

## Minimum wage and marijuana: 2 new Nevada laws may have big business impacts

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Laura Jacobsen, left, and Lindsay Knox.  
*Courtesy photos*

RENO, Nev. — Two new laws coming into play in the New Year could spell big changes for Northern Nevada businesses and employers.

The Nevada Minimum Wage Increase Initiative will implement a series of staggered hikes to the minimum wage through 2024, with the minimum wage expected to top out at \$12. And AB 132 prohibits employers from denying employment to candidates who test positive for marijuana in pre-employment drug screens.

Both initiatives could have wide-ranging impacts, and Northern Nevada attorneys and human resource professionals are working closely with clients and peers to ensure they stay abreast of the pending changes.

Courtney Pino, president of the Northern Nevada Human Resources Association and employee benefits consultant for Assured Partners Consulting, says a wage hike was needed — the real questions have been centered on how and when the hike would take effect. It's slated to take effect Jan. 1.

“Everyone is ramping up for it,” Pino says. “Our minimum wage is very low, so we knew it’s needed. But now we realistically need to make it happen and budget accordingly. Company management teams must strategize and plan accordingly to ensure they have correct personnel budgeting in place moving forward.”

Here’s a breakdown of the incremental increases to the minimum hourly wage (for employees not offered health insurance) over the next five years:

- 2020: \$9.00
- 2021: \$9.75
- 2022: \$10.50
- 2023: \$11.25
- 2024: \$12.00

Pino says many NNHRA members already pay employees more than the minimum wage. Some industries could be adversely affected by the forced bumps in pay, however.

## NEGATIVE IMPACTS TO BUSINESSES

Johnny Skowronek, owner of staffing company Square One Solutions and incoming NNHRA president, expects the service and retail industries to suffer the most due to minimum wage increases.

“Most bars, restaurants, casinos and retail operations pay minimum wage, and they are going to have to pass costs onto consumers,” Skowronek says. “The price of everything is going to go up without question in order to absorb this additional hard cost.”

Laura Jacobsen, labor and employment law attorney for McDonald Carano, says the wage initiative does impact businesses already paying more than minimum wage. Some businesses, she says, may lean out their staffing levels while others may choose to move key personnel into salaried positions – although there are many pitfalls to avoid there, Jacobsen cautions.

“Businesses are doing audits now on their pay scales to see how many folks they can continue to employ, whether they need to eliminate some positions, or have someone higher up absorb more executive responsibilities and be put on salary,” Jacobsen says. “It makes sense to streamline now if they can, but moving folks into supervisor positions, you have to make sure they fit the definition of a very specific exemption under the law. You might really have to tailor that job description and consult legal counsel to make sure (employees) are properly classified as exempt from wage per hour and overtime laws.”

Lindsay Knox, vice president of government affairs for McDonald Carano, says the wage hike could lead to sweeping changes in the demographics of the workforce of Northern Nevada. Some employees could lose their jobs, Knox says, while other jobs could go to older workers rather than teenage youth.

“Small businesses are where we are going to see a lot of changes,” Knox says.

## PRE-EMPLOYMENT CANNABIS DRUG TESTING

Another hot topic among business leaders, HR professionals and legal counsel is Assembly Bill No. 132, which begins Jan. 1 and restricts pre-employment marijuana drug testing. Businesses still can require potential applicants to take a drug test, but they can’t take certain actions if that applicant tests positive for THC.

“You can’t rescind or revoke a job offer because someone shows that marijuana metabolites are present in their system,” Jacobsen says.

There are certain exemptions, though. Knox advocated for inclusion of some broad language that provides “employer discretion” in the case of safety-sensitive jobs that affect others. Employees such as drivers or heavy equipment operators can have their job offers revoked for a negative test – although businesses still could be legally challenged over an offer termination.

Jacobsen advises clients to add key language into job descriptions denoting safety-sensitive positions. Others clients are putting such language into conditional offer letters, she adds. Doing so can potentially curtail wrongful termination litigation.

“If you are up front about it, you can weed out some folks and avoid potential claims from people who were not clear about it,” she says. “It helps to be up front with job applicants and get it into job descriptions if you are going to designate them safety-sensitive.”

Knox says the language and impacts of AB 132 aren’t particularly clear. In light of that, it behooves businesses to include language in company handbooks, contracts or job offers that define a drug-free workplace.

Doing so sets precedent and expectation for the type of workforce the employer desires. And businesses that receive federal funding or grants of any type are exempted because marijuana is still illegal at the federal level, Knox notes.

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