

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Eightieth Session
February 8, 2019**

The Committee on Government Affairs was called to order by Chair Edgar Flores at 9 a.m. on Friday, February 8, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Edgar Flores, Chair
Assemblyman William McCurdy II, Vice Chair
Assemblyman Alex Assefa
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Bea Duran
Assemblyman John Ellison
Assemblywoman Michelle Gorelow
Assemblyman Gregory T. Hafen II
Assemblywoman Melissa Hardy
Assemblyman Glen Leavitt
Assemblywoman Susie Martinez
Assemblywoman Connie Munk

COMMITTEE MEMBERS ABSENT:

Assemblyman Richard Carrillo (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Asher Killian, Committee Counsel
Kirsten Oleson, Committee Secretary
Trinity Thom, Committee Assistant



OTHERS PRESENT:

Patrick Cates, Director, Department of Administration

Peter Long, Administrator, Division of Human Resource Management, Department of Administration

Kara Jenkins, Administrator, Nevada Equal Rights Commission, Department of Employment, Training and Rehabilitation

Jennifer Guthrie, Assistant Professor, Department of Communication Studies, Greenspun College of Urban Affairs, University of Nevada, Las Vegas

Lila Vizcarra, Chief Investigator, Nevada Equal Rights Commission, Department of Employment, Training and Rehabilitation

Judy Price, Private Citizen, Washoe Valley, Nevada

Chair Flores:

[Roll was taken. Committee rules and protocol was explained.] We have two quick presentations today.

Patrick Cates, Director, Department of Administration:

I am here on behalf of the Division of Human Resource Management of the Department of Administration. The Division of Human Resource Management is the core of the Department of Administration. The last time I was here, I talked about our major pillars: the people, the technology, and the infrastructure. The Division of Human Resource Management is the "people" part of the pillars. It provides the human resource (HR) practice for the entire state of Nevada—a workforce of about 18,000 people. They do everything from recruitment, onboarding, employee development, classification, to sexual harassment policies. We do everything for agencies. We serve several departments from soup to nuts for HR. Some of the larger departments have their own HR staff. They have the staff under the authority of the Division of Human Resource Management. With that, I will turn it over to Peter Long. Peter Long is the Administrator of the Division of Human Resource Management. He has been with the division for a number of years. He is a very skilled practitioner of the HR arts. He has been the administrator for three years now.

Peter Long, Administrator, Division of Human Resource Management, Department of Administration:

The Division of Human Resource Management's mission is to provide exceptional HR service with integrity, respect, and accountability. Our vision is to be recognized as a leader and partner in the management of HR services. The chart for our agency [page 2, [\(Exhibit C\)](#)] covers the various sections that we deal with. We are allocated 75 positions to provide services to state employees. The division structure has six basic sections [page 3] in addition to the administrator's office. The sections include the Equal Employment Opportunity and Discrimination Investigation Unit; employee and management services; Central Payroll and Employee Records; Compensation, Classification and Recruitment; Agency Human Resource Services; and the Office of Employee Development.

The Equal Employment Opportunity (EEO) Office has various roles and missions [page 4]. They provide guidance and advice to state agencies and state employees about EEO matters. They recommend and assist with the implementation of policies to create and maintain a work environment free of harassment and discrimination. In support of the state's affirmative action initiatives, they conduct community outreach to market the state of Nevada as the employer of choice. Additionally, they provide oversight for the state's administrative action plan and reports [page 5]. They develop and deliver EEO affirmative action training for employees, supervisors, and management. They manage discrimination and harassment complaints to the Sexual Harassment and Discrimination Investigation Unit (SHDIU). They develop and administer the state's mediation program.

The Sexual Harassment and Discrimination Investigation Unit was established on July 1, 2003, by Governor Kenny C. Guinn [page 6]. He created the unit—originally in the Department of Personnel—to establish an impartial and consistent and independent investigative process to evaluate allegations containing complaints of sexual harassment or discrimination. He felt that an impartial unit within our division would lend credibility to employees and assure them that the agency was not doing anything contrary to what Title VII outlines. The SHDIU's mission is to conduct prompt, independent investigations of complaints of sexual harassment and discrimination, as defined in state and federal law, in order to protect the interests of the state, protect employees from unlawful discrimination and harassment, and reduce costs associated with settlements and court decisions against the state. The Sexual Harassment and Discrimination Training Investigation Unit is managed by the EEO Office [page 7]. It has one supervisory compliance investigator and three compliance investigators located in Carson City and Las Vegas. In 2018 sexual harassment was the most common complaint by state of Nevada employees, followed by racial discrimination, and gender discrimination. You can see a complete breakdown in the pie chart on page 8 ([Exhibit C](#)). Disability discrimination claims were often associated with the Americans with Disabilities Act (ADA) compliance issues and the Family and Medical Leave Act of 1993 (FMLA)—if you are familiar with those, they are very detailed and often hard to interpret.

We also handle the Mediation Unit [page 9]. This was created years ago to try to resolve conflicts between employees and management at the lowest possible level before it created a grievance. It creates a win-win solution to workplace conflict. The Mediation Unit allows employees to discuss issues, clear up misunderstandings, determine the underlying interests or concerns, and ultimately find areas of agreement. When that is done, we put a written agreement into place that the agency and the employee agrees to adhere to.

The employee and management services section [page 10] handles a broad array of issues: alcohol and drug testing, ADA, and they serve as the secretary to the Hearings Division for appeal hearings over suspension, demotion, or dismissal. Furthermore, they oversee the state's Employee Assistance Program (EAP), employee relations, FMLA, grievances, performance management, as well as progressive discipline. They are also the point of reference for the regulation-making process or revisions to regulation. They handle whistleblower retaliation.

The EAP provides guidance resources. Initially they were brought on to provide counseling for someone who was impaired in the workplace. The process begins with the impaired individual going to a counselor and, per regulation, he or she has to get the counselor's approval to return to work. We have expanded that over the years to provide good, significant benefits to the employees of this program. They give financial assistance, legal assistance, and work-life assistance. They can help with elder care, senior care, finding a babysitter, and scheduling your birthday party. The cost for this service is rather insignificant. It is 79 cents per employee per month. It is a lot of services for a small cost.

The Personnel Commission [page 11] consists of five members and five alternates. There is one member from labor, one member from management, and three members are from the general public but have some background in human resources. They are responsible for adopting personnel regulations before going to the Legislative Commission for final approval. They hear appeals on classification studies and whether someone meets the minimum qualifications for a job. They serve as an advisor administrator on matters of human resources. They also provide secretarial support to the Personnel Commission.

The Employee-Management Committee [page 12] consists of three management and three employee representatives. Their role is to hear employee grievances of any issue relating to the workplace which is not covered by some other law. They would not hear FMLA or ADA issues or anything that is covered separately. If the employee still disagrees after the Employee-Management Committee has made a decision, he or she can file for judicial review. Again, HR provides administrative support to the Employee-Management Committee. This is a committee of existing state employees who serve on this and are appointed by the Governor.

