

Amendment No. 482

Senate Amendment to Senate Bill No. 312	(BDR 53-888)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: Yes 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.



SENATE BILL NO. 312—SENATORS WOODHOUSE, CANNIZZARO, RATTI, PARKS, OHRENSCHALL; BROOKS, CANCELA, DONDERO LOOP, D. HARRIS AND SCHEIBLE

MARCH 18, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Requires an employer in private employment to provide paid ~~[sick]~~ leave to employees under certain circumstances. (BDR 53-888)

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.

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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 employment; requiring an employer in private employment to provide paid ~~[sick]~~ leave to each employee of the employer under certain circumstances; providing ~~[an exception;]~~ **certain exceptions;** providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires employers in private employment to pay employees certain minimum compensation and to provide certain benefits, including overtime compensation and meal and rest breaks. (NRS 608.018, 608.019, 608.250) **Section 1** of this bill requires such an employer who has ~~[25]~~ **50** or more employees in this State, at a minimum, to provide employees **40 hours per year of** paid ~~[sick]~~ leave ~~[that must be earned at a rate of not less than 1 hour per 30 hours worked and]~~ **that** may be used by an employee beginning on the 90th calendar day of employment. **Section 1** provides that an employee may use ~~[accrued]~~ paid ~~[sick]~~ leave ~~for: (1) for obtaining health care for himself or herself or for his or her family; (2) to obtain counseling, assistance or to attend a court proceeding related to domestic violence, sexual assault, stalking or harassment; or (3) if the business of the employer or the school which a member of the employee's family or household attends closes as a result of a public health concern.]~~ **available for use by that employee without providing a reason to his or her employer for such use.** **Section 1** requires an employee to **, as soon as practicable,** give ~~[reasonable advance]~~ notice to ~~[the]~~ **his or her** employer to use ~~[his or her accrued]~~ **the** paid ~~[sick]~~ leave ~~for.~~ **Section 1** authorizes an employer to request reasonable documentation from the employee for use of accrued paid sick leave. **available for use by that employee.**

Section 1 also provides that an employer may: (1) limit the use of the paid ~~[sick]~~ leave to ~~[24]~~ **40** hours per year; (2) limit the ~~[accrual]~~ **amount of** paid ~~[sick]~~ leave **that an employee may carry over to another year** to a maximum of ~~[48]~~ **40** hours per year; and (3) set a minimum increment that an employee may use the accrued sick leave at any one time, not to exceed ~~[2]~~ **4** hours. **Section 1** additionally requires an employer to maintain records of the **receipt or** accrual and use of paid ~~[sick]~~ leave for each employee for a ~~[3-year]~~ **1-year** period and to make those records available for inspection by the Labor Commissioner. **Section 1** requires the Labor Commissioner to prepare a bulletin setting forth these benefits and requires

employers to post the bulletin in the workplace. **Section 1** provides an exception for : (1) employers who provide at least an equivalent amount of ~~paid~~ leave or paid time off that may be used for the same purposes and under the same conditions as required by ~~this bill~~ **section 1**; and (2) temporary and seasonal employees. Section 1 additionally provides that for the first 2 years of operation, an employer defined in section 1 is not required to comply with the requirements of section 1.

Existing law requires: (1) the Labor Commissioner or his or her representative to enforce the provisions governing the payment and collection of wages and other benefits; and (2) certain entities to prosecute an action for enforcement upon receiving notice from the Labor Commissioner or his or her representative. (NRS 608.180) **Section 2** of this bill requires the Labor Commissioner to enforce the provisions of **section 1**.

Existing law provides that any person who violates the provisions governing the payment and collection of wages and other benefits is guilty of a misdemeanor. Existing law additionally authorizes the Labor Commissioner to impose against the person an administrative penalty of not more than \$5,000 for each such violation. (NRS 608.195) **Section 3** of this bill makes a violation of the provisions of **section 1** a misdemeanor and authorizes the Commissioner to impose, in addition to any other remedy or penalty, an administrative penalty of not more than \$5,000 for each violation.

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

Section 1. Chapter 608 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, every employer in private employment shall provide paid ~~sick~~ leave to each employee of the employer as follows:

(a) An employee is entitled to ~~accrue~~ 40 hours of paid ~~sick~~ leave ~~at a rate of not less than 1 hour for every 30 hours worked by the employee. For the purposes of this calculation, a salaried employee shall be deemed to work 40 hours per week, unless the employee's normal week of work is less than 40 hours, in which case paid sick leave must accrue based upon the hours worked in that employee's normal week of work.~~ per year.

(b) ~~Accrued paid sick~~ An employee may, as determined by the employer, obtain paid leave by:

(1) Receiving on January 1 of each year the total number of hours of paid leave that the employee is entitled to accrue in a year pursuant to paragraph (a); or

(2) Accruing over the course of a year the total number of hours of paid leave the employee is entitled to accrue in a year pursuant to paragraph (a).

(c) Paid leave ~~must~~ accrued pursuant to subparagraph (2) of paragraph (b) may carry over for each employee between his or her years of employment, except an employer may limit the ~~accrued~~ amount of paid ~~sick~~ leave for each employee ~~carried over to a maximum of 48~~ 40 hours per year.

~~(c)~~ (d) Except as otherwise provided in paragraph ~~(b)~~ (i), an employer shall:

(1) Compensate an employee for the ~~accrued~~ paid ~~sick~~ leave ~~of the~~ available for use by that employee at the rate of pay at which the employee is compensated at the time such leave is taken, as calculated pursuant to paragraph ~~(d), if necessary~~ (e); and

(2) Pay such compensation on the same payday as the hours taken are normally paid.

