

# EMPLOYMENT LAW CHANGES EFFECTIVE 2020

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## Employment Law Changes Effective 2020

**Though hard to believe, it's 2020, the year after the 80<sup>th</sup> Session of the Nevada Legislature. This means that new employment laws effective this year are impacting Nevada employers. This article highlights some of the new laws relating to minimum wage, health benefits, paid time off, marijuana screening and sex discrimination.<sup>1</sup>**

### Minimum Wage

Perhaps the most widely discussed change pertains to minimum wage. As of July 1, 2019, the Labor Commissioner no longer regulates the minimum wage in accordance with federal law. Instead, pursuant to Assembly Bill (AB) 456, minimum wage is now codified in Nevada Revised Statute (NRS) 608.250, which provides for yearly 75-cent increases in Nevada's two-tiered minimum wage system as follows:

- On July 1, 2020, the minimum wage increases from \$7.25 per hour (if qualifying health benefits are offered) and \$8.25 per hour (if such benefits are not offered) to \$8 and \$9, respectively.
- On July 1, 2021, it increases to \$8.75 and \$9.75.
- On July 1, 2022, it increases to \$9.50 and \$10.50.
- On July 1, 2023, it increases to \$10.25 and \$11.25.
- On July 1, 2024, it increases to \$11 and \$12.

In addition, during the 80<sup>th</sup> Legislative Session, Assembly Joint Resolution No. 10, which proposes constitutional minimum-wage amendments, passed both the



Assembly and Senate. If passed at the next legislative session and approved by voters, Nevada's Constitution will be amended to remove the two-tiered wage system and replace it with a single minimum wage of not less than \$12 per hour, subject to increases as set by the Nevada Legislature or established by the federal minimum wage.

### Qualifying Health Benefits

In response to the Nevada Supreme Court's decision in *MDC Restaurants, LLC v. The Eighth Judicial Dist. Court*, 419 P.3d 148 (Nev. 2018), the Nevada Legislature passed Senate Bill (SB) 192 to "further clarify the definition of health benefits"<sup>2</sup> that must be provided to qualify for paying the lower-tier minimum wage. These benefits must include coverage for: ambulance services, emergency services, hospitalization, maternity and newborn care, mental health services, substance use services, prescription drugs, rehabilitative services, lab work, preventative services, chronic



disease care, pediatric care and more. Further, such plans must either be a qualifying Taft-Hartley plan<sup>3</sup> or cover at least 60 percent of the total average costs of covered benefits (i.e., it generally must be at least a “bronze” health plan).

SB 192 is potentially problematic because it defines qualifying health benefits for the purpose of the constitutional two-tiered minimum wage system differently than did the Nevada Supreme Court in *MDC Restaurants*, which had interpreted the

Constitution as requiring only that (1) the health benefits be of a value greater than or equal to the wage of an additional dollar per hour; and (2) the premiums be “not more than 10 percent of the employee’s gross taxable income

from the employer.” Until this difference is resolved or becomes moot, the safest bet may be to either ensure that health plans satisfy both SB 192 and *MDC Restaurants*, or simply pay the higher-tier minimum wage.

### Paid Leave

Beginning January 1, 2020, Nevada joined a minority of states that mandate paid time off for private employees. Specifically, SB 312 modified NRS 608 to require at least 0.01923 hours of paid time off for each hour of work performed. This means that an employee who works 40 hours per week for 52 weeks will receive about 40 hours of paid leave.

This new law applies to employers with 50 or more Nevada employees. It also applies to both full- and part-time employees, but not to temporary, seasonal or on-call employees. The labor commissioner’s October 4, 2019, Advisory Opinion is a great resource to understand the terms of the new law, which include the following:

- Employees must be allowed to use paid leave beginning on the 90<sup>th</sup> day of employment;
- Employees may use leave without providing a reason to the employer;
- To use paid leave, employees must, as soon as practicable, give notice to the employer;
- Employers may limit the use of paid leave to 40 hours per benefit year;
- Employers may require that leave be used in minimum increments of up to four hours;
- Employers must maintain a record of each employee’s accrual and use of paid leave for one year;
- On each payday, an employer must provide each employee with an accounting of the paid leave available for use;
- Leave can be “front loaded” or given all at once at the beginning of the benefit year;
- If leave is not front loaded but, instead, is accrued over the course

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of the year, then leave may carry over to subsequent benefit years, although such carry over may be limited to 40 hours;

- Upon termination, the employer does not have to pay the former employee for unused leave; however, the employer must reinstate unused leave to an employee who was involuntarily terminated then rehired within 90 days.

“NRS 613 was amended to prohibit employers from refusing to hire an individual who tested positive for marijuana, whether through a blood, urine, hair or saliva screening test.”

This law does not apply to employers during their first two years of operation. Nor does it apply to an employer who provides an equal or greater amount of paid leave through an established policy or agreement. Accordingly, a best practice may be for relevant employers to revise or implement such policies to avoid the specific caveats and conditions of this new law. It is also advisable that such policies or agreements allow for the use of paid leave beginning no later than the 90<sup>th</sup> day of employment, thereby avoiding potential disputes concerning whether the delayed ability to use paid leave constitutes a time period where the employer lacked a compliant policy or agreement.

## Marijuana Screening

Effective January 1, 2020, NRS 613 was amended to prohibit employers from refusing to hire an individual who tested positive for marijuana, whether through a blood, urine, hair or saliva screening test. This restriction does not apply if: (1) the individual is applying to be a firefighter or emergency medical technician; (2) the position requires the operation of a motor vehicle and screening tests are otherwise required by law for such position; (3) the employer determines that the position is such that it could adversely affect the

safety of others; (4) it is inconsistent with an employment contract or collective bargaining agreement; (5) it is inconsistent with federal law; or (6) the position is funded by a federal grant.

Further, if an employer requires an employee to submit to a screening test within the first 30 days of employment, the employee has the right to rebut the results by submitting an additional screening test at his or her own expense. The new law requires that the employer “accept and give appropriate consideration” to the results of such rebuttal tests.

## Discrimination

As of January 1, 2020, the Nevada Equal Rights Commission (NERC) has increased power to penalize discrimination. NRS 233.170 was amended pursuant to SB 166 to give the NERC power to: (1) order the payment of lost wages or other economic damages resulting from sex discrimination; (2) impose civil penalties of up to \$5,000, \$10,000 or \$15,000 against employers of 50 or more employees for willful misconduct or reckless indifference (subject to the employer’s ability to take corrective action within 30 days of receiving the NERC’s order); and (3)

award back pay for a period not exceeding two years before the complaint is filed and ending on the date the NERC issues its order.

1. This article does not address employment laws from the 80<sup>th</sup> Legislative Session that became effective in their entirety during 2019, with no further developments occurring in 2020, including: (1) AB 248, which prohibits settlements agreements that restrict the disclosure of facts relating to sexual offenses, sex discrimination or retaliation based on sex; (2) AB 181, which prohibits employers from requiring that an employee be present when reporting that he or she is sick or injured and cannot work; (3) SB 177, which allows courts to award the relief provided in Title VII for state-law discrimination claims; and (4) SB 493, which tackles misclassifying employees as independent contractors and creates a misclassification task force.
2. Minutes of the Senate Committee on Health and Human Services on Senate Bill 192, 80<sup>th</sup> Sess., p. 14 (Nev. Mar. 6, 2019) (statement of Sen. Patricia Spearman).
3. A Taft-Hartley plan is a multiemployer plan maintained under one or more collective bargaining agreements. To qualify under SB 192, the Taft-Hartley plan must qualify as an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 or the Internal Revenue Code.



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