

Amendment No. 172

Assembly Amendment to Assembly Bill No. 113 (BDR 40-7)

Proposed by: Assembly Committee on Health and Human Services**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will REMOVE the unfunded mandate from A.B. 113.

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.

RBL/BJE



Date: 4/20/2017

A.B. No. 113—Requires an employer to make certain accommodations for a nursing mother. (BDR 40-7)



ASSEMBLY BILL NO. 113—ASSEMBLYWOMAN SPIEGEL

PREFILED FEBRUARY 7, 2017

Referred to Committee on Health and Human Services

SUMMARY—Requires ~~an employer~~ **certain employers** to make certain accommodations for a nursing mother. (BDR ~~(40-7)~~ **23-7**)

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 ~~for~~ reasonable ~~time~~ **break times** and **a** 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; **requiring the Local Government Employee-Management Relations Board to provide for an expedited review of such complaints by local government employees;** exempting certain small employers **and contractors** 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:

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

Sections 2 and 5 of this bill require each public and private employer in this State, other than the Department of Corrections, **certain small employers and certain licensed**

contractors, to provide a 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 ~~+~~, except that section 5 requires the break time to be compensated if such break time is otherwise required to be compensated pursuant to a collective bargaining agreement between a private employer and an employee organization. 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. If a public or private employer would face an undue hardship relating to these requirements, sections 2 and 5 authorize the employer to meet with the employee to discuss potential alternatives. If no agreement is reached on such an alternative, sections 2 and 5 authorize the employer to require the employee to accept a reasonable alternative selected by the employer. Section 2 also authorizes a public employee to file a complaint against his or her public employer for certain violations of sections 2, 4 and 5 of this bill and require the Local Government Employee-Management Relations Board to create an expedited procedure to resolve such a complaint. Section 5 exempts a private employer ~~(which)~~ from the requirements of section 5 if the employer: (1) and fewer than 50 employees ~~(from the duty to provide these accommodations if doing so)~~ and complying with the requirements 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; or (2) is a licensed contractor and the employee is performing work at a construction jobsite that is at least 3 miles from the regular place of business of the employer. 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 disputes;~~

~~(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 conducted pursuant to this section except the written findings and recommendations of the mediator.~~
(Deleted by amendment.)

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,~~ subsections 2 and 5, 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 as needed; and

(b) A ~~clean, private~~ place, other than a bathroom, ~~where the employee may express such milk,~~ that is reasonably free from dirt or pollution, protected from the view of others and free from intrusion by others where the employee may express breast milk.

2. If the public body determines that complying with the provisions of subsection 1 will cause an undue hardship considering the size, financial resources, nature and structure of the public body, the public body may meet with the employee to agree upon a reasonable alternative. If the parties are not able to reach an agreement, the public body may require the employee to accept a reasonable alternative selected by the public body and the employee may appeal the decision by filing a complaint in the manner set forth in subsection 4.

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

(a) Taken break time or used the space provided pursuant to subsection 1 or 2 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 the provisions of this section.

~~3.4.~~ 4. An employee who is aggrieved by the failure of a public body to comply with the provisions of this section may:

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

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

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

(d) If the employee is employed by a ~~municipality, county, school district or other type of district, or a city or town,~~ political subdivision of this State or any public or quasi-public corporation organized under the laws of this State, file a complaint with the Local Government Employee-Management Relations Board ~~4.~~ in the manner set forth in section 3.3 of this act.

5. The requirements of this section do not apply to the Department of Corrections. The Department is encouraged to comply with the provisions of this section to the extent practicable.

~~5.6.~~ 6. 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; or
(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,~~ political subdivision of this State or any public or quasi-public corporation organized under the laws of this State, including, without limitation, counties, cities, unincorporated towns, school districts, charter schools, hospital districts, irrigation districts and other special districts.

