scope of employment" that directly relates to the work performed.[134]

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

Table 5. Federal Posting & Notice Requirements

Poster or Notice	Notes
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[135]
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[136]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[137]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[138]

[134] NEV. REV. STAT. § 600.500.

[135] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[136] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[137] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[138] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[139]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[140]
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[141]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[142]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[143] The second page includes reference to government contractors.

[139] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[140] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[141] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[142] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[143] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[144]
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[145]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[146]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[147]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[148]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster

[144] 41 C.F.R. §§ 60-300.44, 60-741.44.

[145] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[146] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

[147] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[148] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[149]
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[150]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[151] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[152]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the

[149] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[150] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[151] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

[152] 29 C.F.R. § 13.5.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[153]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where accessible to employees, summarizing the applicable minimum wage rate and other required information.[154]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Domestic Violence Victim's Bulletin	The Labor Commissioner publishes a bulletin setting forth the rights granted under the domestic violence leave statute. All employers must post the bulletin in a conspicuous location in each of the employer's workplaces.[155]
Fair Employment Practices: Pregnant Workers' Fairness Act	Employers with 15 or more employees must post notice of the employee's rights under the Pregnant Workers' Fairness Act in a conspicuous location in the workplace.[156]
Kin Care Leave	Employers must obtain and post the Labor Commissioner's bulletin that sets forth an explanation of the provisions of the law in a conspicuous location in each workplace maintained by the employer. The bulletin may be included in any printed abstract posted by the employer as required under state law.[157]

[153] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[154] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

[155] NEV. REV. STAT. § 608.0198. This poster is available at: http://labor.nv.gov/Employer/Employer_Posters/.

[156] NEV. REV. STAT. § 613. This poster is available at https://cms.detr.nv.gov/Content/Media/Nevada_Pregnant_Workers_Fairness_Act.pdf.

[157] NEV. REV. STAT. § 608.0198(5).

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Nevada Polygraph Testing Notice	All employers must conspicuously post and maintain at the worksite, where notices are customarily posted and read, the "Notice of Limitations Affecting the Application of Lie Detector Tests." The notice informs employees and applicants that employers generally cannot compel an individual to submit to testing.[158]
Unemployment Compensation	All employers must post and maintain, where readily accessible to employees, a notice informing employees about unemployment coverage and how to seek benefits if they become unemployed.[159]
Unemployment Compensation: Job Training	Employers must post and maintain notices prepared by the Department of Employment, Training, and Rehabilitation, which are prepared by the Department concerning job training or employment programs. The Labor Commissioner will make the notices available to all private employers. Employers must post these notices in a conspicuous location at the place of employment where notices to employees and applicants for employment are customarily posted and read.[160]
Wages, Hours & Payroll: Annual Daily Overtime Bulletin	All employers must conspicuously post and maintain on the premises an approved abstract of the overtime law, which summarizes employees' entitlement to overtime.[161]
Wages, Hours & Payroll: Annual Minimum Wage Bulletin	All employers must conspicuously post and maintain on the premises an approved abstract of the minimum wage law, which summarizes employees' entitlement to wages.[162]
Wages, Hours & Payroll: Rules to be Observed by Employers	All employers must conspicuously post an approved abstract—"Rules to be Observed by Employers"—that summarizes certain wage and hour laws, including those governing meal and rest breaks, wage payments, and uniforms.[163]

[158] NEV. REV. STAT. § 613.460. This poster is available at http://business.nv.gov/Resource_Center/Workplace_Poster_Requirements/.

[159] NEV. REV. STAT. § 612.455. This poster and other materials are available at http://ui.nv.gov/ESSHTML/ui_forms.htm. It is available in English at https://ui.nv.gov/PDFS/Notice_To_Employees_ENG.pdf and in Spanish at https://ui.nv.gov/PDFS/Information_for_Unemployed_Worker_SP.pdf.

[160] NEV. REV. STAT. § 232.933.

[161] NEV. REV. STAT. § 608.013. This poster is available at http://labor.nv.gov/Wages/Minimum_Wage_Bulletins/.

[162] NEV. REV. STAT. § 608.013. This poster is available at http://labor.nv.gov/Wages/Minimum_Wage_Bulletins/.

[163] NEV. REV. STAT. §§ 608.013, 608.090; NEV. ADMIN. CODE § 608.360. This poster is available at http://business.nv.gov/Resource_Center/Workplace_Poster_Requirements/.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Wages, Hours & Payroll: Wage Payment Notification	All employers must post and maintain, in at least two conspicuous places where it will be seen by employees, a notice in plain type informing employees of the designated regular paydays and the place of payment.[164]
Wages, Hours & Payroll: Paid Leave Law	The state labor department must require employers to post the state-created bulletin in a conspicuous location in each workplace maintained by an employer.[165]
Workers' Compensation	All employers must conspicuously post and maintain at the worksite a notice summarizing the workers' compensation law and identifying the employer's insurer. The notice must include the insurer's name, business address, and telephone number, as well as the name, business address, and telephone number of its nearest adjuster. Employers can use a template (Form D-1) available from the state. This posting must also include any applicable definition of employee and independent contractor as defined in the state Industrial Insurance statutes.[166]
Workplace Safety: Emergency Phone Numbers	All employers must conspicuously post a sheet that lists the exact address of the worksite and phone numbers of physicians, hospitals, etc.[167]
Workplace Safety: Job Safety & Health Protection On the Job	All employers must prominently post in the workplace this approved poster, which summarizes the state health and safety law.[168]
Workplace Safety: No Smoking Signs	Generally speaking, smoking is prohibited within indoor places of employment in Nevada. (Numerous exceptions exist to the general ban, including for bars and casinos.) Employers must post "No Smoking" signs conspicuously at entrances to workplaces.[169]

[164] NEV. REV. STAT. §§ 608.080, 608.090; NEV. ADMIN CODE § 608.135. Employers must create their own form to satisfy this posting requirement.

[165] NEV. REV. STAT. § 608.0197.

[166] NEV. REV. STAT. § 616A.490. This poster is available at http://dir.nv.gov/WCS/Workers__Compensation_Forms_and_Worksheets/, specifically at http://dir.nv.gov/uploadedFiles/dirnvgov/content/WCS/D-1.pdf.

[167] NEV. REV. STAT. § 618.295(5). This poster is available at https://business.nv.gov/uploadedFiles/business.nv.gov/content/Business/NV OSHA (Emergency Numbers).pdf.

[168] NEV. REV. STAT. §§ 618.375, 618.675. This poster is available at http://business.nv.gov/Resource_Center/Workplace_Poster_Requirements/. It is available in English at http://business.nv.gov/uploadedFiles/business.nv.gov/content/Business/NV OSHA (English).pdf and in Spanish at http://business.nv.gov/uploadedFiles/business.nv.gov/content/Business/NV OSHA (Spanish).pdf.

[169] NEV. REV. STAT. § 202.2491.

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements

Records	Notes	Retention Requirement
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[170]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[171]	At least 1 year from the date of the personnel action to which any records relate.
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[172]	For the full period the plan or system is in effect, and for at least 1 year after its termination.

[170] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[171] 29 C.F.R. § 1627.3(b).

[172] 29 C.F.R. § 1627.3(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[173]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[174]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[175]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner;	At least 3 years following the date on which the polygraph examination was conducted.

[173] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[174] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[175] 29 C.F.R. § 1602.7.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[176]	
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[177]	At least 6 years after documents are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[178]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[179]	At least 2 years.
Fair Labor Standards Act	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:*	3 years from the last day of entry.

[176] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[177] 29 U.S.C. § 1027.

[178] 29 C.F.R. § 1620.32(a).

[179] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(FLSA): Payroll Records	• full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[180] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips;	

[180] 29 C.F.R. §§ 516.2, 516.5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[181]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[182]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms;	At least 3 years from the last effective date.

[181] 29 C.F.R. § 516.28.

[182] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[183]	
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[184]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the	At least 3 years.

[183] 29 C.F.R. § 516.5.

[184] 29 C.F.R. § 516.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing	

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[185]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[186]	At least 4 years after the date the tax is due or paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[187]	3 years after the date of hire or 1 year following

[185] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

[186] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[187] 8 C.F.R. § 274a.2.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[188]	Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[189]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[190]	As long as it is in effect and at

[188] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[189] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[190] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[191]	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used.	At least 30 years.

[191] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Exceptions to this requirement include: • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[192]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[193]	Duration of employment plus 30 years.

[192] 29 C.F.R. § 1910.1020(d).

[193] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[194]	At least 30 years.
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[195]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[196]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later."

[194] 29 C.F.R. § 1910.1020(d).

[195] 29 C.F.R. §§ 1904.33, 1904.44.

[196] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[197]	If the contractor has fewer than 150 employees or does not have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and	Until final disposition of the complaint, compliance review or action.

[197] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[198]	
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[199]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be	During the course of the covered contract as well as after the end of the contract.

[198] 41 C.F.R. §§ 60-1.12, 60-741.80.

[199] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[200]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and	At least 3 years after the work.

[200] 29 C.F.R. § 13.25.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• worker or employee employed in conjunction with the project.[201]	
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[202]	At least 3 years from the completion of the work records containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[203]	At least 3 years from the last date of entry.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements.

[201] 29 C.F.R. § 5.5.

[202] 29 C.F.R. § 4.6.

[203] 41 C.F.R. § 50-201.501.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Domestic Violence Leave	Employers must maintain a record of leave used by each employee under this law. Records must be made available for inspection by the Nevada Labor Commissioner. Employer must exclude the names of the employees from the record unless the request for a record is for the purposes of an investigation.[204]	2 years.
Paid Leave	An employer must maintain a record of the receipt or accrual and use of paid leave. Note: The law was amended to require that employers provide four hours of leave for receiving a COVID-19 vaccine. The amended law requires employers to maintain a record of the receipt or accrual and use of paid leave for the vaccine for a one-year period. This amendment expires on December 31, 2023.[205]	1 year.
Polygraph Examinations	Nevada imposes strict rules regarding when an employee may be asked to submit to a polygraph test. When such tests are provided "in connection with an ongoing investigation involving economic loss or injury to the employer's business," the employer must obtain and keep a written statement signed by the subject employee, describing the basis of the employer's reasonable suspicion that the employee was involved in the incident underlying the loss or injury.[206]	3 years.
Public Works Contracts	*Contractors and subcontractors engaged on public works must keep accurate records, for each worker employed in connection with the public work. Such records must include, for each employee:* • name and occupation; • gender and ethnicity, if the employee voluntarily agreed to specify that information; or if the employee declined to provide that information, the record should so indicate; • whether the worker has a driver's license or identification card; and	None specified.

[204] NEV. REV. STAT § 608.0198.

[205] NEV. REV. STAT. § 608.0197 (5).

[206] NEV. REV. STAT. § 613.510.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• actual per diem, wages, and benefits paid to each worker.[207] *If an employee has a driver's license or identification card, a separate record must be kept of:* • which jurisdiction issued the license or card; and • the driver's license or identification card number. This record will be kept confidential from the public. Records must be provided to the awarding body on a monthly basis. *In addition, upon request, the awarding body may examine the certified payroll reports of a contractor or subcontractor, including:* • records or other data concerning payroll; • verification of registration of apprentices; and • evidence of payments to fringe benefit plans.[208]	
Recall for Hospitality Employers	An employer must retain the following records after an employee is laid off: • the full legal name of the employee; • the job classification of the employee at the time of separation; • the date of hire of the employee; • the last known address, electronic mail address, and telephone number of the employee; • a copy of the written notice regarding the layoff; and • records of each offer made by the employer to the employee including, without limitation, the date and time of each offer.[209]	At least 2 years after the employee was laid off. The two years is measured from the date of the written notice provided by the employer to the laid-off employee.
Workplace Safety: Records	Nevada employers are required to comply with Fed-OSHA's record-keeping requirements.[210]	See the federal requirements (Table 7).

[207] NEV. REV. STAT. § 338.070.

[208] NEV. ADMIN. CODE §§ 338.094, 338.096.

[209] NEV. REV. STAT. § 613.

[210] NEV. REV. STAT. §§ 618.295(8), 618.378.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Workplace Safety: Written Safety Program	*Employers with more than 10 employees must establish a written safety program and keep written records of:* • safety and health issues discussed at safety committee meetings (if a committee is required, depending on employer size and industry); • attendance of those persons who participate in such meeting; and • attendance of employees participating in training programs.[211]	3 years.
Unemployment Insurance	*All employers must keep, maintain, and preserve true and accurate records, for each employee. These records must include:* • beginning and ending dates for each pay period; • total wages payable for each pay period and date wages are paid; • name and Social Security number; • rate of pay; • date of hire, rehire, or return to work after temporary layoff; • date and reason for separation from employment; • state in which services are performed; and • the dates worked and total amount of wages earned in each period, and date on which wages are paid, with separate entries for money wages, cash value of other remuneration, and special payments.[212]	At least 4 years after the date the contributions to which they relate become due, or are paid, whichever is later. If an employer believes that it is not subject to the unemployment compensation law, records should be kept for 4 years after the period to which they relate.
Wages, Hours & Payroll: General	*Every employer must keep and maintain records of employee wages, including, for each employee during 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;	2 years after entry of the information in the record.

[211] NEV. REV. STAT. § 618.383; NEV. ADMIN. CODE § 618.542.

[212] NEV. REV. STAT. § 612.260; NEV. ADMIN. CODE § 612.020.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total hours employed in the pay period by noting number of hours per day; and • date of payment.[213]	
Wages, Hours & Payroll: Sub-Minimum Wages for Certain Workers with Disabilities	*Employers certified to employ workers with disabilities at below the minimum wage must keep records for each such employee, including:* • verification of the disability, and in cases where the disability cannot be readily observed, appropriate medical or psychiatric reports; • evidence of the productivity of the worker; • prevailing wage paid workers without disabilities, who are employed in industry in the locality for essentially the same kind of work using similar methods and equipment; and • production standards and supporting documentation for workers without disabilities for the job being performed by the worker with a disability.[214]	None specified.
Wages, Hours & Payroll: Paid Leave Law	An employer must maintain a record of the receipt or accrual and use of paid leave.[215]	1-year period following the entry of such information.
Workers' Compensation	*An employer that is self-insured or insured by a private carrier must maintain records as necessary for, and make all such books and records available for, the administrator to determine:* • the accuracy of the payroll; and • the number of persons employed.[216] In addition, if an employer's employees receive tips, the employer must make and retain a copy of each employee's report to the Internal Revenue Service listing the amount of the employee's tips.[217]	None specified.

[213] NEV. REV. STAT. § 608.115.

[214] NEV. ADMIN. CODE § 608.355.

[215] NEV. REV. STAT. § 608.0197.

[216] NEV. REV. STAT. § 616A.485.

