

PANORAMIC

EMPLOYMENT: NORTH AMERICA

USA - Nevada



LEXOLOGY

Employment: North America

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STATE SNAPSHOT

Key considerations**Which issues would you most highlight to someone new to your state?**

- Nevada has two different minimum wage rates: an hourly rate for employees who receive qualified health benefits from their employer, and a higher hourly rate for employees who do not receive qualified employer-provided health benefits.
- Nevada's minimum wage rates are set to increase by \$0.75 on each July 1, until they reach \$11/hour (with qualifying benefits) and \$12/hour (without qualifying benefits), beginning July 1, 2024.
- During the 2019 and 2021 legislative sessions, the Nevada Legislature passed AJR 10, which proposes to amend the Nevada minimum wage constitutional provisions and eliminate the two-tier minimum wage system. AJR 10 was approved by voters in 2022. AJR 10's passage eliminates the two-tier minimum wage system and establishes a \$12/hour minimum wage for all employers (regardless of whether they provide qualifying health benefits), beginning July 1, 2024. AJR 10 also eliminates the annual CPI increase and provides for increases in the Nevada minimum wages corresponding to any increases in the federal minimum wage above \$12/hour. Finally, AJR 10 expressly allows the Nevada Legislature to establish a minimum wage greater than \$12/hour.
- Nevada prohibits employers from denying employment to an applicant based on a failed pre-employment marijuana test, unless certain exceptions apply. Nevada law also provides that if an employer requires an employee to submit to a screening test (for marijuana or other drugs/controlled substances) within the initial 30 days of employment, and the employee fails the test, the employee has the right to submit to an additional screening test (at the employee's expense) to rebut the results of the initial test. The employer is required to accept and give appropriate consideration to the results of the second test.
- Subject to certain exceptions, Nevada statutorily requires that private employers with 50 or more employees in Nevada provide mandatory paid time off to employees (including part-time employees) at rates/allotments specified in the statute. Other requirements for paid time off administration and protections apply.
- Nevada requires that employers provide a meal period of at least half an hour to employees working a continuous eight-hour period. Rest periods of at least 10 minutes are required for every four hours worked, or a major fraction of four hours (interpreted by regulation to mean at least three and a half continuous hours).
- Overtime pay is required for non-exempt employees on a daily and weekly basis. Despite some overlap, Nevada's overtime exemptions differ from the federal overtime exemptions. Nevada is also unique in that it calculates daily overtime based on hours worked in a 24-hour period, instead of a calendar day.
- No tip credit is permitted to offset the minimum wage.
- Sexual orientation, gender identity or expression, domestic violence victim and sexual assault victim status, and the need to use a service animal at work are additional protected categories under Nevada law. The definition of "race" for purposes of

Nevada's anti-discrimination provisions includes traits associates with race, such as hair texture and protective hairstyles.

- Employers must not discriminate based on an employee's use of a lawful product outside the employer's premises during non-working hours, as long as the use does not negatively affect the employee's ability to perform his or her job or the safety of others.
- In Nevada, it is unlawful to seek the wage or salary history of an applicant, rely on past wage or salary history in determining whether to make an employment offer or in determining the rate of pay, or discriminate or retaliate against an applicant for not providing their wage or salary history. Employers and employment agencies must provide interviewed applicants the wage or salary rate for the position. If a current employee has applied for a promotion or transfer and has completed an interview or has been offered the promotion or transfer, employers and employment agencies must provide the employee the wage or salary range or rate for the desired position, if the employee requests it. Employers and employment agencies may ask the applicant for their wage or salary expectation for the position sought.
- The Nevada Occupational Safety and Health Administration requires that safety training be provided to every new hire and that a safety person or committee be appointed (for employers of certain size).
- Leave for school-related activities must be provided by employers of 50 or more employees.
- Domestic violence and sexual assault victim and pregnancy accommodations and leave are required in certain circumstances.
- Employers must provide required distinct uniforms and accessories at no cost to employees, and if not easily laundered, employers must clean them for free.
- Deductions from employee pay checks are not permitted, unless expressly authorized in writing for a specific amount, purpose, and payroll period. Blanket pre-authorizations do not suffice and can subject employers to waiting time penalties if improper deductions are made from final paychecks.
- Settlement agreements cannot restrict the disclosure of certain information or prohibit testimony at judicial or administrative proceedings under certain circumstances.
- Nevada prohibits non-competition agreements with employees who are "paid solely on an hourly wage basis, exclusive of any tips or gratuities."
- If an employer provides paid or unpaid sick leave to their employees, the employer must allow an employee to use at least an amount equal to at least 6 months of accrued sick leave to assist their immediate family members who have an illness, injury, medical appointment, or other authorized medical need.
- Effective December 1, 2022, subject to certain exceptions, Nevada public bodies cannot enter into employment contracts that entitle officers or employees of the public body to receive certain types of compensation in specified circumstances.