Sec. 3. 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 ~~and~~ *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 ~~and~~ *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 Office of Finance 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. 3.3. Chapter 288 of NRS is hereby amended by adding thereto a new section to read as follows:

The Board shall provide for an expedited review of a complaint filed by an employee pursuant to subsection 4 of section 2 of this act. To facilitate such a review, the Board shall:

1. Create and make available a form to be used by an employee to file a complaint;

2. Authorize the Commissioner to resolve such a complaint without referring the matter to the Board;

3. Establish an expedited timeline for issuing a decision; and

4. Take any other action necessary to ensure the complaint is reviewed in a timely manner.

Sec. 3.7. NRS 288.110 is hereby amended to read as follows:

288.110 1. The Board may make rules governing:

- (a) Proceedings before it;
- (b) Procedures for fact-finding;
- (c) The recognition of employee organizations; and
- (d) The determination of bargaining units.

2. The Board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by any local government employer, local government employee or employee organization. Except as otherwise provided in this subsection and NRS 288.280, and section 3.3 of this act, the Board shall conduct a hearing within 180 days after it decides to hear a complaint. If a complaint alleges a violation of paragraph (e) of subsection 1 of NRS 288.270 or paragraph (b) of subsection 2 of that section, the Board shall conduct a hearing not later than 45 days after it decides to hear the complaint, unless the parties agree to waive this requirement. The Board, after a hearing, if it finds that the complaint is well taken, may order any person to refrain from the action complained of or to restore to the party aggrieved any benefit of which the party has been deprived by that action. ~~That~~ Except when an expedited hearing is conducted pursuant to section 3.3 of this act, the Board shall issue its decision within 120 days after the hearing on the complaint is completed.

3. Any party aggrieved by the failure of any person to obey an order of the Board issued pursuant to subsection 2, or the Board at the request of such a party, may apply to a court of competent jurisdiction for a prohibitory or mandatory injunction to enforce the order.

4. The Board may not consider any complaint or appeal filed more than 6 months after the occurrence which is the subject of the complaint or appeal.

5. The Board may decide without a hearing a contested matter:

- (a) In which all of the legal issues have been previously decided by the Board, if it adopts its previous decision or decisions as precedent; or
- (b) Upon agreement of all the parties.

6. The Board may award reasonable costs, which may include attorneys' fees, to the prevailing party.

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~~ subsections 3, 5 and 6, 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

(b) ~~A clean, private place, other than a bathroom, where the employee may express such milk.~~ that is reasonably free from dirt or pollution, which is protected from the view of others and free from intrusion by others where the employee may express breast milk.

2. If break time is required to be compensated pursuant to a collective bargaining agreement entered into by an employer and an employee organization, any break time taken pursuant to subsection 1 by an employee which is covered by the collective bargaining agreement must be compensated.

3. If an employer determines that complying with the provisions of subsection 1 will cause an undue hardship considering the size, financial resources, nature and structure of the business of the employer, the employer may meet with the employee to agree upon a reasonable alternative. If the parties are not able to reach an agreement, the employer may require the employee to accept a reasonable alternative selected by the employer.

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

(a) Taken break time or used the space provided pursuant to subsection 1 or 3 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 the provisions of this section.

~~3.7~~ 5. An employer who employs fewer than 50 employees is not subject to the requirements of this section if these requirements would impose an undue hardship on the employer, considering the size, financial resources, nature and structure of the business of the employer.

6. An employer who is a contractor licensed pursuant to chapter 624 of NRS is not subject to the requirements of this section with regard to an employee who is performing work at a construction jobsite that is located at least 3 miles from the regular place of business of the employer.

Sec. 6. 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,

1 *and section 5 of this act* to be enforced, and upon notice from the Labor
2 Commissioner or the representative:

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

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

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

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

8 ➔ shall prosecute the action for enforcement according to law.

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

10 608.195 1. Except as otherwise provided in NRS 608.0165, any person who
11 violates any provision of NRS 608.005 to 608.195, inclusive, *and section 5 of this*
12 *act*, or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

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

16 **Sec. 8.** ~~[The provisions of NRS 254.599 do not apply to any additional~~
17 ~~expenses of a local government that are related to the provisions of this act.]~~
18 **(Deleted by amendment.)**

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