The Committee on Catastrophic Leave has two employee representatives and three management representatives who hear appeals for the state's regulations on catastrophic leave, which is the leave someone can take if they meet certain conditions [page 13]. Other employees can donate to that leave if they choose to.

We also have the Organizational/Workplace Climate Study Program [page 14]. Climate studies are independent studies conducted by us which look at various agencies to assess and evaluate their culture, effectiveness of management, employee morale, and the internal communications of that organization. This program is beneficial because they identify areas of inefficiency and action performance barriers. Once the survey and study have been completed, they analyze the results and review key findings with agency leadership and advise on possible ways to develop solutions, and they also provide training.

Central Payroll and Employee Records maintain employee records [page 15]. They process about 2,500 transactions biweekly. Central Payroll sends out approximately 18,000 to 19,000 paychecks every two weeks. With our current information technology (IT) system, we have never missed a check. However, it is a challenge with a lot of different systems talking to each other.

The Compensation, Classification, and Recruitment section is self-explanatory [page 16]. They are responsible for maintaining our compensation schedules, conducting the biennial wage and salary benefit survey, developing pay policies, and participating in the Merit Award Board for "Good Government, Great Employees." The classification portion is responsible for maintaining our classification plan and classifying new and existing positions within the classified service.

The recruitment unit [page 17] is responsible for recruitment, developing and maintaining recruitment strategies, succession planning, workforce planning, attending job fairs, and providing agencies with the Nevada Applicant Processing and Placement System training, which is our in-house recruitment system. They also oversee the layoff process, in the event that it occurs. In 2018 we did a total of almost 2,500 recruitments, with almost 65,000 applications received. Over the past five years, recruitment has received, on average, about 83,000 applications per year. Our recruitment staff has to evaluate one application every six minutes.

We have embarked on a pilot program with LinkedIn [pages 18-19]. The Interim Finance Committee allowed us to pull funding from our reserves to start this pilot program last December. We are using it and working out some small bugs. Our intent for this program is to be able to target people with the skill sets that we are looking for—mainly higher-level positions or positions that are difficult to recruit like IT, health care, and engineers. We can screen and select for certain skill sets, then reach out to them to make them aware that we have a job. We will then try to sell them on the benefits of working for the state of Nevada. Our current recruitment method is to post a job announcement and hope that someone applies. That used to work but now with 3 percent to 4 percent unemployment, we have to do something different. By applying these benchmarks regarding recruitments and filling positions, we hope to improve recruitment efforts. We are looking to decrease the length of time for recruitment and getting the skill sets for agencies to fill the positions and retain employees.

Agency Human Resource Services [page 20] is a section within our division that provides day-to-day HR services to multiple agencies in the state that do not have their own HR. There is a typo on page 20 ([Exhibit C](#)). The total number of customer services provided, 8,979, is strictly for the year 2018—not 2017 and 2018. These day-to-day services include orientation, recruitment requests, leave issues, employee relations, grievances, and complaints. They play a major role. If an employee is perceived to have done something incorrectly, they do the internal investigations then make recommendations to the agency's management in regards to what, if any, action might be appropriate, working in conjunction with the Office of the Attorney General. The next page describes the agencies they provide service to [page 21].

The Office of Employee Development provides competency-based training programs that help the state develop and retain a highly qualified workforce [page 22]. We have one employee development manager, three training officers, one program officer, one administrative assistant in Las Vegas, and one training officer in Carson City. The annual

training programs that we provide are the Certified Public Manager Program (CPM) which is for high-level management training, and the management academy, which provides training for the employee to be a good, competent manager. Also, we have the supervisory skills class which will be a set of classes—we just completed it and we will begin this in Carson City next month and the following month in Las Vegas. Depending on how many positions are filled we have 2,500 to 4,000 supervisors in the state service. I do not think we have done as good of a job in the past as we could have in providing employees new supervisors with the skill sets they need to be good supervisors. A lot of the time, supervisors are promoted because they were good journey-level workers. Any of us who have been supervisors knows that being thrown into supervision is a brave new world. We want to provide them the skill set they need to succeed in the supervisory level. We also provide special consulting services for learning and development.

A little more about the various classes: the CPM is an 18-month, nationally accredited leadership program [page 23]. The class has a capstone project in which teams get together and develop recommendations for agencies on the various issues the agencies have brought forth. Since the first class, the capstone projects have saved the state an estimated \$40 million. We have had 560 graduates from 41 agencies since 2004. The management academy is a five-month, competency-based management development program. Since 2014 we have had 10 cohorts and 260 graduates. The supervisory skills program is a 42-hour practical application. It is not a cohort class; these classes can be taken as the employee has time. Once they complete the classes, they will be given a supervisory certificate. We also offer 125 general education classes.

The next page [page 24] asks that the agency Human Resource Service section, which provides services to agencies on a daily basis, be carved out and have its own separate budget, mainly because they maintain their own separate reserves. It is difficult for us and our Administrative Service Unit and the Office of Finance in the Office of the Governor to keep those two separate.

The next page shows transfers [page 25]. We are funded 100 percent by assessment to agencies. The next page shows the activity for the divisions [page 26]. The next pages are budget slides showing what our revenue is [pages 26-28]. Quickly, one of the new positions we are looking for this session is a veterans recruitment coordinator. The Legislature gave us a veterans coordinator two sessions ago and this position is based in Las Vegas. This position has made a huge impact in making Nevada the most veteran-friendly state. We received 12,000 applications specifically from veterans. Of those 12,000, the coordinator has had face-to-face contact with 2,800 to advise them how to apply for state jobs and how to equate their military service with state jobs. As some of you may know, a lot of these veterans have never applied for a job. They went into the service straight out of high school. They may have gotten a couple-hour course on how to fill out a resume when they were exiting the military. They really do not know how to apply for a job, and they do not know how to equate the job they did in the military with state service requirements. He has done an exceptional job in doing that. We are at a ratio of being able to hire anywhere from 8 percent to 12 percent of those folks and getting them into state service. He has also created

a crosswalk to show their military specialty, which jobs in state service that equates to, and what they would qualify for.

We are also asking for a new training officer to supplement the existing one, specifically to create and administer the supervisory training that we are rolling out [page 29]. We anticipate a good reaction and that folks will sign up for it. We do not have the ability to train 2,500 people. We are also looking for a new student worker for our agency HR services section [page 30]. There are two reasons. First, it will provide some clerical support at that level and free existing staff for higher level duties. Second, when someone from high school comes and works for us, hopefully they will move into state service later on.