Law stated - 20 June 2024

Key considerations

What do you consider unique to those doing business in your state?

Nevada's laws are generally more employer-friendly than those of California.

Law stated - 20 June 2024

Key considerations

Is there any general advice you would give in the labor/employment area?

In the absence of a contract, employment relationships in Nevada are presumed to be at will. An implied contract may be created through written or oral statements, including oral representations made by managers or statements contained in employee handbooks or other materials. It is important that employee handbooks and other employment documents include express disclaimers that such handbooks or documents do not constitute a contract, either express or implied.

Nevada employment law differs from federal law and some other U.S. states' employment laws in numerous ways:

- Nevada has two different minimum wage rates (until July 1, 2024).
- Nevada requires that employers provide a meal period of at least half an hour to employees working a continuous eight-hour period. Rest periods of at least 10 minutes are required for every four hours worked, or a major fraction of four hours (interpreted by regulation to mean at least three and a half continuous hours).
- Overtime pay is required for non-exempt employees on a daily and weekly basis. Despite some overlap, Nevada's overtime exemptions differ from federal overtime exemptions.
- No tip credit is permitted to offset the minimum wage.
- Sexual orientation, gender identity or expression, domestic violence and sexual assault victim status, traits associated with race (e.g. hair texture and protective hairstyles), and the need to use a service animal at work are additional protected categories in Nevada.
- Employers may not discriminate based on an employee's use of a lawful product outside the employer's premises during non-working hours, as long as the use does not negatively affect the employee's ability to perform his or her job or the safety of others.
- The Nevada Occupational Safety and Health Administration requires that safety training be provided to every new hire and that a safety person or committee be appointed (depending on the size of the employer).
- Nevada's medical marijuana law requires that employers make reasonable accommodations for the medical needs of employees who use medical marijuana with a valid registry identification card in certain circumstances.
- Special drug testing rules apply.

- Subject to certain exceptions, Nevada imposes mandatory paid time off requirements for private employers with 50 or more employees in Nevada.
- Leave for school-related activities must be provided by employers of 50 or more employees.
- Domestic violence and sexual assault victim and pregnancy accommodations and leave are required in certain circumstances.
- Employers must provide required distinct uniforms and accessories at no cost to employees, and if not easily laundered, employers must clean them for free.
- Nevada prohibits inquiries into prior wage history.

Law stated - 20 June 2024

Emerging issues

What are the emerging trends in employment law in your state, including the interplay with other areas of law, such as firearms legislation, legalization of marijuana and privacy?

There is limited guidance in Nevada to assist employers in determining their obligation to provide a reasonable accommodation of an employee's use of marijuana for medical purposes under Nevada's medical marijuana law. *See* NRS 678C.850.

In 2022, the Nevada Supreme Court issued two decisions pertaining to marijuana use by employees and the related rights and obligations of employers. In *Ceballos v. NP Palace, LLC*, the Nevada Supreme Court upheld the termination of employee who used recreational marijuana and explained that marijuana's status as an illegal drug under federal law takes it outside the protections for "lawful" off-duty product use. In *Freeman Expositions, LLC v. Eighth Judicial District Court*, the Nevada Supreme Court held that an employee who was terminated after testing positive for marijuana due to medical marijuana use had a private right of action under NRS 678C.850, which requires employers to attempt to accommodate the medical needs of valid registry cardholders, subject to certain exceptions. Because the appeal involved a ruling on a motion to dismiss, the Nevada Supreme Court did not address the actual merits of the case nor provide any guidance regarding the scope of employers' obligation to attempt to accommodate the medical needs of an employee who is a medical cannabis user.

