

ASSEMBLY BILL NO. 306—ASSEMBLYMEN SPIEGEL, DIAZ,
CARRILLO, OHRENSCHALL, JOINER; BENITEZ-THOMPSON,
BUSTAMANTE ADAMS, CARLTON AND SWANK

MARCH 16, 2015

Referred to Committee on Health and Human Services

SUMMARY—Requires an employer to make certain accommodations for a nursing mother.
(BDR 40-249)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in a County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public health; requiring an employer to provide a reasonable break time and a clean, private place for an employee who is a nursing mother to express breast milk; prohibiting an employer from retaliating against an employee for certain actions relating to this requirement; creating a right of action for a public employee who is aggrieved by her employer's failure to comply with this requirement or by such retaliation by the employer; exempting certain small employers from this requirement if compliance would cause an undue hardship; authorizing a local board of health to establish a program to mediate disputes concerning a violation of this requirement; authorizing the Labor Commissioner to enforce the requirement against private employers; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires each employer to provide employees with certain meal
- 2 and rest periods, with certain exceptions. (NRS 608.019) Existing law gives the
- 3 Labor Commissioner the authority to prosecute violations of this requirement and
- 4 provides that an employer who violates this requirement is guilty of a misdemeanor
- 5 and subject to a civil penalty of \$5,000 per violation. (NRS 608.180, 608.195)



* A B 3 0 6 *

Existing federal law requires an employer to provide a reasonable break time and a private place for certain employees to express breast milk for a nursing child for 1 year after the child's birth. (29 U.S.C. § 207) **Sections 2 and 3** of this bill similarly require each public and private employer in this State to provide reasonable break time and a clean, private place for an employee who is a nursing mother to express breast milk. Such break time may be with or without compensation. Additionally, **sections 2 and 3** prohibit an employer from retaliating against an employee who: (1) takes the provided break time or uses the designated place to express breast milk; or (2) takes any action to enforce the requirement that the employer provide such a time and place. Finally, **section 3** relieves a private employer of fewer than 25 persons from the duty to provide such accommodations if doing so would cause undue hardship to the employer.

Section 1 of this bill authorizes a local board of health to establish a program of voluntary mediation to resolve disputes concerning a violation of the requirement that each employer provide break time and a place for an employee to express breast milk. **Section 2** creates a right of action for a public employee against a public employer who fails to meet the requirement to provide break time and a place for the employee to express breast milk and provides that an officer or agent of a public employer who violates this requirement is guilty of a misdemeanor. **Section 4** of this bill authorizes the Labor Commissioner to enforce the requirement against private employers. **Section 5** of this bill provides that a private employer who violates this requirement is guilty of a misdemeanor and is subject to a civil penalty of \$5,000 per violation.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 439 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A local board of health may, by regulation, establish a program of voluntary mediation for disputes concerning complaints of violations of section 2 or 3 of this act. Such a program must allow persons to submit such a dispute for mediation before seeking enforcement by the Labor Commissioner pursuant to NRS 608.180 and before filing a criminal complaint or an action in court.

2. Regulations establishing a program of voluntary mediation pursuant to subsection 1 may include, without limitation:

- (a) Requirements for participation in the program;*
- (b) The types of disputes that may be submitted for mediation;*
- (c) The manner in which the parties must submit information concerning the dispute;*
- (d) The manner in which any inspections may occur;*
- (e) The manner in which findings will be made;*
- (f) Any fee to cover the cost of the mediation; and*
- (g) Any other matters relevant to the mediation.*



3. Upon completion of any mediation conducted pursuant to this section, the mediator shall provide the parties with his or her findings and recommendations.

4. If the parties do not reach an agreement concerning a dispute as a result of participation in the program of voluntary mediation, the complainant may file a complaint with the Labor Commissioner, a criminal complaint or commence an action in court, as appropriate.

5. The local board of health shall not report any information to the Labor Commissioner or a court concerning a mediation conducted pursuant to this section except the findings and recommendations of the mediator.

Sec. 2. Chapter 281 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A public body shall provide an employee who is the mother of a child under 1 year of age with a reasonable break time, with or without compensation, for the employee to express breast milk for the child each time the employee needs to express such milk and a clean, private place, other than a bathroom, where the employee may express such milk.

2. Any officer or agent of a public body shall not retaliate, or direct or encourage another person to retaliate, against any employee of the public body because the employee has:

(a) Taken the break time or used the space required pursuant to subsection 1 to express breast milk; or

(b) Taken any action to require the public body to comply with the requirements of this section, including, without limitation, filing a complaint, testifying, assisting or participating in any manner in an investigation, proceeding or hearing to enforce this section.

3. Any employee of a public body who is aggrieved by a violation of the provisions of this section may file a civil action in the district court of the county in which the violation occurred for declaratory, injunctive and monetary relief against the public body. If the court finds that there has been a violation of the provisions of this section by an officer or agent of the public body, the court shall award the employee the sum of \$5,000 for each violation or the sum of the employee's actual damages, whichever is greater.

4. Any officer or agent of a public body whose duty it is to employ, direct or control the services of an employee covered by this section, who violates any of the provisions of this section, is guilty of a misdemeanor.

5. As used in this section, "public body" means:



(a) *The State of Nevada, or any agency, instrumentality or corporation thereof;*

(b) *The Nevada System of Higher Education;*

(c) *Any municipality, county, school district or other type of district, or a city or town, incorporated or unincorporated; or*

(d) *Any other body corporate and politic comprising a political subdivision of this State or acting on behalf thereof.*

Sec. 3. Chapter 608 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, each employer shall provide an employee who is the mother of a child under 1 year of age with a reasonable break time, with or without compensation, for the employee to express breast milk for the child each time the employee needs to express such milk and a clean, private place, other than a bathroom, where the employee may express such milk.

2. An employer shall not retaliate, or direct or encourage another person to retaliate, against any employee because the employee has:

(a) Taken the break time or used the space required pursuant to subsection 1 to express breast milk; or

(b) Taken any action to require the employer to comply with the requirements of this section, including, without limitation, filing a complaint, testifying, assisting or participating in any manner in an investigation, proceeding or hearing to enforce this section.

3. An employer who employs fewer than 25 employees is not subject to the requirements of this section if the requirements would impose undue hardship or expense on the employer, considering the size, financial resources, nature and structure of the business of the employer.

Sec. 4. NRS 608.180 is hereby amended to read as follows:

608.180 The Labor Commissioner or the representative of the Labor Commissioner shall cause the provisions of NRS 608.005 to 608.195, inclusive, *and section 3 of this act* to be enforced, and upon notice from the Labor Commissioner or the representative:

1. The district attorney of any county in which a violation of those sections has occurred;

2. The Deputy Labor Commissioner, as provided in NRS 607.050;

3. The Attorney General, as provided in NRS 607.160 or 607.220; or

4. The special counsel, as provided in NRS 607.065,

↪ shall prosecute the action for enforcement according to law.



- 1 **Sec. 5.** NRS 608.195 is hereby amended to read as follows:
2 608.195 1. Except as otherwise provided in NRS 608.0165,
3 any person who violates any provision of NRS 608.005 to 608.195,
4 inclusive, *and section 3 of this act*, or any regulation adopted
5 pursuant thereto, is guilty of a misdemeanor.
6 2. In addition to any other remedy or penalty, the Labor
7 Commissioner may impose against the person an administrative
8 penalty of not more than \$5,000 for each such violation.
9 **Sec. 6.** This act becomes effective on July 1, 2015.

