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SECOND REPRINT

S.B. 312

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

MARCH 18, 2019

Referred to Committee on Commerce and Labor

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

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to employment; requiring an employer in private employment to provide paid leave to each employee of the employer under certain circumstances; providing certain exceptions; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires employers in private employment to pay employees
2 certain minimum compensation and to provide certain benefits, including overtime
3 compensation and meal and rest breaks. (NRS 608.018, 608.019, 608.250) **Section**
4 **1** of this bill requires such an employer who has 50 or more employees in this State,
5 at a minimum, to provide employees 0.01923 hours of paid leave for each hour
6 worked that may be used by an employee beginning on the 90th calendar day of
7 employment. **Section 1** provides that an employee may use paid leave available for
8 use by that employee without providing a reason to his or her employer for such
9 use. **Section 1** requires an employee to, as soon as practicable, give notice to his or
10 her employer to use the paid leave available for use by that employee.

11 **Section 1** also provides that an employer may: (1) limit the use of the paid
12 leave to 40 hours per benefit year; (2) limit the amount of paid leave that an
13 employee may carry over to another benefit year to a maximum of 40 hours per
14 benefit year; and (3) set a minimum increment that an employee may use the
15 accrued sick leave at any one time, not to exceed 4 hours. **Section 1** additionally
16 requires an employer to maintain records of the receipt or accrual and use of paid
17 leave for each employee for a 1-year period and to make those records available for
18 inspection by the Labor Commissioner. **Section 1** requires the Labor Commissioner



19 to prepare a bulletin setting forth these benefits and requires employers to post the
20 bulletin in the workplace. **Section 1** provides an exception for: (1) employers who
21 provide at least an equivalent amount of paid leave or paid time off that may be
22 used for the same purposes and under the same conditions as required by **section 1**;
23 and (2) temporary, seasonal and on-call employees. **Section 1** additionally provides
24 that for the first 2 years of operation, an employer defined in **section 1** is not
25 required to comply with the requirements of **section 1**.

26 Existing law requires: (1) the Labor Commissioner or his or her representative
27 to enforce the provisions governing the payment and collection of wages and other
28 benefits; and (2) certain entities to prosecute an action for enforcement upon
29 receiving notice from the Labor Commissioner or his or her representative. (NRS
30 608.180) **Section 2** of this bill requires the Labor Commissioner to enforce the
31 provisions of **section 1**.

32 Existing law provides that any person who violates the provisions governing
33 the payment and collection of wages and other benefits is guilty of a misdemeanor.
34 Existing law additionally authorizes the Labor Commissioner to impose against the
35 person an administrative penalty of not more than \$5,000 for each such violation.
36 (NRS 608.195) **Section 3** of this bill makes a violation of the provisions of **section**
37 **1** a misdemeanor and authorizes the Commissioner to impose, in addition to any
38 other remedy or penalty, an administrative penalty of not more than \$5,000 for each
39 violation.

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

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

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

6 *(a) An employee is entitled to at least 0.01923 hours of paid*
7 *leave for each hour of work performed.*

8 *(b) An employee may, as determined by the employer, obtain*
9 *paid leave by:*

10 *(1) Receiving on the first day of each benefit year the total*
11 *number of hours of paid leave that the employee is entitled to*
12 *accrue in a benefit year pursuant to paragraph (a); or*

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

16 *(c) Paid leave accrued pursuant to subparagraph (2) of*
17 *paragraph (b) may carry over for each employee between his or*
18 *her benefit years of employment, except an employer may limit the*
19 *amount of paid leave for each employee carried over to a*
20 *maximum of 40 hours per benefit year.*

21 *(d) Except as otherwise provided in paragraph (i), an employer*
22 *shall:*



1 (1) *Compensate an employee for the paid leave available*
2 *for use by that employee at the rate of pay at which the employee is*
3 *compensated at the time such leave is taken, as calculated*
4 *pursuant to paragraph (e); and*

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

7 (e) *For the purposes of determining the rate of pay at which an*
8 *employee is compensated pursuant to paragraph (d), the*
9 *compensation rate for an employee who is paid by:*

10 (1) *Salary, commission, piece rate or a method other than*
11 *hourly wage must:*

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

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

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

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

24 (f) *An employer may limit the amount of paid leave an*
25 *employee uses to 40 hours per benefit year.*

26 (g) *An employer may set a minimum increment of paid leave,*
27 *not to exceed 4 hours, that an employee may use at any one time.*

28 (h) *An employer shall provide to each employee on each*
29 *payday an accounting of the hours of paid leave available for use*
30 *by that employee. An employer may use the system that the*
31 *employer uses to pay its employees to provide the accounting of*
32 *the hours of paid leave available for use by the employee.*

33 (i) *An employer may, but is not required to, compensate an*
34 *employee for any unused paid leave available for use by*
35 *that employee upon separation from employment, except if the*
36 *employee is rehired by the employer within 90 days after*
37 *separation from that employer and the separation from*
38 *employment was not due to the employee voluntarily leaving his or*
39 *her employment, any previously unused paid leave hours available*
40 *for use by that employee must be reinstated.*

41 2. *An employee in private employment may use paid leave*
42 *available for use by that employee as follows:*

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



1 (b) An employee may use paid leave available for use by that
2 employee without providing a reason to his or her employer for
3 such use.

4 (c) An employee shall, as soon as practicable, give notice to his
5 or her employer to use the paid leave available for use by that
6 employee.

7 3. An employer shall not:

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

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

14 (c) Retaliate against an employee for using paid leave
15 available for use by that employee.

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

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

29 6. The provisions of this section do not:

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

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

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

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

39 8. This section does not apply to:

40 (a) An employer who, pursuant to a contract, policy, collective
41 bargaining agreement or other agreement, provides employees
42 with a policy for paid leave or a policy for paid time off to all
43 scheduled employees at a rate of at least 0.01923 hours of paid
44 leave per hour of work performed that may be used under the
45 same conditions as specified in this section; and



1 *(b) Temporary, seasonal or on-call employees.*

2 *9. As used in this section:*

3 *(a) "Benefit year" means a 365-day period used by an*
4 *employer when calculating the accrual of paid leave.*

5 *(b) "Employer" means a private employer who has 50 or more*
6 *employees in private employment in this State.*

7 **Sec. 2.** NRS 608.180 is hereby amended to read as follows:

8 608.180 The Labor Commissioner or the representative of the
9 Labor Commissioner shall cause the provisions of NRS 608.005
10 to 608.195, inclusive, *and section 1 of this act* and 608.215 to be
11 enforced, and upon notice from the Labor Commissioner or the
12 representative:

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

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

17 3. The Attorney General, as provided in NRS 607.160 or
18 607.220; or

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

20 ↪ shall prosecute the action for enforcement according to law.

21 **Sec. 3.** NRS 608.195 is hereby amended to read as follows:

22 608.195 1. Except as otherwise provided in NRS 608.0165,
23 any person who violates any provision of NRS 608.005 to 608.195,
24 inclusive, *and section 1 of this act* or 608.215, or any regulation
25 adopted pursuant thereto, is guilty of a misdemeanor.

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

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

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

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