Nevada law has protections and penalties against misclassification of employees as independent contractors, creates an administrative process for addressing related grievances, and requires state agencies to share misclassification information.

Law stated - 20 June 2024

Proposals for reform

Are there any noteworthy proposals for reform in your state?

Not applicable.

EMPLOYMENT RELATIONSHIP

State-specific laws

What state-specific laws govern the employment relationship?

NRS Chapters 608, 609, 612, 613, 616A through 616D, 617, and 618. Nevada's Administrative Code also includes rules governing employment-related matters. The chapter numbers for the code generally correspond to the related chapter of the Nevada Revised Statutes.

Law stated - 20 June 2024

State-specific laws

Who do these cover, including categories of workers?

Depending on the specific provision, these laws generally cover employees. Some provisions, including fair employment practices laws, also apply to applicants for employment. Chapter 608 of the Nevada Revised Statutes does not apply to public employers.

Law stated - 20 June 2024

Misclassification

Are there state-specific rules regarding employee/contractor misclassification?

Nevada sets forth different tests for independent contractor status.

For wage and hour purposes, a person is conclusively presumed to be an independent contractor if certain criteria are met (See Nev. Rev. Stat. § 608.0155).

For workers' compensation purposes, an "independent contractor" is defined in Nev. Rev. Stat. § 616A.255. The contractor must operate as an independent enterprise, which is not in the "same trade, business, profession or occupation" as the company. A different test applies in construction cases.

For unemployment compensation purposes, Nevada uses an "ABC" test articulated in Nev. Rev. Stat. § 612.085.

Law stated - 20 June 2024

Contracts

Must an employment contract be in writing?

No, an express contract for employment may be made either orally or in writing (*Am. Bank Stationery v. Farmer*, 799 P.2d 1100 (Nev. 1990); see also *Ringle v. Bruton*, 86 P.3d 1032 (Nev. 2004)).

An employer's written materials, including employee handbooks and personnel policies, as well as oral representation made by the hiring authority or management may constitute an implied employment contract (*Am. Bank Stationery v. Farmer*, 799 P.2d 1100 (Nev. 1990)). An employer may avoid the inference of an implied contract by including an express handbook disclaimer (*D'Angelo v. Gardner*, 819 P.2d 206 (Nev. 1991)).

Law stated - 20 June 2024

Contracts

Are any terms implied into employment contracts?

Under Nevada law, each contract contains an implied covenant of good faith and fair dealing. An employer breaches that implied covenant when, acting in bad faith, it discharges an employee who has established contractual rights of continued employment and who has developed a relationship of trust, reliance and dependency with the employer (*D'Angelo v. Gardner*, 819 P.2d 206 (Nev. 1991)). Liability is typically limited to the rare cases where the party in the superior or entrusted position has engaged in "grievous and perfidious misconduct" (*K Mart Corp. v. Ponsock*, 732 P.2d 1364 (Nev. 1987), abrogated on other grounds by *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 111 S.Ct. 478, 112 L.Ed.2d 474 (1990)).

Law stated - 20 June 2024

Contracts

Are mandatory arbitration agreements enforceable?

An agreement to submit to arbitration any existing or subsequent controversy arising between the parties is valid, enforceable and irrevocable, except on certain grounds, such as where the agreement fails to include specific affirmative authorization to arbitrate, or on grounds to revoke the contract under established contractual principles (Nev. Rev. Stat. §38.219). As a matter of public policy, Nevada courts favor arbitration and liberally construe arbitration clauses in favor of granting arbitration (*Tallman v. Eighth Jud. Dist. Ct.*, 359 P.3d 113 (Nev. 2015); *Kindred v. Second Jud. Dist. Ct.*, 996 P.2d 903 (Nev. 2000)).

Law stated - 20 June 2024

Contracts

How can employers make changes to existing employment agreements?

