

ASSEMBLY BILL NO. 113—ASSEMBLYWOMAN SPIEGEL

PREFILED FEBRUARY 7, 2017

Referred to Committee on Health and Human Services

SUMMARY—Requires an employer to make certain accommodations for a nursing mother. (BDR 40-7)

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

CONTAINS UNFUNDED MANDATE (§§ 2, 4)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 time and 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 an employer's failure to comply with this requirement or for retaliation by the employer to file a complaint; exempting certain small employers from this requirement based on an undue hardship; authorizing a local board of health to establish a voluntary mediation program to mediate disputes concerning a violation of this requirement; authorizing the Labor Commissioner to enforce the requirement against a private employer; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires employers to provide their employees with meal and rest
- 2 periods, with certain exceptions. (NRS 608.019) Existing law also authorizes the
- 3 Labor Commissioner to prosecute violations of this requirement and makes
- 4 violation of this requirement a misdemeanor, subject to a civil penalty of \$5,000 per
- 5 violation. (NRS 608.180, 608.195) Existing federal law also requires an employer
- 6 to provide reasonable break time and a private place for employees to express
- 7 breast milk for a nursing child for 1 year after the child's birth. (29 U.S.C. § 207(r))



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Sections 2 and 5 of this bill require each public and private employer in this State, other than 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. This break time may be provided with or without compensation. Additionally, sections 2 and 5 prohibit employers from retaliating against an employee who: (1) takes such break time or uses the designated place to express breast milk; or (2) takes any action to enforce this requirement. Section 5 exempts a private employer which has fewer than 50 employees from the duty to provide these accommodations if doing so would cause an undue hardship.

Section 1 of this bill authorizes a local board of health to establish a voluntary mediation program to resolve disputes concerning the requirement to provide break time and a place for the employee to express breast milk. Section 2 authorizes a public employee to file a complaint against a public employer who fails to meet this requirement or who retaliates against an employee. Section 6 of this bill authorizes the Labor Commissioner to enforce these requirements against private employers. Finally, section 7 of this bill makes a private employer who violates these requirements guilty of a misdemeanor, 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 5 of this act.

2. Participation in a program of voluntary mediation must be voluntary and is not required as a condition to seeking enforcement pursuant to NRS 608.180, 608.195 or section 2 or 5 of this act.

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

- (a) Requirements for participation;*
- (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 and recommendations will be made;*

- (f) Any required fee to cover the cost of the mediation; and*
- (g) Any other matters relevant to the mediation.*

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

5. The local board of health shall not report any information to the Labor Commissioner or a court concerning a mediation



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1 *conducted pursuant to this section except the written findings and*
2 *recommendations of the mediator.*

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

5 *1. Except as otherwise provided in subsection 4, a public body*
6 *shall provide an employee who is the mother of a child under 1*
7 *year of age with:*

8 *(a) Reasonable break time, with or without compensation, for*
9 *the employee to express breast milk as needed; and*

10 *(b) A clean, private place, other than a bathroom, where the*
11 *employee may express such milk.*

12 *2. An officer or agent of a public body shall not retaliate, or*
13 *direct or encourage another person to retaliate, against an*
14 *employee of the public body because the employee has:*

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

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

22 *3. An employee who is aggrieved by the failure of a public*
23 *body to comply with the provisions of this section may:*

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

29 *(b) If the employee is employed by the Legislative Department*
30 *of the State Government, file a complaint with the Director of the*
31 *Legislative Counsel Bureau;*

32 *(c) If the employee is employed by the Judicial Department of*
33 *the State Government, file a complaint with the Court*
34 *Administrator; and*

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

39 *4. The requirements of this section do not apply to the*
40 *Department of Corrections. The Department is encouraged to*
41 *comply with the provisions of this section to the extent practicable.*

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

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

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



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

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

5 Sec. 3. NRS 284.384 is hereby amended to read as follows:

6 284.384 1. The Commission shall adopt regulations which
7 provide for the adjustment of grievances for which a hearing is not
8 provided by federal law or NRS 284.165, 284.245, 284.3629,
9 284.376 or 284.390 **H and complaints filed pursuant to section 2**
10 **of this act.** Any grievance for which a hearing is not provided by
11 NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 , **or any**
12 **complaint filed pursuant to section 2 of this act,** is subject to
13 adjustment pursuant to this section.

14 2. The regulations must provide procedures for:

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

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

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

22 3. The regulations must include provisions for:

23 (a) Submitting each proposed resolution of a dispute which has a
24 fiscal effect to the Budget Division of the Office of Finance for a
25 determination by that Division whether the resolution is feasible on
26 the basis of its fiscal effects; and

27 (b) Making the resolution binding.

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

35 5. The employee may represent himself or herself at any
36 hearing regarding a grievance **or complaint** which is subject to
37 adjustment pursuant to this section or be represented by an attorney
38 or other person of the employee's own choosing.

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



Sec. 4. 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. Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided 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. 5. 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 as needed; and



1 **(b) A clean, private place, other than a bathroom, where the**
2 **employee may express such milk.**

3 **2. An employer shall not retaliate, or direct or encourage**
4 **another person to retaliate, against any employee because that**
5 **employee has:**

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

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

13 **3. An employer who employs fewer than 50 employees is not**
14 **subject to the requirements of this section if these requirements**
15 **would impose an undue hardship on the employer, considering the**
16 **size, financial resources, nature and structure of the business of**
17 **the employer.**

18 **Sec. 6.** NRS 608.180 is hereby amended to read as follows:

19 608.180 The Labor Commissioner or the representative of the
20 Labor Commissioner shall cause the provisions of NRS 608.005 to
21 608.195, inclusive, **and section 5 of this act** to be enforced, and
22 upon notice from the Labor Commissioner or the representative:

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

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

27 3. The Attorney General, as provided in NRS 607.160 or
28 607.220; or

29 4. The special counsel, as provided in NRS 607.065,
30 ➔ shall prosecute the action for enforcement according to law.

31 **Sec. 7.** NRS 608.195 is hereby amended to read as follows:

32 608.195 1. Except as otherwise provided in NRS 608.0165,
33 any person who violates any provision of NRS 608.005 to 608.195,
34 inclusive, **and section 5 of this act**, or any regulation adopted
35 pursuant thereto, is guilty of a misdemeanor.

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

39 **Sec. 8.** The provisions of NRS 354.599 do not apply to any
40 additional expenses of a local government that are related to the
41 provisions of this act.

42 **Sec. 9.** This act becomes effective on July 1, 2017.