[217] NEV. REV. STAT. § 616B.227.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

3.1(c)(ii) *State Guidelines on Personnel Files*

In Nevada, employees and former employees have the right to inspect and receive a copy of their employment records.[218] Records of employment include records kept by the employer containing information used by it to determine qualifications and disciplinary action. Current employees must be afforded a reasonable opportunity during usual business hours to inspect their personnel files or receive copies of the file upon request. Upon termination of employment, an employer must allow a former employee the opportunity to inspect their file within 60 days after termination. An employer is not required to permit access to:

- confidential reports from previous employers or investigative agencies,
- other confidential investigative files concerning the employee or the investigation, or
- arrest or conviction records of that employee.[219]

If requested, the employer must also provide a copy of the personnel file. An employer may charge employee or former employee the actual cost of providing copies.[220] Copies of the file do not need to be provided unless the employee or former employee was employed for more than 60 days.

An employee may submit a reasonable written explanation in direct response to any entry in the records regarding the employee. The employer may set forth reasonable requirements for the length and format of such explanations. The response must be maintained in the employment records. If an employee disagrees with information in the record, the employee can notify the employer in writing. If the employer finds that the employee is correct, the employer must change the information.[221] An employer is not permitted to maintain a secret record of employment regarding an employee.

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see **1.3**.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

For information on state law related to background screening of current employees, see **1.3**.

[218] NEV. REV. STAT. § 613.075.

[219] NEV. REV. STAT. § 613.075.

[220] NEV. REV. STAT. § 613.075.

[221] NEV. REV. STAT. § 613.075.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

While Nevada does not have a general statute regulating alcohol and drug testing procedures for job applicants or employees in the private sector, testing may become necessary with respect to administering industrial insurance benefits. In that case, testing for the use of alcohol or a controlled substance may only be performed by a properly-licensed laboratory.[222] If an employer requires an employee to submit to a drug screening test within the first 30 days of the individual's employment, the employee has the right to submit to an additional screening test, at their own expense, to rebut the results of the initial test. The employer must accept and give appropriate consideration to the results of the additional screening test. Exceptions apply.[223]

3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[224]

3.2(c)(ii) *State Guidelines on Marijuana*

Under Nevada law, it is generally legal to possess or use marijuana for recreational purposes and medical purposes.

With respect to recreational marijuana use, an employer can implement a workplace policy prohibiting or restricting actions or conduct otherwise permitted under the law.[225]

With respect to the use of medical marijuana, existing law does not require any employer, public or private, to allow the use of medical marijuana in the workplace. Although employers are not required to allow the use of medical marijuana, the medical needs of an employee engaged in the medical use of marijuana should be reasonably accommodated provided that such accommodation would not pose a threat of harm, undue hardship, or prohibit the employee from fulfilling any and all of the employee's job responsibilities.[226] In addition, an employer's group health insurance plan is not required to provide coverage related to medical marijuana use. An insurance, organization for managed care, or any other person or entity proving medical or health care coverage service is not required to pay for or reimburse a person for costs associated with the medical use of marijuana.[227]

An employer cannot fail or refuse to hire a prospective employee because the individual submitted to a screening test – a test of a person's blood, urine, hair or saliva to detect the general presence of a

[222] NEV. REV. STAT. § 616C.230(2)(b).

[223] NEV. REV. STAT. § 613.132(4)(a)-(c).

[224] 21 U.S.C. §§ 811-12, 841 *et seq*.

[225] NEV. REV. STAT. § 678D.510.

[226] NEV. REV. STAT. § 678C.850.

[227] NEV. REV. STAT. § 678C.850.

controlled substance or any other drug – and the results indicate the presence of marijuana.[228] The restriction does not apply if the individual is applying for a position:

- as a firefighter;[229]
- as an emergency medical technician;[230]
- that requires an employee to operate a motor vehicle and for which federal or state law requires the employee to submit to screening tests; or
- that, in the determination of the employer, could adversely affect others' safety of others.

If an employer requires an employee to submit to a screening test within the first 30 days of employment, the employee has the right to submit to an additional screening test, at the individual's expense, to rebut the initial screening test results. An employer must accept, and five appropriate consideration, to such a screening test's results.

All the above drug-testing related provisions do not apply:

- to the extent they are inconsistent or otherwise in conflict with provisions of an employment contract or collective bargaining agreement, or federal law; and
- to a position of employment funded by a federal grant.

The state supreme court held that because recreational marijuana is illegal under federal law it does not constitute a "lawful" product under a Nevada employment law statute,[231] and because the recreational marijuana law "authorizes employers to prohibit or restrict recreational marijuana use by employees, an employee discharged after testing positive at work based on recreational marijuana use does not have a common-law tortious discharge claim."[232] Later, the state supreme court held that a private right of action exists under the medical marijuana law if an employer does not reasonably accommodate an employee's off-site and outside of working hours use of marijuana, but they would not have a private right of action for the same conduct under various employment torts such as tortious discharge or negligent hiring, training, or supervision; and, like with its holding concerning recreational marijuana, the court held that employees could not pursue a "lawful" product claim based on their medical marijuana use.[233]

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to

[228] NEV. REV. STAT. § 613.132.

[229] NEV. REV. STAT. § 450B.071.

[230] NEV. STAT. STAT. § 450B.065.

[231] *See* NEV. REV. STAT. § 613.333.

[232] *Ceballos v. NP Palace, L.L.C.*, 514 P.3d 1074 (Nev. 2022).

[233] *FreemanExpositions, L.L.C. v. Eighth Judicial Dist. Court*, 520 P.3d 803 (Nev. 2022).

include the value of the identity protection services in the employee's gross income and wages.

- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[234]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[235]

3.2(d)(ii) *State Data Security Breach Guidelines*

Under Nevada's data security statute,[236] when a covered entity discovers or is notified of a breach of the security system where unencrypted personal information was, or is reasonably believed to have been acquired by an unauthorized person, notice to the affected persons is required.

Coverage & Exceptions. A covered entity is any type of business entity or association that owns or licenses computerized data which includes personal information. However, certain covered entities are not required to provide notice as set forth in the statute if notification procedures are already in place, including:

- a covered entity that maintains and complies with a notification procedure as part of an information security policy for the treatment of personal information is compliant with the data security statute. The policy must afford the same or greater protection to the affected individuals as the statute; and
- any person or entity that is subject to and complies with the notification requirements of the Gramm-Leach-Bliley Act.[237]

Personal information means an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number;
- driver's license or driver authorization card number or identification card number;

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[234] I.R.S. Announcement 2015-22, Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims (Aug. 14, 2015), available at https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[235] I.R.S. Announcement 2015-22, Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims (Aug. 14, 2015).

[236] NEV. REV. STAT. §§ 603A.020 *et seq*.

[237] NEV. REV. STAT. § 603A.220(5).

- any account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial accounts;
- medical identification number or a health insurance identification number; or
- a username, unique identifier, or email address in combination with a password, access code, or security question and answer that would permit access to an online account.[238]

The following categories of data are excluded from the definition of personal information:

- data that is encrypted;
- the last four digits of a Social Security number, driver's license number, or a driver authorization card number; and
- information that is lawfully available publicly via federal, state, or local governmental records.[239]

Content & Form of Notice. A covered entity may provide the required notice in one of the following formats:

- written notice;
- electronic notice, if it is compliant with the federal e-sign act; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $250,000;
  - the affected class of persons to be notified exceeds 500,000; or
  - the covered entity does not have sufficient contact information.[240]

Substitute notice must consist of all of the following:

- electronic mail notice when the covered entity has an electronic mail address for members of the individuals;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by statewide media.[241]

Timing of Notice. Notice must be given in the most expedient time possible and without unreasonable delay. However, notification may be delayed if:

- A law enforcement agency indicates that notification will impede a criminal investigation.
- A covered entity needs time to determine the scope of the breach.

[238] NEV. REV. STAT. § 603A.040.

[239] NEV. REV. STAT. § 603A.040.

[240] NEV. REV. STAT. § 603A.220(4).

[241] NEV. REV. STAT. § 603A.220(4).

- A covered entity needs time to restore the reasonable integrity of the data system.[242]

Additional Provisions. In addition to notifying affected state residents of a data security breach, a covered entity may also be required to notify the credit bureaus. If more than 1,000 individuals at a single time will be notified of a breach, the covered entity without unreasonable delay must notify all nationwide consumer reporting agencies of the content of the notification.[243]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[244] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[245]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[246]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[247]

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[242] NEV. REV. STAT. § 603A.220(1).

[243] NEV. REV. STAT. § 603A.220(6).

[244] 29 U.S.C. § 218(a).

[245] 29 U.S.C. § 206.

[246] 29 U.S.C. §§ 203, 206.

[247] 29 U.S.C. § 3(m)(2)(B).

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 41 in a workweek.[248] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.3(b) *State Guidelines on Minimum Wage Obligations*

Nevada primarily regulates wage and hour matters by statute. The Nevada Administrative Code also contains several wage and hour related regulations. Nevada's wage and hour laws are generally applicable to all "employment of persons in private enterprise" in Nevada.[249] *Employer* is defined as "every person having control or custody of any employment, place of employment or any employee"[250] and an *employee* is a person "in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed."[251] Based on this language, the statute governs all private employment (subject to the various exceptions noted below), regardless of the size of the employer.

3.3(b)(i) *State Minimum Wage*

Under the state constitution, the Nevada minimum wage is $12.00 as of July 1, 2024. Employers must provide written notification of the rate adjustments to each employee and implement the necessary payroll adjustments by July 1st.[252] Previously, up until July 1, 2024, the minimum wage law established a two-tiered minimum wage system: one rate for employees whose employers provide qualifying health benefits ("first tier") and a higher rate if the employer does not provide such benefits, unless the employee is otherwise exempted ("second tier").[253]

3.3(b)(ii) *Tipped Employees*

Unlike under the FLSA, tip credits are not permitted in Nevada.[254] Accordingly, tipped employees receive the regular state minimum wage rate, and tips received by employees in industries where tips or other gratuities commonly occur are simply additional compensation to the employee above and beyond the state minimum wage.

3.3(b)(iii) *Minimum Wage Rates Applicable to Specific Groups*

The Director of the Department of Health and Human Services, after receiving a report from a convened home care employment standards board, may, among other things, adopt rules establishing the minimum wage to be paid to a home care employee.

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[248] 29 U.S.C. § 207.

[249] NEV. REV. STAT. § 608.005.

[250] NEV. REV. STAT. § 608.011.

[251] NEV. REV. STAT. § 608.010.

[252] NEV. CONST., art. 15, § 16.

[253] NEV. CONST., art. 15, § 16A. NEV. REV. STAT. § 608.258 details what it means to provide or not provide health benefits.

[254] NEV. REV. STAT. § 608.160.

3.3(c) *State Guidelines on Overtime Obligations*

Nevada requires payment of an overtime premium of one and one-half times an employee's regular rate when the employee works more than 40 hours in any scheduled week of work.[255] This is identical to the federal overtime requirement. In addition to weekly overtime, however, Nevada also requires payment of overtime where an employee works more than eight hours in any workday, so long as that employee is paid less than one and one-half times the required minimum wage.

Although employers must pay overtime to nonexempt employees for all hours worked in excess of 40 hours in one workweek, employees who are paid at least one and one-half times the state minimum wage are exempt from the eight-hour daily overtime requirement. In addition, the two-tiered minimum wage system impacts an employee's eligibility for overtime. Daily overtime applies if an employee works over eight hours in a workday and is paid less than one-and-a-half times the applicable minimum wage per hour by an employer.

In determining whether weekly or daily overtime is required, it is important to understand the meaning of "week of work" and "workday." The term "week of work" is important because the statute requires the payment of overtime whenever an employee works more than 40 hours in a week of work. *Week of work* is defined as seven consecutive periods of 24 hours that may begin on any day and at any hour of the day.[256] The employer is free to set the workweek and is free to change it from time to time. The workweek, however, may not be manipulated to avoid the payment of overtime.

For purposes of the requirement that overtime be paid to an employee who works more than eight hours in a workday, *workday* is defined to mean a period of 24 consecutive hours that begins when the employee begins work.[257] The Nevada Labor Commission interprets this statute to mean that the workday can change each day if the employee begins work at a different hour. This may require an employer to pay daily overtime even where the employee does not work more than eight hours in any calendar day. This is most often true where employees change shifts or have shifts with varying hours. For example, an employee who begins work on day one at 9:00 A.M. and works eight hours that day would be owed overtime if the employee were to begin work at 8:00 A.M. on day two. This is the case even if the employee worked only eight hours on day two also as the statute does not use a calendar day but defines day as a 24-hour period. Under this definition of workday, the employee worked nine hours on the first day: eight hours on day one and one additional hour on day two. The first workday did not end until 9:00 A.M. on day two. Because the employee started work at 8:00 A.M., the employee is credited with having worked nine hours on day one.

Nevada law also permits the employer and employees to agree to a schedule of 10 hours per day for four calendar days in a workweek without incurring overtime.[258] While there is no requirement that the agreement be in writing, it is advisable to do so. Note that if an employee does not work a scheduled "4 10s" workweek due to a decision made by the employee or for reasons within the employee's control or to the employee's benefit, the employer is only required to pay the employee's regular wage for the hours the employee actually worked during that work week.[259] If the employee is unable to work a "4 10s"

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[255] NEV. REV. STAT. § 608.160(1)(a).

[256] NEV. REV. STAT. § 608.0123.

[257] NEV. REV. STAT. § 608.0126.

[258] NEV. REV. STAT. § 608.160(1)(b).

[259] Nevada Dep't of Bus. & Indus., Office of the Labor Comm'r, Advisory Op. 2013-04 (July 25, 2013), *available at*

schedule as a result of action by the employer or for reasons outside of the employee's control, then the employer is required to pay overtime for any day during the work week where the employee worked more than eight hours.[260]

The Director of the Department of Health and Human Services, after receiving a report from a convened home care employment standards board, may, among other things, adopt rules concerning payment of overtime to a home care employee.

3.3(d) *State Guidelines on Overtime Exemptions*

Like federal law, Nevada law contains exclusions and exemptions for a range of employees. The state overtime provisions do not apply to the following categories of workers::

- employees who are not covered by the minimum wage provisions of Nevada Revised Statutes section 608.250 (see **3.3(b)(iii)**);
- outside buyers;
- certain retail or service business employees;
- executive, administrative, or professional employees;
- employees covered by collective bargaining agreements that provide for overtime;
- drivers, drivers' helpers, loaders, and mechanics for motor carriers subject to the federal Motor Carrier Act;
- employees of a railroad;
- employees of a carrier by air;
- 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;
- certain mechanics; and
- certain domestic workers who reside in a household.[261]

http://labor.nv.gov/uploadedFiles/labornvgov/content/About/A%20O%204%20Day%2010%20Hour%20Shifts%20(revised).pdf.

[260] Nevada Dep't of Bus. & Indus., Office of the Labor Comm'r, Advisory Op. 2013-04.

