

Employment Law Summary

Fair Employment Laws – Overview



Because You're Different

Several [federal laws](#) provide workplace discrimination protections for job applicants and employees. In addition, Nevada's laws on employment practices provide broad workplace discrimination protections to workers in Nevada. This Employment Law Summary provides a summary of certain provisions of these laws.

NEVADA EQUAL OPPORTUNITIES FOR EMPLOYMENT ACT

The Nevada Equal Opportunities for Employment Act ([NEOEA](#)) applies to private employers with **15 or more employees** for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. It also applies to employment agencies, labor organizations, and the state of Nevada and its political subdivisions.

The NEOEA does not apply to:

- The United States or any corporation wholly owned by it;
- Nonprofit private membership clubs;
- Any Native American tribe;
- Any business or enterprise on or near a Native American reservation with respect to any publicly announced employment practice of the business or enterprise under which preferential treatment is given to any individual because the individual is a Native American living on or near a reservation;
- Any employer with respect to employment outside of the state;
- Any religious corporation, association or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of its religious activities; or
- Any nonprofit organization with respect to practices related to sexual orientation and gender identity or expression.

PROHIBITED ACTIONS BASED ON PROTECTED TRAITS

The NEOEA prohibits employers from discriminating against applicants and employees based on any of the following, which are known as "protected traits" (as well as on other bases, as discussed below):

- Race (including traits associated with race, including hair texture and protective hairstyles, such as natural hairstyles, afros, bantu knots, curls, braids, locks and twists);
- Color;
- Religion;
- Sex (including pregnancy, childbirth and related medical conditions, such as lactation and the need to express breast milk for a nursing child);
- Sexual orientation (defined as having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality);
- Gender identity or expression (defined as an individual's gender-related identity, appearance, expression or behavior, regardless of the individual's assigned sex at birth);
- Age (40 and older);

- Disability; or
- National origin.

In general, an individual has a disability for this purpose if the individual:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of the person, including, without limitation, HIV;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

With limited exceptions, the NEOEA makes it unlawful for an employer to take any of the following actions against an applicant or employee based on a protected trait:

- Fail or refuse to hire the individual;
- Discharge the individual;
- Otherwise discriminate against the individual with respect to compensation, terms, conditions or privileges of employment; or
- Discriminate against the individual in admission to or employment in any program established to provide apprenticeship or other training.

It is also unlawful for an employer to:

- Limit, segregate or classify an employee in a way that would deprive or tend to deprive them of employment opportunities or otherwise adversely affect their status as an employee based on a protected trait; or
- Print, publish or cause to be printed or published any notice or advertisement relating to employment that indicates any preference, limitation, specification or discrimination based on a protected trait.

DISABILITY DISCRIMINATION AND SERVICE ANIMALS

With limited exceptions, it is unlawful for an employer to discriminate against an individual with a disability by interfering, directly or indirectly, with the use of an aid or appliance. This includes the individual's use of a service animal, which may, in general, be either:

- A dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability; or
- A miniature horse that has been trained to do work or perform tasks for the benefit of an individual with a disability.

The law requires employers to permit an employee with a disability to keep the employee's service animal with the employee at all times in the employee's place of employment. However, an employer may refuse to permit this if the service animal is a miniature horse and the employer determines that it is not reasonable to comply. This determination must be made based on several factors, such as:

- The type, size and weight of the miniature horse and whether the facility can accommodate these features;
- Whether the handler has sufficient control of the miniature horse;
- Whether the miniature horse is housebroken; and
- Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

PROHIBITED DISCRIMINATION BASED ON WAGE DISCUSSION

Employers may not discriminate against an employee because the employee has inquired about, discussed or voluntarily disclosed their wages or the wages of another employee.

However, unless disclosure is ordered by the [Nevada labor commissioner](#) or a court, this provision does **not** protect an individual who:

- Has access to information about the wages of others as part of the individual's essential job functions; and
- Discloses that information to an individual who does not have access to that information.

PROHIBITED ACTIONS BASED ON OFF-DUTY USE OF LAWFUL PRODUCTS

It is an unlawful employment practice for an employer to take either of the following actions against an individual because the individual engages in the lawful use, within Nevada, of any product outside the employer's premises and during the employee's nonworking hours as long as that use does not adversely affect the employee's ability to perform their job or the safety of other employees:

- Fail or refuse to hire a prospective employee; or
- Discharge or otherwise discriminate against an employee concerning the employee's compensation, terms, conditions or privileges of employment.

