

ASSEMBLY BILL NO. 222—ASSEMBLYWOMAN TORRES

MARCH 10, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing employment practices.
(BDR 53-739)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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; making it an unlawful employment practice for an employer to take certain actions against an employee who reports or reasonably refuses to engage in certain conduct that is illegal or unsafe or who provides notice of certain safety or health violations; revising provisions governing periods of limitation in certain civil actions concerning unlawful employment practices; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The Nevada Supreme Court has determined that under existing law an employer violates the public policy of this State protecting what is commonly referred to as whistleblowing if the employer terminates the employment of an at-will employee because the employee reports to the appropriate external authorities conduct by the employer that the employee reasonably and in good faith suspects may be illegal. However, the Court has also determined that this protection does not extend to a whistleblower who reports such conduct only to a supervisor or other person within the employer’s organization. (*Wiltzie v. Baby Grand Corp.*, 105 Nev. 291, 293 (1989); *Allum v. Valley Bank of America*, 114 Nev. 1313, 1325 (1998)) **Section 1** of this bill codifies in statute the whistle blower protections established by the Nevada Supreme Court for employees who report to appropriate external authorities, or to the employer, conduct by the employer that the employee reasonably and in good faith suspects may be illegal. **Section 1** also provides that those provisions apply to conduct by the employer that the employee reasonably and in good faith suspects may be unsafe. **Section 1** further provides the same protections to employees who reasonably refuse to engage in such conduct.

Existing law establishes the Division of Industrial Relations within the Department of Business and Industry and, in addition to its other duties, requires the Division to supervise and regulate all matters relating to occupational safety and



20 health. (NRS 232.510, 618.175) To carry out those duties under existing law, the
 21 Administrator of the Division and his representatives are authorized to inspect
 22 workplaces. (NRS 618.325) Existing law further provides that before or during
 23 such an inspection, any employee is entitled to notify the Division of a safety or
 24 health violation that the employee has reason to believe exists in the workplace.
 25 (NRS 618.435) **Section 1** extends its whistleblower protections to employees who
 26 notify the Division of such violations. **Section 2** of this bill makes a conforming
 27 change to indicate the placement of **section 1** within the Nevada Revised Statutes.

28 Under existing law, if, after a complaint alleging an unfair employment practice
 29 is filed with the Nevada Equal Rights Commission, the Commission does not
 30 conclude that an unfair employment practice has occurred, the person alleging such
 31 a practice has occurred is authorized to bring a civil action in the district court for
 32 an order granting or restoring to that person the rights to which the person is
 33 entitled. (NRS 613.420) Existing law prohibits a person from bringing such a civil
 34 action more than 180 days after the act constituting the unfair employment practice
 35 occurred or more than 90 days after the receipt of a right-to-sue letter issued by the
 36 Commission, whichever is later. Existing law further provides that the 90-day and
 37 180-day periods of limitation are tolled during the pendency of the complaint
 38 before the Commission. (NRS 613.430) **Section 4** of this bill extends the coverage
 39 of those provisions to: (1) actions in the district court for the occurrence of
 40 unlawful employment practices prohibited under Title VII of the Civil Rights Act
 41 of 1964; (2) issuance of right-to-sue letters by the federal Equal Employment
 42 Opportunity Commission; and (3) the tolling of the 90-day and 180-day periods of
 43 limitation during the pendency of a complaint before the federal Equal Employment
 44 Opportunity Commission.

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

1 **Section 1.** Chapter 613 of NRS is hereby amended by adding
 2 thereto a new section to read as follows:

3 *1. It is an unlawful employment practice for an employer to*
 4 *discharge, discipline, discriminate against in any manner or deny*
 5 *employment or promotion to, or threaten to take any such action*
 6 *against, an employee because the employee:*

7 *(a) Reports to his or her employer or an appropriate external*
 8 *authority, or reasonably refuses to engage in, conduct that the*
 9 *employee reasonably and in good faith suspects may violate a*
 10 *local, state or federal law or regulation or pose an unreasonable*
 11 *risk to the health or safety of any person; or*

12 *(b) Notifies the Division of Industrial Relations of the*
 13 *Department of Business and Industry, pursuant to NRS 618.435,*
 14 *of a safety or health violation that the employee has reason to*
 15 *believe exists in the workplace.*