[261] NEV. REV. STAT. § 608.018(3); NEV. REV. STAT. § 232.933.

3.3(d)(i) *Executive, Administrative & Professional Exemptions*

Nevada has expressly adopted the federal FLSA regulations regarding the exemptions from overtime for executive, administrative, and professional employees.[262]

3.3(d)(ii) *Commissioned Sales Exemption*

Overtime requirements do not apply to employees in a retail or service business if:

- their regular rate is more than one and one half times the state minimum wage; and
- more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than one month.[263]

3.3(d)(iii) *Outside Sales Exemption*

Nevada does not have an overtime exemption for outside sales employees.[264]

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[265] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[266]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

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[262] NEV. REV. STAT. § 608.018; NEV. ADMIN. CODE § 608.125.

[263] NEV. REV. STAT. § 608.018.

[264] *See* NEV. REV. STAT. § 608.018.

[265] 29 C.F.R. § 785.19.

[266] 29 C.F.R. § 785.18.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[267] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[268] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[269] Exemptions apply for smaller employers and air carriers.[270]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[271] Lactation is considered a related medical condition.[272] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[273] For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

Meal Periods. In Nevada, employees who work eight continuous hours must be permitted a meal period of at least 30 minutes. Any period of less than 30 minutes is not deemed to interrupt a continuous period of work.[274] The statute does not specify the point during a shift at which this meal period must be provided.

Meal Period Waiver. An employee may voluntarily agree to forego any meal period. The employer bears the burden of proving the existence of any such agreement.[275] This means that employers are well advised to obtain a written acknowledgment from any employee that foregoes a break or meal period that they did so voluntarily.

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[267] 29 U.S.C. § 218d.

[268] 29 U.S.C. § 218d(b)(2).

[269] 29 U.S.C. § 218d(a).

[270] 29 U.S.C. § 218d(c), (d).

[271] 42 U.S.C. § 2000gg–1.

[272] 29 C.F.R. § 1636.3.

[273] 29 C.F.R. § 1636.3.

[274] NEV. REV. STAT. § 608.019.

[275] NEV. ADMIN. CODE § 608.145.

Rest Periods. Nevada employers must authorize and permit ten-minute rest breaks for every four hours worked or major fraction thereof.[276] However, employees whose total daily work time is less than three and a half hours need not be given rest periods. Authorized rest periods count as hours worked.[277] Rest periods, insofar as practicable, must be taken in the middle of each work period.[278]

Unless exempt, an employee that works at least three and a half continuous hours is permitted the following number of breaks:

Table 9. Number of Employee Breaks Required	
Hours Worked	**Number of Breaks Required**
At least 3½ hours and less than 7 hours	One 10-minute rest period
At least 7 continuous hours and less than 11 continuous hours	Two 10-minute rest periods
At least 11 continuous hours and less than 15 continuous hours	Three 10-minute rest periods
At least 15 continuous hours and less than19 continuous hours	Four 10-minute rest periods

An unpaid lunch break is not considered when determining the number of hours worked by an employee.[279]

Exceptions. Certain employees are not subject to the meal and rest period requirements. The provisions do not apply to employees whose terms and conditions of employment are governed by a collective bargaining agreement.[280] The provisions also do not apply in situations where only one person is employed at a particular place of employment (as compared to one employee in a specific location, while other employees are present at the place of employment), *e.g.*, one person at a convenience store, one security guard at an apartment complex.[281]

3.4(b)(ii) *State Meal & Rest Periods for Minors*

There are no independent meal period requirements for minor employees in Nevada—the adult standards apply.

3.4(b)(iii) *State Enforcement, Remedies & Penalties*

An employer that violates the meal and rest period provisions commits a misdemeanor. In addition to any other remedy or penalty, the Labor Commissioner may impose an administrative penalty of up to $5,000

[276] NEV. REV. STAT. § 608.019(2).

[277] NEV. REV. STAT. § 608.019(2).

[278] NEV. REV. STAT. § 608.019(2).

[279] NEV. REV. STAT. § 608.019; NEV. ADMIN. CODE § 608.145.

[280] NEV. REV. STAT. § 608.019.

[281] NEV. REV. STAT. § 608.019; Op. Nev. Att'y Gen. No. 96-25 (Sept. 9, 1996), *available at* http://ag.nv.gov/uploadedFiles/agnvgov/Content/Publications/opinions/1996_AGO.pdf.

for each violation.[282] The statute does not afford an employee a private right of action to enforce the meal and rest break provisions.[283]

3.4(b)(iv) *Lactation Accommodation Under State Law*

Under Nevada law, an individual has the right to breast feed in public or any other place where the individual is permitted.[284] Although the law does not specifically mention employers, it can be construed to include places of employment.

In addition, an employer is required to provide an employee who is the mother of a child under one year of age with:

1. reasonable break time, with or without compensation, for the employee to express breast milk as needed; and
2. a place, other than a bathroom, that is reasonably free from dirt or pollution, which is protected from the view of others and free from intrusion by others where the employee may express breast milk.[285]

Though the general rule is that lactation breaks may be paid or unpaid, special rules apply in the context of a collective bargaining agreement. If break time is required to be compensated pursuant to a collective bargaining agreement that governs the employee's employment with the employer, any break time taken pursuant to this law must be compensated.[286]

If an employer determines that complying with these lactation accommodation requirements will cause an undue hardship, when considering the employer's size, financial resources, nature and business structure, the employer may meet with the employee to agree upon a reasonable alternative. If the parties are not able to reach an agreement, the employer may require the employee to accept a reasonable alternative selected by the employer.[287]

An employer with fewer than 50 employees is not subject to the lactation accommodation requirements if these requirements would impose an undue hardship on the employer, considering the employer's size, financial resources, nature, and business structure. In contrast to the undue hardship exception applicable to larger employers, these smaller employers are not required to determine and provide a reasonable alternative.[288]

An employer is prohibited from retaliating, or directing or encouraging another person to retaliate, against any employee because that employee has:

- taken break time or used the space provided to express breast milk; or

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[282] NEV. REV. STAT. § 608.195.

[283] *See Busk v. Integrity Staffing Solutions, Inc.*, 713 F.3d 525 (9th Cir. 2013).

[284] NEV. REV. STAT. § 201.232.

[285] NEV. REV. STAT. § 608.0193(1).

[286] NEV. REV. STAT. § 608.0193(2)..

[287] NEV. REV. STAT. § 608.0193(3).

[288] NEV. REV. STAT. § 608.0193(5).

- taken any action to require the employer to comply with the lactation accommodation requirements, including, without limitation, filing a complaint, testifying, assisting or participating in any manner in an investigation, proceeding or hearing to enforce the requirements.[289]

Further, the Nevada Pregnant Workers' Fairness Act requires an employer of 15 or more employees to provide reasonable accommodation for an employee or applicant affected by pregnancy, childbirth, or a related medical condition. The definition of *related medical condition* includes lactation or the need to express breast milk for a nursing child, mastitis, or other lactation-related medical condition. The Act includes providing space in an area other than a bathroom that may be used for expressing breast milk as a reasonable accommodation.[290]

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[291] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[292]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

As discussed in 3.5(a), under federal law the general rule is that all hours worked for the benefit of the employer count as hours worked, with the exception of certain preliminary and post-job activities. Moreover, federal law does not dictate which hours must be compensated, only which hours are counted as work for minimum wage and overtime purposes. There is no such limitation under Nevada wage and hour law. Nevada law simply states that employers are required to pay employees wages "for each hour

[289] NEV. REV. STAT. § 608.0193(4).

[290] NEV. REV. STAT. § 613.

[291] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

[292] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

the employee works."[293] There is no definition of hours worked in the chapter and there is no case law interpreting the statute. Arguably, the statute on its face is broader than federal law.

There are a number of issues considered when determining whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, travel time, and training time. Nevada law addresses the compensability of travel time and training time.

Travel Time. Nevada's wage and hour regulations address the topics of when travel time is considered work time. These regulations provide that travel time is compensable:

- if the travel is between different worksites during a workday; or
- if an employee is transporting another employee on behalf of an employer that offers transportation for the convenience of his employees.[294]

The regulations also state that travel time between an employee's home and work location, regardless of whether the employee works at a fixed location or not, is not compensable.[295]

Training Time. An employer may not require an employee to work without wages during a probationary or break-in period.[296] With respect to specific training courses or on the job training, the regulations provide that training that is required by an employer is considered to be time worked, while training that is required by an agency or entity other than the employer is not work time.[297]

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[298] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[299] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

[293] NEV. REV. STAT. § 608.016.

[294] NEV. ADMIN. CODE § 608.130(2).

[295] NEV. ADMIN. CODE § 608.130(2).

[296] NEV. REV. STAT. § 608.016.

[297] NEV. ADMIN. CODE § 608.130(3).

[298] 29 C.F.R. §§ 570.36, 570.50.

[299] 29 C.F.R. § 570.6.

3.6(b) *State Guidelines on Child Labor*

While the FLSA regulations address varying age groups such as 12-13, 13-14, under 16, and 16-18, Nevada has enacted statutes more specifically concerning the 14-16 age group. Nevada law generally bars children under the age of 14 from all employment so as not to interfere with their schooling, health, and well-being, except where administratively permitted or unless it is with written permission of a district judge or designee. Even if the employment is administratively permitted under the law, it may not be permitted during school hours.[300]

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. Table 10 summarizes the state restrictions on type of employment by age.

Table 10. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under 18	*An employer in Nevada may not hire persons under the age of 18:* • for begging, receiving alms, or in any mendicant occupation; • in any indecent or immoral exhibition/practice; • in any practice or exhibit dangerous or injurious to life, limb, health, or morals; • to work in any area of a casino where there is gaming or where the sale of alcoholic beverages is the primary commercial activity, unless the minor is in the casino area to provide entertainment under employment contract; • as a messenger to any house of prostitution; or • to work in any public dance hall where alcoholic beverages are served.[301]
Under 16	*In addition, children under the age of 16 are barred from occupations deemed "particularly hazardous" or detrimental to their well-being. No child under 16 years of age shall be employed, subjected to, or permitted to work in any capacity for occupations in which the following products or materials are found:* • dangerous or poisonous acids; • manufacture of paints, colors, white lead; • dipping, drying, or packing matches; • manufacture of goods for immoral purposes; • any mine, coal breaker, quarry, smelter, ore reduction works, laundry, tobacco warehouse, or the like; • distillery, brewery, or other establishment where alcoholic liquors are manufactured, bottled, or packed; • any glass furnace, smelter, running or management of elevators, lifts, or dangerous machinery in motion, or erecting or repairing electrical wires;

[300] NEV. REV. STAT. §§ 609.245 to 609.250.

[301] NEV. REV. STAT. § 609.210.

Table 10. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• in or about railroad establishments where dangerous explosives are manufactured, stored, or compounded; • switch tending, gate tending, or track repairing; or • any other employment declared by the labor commissioner to be dangerous to lives and limbs, or injurious to the health of morals of children.[302]

Restrictions on Selling or Serving Alcohol. A person under age 21 may not furnish, sell, serve (including with meals), or solicit the purchase, sale, or service of liquor, or accept liquor or wine shipped into the state.[303] A person under 18 may not distribute promotional materials that include an offer for alcoholic beverages for a business, including, without limitation, a gaming establishment, a saloon, a resort, or a restaurant. This does not prohibit the employment of a person under 18 to distribute a publication that includes an advertisement for the sale of alcoholic beverages which is incident to the publication.[304]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

Nevada law provides that no child under the age of 16 may be employed or permitted to work more than 48 hours in any one week or more than eight hours in any one day—except those employed in the production of a motion picture or those working on a farm.[305] Motion picture is defined as a film to be shown in a theater or on television, a film to be placed on a video disc or tape, an industrial training or educational film, and a commercial for television.[306] Further, while the limitations on the types of employment would seem to indicate that employers might have unlimited flexibility with employing individuals over the age of 17, the statute adds a caveat by providing that in incorporated cities and towns, no person under the age of 18 shall be employed or permitted to work as a messenger distributing goods or messages before 5:00 A.M. or after 10:00 P.M. on any day.[307]

3.6(b)(iii) *State Child Labor Exceptions*

Special rules apply to minors employed in the production of a motion picture and minors working on a farm.[308] Otherwise, Nevada law does not expressly include additional exceptions to the child labor laws.

[302] NEV. REV. STAT. § 609.190.

[303] NEV. REV. STAT. §§ 369.490, 369.100.

[304] NEV. REV. STAT. § 202.057.

[305] NEV. REV. STAT. § 609.240.

[306] NEV. REV. STAT. § 609.185.

[307] NEV. REV. STAT. § 609.230.

[308] NEV. REV. STAT. § 609.240.

3.6(b)(iv) *State Work Permit or Waiver Requirements*

A permit from a district court, juvenile master, referee, or probation officer is required for a minor under age 14 to work in or in connection with any store, shop, factory, mine or any inside employment not connected with farmwork, housework, or employment as a performer in a motion picture.[309]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

An employer found to be in violation of Nevada's child labor laws is guilty of a misdemeanor. While this penalty does not seem as severe as that for violation of a federal child labor provision (up to and including a $10,000 fine), Nevada employers should be familiar with and aware of the state's child labor statutes to ensure compliance.

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[310]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[311]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[312]

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[309] NEV. REV. STAT. § 609.245.

[310] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[311] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

[312] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[313] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[314]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[315] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[316]

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[317]

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[313] 12 C.F.R. § 1005.18; see also Consumer Fin. Prot. Bureau, CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E) (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it? (Sept. 4, 2020), available at https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[314] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[315] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[316] 12 C.F.R. § 1005.18.

[317] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[318]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in **3.7(a)(ii)**, wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[319] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[320] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[321] tools and equipment,[322] and business transportation and travel.[323] Additionally, if an

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[318] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[319] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[320] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[321] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[322] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[323] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[324]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[325]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[326]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[327]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[328]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[329] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[330]

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[324] 29 C.F.R. § 778.217.

[325] 29 C.F.R. § 531.38.

[326] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[327] 29 C.F.R. § 531.40.

[328] 29 C.F.R. § 531.40.

[329] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[330] 29 C.F.R. § 825.213.

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[331]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[332] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[333]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[334]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[335]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[336]

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[331] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[332] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[333] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[334] 29 C.F.R. § 531.36.

[335] 29 C.F.R. § 531.37.