The Nevada Supreme Court determined that an employee's recreational marijuana use both outside of their employer's premises and during nonworking hours is not "lawful" under the state's lawful, off-duty conduct law because marijuana remains unlawful under federal law. In addition, an employer may enforce a policy to terminate an individual for failing a workplace drug test after using recreational marijuana before their shift.

PROHIBITED GENETIC TESTING AND DISCRIMINATION

Under the NEOEA, an employer may not:

- Ask or encourage a prospective or current employee to submit to a genetic test;
- Require or administer a genetic test to a person as a condition of employment;
- Deny employment based on genetic information;
- Alter the terms, conditions or privileges of employment based on genetic information; or
- Terminate employment based on genetic information.

The term "genetic information" means information obtained from a genetic test. "Genetic test" is defined as a test that:

- Uses DNA extracted from the cells of an individual or a diagnostic test using another substance extracted or otherwise obtained from an individual's body; and
- Determines the presence of an abnormality or deficiency that:
 - Is linked to a physical or mental disorder or impairment; or
 - Indicates a susceptibility to an illness, a disease, an impairment, or another physical or mental disorder.

A test to determine the presence of alcohol or a controlled substance in an individual's system is excluded from this definition.

EXCEPTIONS FOR BONA FIDE OCCUPATIONAL QUALIFICATIONS

It is not unlawful for an employer to take certain actions where a protected trait is a bona fide occupational qualification (BFOQ) for a position. Specifically, the NEOEA permits employers to:

- Hire and employ employees based on religion, sex, sexual orientation, gender identity or expression, age, physical, mental or visual condition, or national origin where the otherwise protected trait is a BFOQ reasonably necessary to the normal operation of that particular business or enterprise;
- Indicate a preference, limitation, specification or discrimination based on religion, sex, sexual orientation, gender identity or expression, age, physical, mental or visual condition, and national origin on a job notice or advertisement where the otherwise protected trait is a BFOQ for employment;
- Fail or refuse to hire and employ employees based on disability where:
 - Physical, mental or visual condition is a bona fide and relevant occupational qualification necessary to the normal operation of a particular business or enterprise; and
 - The employer shows that the disability would prevent the proper performance of the work for which the individual with a disability would otherwise have been hired, classified, referred or prepared under a training or retraining program.

OTHER PERMITTED ACTIONS

The NEOEA permits certain religious schools and institutions to hire and employ employees of a particular religion if:

- The school or institution is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society; or

- The curriculum of the school or institution is directed toward the propagation of a particular religion.

The law also allows any covered employer to:

- Observe the terms of any bona fide plan for employees' benefits, such as a retirement, pension or insurance plan, as long as it is not a subterfuge to evade the prohibitions against discrimination based on any protected trait (except that no plan excuses the failure to hire any person who is at least 40 years of age);
- Require employees to adhere to reasonable workplace appearance, grooming and dress standards (and enforce health and safety requirements set forth in federal or state law) as long as the requirements are not precluded by law and employees are allowed to appear, groom and dress consistent with their gender identity or expression;
- Fail or refuse to hire and employ any individual for any position or discharge any individual from any position if:
 - The occupancy of the position or access to the premises in or upon which any part of the duties of the position is performed or is to be performed is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect or administered under any federal law or executive order; and
 - The individual has not fulfilled or has ceased to fulfill that requirement;
- Apply different standards of compensation or different terms, conditions or privileges of employment to employees who work in different locations or under any of the following, as long as the differences are not the result of an intention to discriminate based on a protected trait:
 - A bona fide seniority or merit system; or
 - A system that measures earnings by quantity or quality of production; or
- Give and act upon the results of any professionally developed ability test if the test, its administration or action upon the results is not designed, intended or used to discriminate based on a protected trait.

PREFERENTIAL TREATMENT IN HIRING VETERAN OR SPOUSE OF VETERAN PERMITTED

A private employer may adopt an employment policy that gives preference in hiring to a veteran or the spouse of a veteran as long as the policy is applied uniformly to employment decisions regarding the hiring or promotion of a veteran or the spouse of a veteran and their retention during a reduction in the workforce.

NEVADA PREGNANT WORKERS' FAIRNESS ACT

Under the **Nevada Pregnant Workers' Fairness Act** (NPWFA), the NEOEA requires employers to provide reasonable accommodation to applicants or employees who are pregnant, have given birth or have a related medical condition unless it would impose undue hardship. "Related medical conditions" include any medically recognized physical or mental condition related to pregnancy, childbirth or recovery from pregnancy or childbirth, such as lactation or the need to express breast milk for a nursing child. Other examples include mastitis or other lactation-related medical conditions, gestational diabetes, pregnancy-induced hypertension, preeclampsia, postpartum depression, a loss or an end of pregnancy, and recovery from a loss or an end of pregnancy.

