

REMINDER: NEVADA PAID LEAVE LAW TAKES EFFECT JANUARY 1

Insights

Dec 16, 2019

Nevada employers will soon have a very important New Year's resolution to complete: complying with the state's first-ever paid leave law. Effective January 1, 2020, all private employers with 50 or more employees in Nevada will have to provide employees with up to 40 hours of paid leave per benefit year. If you aren't up to speed on the basics of this impending change, the time is now to understand the necessary compliance steps.

IMMEDIATE CONCERNS

Beginning with the new year, you will have to provide 0.01923 hours of paid leave for each hour of work performed. According to the language of the statute, the law does not apply to an employer who "pursuant to a contract, policy, collective bargaining agreement or other agreement, provides employees with a policy for paid leave or a policy for paid time off to **all** scheduled employees at a rate of at least 0.01923 hours of paid leave per hour of work performed."

However, it remains to be seen whether you can avoid all of the other requirements simply by having a policy that provides paid leave to all scheduled employees at this rate or better. There will no doubt be litigation over this new law, and state and federal judges called to interpret the statute may have different opinions.

Therefore, our recommendation is that private employers with 50 or more Nevada employees relying on this exemption still design policies that mirror the language of the statute to the maximum extent possible.

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KEY COMPLIANCE STEPS

Key points of the law are summarized below.

- In determining whether you have 50 or more employees, part-time employees are counted, but temporary, seasonal and on-call employees do not. If the 50-or-more-employee threshold is met, you do not have to give paid leave to temporary, seasonal, or on-call employees. (A “temporary” employee is considered to be an employee whose employment will not exceed 90 days). Part-time employees are entitled to paid leave in accordance with the formula.
- The law does not apply to a business during its first two years of operation.
- An employee can start using paid leave on the 90th day of their employment.
- Paid leave may be limited to 40 hours per benefit year.
- Leave may be provided in a lump sum at the beginning of the benefit year or on an accrual basis over the course of a benefit year.
- The law provides for the carryover of accrued paid leave from one benefit year to the next, but you can limit the amount of carryover to 40 hours per benefit year.
- Upon termination of employment, you may, but are not required, to pay out unused paid leave. However, if an employee who did not voluntarily leave their employment is rehired within 90 days of the separation, you must reinstate previously unused paid leave hours.
- You can require that paid leave be taken in increments up to a maximum of four hours.
- An employee may use the leave without telling you the reason for its use, and the employee is not required to find a replacement worker as a condition of using the paid leave. However, in situations where the employee is on FMLA leave, you can still ask if an absence is being used as FMLA leave, and the provisions of the FMLA will continue to apply.
- The employee is to give you notice of an intention to use paid leave “as soon as practicable.” In a non-emergency

situation, we believe you can establish reasonable advance notice periods for the taking of leave and have blackout periods for times of heavy business demand. FMLA notice provisions can still be followed in FMLA situations.

- Each employee is entitled on each payday to an accounting of the hours of paid leave available for their use, and the law imposes recordkeeping requirements relating to the accrual and use of paid leave.
- As with other wage and hour laws, the statute does not prevent you from having paid leave policies that are more generous than the statutory requirements, and you may have different policies for different classes of employees, e.g., management versus line employees.
- The law prohibits retaliation against an employee for using available paid leave, although it does not specify a particular remedy for the violation. The courts will ultimately decide if an employee can bring suit for a violation of the law, or whether the sole remedy is to file a complaint with the Labor Commissioner.

CONCLUSION

The Nevada Labor Commissioner has put out [an Advisory Opinion](#) on this subject which you may find useful. We will continue to monitor further developments, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have any questions, please contact your Fisher Phillips attorney or any attorney in our [Las Vegas office](#).

This Legal Alert provides an overview of a specific 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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