

Amendment No. 394

Assembly Amendment to Assembly Bill No. 306 (BDR 40-249)

Proposed by: Assembly Committee on Health and Human Services

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EWR/RBL



Date: 4/16/2015

A.B. No. 306—Requires an employer to make certain accommodations for a nursing mother. (BDR 40-249)



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 ~~for an employer~~ **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; ~~creating a right of action for~~ **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~~ **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:

Existing law requires each employer to provide employees with certain meal and rest periods, with certain exceptions. (NRS 608.019) Existing law gives the Labor Commissioner the authority to prosecute violations of this requirement and provides that an employer who violates this requirement is guilty of a misdemeanor and subject to a civil penalty of \$5,000 per violation. (NRS 608.180, 608.195) 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 ~~125~~ **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** ~~creates a right of action for~~ **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, ~~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.~~ 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 ~~file a complaint with the Labor Commissioner, a criminal complaint or commence an action in court, as appropriate,~~ 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. ~~14~~ 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

1 clean, private place, other than a bathroom, where the employee may express
2 such milk.

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

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

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

12 3. ~~Any employee of a public body who is aggrieved by a violation of the~~
13 ~~provisions of this section may file a civil action in the district court of the county~~
14 ~~in which the violation occurred for declaratory, injunctive and monetary relief~~
15 ~~against the public body. If the court finds that there has been a violation of the~~
16 ~~provisions of this section by an officer or agent of the public body, the court shall~~
17 ~~award the employee the sum of \$5,000 for each violation or the sum of the~~
18 ~~employee's actual damages, whichever is greater.~~ An employee who is aggrieved
19 by the failure of a public body to comply with the requirements of this section
20 may:

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

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

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

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

32 4. ~~Any officer or agent of a public body whose duty it is to employ, direct or~~
33 ~~control the services of an employee covered by this section, who violates any of~~
34 ~~the provisions of this section, is guilty of a misdemeanor.~~ The requirements of
35 this section do not apply to the Department of Corrections. The Department of
36 Corrections is encouraged to make reasonable accommodations, when
37 practicable, for an employee who is the mother of a child under 1 year of age to
38 express breast milk.

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

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

42 (b) The Nevada System of Higher Education;

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

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

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

48 284.384 1. The Commission shall adopt regulations which provide for the
49 adjustment of grievances for which a hearing is not provided by federal law or NRS
50 284.165, 284.245, 284.3629, 284.376 or 284.390. ~~++~~ and complaints filed pursuant
51 to section 2 of this act. Any grievance for which a hearing is not provided by NRS
52 284.165, 284.245, 284.3629, 284.376 or 284.390, or any complaint filed pursuant
53 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 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 adjustment pursuant to this section or be represented by an attorney or other person of the employee's own choosing.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Refuse to bargain collectively in good faith with the local government employer, if it is an exclusive representative, as required in NRS 288.150.

1 Bargaining collectively includes the entire bargaining process, including mediation
2 and fact-finding, provided for in this chapter.

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

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

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

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

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

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

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

22 *3. An employer who employs fewer than ~~125~~ 50 employees is not subject to*
23 *the requirements of this section if the requirements would impose undue*
24 *hardship or expense on the employer, considering the size, financial resources,*
25 *nature and structure of the business of the employer.*

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

27 608.180 The Labor Commissioner or the representative of the Labor
28 Commissioner shall cause the provisions of NRS 608.005 to 608.195, inclusive,
29 *and section 3 of this act* to be enforced, and upon notice from the Labor
30 Commissioner or the representative:

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

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

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

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

36 ↪ shall prosecute the action for enforcement according to law.

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

38 608.195 1. Except as otherwise provided in NRS 608.0165, any person who
39 violates any provision of NRS 608.005 to 608.195, inclusive, *and section 3 of this*
40 *act*, or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

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

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