REASONABLE ACCOMMODATION REQUIREMENTS

For an applicant affected by pregnancy, childbirth or related medical conditions, a reasonable accommodation may consist of a modification to the application process or the manner in which things are customarily carried out that allows the applicant to be considered for employment or hired for a position.

For an employee affected by pregnancy, childbirth or related medical conditions, a reasonable accommodation may consist of a change in the work environment or in the way things are customarily carried out that allows the employee to have:

- Equal employment opportunities, including the ability to perform the essential function of the position; and
- Benefits and privileges of employment that are equal to those available to other employees.

Examples include:

- Modifying equipment or providing different seating;
- Revising break schedules, which may include revising the frequency or duration of breaks;
- Providing space in an area other than a bathroom that may be used for expressing breast milk;
- Providing assistance with manual labor if the manual labor is incidental to the primary work duties of the employee;
- Authorizing light duty;
- Temporarily transferring the employee to a less strenuous or hazardous position; or
- Restructuring a position or providing a modified work schedule.

If an employee requests an accommodation for pregnancy, childbirth or a related medical condition, they and the employer must engage in a timely, good faith and interactive process to determine an effective, reasonable accommodation.

Unless it has done so or would do so for other classes of employees who are not affected by pregnancy, childbirth or related medical conditions, an employer is not required to do any of the following to accommodate an employee for pregnancy, childbirth or related medical conditions:

- Create a new position that it would not have otherwise created;
- Discharge any employee;
- Transfer an employee with more seniority; or
- Promote an employee who is not qualified to perform the job.

UNDUE HARDSHIP

If an employee or applicant shows that they have requested a reasonable accommodation for a condition relating to pregnancy, childbirth or a related medical condition and the employer refuses to provide or attempt to provide it, the employer has the burden of proving that granting the accommodation would impose an undue hardship on its business. To prove this, the employer must demonstrate that the accommodation is significantly difficult to provide or expensive, considering factors such as:

- The nature and cost of the accommodation;
- The overall financial resources of the employer;
- The overall size of the business of the employer with respect to the number of employees and the number, type and location of the available facilities; and
- The effect of the accommodation on the employer's expenses and resources or the effect of the accommodation on the employer's operations.

Evidence that an employer provides or would be required to provide a similar accommodation to a similarly situated employee or applicant creates a rebuttable presumption that an accommodation does not impose an undue hardship.

PROHIBITED ACTIONS

Under the NPWFA, it is an unlawful employment practice for an employer to take any of the following actions against an otherwise qualified employee or applicant affected by pregnancy, childbirth or related medical conditions:

- Refuse to provide a requested reasonable accommodation that would not impose an undue hardship on the employer's business;
- Take an adverse employment action (which may include refusing to promote the employee, requiring the employee to transfer to another position, refusing to reinstate the employee to the same or an equivalent position upon return to work, or taking any other action that affects the terms or conditions of employment in a manner not desired by the employee) because they request or use a reasonable accommodation;
- Deny an employment opportunity based on the need for a reasonable accommodation;
- Require the individual to accept an accommodation that they did not request or choose not to accept; and
- Require the individual to take leave from employment if a reasonable accommodation for the condition is available that would allow the employee to continue to work.

If an employer grants leave with pay, leave without pay, or leave without loss of seniority to its employees for sickness or disability because of a medical condition, it is also unlawful for the employer to fail or refuse to extend the same benefits to any employee for pregnancy, childbirth or a related medical condition. An employee who is pregnant must be allowed to use the leave before and after childbirth, miscarriage or other natural resolution of the pregnancy if the leave is granted, accrued or allowed to accumulate as a part of their employment benefits.

EXCEPTIONS

It is not unlawful for an employer to take any of the actions described above if it is based on a BFOQ.

In addition, certain licensed contractors may be exempt from certain requirements relating to pregnancy, childbirth or related medical conditions if an employee works at a construction job site located more than three miles from the employer's regular place of business or performs manual labor. Nevertheless, the law encourages licensed contractors to provide all accommodations to the extent practicable.

NOTICE AND POSTING REQUIREMENTS

The NPWFA requires employers to provide a [written or electronic notice](#) to employees that they have the right to be free from discriminatory or unlawful employment practices under the NPWFA. This notice must include a statement that an employee has the right to a reasonable accommodation for a condition relating to pregnancy, childbirth or a related medical condition and must be provided:

- To each new employee upon commencement of employment; and
- Within 10 days after an employee notifies their immediate supervisor that they are pregnant.