I wanted to point out that in December of 2017, Governor Sandoval asked Patrick Cates, as the Director of the Department of Administration, to set up an HR working group with directors from the larger agencies [page 31]. We did that. I will admit, for a few months I thought I should wear a flak jacket to the meeting because the idea was to hear everything they felt was a problem with HR—hindrances we were causing and rules that were too difficult to implement. After the first few months, my skin toughened up and I realized that this was best for the state and we have changed policies, procedures, and regulations.

Very quickly, if these two bills get through the Senate side you will have an opportunity to vet them well. Senate Bill 31 does two things [page 32]. First, it amends statute to follow federal regulation for employees with disabilities and their ability to be reassigned. In our regulation and statutes, it refers to those who have not had a probationary period. Federal law does not require that—any employee with a disability has the right to reassignment. Second, it would include blood testing for impairment. We use urine and blood for someone who is believed to be impaired by alcohol. Currently, we can only use urine for the person who is believed to be under the impairment of drugs. We are trying to make that consistent. We are trying to stay a step ahead because Nevada has legalized both medicinal and recreational marijuana and we do not want someone to test positive for marijuana who is not impaired. There is no standardized testing across the United States, but we want to be proactive so that when there is something that comes along, we will be able to test for it.

Finally Senate Bill 51 makes changes to various statutes. The main two changes made by S.B. 51 [page 33] are, firstly, an unclassified position can be overlapped for up to 90 days so that these high-level positions can have some knowledge transfer. Currently, we cannot pay more than what the unclassified paid bill says, so we do not have that ability. Secondly, in a recruitment and retention effort, it would allow new employees to take annual leave as soon as they earn it. Right now they have to wait six months. We see that as a benefit for both agencies and employees. That concludes my presentation.

Chair Flores:

Members, should those bills make their way to our house, we will have the opportunity to vet them, so please do not ask questions on them now.

Assemblywoman Duran:

You talked about creating new positions. How many positions do you create and how often?

Peter Long:

Are you talking about the classification process? Typically, we do not create new positions. That would be through the Legislature or through the budget process or the Interim Finance Committee. We would review those positions to see what classification they would fall into. If we created a new job classification, it would be as the need arises. Sometimes position duties change to the point where an existing class does not meet what it is doing.

Assemblywoman Duran:

I work as a grievance specialist, so I was wondering about your contracts. When you do create a position, do you post it for internal candidates—employees—to get a promotion or is it just put out on the website? How do you do recruitment?

Peter Long:

We have multiple ways to recruit. They are all going out on our website, but you would only be able to see or apply for them if you are in a certain category. We can promote as narrowly as by division, department, or statewide or as broadly as open competition or a combination of all. We do often promote internally to give current employees the opportunity to be promoted. It depends on whether the appointing authority feels they have employees that are ready to be promoted into that position.

Assemblyman Assefa:

I wanted to ask a few questions. When it comes to recruitment and acquisition of talent, you seem to be getting creative—for example, launching a pilot program with LinkedIn. How long has that program been going on, and what kind of results has that yielded? Additionally, could you clarify what your policies are when it comes to marijuana since our state has legalized recreational and medical marijuana? If any state employees are found to have that in their system, how would you handle it?

Peter Long:

As far as the LinkedIn program goes, that just rolled out a month or so ago, so we have not had the opportunity to gather statistics that I would feel comfortable giving you. I believe it is working, but I do not have anything to give you that says that this many people have responded and applied and have been hired because of our new hiring process. Unfortunately, it does not work that quickly. We are making contact with people and we are getting applications. At this point, I believe it is working. It is a 10-month pilot program, so as we gather more information we will provide that to you.

As far as the marijuana question, although it is legal both medicinally and recreationally, the state has a zero-tolerance policy for the workplace. You cannot be impaired in the workplace. Under federal law, it is illegal. Whether or not someone is impaired is determined by a urine test. It will conclude if they have marijuana in their system. One reason we want the bill is because I am not a scientist or an expert on testing. I understand

that there may be certain metabolites that determine impairment versus having just consumed or smoked or whatever you do with marijuana. We want to be able to determine whether someone is truly impaired. Also, it is not just the blood test; you have to observe what you believe to be impairment, and a witness has to corroborate. With law enforcement, there is not just the breath test. A lot of things go together to determine impairment. If someone is ultimately determined to be impaired, he or she would go see a counselor, would get counseling, and then would be allowed to come back to work—meeting the criteria set. I will say that if someone is deemed to be impaired twice within five years, it is grounds for automatic termination. That is why we are pursuing ways to make sure that the test we administer truly determines impairment. I do not think that there is a standardized test anywhere that makes that determination.

Assemblyman Leavitt:

I might have missed it, but do state employees have any kind of union representation?

Peter Long:

State employees do not have collective bargaining. They do have representation from associations. They can belong to various associations that can represent them during grievances or during hearings for suspension, demotion, or dismissal. There is no collective bargaining or agreements but Chapter 284 of *Nevada Revised Statutes* and the *Nevada Administrative Code* is pretty defined and offers numerous protections to employees that we have to adhere to.

Assemblyman Leavitt:

During the implementation of policy or recruitment, do you meet with any of those associations to get input?

Peter Long:

For any regulations we have workshops. We typically meet with various associations to get their input. I believe that we have a good working relationship with the associations. We try to consider their input before moving forward.

Assemblyman McCurdy:

I am excited for the initiative you are taking and that you are taking into consideration the legalization of recreational and medicinal marijuana. I am looking to identify an instance in which a random drug test was taken by the employee. Do you have a running tally of how many folks have been terminated for testing positive even though they were not deemed to be visibly impaired?

Peter Long:

The state does not have random drug testing other than for positions requiring commercial driver's licenses. These tests would be administered through the agency and they would follow those requirements. A person would have to be perceived to be impaired. I could check and get back to you, but to the best of my knowledge, we have not had any employees terminated or suspended for having been randomly tested for marijuana use.

Assemblywoman Duran:

Does your HR have the final say, or are they leaving it up to management in the different departments? Are they giving advice as to what to do, or are they leaving it to the manager of that department?

Peter Long:

We provide advice based on our regulations and per statute. Appointing authorities of various agencies have to adhere to the rules for state personnel administration. The advice we give them is what those rules are and how they should be applied. Agencies need to follow the rules. It is not discretionary, if that is the question.

Assemblywoman Duran:

I know in my profession there is disparate treatment, for example. Do you follow those guidelines? If you are in one department and someone does something wrong, are you leaving it up to another manager? They may not deem it to be disciplined at the same level.

Peter Long:

Yes, agencies have prohibitions and penalties based on a particular offense. We have progressive discipline. There is a range of discipline that could be administered based on the first, second, and third offense. We review those before they are submitted to the Personnel Commission. We have, in the last few years, done a good job bringing those to be consistent across agency lines so the penalties are the same across agency lines. There may be instances in which the discipline for an offense could be higher. For example, public safety agents representing the state are held to higher standards.