[336] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

Authorized Instruments. Under Nevada law, wages may be paid by cash, negotiable check, or draft, or another form if agreed to in writing, *e.g.*, by direct deposit or payroll card. Paychecks or drafts must be payable on presentation at a bank or business without any charges or fees to the employee, and payable in lawful U.S. money.[337]

Direct Deposit. Mandatory direct deposit is not permitted in Nevada. However, an employer may pay its employees by direct deposit if all the following requirements are met:

- the employee can obtain immediate payment in full;
- at least one free transaction is provided per pay period, and any fees or other charges are prominently disclosed and subject to the employee's written consent;
- the location of payment is easily and readily accessible to the employee;
- there are no other requirements or restrictions that a reasonable person would find to be an unreasonable burden or inconvenience; and
- the use of the electronic payment method is optional at the employee's election.[338]

Payroll Debit Card. An employer may pay employees using a payroll debit card if all the following requirements are met:

- the employee can obtain immediate payment in full;
- the employee receives at least one free transaction each pay period and any fees or charges are prominently disclosed to and subject to the employee's written consent;
- the alternative location of payment is easily and readily accessible to the employee;
- there are no requirements or restrictions that a reasonable person would find to be an unreasonable burden or inconvenience; and
- the payment system is optional.[339]

The initial withdrawal must not require the employee to incur fee. Employers cannot require employees to pay a fee to receive payment. A program that allows employees one withdrawal without fees is permissible if the employee can withdraw all wages. Subsequent fees are acceptable, but should be disclosed in the written agreement.[340]

3.7(b)(ii) *Frequency of Payment Under State Law*

Nevada law requires that employees in private employment be paid at least on a semi-monthly basis. All wages or compensation earned before the first day of the month must be paid no later than 8:00 A.M. on

[337] NEV. REV. STAT. §§ 608.120, 608.130; NEV. ADMIN. CODE § 608.135.

[338] NEV. REV. STAT. § 608.120; NEV. ADMIN. CODE § 608.135.

[339] NEV. ADMIN. CODE § 608.135.

[340] NEV. ADMIN. CODE § 608.135.

the 15th day of the same month. All wages or compensation earned before the 16th day of the month must be paid no later than 8:00 A.M. on the last day of the same month.[341]

With respect to commissions, "the employer shall pay each commission to the employee when the commission becomes payable pursuant to the agreement."[342] Thus, it is important that employers that pay commissions have written agreements clearly spelling out when commissions are payable.

There is an exception to some of the above rules for employers whose principal place of business is located outside of Nevada. If such an employer prepares payroll outside of the state, it may designate one or more days as fixed paydays each month for supervisory employees and employees employed as outside salespersons, or in an executive, administrative, or professional capacity as defined in title 29, section 541 of the Code of Federal Regulations.[343] These frequency of payment requirements also do not apply to employees whose wages are determined by a collective bargaining agreement.[344]

Nevada law also permits the employer and employee to agree to an alternate schedule for payment of wages. The agreement may be either verbal or in writing. The employer may not, however, require the employee to enter into such an agreement as a condition of entering into or remaining in employment.[345]

3.7(b)(iii) *Final Payment Under State Law*

Nevada law governs the timing of the final payment of wages in the case where an employee is terminated or resigns employment. Should an employee resign or quit employment, final wages must be paid by the earlier of the calendar day the employee would have regularly been paid or in seven days, whichever is earlier.[346] Failure to pay final wages within the prescribed time period may result in a statutory penalty.[347] Conversely, the wages of an employee who is discharged or is placed on nonworking status become due and payable immediately.[348] The statute, however, imposes a penalty only if the employer fails to pay the employee who has been discharged or placed on nonworking status within three days after wages or compensation become due.[349] In addition to any other remedy or penalty, the Labor Commissioner may impose an administrative penalty of not more than $5,000 for each violation.[350]

The penalty ascribed for failure to timely pay final wages in either case is that the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit, was placed on

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[341] NEV. REV. STAT. § 608.060(1).

[342] NEV. ADMIN. CODE § 608.120.

[343] NEV. REV. STAT. § 608.060(3).

[344] NEV. REV. STAT. §§ 608.060, 608.070, and 608.080.

[345] NEV. REV. STAT. § 608.060(3).

[346] NEV. REV. STAT. § 608.030; *see also* NEV. ADMIN. CODE § 608.060 (*day* means a calendar day, including any portion of a calendar day, unless otherwise specified); *Evans v. Wal-Mart Stores, Inc.*, 656 F. App'x 882 (9th Cir. 2016) ("We conclude that overtime pay is a form of wages under Nevada law. . . . Overtime pay is also a form of compensation under § 608.040 [Waiting time penalty].").

[347] NEV. REV. STAT. § 608.040(1)(b).

[348] NEV. REV. STAT. § 608.020.

[349] NEV. REV. STAT. § 608.040(1)(a); *see also* Nevada Dep't of Bus. & Industry, Office of the Labor Comm'r, *Frequently Asked Questions – Employers*, *available at* http://labor.nv.gov/About/Frequently_Asked_Questions/Frequently_Asked_Questions_-_About_Us/.

[350] NEV. REV. STAT. § 608.195(2).

nonworking status or was discharged until the wages are paid or for 30 days, whichever is less.[351] The Nevada attorney general has opined that for purposes of determining the statutory penalty, wages, and compensation do not include the payment of vacation, welfare benefits, or travel time.[352]

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

With respect to paystubs, employers must provide itemized wage statements showing the deductions made from the total amount of wages or compensation at the time of payment.[353] The statute does not discuss whether electronic delivery of the wage statement is permitted. In addition, Nevada's mandatory paid leave law requires that, on each payday, an employer must provide an accounting of paid leave hours available for use; employers can use the system they use to pay employees to provide the accounting.[354]

Nevada law also requires every employer to establish and maintain records of wages. The minimum records that must be kept include information regarding gross wage or salary, deductions, the net wage or salary, total hours employed in the pay period noting the number of hours per day, and the date of payment.[355] These records must be kept for a two-year period following the entry of the information.[356]

The statute also requires an employer to give its employees access to the records of wages kept. The information required to be kept must be furnished to the employee within 10 days after the employee submits a request for the record.[357]

3.7(b)(v) *Wage Transparency*

Under the Nevada fair employment practices statute, employers of 15 or more employees are prohibited from discriminating against any employee because the employee has inquired about, discussed, or voluntarily disclosed the employee's wages or the wages of another employee.[358] The prohibition does not apply to an employee who has access to information about the wages of other employees as part of their essential job functions and discloses the information to a person who does not have access to that information, unless the disclosure is otherwise ordered by a court or the state labor commissioner.

An employee alleging a violation of the wage disclosure provisions must first exhaust administrative remedies by filing an administrative complaint with the Nevada Equal Rights Commission within 300 days of the alleged violation. After exhausting administrative remedies, the employee may file a civil action.[359]

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

Once an employer establishes regular paydays and the place of payment, the employer may not change the payday or place of payment unless seven days' notice of the pending change is given to employees

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[351] NEV. REV. STAT. § 608.040(1)(b).

[352] Op. Nev. Att'y Gen. No. 1955-60 (May 16, 1955).

[353] NEV. REV. STAT. § 608.110.

[354] NEV. REV. STAT. § 608.0197.

[355] NEV. REV. STAT. § 608.115(1).

[356] NEV. REV. STAT. § 608.115(3).

[357] NEV. REV. STAT. § 608.115(2).

[358] NEV. REV. STAT. § 613.330.

[359] NEV. REV. STAT. §§ 233.160, 613.430.

that are affected by the change.[360] In the event of a decrease in an employee's rate of pay, the employer must give the employee written notice of the decrease at least seven days before the employee performs any work at the decreased rate. Alternatively, a decrease can occur if employers comply with provisions concerning decreases in a collective bargaining agreement or contract between the employer and employee.[361]

3.7(b)(vii) *Paying for Expenses Under State Law*

Nevada law does not address reimbursement of work expenses except with regard to work uniforms. An employer is required to provide all uniforms or accessories distinctive as to style, color, or material without cost to employees. If a uniform or accessory requires a special cleaning process, and an employee cannot easily launder it, an employer must clean the uniform without cost to an employee.[362] The wage payment regulations define *uniform* to mean "distinctive clothing which an employee of a business is required to wear and which serves as a clear means of identifying the employee with the business."[363]

3.7(b)(viii) *Wage Deductions Under State Law*

In general, it is unlawful for an employer to take unauthorized deductions from an employee's wages. An employer may not pay a lower wage, salary, or compensation than that agreed upon.[364] It is also unlawful for an employer to require an employee to rebate, refund, or return any part of the wage salary or compensation.

Requirements for Deductions. An employer does not need an employee's written authorization to deduct for any amount required by law and any employee contribution to a benefit program such as health insurance or a pension plan.[365] However, an employer cannot deduct from an employee's wages unless:

1. the employer has a reasonable basis to believe that the employee is responsible for the amount being deducted;
2. the deduction is for a specific purpose, pay period, and amount; and
3. the employee voluntarily authorizes the employer, in writing, to deduct the amount from the wages.[366]

An employer cannot use a blanket authorization that was made in advance by the employee to withhold any amount from the wages due the employee.[367]

Permissible Deductions. An employer may deduct from employee wages for dues, rates, or assessments becoming due to any hospital association or to any relief, savings, or other department or association maintained by the employer or employees for the employees' benefit, or other deductions authorized by

[360] NEV. REV. STAT. § 608.060(2).

[361] NEV. REV. STAT. § 608.100.

[362] NEV. REV. STAT. § 608.165.

[363] NEV. ADMIN. CODE § 608.090.

[364] NEV. REV. STAT. § 608.100.

[365] NEV. REV. STAT. § 608.110; NEV. ADMIN. CODE § 608.160.

[366] NEV. ADMIN. CODE § 608.160.

[367] NEV. ADMIN. CODE § 608.160.

written order of an employee.[368] For example, the Nevada Supreme Court has held that such deductions may include amounts equal to cash shortages from an employee's wages.[369]

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Garnishment for Debts. In Nevada, the procedures for garnishments closely follow those of seeking an attachment on real or personal property to recover on a judgment. At the time of the order directing a writ of attachment to issue (or thereafter), the court may order a writ of garnishment to issue, and cause money, credits, debts, etc., in the possession or under the control of any third person (such as an employer) to be attached as security for any judgment on which the plaintiff may recover. No writ of garnishment may issue except on order of the court.[370]

At the time of service of the writ of garnishment, the plaintiff or officer serving the writ must pay the garnishee-employer a fee of $5. If the garnishment fee is not paid, service is deemed incomplete.[371] In addition to the $5 fee, a garnishee is entitled to a fee from the plaintiff of $3 per pay period, not to exceed $12 per month, for each withholding made of defendant's earnings. However, this requirement does not apply to the first pay period in which the defendant's earnings are garnished.[372]

After the garnishee receives and answers interrogatories in writing under oath (or affirmation), the garnishee must file answers within the time required by the writ. If the answers are incomplete and/or not filed, a garnishee can be deemed in default. If the garnishee indicates in answers to interrogatories that the garnishee is the defendant's employer, the served writ of garnishment continues in effect for 180 days or until the amount demanded in the writ is satisfied, whichever occurs earlier.[373]

If an employer, without legal justification, refuses to withhold earnings of a defendant demanded in writing or misrepresents the employee's earnings, the employer may be held liable for the amount of arrearages caused by the employer's refusal to withhold or by the misrepresentation. In addition, the court may order the employer to pay the plaintiff punitive damages in an amount not to exceed $1,000 for each pay period in which the employer has, without legal justification, refused to withhold defendant's earnings.[374]

It is unlawful for an employer to discharge or discipline an employee exclusively because the employer is required to withhold the employee's earnings pursuant to a writ of garnishment.[375] Employers are cautioned to seek legal counsel when any discipline and/or termination is contemplated against an employee subject to a garnishment.

Orders of Support. Once an order of support has been entered by a Nevada court (or has been registered in the state pursuant to the Uniform Family Support Act), the obligor's income payer will receive a notice

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[368] NEV. REV. STAT. § 608.110.

[369] *Coast Hotels & Casinos v. Nevada State Labor Comm'n*, 34 P.3d 546, 549-52 (Nev. 2001).

[370] NEV. REV. STAT. § 31.249.

[371] NEV. REV. STAT. § 31.270.

[372] NEV. REV. STAT. § 31.296.

[373] NEV. REV. STAT. § 31.296.

[374] NEV. REV. STAT. § 31.297.

[375] NEV. REV. STAT. § 31.298.

of the order.[376] An enforcing authority may, by first-class mail, transmit notice to withhold income to an obligor's income payer.[377] Because notice of a support order may be accomplished through other than personal service, an income payer should implement steps to ensure that such notices are not overlooked and that compliance is accomplished. When an income payer is faced with receipt of such a notice, there are certain procedures that must be followed.

An income payer must:

- immediately provide a copy of the order to the obligor-employee;
- withhold the amount stated in the notice from the income due the employee beginning with the first pay period that occurs within 14 days after the date the notice was mailed to the employer and continuing until the enforcing authority notifies to discontinue the withholding;
- deliver the money withheld to the enforcing authority within seven days after the date of each payment of the regular scheduled payroll for the income payer; and
- deduct a fee from the employee and forward it to the State Treasurer.[378]

Additionally, if applicable, an income payer is required to notify the enforcing authority when the employee terminates employment, providing the last known address of the employee and the name of any new employer, if known.[379]

The statute provides that an income payer may deduct $3 from the amount paid the employee each time the income payer makes a withholding.[380] If an income payer receives multiple income-withholding orders with respect to the same employee, the laws of the state of the obligor's principal place of employment govern to establish priorities for withholding and allocating income.[381]

To enforce an order for support, the maximum amount of the aggregate disposable earnings for an employee that is subject to garnishment (unless otherwise specified) may not exceed:

- 50% of the employee's disposable earnings for that week if the employee is supporting a spouse or child other than the spouse or child for whom the order of support was rendered; or
- 60% of the employee's disposable earnings for that week if the employee is not supporting another spouse or child.[382]

If the garnishment is to enforce a previous order of support with respect to a period occurring at least 12 weeks before the beginning of the workweek, the limits that apply become 55% and 65% respectively.[383]

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[376] NEV. REV. STAT. § 130.605.

[377] NEV. REV. STAT. §§ 31A.070, 31A.080.

[378] NEV. REV. STAT. § 31A.075.

[379] NEV. REV. STAT. § 31A.080.

[380] NEV. REV. STAT. § 31A.090.

[381] NEV. REV. STAT. § 130.503.

[382] NEV. REV. STAT. § 31.295.

[383] NEV. REV. STAT. § 31.295.

