

Nevada

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

No new laws or regulations enacted in 2015 or 2016.

II. Pre-Employment Inquiry Guidelines

Nevada has enacted a new law that creates a voluntary veterans' preference to be applied in hiring, promotion, and retention decisions. A private employer may adopt an employment policy that gives preference to a military veteran or the spouse of a veteran. The policy must be applied consistently to all decisions regarding hiring, promotion, or retention during a reduction in force. The law defines "veteran" as a Nevada resident who:

- Was regularly enlisted, drafted, inducted or commissioned in the Armed Forces of the United States and was accepted for and assigned to active duty in the Armed Forces of the United States;
- Was a member of the National Guard or a reserve component of the Armed Forces of the United States and was accepted for and assigned to duty for a minimum of 6 continuous years; or
- Was a member of the Commissioned Corps of the United States Public Health Service or the Commissioned Corps of the National Oceanic and Atmospheric Administration of the United States and served in the capacity of a commissioned officer while on active duty in defense of the United States.

To be eligible for application of a veterans' preference policy, the veteran must have been separated from military service under conditions other than dishonorable. The new law also provides that an employer who applies the veterans' preference will not be deemed in violation of any state or local equal employment opportunity law.

Nev. Rev. Stat. Ann. § 613.385 (Effective Date 07/01/2015).

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

A. Nevada Minimum Wage/Overtime Rate

The Nevada Labor Commissioner announced that the minimum wage and daily overtime rates will remain the same in 2016. The minimum wage remains \$7.25 per hour for employees who receive qualified health benefits from their employers, and \$8.25 per hour for employees who do not receive such benefits. Concerning daily overtime, employees who receive qualified health benefits from their employer and earn less than \$10.875 per hour, and employees earning less than \$12.375 per hour who do not receive qualified health benefits, must be paid overtime whenever they work more than 8 hours in a 24-hour period.

Effective Date (07/01/2016).

B. Wage Garnishments

New laws govern wage garnishments when an employee owes a debt to state agency that has been assigned to the state controller. An employee will receive notice from the controller. If the employee timely contests the garnishment order, employers will receive notice from the controller to discontinue garnishment until the matter is resolved. When a final decision is reached, the controller will notify the employer. Otherwise, the following requirements apply.

An employer will receive a notice from the controller about the garnishment. If an employer does not begin garnishing wages, a second notice will be sent (unless the employer requests the state calculate the withholding amount). A valid notice must contain the following information: 1) the employee's Social Security number; 2) the total amount to be withheld, including any interest, penalties, or assessments; 3) a description concerning how much income can be withheld; 4) a description about the prohibition against firing an employee because of the withholding, and penalties for wrongfully refusing to withhold; 5) an explanation of the employer's duties; and 6) an explanation that an employer may request that the controller calculate the withholding amount if it submits all information necessary for the controller to make a calculation.

Unless an employer requests that the controller calculate the withholding amount, it must calculate how much income will be withheld each pay period. The employer must begin withholding income in the first pay period occurring within 14 days of the notice's mailing or the first pay period occurring within 14 days after the controller notifies the employer of the amount to withhold. Withheld amounts must be delivered to the controller within four days after each regularly scheduled payday, by check or electronic funds transfer. If more than one employee is having wages garnished, the total amount withheld and remitted can be sent via one payment. If paying by check, the employer must submit a separate statement identifying the name and Social Security number of each employee and the amount transmitted for that person. If the amount is electronically transferred and is \$10,000 or more, an employer must separately transmit the name and appropriate identification number, if any, of each person for whom payment was made and the amount transmitted for that person.

An employer must continue withholding the required amount until the controller notifies the employer to stop withholding or the full amount has been paid to the controller, as indicated in a written statement to the employer from the controller. Additionally, the employer must notify the controller when employment ends and provide the individual's last known address and name of any new employer, if known.

When garnishing wages, an employer can deduct \$3 from the employee's wages each time a withholding occurs. An employer that complies with a withholding notice will not be held liable in a civil action for conduct it took to comply with the notice. Moreover, by complying with a notice, an employer discharges its liability to the employee for the portion of income withheld.

If an employer wrongfully refuses to withhold income, or knowingly misrepresents an employee's income, it must pay the amount it refused to withhold to the state and may be ordered to pay punitive damages of up to \$1,000 per pay period it failed to withhold or knowingly misrepresented the income. If the wrongful refusal or knowing misrepresentation occurs after receiving notice of the withholding from the controller by certified mail, the controller can petition the courts to order the employer to appear and show why it should not be subject to penalties.

An employer cannot use a garnishment order as a basis for refusing to hire an applicant, or to fire or take disciplinary action against an employee. If an employer violates these provisions, it must hire or reinstate the individual with no loss of pay or benefits, will be liable for any non-

withheld amounts, and can be fined \$1,000. Additionally, if an individual sues the employer and wins, an employer is liable for not less than \$2,500 in attorneys' fees and costs.

Nev. Rev. Stat. Ann. § 353C.171 through Nev. Rev. Stat. Ann. § 353C.179 (Effective Date 05/06/2015).

