JOE LOMBARDO
Governor

DR. KRISTOPHER SANCHEZ
Director

BRETT HARRIS
Labor Commissioner

STATE OF NEVADA

OFFICE OF THE LABOR COMMISSIONER
1818 COLLEGE PARKWAY, SUITE 102
CARSON CITY, NEVADA 89706
PHONE (775) 684-1890
FAX (775) 687-6409

OFFICE OF THE LABOR COMMISSIONER
3340 WEST SAHARA AVENUE
LAS VEGAS, NEVADA 89102
PHONE (702) 486-2650
FAX (702 486-2660

Department of Business & Industry

OFFICE OF THE LABOR COMMISSIONER

http://www.labor.nv.gov

PRELIMINARY GUIDANCE ON SENATE BILL (SB) 386 EFFECTIVE DATE JULY 1, 2021 - (SECTIONS 1 to 28) NEVADA HOSPITALITY AND TRAVEL WORKERS RIGHT TO RETURN ACT

The following guidance is being provided to address some of the initial issues and/or questions that have been raised and/or presented to the Office of the Labor Commissioner/Labor Commissioner regarding the interpretation of certain provisions of SB 386. The express provisions of Senate Bill (SB) 386 should be followed and additional guidance may be provided in the future if additional issues and/or questions arise.

ISSUES/QUESTIONS PRESENTED:

1. Who and/or what is a covered enterprise and are parent companies and/or parent corporations and employees covered by SB 386 that are not directly operating or physically working in a covered enterprise?

The following sections of SB 386 set forth certain definitions on how SB 386 will be applied.

Section 9. Business entity" means a natural person, corporation, partnership, limited partnership, limited-liability partnership, limited-liability company, business trust, estate, trust, association, joint venture, agency, instrumentality or any other legal or commercial entity, whether domestic or foreign.

Section 11. "Covered enterprise" means 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.

A "covered enterprise" must still meet the individual defintions of aiport 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. (See sections 7, 8, 10, 14, 15, and 18.)

The definition of "employee" in Senate Bill 386, section 12, excludes employees in managerial or executive capacities and employees exempt from the Fair Labor Standards Act (FLSA) of 1938, 29 U.S.C. §§ 201 et seq., pursuant to 29 U.S.C. § 213(a)(1); or any person who is engaged as a theatrical or stage performer, including, without limitation, at an exhibition.

To the extent that a parent company/corporation is not directly operating or has employees physically working in any of the entities referenced in the definition of a covered enterprise or the parent company/corporation does not meet those individual definitions of a "covered enterprise," then SB 386 would likely not apply. If the covered enterprise/employer has employees that do not meet the definition of employee in Section 12 and/or are salary employees exempt from the FLSA, then the Labor Commissioner would also find it reasonable that they would not be subject to Senate Bill 386. Senate Bill 386, section 4, expressly provides that the provisions of sections 2 to 28, inclusive, of this act do not: (a) Preempt or prevent the establishment of employment standards which are more protective of, or more beneficial for, employees, including, without limitation, higher wages or the expansion of coverage by any other action of this State; or (b) Supersede an employee's right to recall contained in a collective bargaining agreement, which right shall govern in the event of a conflict with an employees rights as set forth in sections 2 to 28, inclusive, of this act.

2. If there is a Collective Bargaining Agreement (CBA) that provides recall rights, does

Senate Bill 386, section 4, expressly provides that the provisions of sections 2 to 28, inclusive, of this act do not: (a) Preempt or prevent the establishment of employment standards which are more protective of, or more beneficial for, employees, including, without limitation, higher wages or the expansion of coverage by any other action of this State; or (b) Supersede an employee's right to recall contained in a collective bargaining agreement, which right shall govern in the event of a conflict with an employees rights as set forth in sections 2 to 28, inclusive, of this act.

3. Are time shares subject to Senate Bill 386?

In reviewing the intent of Senate Bill 386 and the express provisions of Senate Bill 386, the Labor Commissioner would take the position that Senate Bill 386 applies to "time shares" if they fit the definitions set forth in sections 11, 15, and 18 of Senate Bill 386 below.

Section. 3 – subdivision 10. It is in the public interest and beneficial to the public welfare to ensure that the State's casino, hospitality, stadium and travel related employers honor their former employees' right to return to their former positions because doing so will speed the transition back to a functioning labor market and will lessen the damage to the State's economy. Recalling workers instead of searching for new employees could minimize the time necessary to match employees with jobs and reduce the unemployment rate more quickly.

Section - 11. "Covered enterprise" means 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.

Section.15.1. “Hotel” means:(a) A resort hotel; or (b) Any other residential building that:(1) Is designated or used for lodging and other related services for the public, including, without limitation, the preparation and service of food and beverages, trade shows and conventions; and (2) Contains not less than 200 guest rooms or suites of rooms. For the purposes of this paragraph, adjoining rooms do not constitute a suite of rooms.2. The term also includes any contracted, leased or sublet premises that: (a) Is connected to or operated in conjunction with the purpose of the resort hotel or residential building; or (b) Provides services at the resort hotel or residential building.

Section 18. “Resort hotel” means: 1. A resort hotel, as defined in NRS 463.01865; 2. An establishment described in section 19 of chapter 452, Statutes of Nevada 1997; or 3. A resort hotel described in section 20 of chapter 452, Statutes of Nevada 1997.