An income payer that willfully fails to comply with an income-withholding order (either issued in Nevada or by another state or foreign country) or that misrepresents the obligor's income may be liable for a fine in the amount of $1,000 for each pay period the withholding is not made.[384] The income payer may additionally be liable for punitive damages in the amount of $1,000 for engaging in any of these actions.[385] Conversely, an income payer that complies with an income-withholding order is afforded immunity from civil liability.[386]

As with garnishments for debts, it is unlawful for an income payer to use the withholding of income to collect on a support obligation as a basis for refusing to hire a potential obligor, discharging the obligor, or taking disciplinary action against the obligor.[387] Any income payer that violates this section must hire or reinstate the obligor with no loss of pay, and is liable for any payments of support not withheld. The income payer may also be $1,000.[388] If an obligor prevails in an action based on this section, the income payer is liable in an amount not less than $2,500 for payment of the obligor's costs and attorneys' fees incurred in that action.[389]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

Complaints about disputed wages are to be made to the Nevada Labor Commissioner. The Labor Commissioner is charged with enforcing all labor laws in Nevada without regard to whether an employee or worker is lawfully or unlawfully employed.[390] The Labor Commissioner has the power to investigate, subpoena records and witnesses, conduct an enforcement hearing, and issue decisions if it deems necessary.[391] In addition, it is unlawful for anyone to threaten, discharge, or penalize in any manner a person testifying in a wage, hour and compensation hearing.[392]

An employee claiming violation of the minimum wage law may bring an action against their employer in a Nevada court to enforce these provisions. An employee who successfully prosecutes a suit for minimum wage violations is entitled to all remedies available under the law or in equity appropriate to remedy any violation, including but not limited to back pay, damages, reinstatement, or injunctive relief. An employee who prevails in any action to enforce the employee's rights must be awarded their reasonable attorneys' fees and costs.

The statute of limitations on a suit for payment of minimum wages is two years. The statute prohibits employers from discharging, reducing the compensation of, or otherwise discriminating against, any employee for using any civil remedies to enforce the employee's rights under the law.

A violation of any of the provisions of the Nevada wage and hour laws is a misdemeanor.[393] There may also be a private cause of action for violations of these laws where the statute makes an express provision

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384 NEV. REV. STAT. §§ 31A.095, 31A.120(2), and 130.505.

385 NEV. REV. STAT. § 31A.120.

386 NEV. REV. STAT. §§ 31A.100, 130.504.

387 NEV. REV. STAT. § 31A.120.

388 NEV. REV. STAT. § 31A.120.

389 NEV. REV. STAT. § 31A.120.

390 NEV. REV. STAT. § 607.160(1).

391 NEV. REV. STAT. §§ 607.207, 607.210.

392 NEV. REV. STAT. § 608.015.

393 NEV. REV. STAT. § 608.190.

for a civil remedy.[394] In addition to any other remedy or penalty, the Labor Commissioner may impose an administrative penalty of not more than $5,000 for certain wage and hour violations.[395]

Individual Liability. Along with the employing entity, individuals may be held personally liable for violations of Nevada's wage laws. The regulations provide a list of factors for consideration as to when personal liability may be found:

- whether the person had the power to hire, fire, set schedules or work, or control the conditions of employment;
- whether the individual determined or controlled the method or rate of pay for employees;
- whether records of employment were maintained by the person; or
- when more than one business is involved, whether the person had control of all the business or operated them for a common purpose.[396]

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[397] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[398] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[399]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

Nevada has a mandatory paid leave law.[400] Generally, the law covers all private employers with 50 or more employees in Nevada, though new employers are not required to comply with the law for the first 2 years of operations. Per the state labor department, employers count employees working in Nevada, including part-time employees, employees they jointly employ, or employees for whom they are a successor employer; otherwise, it provides no express guidance other than to contact it with questions concerning

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394 *Baldonado v. Wynn Las Vegas, L.L.C.*, 194 P.3d 96, 102-03 (Nev. 2008).

395 NEV. REV. STAT. § 608.195.

396 NEV. ADMIN. CODE § 608.150.

397 29 U.S.C. § 1002.

398 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

399 490 U.S. 107, 119 (1989).

400 NEV. REV. STAT. § 608.0197.

how to calculate business size under other circumstances, *e.g.*, franchisor-franchisee, businesses with multiple companies or different corporate structures.[401]

However, employers will be exempt if per a contract, policy, collective bargaining agreement, or other agreement they provide all scheduled employees paid leave or paid time at a rate of at least .01923 hours of paid leave per hour of work performed. Per the state labor department, employers already providing qualifying leave when the law takes effect are exempt from all the law's requirements.[402] For example, in a supplemental letter to an Advisory Opinion, the state labor department said a collective bargaining agreement would qualify under the exemption where a nondelineated component of employees' base wage included PTO that matches or exceeded the law's requirements.[403] Later, however, while reconfirming the exemption when an employer provides a qualifying amount of leave, the state labor department said that the exemption would not apply if leave was not provided to "all scheduled employees."[404]

All employees are covered except for temporary, seasonal, and/or on-call employees. Per the state labor department,[405] temporary employees work less than 90 days on an occasional or temporary basis, whether paid by the employer or a Private/Temporary Employment Agency, Training School, or Training Center; seasonal employees typically work less than 90 days and/or are hired for a specific season, *e.g.*, summer pool staff, ski workers during the ski season, holiday season staff; and on-call employees are those called to work on an hourly or daily basis based on employer need, which also applies to per diem employees.

An employee is entitled to accrue at least .01923 hours of paid leave for each hour of work performed. Alternatively, on the first day of each benefit year an employer may provide the total number of leave hours the employee is entitled to accrue in a benefit year (a 365-day period used by an employer when calculating accrual of paid leave). The law does not contain an express accrual cap, but an employer can limit carry-over to 40 hours per benefit year.

Employees must be allowed to use leave by the 90th calendar day of employment. An employer may limit leave use to 40 hours per benefit year, and may set a minimum increment of use that does not exceed four hours. As soon as practicable, an employee must give notice of its intent to use leave, but need not provide a reason for using leave. Per the state labor department,[406] what is "as soon as practicable" depends on the situation. For example, it says a written policy could require notice of 3 days, five days, or

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[401] Nevada Labor Commissioner, Advisory Opinion 2019-02 (Oct. 4, 2019), *available at* http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20SB%20312%20Paid%20Leave.pdf.

[402] Nevada Labor Commissioner, Advisory Opinion 2019-02 (Oct. 4, 2019), *available at* http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20SB%20312%20Paid%20Leave.pdf.

[403] Nevada Labor Commissioner, Request for Advisory Opinion – Senate Bill 312 Employer Exemption (Oct. 10, 2019), supplementing Advisory Opinion 2019-02 (Oct. 4, 2019), *available at* http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20SB%20312%20Paid%20Leave.pdf.

[404] Nevada Labor Commissioner, Advisory Opinion 2024-08 (Aug. 19, 2024), *available at* https://labor.nv.gov/uploadedFiles/labornvgov/content/Employer/24.08.19%20AO-2024-08%20-%20Paid%20Leave%20and%20CBA%20Term.pdf.

[405] Nevada Labor Commissioner, Advisory Opinion 2019-02 (Oct. 4, 2019), *available at* http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20SB%20312%20Paid%20Leave.pdf.

[406] Nevada Labor Commissioner, Advisory Opinion 2019-02 (Oct. 4, 2019), *available at* http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20SB%20312%20Paid%20Leave.pdf.

more notice, when employees know they need to take leave, are going on vacation, or taking a voluntary day off. However, the department says advance notice should not be required for unexpected absences to deal with emergencies, urgent situations, or unexpected illnesses, injuries, sickness, etc. Additionally, it advises that the law does not prevent employer from developing their own notice requirements or applying existing requirements in a policy, handbook, contract, agreement, or collective bargaining agreement, from disciplining employees that abuse leave or that have demonstrated a pattern or failure to give practicable or reasonable notice.

Leave must be paid at the rate of pay at which the employee is compensated at the time leave is taken.

The compensation rate for an employee who is paid by hourly wage must be calculated by the hourly rate the employee is paid by the employer. For employees paid by salary, commission, piece rate, or a method other than an hourly rate, the rate of pay is calculated by dividing total wages paid for the immediately preceding 90 days by the number of hours worked during that period. For employees paid by salary, commission, piece rate, or a method other than an hourly rate, any bonuses agreed upon and earned by the employee must be included in the compensation rate; however, the following are excluded when calculating the rate of pay: bonuses awarded at the sole discretion of the employer; overtime pay; additional pay for performing hazardous duties; holiday pay; tips. An employer must pay an employee for paid leave used on the same payday as hours taken are normally paid.

Upon separation from an employment, an employer may – but is not required to – compensate an employee for any unused paid leave. If an employee is rehired within 90 days after separation of employment (other than an employee voluntarily leaving), previously unused paid leave hours must be reinstated.

For the law's posting, recordkeeping, and paystub requirements, *see* 3.2(a)(ii), 3.1(b)(ii) and **3.7(b)(iv)**.

For employers not covered by the mandatory paid leave law, vacation pay is a matter of an employer's internal policies or a contract between the employer and its employees. However, once an employer does establish a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice. Thus, there is no statutory or regulatory provision prohibiting an employer from implementing caps on accrual or a "use-it-or-lose-it" policy. Further, there is no requirement in Nevada that an employee be paid accrued, unused vacation time upon termination of employment. Whether an employer must pay accrued vacation is a contractual matter determined by the employment contract, if any, or by established policy or procedure of the employer.[407]

[407] *Paulk v. Maese*, 2014 WL 6609490 (Nev. Nov. 20, 2014) (Rejecting argument "that an employee is entitled to payment for unused vacation time upon termination absent an express agreement" and holding "an employment agreement dictates the terms of payment."). *See also, e.g.*, *Ladue v. Renown Reg'l Med. Ctr.*, No. RJC2015-000681 (Washoe Cnty. Oct. 1, 2015).

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

Nevada does not require employers to provide employees with a day of rest each week, or compensate employees at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[408] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[409] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[410] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

With certain exceptions, under the Nevada Domestic Partnership Act, domestic partners have the same rights, protections, benefits, responsibilities, obligations, and duties as do parties to any other civil contract created by title 11 of the Nevada Revised Statutes.[411] However, employers are not required to

[408] 29 U.S.C. § 1144.

[409] 29 U.S.C. § 1161.

[410] 29 U.S.C. § 1167(3).

[411] NEV. REV. STAT. §§ 122A.010 *et seq*.

provide health care coverage for domestic partners, although they are not prohibited from voluntarily doing so.[412]

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[413]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[414]
- to take medical leave when the employee is unable to work because of a serious health condition;[415]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[416] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[417] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Nevada law does not address family and medical leave for private-sector employees.

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412 NEV. REV. STAT. § 122A.210.

413 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

414 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

415 29 C.F.R. §§ 825.112, 825.113.

416 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

417 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[418] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

Nevada law does not address paid sick leave for private-sector employees.

3.9(b)(iii) *State Guidelines on Kin Care Leave*

Nevada's kin care law requires employers that provide paid or unpaid sick leave to their employees to allow an employee to use any accrued sick leave to help an immediate family member with an illness, injury, medical appointment, or other authorized medical need to the same extent and under the same conditions that would apply to the employee while taking leave. The law defines immediate family to mean an employee's child, foster child, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, stepparent, or any person for whom the employee is a legal guardian.

Employers may limit the amount of sick leave that employees can use for kin care purposes to an amount of not less than the amount of sick leave that the employee accrues in a six-month period. Employers are also required to post an explanation of the provisions of the law that will be provided by the Labor Commissioner.

Employers may not deny employees the right to use sick leave for kin care purposes or retaliate against employees for attempting to prosecute violations of the law or for exercising their rights under the law.[419]

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[420] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due

[418] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[419] NEV. REV. STAT. § 608.01975(5).

[420] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for their own serious health condition, such as severe morning sickness.[421] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[422] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

Nevada law prohibits discrimination on the basis of pregnancy. If an employer's internal policies or procedures grant leave to employees for sickness or disability, the employer must extend the same benefits to female employees who are pregnant. If such leave is available, the employee must be able to use it before and after childbirth, miscarriage, or other natural resolution of the pregnancy.[423]

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[421] 29 C.F.R. § 825.202.

[422] EEOC, Notice 915.003, EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues (June 25, 2015), available at https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; see also EEOC, Facts About Pregnancy Discrimination (Sept. 8, 2008), available at https://www.eeoc.gov//facts/fs-preg.html.

[423] NEV. REV. STAT. § 613.335.

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

Nevada law does not address adoptive parents leave for private-sector employees.

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

Under Nevada law, an employer may not terminate, threaten to terminate, demote, suspend, or otherwise discriminate against a parent, guardian, or custodian of a child based upon their attendance at a school conference requested by the school administrator or based upon an emergency regarding the child at school. If an employer violates this law, the employee may file a claim or complaint with the Office of the Labor Commissioner. If the Labor Commissioner issues a decision in favor of the employee, the employee may recover lost wages and benefits, an order of reinstatement, civil damages equal to the amount of lost wages and benefits, and reasonable attorneys' fees. A violation is also a misdemeanor.[424]

A separate law provides that employers of 50 or more employees must grant a parent, guardian, or custodian of a child who is enrolled in a public school leave from their place of employment for four hours per school year per child, which must be taken in increments of at least one hour, to:

- attend parent-teacher conferences;
- attend school-related activities during regular school hours;
- volunteer or otherwise be involved at the school in which their child is enrolled during regular school hours; and
- attend school-sponsored events.[425]

Such leave is unpaid. The employer may require the employee to provide a written request for leave at least five school days before the leave is taken. The leave must be at a time mutually agreed upon by the employer and the employee. The employer may require the employee to provide documentation that during the time of the leave, the employee attended or was otherwise involved at the school or school-related activity for one of the purposes set forth above.[426]

[424] NEV. REV. STAT. § 392.920.

[425] NEV. REV. STAT. § 392.4577.

[426] NEV. REV. STAT. § 392.4577.

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

Nevada law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

In Nevada, if it is impracticable to vote before or after working hours, employees who are registered voters must be provided sufficient time to vote, which means:

- one hour off if the distance between the place of employment and polling place is two miles or less;
- two hours off if the distance is more than two miles but less than 10 miles; and
- three hours off if the distance is more than 10 miles.[427]

An employee must request time off prior to election day. The employer may designate when the time off may be taken.

An employee must be paid for time off to vote. No deductions may be made from an employee's usual salary or wages, nor can employers penalize employees for taking time off to vote.[428]

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Nevada prohibits an employer from maintaining a policy prohibiting or preventing an employee from engaging in politics or becoming a candidate for public office.[429] An employer may not penalize an employee with loss of job seniority due to the employee's leave while serving in the Nevada state legislature. Additionally, an employer with 50 or more employees must grant leave to a member of the legislature to attend sessions and committee meetings during the legislative term. The leave may be unpaid.[430]

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[427] NEV. REV. STAT. § 293.463.

[428] NEV. REV. STAT. § 293.463.

[429] NEV. REV. STAT. §§ 613.040, 613.070.

[430] NEV. REV. STAT. § 218A.300.

