

Amendment No. 733

Senate Amendment to Assembly Bill No. 222 Second Reprint (BDR 53-739)
Proposed by: Senator Spearman
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.

DP/WLK



Date: 5/20/2021

A.B. No. 222—Revises provisions governing employment practices.
(BDR 53-739)



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. (Wiltsie 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 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 makes a conforming change to indicate the placement of section 1 within the Nevada Revised Statutes.]~~

Under existing law, if, after a complaint alleging an unfair employment practice is filed with the Nevada Equal Rights Commission, the Commission does not conclude that an unfair employment practice has occurred, the person alleging such a practice has occurred is

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28 authorized to bring a civil action in the district court for an order granting or restoring to that
 29 person the rights to which the person is entitled. (NRS 613.420) Existing law prohibits a
 30 person from bringing such a civil action more than 180 days after the act constituting the
 31 unfair employment practice occurred or more than 90 days after the receipt of a right-to-sue
 32 letter issued by the Commission, whichever is later. Existing law further provides that the 90-
 33 day and 180-day periods of limitation are tolled during the pendency of the complaint before
 34 the Commission. (NRS 613.430) ~~[Section 4 of this]~~ **This** bill extends the coverage of those
 35 provisions to: (1) actions in the district court for the occurrence of unlawful employment
 36 practices prohibited under Title VII of the Civil Rights Act of 1964; (2) issuance of right-to-
 37 sue letters by the federal Equal Employment Opportunity Commission; and (3) the tolling of
 38 the 90-day and 180-day periods of limitation during the pendency of a complaint before the
 39 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 to,~~
 5 ~~or threaten to take any such action against, an employee because the~~
 6 ~~employee~~

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

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

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

17 ~~— (a) Any wages and benefits lost as a result of the violation;~~

18 ~~— (b) An order of reinstatement without loss of position, seniority or benefits;~~

19 ~~— (c) Any past or future compensatory damages; and~~

20 ~~— (d) Punitive damages, if appropriate pursuant to NRS 42.005. The provisions~~
 21 ~~of NRS 42.007 do not apply to an action brought pursuant to this section.~~

22 ~~3. The court shall award reasonable costs, including, without limitation,~~
 23 ~~court costs and attorney's fees, to an employee who is the prevailing party in an~~
 24 ~~action brought pursuant to this section.~~

25 ~~4. The remedy provided by this section is the exclusive remedy for an action~~
 26 ~~brought pursuant to this section.] (Deleted by amendment.)~~

27 **Sec. 2.** ~~[NRS 613.310 is hereby amended to read as follows:~~

28 ~~— 613.310 As used in NRS 613.310 to 613.4383, inclusive, and section 1 of~~
 29 ~~this act, unless the context otherwise requires:~~

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

31 ~~— (a) A physical or mental impairment that substantially limits one or more of the~~
 32 ~~major life activities of the person, including, without limitation, the human~~
 33 ~~immunodeficiency virus;~~

34 ~~— (b) A record of such an impairment; or~~

35 ~~— (c) Being regarded as having such an impairment.~~

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

~~(a) The United States or any corporation wholly owned by the United States;~~

~~(b) Any Indian tribe;~~

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

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

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

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

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

~~7. "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.] (Deleted by amendment.)~~

Sec. 3. (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~~ *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.