Oral modifications of an existing contractual agreement can be permissible (*Silver Dollar Club v. Cosgriff Neon Co., Inc.*, 389 P.2d 923 (Nev. 1964)). However, best practice would be to record any contractual changes in writing, signed by both parties.

Law stated - 20 June 2024

HIRING

Advertising

What are the requirements relating to advertising open positions?

It is unlawful to induce, influence, persuade or engage workers to change from one place to another through means of false or deceptive representations, false advertising, or false pretenses concerning the character of the work, the amount of pay, sanitary or other work conditions, or the existence of a strike or other labor unrest (Nev. Rev. Stat. § 613.010). In addition, employment agencies may not knowingly send an applicant to any place where a strike, lockout or other labor trouble exists without providing the applicant with a written statement of that fact and retaining a copy signed by the applicant for one year (Nev. Rev. Stat. § 611.290). Employers must also comply with Nevada's anti-discrimination statutes (Nev. Rev. Stat. § 613.310 et seq.).

Law stated - 20 June 2024

Background checks

(a) Criminal records and arrests

Nevada law does not restrict a private employer's use of criminal history records for arrests and convictions. Different requirements apply for certain Nevada public employers. The Nevada Equal Rights Commission pre-employment guidelines discourage inquiries regarding arrests that did not result in conviction.

If an employer authorizes a third-party service to obtain criminal records, those records can only be provided to the employer, and not to another third-party employment screening service. 2017 Nev. Op. Atty. Gen. No. 12 (Nev. A.G.), 2018 WL 804159.

Law stated - 20 June 2024

Background checks

(b) Medical history

It is unlawful for a Nevada employer to:

- ask or encourage an employee or job applicant to submit to a genetic test;
 - require or administer a genetic test to a person as a condition of employment;
 - deny employment based on genetic information;
 - alter the terms, conditions or privileges of employment based on genetic information;
- or
- terminate employment based on genetic information (Nev. Rev. Stat. § 613.345).

Law stated - 20 June 2024

Background checks

(c) Drug screening

Nevada prohibits employers from denying employment to an applicant based on a failed pre-employment marijuana test, unless certain exceptions apply. If an employer requires an employee to submit to a screening test (for marijuana or other drugs/controlled substances) within the initial 30 days of employment, and the employee fails the test, the employee has the right to submit to an additional screening test (at the employee's expense) to rebut the results of the initial test. The employer is required to accept and give appropriate consideration to the results of the second test. Employers may need to accommodate the medical use of marijuana outside the workplace.

Covered public employers must comply with alcohol and drug-testing procedures set forth in Nev. Rev. Stat. § 284.406 et seq.

Law stated - 20 June 2024

Background checks

(d) Credit checks

Nevada restricts the use credit reports by employers. Generally, employers cannot require, request, suggest, or cause employees or applicants to submit to a credit report as a condition of employment, unless an exception exists. In addition, employers may not discipline, discharge, or discriminate against an employee or applicant on the basis of a credit report, or the failure to provide a credit report.

Exceptions that allow the use of credit reports in the employment context include:

- when required or authorized by state or federal law;
- when based on reasonable belief, the individual has engaged in specific activity that may constitute a violation of law; and
- when credit information is reasonably related to the position for which the employee or applicant is being considered.

NRS 613.580 enumerates the circumstances in which credit information is deemed reasonably related to the position for which the employee or applicant is being considered.

Law stated - 20 June 2024

Background checks

(e) Immigration status

There is no Nevada law regarding immigration or employment eligibility verification. However, if the U.S. Attorney General finds that a person who holds a state business license has engaged in the unlawful hiring or employment of an unauthorized alien, the Nevada Tax

Commission will hold a hearing to determine whether to take action against the person, which may include administrative fines. (Nev. Rev. Stat. §360.796).

Law stated - 20 June 2024

Background checks

(f) Social media

Nevada employers may not directly or indirectly require, request, suggest, or cause any employee or applicant to disclose the username, password, or any other information that provides access to the individual's personal social media account. Employers also may not discharge, discipline, or discriminate against any employee or applicant for refusing or failing to disclose such information (Nev. Rev. Stat. §613.135).