Employers must also post the notice in a conspicuous place at their places of business in an area that is accessible to employees.

PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE

Unless it would cause undue hardship, all employers in Nevada must make reasonable accommodations for an employee who is (or whose family or household member is) a victim of domestic violence or sexual assault. Accommodations for this purpose may include:

- A transfer or reassignment;
- A modified schedule;
- A new telephone number for work; or
- Any other reasonable accommodations that would not create an undue hardship deemed necessary to ensure the safety of the employee, the workplace, the employer or other employees.

An employer may require an employee to provide documentation that confirms or supports the reason the employee requires reasonable accommodations.

Nevada law also prohibits employers from discharging, disciplining, discriminating in any manner or denying employment or promotion to, or threatening to take any of these actions against, certain employees for requesting or taking leave or any other reasonable accommodation related to domestic violence or sexual assault or participating as a witness or interested party in court proceedings related to domestic violence or sexual assault that triggers the use of leave related to domestic violence or sexual assault.

PROHIBITED SALARY HISTORY INQUIRIES

For any employment within Nevada, state law prohibits all public and private employers (other than religious and nonprofit entities under limited circumstances) from taking any of the following actions, whether orally or in writing, and whether personally or through an agent:

- Seeking the wage or salary history of an applicant for employment;
- Relying on the wage or salary history of an applicant to determine whether to offer employment to or the rate of pay for the applicant; or
- Refusing to interview, hire, promote or employ an applicant, or discriminating or retaliating against an applicant if the applicant does not provide wage or salary history.

For these purposes, the term "wage or salary history" includes any compensation and benefits paid to or received by an applicant from the applicant's current or former employer.

An employer may, however, ask an applicant about the applicant's wage or salary **expectation** for the position for which the applicant is applying. In addition, the law **requires** employers to provide the **wage or salary range or rate** for a position to:

- An applicant who has completed an interview for the position; and
- An employee who has applied for, completed an interview for, or been offered the position as a promotion or transfer and has requested this information.

PROHIBITED ACTIONS BASED ON MARIJUANA TEST RESULTS

With limited exceptions, it is unlawful for any employer in Nevada to fail or refuse to hire a prospective employee because the prospective employee submitted to a screening test and the results of the screening test indicate the presence of marijuana. A "screening test" means a test of a person's blood, urine, hair or saliva to detect the general presence of a controlled substance or any other drug.

This does not apply if the prospective employee is applying for a position:

- As a firefighter or emergency medical technician;
- That requires an employee to operate a motor vehicle and for which federal or state law requires the employee to submit to screening tests; or
- That, in the employer's determination, could adversely affect the safety of others.

If an employer requires an employee to submit to a screening test within the first 30 days of employment:

- The employee has the right to submit to an additional screening test, at the employee's own expense, to rebut the results of the initial screening test; and
- The employer must accept and give appropriate consideration to the results of such a screening test.

The provisions do not apply to the extent that they are inconsistent or otherwise in conflict with an employment contract or collective bargaining agreement, federal law or a position of employment funded by a federal grant.

PROTECTIONS FOR AUTHORIZED MEDICAL MARIJUANA USERS

Employers must attempt to provide reasonable accommodation for the medical needs of an employee who uses medical marijuana and holds a valid Nevada registry identification card if the reasonable accommodation will not pose a threat of harm or danger to persons or property, create an undue hardship for the employer, or prohibit the employee from satisfying any and all of their job responsibilities.

LIE DETECTOR TEST PROHIBITIONS

With certain exceptions, it is unlawful for any employer in Nevada to:

- Directly or indirectly require, request, suggest or cause any employee or prospective employee to take or submit to any lie detector test;
- Use, accept, refer to or inquire concerning the results of any lie detector test of any employee or prospective employee;
- Discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee:
 - Who refuses, declines or fails to take or submit to any lie detector test; or
 - On the basis of the results of any lie detector test.

All employers must post and maintain a notice about these prohibitions in a conspicuous location at the place of employment where notices to employees and applicants for employment are customarily posted and read.

SOCIAL MEDIA ACCOUNT PROTECTIONS

It is unlawful for any employer in Nevada to directly or indirectly require, request, suggest or cause any employee or prospective employee to disclose the username, password or any other information that provides access to that individual's personal social media account. It is also unlawful to discharge, discipline, discriminate against in any manner, deny employment or promotion to, or threaten to take any such action against any employee or prospective employee who refuses, declines or fails to disclose the user name, password or any other information that provides access to that individual's personal social media account.