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[431] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[432] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. An employer cannot discharge or threaten to discharge an employee because of service as a juror, nor may an employer dissuade or attempt to dissuade an employee from serving on a jury. To take leave from work due to jury service, an employee must provide their employer with a copy of the jury summons at least three days before the employee is to appear.[433]

Employees summoned to appear for jury duty cannot be required to work within eight hours before the time they are to appear for jury duty and also cannot be required to work if the jury service lasts for four or more hours on the day of appearance for jury duty, including time traveling to and from court, between 5:00 P.M. on the day of the appearance for jury duty and 3:00 A.M. on the following day. An employer is not required to compensate an employee for time spent on jury service. Employees cannot be required to use sick leave or vacation time for jury duty.[434]

An employee who is wrongfully discharged in violation of this law may bring an action against the employer for lost wages and benefits, an order of reinstatement without loss of position, seniority, or benefits, damages, attorneys' fees, and punitive damages not to exceed $50,000.[435]

Leave to Serve as a Witness. An employer is prohibited from terminating or threatening to terminate an employee for service as a witness or prospective witness in any judicial or administrative proceeding. It is a misdemeanor and an aggrieved person may bring a civil action. Remedies include an order of reinstatement, restoration of lost wages and benefits, damages equal to lost wages and benefits, and reasonable attorneys' fees.[436]

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[431] 28 U.S.C. § 1875.

[432] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[433] NEV. REV. STAT. § 6.190.

[434] NEV. REV. STAT. § 6.190.

[435] NEV. REV. STAT. § 6.190.

[436] NEV. REV. STAT. § 50.070.

If it is difficult for a witness to assist in an investigation or cooperate with the prosecuting attorney because they are being harassed, intimidated, or subjected to conflicting requirements by their employer, the prosecuting attorney, sheriff, or chief of police shall, upon the written request of the witness, intercede on their behalf to minimize any loss of pay or other benefits that would result from the witness's assistance or appearances in court.[437]

Leave to Appear in Court with a Child. It is a misdemeanor for an employer to terminate or threaten to terminate an employee who appears with or on behalf of their child in court.[438] The employee must give the employer notice of the appearance. In the case of a detention hearing, notice is given when the employee gives the employer or the employer's agent oral notice in advance of the hearing and provides the employer with a certificate of attendance immediately upon return to employment. In the case of subsequent hearings, notice is given when the employee gives the employer a copy of the written notice of the hearing before the hearing takes place.[439]

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Entitlement and Permissible Reasons for Leave. All Nevada employers must permit an eligible employee to take up to 160 hours of leave in one 12-month period if the employee is using the leave:

- for the diagnosis, care or treatment of a health condition related to an act that constitutes domestic violence committed against the employee or the employee's family or household member;
- to obtain counseling or assistance related to an act that constitutes domestic violence committed against the employee or the employee's family or household member;
- to participate in any court proceedings related to an act that constitutes domestic violence committed against the employee or the employee's family or household member; or
- to establish a safety plan, including, without limitation, any action to increase the safety of the employee or the employee's family or household member from a future incidents of domestic violence.[440]

Effective January 1, 2024, the provisions will apply to an employee or the employee's family or household member who are victims of sexual assault.[441]

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[437] NEV. REV. STAT. § 178.5694.

[438] NEV. REV. STAT. § 62D.130.

[439] NEV. REV. STAT. § 62D.130.

[440] NEV. REV. STAT. § 608.0198.

[441] NEV. REV. STAT. § 608.0198, as amended by A.B. 163 (Nev. 2023).

An *eligible employee* is one that has been employed by the employer for at least 90 days and is not the alleged perpetrator of the act constituting domestic violence. *Domestic violence* has the same meaning as defined under section 33.018 of the Nevada Revised Statutes. *Sexual assault* has the same meaning as defined under section 200.366 of the Nevada Revised Statutes. *Family or household member* means a 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.[442]

The employee must use this leave within the 12 months immediately following the date on which the incident of domestic violence occurred, and effective January 1, 2024, following the date on which the incident of sexual assault occurred. Leave may be taken consecutively or intermittently.

If the employee will use the leave for a reason that is also a qualifying reason for leave under the federal Family and Medical Leave Act (FMLA), the two leaves run concurrently and the amount of leave taken must be deducted from the employee's available FMLA leave.

Reasonable Accommodation. An employer must make reasonable accommodations that will not create an undue hardship for an employee who is a victim of domestic violence or whose family or household member is a victim of domestic violence, and effective January 1, 2024, an employer must make reasonable accommodations for victims of sexual assault. Reasonable accommodations include, without limitation: a transfer or reassignment, a modified schedule, a new telephone number for work, or any other reasonable accommodations which will not create an undue hardship and that are deemed necessary to ensure the safety of the employee, the workplace, the employer or other employees.[443]

Notice to Employer. After taking any hours of leave upon an incident of domestic violence, or effective January 1, 2024, and incident of sexual assault, an employee must give not less than 48 hours' advance notice to their employer of the need to use additional hours of leave for any qualifying purpose.[444]

Certification. The employer may require the employee to provide documentation that confirms or supports the reason the employee has requested leave and/or reasonable accommodation. Such documentation may include, without limitation, a police report, a copy of an application for an order for protection, an affidavit from an organization which provides services to victims of domestic violence, or documentation from a physician. Any documentation provided to an employer is confidential, and the employer must retain such documentation in a manner consistent with the requirements of the FMLA.[445]

Record Keeping. An employer must maintain a record of the hours of domestic violence leave taken for each employee for a two-year period following the entry of such information in the record. Upon request, must make those records available for inspection by the Labor Commissioner. The employer must exclude the names of the employees from the records, unless a request for a record is for the purpose of an investigation.[446]

[442] NEV. REV. STAT. § 608.0198.

[443] NEV. REV. STAT. § 613.222.

[444] NEV. REV. STAT. § 608.0198.

[445] NEV. REV. STAT. § 608.0198.

[446] NEV. REV. STAT. § 608.0198.

Compensation During Leave. Leave may be paid or unpaid.[447]

Prohibitions. An employer is prohibited from:

- denying an employee the right to use domestic violence leave;
- requiring an employee to find a replacement worker as a condition of using leave; or
- discharging, disciplining, discriminating, or otherwise retaliating against an employee for:
  - requesting to take domestic violence leave;
  - participated as a witness or interested party in court proceedings related to an act of domestic violence that triggered the use of leave;
  - requesting reasonable accommodation; or
  - because an act of domestic violence was committed against the employee at the workplace.[448]

Notice & Posting. An employer is required to post a bulletin setting forth the rights granted under the domestic violence leave statute in a conspicuous location in each of the employer's workplaces.[449]

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[450]

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[447] NEV. REV. STAT. § 608.0198.

[448] NEV. REV. STAT. § 608.0198.

[449] NEV. REV. STAT. § 608.0198.

[450] USERRA provides that: (1)nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[451] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.452 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Military Service Leave. An employer is prohibited from discriminating against an individual due to the individual's membership in the National Guard or the National Guard of other states.[453] An employer is also prohibited from terminating an employee because the employee assembles for training, participates in field training or active duty, or is called to active Nevada National Guard duty.[454] If a member of the Nevada National Guard has their employment terminated because they assemble for training, participates in field training for active duty, or is ordered to active duty, is the members are entitled to be immediately reinstated to their previous position without loss of seniority or benefits. Employees are also entitled to receive all wages and benefits lost as a result of the termination.[455]

Other Military-Related Protections: Spousal Unemployment. If an employer provides evidence within 10 working days after notice that a claimant for unemployment benefits was the spouse of an active member of the U.S. armed forces and left their employment because the spouse was transferred to a different location, the Nevada Employment Security Division must order that the benefits not be charged against the employer's record for experience rating.[456]

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supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

[451] 29 C.F.R. § 825.126(a).

[452] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

[453] NEV. REV. STAT. § 412.606.

[454] NEV. REV. STAT. § 412.139.

[455] NEV. REV. STAT. § 412.1395.

[456] NEV. REV. STAT. § 612.551(4).

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(l)(ii) *State Guidelines on Other Leaves*

Paid Leave. Employers of 50 or more employees must provide up to 40 hours of paid leave per year. The statute does not specify permissible uses for the leave, so leave may be used for any purpose. An employee is not required to provide a reason to their employer for using this leave.[457]

Employees are entitled to accrue at least 0.01923 hours of paid leave for each hour of work performed. An employer may cap accrual at 40 hours per benefit year, which means a 365-day period used by an employer when calculating the accrual of paid leave. Employees may carry over unused leave to the following benefit year, but employers may cap the amount of leave carried over to 40 hours.[458]

An employee may, as determined by the employer, obtain paid leave by:

- receiving on the first day of each benefit year the total number of hours of paid leave that the employee is entitled to accrue in a benefit year; or
- accruing over the course of a benefit year the total number of hours of paid leave that the employee is entitled to accrue in a benefit year.[459]

An employer must compensate an employee for paid leave on the same payday as the hours taken are normally paid and at the rate of pay at which the employee is compensated at the time such leave is taken. Hourly employees receive their hourly rate of pay. The rate of pay for salaried, commissioned, and piece rate employees is calculated by dividing the total wages of the employee paid for the immediately preceding 90 days by the number of hours worked during that period, and the rate of pay includes bonuses agreed upon and earned by the employee. Discretionary bonuses, overtime pay, hazard pay, holiday pay, and tips are not included.[460]

An employer may set a minimum increment of paid leave, not to exceed four hours, that an employee may use at any one time. An employee may use paid leave beginning on the 90th calendar day of their employment. The employee must provide notice to the employer as soon as practicable that the employee will use paid leave.[461]

An employer may, but is not required to, compensate an employee for any unused paid leave upon separation from employment. However, if the employer rehires the employee within 90 days after separation from that employer and the separation from employment was not due to the employee voluntarily leaving their employment, any previously unused paid leave hours available for use by that employee must be reinstated.[462]

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[457] NEV. REV. STAT. § 608.0197.

[458] NEV. REV. STAT. § 608.0197(1)(c).

[459] NEV. REV. STAT. § 608.0197(1)(b).

[460] NEV. REV. STAT. § 608.0197(1)(e).

[461] NEV. REV. STAT. § 608.0197(2)(d).

[462] NEV. REV. STAT. § 608.0197(1)(i).

An employer must provide to each employee on each payday an accounting of the hours of paid leave available for use by that employee. An employer may use the system that the employer uses to pay its employees to provide the accounting of the hours of paid leave available for use by the employee. An employer must also maintain a record of the receipt or accrual and use of paid leave for each employee for a one-year period following the entry of such information in the record and, upon request, must make those records available for inspection by the state labor commissioner.[463]

An employer is prohibited from:

- denying an employee the right to use paid leave in accordance with the statute;
- requiring an employee to find a replacement worker as a condition of using paid leave; or
- retaliating against an employee for using paid leave.[464]

The statute does not apply to:

- an employer that, pursuant to a contract, policy, collective bargaining agreement or other agreement, provides paid leave or paid time off to all scheduled employees at a rate of at least 0.01923 hours of paid leave per hour of work performed;
- temporary, seasonal, or on-call employees; or
- employers within their first two years of operation.[465]

The statute does not prohibit, preempt or discourage any contract or other agreement that provides a more generous paid leave benefit or paid time off benefit.[466]

Volunteer Emergency Responder / Civil Air Patrol Leave. An employer may not discharge an employee due to his performing service as a volunteer firefighter. Applicants and current employees who are volunteer firefighters must disclose that fact to their employers.[467]

An employer also may not discharge an employee for performing service as a search and rescue volunteer, in a reserve unit of a sheriff's department, or a Civil Air Patrol member. Applicants and current employees performing service as a volunteer search and rescue, reserve unit of a sheriff's department or a Civil Air Patrol must disclose that fact to their employers. Employers may choose not to allow employees to perform these volunteer duties during work hours. If such permission is not granted, employees are subject to discipline and dismissal for missing work for such volunteer duties.[468]

Likewise, an employer may not discharge an employee for performing service as a volunteer ambulance driver or attendant. Applicants and current employees who are volunteer ambulance drivers or attendants must disclose that fact to their employers.[469]

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[463] NEV. REV. STAT. § 608.0197(5).

[464] NEV. REV. STAT. § 608.0197(3).

[465] NEV. REV. STAT. § 608.0197(8).

[466] NEV. REV. STAT. § 608.0197(6)(c)

[467] NEV. REV. STAT. § 475.115.

[468] NEV. REV. STAT. §§ 414.250, 414.260.

[469] NEV. REV. STAT. § 450B.860.

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[470] Employers are also required to comply with all applicable occupational safety and health standards.[471] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[472] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Nevada, under agreement with Fed-OSHA, operates its own state occupational safety and health program in accordance with section 18 of the Fed-OSH Act.[473] Thus, Nevada is a so-called "state plan" jurisdiction, with its own detailed rules for occupational safety and health that parallel, but are separate from, Fed-OSHA standards. Similar to the federal Fed-OSH Act, the stated purpose of the Nevada Occupational Safety and Health Act (NOSHA) is "to provide safe and healthful working conditions for every employee."[474] NOSHA declares that this is to be accomplished by establishing regulations, effectively enforcing such regulations, educating and training employees, and establishing reporting procedures for job-related accidents and illnesses.[475] NOSHA also requires an employer to "furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees."[476]

As contemplated by the Fed-OSH Act, NOSHA is broad in its scope and coverage. Indeed, NOSHA covers virtually every employee and every employer in the state.[477] The Nevada Occupational Safety and Health

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[470] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[471] 29 U.S.C. § 654(a)(2).

[472] 29 U.S.C. § 667(c)(2).

[473] 29 U.S.C. § 667.

[474] NEV. REV. STAT. § 618.015.

[475] NEV. REV. STAT. § 618.015.

[476] NEV. REV. STAT. § 618.375(1).

[477] NEV. REV. STAT. § 618.315(1). NOSHA defines the term *employer* as "any person, firm, corporation, partnership, or association." NEV. REV. STAT. § 618.095(3). The term *employer* also includes the State of Nevada and its subdivisions, school districts, public or quasi-public corporations and "[a]ny officer or management official having

Plan ("Plan") includes enforcement, consultation, and training programs for both private- and public-sector places of employment. The Plan is administered by the Division of Industrial Relations (DIR or "Division").

Safety & Health Standards. NOSHA grants the DIR wide authority to promulgate occupational safety and health standards for employers and places of employment in Nevada. NOSHA provides that the DIR may consider a variety of sources in adopting standards.[478] These sources include standards established by a number of specifically named national institutes, including American National Standards Institute and the American Society of Mechanical Engineers, among others. The DIR may also consider "any national consensus standard."[479] A *national standard*, or national consensus standard, is defined as a standard that has been adopted by a nationally recognized standards-producing organization. The standard must be adopted under procedures whereby persons affected by the standard have reached substantial agreement on its adoption.[480] In practice, the majority of standards regulating places of employment in Nevada are federal standards adopted under the Fed-OSH Act. NOSHA explicitly adopts all federal occupational safety and health standards, their modifications, and amendments.[481]

A full analysis of the standards is beyond the scope of this publication. These standards regulate such diverse areas as personal protective equipment, safety training, employee access to information, crane safety, structural protection, fall protection, lock-out/tag-out programs, machine guarding, hazardous materials, hazardous communications, fire protection, confined-space programs, and record keeping. Some standards are general to all industry. Others are industry specific.[482] The federal standards alone occupy thousands of pages of the Code of Federal Regulations. Others have been incorporated by reference, pursuant to section 6(a) of the Fed-OSH Act, and are not specifically found in the regulations.