Law stated - 20 June 2024

Background checks

(g) Other

Under Nevada Law, employers cannot discriminate based on an employee's use of a lawful product outside the employer's premises during non-working hours, as long as the use does not negatively affect the employee's ability to perform their job or the safety of others (Nev. Rev. Stat. §613.333).

Law stated - 20 June 2024

WAGE AND HOUR

Pay

What are the main sources of wage and hour laws in your state?

Nevada Revised Statutes, Chapter 608, Compensation, Wages and Hours, the Nevada Administrative Code, Chapter 608, and the Nevada Constitution, Article XV, Section 16.

Law stated - 20 June 2024

Pay

What is the minimum hourly wage?

Nevada has two different minimum wage rates, depending on whether the employer provides qualified health benefits. Effective July 1, 2023, the minimum wage for employees who receive qualified health benefits is \$10.25 per hour. The minimum wage rate for employees who do not receive qualified health benefits is \$11.25 per hour. As a result of AJR 10, which was approved by Nevada voters in 2022, effective July 1, 2024, Nevada's minimum wage rate

will increase to \$12/hour for all employees (regardless of whether they are offered qualified health benefits).

Law stated - 20 June 2024

Pay

What are the rules applicable to final pay and deductions from wages?

An employee who is terminated or placed in a “nonworking status” must be paid all earned wages immediately (Nev. Rev. Stat. § 608.020). “Nonworking status” means a temporary layoff during which the employee remains employed and may be called back to work at some point in the future. “Nonworking status” does not include circumstances where: (i) the employer places the employee on an investigatory or disciplinary suspension; (ii) the employer places the employee “on call”; or (iii) the employee is on an approved leave of absence.

When an employee resigns or quits his or her employment, the wages and compensation earned must be paid no later than the day on which the employee would have been regularly paid, or seven days after the resignation, whichever is earlier (Nev. Rev. Stat. §§608.020; 608.030).

If an employee’s wages are not paid in a timely manner, employers may be liable for a waiting time penalty of up to 30 days’ wages.

Generally, deductions from wages are permitted for any dues, rates or assessments becoming due to any hospital association or relief, savings or other department or association maintained by the employer or employees for the benefit of employees, or other deductions authorized by written order of an employee. The authorization from the employee must be specific to the circumstance leading to the deduction (i.e., specific purpose of the withholding, amount to be withheld, and pay period for which the withholding is to be made). Blanket pre-authorizations are not permitted (Nev. Admin. Code § 608.160). Employers must provide an itemized list showing the deductions from the total amount of wages (Nev. Rev. Stat. § 608.110).

Law stated - 20 June 2024

Hours and overtime

What are the requirements for meal and rest breaks?

Nevada requires that employers provide a meal period of at least half an hour to employees working a continuous eight-hour period. Rest periods of at least 10 minutes are required for every four hours worked, or a major fraction of four hours (interpreted by regulation to mean at least three and a half continuous hours) (Nev. Rev. Stat. §608.019; Nev. Admin. Code §608.145). Employees may agree to voluntarily forgo any rest period or meal period, but the employer must be able to show the existence of such an agreement.

Unless deemed to be a hardship with a reasonable alternative otherwise reached between the employer and employee, certain employers are required to provide reasonable break time to mothers of children under 1 year of age to express breast milk as needed in a place,

other than a bathroom, that is reasonably clean, protected from the view of others and free from intrusion by others. If the break time is required to be compensated under a collective bargaining agreement, the break time to express breast milk must be compensated. (Nev. Rev. Stat. § 608.0193).

Law stated - 20 June 2024

Hours and overtime

What are the maximum hour rules?

Nevada employees engaged in work in underground mines cannot work more than eight hours within any 24-hour period (Nev. Rev. Stat. §608.200).

With limited exceptions, minors under the age of 16 may not work more than 48 hours in any week, or more than eight hours in any day (Nev. Rev. Stat. §609.240).

For overtime purposes, unless an exception applies, Nevada requires that overtime pay be paid to non-exempt employees at one-and-a-half times their regular hourly rate for hours worked in excess of 40 hours per work week, and on a daily basis for hours worked over eight hours per day (Nev. Rev. Stat. §608.018).

