

## **New Nevada Employment Laws – Part 2: Non-competes and Domestic Violence Leave**

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In addition to the pregnancy accommodation law and nursing mothers law we reported on [here](#), the Nevada legislature recently enacted changes to Nevada's non-compete law and created a new obligation for employers to provide domestic violence leave. Here are the specifics of these new laws that Nevada employers need to know.

### **Non-Compete Agreements – Changes To Enforceability ([AB 276](#)) – effective June 3, 2017**

Governor Sandoval recently signed into law AB 276 which enacts some important changes to existing Nevada non-compete law, requiring careful review.

To begin, AB 276 amends NRS Chapter 613 to require that a non-compete covenant: (a) be supported by valuable consideration; (b) not impose any restraint that is greater than necessary for the protection of the employer for whose benefit the restraint is imposed; (c) not impose any undue hardship on the employee; *and* (d) impose restrictions that are appropriate in relation to the valuable consideration supporting the non-compete covenant.

Many questions are raised by the new requirement that the restrictions be in relation to the consideration offered to the employee to support the non-compete agreement. One key question is whether continued employment of an at-will employee will be sufficient consideration to support a non-compete. We will have to see how that language plays out in future enforcement actions.

Restructuring or Reductions In Force. The new amendments state that, if an employee's termination is the result of a reduction in force, reorganization, or "similar restructuring," a non-compete covenant is only enforceable during the period in which the employer is paying the employee's "salary, benefits or equivalent compensation," such as severance pay. This restriction may vastly reduce the ability of Nevada employers to use non-compete agreements when executives, managers, or other employees are let go due to downsizing or other restructuring.

Restrictions Related to Customers. These new amendments further provide that a non-compete covenant may not restrict a former employee from providing service to a former client or customer of the employer if: (a) the former employee did not solicit the former client or customer; (b) the client or

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customer voluntarily chose to leave and seek services from the former employee; and (c) the former employee is otherwise complying with the limitations in the covenant as to time, geographical area, and scope of activity to be restricted, other than any limitation on providing services to a former customer or client who seeks the services of the former employee without any contact instigated by the former employee.

Confidentiality and Non-Disclosure Agreements. AB 276 additionally states that it does not prohibit agreements to protect an employer's confidential and trade secret information if the agreement is supported by valuable consideration and is otherwise reasonable in scope and duration.

Judicial Revision Required. Notably, the new provisions state that if, during a non-compete enforcement action, a court determines that the non-compete covenant is supported by valuable consideration, but otherwise contains limitations that are unreasonable, or impose greater restraint than necessary and create undue hardship on the employee, the court "shall revise the covenant to the extent necessary and enforce the covenant as revised." Any judicial revisions must be made to cause the limitations contained in the non-compete agreement as to time, geographical area and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than is necessary for the protection of the employer for whose benefit the restraint is imposed.

## **Domestic Violence Leave ([SB 361](#)) – effective January 1, 2018**

Beginning in 2018, Nevada employers must provide an employee who has been employed for least 90 days and who is a victim of domestic violence, or whose family or household member is a victim of domestic violence, up to 160 hours of leave in one 12-month period, assuming the employee is not the alleged perpetrator. A "family or household member" means a spouse, domestic partner, minor child, or parent or another adult who is related within the first degree of consanguinity or affinity to the employee, or other adult person who is or was actually residing with the employee at the time the act of domestic violence was committed.

The leave allowed under this new law may be paid or unpaid, and may be used intermittently or in a single block of time. The leave must be used within 12 months after the date when the act of domestic violence occurred. If used for FMLA-qualifying purposes, the domestic violence leave will run concurrently with FMLA leave and both leave balances will be reduced accordingly.

Reasons For Leave. Eligible employees may take domestic violence leave for the following reasons:

1. For the diagnosis, care, or treatment of a health condition related to an act of domestic violence committed against the employee or the employee's family or household member;
2. To obtain counseling or assistance related to an act of domestic violence committed against the employee or the employee's family or household member;
3. To participate in court proceedings related to an act of domestic violence committed against the employee or the employee's family or household member; or
4. To establish a safety plan, including any action to increase the safety of the employee or the employee's family or household member from a future act of domestic violence.

Notice Requirements. This new leave law requires an employee who has used any leave allowed under the bill to give his or her employer at least 48 hours notice if the employee needs to use additional leave for any of the purposes outlined above.

Reasonable Accommodations. Employers are obligated to make reasonable accommodations that

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will not create undue hardship for an employee who is a victim of domestic violence (or whose family or household member is such a victim). These accommodations may include: (a) a transfer or reassignment; (b) a modified schedule; (c) a new telephone number for work; or (d) any other reasonable accommodation which will not create an undue hardship deemed necessary to ensure the safety of the employee, the workplace, the employer, and other employees.

Documentation. Employers may require employees to present documentation substantiating the need for leave, such as a police report, a copy of an application for a protective order, an affidavit from an organization that provides assistance to victims of domestic violence, or documentation from a physician. Any substantiating documentation provided to the employer must be treated confidentially and must be retained in a manner consistent with the FMLA requirements. In addition, employers may require an employee to provide documentation that confirms or supports the need for a reasonable accommodation under this new law.

Recordkeeping. Employers are required to keep a record of the hours taken for domestic violence leave for a 2-year period following the entry of the information in the record and make these records available to inspection by the Nevada Labor Commissioner upon request. When producing records pursuant to an inspection request, employee names must be redacted, unless a request for a record is made for investigation purposes.

Notice. Pursuant to SB 361, the Nevada Labor Commissioner has provided a [bulletin](#) setting forth the rights conferred to employees under the domestic violence leave law, available on its website. Employers must post the bulletin in a conspicuous location in the employer's workplace. The bulletin may be included in the posting already required by NRS 608.013.

Additional Protections. The domestic violence leave law states that an otherwise eligible employee may not be denied unemployment benefits if the employee left employment to protect himself or herself (or a family or household member) from an act of domestic violence, and the person actively engaged in an effort to preserve employment.

The new law also prohibits employers from denying an employee's right to use domestic violence leave, requiring an employee to find a replacement as a condition to using this leave, or retaliating against an employee for using such leave. It is also unlawful for employers to discharge, discipline, discriminate in any manner or deny employment or promotion to, or threaten to take any such action against an employee because:

1. The employee sought leave under SB 361;
2. The employee participated as a witness or interested party in court proceedings related to domestic violence, which triggered the use of leave under SB 361;
3. The employee requested an accommodation pursuant to SB 361; or
4. The employee was subjected to an act of domestic violence at the workplace.

## **Update Your Policies and Practices**

Take time now to review and update your employee handbook, supervisor manuals, and other personnel policies to reflect these new Nevada laws. If you use non-compete agreements, be sure to review future agreements for compliance with the amended statute. Also, be sure to train your managers, supervisors, team leads, and human resources personnel on the requirements and restrictions imposed on employers by these laws. As always, if you have questions or need assistance, contact your Nevada employment attorney.

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