Senate Bill 386 does contain express exemption language in certain portions of the bill and "time shares" were not expressly excluded from the provisions of Senate Bill 386. Absent any additional information that "time shares" were to be expressly excluded from Senate Bill 386, the Labor Commissioner must read the provisions of Senate Bill 386 as stated and apply them to "time shares" in conjunction with intent of Senate Bill 386.

4. Would a business that operates out of a hotel (leases or subleases space in the hotel) but is not in the business of travel or hotels or gaming or events, be a covered enterprise under SB 386?

Section 15 - 1. “Hotel” means: (a) A resort hotel; or (b) Any other residential building that:
(1) Is designated or used for lodging and other related services for the public, including, without limitation, the preparation and service of food and beverages, trade shows and conventions; and (2) Contains not less than 200 guest rooms or suites of rooms. For the purposes of this paragraph, adjoining rooms do not constitute a suite of rooms. 2. The term also includes any contracted, leased or sublet premises that: (a) Is connected to or operated in conjunction with the purpose of the resort hotel or residential building; or (b) Provides services at the resort hotel or residential building.

A similar definition is found relating to leases and/or subleases for “casino” and “event center” in section 10 and section 14.

5. If an employee has been recalled and/or returned to work prior to July 1, 2021, and/or returned to work with the same employer but in a different position prior to July 1, 2021, does the employer need to create a new notice and/or offer to the employee?

No, because the employee has returned to work. However, the employer could notify current employees of existing and future promotional and/or transfer opportunities.

6. If a covered enterprise/employer has made three bona fide offers to a laid off employee three weeks apart, and the employee did not respond within 24-hours and/or did not return within 5-calendar days, what starts the time and is that considered a "decline" by the employee thereby eliminating the need for more offers?

A covered enterprise/employer is not required to extend additional "bona fide offers"/offers of employment to a laid off employee if: The employer attempts to make three offers of employment three weeks apart to the employee by mail to the last known address of the employee and, if the employer possesses such contact information, by telephone, text message or electronic mail, and; (1) Each offer made by mail is returned as undeliverable; (2) If the employer has the electronic mail address of the employee, any offer made by electronic mail is returned as undeliverable; and (3) If the employer has the contact information provided by the employee for telephone calls or text messages, the number provided for such calls or messages is no longer in service. (See section 21 and section 22.) The Labor Commissioner would consider each event where the employee did not respond within 24-hours and/or did not return within 5-calendar days or where there is undeliverable mail, undeliverable electronic mail, and an employee telephone number for calls or texts that is no longer in service to be a decline of the offer by the employee. If this occurs three times for each offer, three weeks apart, then the Labor Commissioner would view the covered enterprise/employer as in compliance with making a "bona fide offer" to the employee and no additional offers after three, three weeks apart, would need to be made.

7. Do the hiring provisions for "laid-off employee(s)" provided in SB 386 (as defined in section 16) give a laid-off employee a hiring preference and/or priority over any other type of employee at a covered enterprise other than a new/prospective employee?

No. The provisions of Senate Bill 386 do not create a hiring preference and/or "bumping" for laid-off employees over any other type of employee currently employed at the covered enterprise/employer. (See section 21 and section 22.)

An employee currently employed at a covered enterprise/employer that was employed prior to July 1, 2021, has priority over a laid-off employee when a same or similar position in the same job classification as the one the laid-off employee had at the time of his/her most recent separation from active service becomes available on or after July 1, 2021.

This would be the same for transfer or promotions and the same for offering current employees that are part-time, on-call, or steady extra employees in a particular job classification the opportunity to apply for and be placed in a full-time position in the same or similar job classification that becomes available on or after July 1, 2021.

8. What type(s) of job offer must a covered enterprise/employer make to a "laid off employee(s)" (as defined in section 16)?

A covered enterprise/employer shall offer a laid off employee who is qualified, a position which becomes available after the effective date of this act; and for which the laid off employee is qualified if: (1) The laid-off employee held the same position at the covered enterprise at the time of the laid-off employee's most recent separation from active service with the employer; or (2) Held a similar position within the same job classification at the covered enterprise at the time of the laid-off employee's most recent separation from active service with the employer. The same or similar position in that job classification must also have a comparable number of regularly scheduled hours of work. (See section 22.)

The covered enterprise/employer needs to offer laid-off employee(s) a position(s) and a "bona fide offer" that is the same position or a similar position within the same job classification and with a comparable number of regularly scheduled hours of work as the employee worked immediately before his or her last separation from active service with the employer. The covered enterprise/employer would not need to offer positions to laid-off employees that were not positions that were the same or similar within the same job classification or did not have a comparable number of regularly scheduled hours. If a laid-off employee were in a part time position, the covered enterprise/employer would not be required to offer the laid-off employee a full-time position in that same or similar job classification because it is not a comparable number of regularly scheduled hours of work as the laid-off employee worked immediately before his or her last separation from active service with the employer. However, the covered enterprise/employer could offer full-time positions to laid-off employees that were working part-time positions or vice versa, in the same position or similar position within the same job classification over potential new hires. (See section 22.)

POTENTIAL REVISIONS TO THE PRELIMINARY GUIDANCE PROVIDED ON SB 386:

The preliminary guidance provided on Senate Bill 386 is made on the express provisions of Senate Bill 386, and the information, statements, and questions presented and/or made to the Labor Commissioner. The Labor Commissioner may change this preliminary guidance based on additional issues and/or alleged violations of Senate Bill 386 being presented to the Office of the Labor Commissioner/Labor Commissioner.

Brett Harris
Labor Commissioner
State of Nevada