

Amendment No. 369

Assembly Amendment to Assembly Bill No. 222	(BDR 53-739)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



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, ~~fr~~ ~~requests the correction of~~ or **reasonably** refuses to engage in certain conduct ~~fr; establishing procedures for certain civil actions concerning unlawful employment practices;~~ **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, ~~frwhether internal or external~~ **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 ~~frrequest the correction of or~~ **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 health. (NRS 232.510, 618.175) To carry out those duties under existing law, the Administrator of the Division and his representatives are authorized to inspect workplaces. (NRS 618.325) Existing law further provides that before or during such an inspection, any employee is entitled to notify the Division of a safety or health violation that the employee has reason to believe exists in the workplace. (NRS 618.435) Section 1 extends its whistleblower protections to employees who notify the Division of such violations. Section 2 of this bill

25 makes a conforming change to indicate the placement of **section 1** within the Nevada Revised
 26 Statutes.

27 ~~Under existing law, an employer may not discriminate against an employee in retaliation
 28 for the employee's opposition to the employer's engagement in certain unlawful employment
 29 practices or because the employee made a charge, testified, assisted or participated in any
 30 manner in an investigation, proceeding or hearing concerning such practices. (NRS 613.340)
 31 Section 3 of this bill provides that if a discharged employee makes a prima facie showing in a
 32 civil action against his or her employer that the employee was discharged in retaliation for
 33 opposing the employer's engagement in certain unlawful practices or for participating in any
 34 manner in an investigation, proceeding or hearing concerning such practices, the burden of
 35 proof shifts to the employer to demonstrate that the employee engaged in other conduct in the
 36 workplace that constitutes gross misconduct sufficient to independently justify the discharge
 37 of the employee.]~~

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

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

7 ~~(a) Reports to an appropriate authority, whether internal or external to the
 8 employer;~~

9 ~~(b) Requests correction of;~~

10 ~~or~~

11 ~~(c) Refuses his or her employer or an appropriate external authority, or
 12 reasonably refuses to engage in,~~

13 ~~conduct that the employee reasonably and in good faith suspects may violate
 14 a local, state or federal law or regulation or pose an unreasonable risk to the
 15 health or safety of any person;~~ or

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

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

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

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

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

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

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

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

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

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

13 613.310 As used in NRS 613.310 to 613.4383, inclusive, *and section 1 of*
 14 *this act*, unless the context otherwise requires:

15 1. “Disability” means, with respect to a person:

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

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

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

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

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

25 (b) Any Indian tribe.

26 (c) Any private membership club exempt from taxation pursuant to 26 U.S.C. §
 27 501(c).

28 3. “Employment agency” means any person regularly undertaking with or
 29 without compensation to procure employees for an employer or to procure for
 30 employees opportunities to work for an employer, but does not include any agency
 31 of the United States.

32 4. “Gender identity or expression” means a gender-related identity,
 33 appearance, expression or behavior of a person, regardless of the person’s assigned
 34 sex at birth.

35 5. “Labor organization” means any organization of any kind, or any agency or
 36 employee representation committee or plan, in which employees participate and
 37 which exists for the purpose, in whole or in part, of dealing with employers
 38 concerning grievances, labor disputes, wages, rates of pay, hours of employment or
 39 other conditions of employment.

40 6. “Person” includes the State of Nevada and any of its political subdivisions.

41 7. “Sexual orientation” means having or being perceived as having an
 42 orientation for heterosexuality, homosexuality or bisexuality.

43 **Sec. 3.** ~~NRS 613.340 is hereby amended to read as follows:~~

44 ~~613.340 1. It is an unlawful employment practice for an employer to~~
 45 ~~discriminate against any of his or her employees or applicants for employment, for~~
 46 ~~an employment agency to discriminate against any person, or for a labor~~
 47 ~~organization to discriminate against any member thereof or applicant for~~
 48 ~~membership, because the employee, applicant, person or member, as applicable,~~
 49 ~~has opposed any practice made an unlawful employment practice by NRS 613.310~~
 50 ~~to 613.4383, inclusive, and section 1 of this act, or because he or she has made a~~
 51 ~~charge, testified, assisted or participated in any manner in an investigation,~~
 52 ~~proceeding or hearing under NRS 613.310 to 613.4383, inclusive [], and section 1~~
 53 ~~of this act.~~

~~2. It is an unlawful employment practice for an employer, labor organization or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification or discrimination, based on race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, sexual orientation, gender identity or expression, age, physical, mental or visual condition or national origin when religion, sex, sexual orientation, gender identity or expression, age, physical, mental or visual condition or national origin is a bona fide occupational qualification for employment.~~

~~3. If an employee makes a prima facie showing in a civil action against his or her employer that the employee was discharged in retaliation for engaging in conduct that is protected by subsection 1, the burden of proof shifts to the employer to demonstrate that the employee engaged in other conduct in the workplace that constitutes gross misconduct sufficient to independently justify the discharge of the employee.~~

~~4. As used in this section, "gross misconduct" includes, without limitation:~~

- ~~(a) Theft;~~
- ~~(b) Fightings;~~
- ~~(c) Intoxication or use of a controlled substance or any other substance that could impair the ability of the employee to perform the duties of his or her employment safely and efficiently;~~
- ~~(d) The commission of a criminal act, including, without limitation, the sale of a controlled substance or dangerous drug; and~~
- ~~(e) Any serious act of insubordination. **(Deleted by amendment.)**~~

Sec. 4. NRS 613.430 is hereby amended to read as follows:
613.430 *To the extent consistent with federal law:*

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

- (a) More than 180 days after the date of the act complained of; or
- (b) More than 90 days after the date of the:
 - (1) Issuance of the letter described in subsection 1 of NRS 613.420; or
 - (2) Receipt of the right-to-sue notice *issued by the Nevada Equal Rights Commission* pursuant to NRS 613.412 ~~§~~ *or by the United States Equal Employment Opportunity Commission pursuant to 42 U.S.C. § 2000e-5(f)(1), as applicable,*

whichever is later.

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

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