What Employers Need to Know About the Nevada Hospitality and Travel Workers Right to Return Act

Insights
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The Nevada legislature followed several other cities and states by enacting sweeping legislation that provides certain employees with rights to return to their former employment. Senate Bill 386, the Nevada Hospitality and Travel Workers Right to Return Act, requires certain employers to provide written notification of layoffs to laid-off employees, rights to reemployment to laid-off employees, and maintain records relating to the new law for at least two years. The new law went into effect on July 1, and requires immediate compliance from certain employers within the hospitality and travel industry. Employers in the hospitality and travel industry should respond to the new law immediately by identifying laid-off employees that may have rights under the law and beginning to send correspondence to those laid-off employees.

Which Employers are Subject to the New Law?

The Nevada legislature did not intend for this law to apply to each employer in Nevada, and only targeted large employers within the hospitality and travel industry. To be clear, the law only applies to the following employers: airport hospitality operation, airport service provider, casino, event center, or hotel located in a county with a population in excess of 100,000. Because Nevada is made up of numerous smaller counties with fewer than 100,000 people, it appears this law only applies to employers in Clark County (where Las Vegas is located) and Washoe County (where Reno is located).

Notably, this law also applies to any business that contracts, leases, or sublets premises connected to a casino, event center, or hotel. For example, if you operate a restaurant that is within the premises of a casino or hotel, you may be required to comply with this new law. However, for this law to apply, the employer must currently employ or must have employed 30 employees on March 12, 2020.

Which Employees are Subject to the New Law?

The law defines "laid-off" employees as employees that were employed for no less than six months during the 12 months preceding the governor's declaration of emergency on March 12, 2020, whose most recent separation from active service occurred after March 12, 2020, and was due to a governmental order, lack of business, reduction in force, or other economic and nondisciplinary reason. The Nevada Labor Commissioner has issued guidance suggesting that if the employee has

been recalled or return to work before the bill was enacted (i.e. before July 1, 2021), then the employee does not need to receive any notices or employment offers under the new law.

The new law also does not cover laid-off employees that have a valid severance agreement, executive or management employees otherwise classified as exempt employees under the FLSA, or theatrical/stage performers. However, if an employee is subject to a collective bargaining agreement (CBA) with a right to return provision, any conflict between the language of the CBA and the new law will be governed by the CBA.

General Requirements Under the Law

There are four general requirements of the new Nevada law that you will want to familiarize yourself with in order to ensure compliance.

Notice Requirements

Employers that meet the qualifications above must provide a written notice of layoff to qualifying laid-off employees, and the notice must be provided in English, Spanish, and any other language spoken by 10% of the employees. If you have laid off employees due to COVID-19, you were required to have provided a notice of the layoff on or before July 21, 2021.

The notice must include the following information:

- Notice of the layoff and effective date of the layoff;
- Summary of the right to reemployment or clear instructions on the way an employee may access information relating to the right to reemployment; and
- Contact information for the individual that has been designated to receive complaints relating to violations of the new law.

Offers of Recall to Workers

Qualifying employers are also required to offer laid-off employees positions that become available after July 1, 2021 that the employee is qualified to perform, including the same position previously held by the employee or a similar position within the same job classification that the employee held at the time of the layoff. You are required to offer positions in order of seniority, taking into consideration the last position the employee held with the company and giving priority to employees with the "greatest length of service."

The offers of reemployment must include the following information:

- Notice that the offer must be accepted in no less than 24 hours after the employee receives the offer; and

- The employee must be available to begin working within five days after accepting the offer.

You are allowed to offer simultaneous conditional offers of employment based upon the priority given to employees with the greatest length of service. Notably, "greatest length of service" is defined as the total of all periods of when the employee has been in active service, *including time when the employee was on leave or vacation.*

If an employee does not accept the offer within 24 hours or is unavailable to begin working within the subsequent five days, you may recall the next available employee with the greatest length of service. Further, if you do not recall a specific employee because the employee lacks qualifications and end up hiring another person, you must provide the laid-off employee with a written notice of the decision and the reasons for the decision within 30 days.

Limited Exemptions for the Employee's Right to Reemployment

You are not required to extend additional offers of reemployment in a few limited circumstances:

- If the employee states in writing they do not wish to be considered for future open positions;
- If the employee states in writing they do not wish to be considered for positions with different hours of work than the employees' position prior to the separation; or
- If the employer has extended three bona fide offers of employment within three weeks of each offer for the same or similar position with a comparable number of regularly scheduled work that the employee worked prior to the layoff ***and*** each offer delivered by mail is returned as undeliverable, any offers sent by electronic mail are returned as undeliverable, and if the last-known phone number of the employee is no longer in service.

Recordkeeping Requirements

The notice and each offer of re-employment must be provided to the employee either in person or mailed to the employee's last-known address, and also sent by way of telephone, text message, or electronic mail. Given the notification and re-employment offer requirements are required to be disseminated through a number of avenues, we recommend that you begin preparing and disseminating notices and offers of re-employment immediately.

Employers are also required to retain records of the notices and offers of re-employment that are disseminated to each laid-off employee. In particular, you must retain the following records for at least two years after an employee receives notice of the layoff that complies with this law:

- The full legal name of the employee;
- The job classification for the employee at the time of the layoff;
- The date of hire of the employee;

- The last-known address, email address, and telephone number of the employee;
- A copy of the written notice of layoff to the employee; and
- Records of each offer of employment made to the employee

Retaliation and Enforcement Provisions

The law also creates a private cause of action for employees to file actions against their employers for violations of the new law. Before pursuing any action, employees must first provide their employer with written notice of the alleged violations and provide 15 days to cure the violation.

Employers are prohibited from terminating, reducing compensation, refusing to employ, or taking any adverse action against an employee that seeks to enforce their rights under the new law; participating in any proceeding under the new law; opposing "any practice" that does not conform with the requirements of the law; or an employee that mistakenly, but in good faith, alleges that an employer has not complied with the law. Violations of the law may entitle employees to rights of rehiring and reinstatement, future and back pay for each day of the violation, civil penalties of $100 each violation, $500 per day for compensatory and liquidated damages, and attorneys' fees and costs.

Notably, there is a ***rebuttable presumption*** that attaches if (a) an employee provides you with written notice of the your violation of the new law, (b) you terminate, demote, or take adverse employment action against the employee, and (c) you took such action within 60 days after the employee provided notice of your violation of the law. You may rebut the presumption if the reason for the adverse employment action was for a "legitimate business reason."

Miscellaneous Provisions

Previously enacted SB 4 required, among other things, that public accommodation facilities to test all new and returning employees and offer paid time off while employees awaited test results. SB 386 removes many of those requirements. Now paid time off for testing is only required if the employee is fully vaccinated or has an underlying medical condition preventing the employee from receiving a COVID-19 vaccine and the employee has either (1) been in close contact with a guest or employee who tested positive for COVID-19 or (2) the employee is experiencing symptoms of COVID-19.

Additionally, public accommodation facilities must still allow employees who test positive for or are diagnosed with COVID-19 and were working or had been recalled to work at the time of the diagnosis to take at least 14 days off work. However, only employees who are fully vaccinated or who have a verified underlying medical condition that prevents them from receiving a COVID-19 vaccination are required to be paid for at least 10 of their mandatory 14 days off work.

Conclusion

Fisher Phillips will continue to monitor employment developments in Nevada and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Las Vegas office.

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