16 *2. An employee who is discharged, discriminated against or*
 17 *otherwise suffers an adverse employment action as a result of a*
 18 *violation of subsection 1 by his or her employer may bring a civil*
 19 *action against the employer and obtain:*

20 *(a) Any wages and benefits lost as a result of the violation;*



1 (b) *An order of reinstatement without loss of position, seniority*
2 *or benefits;*

3 (c) *Damages equal to the amount of the lost wages and*
4 *benefits;*

5 (d) *Any past or future compensatory damages; and*

6 (e) *Punitive damages, if appropriate pursuant to NRS 42.005.*
7 *The provisions of NRS 42.007 do not apply to an action brought*
8 *pursuant to this section.*

9 3. *The court shall award reasonable costs, including, without*
10 *limitation, court costs and attorney's fees, to an employee who is*
11 *the prevailing party in an action brought pursuant to this section.*

12 4. *The remedy provided by this section is the exclusive*
13 *remedy for an action brought pursuant to this section.*

14 **Sec. 2.** NRS 613.310 is hereby amended to read as follows:

15 613.310 As used in NRS 613.310 to 613.4383, inclusive, *and*
16 *section 1 of this act*, unless the context otherwise requires:

17 1. "Disability" means, with respect to a person:

18 (a) A physical or mental impairment that substantially limits one
19 or more of the major life activities of the person, including, without
20 limitation, the human immunodeficiency virus;

21 (b) A record of such an impairment; or

22 (c) Being regarded as having such an impairment.

23 2. "Employer" means any person who has 15 or more
24 employees for each working day in each of 20 or more calendar
25 weeks in the current or preceding calendar year, but does not
26 include:

27 (a) The United States or any corporation wholly owned by the
28 United States.

29 (b) Any Indian tribe.

30 (c) Any private membership club exempt from taxation pursuant
31 to 26 U.S.C. § 501(c).

32 3. "Employment agency" means any person regularly
33 undertaking with or without compensation to procure employees for
34 an employer or to procure for employees opportunities to work for
35 an employer, but does not include any agency of the United States.

36 4. "Gender identity or expression" means a gender-related
37 identity, appearance, expression or behavior of a person, regardless
38 of the person's assigned sex at birth.

39 5. "Labor organization" means any organization of any kind, or
40 any agency or employee representation committee or plan, in which
41 employees participate and which exists for the purpose, in whole or
42 in part, of dealing with employers concerning grievances, labor
43 disputes, wages, rates of pay, hours of employment or other
44 conditions of employment.



1 6. "Person" includes the State of Nevada and any of its
2 political subdivisions.

3 7. "Sexual orientation" means having or being perceived as
4 having an orientation for heterosexuality, homosexuality or
5 bisexuality.

6 **Sec. 3.** (Deleted by amendment.)

7 **Sec. 4.** NRS 613.430 is hereby amended to read as follows:

8 613.430 *To the extent consistent with federal law:*

9 1. No action authorized by NRS 613.420 *or Title VII of the*
10 *Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.,* may be
11 brought:

12 (a) More than 180 days after the date of the act complained of;
13 or

14 (b) More than 90 days after the date of the:

15 (1) Issuance of the letter described in subsection 1 of NRS
16 613.420; or

17 (2) Receipt of the right-to-sue notice *issued by the Nevada*
18 *Equal Rights Commission* pursuant to NRS 613.412 ~~or~~ *or by the*
19 *United States Equal Employment Opportunity Commission*
20 *pursuant to 42 U.S.C. § 2000e-5(f)(1), as applicable,*

21 ↪ *whichever is later.*

22 2. When a complaint is filed with the Nevada Equal Rights
23 Commission ~~or~~ *or the United States Equal Employment*
24 *Opportunity Commission,* the limitation provided by this section is
25 tolled as to any action authorized by NRS 613.420 *or Title VII of*
26 *the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.,* during the
27 pendency of the complaint before the *Nevada Equal Rights*
28 *Commission* ~~or~~ *or the United States Equal Employment*
29 *Opportunity Commission, as applicable.*

30 **Sec. 5.** This act becomes effective upon passage and approval.

