

Reducing Labor Costs by Relocating Operations from California to Nevada

A Howard & Howard White Paper

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Silver Beats Gold

Introduction

Can a company spend less on human resources by relocating its operations from California (the Golden State) to Nevada (the Silver State)? In a word, Yes. Nevada's employment laws are generally more favorable to employers than California's. By moving their operations to the Silver State companies may be able to realize monetary savings and other benefits. This white paper highlights a few of the advantages Nevada's wage and benefits law offers employers over California law.

When it comes to human resources costs, silver beats gold.

Nevada's Wage and Benefits Laws Provide Employers Significant Cost Savings Compared to California's

When evaluating whether to move operations from California to Nevada, companies should consider the potential for Nevada law to reduce human resources costs such as employee benefits, employee leave, workers compensation, taxes and minimum wages. In addition, Companies should consider the fact that non-compete agreements are enforceable in Nevada. Nevada's wage and benefits laws can save employers significant costs over doing business in California. Below are examples of how Nevada law can help employers reduce human resources costs.

Nevada's Employee Leave Laws Are Less Generous Than California's

Family and Medical Leave: Pursuant to the California Government Code § 12945.2 and California Labor Code § 233, employers with 50 or more employees within any jurisdiction of the United States that have operations in California are subject to the California Family Rights Act ("CFRA"). CFRA is similar the federal Family Medical Leave Act ("FMLA"); however, there are some differences. First, under the CFRA, employees may take leave to care for a registered domestic partner who has an illness that qualifies under the CFRA. Additionally, employees who take leave for childcare can take up to two weeks at a time (plus, two additional leave times of less than two weeks). The

CFRA grants twelve more weeks of leave for employees who give birth to, adopt, or take into foster care a child. Under the CFRA, parents may aggregate the time, potentially giving twenty-four workweeks of permitted leave. Additionally, the employer and employee are allowed to enter into an agreement to have paid sick time accrue during CFRA leave.

With few exceptions, Nevada imposes a no requirements beyond the federal requirements set forth in the FMLA.

Pregnancy Leave: Pursuant to California Government Code §12945, employers that employ more than five employees must allow female employees to take up to four months of leave for disability caused by pregnancy, child birth and related medical conditions (subject to the employee providing the employer with medical evidence of the disability). California law in this respect is generally consistent with the FMLA; however, it includes companies with as few as five employees (as opposed to the 50-employee requirement under the FMLA). California's leave law grants female employees an additional three months of leave.

Nevada's pregnancy leave is significantly less generous to pregnant employees in general. If employers have 15 or more employees, and they provide medical or disability leave to their employees, then the employer is required to include pregnancy leave as one of the permitted leaves. See NRS 613.335, 613.310 (2), and 613.310 (1)(b). However, if the employer does not offer medical or disability leave, then

It is not required to offer pregnancy leave to its female employees.

Nevada's Workers Compensation Rates are capped and Lower than California's

In Nevada workers compensation is capped at \$36,000 per employee per year regardless of classification. In addition to the immediate cost savings of the cap, the cap has a secondary benefit of reducing rates because rates are calculated based on the \$36,000 cap rather than the actual payroll for the company. As a result, employers in California spend more on workers compensation insurance than in Nevada. Given California's higher base rates and uncapped employee rates, employers can realize significant savings to their labor costs by relocating to their operations to the Silver State.

Nevada Requires Less Benefits for Discharged Employees

Pursuant to California Labor Code §§ 201 and 227.3 an employee who is discharged must be paid all of his or her wages, including accrued vacation time, immediately at the time of termination. Additionally, employers cannot contract with employees to forfeit their vested vacation time or paid time off should a termination occur. By comparison, Nevada law does not mandate that employers pay accrued, but unused, vacation time to employees upon termination.

In Nevada, Domestic Partners Are Not Entitled to Medical Benefits

Pursuant to California Family Codes Sections §§ 297-299.6 registered domestic partners have the identical rights, protections and benefits that married couples share. *See also, In Re: Marriage Cases*, 43 Cal 4th 757 (2008).