Law stated - 20 June 2024

Hours and overtime

How should overtime be calculated?

Nevada requires that overtime pay be paid to non-exempt employees at one-and-a-half times their regular hourly rate for hours worked in excess of 40 hours per work week, and on a daily basis for hours worked over eight hours per day. Daily overtime is calculated based on the 24-hour period beginning at the start of each shift, not based on a calendar day. Employers and employees may agree to a schedule of four 10-hour shifts that will not trigger the daily overtime requirement (Nev. Rev. Stat. §§ 608.018, 608.0126).

Law stated - 20 June 2024

Hours and overtime

What exemptions are there from overtime?

Nevada exemptions from overtime are set forth in NRS 608.018.

Law stated - 20 June 2024

Record keeping

What payroll and payment records must be maintained?

Nevada requires that the records enumerated in NRS 608.115 be kept by employers for two years for each pay period for each employee. Special requirements apply to domestic service employees. Employers must also keep records of the receipt or accrual and use of paid leave by each employee for one year following the entry of such information on the record.

Law stated - 20 June 2024

DISCRIMINATION, HARASSMENT AND FAMILY LEAVE

Protected categories

(a) Age?

Yes—Nev. Rev. Stat. §613.330.

Law stated - 20 June 2024

Protected categories

(b) Race?

Yes—Nev. Rev. Stat. §613.330. "Race" includes traits associated with race, such as hair texture and protective hairstyles.

Law stated - 20 June 2024

Protected categories

(c) Disability?

Yes—Nev. Rev. Stat. §613.330. In addition, it is unlawful for an employer to refuse to permit an employee with a disability to keep the employee's service animal with him or her at all times in the place of employment (Id.).

Law stated - 20 June 2024

Protected categories

(d) Gender?

Yes—including gender identity or expression (Nev. Rev. Stat. §613.330).

Law stated - 20 June 2024

Protected categories

(e) Sexual orientation?

Yes—Nev. Rev. Stat. §613.330.

Law stated - 20 June 2024

Protected categories

(f) Religion?

Yes—Nev. Rev. Stat. §613.330.

Law stated - 20 June 2024

Protected categories

(g) Medical?

It is unlawful for a Nevada employer to ask or encourage an employee or applicant to submit to a genetic test, require or administer a genetic test to a person as a condition of employment or deny employment, alter the terms, conditions or privileges of employment, or terminate employment based on genetic information (Nev. Rev. Stat. § 613.345).

Law stated - 20 June 2024

Protected categories

(h) Other?

An additional protected class under Nevada law is national origin (Nev. Rev. Stat. § 613.330).

Further, Nevada employers are prohibited from taking adverse action against (and must reasonably accommodate) employees who are victims of domestic violence or sexual assault (or whose family member is a victim of domestic violence or sexual assault) for reasons related to domestic violence or sexual assault (Nev. Rev. Stat. § 613.222 and § 613.223). In addition, private employers must provide domestic violence and sexual assault victim leave in qualifying circumstances (Nev. Rev. Stat. § 608.0198).

Employers are also prohibited from discriminating against or failing to accommodate pregnant employees, and from refusing to grant leave to pregnant employees on the same terms as are otherwise offered to employees with other medical conditions (Nev. Rev. Stat. § 613.4353 et seq.).

Under Nevada Law, employers may not discriminate based on an employee's use of a lawful product outside the employer's premises during non-working hours, as long as the use does not negatively affect the employee's ability to perform his or her job or the safety of others (Nev. Rev. Stat. § 613.333).

In addition, subject to an exception, NRS Chapter 613 protects employees from being subjected to discrimination for inquiring about, discussing, or voluntarily disclosing their wages or the wages of another employee. (Nev. Rev. Stat. §613.330).

It should also be noted that, while domestic workers are not a "protected class," special requirements governing the employment relationship apply to domestic workers.

Private employers subject to mandatory paid time off requirements cannot deny an employee use of available paid time off or retaliate against the employee for use of such paid time off.

