



# What You Need To Know About Nevada's New Domestic Violence Victims' Law

Insights

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By the turn of the New Year, employers in Nevada will have an obligation to provide workplace protections to domestic violence victims, including time off from work. Starting January 1, 2018, Nevada employees will be entitled to leave above and beyond what may already be owed to them under the federal Family and Medical Leave Act (FMLA). Employers should begin preparing for this change to the law, revising policies, practices, and training sessions to reflect the change.

## Overview Of Impending Law

The new law will cover private employers and, unlike the FMLA, apply to all of them in the state, not just those with at least 50 employees within 75 miles of the worksite. All private employers in Nevada will be required to provide 160 hours of leave to domestic violence victims during a 12-month period.

The law will apply to employees who have been employed for at least 90 days and who are victims of domestic violence. It will also apply to employees whose family or household members are victims of domestic violence (with the assumption that the employee is not the alleged perpetrator).

The employee's leave may be paid or unpaid, although it must be used within the 12 months immediately following the act of domestic violence. The new bank of leave time may be used consecutively or intermittently. If it is used for a reason that also falls under the FMLA, it must be deducted concurrently from leave permitted by this law and the FMLA.

An employee will be able to use the leave for several purposes, including medical care, counseling, participation in court proceedings, and creating a safety plan. Prior to using the leave, an employee will need to provide advance notice of at least 48 hours.

Employers cannot deny an employee the right to use leave, require an employee to find a replacement worker as a condition of using leave, or retaliate against an employee for using leave. However, employers can require the employee to provide supporting documentation, such as a police report, a copy of an application for an order for protection, an affidavit from an organization that provides services to victims of domestic violence, or documentation from a physician. Any documentation provided is deemed confidential and must be retained in a manner consistent with the FMLA. Thus, employers will need to maintain confidential medical records in separate files from their typical personnel files. Depending on the type of documentation, employers should keep in

mind additional confidentiality requirements of other federal laws that may apply, such as those of the Genetic Information Nondiscrimination Act (GINA) and the Americans with Disabilities Act (ADA).

### **Penalties**

Employers who violate this law will be considered guilty of a misdemeanor. In addition, the Labor Commissioner may impose a penalty of up to \$5,000 for each violation.

### **Additional Requirements**

The Labor Commissioner will prepare a bulletin setting forth an employee's right to these benefits, which employers must post in a conspicuous location in the workplace. Employers can include the bulletin in the printed abstract they already post for NRS Chapter 608.

Similar to the FMLA, this law will also require employers to maintain a record of the use of leave for each employee and to make those records available for inspection by the Labor Commissioner. Employers must exclude the names of the employees from the records, unless a request for a record is for the purpose of an investigation. However, unlike the FMLA, which requires recordkeeping for three years, this law only requires two years of recordkeeping.

### **Reasonable Accommodations Must Also Be Considered**

This law goes even further than FMLA-type leave by requiring employers to provide reasonable accommodations that will not create an undue hardship, including but not limited to a transfer or reassignment, a modified schedule, a new work telephone number, or any other reasonable accommodation that will not create an undue hardship deemed necessary to ensure the safety of the employee, the workplace, the employer, or other employees.

Employers will be able to require the employee to provide supporting documentation for a request for reasonable accommodations.

### **Unlawful Conduct**

Under the new law, employers cannot discharge, discipline, discriminate against, deny employment or promotion to, or threaten to take any such action against an employee because the employee requests leave or participates as a witness or interested party in court proceedings related to the domestic violence. The same holds true for any employee who requests a reasonable accommodation, and even applies to alleged perpetrators accused of committing an act of domestic violence in the workplace.

### **Applicability To Public Employers**

Currently, it is unclear whether certain provisions of the new law will apply to public employers. The main provisions of the new law amend NRS Chapter 608, which only applies to private employers. A few provisions, governing reasonable accommodations and unlawful conduct, amend NRS Chapter 613, which generally apply to both private and public employers. However, the provisions from NRS Chapter 613 specifically incorporate by reference the provisions from NRS Chapter 608. This

suggests that the law in its entirety will only apply to private employers, though legal disputes over this issue may arise in the future.

### **Unemployment Benefits**

Under the new law, the Administrator of the Employment Security Division of the Department of Employment, Training, and Rehabilitation cannot disqualify a person from receiving unemployment compensation benefits if the former employee leaves employment to protect himself or herself, or his or her family or household member, from domestic violence, and if the former employee actively engages in an effort to preserve employment.

### **Action Needed**

To prepare for compliance with the law by January 1, 2018, you should review your policies and handbooks to ensure that proper procedures are in place for victims of domestic violence. Although the overall requirements of this new law purposely mirror those of the FMLA, there are differences in terms of eligibility and coverage for employees.

Thus, you should carefully consider your current requirements for advance notice, reasonable accommodations, and supporting documentation that accompany a request for leave. You should determine whether to update these policies to address the specific needs of domestic violence victims.

To prevent potential claims of insufficient or unlawful recordkeeping by employees, you should also keep in mind the confidentiality requirements of federal laws that may apply to the maintenance of any medical documentation you receive. Finally, you should prepare to post the relevant bulletin from the Labor Commissioner, as well as maintain records for potential inspection in the future.

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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**Mark J. Ricciardi**  
Regional Managing Partner  
702.252.3131  
Email

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