On May 31, 2009 the Nevada Legislature overrode the Governor's veto of Senate Bill 283 and enacted the Nevada Domestic Partnership Act ("Act"). Pursuant to the Act, registered domestic partners have the same "rights and protections" as spouses except that the Act does not "require a public or private employer in [Nevada] to provide health care benefits to or for the domestic partner of an officer or employee." The Act permits employers to offer health care benefits to domestic partners on such terms as the employer and employee find appropriate. The Act is silent on whether employers are required to providing leave for issues related to domestic partners.

Nevada Has No Personal Income Tax

Pursuant to the Constitution of Nevada Article 10, §1(9) "[n]o income tax shall be levied upon the wages or personal income of natural persons." This constitutional provision has a twofold benefit for employers. First, because there is no individual income tax, the employer is not obligated to make a corresponding payment to Nevada. Second, employee take home pay is increased at no cost to the employer. Nevada's prohibition of personal income tax is a win-win; employees receive an after tax raise and the company pays less payroll tax.

Nevada's Minimum Wage is Lower

Federal Minimum Wage: Federal law requires that employers pay employees a minimum wage of \$6.55 per hour. On July 24, 2009, the federal minimum wage will increase to \$7.25 per hour. Under Nevada law, when both federal and state laws confer an employee benefit, the employer must grant the more generous benefit.

California's Minimum Wage: With some exceptions, California requires that employers pay their employees at least \$8.00 per hour. Only Washington has a higher minimum wage (\$8.07), and Massachusetts is the only other state that has a minimum wage of \$8.00. California's minimum wage is one of the top three minimum wages in the nation.

Nevada's Minimum Wage: Nevada's Constitution provides for a two-tier minimum wage system. Effective July 1, 2009, if an employer provides qualified health insurance benefits¹ to its employees, employers pay the lower tier-1 minimum wages of \$6.55 per hour. If an employer does not provide qualified health insurance benefits, it must pay employees the tier-2 minimum wage of \$7.55 per hour. Employers who relocate their companies from California to Nevada could save \$0.45 per hour per employee. Additionally, employers would also realize a savings on the

¹If you need assistance in determining whether your benefits qualify for tier-1 minimum wage, we can help answer that question.

reduced corresponding matching federal taxes they pay.²

Daily Overtime

Both California and Nevada require employers to pay employees overtime if they work more than eight hours in any workday or more than forty hours in any workweek. In both states daily overtime does not apply to employees who agree to work four 10-hour days in a workweek. Both Nevada and California have limited exceptions to their overtime rules. In Nevada, if an employee earns more than 1½ times the applicable minimum wage, the employer is not required to pay overtime to employees who work more than 8 hours in one workday. NRS 608.018.

Nevada Will Enforce Non-Compete Agreements

Pursuant to the California Business and Professional Code Sections §§16600-16602.5, and *Edwards II, v. Arthur Anderson*, 189 P.3d 285 (Cal. 2008), employers are not permitted to enter into non-compete agreements with employees that prohibits the employee from pursuing their trade or profession. Unless a non-compete agreement is part of a larger transaction such as the sale of business or a negotiated dissolution of a partnership, California will not allow an employer to protect itself by using a non-compete agreement. Under California law businesses are vulnerable to situations where key employees leave only to directly compete with them.

However, In Nevada, courts will enforce non-compete agreements between employers and employees if the restrictive covenant is reasonable in duration and locality. The general test is that the contract imposes no greater restraints on the employee than are necessary to protect the legitimate business interest of the employer.

Additionally, under *Camco, Inc. v. Baker*, 113 Nev. 512, 936 P.2d 827 (1997), an employer need not pay the employee to enter into the restrictive covenant. Nevada is an “at will” employment state; this means that (with a few exceptions) the employer and employee are free to terminate the relationship at any time. Under Nevada law, the employer’s offer of continuing employment is sufficient consideration to support the enforcement of a non-compete agreement.

Summary

While many considerations factor into moving a company from California to Nevada, issues related to human resources should not be overlooked. When it comes to wages, benefits and leave that employers must pay employees, silver beats gold.

For more information about employment issues related to relocating to Nevada or Nevada law, contact:

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²All of which is subject, however, to the July 24, 2009 federal increase in minimum wage.