Assemblyman Ellison:

Do you have a policy that if someone gets in a wreck, the people involved are automatically drug tested?

Peter Long:

That is more risk management, but yes. They should be tested if they are in an accident.

Assemblyman Ellison:

We have had a few happen after which we found out that the people involved were heavily impaired. I would like to make sure that that policy is in there. I think it is important for the citizens.

Chair Flores:

I am going to close out the presentation and move into the presentation from Las Vegas.

Kara Jenkins, Administrator, Nevada Equal Rights Commission, Department of Employment, Training and Rehabilitation:

When I first applied for the position at the Nevada Equal Rights Commission (NERC), I thought, what is NERC? Having a law degree, I had a strong interest in civil rights—

particularly with my emphasis in constitutional law. When I was told about the position at NERC, I was intrigued.

The Nevada Equal Rights Commission is a statewide agency. It is housed within the Department of Employee, Training and Rehabilitation under Director Dr. Tiffany Tyler. We oversee and investigate claims of discrimination based on protected categories that I will get into later. We also cover employment, housing, and public accommodation discrimination. We have a very robust outreach and training component. We partner with the United States Equal Employment Opportunity Commission (EEOC). We have a really great relationship with them. We close cases on their behalf for all Nevada jurisdictional cases. That is who we are.

We are going to go back in time because I want to make sure that everybody is aware of the federal laws that guide us here in Nevada as well as the *Nevada Revised Statutes* (NRS) provisions. I am proud to say that we follow all the federal provisions and then some [page 4, ([Exhibit D](#))]. The Equal Pay Act of 1963 is something that we honor here at the Equal Rights Commission. We seldom get Equal Pay Act cases. In fact, we just transfer them to the EEOC because there is possibly some work that can be done in that area and the state of Nevada. The EEOC aggressively pursues Equal Pay Act discrimination cases—such as sexual harassment—because their statute of limitations is a lot shorter than any other cases. The Equal Pay Act of 1963 cases deal with pay inequality based on gender. We will forward the cases to the EEOC, frame the charge, write it up for them, and ship it over to the Los Angeles District Office so they can pursue investigating and closing that claim out.

Moving forward, in 1964—a very monumental time in our history—we had the Civil Rights Act of 1964 signed by President Lyndon B. Johnson. That act created the EEOC. It also established five protected categories: race, color, religion, national origin, and sex. It also adopted Title VII of the Civil Rights Act. In fact, I think our previous speakers mentioned Title VII. Most HR professionals and employment lawyers know what Title VII is. We, as a commission, of course adopted that. We take claims alleging race or color discrimination. For example, you can be in the same racial group as another person, but the color of your skin is preventing promotion at work, or you are seeing a preference for the lighter-skinned employees versus the darker-skinned employees. You can come file a claim with NERC, and we will investigate and settle it for you. Religion is your belief or unbelief in God. National origin is where your ancestors are from—it could be Latin America, Central America, the Caribbean, Africa, or Europe. Sex is a huge one. We are seeing many sex-based complaints in light of the #MeToo movement. Sex includes sexual harassment, sexual orientation, or gender identity or expression. In 1964, when they created the protected category for sex, I think they were originally thinking male versus female. It has now been expanded and interpreted that sex will include gender identity and expression, which includes transgender individuals, sexual orientation, discrimination based on same-sex couples, and sexual harassment. We will be partnering with the University of Nevada, Las Vegas and getting more statistics and data for you in the coming months.

In 1967 the Age Discrimination Employment Act (ADEA) was passed, three years after the passage of the Civil Rights Act of 1964. Here we see protections based on age if you are 40 or older. I was going over this presentation and I realized I check off a lot of boxes here—I just turned 40 in May. We do not see too many cases like that. In Las Vegas we sometimes will see cocktail waitresses or casino workers who are getting pushed out because they do not fit a uniform a certain type of way or the employers feel that they want to focus on hiring 20-something servers not 40-something servers. We do not take age discrimination complaints if, for example, you say I am 25 and not getting the job because I am younger than someone who got the job. It is for 40 or older—that is ADEA

The next federal piece of legislation that we follow here in Nevada— one I am sure you are all familiar with—is the Americans with Disabilities Act (ADA) of 1990 and the Americans with Disabilities Act Amendments Act of 2008. It was originally penned into law by President George H.W. Bush in 1990 and then expanded in 2008 by President Barack Obama. It includes protections for people with disabilities. A disability is legally defined as something that substantially limits a life activity. Disabilities could include requiring visual aid, hearing aid, a service animal, Braille, medication, a blood disorder, HIV, AIDS, or whatever would substantially limit your life activity. If you can do the job, you should not face discrimination. The balancing test is whether an undue hardship is imposed on the employer. For example, if I have epilepsy—which is covered under the act—and I cannot work under bright lights, then I might ask the employer if I could work in an office with just a lamp. We would look at that case and ask whether it was imposing an undue hardship to the employer to put them into an office with less lighting. The answer is no, not really. It is neither an undue hardship nor is there a really big financial impact. Let them do their job in an area that will not inflame or spark a seizure. That is what the ADA covers. It allows people with disabilities the right to work and gives them insurance benefits they probably desperately need.

The Genetic Information Nondiscrimination Act (GINA) of 2008 is a cousin to the ADA. We do not see a lot of GINA cases—oftentimes, they are framed as ADA cases alleging discrimination based on a disability. Genetic information is simply that. The law says that you cannot discriminate against people based on their genetic information. For instance, say I have cancer and I am in remission. It is known in the workplace that I am in remission. I want to go for a promotional opportunity; however, my supervisors and managers are concerned that I may regress back into needing chemotherapy, so I am denied the promotional opportunity because they are aware of my genetic information. That is an example of a violation under GINA.

Those are the federal laws. Now we are into state employment discrimination laws—these are basically all of those federal laws embodied in NRS Chapter 613 and Chapter 233 in employment [page 5]. We will talk about housing and public accommodation later in the presentation. In good news, Nevada mirrors federal legislation. I am really proud to say that Nevada expands on federal laws and explicitly states that you cannot discriminate based on gender identity or expression. It is more explicit than what is implied under Title VII. Legislation from this last session introduced the Nevada Pregnant Workers' Fairness Act—

Senate Bill 253 of the 79th Session—and it became effective October 2017. Also under the sex category are pregnant workers. As far as I know, only women can get pregnant, so that is a sex-based discrimination protected class. It is discrimination if in the event that you are pregnant, you now no longer have a job. Nevada expanded it last session, making it an affirmative duty of the employer to try to accommodate a pregnant woman once she gives notice she needs accommodation—within ten days of that notice. That is the Pregnant Workers' Fairness Act and that is awesome. We strongly encourage and provide outreach that you should make an accommodation when an employee comes to you and says, I am dealing with a medical issue, I may be pregnant, I need to reduce my hours, I need to take multiple breaks, or I must have privacy to lactate. We are really proud that Nevada has passed this so that it is an affirmative duty of the employer to get on the ball. Before it was just a reasonable amount of time, but what is a reasonable amount of time?

