

Nevada Enacts Right to Return Law for Certain Workers Laid Off During and After COVID-19 Pandemic

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Beginning July 1, 2021, under the [Nevada Hospitality and Travel Workers Right to Return Act](#) (Senate Bill 386), certain employers in the casino, hospitality, stadium, and travel industries must offer their former employees laid off or furloughed due to the COVID-19 pandemic the opportunity to return to work. The Act also requires notice to employees who will be laid off that is different from a federal Worker Adjustment and Retraining Notification Act (WARN) notice, if a WARN notice is required.

Further, the Act imposes certain recordkeeping and notice requirements for past and future layoffs.

The Act expires on the later of the date the Nevada governor terminates the emergency described in the Declaration of Emergency for COVID-19 issued on March 12, 2020, or August 31, 2022.

Covered Employers

The new law applies to an employer that:

- “[E]mploys or exercises control over the wages, hours or working conditions of 30 or more employees” or did so on March 12, 2020; and
- Who owns or operates a “covered enterprise” in Nevada.

A “covered enterprise” is “an airport hospitality operation, an airport service provider, a casino, an event center or a hotel that is located in a county whose population is 100,000 or more.” Employers should review carefully the Act’s extensive list of definitions.

Covered Current, Former Employees

The Act applies to all employees “regardless of whether the employees are represented for purposes of collective bargaining or are covered by a collective bargaining agreement,” except for the following:

- Managerial and executive employees who are who are exempt from the Fair Labor Standards Act;
- Theatrical or stage performers; or
- Employees who are party to a valid severance agreement.

To qualify for protection under the Act’s layoff provisions, laid-off employees must have been employed for at least six months during the period of March 12, 2019, through March 12, 2020. The duration need not be consecutive. In addition, the employee’s separation must have occurred *after* March 12, 2020, and have been “due to a governmental order, lack of business, reduction in force, or another economic, non-disciplinary reason.”

Notice Requirements

The employer must provide the employee a written notice of the layoff in “Spanish, English and any other language that is spoken by not less than 10 percent of the employer’s workforce” that includes:

- Notice of the layoff and its effective date;
- A summary of the right to reemployment provided by the Act, or clear instructions on how to access such information; and
- Contact information for the person designated by the employer to receive notice of a violation of the Act.

While WARN requires 60 days’ advance written notice of a “mass layoff” or a “plant closing,” the new Nevada law does not require advance notice. The notice must be provided at the time the layoff occurs. If the layoff took place before July 1, 2021, then the notice must be provided within 20 days after July 1, 2021. The notice must be given “either in person or mailed to the last known address of the employee and, [if known] by telephone, text message or electronic mail.”

The contents of the notices to affected employees under the Nevada law differ from the contents of WARN notices. Thus, employers must keep in mind that the new law’s notice requirements are in addition to, rather than instead of, WARN notices, if a WARN notice is required.

Recordkeeping Requirements

Employers must retain the following records for at least two years after the date the layoff notice is provided to the employee:

- The employee’s full legal name, last job classification, and date of hire;

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- The employee's last known address, email address, and telephone number;
 - A copy of the written layoff notice; and
 - Records of each offer of reemployment made to the employee including the date and time of each offer.

Reemployment Requirements

An employer must offer a laid-off employee each position: (a) which becomes available after July 1, 2021; and (b) for which the employee is "qualified." An employee is "qualified" if they held the same position, or a similar position within the same job classification, at the time of separation from the employer. Each offer must be in writing and sent "by mail to the last known address of the employee and, [if known], by telephone, text message or electronic mail."

Available positions must be offered first to laid-off employees who held the same position when they were separated, and then to laid off employees who held a similar position within the same job classification. If more than one laid-off employee is entitled to preference, the employer must first offer the position to the employee with the greatest length of service. Employers may extend simultaneous employment offers conditioned on applying the order of preference.

The laid-off employee must have at least 24 hours after "the employee's receipt of the offer to accept or decline the offer." Further, if a laid-off employee is offered a job or position and (a) does not accept or decline the offer within 24 hours or (b) is not available to return to work within five calendar days after accepting the offer, "the employer may recall the next available employee with the greatest length of service[.]"

If an employer declines to recall a laid-off employee because the employee lacks qualifications and then hires a different person, the employer must, within 30 days of such decision, notify the laid-off employee in writing and identify "all the reasons for the decision."

Exceptions to Reemployment

After an employer makes an offer to a laid-off employee, the employer is not required to make additional offers to that employee if:

- The employee states in writing that they do not wish to be considered for future open positions, or future open positions with regularly scheduled work hours that are different from those the employee worked immediately before their separation.
- The employer extends and the employee declines three "bona fide offers" of employment, with not less than three weeks between each offer.
- The employer attempts to make three offers of employment and (1) each offer made by mail is returned as undeliverable; (2) any offer made by electronic mail is returned as undeliverable; and (3) the employee's telephone number is no longer in service.

Enforcement

An employer is prohibited from taking any adverse action against any person for enforcing their rights under the Act, participating in any proceedings authorized by the Act, or opposing any practice prohibited by the Act. The Nevada law provides an administrative remedy, where WARN is enforced only through lawsuits and has no administrative enforcement scheme.

Under the Act, an employee may file a complaint with the Nevada Labor Commissioner or a court after:

1. Providing written notice to the employer of the alleged violation and any supporting facts; and
2. The employer has not cured the alleged violation within 15 days after receiving the notice.

The Act also addresses rebuttable presumptions against the employer and the damages a successful employee may recover.

Next Steps

The Act also includes provisions dealing with purchasers and successor employers, as well as employers who move operations to a different location within the state.

Covered employers should review their personnel records to determine which employees, if any, qualify for protection under the Act and start preparing notices to send to already laid-off employees. Additionally, they should create internal policies and procedures to address the job offer and recordkeeping requirements of the Act.

Given the complexities in the new law, employers would be well-served to address specific scenarios with the assistance of counsel.

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