~~[(d)]~~ (e) For the purposes of determining the rate of pay at which an employee is compensated pursuant to paragraph ~~[(e)]~~ (d), the compensation rate for an employee who is paid by ~~salary~~;

(I) Salary, commission, piece rate or a method other than hourly wage must ~~be~~;

(I) Be calculated by dividing the total wages of the employee paid for the immediately preceding 90 days by the number of hours worked during that period ~~it~~;

(II) Except as otherwise provided in sub-subparagraph (III), include any bonuses agreed upon and earned by the employee; and

(III) Not include any bonuses awarded at the sole discretion of the employer, overtime pay, additional pay for performing hazardous duties, holiday pay or tips earned by the employee.

(2) Hourly wage must be calculated by the hourly rate the employee is paid by the employer.

~~[(e)]~~ (f) An employer may limit the amount of paid ~~sick~~ leave an employee uses to ~~24~~ 40 hours per year.

~~[(f)]~~ (g) An employer may set a minimum increment of paid ~~sick~~ leave, not to exceed ~~1/2~~ 4 hours, that an employee may use at any one time.

~~[(g)]~~ (h) An employer shall provide to each employee on each payday a written accounting of the hours of ~~accrued~~ paid ~~sick~~ leave available for use by that employee. An employer may use the system that the employer uses to pay its employees to provide the written accounting of the hours of paid leave available for use by the employee.

~~[(h)]~~ (i) An employer may, but is not required to, compensate an employee for any ~~accrued~~ unused paid ~~sick~~ leave available for use by that employee upon separation from employment, except if ~~any~~ the employee is rehired by the employer within ~~1 year~~ 90 days after separation from that employer ~~and the separation from employment was not due to the employee voluntarily leaving his or her employment, any previously accrued unused paid sick leave hours available for use by that employee must be reinstated.~~

2. An employee in private employment may use ~~accrued~~ paid ~~sick~~ leave available for use by that employee as follows:

(a) An employer shall allow an employee to use paid ~~sick~~ leave beginning on the 90th calendar day of his or her employment.

(b) An employee may use ~~accrued~~ paid ~~sick~~ leave ~~for~~

~~— (1) For the diagnosis, care or treatment of an existing health condition of, or preventive care for, the employee or a member of the employee's family or household;~~

~~— (2) To obtain counseling or assistance or to participate in any court proceedings related to domestic violence, sexual assault, stalking or harassment; or~~

~~— (3) If the business of the employer or the school which a member of the employee's family or household attends closes as a result of a public health concern, available for use by that employee without providing a reason to his or her employer for such use.~~

(c) ~~[To the extent possible, an]~~ An employee shall, as soon as practicable, give reasonable advance notice to his or her employer [of the need] to use accrued the paid sick leave [for any purpose listed in paragraph (b).] available for use by that employee.

3. An employer shall not:

(a) Deny an employee the right to use ~~accrued~~ paid ~~sick~~ leave available for use by that employee in accordance with the conditions of this section;

(b) Require an employee to find a replacement worker as a condition of using ~~accrued~~ paid ~~sick~~ leave ~~that~~ available for use by that employee; or

(c) Retaliate against an employee for using ~~accrued~~ paid ~~sick~~ leave ~~that~~ available for use by that employee.

~~4. The employer of an employee who uses accrued paid sick leave pursuant to this section may require the employee to provide to the employer documentation that confirms or supports the reason the employee provided for requesting such leave. Any documentation provided to an employer pursuant to this subsection is confidential.~~

~~5. The Labor Commissioner shall prepare a bulletin which clearly sets forth the benefits created by this section. The Labor Commissioner shall post the bulletin on the Internet website maintained by the Office of Labor Commissioner, if any, and shall require all employers to post the bulletin in a conspicuous location in each workplace maintained by the employer. The bulletin may be included in any printed abstract posted by the employer pursuant to NRS 608.013.~~

~~5. An employer shall maintain a record of the receipt or accrual and use of paid sick leave pursuant to this section for each employee for a 3-year 1-year period following the entry of such information in the record and, upon request, shall make those records available for inspection by the Labor Commissioner.~~

~~6. The provisions of this section do not:~~

(a) Limit or abridge any other rights, remedies or procedures available under the law.

(b) Negate any other rights, remedies or procedures available to an aggrieved party.

(c) Prohibit, preempt or discourage any contract or other agreement that provides a more generous paid ~~sick~~ leave benefit or paid time off benefit.

7. For the first 2 years of operation, an employer is not required to comply with the provisions of this section.

8. This section does not apply to ~~an~~:

(a) An employer who, pursuant to a ~~collective bargaining agreement,~~ contract, policy, collective bargaining agreement or other agreement, provides employees with a policy for paid ~~sick~~ leave or a policy for paid time off that provides for at least ~~24~~ 40 hours of paid ~~sick~~ leave per year that may be used ~~for the same purposes and~~ under the same conditions as specified in this section ~~that~~:

(b) Temporary or seasonal employees.

9. As used in this section, "employer" means a private employer who has ~~25~~ 50 or more employees in private employment in this State. ~~The term does not include a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax exempt organization pursuant to 26 U.S.C. § 501(c).~~

Sec. 2. 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 1 of this act and 608.215 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. 3.** NRS 608.195 is hereby amended to read as follows:

2 608.195 1. Except as otherwise provided in NRS 608.0165, any person who
3 violates any provision of NRS 608.005 to 608.195, inclusive, *and section 1 of this*
4 *act* or 608.215, or any regulation adopted pursuant thereto, is guilty of a
5 misdemeanor.

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

9 **Sec. 4.** This act becomes effective:

10 1. Upon passage and approval for the purpose of adopting any regulations and
11 performing any other preparatory administrative tasks necessary to carry out the
12 provisions of this act; and

13 2. On January 1, 2020, for all other purposes.