

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 certain employers 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; authorizing a public employee who is aggrieved by her employer's failure to comply with this requirement or by such retaliation by the employer to file a complaint; 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 R 1 *

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, except for the Department of Corrections, 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 such 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 50 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** authorizes a public employee to file a complaint against a public employer who fails to meet the requirement to provide break time and a place for the employee to express breast milk. **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 pursuant to NRS 608.180 or 608.195 or section 2 of this act.

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 seek enforcement pursuant to NRS 608.180 or 608.195 or section 2 of this act.*

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. *Except as otherwise provided in subsection 4, 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. *An employee who is aggrieved by the failure of a public body to comply with the requirements of this section may:*

(a) *If the employee is an employee of the Executive Department of State Government and is not an employee of an entity described in NRS 284.013, file a complaint with the Personnel Commission in accordance with the procedures provided pursuant to NRS 284.384;*

(b) *If the employee is an employee of the Legislative Department of State Government, file a complaint with the Legislative Commission;*

(c) *If the employee is an employee of the Judicial Department of State Government, file a complaint with the Court Administrator; and*

(d) *If the employee is an employee of a municipality, county, school district or other type of district, or a city or town, file a complaint with the Local Government Employee-Management Relations Board.*



4. *The requirements of this section do not apply to the Department of Corrections. The Department of Corrections is encouraged to make reasonable accommodations, when practicable, for an employee who is the mother of a child under 1 year of age to express breast milk.*

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. 2.2. NRS 284.384 is hereby amended to read as follows:

284.384 1. The Commission shall adopt regulations which provide for the adjustment of grievances for which a hearing is not provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 **[H]** *and complaints filed pursuant to section 2 of this act.* Any grievance for which a hearing is not provided by NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 , *or any complaint filed pursuant to section 2 of this act,* is subject to adjustment pursuant to this section.

2. The regulations must provide procedures for:

(a) Consideration and adjustment of the grievance *or complaint* within the agency in which it arose.

(b) Submission to the Employee-Management Committee for a final decision if the employee is still dissatisfied with the resolution of the dispute.

(c) If requested by an employee or agency, the use of a resolution conference to resolve a grievance **[H]** *or complaint.*

3. The regulations must include provisions for:

(a) Submitting each proposed resolution of a dispute which has a fiscal effect to the Budget Division of the Department of Administration for a determination by that Division whether the resolution is feasible on the basis of its fiscal effects; and

(b) Making the resolution binding.

4. Any grievance *or complaint* which is subject to adjustment pursuant to this section may be appealed to the Employee-Management Committee for a final decision. Except as otherwise provided in subsection 3, a final decision of the Committee is binding. The Committee or an employee may petition a court of competent jurisdiction for enforcement of the Committee's binding decisions.

5. The employee may represent himself or herself at any hearing regarding a grievance *or complaint* which is subject to



1 adjustment pursuant to this section or be represented by an attorney
2 or other person of the employee's own choosing.

3 6. As used in this section, "grievance" means an act, omission
4 or occurrence which an employee who has attained permanent status
5 feels constitutes an injustice relating to any condition arising out of
6 the relationship between an employer and an employee, including,
7 but not limited to, compensation, working hours, working
8 conditions, membership in an organization of employees or the
9 interpretation of any law, regulation or disagreement.

10 **Sec. 2.7.** NRS 288.270 is hereby amended to read as follows:

11 288.270 1. It is a prohibited practice for a local government
12 employer or its designated representative willfully to:

13 (a) Interfere, restrain or coerce any employee in the exercise of
14 any right guaranteed under this chapter.

15 (b) Dominate, interfere or assist in the formation or
16 administration of any employee organization.

17 (c) Discriminate in regard to hiring, tenure or any term or
18 condition of employment to encourage or discourage membership in
19 any employee organization.

20 (d) Discharge or otherwise discriminate against any employee
21 because the employee has signed or filed an affidavit, petition or
22 complaint or given any information or testimony under this chapter,
23 or because the employee has formed, joined or chosen to be
24 represented by any employee organization.

25 (e) Refuse to bargain collectively in good faith with the
26 exclusive representative as required in NRS 288.150. Bargaining
27 collectively includes the entire bargaining process, including
28 mediation and fact-finding, provided for in this chapter.

29 (f) Discriminate because of race, color, religion, sex, age,
30 physical or visual handicap, national origin or because of political or
31 personal reasons or affiliations.

32 (g) Fail to provide the information required by NRS 288.180.

33 *(h) Fail to comply with the requirements of section 2 of this*
34 *act.*

35 2. It is a prohibited practice for a local government employee
36 or for an employee organization or its designated agent willfully to:

37 (a) Interfere with, restrain or coerce any employee in the
38 exercise of any right guaranteed under this chapter.

39 (b) Refuse to bargain collectively in good faith with the local
40 government employer, if it is an exclusive representative, as
41 required in NRS 288.150. Bargaining collectively includes the entire
42 bargaining process, including mediation and fact-finding, provided
43 for in this chapter.



(c) Discriminate because of race, color, religion, sex, age, physical or visual handicap, national origin or because of political or personal reasons or affiliations.

(d) Fail to provide the information required by NRS 288.180.

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 50 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.

Sec. 5. NRS 608.195 is hereby amended to read as follows:

608.195 1. Except as otherwise provided in NRS 608.0165, any person who violates any provision of NRS 608.005 to 608.195,



1 inclusive, *and section 3 of this act*, or any regulation adopted
2 pursuant thereto, is guilty of a misdemeanor.

3 2. In addition to any other remedy or penalty, the Labor
4 Commissioner may impose against the person an administrative
5 penalty of not more than \$5,000 for each such violation.

6 **Sec. 6.** This act becomes effective on July 1, 2015.