We also have the Criminal Background Law—we call it "Ban the Box" here at NERC—that was effective January 2018. It was your colleague Assemblyman Thompson's bill, Assembly Bill 384 of the 79th Session. He was the main sponsor. It applies to public employers, which means that if I am applying for a job at any public entity, including the state of Nevada, they cannot ask this question on the application—Have you ever been convicted of a felony? I know one of the members of the Committee asked about disparate treatment in the earlier presentation. The EEOC has done research that says that those types of questions disparately impact black and brown men. When you see someone checking those boxes, even though it says please attach additional pages to explain, mostly people just chuck out the application—they do not look any further to see if the person is rehabilitated and qualified. Now, with the law in place in Nevada, that question is no longer asked. The only time you can ask that question is when you are ready to make a conditional offer of employment—when I am ready to offer an individual the job, after I have interviewed him and spent time with him and think he is great and qualified and I am ready to make the offer. There are conditions to asking that question. It means that when you ask the question, you allow the candidate to explain if it says he did commit a felony. The employer must also take into consideration the nature and severity of the crime—was it a DUI, murder, larceny, or theft?—and how long ago did the crime occur from when they are now applying for the job? Did this happen when they were 15 and now they are 40? They might have learned something since being 15 years old. Also, the nature of the job that is being applied for is taken into consideration. Are they working for a call center but had a DUI when they were 19 years old and they are now 40? I am working at a call center—I am not operating machinery or a vehicle or anything that could hurt anyone. I can get into more detail and send members more information on this piece of legislation, but we are really proud of it. We had a panel consisting of Assemblyman Thompson, other experts, an opening remark by then-Lieutenant Governor Mark Hutchison—who is really proud of this bill—and me. We also have NRS Chapter 233 which is public policy which says we are to foster equal enjoyment and employment in the state of Nevada.

This is a page of the protected categories [page 6]. The first protected category is race. There are only five races acknowledged federally, which is really interesting because America is such a melting pot. The five races are Asian, African-American, White,

Hawaiian or other Pacific Islander, and Native American and Alaskan. Those are the race categories that are acknowledged when you file a complaint. People who may have ancestry national origin that would make them Hispanic would probably say it is national origin discrimination not racial discrimination.

Color discrimination is about the color of your skin—you are finding discrimination in employment because of your skin tone. Religion is your belief or unbelief in God. We had a really interesting case in which a Native American employee was smoking peyote on his breaks. He was terminated, but it was not a violation under Title VII based on religion because, as you heard earlier, it is a zero-tolerance policy. They were not sure what was in the peyote. It was not a rejection of the religion, it was a rejection of being impaired at work. That is how we might see religion come into play. Sex includes pregnancy, sexual harassment, and gender identity or expression. We also have disability that is covered under the ADA. Additionally there is age discrimination—40 years or older—and your genetic information—which was the hypothetical about cancer. Sexual orientation—who your romantic partner is—should not be used against you in work. Say your employer finds out that you are part of a same-sex couple or they do not like that you are a heterosexual couple, that has no place at work and is covered. These are all the protected categories included in federal and state law.

Going back to sexual harassment, in light of the #MeToo movement, NERC has seen maybe twice the number of requests for training and outreach from employers within the state. I am also really honored to be appointed to the Governor's Task Force on Sexual Harassment and Discrimination Law and Policy, led by Attorney General Aaron D. Ford. Having said that, NERC has been trying to field questions not only from legislators but also from the public—especially questions regarding statistical data on sexual harassment.

Why do people not report? In light of the #MeToo movement, we were a little bit surprised when we pulled our data that said only 20 more complaints of sexual harassment were filed with the commission. We believe there to be more instances in the workplace here in the state, but we do not know why they are not reported. One of the reasons, after consulting with Dr. Guthrie, is perhaps there is not only a fear of retaliation, but victims of sexual harassment tend to take a while to internalize it, and they do not report within the statute of limitations. Here in Nevada, victims have 300 days to report. We were also wondering why the majority of the sexual harassment complaints were filed by women and not by men. Are men not sexually harassed at work? Of course they are. The Nevada Equal Rights Commission is a limited agency with limited resources, which is why we decided to partner with the Greenspun College of Urban Affairs at the University of Nevada, Las Vegas. One of the plausible reasons men are afraid to report is fear of masculinity shaming, meaning that if you are approached by a female supervisor and you do not take her up on an offer to dinner, then maybe if you report it, people would say, Why did you not go to dinner, what is wrong with you? We need to look into that because I think that would help with our reporting. We are going to publish a report.

We have two phases of our partnership with the Greenspun College of Urban Affairs. In this collaboration, we are so honored that Dr. Guthrie, her graduate students, and Dean Robert R. Ulmer at the Greenspun College of Urban Affairs are going to allow us to utilize their resources to pull data so we can report out—which will help legislation in years to come. I am aware that California has extended their statute of limitations for sexual harassment complaints being filed with their agency to 365 days knowing—with data—that it takes victims longer to report. Perhaps that is something that you all could consider down the road. That is not my job; my job is to give you the information. We plan to have the qualitative and quantitative data of sexual harassment from Nevada, not national data. We can get national data from the EEOC—in fact, they have an amazing task force called the Select Task Force on the Study of Harassment in the Workplace that has polled data; I can get that to you with their recommendations for the workplace. We do not have anything Nevada-specific, which I think is really interesting. We are going to be doing surveys and putting that together. The surveys will launch this summer, then we will have an analysis and report completed this fall and we will publish it on the website. We can get it to you through the Legislative Counsel Bureau.

We have talked about the various laws, what discrimination looks like, and what Nevada is doing. I now want to talk about how you would file a complaint with the Equal Rights Commission and what our jurisdiction is. I know the earlier presentation talked about an EEO office. I want to clarify that is state personnel. We are Nevada's EEO office. In order for us to take in complaints statewide, not only from public employees but also from folks who might work privately, like small agencies, law firms, offices they do file with us. We now have the designation to take in complaints about criminal background violations. If you file a complaint with NERC, you have to be an employee with at least 14 other coworkers—meaning the employer must have at least 15 employees for jurisdiction to attach. If someone calls our office and says, I think I am being discriminated against because of my race, we will ask, Does your employer have 15 or more employees? If they say yes, then we have jurisdiction. If they say no, then we do not have jurisdiction. The EEOC will not take the call either. There is an issue with folks who work in a small company with fewer than 15 employees; they do not have recourse unless they get an attorney. Temporary placement agencies are not exempt.

[Assemblyman McCurdy assumed the Chair.]

