



# Nevada Follows Trend By Passing Strict New Wage Disclosure Law

Insights

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Many legitimate reasons exist to explain differences in compensation within a company, such as job qualifications and prior experience. Although employers may wish to maintain the privacy of this information, they could face legal consequences if they prevent employees from discussing their wages. Under the National Labor Relations Act (NLRA), employers cannot discriminate against non-supervisory employees when they discuss their wages as part of a “concerted activity,” regardless of whether they are unionized. Similarly, in 2014, the Obama administration issued an executive order prohibiting discrimination from federal contractors against employees or applicants who inquire about, discuss, or disclose their wages.

To complement these federal restrictions, several states have enacted wage disclosure laws. Nevada now joins that list by passing a strict new law to that end. You will want to familiarize yourself with this new law immediately to ensure you don’t expose yourself to costly litigation.

## Overview Of New Law

The new law prohibits employers, employment agencies, and labor organizations from discriminating against the inquiry, discussion, or voluntary disclosure of information on wages. A violation of this law constitutes an unlawful employment practice under NRS Chapter 613.

However, there is an open question as to whom this law applies. Employers cannot discriminate against any “employee.” In general, this prohibition only applies to employers with 15 or more employees for each working day in each of 20 or more calendar weeks, either in the same or the preceding calendar year. Unlike the protections of the NLRA, which do not generally extend to supervisors, this law concerns all employees, including those at the top.

On the other hand, employment agencies cannot discriminate against any “person,” while labor organizations cannot discriminate against “any member” or “any applicant for membership.” Notably, the prohibition against labor organizations encompasses applicants, unlike the prohibition against employers or employment agencies. Given the three different definitions, legal disputes over this terminology will likely arise in the future.

## Only One Exemption Exists

Nevada provides for only one exemption from these prohibitions: the law does not apply to any person who has access to wage information as part of his or her essential job functions and

discloses the information to a person without access, except as ordered by the Labor Commissioner or a court of competent jurisdiction. For example, employers can prevent human resources or payroll representatives from sharing wage information with other employees, unless the disclosure is otherwise required by law.

### **Action Needed**

This law took effect upon passage and approval, which was on June 3, 2017. Although federal restrictions are already in place, you should review your policies and handbooks to ensure they prohibit discrimination against employees for wage disclosure. In addition, you should review your current employee handbook rules and confidentiality provisions and decide whether you should revise any that seem to overstep the line of compliance with the law. For example, many handbooks contain blanket rules prohibiting employees from disclosing their wage rate. Enforcement of such rule would now likely violate the law.

You should also consider establishing a clear system for employee compensation, if one is not already in place, and carefully evaluate the reasons behind any disparities. While you cannot prevent your employees from sharing information about their wages, you can minimize acrimony in the office by providing reasonable explanations to the question of why certain employees earn more than others.

For more information, please contact any attorney in the Las Vegas office of Fisher Phillips at (702) 252-3131.

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*This Legal Alert provides an overview of a specific Nevada state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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