General Duty Clause. Both the Fed-OSH Act and NOSHA generally require an employer to maintain a hazard-free workplace.[483] This section in both acts is commonly referred to as the General Duty Clause. The purpose of the clause is to fill in the gaps in the standards promulgated under each Act. The elements of a General Duty Clause violation are:

1. the employer failed to make its workplace free of hazard;
2. the condition is recognized to be a hazard by the employer or the employer's industry;

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direction or custody of any employment or employee." NEV. REV. STAT. § 618.095. *Employee* is defined as every person "required, permitted or directed by any employer to engage in any employment, or to go to work or be at any time in any place of employment, under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed." NEV. REV. STAT. § 618.085. The exceptions to NOSHA coverage include: household domestic service, motor vehicles on public highways, federal employees, and employees on Indian lands and places of employment regulated by the Federal Mine Safety and Health Act or the Federal Railway Safety Act. NEV. REV. STAT. § 618.315(2).

478 NEV. REV. STAT. § 618.305.

479 NEV. REV. STAT. § 618.305(7).

480 NEV. REV. STAT. § 618.125.

481 NEV. REV. STAT. § 618.295(8).

482 *See* NEV. REV. STAT. ch. 618; NEV. ADMIN. CODE ch. 618.

483 Both 29 U.S.C. § 654(a)(1) and NEV. REV. STAT. § 618.375(1) require employers to furnish "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

3. the hazard is causing or likely to cause death or serious physical harm to employees; and
4. the hazard could have been materially reduced or eliminated by a feasible means of abatement.[484]

Safety Programs & Training. Both the Fed-OSH Act and NOSHA require employers to provide certain training and safety programs in carrying out their duty to furnish a place of employment free from recognized hazards. In addition, NOSHA also requires employers to provide general training regarding safety in the workplace and to develop and implement a written safety program. NOSHA also requires employers to form a safety committee that includes employee representatives.

NOSHA requires that every employer provide its employees on hire a document or videotape setting forth the rights and responsibilities of employers and employees to promote safety in the workplace.[485] The employer must document this training by placing a signed copy of the document or a receipt of the videotape in the employee's personnel file. The statute, however, provides that the safety document or videotape not be deemed part of any employment contract.

In addition, NOSHA requires that all supervisory employees take mandatory OSHA-30 training. A supervisory employee has 15 days after the date of hire to obtain a completion card for an OSHA-30 course. If a supervisory employee fail(s) to present the employer with a current and valid completion card of the required OSHA-30 course within 15 days after being hired, the employer must suspend or terminate the employment.[486]

Investigations. NOSHA grants the Occupational Safety and Health Enforcement Section (OSHES) full authority to carry out and enforce the Act and any standards and orders adopted thereunder.[487] OSHES's main tool to assure compliance with NOSHA is the power to conduct investigations. NOSHA specifically gives OSHES authority to inspect and investigate places of employment in the state during regular working hours or at other reasonable times.[488] An OSHES investigator may enter without delay any place of employment upon presenting appropriate credentials to the employer.

In addition, the statute charges OSHES with investigating all pertinent conditions, structures, machines, apparatus, devices, equipment and materials. OSHES also has the right to privately question any employee.[489] The statute prohibits OSHES from giving the employer advance notice of a random or customary regulatory inspection.[490]

Although the statutory language is very broad and appears to permit almost unlimited inspections, an inspection conducted under chapter 618 must conform with the dictates of the Fourth Amendment to the U.S. Constitution.[491] To meet constitutional requirements, OSHES's decision to select a site for inspection

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[484] *National Realty & Constr. Co. v. Occupational Safety & Health Review Comm'n*, 489F.2d 1257 (D.C. Cir. 1973); Inland Steel Co., 12O.S.H.C. 1968 (Rev. Comm'n 1986).

[485] NEV. REV. STAT. § 618.376.

[486] NEV. REV. STAT. § 618.983.

[487] NEV. REV. STAT. § 618.325.

[488] NEV. REV. STAT. § 618.325(2)(b).

[489] NEV. REV. STAT. § 618.325(2)(b).

[490] NEV. REV. STAT. § 618.325(3).

[491] *Marshall v. Barlow's, Inc.*, 436U.S. 307(1978).

must be based on either: (1) specific evidence that the work site contains an existing violation; or (2) was chosen as a result of an unbiased implementation of a systematic plan for selecting inspection targets.

Upon arrival at the place of employment, the inspector must present their credentials to the owner, operator, or agent in charge at the place of employment to be inspected; explain the nature and purpose of the inspection; indicate generally the scope of the inspection; and designate the records they wish to review, although such a designation does not preclude access to additional records.[492] The inspection must be conducted in such a manner as to preclude unreasonable disruption of the operations of the place of employment being inspected.[493] At the conclusion of their inspection, the inspector confers with the employer or their representative to advise the employer or representative informally of any apparent safety or health violations disclosed by the inspection.[494] During such a conference, the inspector affords the employer or their representative the opportunity to bring to the attention of the inspector any pertinent information regarding conditions at the place of employment.[495] If the inspection is the result of a complaint or a referral, the employer may request a copy of the complaint or referral. The employer may also refuse the inspector entry to the place of employment. However, in the event entry is denied, a search warrant may be sought to gain entry and complete the inspection.[496]

Citations. If OSHES determines that an employer has violated any provision of NOSHA, or any standard, rule, or order, OSHES will issue a citation. The citation must be issued with reasonable promptness, but not later than six months after the occurrence of the violation. The employer must prominently post a copy or copies of the citation(s) at or near each place a violation referred to in the citation occurred.[497] The administrative fines may not be than the corresponding civil penalty under federal law, including any adjustments for inflation.[498]

There are three basic types of citations that may be issued for a violation of NOSHA: willful, serious, and other than serious.[499] A citation may consist of one or many separate items, each classified as separate violations. Although NOSHA does not define the term willful violation, the Nevada Supreme Court held that a willful violation of NOSHA occurs when an employer acts in an intentional, deliberate, knowing, and voluntary manner, and if the action is taken with either intentional disregard of or plain indifference to relevant safety requirements.[500]

In assessing administrative fines, the Division is to give due consideration to the appropriateness of the penalty with respect to the size of the employer, the gravity of the violation, the good faith of the employer, and the history of previous violations. The administrative fines may not be than the corresponding civil penalty under federal law, including any adjustments for inflation.[501]

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[492] NEV. ADMIN. CODE § 618.6434(1)(a)-(d).

[493] NEV. ADMIN. CODE § 618.6434(4).

[494] NEV. ADMIN. CODE § 618.6434(5).

[495] NEV. ADMIN. CODE § 618.6434(5).

[496] NEV. ADMIN. CODE § 618.6452.

[497] NEV. REV. STAT. § 618.465.

[498] NEV. REV. STAT. § 618.655.

[499] NEV. REV. STAT. §§ 618.635, 618.645.

[500] *Century Steel, Inc. v. Nevada Occupational Safety & Health Admin.*, 137P.3d 1155 (Nev. 2006).

[501] NEV. REV. STAT. § 618.625.

An employer has the right to contest a citation under NOSHA. Contests of a citation are adjudicated by the Occupational Safety and Health Review Board ("Review Board"). The employer may contest the citation by serving written notice of their intent to contest within 15 working days of their receipt of the citation. If the employer fails to contest the citation within the time period specified, the citation is deemed to be the final order of the Review Board and is not subject to review by any court or agency.[502] If an employer has filed a notice to contest, OSHES must seek enforcement through the Review Board. Practice before the Review Board is generally regulated by chapter 618 of the Nevada Administrative Code.

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

Nevada law prohibits a driver from operating a motor vehicle while:

- manually typing or enter text into a handheld wireless communication device;
- sending or reading data using such device to access or search the internet; or
- engaging in nonvoice communications with another person such as texting, electronic messaging, and instant messaging.[503]

Further, a driver may not use a handheld wireless communications device to engage in voice communications with another person unless the device is used with an accessory which allows the person to communicate without using their hands, other than to activate, deactivate, or initiate a feature or function on the device.[504] *Handheld wireless communications device* means a handheld device for the transfer of information without the use of electrical conductors or wires and includes, without limitation, a cellular telephone, a personal digital assistant, a pager and a text messaging device.[505]

These restrictions apply to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, the state restrictions.

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

Nevada does not have a statute specifically addressing the possession or storage of firearms in the workplace or in company parking lots. As such, private employers in Nevada are free to develop their own policies with respect to the presence of firearms on their premises.

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[502] NEV. REV. STAT. § 618.475(1).

[503] NEV. REV. STAT. § 484B.165(1).

[504] NEV. REV. STAT. § 484B.165(1).

[505] NEV. REV. STAT. § 484B.165(8).

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

The Nevada Clean Indoor Air Act prohibits smoking, including vaping and use of electronic smoking devices, in indoor places of employment. "No smoking" signs must be posted conspicuously at entrances to workplaces. Employers must also remove all ashtrays and other smoking paraphernalia.[506] Numerous exceptions exist to the general smoking prohibition, including bars and casinos. Unless a workplace qualifies for one of these exceptions, smoking is prohibited in all indoor spaces including "work areas, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies and reception areas."[507] Thus, employers are prohibited from having any type of break room where smoking is permitted.

Antiretaliation Provisions. Employers may not discharge or retaliate against an employee due to the employee reporting a violation or otherwise exercising their rights under the Act.[508]

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Nevada law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

An employer or an authorized agent of an employer that reasonably believes that harassment in the workplace has occurred may file a verified application for a temporary order for protection against harassment in the workplace against the person who allegedly committed the harassment.[509] However, the law does not:

- modify the duty of an employer to provide a safe workplace for the employees of the employer and other persons present at the workplace of the employer;

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[506] NEV. REV. STAT. § 202.2483.

[507] NEV. REV. STAT. § 202.2483(12).

[508] NEV. REV. STAT. § 202.2483.

[509] NEV. REV. STAT. § 33.250(1).

- prohibit a person from engaging in any constitutionally protected exercise of free speech, including, without limitation, speech involving labor disputes concerning organized labor; or
- prohibit a person from engaging in any activity which is part of a labor dispute.[510]

Harassment in the workplace occurs when:

- a person knowingly threatens to cause or commits an act that causes:
  - bodily injury to the person or another person;
  - damage to the property of another person; or
  - substantial harm to the physical or mental health or safety of a person;
- the threat is made or the act is committed against an employer, an employee of the employer while the employee performs the employee's duties of employment or a person present at the workplace of the employer; and
- the threat would cause a reasonable person to fear that the threat will be carried out or the act would cause a reasonable person to feel terrorized, frightened, intimidated, or harassed.[511]

An employer is immune from civil liability for:

- seeking a temporary or extended order for protection against harassment in the workplace, if the employer acts in good faith in seeking the order; or
- failing to seek a temporary or extended order for protection against harassment in the workplace.[512]

An action taken or a statement made by an employer in furtherance of a petition for a protection order is not deemed an admission by the employer of any fact.[513]

The employer must file a verified application (for a temporary order of protection) that includes, without limitation:

- the name of the employer seeking the order;
- the name and address, if known, of the person who allegedly committed the harassment in the workplace; and
- a detailed description of the events that allegedly constituted harassment in the workplace and the dates on which these events occurred.[514]

If an employer has knowledge that a specific person is the target of harassment in the workplace and the employer intends to seek a temporary or extended order for protection against such harassment, the

[510] NEV. REV. STAT. § 33.360.

[511] NEV. REV. STAT. § 33.240.

[512] NEV. REV. STAT. § 33.340(1).

[513] NEV. REV. STAT. § 33.340(2).

[514] NEV. REV. STAT. § 33.250(2).

employer must make a good faith effort to notify the person who is the target of the harassment that the employer intends to seek such an order.[515]

The court may issue a temporary order for protection against harassment in the workplace if it appears to the satisfaction of the court from specific facts shown by a verified application that harassment in the workplace has occurred.[516] A temporary order for protection against harassment in the workplace expires not later than 15 days after the date on which the order is issued, unless extended.[517] If an extension is granted, the extended order for protection against harassment in the workplace expires within the time set by the court, not to exceed one year.[518]

A temporary or extended order for protection against harassment in the workplace may:

- enjoin the person who allegedly committed the harassment from contacting the employer, an employee of the employer while the employee is performing the employee's duties of employment, and any person while the person is present at the employer's workplace;
- order the person who allegedly committed the harassment to stay away from the employer's workplace; and
- order such other relief as the court deems necessary to protect the employer, the employer's workplace, the employees while performing their duties of employment, and any other individuals present at the workplace.[519]

A law enforcement agency must enforce a temporary or extended order for protection against harassment in the workplace without regard to the county in which the order was issued.[520] A temporary or extended order for protection against harassment in the workplace is in addition to and not in lieu of any other available civil or criminal action. An employer is not barred from seeking an order because of other pending proceedings.[521]

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[522] (2) the Americans with Disabilities Act (ADA);[523] (3) the Age

[515] NEV. REV. STAT. § 33.260.

[516] NEV. REV. STAT. § 33.270.

[517] NEV. REV. STAT. § 33.270(5).

[518] NEV. REV. STAT. § 33.270(8).

[519] NEV. REV. STAT. § 33.280(1).

[520] NEV. REV. STAT. § 33.300.

[521] NEV. REV. STAT. § 33.290.

[522] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[523] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

Discrimination in Employment Act (ADEA);[524] (4) the Equal Pay Act;[525] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[526] (6) the Civil Rights Acts of 1866 and 1871;[527] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[528]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[529] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[530]

3.11(a)(ii) *State FEP Protections*

Nevada's fair employment practices law provides protections similar to the federal law's protections. Despite some differences between the federal and state law, Nevada courts specifically look to federal court interpretations for guidance in discrimination cases.[531] The Nevada law prohibits discrimination on the basis of the following:

- race, including traits associated with race, including, without limitation, hair texture and protective hairstyles such as natural hairstyles, afros, bantu knots, curls, braids, locks, and twists;

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[524] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[525] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

[526] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[527] 42 U.S.C. §§ 1981, 1983.

[528] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

[529] The EEOC's website is available at http://www.eeoc.gov/.

[530] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

[531] *Pope v. Motel 6*, 114P.3d 277, 280(Nev. 2005).

- color;
- religion;
- sex;
- sexual orientation;
- gender identity or expression;
- age;
- disability (including HIV/AIDS; also expressly includes use of an aid, appliance, or service animal; or
- national origin.[532]

Nevada passed a ballot measure to amend the constitution, adding a specific guarantee that equality of rights under the law will not be abridged or denied by the state of Nevada or any of its cities, counties or other political subdivisions based on race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin.[533]

Nevada's fair employment practices law also prohibits discrimination on the basis of pregnancy (see **3.9(c)(ii)**). Prohibitions against pregnancy discrimination also apply to childbirth, lactation, and related disabilities and medical conditions, as well as protections for requesting or using accommodations for a pregnancy related condition. Protections related to pregnancy accommodations extend to job applicants as well as employees. Nevada's inclusion of sexual orientation and gender identity or expression as prohibited bases for discrimination distinguishes the state law from federal discrimination statutes.