Here is my example. Someone goes to a temporary placement agency and is placed at a site and there is discrimination on the site. The temporary placement agent might claim that they only referred them to the site and will not claim responsibility; however, they too will be named on the charge. Labor organizations and unions are very narrow. We do not necessarily see a lot of claims from labor organizations, but they cannot prefer or discriminate amongst their members.

Three hundred days seems to be the magic number for employment cases based on discrimination. Your last day of harm has to be within 300 days. You have to file a complaint with the Equal Rights Commission here in Nevada or at the EEOC. If someone

files with the EEOC and then they feel like they want to go to NERC—and they are a resident of Nevada—we share information with the EEOC and say to the individual complaining that because you started your investigation or filings with them, we cannot take your case. Likewise with us, if someone starts with us but then wants to go to the EEOC, the EEOC will not honor their complaint until we have finished our investigation. The business must be located and licensed in Nevada. If you are in Lake Tahoe, you have to be on the Nevada side. There also has to be an employer-to-employee relationship. We have seen interesting cases that deal with independent contractors. We have seen some employers claiming no employee-to-employer relationship as a way out because they do not want to answer to the EEOC about whether they allowed a person to endure discrimination. They say that they are an independent contractor so they do not fall under our jurisdiction. Our investigators look into the relationship. We listen to what they are saying and do a very thorough investigation where we look at the nature of the relationship. We look at whether it is truly an independent contractor relationship. We also look at whether this person has the freedom to come and leave the jobsite at their volition or what is the dominion and control over that particular individual. Is there really an employee relationship being masked as an independent contractor? It is really interesting; we did some training. The United States Court of Appeals for the Ninth Circuit has been clear that that also includes workers in the exotic dancing industry. For all purposes, the dancers are not independent contractors in most situations. We have talked about employment, but let us move forward into our other pocket of jurisdiction. We talked about employment and our relationship with the EEOC. This is where our relationship with the EEOC ends.

[Assemblyman Flores reassumed the Chair.]

We will begin with public accommodations, then housing. Public accommodations declare that we should be able to equally enjoy public areas. That is under NRS Chapter 651. There is no protection for age in public places. If someone gets kicked out of a library because they are over 40 years old, they cannot file a complaint on the basis of age. There is no protection for genetic information in public spaces, but the good news is that we do not see those complaints fall under public accommodations or equal access. Instead, we see it in schools. Ms. Vizcarra defines places of public accommodation as any establishment or place to which the public is invited or which is intended for public use, such as schools, hotels, restaurants, retail stores, doctors' offices, parks, and educational institutions. It does not include any private institutions like golf clubs. Schools are where we see many of the complaints filed. We had a case that we were unable to settle so it went to litigation and is public—I can send you that link. The case was with a middle school in Las Vegas where two minor boys were perceived as homosexual and were discriminated against. Their parents filed a complaint with the Equal Rights Commission. We could not settle it so it went to litigation and has since been settled. That is where some of our training will be focused on in the coming years: in schools and the rights of students. It is getting even more interesting, and we are educating ourselves. We are looking at protection of transgender students and their use of the bathrooms. Spoiler alert: they are legally allowed to use the bathroom of their gender identity, not their biological sex.

Public accommodation discrimination is refusal to serve, refusal of entry, and unequal enjoyment—think buses, water fountains, pools, and now it is bathrooms. It is also, for folks with disabilities, refusal to permit service animals or service animals-in-training. Say you want to go to a restaurant and you have a disability and need to have a service animal. How we look at it at NERC is that that service dog is an extension of that person. When you say that you cannot eat here, we do not allow pets here, you are denying the person because the service animal is an extension of that person. *Nevada Revised Statutes* has some provisions that define what a service animal is versus an emotional comfort animal. Cats are not service animals, but miniature horses and dogs are.

There are some exemptions dealing with public places. Our deputy attorney general has been very helpful in protecting NERC, dismissing complaints that do not meet jurisdictional merit. We have an incident going on now. I do not want to get into it, but we can talk later off record if you would like. We currently have a particular individual who is complaining about gender pricing. The law is clear. *Nevada Revised Statutes* has provisions that allow gender differential pricing—it is not animus based on gender. We have people who are upset that women get a ladies' night at bars. This particular individual thinks that men should get the same. We have exceptions in statute for that. Stay tuned for that; you might see that one in the paper.

For public accommodations, you have a year to file a complaint if you have been denied access to a facility or denied equal enjoyment. I could make a claim if, for example, I was bullied at school based on my gender identity or sexual orientation and I could not learn anymore or I had to leave or I did not enjoy school because I was bullied so much based on my protected status. I have a year to file and start the litigation process. Again, the businesses or entities must be licensed and located in Nevada. Also, the harm must have occurred in Nevada.

The next section is state housing protections. We do not see many cases based on housing discrimination. The ones we do see are pretty common, such as landlords not renting to same-sex couples. That is protected under NRS Chapter 118. What is housing discrimination? It is the refusal to sell or rent; unequal treatment; and refusal to permit emotional support animals, service animals, or service animals-in-training. The landlord might claim that they do not allow dogs, but because it is a service animal there should be an exception. Finally, housing discrimination can be the refusal to allow reasonable modifications to a dwelling. Say someone needs a ramp because they need wheelchair access but their homeowners' association (HOA) does not allow them to build a ramp because it violates their covenants, conditions, and restrictions. The HOA has to allow it, but it is at the cost of the individual wanting the ramp. Again, that takes a year before the statute of limitations runs out to file a claim in the state of Nevada. The landlord whom you are filing a complaint against must own more than three single-family homes. We had a really compelling case filed with the Equal Rights Commission, but the responding attorney replied that the particular individual did not own more than three single-family homes so there was no jurisdiction; we had to close the case. Homeowners' associations and property

management companies are not exempt either. We will name them in the complaint and ask them to respond as well.

The next page is the NERC complaint process [page 18]. I know earlier you heard about full time equivalents (FTE) and budget. I will give you a quick overview. We are 17 strong. We are a tiny big agency. We have 17 FTE statewide. We have a budget of about \$1.8 million. We partner a lot with not only the William S. Boyd School of Law at the University of Nevada, Las Vegas, but also the Greenspun College of Urban Affairs to try and help get more services and not take so much money from the General Fund. We have a current inventory of about 1,000 cases and have a backlog. The backlog is a resource issue. The complaint process begins when an individual files a claim with NERC alleging discrimination—say it is sexual harassment in employment. We will ask the threshold questions: Was it within 300 days of the date of harm? Does your employer have 15 or more employees? Did this happen in Nevada? These are prima facie checklist questions. Assuming yes, our legal team will notify the respondent to say you have an allegation against you from this individual. According to the confidentiality statutes in NRS, this is totally private. Because it is a Title VII complaint, no one would know about this except for the parties involved, the Nevada Equal Rights Commission, and the EEOC.

