



Nevada Expands Leave Rights For Employees Attending School Activities

Insights

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August 15, 2009 marked the effective date for a new law, which dramatically expands leave rights for those parents who choose to participate in school-related activities of their children.

General Scope

Parents with children enrolled in Nevada public schools have long had certain, limited protections for missing work due to school-related activities. Specifically, a parent could not be terminated or otherwise discriminated against for: 1) attending a conference called by an "administrator" of the child's school, or 2) responding to an emergency call from the school. The new law extends the same protections to parents, guardians or custodians whose children are enrolled in private schools.

The law also dramatically expands the scope of parental leave rights to attend school-related activities. Now, employers of 50 or more employees must give each parent, guardian or custodian of a child (whether enrolled in a public or private school) up to 4 hours of unpaid leave to: 1) attend parent-teacher conferences; 2) attend school-related activities during regular school hours; or, 3) volunteer or "otherwise be involved" at the school during regular school hours.

The statute is obviously intended to cover a wide array of activities including recitals, conferences, science fairs, or even if a parent simply wants to volunteer in a child's classroom. Leave is granted on a per-employee, per-child, per-school-year basis. In other words, an employee is entitled to four hours of leave each school year for each child they have enrolled in kindergarten through 12th grade. If an employer happens to employ both parents, both employees are each entitled to four hours of unpaid leave for each child each school year.

Some Restrictions

There are a few important restrictions. For example, employees must take leave in at least one-hour increments. And you may require employees to submit a written request for leave at least five days before the leave is taken. In addition, you may require employees to provide documentation verifying that the leave was used to participate in one of the school activities enumerated in the statute. While the law mandates that leave be taken at a time "mutually agreed" upon by employer and employee, there is no guidance yet on how mutual agreement is reached.

Finally, the expanded requirements of the school leave law do not extend to employees covered by a collective-bargaining agreement, provided that the agreement affords at least the same level of leave.

Penalties

The Nevada State Labor Commissioner will be responsible for enforcing the new provisions of the leave law.

In general it is unlawful for a covered employer to terminate, demote, suspend or otherwise discriminate against an employee for taking leave under the statute. Keep in mind that the law's original provisions remain in force. The Labor Commissioner is currently taking the position that once employees exhaust their allotted four hours of leave, they will still be entitled to take time off to attend conferences requested by a school administrator or to respond to an emergency involving their children.

Contrary to other leave-related statutes like the Family and Medical Leave Act (FMLA), an employer cannot force an employee to exhaust paid leave concurrently with school-related leave. Doing so risks a finding that the employer committed unlawful "retaliation."

Employers found to have engaged in prohibited activity will be guilty of a misdemeanor, and the Labor Commissioner is empowered to award a prevailing complainant lost wages and benefits, liquidated damages in an equal amount, and reinstatement.

Although the leave established may be "unpaid," keep in mind that you will not necessarily be able to deduct wages for time spent on school-related activities. Under both federal and state law, employees compensated on a salaried basis may not have their wages docked except in certain circumstances – none of which encompass the partial-day leave contemplated here. If the employee were off work for a full day through a combination of a school leave and a partial-day absence for personal reasons, docking the employee's salary *might* be appropriate. It would be prudent to seek legal advice in such situations.

Action Checklist

As an initial step all employers in Nevada should review their workforce to determine whether they are actually covered by the new provisions. Employers are obligated to provide four hours of school-related leave only if they employ 50 or more employees during each working day in each of the 20 or more calendar weeks in the current calendar year.

If your company falls within the law's purview, you should review your employee handbook, and other policies and procedures, updating them if needed. New policies should state the amount of leave to which employees are entitled, the activities for which the leave may be used, and the right of the employee to take the leave without fear of discrimination or retaliation.

Additionally, consider whether leave will be unpaid, how much advance written notice of the leave you will require, and whether you will require documentation verifying that the leave has been used for legitimate purposes. If you implement such requirements, then you should include them in your revised policies.

Finally, consider training supervisors and other human resources personnel on the provisions of the new law, as well as on how your company intends to implement those provisions into the workplace.

This Legal Alert contains information about a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.