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# New Academic Leave Law in Nevada

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Effective August 15, 2009, Nevada employers will have to comply with expanded academic leave provisions which Governor Jim Gibbons recently signed into law. Although Nevada already has a statute that grants leave to parents, guardians, or custodians of a child to attend certain school-related events and emergencies, the new law enhances and clarifies the protections afforded for participation in these and other academic events.

### What Do Nevada's Academic Leave Provisions Currently Require?

Prior to the August 15 effective date of the new provisions, NRS 392.920 prohibits employers from firing a parent, guardian or custodian of a child enrolled *in a public school* who appears at a conference *requested by an administrator* of the school that the child attends or who is notified, during work hours, of an emergency regarding the child. In its existing state, NRS 392.920 applies to all employers and does not specify a particular duration of leave that employers have to provide. Further, NRS 392.920 states that employers who violate the statute are guilty of a misdemeanor. The statute also allows a private right of action and an award of lost wages and benefits, reinstatement, and attorney's fees.

### What Do the New Academic Leave Provisions Require?

The new bill alters NRS 392.920 in several important respects. First, it expands the applicable leave protections to parents, guardians, or custodians of children attending *private schools*. However, the new leave provisions apply only to employers who have 50 or more employees for at least 20 weeks in the current calendar year. This is a notable difference from the Family and Medical Leave Act, which applies to employers who have had 50 or more employees for at least 20 weeks in the *current or preceding* calendar year. Accordingly, the new Nevada academic leave will apply to a smaller number of employers. It also appears better tailored to the existing economic conditions in which employers often operate with fewer employees, and granting leave may be more challenging.

The bill also specifies that employers who are subject to its provisions (i.e., have at least 50 employees) must allow eligible employees up to 4 hours of leave per school year to attend parent-teacher conferences and school-sponsored events, as well as school-related activities during regular school hours. Eligible employees may also take leave to volunteer or be otherwise involved at the school during regular school hours. Consequently, while leave was previously available only for attendance at conferences requested by a school administrator and child-related emergencies upon notification from the school, the new academic leave encompasses a much

broader scope of school-related activities. Moreover, because the leave entitlement is *per child*, employees with multiple children will have the right to take up to 4 hours for each child who is enrolled in school.

The leave is unpaid and must be taken in increments of at least 1 hour at a time. Further, the employee and the employer mutually agree upon the time when leave is taken. The bill does not provide guidance as to what happens if the employee and the employer cannot agree on a mutually acceptable time. Employers may request that the employee provide a written leave request at least five school days before taking leave, and that the employee supply documentation demonstrating that the employee attended the school activities for which leave is allowable. The expanded leave provisions do not apply if a collective bargaining agreement already affords the employee at least 4 hours of leave to engage in similar activities and includes substantially similar protections and remedies as those set forth in NRS 392.920.

Notably, the new bill expands the protection against termination that NRS 392.920 previously afforded by also prohibiting demotions, suspensions, or other discrimination against an eligible employee who takes leave under the statute. The extended prohibitions also apply to employees who appear at a conference requested by a school administrator or are notified of a child-related emergency during work hours. Importantly, while the leave provisions apply to employers with 50 or more employees, the prohibition against terminations, demotions, suspensions, and other discrimination against persons who appear at a conference requested by a school administrator or are notified of an emergency during work hours applies to all employers *regardless of size*.

Interestingly, the new bill eliminates the employee's private right of action against the employer. Instead, employees who assert violations of their academic leave rights may file a complaint with the Nevada Labor Commissioner. Employers are responsible for providing employees with the requisite forms to submit a complaint to the Commissioner. If the Commissioner determines that the employee's complaint is meritorious, the Commissioner must provide a notice and a hearing to the employer. The Commissioner may award the aggrieved employee lost wages and benefits, liquidated damages in the amount of the employee's lost wages and benefits, and even order reinstatement. Employees are not, however, entitled to recover attorney's fees. In addition, a violation of the new academic leave provisions is a misdemeanor, which may have dire consequences for, among others, businesses seeking to obtain financing.

### **Bottom Line**

First and foremost, you should review and amend your policies and procedures to reflect the new academic leave requirements. You should also train your supervisors to properly administer these policies and procedures. You would do well to specify the reasons for which leave can be taken, and the total amount of available leave. You should also indicate that employees desiring leave must request leave in writing at least 5 school days in advance, that the leave is to be taken at a mutually agreeable time, and what documentation an employee will have to provide

to substantiate his or her leave request. You should further indicate that the leave is unpaid (unless employees choose to use paid leave concurrently).

When revising your policies and procedures, pay attention to the Nevada Domestic Partners Act, which provides that the rights and obligations of registered domestic partners with respect to a child of either of them are the same as those of spouses. In other words, a registered domestic partner will be entitled to academic leave with respect to his or her registered domestic partner's child just as much as a legal spouse would be.

Another related consideration is the Fair Labor Standards Act, which provides that you can't make deductions from an exempt employee's salary for personal absences lasting less than a full day. You may, however, offset partial day absences due to personal reasons by diminishing the employee's accrued paid leave. For example, if an exempt employee leaves for the day at 3 p.m. to attend a child's school-related activity, you can't deduct from the employee's salary to cover the 2-hour absence. Instead, you can diminish the employee's accrued paid vacation by 2 hours to account for the absence. The employee will still receive his or her full salary for the day, but will lose 2 hours of paid vacation.

Finally, be mindful of the fact that the Commissioner will hear disputes arising out of the new academic leave provisions. At first blush, this may seem like a favorable development because it will avoid lawsuits. However, the Commissioner has the power to award employees almost everything they would otherwise recover in court (including reinstatement). Additionally, the Commissioner has broad discretion to enforce Nevada's employment laws, including the ability to audit your records for compliance. In other words, the Commissioner, while reviewing a claim for improper denial of academic leave, can also ask you to show that you are properly maintaining your wage records. The Commissioner may also decide to review your employee classifications (e.g., exempt vs. non-exempt, independent contractor vs. employee) and impose applicable penalties if he finds a violation. Accordingly, if the Commissioner becomes involved with respect to academic leave, you should be prepared for an overall audit of your business operations. In such circumstances, contacting legal counsel is advisable.

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