The respondents are notified and are asked to provide a position statement: You are alleged to have allowed discrimination to happen in the form of sexual harassment. What is your position? In the meantime, we will also try and schedule a mediation. I have mediators on staff: Lila Vizcarra is a certified mediator, we have another chief who is a mediator, we have a main mediator up north, and I am personally trained in mediation through my education in law school. We will try and schedule a mediation to resolve the issue without having a full investigation. If the mediation is waived, then it goes into an investigation. The investigation will either yield probable cause or no probable cause—meaning more likely than not there was sexual harassment or there was none. If there was probable cause I go to Sofia Long, my deputy attorney general, and ask her to give a legal review of the file. If she approves it, we conduct a conciliation. If we settle the matter, then it is done, it is private, and it is confidential. The case then goes to archives. If not, then there is a court action and a right to sue is given. This is the process to ensure the preservation of rights under Title VII. If there is no probable cause, the plaintiff or the aggrieved party can file an appeal with our office to ask us to review the facts again. I will conduct the appeal. If I side with the investigators that there was not enough evidence at the time—you may be saying the truth; it may have happened—we will close the case out and they have the right to go to district court on their own. That is the Nevada Equal Rights Commission.

Assemblyman McCurdy:

How many cases do you receive in a year's time?

Kara Jenkins:

Last fiscal year we had over 1,400 complaints filed. Of those, we framed and resolved 831—I will get the exact number to you later. These last two fiscal years we have seen a yearly

average of 1,400 complaints come in the door. We have settled or dismissed a fair share of them.

Assemblyman McCurdy:

You are pretty busy. What is the average time—realizing that every case is different and every investigation is going to be different—that you will spend investigating a complaint?

Kara Jenkins:

We are supposed to resolve complaints within 180 days. We are not meeting that right now. It is taking more like a year and a half. We have nine-and-a-half FTE dedicated to all those complaints. It does take time. There is a backlog. I believe the backlog is at 450 waiting to be assigned.

Assemblyman McCurdy:

That is a long time for someone to wait to have their grievances resolved. In your opinion, about how many more employees would be needed in your office to help resolve some of that backlog?

Kara Jenkins:

In my opinion, as any good administrator would say, we would want significantly more resources and FTE dedicated to attacking the backlog. I do realize that we are primarily funded through the General Fund, so we have to be creative on how we get help. Ideally we would be getting externs from law school to help our deputy attorney general as well as being given overtime to partner with other entities to get data. My opinion is that if, through the Governor's recommended budget, we got approval to present a case management system that would be able to take in all the complaints, it would free up the investigators from doing a live intake process. Also, a management analyst position is something that was recommended. Being from the General Fund, I understand tough decisions have to be made—not at my level—about what state entity gets what. I do not know if my opinion is relevant, but I certainly have one.

Assemblyman McCurdy:

I would argue that your opinion definitely is important. One last question: how does your office compare to other states of similar size and the value of cases that are taken and resolved?

Kara Jenkins:

I can speak in terms of what the EEOC has told us. We are a part of the West Coast district so we also get word back from our fair employment practice agency (FEPA)—the EEOC and federal entities call us a FEPA. We are based on district, so it is us, Southern California, Guam, and Hawaii. I know that California does not compare. We are 17 FTE, and they have at least 17 attorneys. Guam and Hawaii are a lot smaller. We do exceptionally well. What I can say is that every year we have had a contract obligation with the EEOC and we have always met that contract requirement in settling employment discrimination cases. We have honored our contract and our relationship is very strong. I will have to do some research and

get back to you and see what Colorado is doing. I know Colorado has an online system which is something we were looking at when we were trying to decide how we could alleviate the backlog. I will see what Colorado's statistics are, but that is a really good question. I know Lila Vizcarra has written down the question, and we will get back to you on how we are doing in comparison to other agencies. I do know that at the EEOC conferences we are all working really hard.

Assemblywoman Gorelow:

What type of outreach do you do to engage employees throughout the state and let them know about your services?

Kara Jenkins:

Our outreach program is really robust. I have Lila Vizcarra to thank for that. She makes quarterly trips up north. We are based in Las Vegas. It is where the bulk of our filings come from. We do not want to ignore the north or the rurals. I think that is an area where we can have a stronger presence. We do a lot of training at no cost. All of our pages and legal updates are posted to our website, and if they do not make it to the website then we have an email list of all employers statewide. There are a lot of people on the email list. We send all the updates, resources, and all the EEOC updates to the law. We send this to people who come to our trainings. The last big training we had was last year regarding sexual harassment. Dr. Guthrie was a copresenter. There was a big push in light of the #MeToo movement to do some statewide training in that realm. We videoconferenced it to Carson City. We probably do three or four trainings a month. Ms. Vizcarra has an abbreviated caseload where she manages staff and does her own investigations. She is pretty much out of the office four times a month. For fiscal year 2019, 755 people were reached. In fiscal year 2018, we did live, in-person training for about 1,359 employers and employees.

Assemblyman Assefa:

You mentioned that an employer would have to have 15 or more employees in order to be investigated for what they have done. I find that disturbing. I understand this is not your job to revise those things. I think we need to get to work as a state to correct those things. If a landlord has fewer than three properties, then there is no liability for the landlord. These are things that I think my colleagues and I can get to work on and make sure people are protected.

I have a few questions for you. How do employees know that you exist? We are talking about your website being available. Your typical employee is not out there browsing websites. Your existence and resources need to be visible and available for employees to take advantage of. Are there efforts to embed the information of your availability in orientations and periodic updates to employees or possibly post them at places of employment? I know of cases and I have constituents who could have used your services, but they have not taken advantage of them because they did not know. They did not know who to turn to.

A separate question: you said that annually, and you referred to last year, you received about 1,400 complaints and approximately 800 of them have been settled and framed. Could you explain what "settled and framed" means? Does that mean that these employees have been reinstated to their jobs? Does it mean that the action that was taken by the employer has been validated and they have moved on?

Kara Jenkins:

Those are great questions. I will start with the most recent question, What does framed and settled mean? In the last two fiscal years, the average number of allegations that come in as complaints to the Equal Rights Commission has been about 1,400. Of those, because of jurisdictional issues or not meeting the requirements, we threw out a good number. We were able to frame—which means you meet a jurisdictional checklist—and charge. Now you have a state stamp on your complaint. It is no longer a complaint anymore. We have checked things off the list. It is a framed charge with a NERC number and an EEOC number. Now we will investigate for settlement. Framing is perfecting a complaint. It is a complaint or allegation when we get it in the door. We remain neutral until we start checking things off the list to determine if it meets the requirements that we have jurisdiction over. When we do, we frame it, and it gets a NERC number and an EEOC number. We then begin the process of investigating and settling it through efforts of mediation.

