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Nevada Expands Parental Leave for Employees Attending School-Related Activities

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By:

[Rick D. Roskelley](#)

On May 28, 2009, Governor Jim Gibbons signed into law AB 243 expanding the leave entitlements of employees for attending or participating in school activities of their children. AB 243 expands leave in two significant ways. First, AB 243 extends the current protections of Nevada Revised Statutes section 392.920 to the parents, guardians and custodians of children enrolled in private as well as public schools. Second, AB 243 requires employers of 50 or more employees to grant employees up to 4 hours of unpaid leave per school year for each child enrolled in school, to attend certain school-related activities. AB 243 becomes effective August 15, 2009.

Provisions of AB 243

Section 392.920 of the Nevada Revised Statutes currently prohibits employers of all sizes from terminating the employment of a parent, guardian or custodian of a child enrolled in a public school who appears at a conference requested by an administrator or is notified during work of an emergency regarding his or her child. AB 243 extends these protections to the parents, guardians and custodians of children enrolled in private schools.

AB 243 also expands the entitlements to leave from employment for attendance at certain enumerated school-related activities. This leave covers parents, guardians and custodians of children enrolled in both public or private school. The expanded leave requirements apply to employers employing 50 or more employees for each working day in 20 or more calendar weeks in the current calendar year. Employers covered by AB 243 must give up to 4 hours of leave to eligible employees to attend or participate in a broad spectrum of school-related activities.

Activities specifically covered by the law include: parent-teacher conferences, school-related activities during regular school hours, volunteering or involvement at school, and attendance at other school related-events. Consequently, the law arguably requires employers to give time off for such diverse activities as parent teacher conferences, musical performances, science fairs, school plays, athletics and class parties. Leave is required as long as the activity is school related.

It is also important to note that the leave is granted on a per child basis. Accordingly, eligible employees are entitled to take up to 4 hours of leave for each child they have enrolled in school. Leave must be taken in increments of at least one hour. An employer may require employees to submit a request for leave in writing five school days prior to the date of the event. The employer may also require employees to provide documentation that at the time of the leave, the employee attended or was involved in one of the activities specified in the Act. AB 243 also appears to require that the employer and employee confer on the timing of the leave. The Act specifies that the leave be taken at a time "mutually agreed upon by the employer and the employee," but it offers no guidance on how this mutual agreement is reached.

AB 243's expanded requirements will not apply to employees covered by a collective bargaining agreement if the agreement provides at least the same level of leave and substantially similar protections.

Enforcement Remedies

Under the Act, it is unlawful for an employer with 50 or more employees to terminate, demote, suspend or otherwise discriminate against a person who, as the parent, guardian or custodian of a child, takes leave for one of the enumerated activities. It is also unlawful for any employer, regardless of size, to terminate, demote, suspend or otherwise discriminate against a person who, as the parent, guardian or custodian of a child, takes or appears at a conference requested by an administrator of the school or is notified during work of an emergency regarding his or her child.

Violation of these provisions is a misdemeanor. In addition, AB 243 provides that an employee may file a claim of discrimination for violation of either provision with the Labor Commissioner. If the Labor Commissioner determines the claim is valid, the Labor Commissioner must provide notice and a hearing to the employer pursuant to Nevada Revised Statutes sections 607.205 *et seq.* The Labor Commissioner may award the complainant lost wages and benefits, liquidated damages in an amount equal to lost wages and benefits, and reinstatement. AB 243 states the employer is responsible for providing the employee with all forms necessary to make a claim under the Act to the Labor Commissioner.

Practical Considerations

Although AB 243 states that leave under the Act may be unpaid, as a practical matter, employers may not be able to require unpaid leave for some employees classified as exempt under the Fair Labor Standards Act (FLSA) and perhaps similar Nevada law. This is because the FLSA prohibits deductions from the salary of exempt employees except in specific circumstances. In general, the FLSA does not allow deductions from the salary of exempt employees if they are

absent for personal reasons unless the absence is for the period of a day or more.¹

Employers must also remember that AB 243 retains the protections applicable to all employees currently under section 392.920. These protections are in addition to the 4 hours of school-related leave applicable to employers of 50 or more employees. Hence, an employee who has exhausted all 4 hours of leave for school-related activities may still take leave for attending a conference requested by an administrator of the school or for notice from school of an emergency regarding his or her child.²

Recommendations

Employers should thoroughly review the provisions of AB 243 and consider its impact on their current practices, policies and operations. Smaller employers need to determine if they are currently covered by the Act or may become covered in the near future. Each covered employer should immediately review its employee handbook and leave policies and update them to comply with the new law.

At a minimum, a covered employer's employee handbook and leave policy should contain the following:

1. Include a statement of nondiscrimination for attending or participating in the enumerated school activities.
2. List the reasons leave can be taken, the total leave available on a school-year basis, and the minimum increment for taking leave.
3. Require that leave be requested in writing at least 5 school days in advance and indicate the procedure for submitting a request.
4. State whether or under what conditions the employee will need to provide documentation that at the time of the leave, the employee attended or was involved in one of the purposes specified in the Act.
5. State whether the leave is paid or unpaid and whether employees may take paid time off in lieu of unpaid leave.

Finally, covered employers should train their supervisors and human resource representatives on the requirements of AB 243.

¹ See 29 C.F.R. § 541.118.

² See Nev. Rev. Stat. § 392.920 (1)(a).

[Rick D. Roskelley](#) is a Shareholder in Littler Mendelson's Las Vegas office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Mr. Roskelley at rroskelley@littler.com.

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