Law stated - 20 June 2024

Harassment

What is the state law in relation to harassment?

Nevada courts typically follow federal law (e.g., Title VII) when interpreting claims of workplace harassment (e.g., *Chavez v. Sievers*, 43 P.3d 1022 (Nev. 2002)).

Law stated - 20 June 2024

Family and medical leave

What is the state law in relation to family and medical leave?

Nevada has no state family and medical leave law, however if an employer grants employees leave for sickness or disability due to medical conditions, it must do the same for female employees for conditions relating to pregnancy, childbirth, or related medical conditions (Nev. Rev. Stat. § 613.4383).

Pregnancy is covered under the Nevada Pregnant Workers' Fairness Act, including reasonable accommodations, and discriminatory or unlawful employment practices (Nev. Rev. Stat. § 613.4353 et seq).

Employees who are domestic violence or sexual assault victims or whose family or household member is a victim of the same are entitled to leave under certain circumstances. Nev. Rev. Stat. § 608.0198.

Law stated - 20 June 2024

PRIVACY IN THE WORKPLACE

Privacy and monitoring

What are employees' rights with regard to privacy and monitoring?

Nevada courts have given private employers wide latitude in monitoring their workplace and facilities, especially where employer policies provide for such monitoring (common sense must be followed with respect to areas where privacy can legitimately be expected—e.g., restrooms and changing rooms).

Employers can require an employee to disclose the username, password or any other information to an account or service, other than a personal social media account, for the purpose of accessing the employer's own internal computer or information system (Nev. Rev. Stat. §613.135).

Nevada law requires two-party consent before recording telephone conversations or other wire communications, but only one-party consent is required for recording “in-person” conversations, subject to prohibitions on eavesdropping (Nev. Rev. Stat. §§ 200.620; 200.650).

Law stated - 20 June 2024

Privacy and monitoring

Are there state rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

Nevada employers may not directly or indirectly require, request, suggest, or cause any employee or applicant to disclose the username, password, or any other information that provides access to the individual’s personal social media account. Employers also may not discharge, discipline, or discriminate against any employee or applicant for refusing or failing to disclose such information (Nev. Rev. Stat. § 613.135).

Law stated - 20 June 2024

Bring your own device

What is the latest position in relation to bring your own device?

Nevada law does not address the issue of bring your own device.

Law stated - 20 June 2024

Off-duty

To what extent can employers regulate off-duty conduct?

Under Nevada Law, employers cannot discriminate based on an employee’s use of a lawful product outside the employer’s premises during non-working hours, as long as the use does not negatively affect the employee’s ability to perform his or her job or the safety of others (Nev. Rev. Stat. § 613.333).

Law stated - 20 June 2024

Gun rights

Are there state rules protecting gun rights in the employment context?

Nevada law does not directly address guns or weapons in the workplace, or an employer’s right to ban weapons in the workplace. The Nevada Attorney General has issued an opinion letter, indicating the holder of a concealed firearms permit may not be prohibited from carrying a concealed firearm in a public building in which the permit holder is employed. *See* Atty Gen. Op. No. 2017-15 (2018).

TRADE SECRETS AND RESTRICTIVE COVENANTS

Intellectual property**Who owns IP rights created by employees during the course of their employment?**

Except as otherwise provided by an express written agreement, an employer is the sole owner of any patentable invention or trade secret developed during the course and scope of the employment that relates directly to work performed by an employee (Nev. Rev. Stat. §600.500).

Law stated - 20 June 2024

Restrictive covenants**What types of restrictive covenants are recognized and enforceable?**

Nevada allows non-compete agreements and other restrictive covenants provided that they are reasonably necessary to protect the employer's business and goodwill (*Hansen v. Edwards*, 426 P.2d 792 (Nev. 1967)). *See also* Nev. Rev. Stat. § 613.195. Effective October 1, 2021, non-competition agreements with employees who are "paid solely on an hourly wage basis, exclusive of any tips or gratuities" are expressly prohibited. Courts look at various factors in determining reasonableness. If a court determines that a non-compete is supported by valuable and appropriate consideration, but is otherwise overly broad, the court shall revise the non-compete to the extent necessary and enforce it as revised. Special rules apply with respect to the assignability of restrictive covenants and customer non-solicitation. If an employee is terminated as a result of a workforce reduction, reorganization or similar restructuring, a non-compete is only enforceable during the period in which the employer is paying the employee's salary, benefits or equivalent compensation, including severance pay (Nev. Rev. Stat. § 613.195).