As far as outreach, Lila Vizcarra and I at the grassroots level have literally gone door to door passing out fliers. This was when we were first really pushing our outreach effort. We were blessed to get her position upgraded to specialist so she could really go out and proactively conduct outreach. Certain centers have our brochures, which means we have driven over there and dropped off brochures. We also have partnerships with the Nevada State Bar where we can refer folks to the State Bar. Legal aid will refer people to us. The Office of Labor Commissioner will also often refer cases to us. For folks who do not know about us, it is the challenge of a lifetime getting the word out about who we are. A lot of people know about EEOC, but they do not know how to file with that entity either. You are right—we need to have more visibility. I appreciate your comment.

Assemblywoman Duran:

I just wanted to follow up with Assemblyman Assefa's question. You mentioned the #MeToo movement. Is there anything to enforce employers to put policy and procedure about harassment and sexual harassment in their native tongue—like Spanish or Tagalog? Is that something the EEOC or NERC would be able to do to help people know their rights? Is that something that another department would do?

Kara Jenkins:

We only investigate cases and give proactive guidance to employers. You could make a law that would give us the power to enforce that. We do have EEOC posters that are in Spanish, and we have a bilingual employee. Through the Department of Employment, Training and Rehabilitation, our parent agency, we have a list of interpreters—especially for folks with disabilities. It is not an enforcement thing where we can tell the employer, you have to have

it. If there is a violation of law and it is filed with us, we can notify and try and correct it. We are not a policing entity unless you make us one.

Assemblywoman Duran:

I am just curious because there are a lot of people who, as you were saying earlier, do not report. I think the reason many people do not report is because it could be sexual harassment based on national origin, their language, and stuff like that. They are afraid that people just do not understand. Perhaps they do not know how to report something in a timely manner.

Kara Jenkins:

Thank you. That is an amazing assessment on that. The Nevada Equal Rights Commission does not ask citizenship status when they take a complaint. People are protected. Dr. Guthrie, would you like to add to that?

Jennifer Guthrie, Assistant Professor, Department of Communication Studies, Greenspun College of Urban Affairs, University of Nevada, Las Vegas:

I am representing the Greenspun College of Urban Affairs. We are so excited to partner with NERC. Hopefully we can provide NERC and all of you with information regarding that exact issue. Phase One of our study is looking at our existing data to try and see what patterns there are in reporting, like who is making these reports and what are the patterns within that data. Phase Two is specifically getting at why people do not report—whether they are not getting the information, where they are getting information, is it online or is it fliers. But also getting at those reasons that, for me as a researcher, are taken for granted. We know all kinds of reasons why people do not report. As mentioned, it may be documentation status or fear of retaliation, but then a large part of my research also focuses on how people often do not realize their experiences count as something that fits a legal definition. We are hoping with the survey that we launch this summer—we are going through the Institutional Review Board at UNLV to make sure that everything is ethical for the participants. With the survey we are hoping to get at those questions both quantitatively and qualitatively. We want to ask folks their experiences, their sense-making processes, who did they tell about these experiences, how did that person respond, and how did they feel about that response. Hopefully we can be better equipped to not only give guidelines for how we can all move better as a state but also, when we look at ground level trainings, being able to better provide people information on how to respond to disclosures—whether that is HR or even people in interpersonal networks.

Assemblyman Ellison:

What about false statements? How do you handle false statements, and how do you handle repeated false statements?

Lila Vizcarra, Chief Investigator, Nevada Equal Rights Commission, Department of Employment, Training and Rehabilitation:

When we get a complaint of discrimination we investigate the complaint neutrally. We look at both sides. Sometimes during our investigations, we find that individuals are lying. Our finding at that point would be no probable cause. Our letters explaining why we did not find

cause will explain that the evidence did not support what they were saying. Basically, the employer provided evidence to support their position. We do not do anything to the person that was filing the false complaint because we are neutral and here to investigate.

Assemblyman Ellison:

The reason I am trying to get to this is because if you had a disgruntled employee or an apartment owner, and you keep getting repeated complaints, is there a point in time that it has now become harassment?

Lila Vizcarra:

When we have someone who keeps filing complaints against an employer, we will take the initial complaint and additional complaints that they are adding. If it is not a new complaint, we amend their complaints. We get those frequent filers, but we take every complaint and look at the merits of those cases. When they do seem not to be truthful, we do an abbreviated investigation. In those cases we do not expend too many resources.

Chair Flores:

Seeing no more questions, I will close out the presentation. I will now open up the floor to public comment.

Judy Price, Private Citizen, Washoe Valley, Nevada:

I am encouraged to hear the questions you asked. I am currently waiting for the EEOC to respond. I got a letter in January of this year. After waiting a year and a half, I lost my job at the Department of Transportation (NDOT) due to waiting. It is weird that I received the Attorney General's letter yesterday that said they are dismissing the case but that I could hire a personal attorney to further pursue the case. I was literally deliberating my response back to him. Please excuse the scribbling on the page ([Exhibit E](#)). I am not crazy, I am just extremely frustrated. The timing of me being in this building and finding this room is remarkable. This piece of paper shows all documentation I took as a coping mechanism from ten years at NDOT and five years at the Division of State Lands, State Department of Conservation and Natural Resources. I am waiting on this to be settled. I have an 80-year-old husband, and I am retired with a very meek Public Employees' Retirement System pension and I am grateful for it. I had 30 years of real estate before I decided to be a public servant in 2004. Human resources is broken. It is simple, when you can be dragged into HR as a person who works hard and has credibility and someone can say something about you and the poor HR manager has no recourse. They have to just listen to the person who is ruling for the day. The simple who, what, when, where methodology eliminates that. When you drag me in and say something and the woman is required to prove that, you will eliminate a lot of the cases of your constituents waiting to hear back. You are absolutely correct. There is no avenue to find out that these resources are available. I am working on three years into this and I am not stopping until I get a whiff of good intent.

Chair Flores:

Thank you for your time. If you would like to know who your assemblyperson or senator is, ask Committee Assistant Trinity Thom. This is your house and your opportunity to get your Assemblyperson's help. It is our obligation to serve you so thank you for coming up. We appreciate your allowing us into your life.

Seeing no more public comment, I will close out the meeting [at 10:42 a.m.].

RESPECTFULLY SUBMITTED:

Kirsten Oleson
Committee Secretary

APPROVED BY:

Assemblyman Edgar Flores, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a copy of a PowerPoint presentation titled "Division of Human Resource Management Agency Overview," presented by Patrick Cates, Director, Department of Administration and Peter Long, Administrator, Division of Human Resource Management, Department of Administration.

[Exhibit D](#) is a copy of a PowerPoint presentation titled "Nevada Equal Rights Commission," presented by Kara Jenkins, Administrator, Nevada Equal Rights Commission, Department of Employment, Training and Rehabilitation.

[Exhibit E](#) is a document submitted by Judy Price, Private Citizen, Washoe Valley, Nevada,