The law applies to employers with 15 or more employees.[534] The Nevada Supreme Court has explicitly rejected the argument that employers with less than the statutory minimum number of employees can be held liable under the theory of tortious discharge in violation of public policy.[535]

3.11(a)(iii) *State Enforcement Agency & Civil Enforcement Procedures*

The fair employment practices statute provides the exclusive state remedy for discrimination in employment. The Nevada Supreme Court has held that the Nevada public policy against discrimination cannot be vindicated through a common law tortious-discharge claim rather than through statutory remedies.[536]

Actions based on discrimination must be filed with the Nevada Equal Rights Commission (NERC or "Commission"). Importantly, a party cannot bring a lawsuit for employment discrimination based on Nevada law unless that claim was first presented to the NERC or is reasonably related to the administrative claims.[537] While a charge of discrimination must be filed with the NERC within 300 days after the date of

[532] NEV. REV. STAT. §§ 613.310, 613.330.

[533] Article 1, § 24 of the Nevada Constitution.

[534] NEV. REV. STAT. § 613.310(2).

[535] *Chavez v. Sievers*, 43 P.3d 1022 (Nev. 2002).

[536] *Chavez*, 43 P.3d 1022; *D'Angelo v. Gardner*, 819 P.2d 206 (Nev. 1991).

[537] *Pope v. Motel 6*, 114 P.3d 277, 279 (Nev. 2005).

the alleged act of discrimination,[538] individuals seeking relief from a federal district court for an alleged violation of the statute or Title VII of the federal Civil Rights Act must file their lawsuit within 180 days after the date of the act complained of, or more than 90 days after the date of the receipt of the right-to-sue notice issued by either the Nevada Equal Rights Commission or the federal EEOC, whichever is later.[539] However, when a charge of discrimination is filed with and investigated by the NERC or the federal EEOC, the 180-day limitation period is tolled during the pendency of the charge of discrimination that is before the Commission.[540]

Filing of an employment discrimination complaint must occur within 300 days after the date the discrimination occurs pursuant to federal law, as it currently exists. If federal law is amended to provide greater protections, then complaints must be filed within 300 days after the discrimination occurs pursuant to federal law, as amended. The Commission must notify each party to the complaint of the period of time in which to apply to a district court for relief. The Commission may order employers to cease and desist an unlawful discriminatory practice. The amended law adds that the order must include correction action that the employer must take. The Commission may award back pay for a period of two years prior to the date a complaint was filed and ending on the date the Commission issues its order. Additionally, the Commission may order payment of lost wages or other economic damages involving sex discrimination, including lost overtime, shift differential, cost of living adjustments, merit increases or promotions, or other fringe benefits.[541]

The law authorizes penalties for employers with 50 or more employees if the Commission determines the unlawful discrimination was willful, meaning with knowledge of unlawfulness, or with reckless indifference to lawfulness. Under those circumstances, the employer must pay a civil penalty of:

- not more than $5,000 for the first instance engaged in during the preceding five years;
- not more than $10,000 for the second instance engaged in during the preceding five years; and
- not more than $15,000 for the third and subsequent instances engaged in during the preceding five years.

However, before imposing civil penalties, the Commission must allow the employer 30 days to take corrective action. If the employer takes corrective action, the Commission will not impose the civil penalty.[542]

3.11(a)(iv) *Additional Discrimination Protections*

Lawful Use of Any Product. In Nevada, employers of 15 or more employees are prohibited from failing or refusing to hire an applicant, or discharging or otherwise discriminating against an employee concerning their compensation, terms, conditions, or privileges of employment because the applicant or employee engages in the lawful use of any product during nonworking hours and outside the employer's premises, provided the use does not adversely affect the employee's ability to perform the job or the safety of other

[538] NEV. REV. STAT. § 233.160(b).

[539] NEV. REV. STAT. § 613.430.

[540] NEV. REV. STAT. § 613.430.

[541] NEV. REV. STAT. §§ 233.160, 233.170.

[542] NEV. REV. STAT. § 233.170.

employees.[543] Though legal under state law, recreational marijuana is not considered a lawful product, as the use of recreational marijuana remains a criminal offense under federal law.[544]

Nevada also provides protections for members of the National Guard,[545] as well as for credit report information.[546]

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[547] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[548]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

In Nevada, it is unlawful for an employer to discriminate on the basis of sex between employees at the same establishment by paying lower wages to one employee than the wages paid to an employee of the opposite sex who performs equal work which requires equal skill, effort and responsibility, and which is performed under similar working conditions.[549] A wage differential is permissible where wages are paid pursuant to a: (1) seniority system; (2) merit system; (3) compensation system under which wages are determined by the quality or quantity of production; or (4) wage differential based on factors other than sex. An employer that violates the statute may not reduce the wages of any employee in order to comply with the statute.

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[543] NEV. REV. STAT. § 613.333.

[544] *Ceballos v. NP Palace, L.L.C.*, 514 P.3d 1074 (Nev. 2022).

[545] NEV. REV. STAT. § 412.606.

[546] NEV. REV. STAT. § 613.570.

[547] 29 U.S.C. § 206(d)(1).

[548] 42 U.S.C. § 2000e-5.

[549] NEV. REV. STAT. § 608.17.

The equal pay statute does not provide a private right of action to redress violations. Only civil and criminal penalties are available.[550]

As discussed in **3.7(b)(v)**, Nevada law prohibits employers from barring employees from disclosing their wages or inquiring about other employees' wages.

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[551]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;

[550] NEV. REV. STAT. §§ 608.180, 608.195.

[551] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[552]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

An employee seeking a reasonable accommodation must request an accommodation.[553] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[554] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[555]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[556]

[552] 29 C.F.R. § 1636.3.

[553] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[554] 29 C.F.R. § 1636.3.

[555] 29 C.F.R. § 1636.4.

[556] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[557]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

The Nevada Pregnant Workers' Fairness Act requires an employer of 15 or more employees to provide reasonable accommodation upon the request of a female employee or applicant affected by pregnancy, childbirth, or a related medical condition.[558] *Pregnancy, childbirth, or related medical condition* means a physical or mental condition intrinsic to pregnancy or childbirth that includes, without limitation, lactation or the need to express breast milk for a nursing child, mastitis, or other lactation-related medical condition, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, loss or end of a pregnancy, and recovery from the loss or end of a pregnancy.[559]

An employer is not required to provide accommodation to a pregnant applicant or employee if doing so would impose an undue hardship on the employer's business or if based upon a *bona fide* occupational qualification. To demonstrate undue hardship, the employer must show that the accommodation is significantly difficult or expensive to provide, based upon: (1) the nature and cost of the accommodation; (2) the employer's overall financial resources; (3) the overall size of the employer's business with respect to the number of employees and the number, type, and location of the available facilities; and (4) the effect of the accommodation on the employer's expenses, resources, or operations. Evidence that the employer provides or would be required to provide a similar accommodation to a similarly situated employee or applicant for employment creates a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.[560]

Special rules apply to employers that are contractors licensed under chapter 624 of the Nevada Revised Statutes.[561]

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[557] 29 C.F.R. § 1636.3.

[558] NEV. REV. STAT. § 613.4371(1).

[559] NEV. REV. STAT. § 613.4359.

[560] NEV. REV. STAT. § 613.4374(3).

[561] NEV. REV. STAT. § 613.438(3).

A reasonable accommodation for an employee may consist of a change in the work environment or in the way things are customarily carried out that allows the employee to have equal employment opportunities, including the ability to perform the essential function of her position and to have benefits and privileges of employment that are equal to those available to other employees. In contrast, a reasonable accommodation for a job applicant may consist of a modification to the application process or the manner in which things are customarily carried out that allows the applicant to be considered for employment or hired for a position.[562]

An employee or applicant seeking reasonable accommodation for a condition relating to pregnancy, childbirth, or a related medical condition must request accommodation.[563] A reasonable accommodation may include, without limitation:

- modifying equipment or providing different seating;
- revising break schedules, which may include revising the frequency or duration of breaks;
- providing space in an area other than a bathroom that may be used for expressing breast milk;
- providing assistance with manual labor if the manual labor is incidental to the employee's primary work duties;
- authorizing light duty;
- temporarily transferring the employee to a less strenuous or hazardous position; or
- restructuring a position or providing a modified work schedule.[564]

By express statement in the law, an employer does not have to: (1) create a new position that the employer would not have otherwise created, unless the employer has created or would create such a position to accommodate other classes of employees; or (2) discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer has taken or would take such an action to accommodate other classes of employees.[565]

An employer may require a female employee to provide an explanatory statement from the employee's physician concerning the specific accommodation recommended by the physician for the employee.[566]

If a female employee requests an accommodation for a condition relating to pregnancy, childbirth, or a related medical condition, the employer and employee must engage in a timely, good faith, and interactive process to determine an effective, reasonable accommodation for the employee.[567]

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[562] NEV. REV. STAT. § 613.4371(2).

[563] NEV. REV. STAT. §§ 613.4371(1), 613.4374(1).

[564] NEV. REV. STAT. § 613.4371(1)(a)-(g).

[565] NEV. REV. STAT. § 613.4371(4)(a)(b).

[566] NEV. REV. STAT. § 613.438(5).

[567] NEV. REV. STAT. § 613.4371(1).

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[568] Multiple decisions of the U.S. Supreme Court[569] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[570] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

There are no antiharassment training and education requirements mandated for private employers in Nevada. However, the NERC advises employers that "prevention is the best tool to eliminate sexual harassment in the workplace. Employers are *encouraged* to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated."[571]

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

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[568] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[569] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526(1999).

[570] EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors* (June 18, 1999), *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also EEOC, Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

[571] *See* Nevada Equal Rights Comm'n, *Sexual Harassment Fact Sheet* (emphasis added).

3.12(a)(ii) *State Guidelines on Whistleblowing*

Nevada's whistleblower statutes apply only to state employees and state officers.[572] The state does not have a general whistleblower law addressing protections for private-sector employees.

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[573] and the Railway Labor Act (RLA)[574] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

Nevada is a right-to-work state. It prohibits employers from excluding nonunion workers from obtaining or continuing employment. Any contract or contract provision excluding nonunion workers will be considered to be illegal and void as a matter of law.[575] In addition, Nevada's Right-to-Work laws make it illegal to compel persons to join a labor organization, strike against the person's will, or leave their employment by the use of threat or actual interference.[576] A person in violation of the Right-to-Work laws is liable to the person injured and may be sued for damages[577] and injunctive relief.[578] Labor organizations, subdivisions, or local units will be held responsible and be subject to liability for damages for the acts of duly authorized agents acting within the scope of their authority.[579]

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572 NEV. REV. STAT. §§ 281.611 to 281.671, 289.110 to 289.120.

573 29 U.S.C. §§ 151 to 169.

574 45 U.S.C. §§ 151 *et seq*.

575 NEV. REV. STAT. § 613.260.

576 NEV. REV. STAT. § 613.270.

577 NEV. REV. STAT. § 613.290.

578 NEV. REV. STAT. § 613.300.

579 NEV. REV. STAT. § 613.290.

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[580] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[581] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

Nevada does not have a generally applicable mini-WARN law requiring advance notice to employees of a plant closing. However, employers operating call centers with more than 50 call center employees are required to provide certain notices to the Nevada Labor Commissioner and affected employees before relocating the call center to a foreign country. Notice may be required no less than 90 days in advance of the relocation, if the employer receives economic development incentives from a Nevada state agency.[582]

4.1(c) *State Mass Layoff Notification Requirements*

Nevada does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff.

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under federal law.

Table 11. Federal Documents to Provide at End of Employment

Category	Notes
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided

[580] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

[581] 20 C.F.R. §§ 639.4, 639.6.

[582] NEV. REV. STAT. §§ 613.710 *et seq.*

Table 11. Federal Documents to Provide at End of Employment	
Category	**Notes**
	under the plan.[583] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[584]

4.2(b) *State Guidelines on Documentation at End of Employment*

Table 12 lists the documents that must be provided when employment ends under state law.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	If an employer is the policyholder of a policy of group life or health insurance that covers their employees, the employer must give each employee, when employment ends, written notice of the employee's right to be issued by the insurer a policy of life or health insurance to replace the group policy.[585]
Reasons for Firing & Service Letters	Upon request by a former employee, an employer must provide "in writing a truthful statement of the reason for the employee leaving its employment or reasons for termination of employee." This requirement applies only if an employee had been working for the employer for at least 60 days. In addition, only one statement need be provided per employee.[586]

[583] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[584] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

[585] NEV. REV. STAT. § 608.1585.

[586] NEV. REV. STAT. § 613.210.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Unemployment Notice	Generally. Employers must post, in places readily accessible, a printed statement concerning unemployment benefits and must provide a copy of an approved notice to employees when they become unemployed. The notice (Form NUCS-4139) is entitled "Information for the Unemployed Worker."[587] Multistate Workers. Upon an employee's separation, a multistate employer must inform the employee of the jurisdiction under whose unemployment compensation law services have been covered. If the employee is not located in the chosen jurisdiction at the time of termination, the employer must notify the employee as to the procedure for filing interstate benefit claims. In, addition to this notice requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.[588]

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

Nevada law prohibits blacklisting an employee, and, as noted in **0**, also requires an employer to give a written statement to an employee, upon demand, at the time of discharge that includes the "truthful" reasons for discharge.[589] An employer may also give a statement regarding meritorious service at the time the employee leaves. Only an employee who has been employed for over 60 days may demand these letters. An individual who violates this law against blacklisting is guilty of a misdemeanor.

Subject to certain exceptions, Nevada employers are immune from civil liability for disclosure to a prospective employer of information about an employee or former employee if the disclosure is made at the employee's request, and the information is related to the employee's ability, the employee's diligence, skill, reliability in performing the job, or an employee's illegal or wrongful act. There is no immunity for a disclosure made with malice or ill will; a disclosure made with information believed to be inaccurate; a disclosure that the employer had no reasonable grounds for believing is accurate; a disclosure of recklessly or intentionally disclosed inaccurate information; or a disclosure made in violation of state or federal law or in violation of an agreement with the employee.[590]

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[587] NEV. REV. STAT. § 612.455. The notice is available in English at http://ui.nv.gov/PDFS/Information_for_Unemployed_Worker_ENG.pdf and in Spanish at http://ui.nv.gov/PDFS/Information_for_Unemployed_Worker_SP.pdf.

[588] NEV. ADMIN. CODE § 612.470.

[589] NEV. REV. STAT. § 613.210.

[590] NEV. REV. STAT. § 41.755.