Nevada has adopted the Uniform Trade Secrets Act (Nev. Rev. Stat. §600A.010 et seq.).

Law stated - 20 June 2024

Non-compete**Are there any special rules on non-competes for particular classes of employee?**

Nevada does not expressly prohibit non-competes for particular classes of employees or professions. However, effective October 1, 2021, employees who are "paid solely on an hourly wage basis, exclusive of any tips or gratuities" may not be subjected to non-compete agreements.

Law stated - 20 June 2024

LABOR RELATIONS

Right to work

Is the state a “right to work” state?

Yes—Nev. Rev. Stat. § 613.230 et seq.

Law stated - 20 June 2024

Unions and layoffs

Is the state (or a particular area) known to be heavily unionized?

According to the Bureau of Labor Statistics (2024), union members accounted for approximately 12.4 per cent of wage and salary workers in Nevada in 2023.

Law stated - 20 June 2024

Unions and layoffs

What rules apply to layoffs? Are there particular rules for plant closures/mass layoffs?

No.

Law stated - 20 June 2024

DISCIPLINE AND TERMINATION

State procedures

Are there state-specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

If an employer has an established discipline procedure and policy, it must be followed (*Beales v. Hillhaven*, 825 P.2d 212 (1992)).

Law stated - 20 June 2024

At-will or notice

At-will status and/or notice period?

Nevada is an at-will state.

Law stated - 20 June 2024

At-will or notice

| What restrictions apply to the above?

The at-will status can be modified by an express or implied contract.

An employer's written materials, including employee handbooks and personnel policies, as well as oral representation made by the hiring authority or management, may constitute an implied employment contract (*Am. Bank Stationery v. Farmer*, 799 P.2d 1100 (Nev. 1990)). However, an employer can avoid the inference of an implied contract by including an express disclaimer that the employee handbook or policies do not establish an express or implied contract (*D'Angelo v. Gardner*, 819 P.2d 206 (Nev. 1991)).

In addition, Nevada recognizes a public policy exception to the at-will employment relationship in certain circumstances, such as when an employee is terminated for:

- filing a workers' compensation claim (*Hansen v. Harrah's*, 675 P.2d 394, 396-97 (Nev. 1984));
- performing jury duty (Nev. Rev. Stat. § 6.190);
- refusing to engage in illegal conduct (*Allum v. Valley Bank of Nevada*, 970 P.2d 1062, 1068 (Nev. 1998));
- refusing to work in unreasonably dangerous conditions (*D'Angelo v. Gardner (Western States v. Jones)*, 819 P.2d 206, 216 (Nev. 1991)); and
- exposing the illegal activities of the employer to the appropriate government agency (i.e., whistleblowing) (*Wiltsie v. Baby Grand Corp.*, 774 P.2d 432, 433 (Nev. 1989)).

Law stated - 20 June 2024

| Final paychecks

Are there state-specific rules on when final paychecks are due after termination?

An employee who is fired or placed on a "nonworking status" must be paid all earned wages immediately (Nev. Rev. Stat. § 608.020). "Nonworking status" means a temporary layoff during which the employee remains employed and may be called back to work at some point in the future. "Nonworking status" does not include circumstances where: (i) the employer places the employee on an investigatory or disciplinary suspension; (ii) the employer places the employee "on call"; or (iii) the employee is on an approved leave of absence. When an employee resigns or quits his or her employment, the wages and compensation earned must be paid no later than the day on which the employee would have regularly been paid, or seven days after resignation, whichever is earlier (Nev. Rev. Stat. §§ 608.020; 608.030). Waiting time penalties may apply where final wages are not paid in a timely manner (Nev. Rev. Stat. §§ 608.040, 608.050).

Law stated - 20 June 2024