For these purposes, "social media account" means any electronic service or account or electronic content, including, without limitation, videos, photographs, blogs, video blogs, podcasts, instant and text messages, electronic mail programs or services, online services or Internet website profiles.

It is not unlawful for an employer to require an employee to disclose the user name, password or any other information to an account or a service other than a personal social media account for the purpose of accessing the employer's own internal computer or information system. In addition, these provisions do not prevent an employer from complying with any state or federal law or regulation or with any rule of a self-regulatory organization as defined under state law.

ARREST RECORDS

While there is no provision that specifically prohibits the use of arrest information in making employment decisions, the state has issued [preemployment guidelines](#) discouraging employers from asking about an applicant's prior arrests.

PROHIBITED RETALIATION

Employers may not discriminate against an individual because the individual has opposed any unlawful employment practice or made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Nevada's fair employment laws.

ENFORCEMENT

Most provisions of Nevada's fair employment laws are enforced by the [Nevada Equal Rights Commission](#) (NERC). Individuals who believe an employer has violated these laws may file a complaint with NERC. In general, a complaint must be filed within 300 days after an alleged violation occurs.

If the NERC finds that the allegations in a complaint would support a finding of unlawful practice if true, the agency may hold an informal meeting to attempt a settlement of the dispute. If that is unsuccessful, the agency may then investigate the claim and, if it then finds that an unlawful practice did occur, attempt to mediate between or reconcile the parties. If the attempts at mediation or conciliation fail, the NERC may hold a public hearing on the matter. After the hearing, if the NERC determines that an unlawful practice has occurred, it may order the employer to:

- Cease and desist from the unlawful practice and take corrective action;
- Restore any other benefits and rights to which the aggrieved individual may be entitled, such as rehiring, back pay (covering up to two years before the date on which the complaint was filed), annual leave time, sick leave time or pay, other fringe benefits and seniority, plus interest; and
- In cases involving an unlawful employment practice relating to discrimination based on sex, pay an amount appropriate for lost wages that would have been earned in the absence of discrimination or other economic damages resulting from the discrimination, such as lost payment for overtime, shift differential, cost of living adjustments, merit increases or promotions, or other fringe benefits.

For a willful violation, an employer with 50 or more employees may also be ordered to pay a civil penalty of between \$5,000 and \$15,000, depending on whether the employer committed any other willful violations within the five-year period immediately preceding the willful violation in question. An unlawful employment practice is willful if the employer engaged in it with knowledge that it is unlawful or with reckless indifference to whether it is lawful or unlawful. Before imposing this civil penalty, the NERC will allow an employer 30 days to take corrective action in order to avoid it.

Employers may also face penalties of \$5,000 per violation plus the costs of proceedings for failing to comply with the state's laws relating to salary history inquiries or requirements to provide an applicant with wage or salary information upon request.

LAWSUITS IN CIVIL COURT

If the NERC does not conclude that an unfair employment practice occurred, or if 180 days or more have passed since an individual filed a complaint and the individual requests it, the NERC will issue a right-to-sue letter allowing the aggrieved individual to file a civil lawsuit in district court against the employer. This type of lawsuit must be filed within **90 days** after the date of the letter and may result in an order for the employer to grant or restore the rights to which the individual is entitled under the law. This may include compensatory damages and punitive damages of between \$50,000 and \$300,000, depending on employer size.

In cases involving intentional age discrimination and intentional sex-based wage discrimination, however, an aggrieved individual may only be entitled to liquidated damages in an amount equal to any amount ordered to be paid as back pay. These are federal remedies under Title VII of the Civil Rights Act (Title VII) and the EPA. In Nevada, an employee can only receive the same legal and equitable relief provided by Title VII if the employee is protected by that law.

LAWSUITS FOR OFF-DUTY, LAWFUL PRODUCT USE

An individual who is discharged or otherwise discriminated against based on off-duty use of legal products in violation of Nevada law, filing a civil lawsuit in court against the employer is the only option for enforcement. In this type of case, the court may order an employer to:

- Pay any wages and benefits lost as a result of the violation;
- Reinstatement the individual without loss of position, seniority or benefits;
- Offer employment to a prospective employee;
- Pay damages equal to the amount of the lost wages and benefits; and
- Pay court costs and attorney fees.

Provided By Heffernan Insurance Brokers

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