V. Drug Testing

Nevada voters approved a ballot initiative to legalize marijuana for individuals 21 years of age or older, which will be in addition to the state's existing medical marijuana law.

Nevada's measure does not prohibit either public or private employers from maintaining, enacting, and enforcing workplace policies prohibiting or restricting the possession and use of marijuana otherwise permitted under the measure.

The amendment is not yet codified.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

No new laws or regulations enacted in 2015 or 2016.

VIII. Workers' Compensation

No new laws or regulations enacted in 2015 or 2016.

IX. Miscellaneous

A. Independent Contractor Test

Nevada's wage and hour provisions have been amended to provide that they do not apply to a relationship between a principal and an independent contractor.

The amendments create a new statute that sets forth an independent contractor test. Under the new law, a person is conclusively presumed to be an independent contractor if:

- Unless the person is a foreign national who is legally present in the U.S., s/he 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 IRS in the previous year;
- The person is required by the contract with the principal to hold any necessary state or local business license and to maintain any necessary occupational license, insurance or bonding; and
- The person satisfies 3 or more of the following criteria. Note, however, the fact that a person is not conclusively presumed to be an independent contractor because s/he failed to satisfy 3 or more of the criteria outlined below does not automatically create a presumption that s/he is an employee.
 - Notwithstanding the exercise of any control necessary to comply with any statutory, regulatory or contractual obligations, the worker

- has control and discretion over the means and manner of the performance of any work and the result of the work, rather than the means or manner by which the work is performed.
- Except for an agreement with the principal relating to the completion schedule, range of work hours, or if the work contracted for is entertainment, the time such entertainment is to be presented, s/he has control over the time the work is performed.
 - The person is not required to work exclusively for one principal unless:
 - A law, regulation or ordinance prohibits him or her from providing services to more than one principal; or
 - S/he has entered into a written contract to provide services to only one principal for a limited period.
 - S/he is free to hire employees to assist with the work.
 - S/he contributes a substantial investment of capital in his or her business. The determination of whether an investment of capital is substantial 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. Such investments include, but are not limited to:
 - Purchase or lease of ordinary tools, material and equipment regardless of source;
 - Obtaining a license or other permission from the principal to access any work space of the principal to perform the work for which s/he was engaged; and
 - Lease of any work space from the principal required to perform the work for which s/he was engaged.

The amendments apply to an action or proceeding to recover unpaid minimum wage or overtime wages in which a final decision has not been rendered before, on, or after the bill's effective date.

Nev. Rev. Stat. Ann. § 608.0155 and Nev. Rev. Stat. Ann. § 608.255 (Effective Date 06/03/2015).

B. Service Animals

In connection with the definition of "service animal" being amended, various provisions within a chapter concerning rights of persons with disabilities, and within the fair employment practices law, among others, have been amended.

Amended Definition

The definition of "service animal" has been changed from "an animal that has been trained to assist or accommodate a person with a disability" to generally align with federal law applicable to public accommodations, i.e., any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory,

psychiatric, intellectual, or other mental disability. While federal law notes that other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition, the state law provides that its definition includes a miniature horse that has been trained to do work or perform tasks for the disabled person's benefit.

Rights of Persons with Disabilities

The amendments remove the requirement that a person have a physical disability – other than blindness or deafness – to use a service animal.

Fair Employment Practices

Although it remains an unlawful employment practice for an employer to directly or indirectly interfere with a disabled person's use of an aid or appliance including a service animal, or to directly or indirectly refuse to allow an employee to keep a service animal with him or herself at all times at the place of employment, the amendment allows an employer to refuse to permit an employee to keep a miniature horse if the employer determines it is not reasonable to comply; in doing so, an employer must use assessment factors laid out under federal regulations concerning miniature horses – 28 C.F.R. § 36.302.

Nev. Rev. Stat. Ann. § 426.097, 426.099, Nev. Rev. Stat. Ann. § 426.510, and Nev. Rev. Stat. Ann. § 613.330. Amendments similar to those described under fair employment practices were also instituted for public accommodations (Nev. Rev. Stat. Ann. § 651.075), common carriers (Nev. Rev. Stat. Ann. § 704.145), and common motor carriers of passengers (Nev. Rev. Stat. Ann. § 706.366) (Effective Date 10/01/2015).

C. Data Security Breach Notification

Nevada has amended its data security breach notification statute. Nevada law requires businesses that own or license computerized data that includes personal information to notify affected individuals in the event of a data security breach where unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The statute defines "personal information" as 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 number or identification card number; or
- 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 a resident's financial account.

Per the amendments, the definition of personal information now also includes a driver authorization card number; medical identification number; health insurance identification number; or a user name, 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.

Exceptions to the rule requiring security breach notification exist where the security breach involves:

- Data that is encrypted;
- The last four digits of a social security number or driver's license number;
or

- Information which is lawfully available publicly via local, state, and federal governmental records.

The amendments add the last four digits of a driver authorization card number to the list of data falling under an exception to the notification rule.

Nev. Rev. Stat. Ann. § 603A.040 (Effective Date 07/01/2015)(Amendments apply to a data collector or a business July 1, 2016)).