The 2019 Session of the Nevada Legislature began quietly on Monday, February 4 and adjourned Sine Die somewhat anticlimactically on Monday, June 3. There was a bit of partisan excitement near the end when the majority party utilized some parliamentary procedures to try and secure a 2/3 majority vote to eliminate a scheduled reduction in the Modified Business Tax and avoid a potential lawsuit. Beyond that, however, the 2019 session ended as peacefully as any in the 120-day limited session era.

This came as a surprise to some since many observers believed the Democrats, who held exclusive control over the legislative and executive branch for the first time since 1991, would act aggressively to enact the progressive reforms being pursued elsewhere in the county where Democratic majorities rule. In fact, progressive changes were addressed in the Nevada Legislature in 2019. However, they were addressed and ultimately resolved in a way that was much more moderate and measured than some in the Democratic base had hoped, and it must be said, expected. However, the decision by the Democratic leadership to proceed and a measured way was well received by most observers of the process and led to a relatively smooth session.

From a business perspective, there were changes that will present challenges going forward, but the mantra among the business lobby as the session drew to a close seemed to be "it could have been worse." Of the numerous pieces of legislation dealing with workers compensation, human resources, minimum wage, and employee relations, most issues were addressed in a thoughtful and moderate way.

The following are the issues that occupied most of the time of the ABC lobbying team this session. This report is not designed to contain an exhaustive analysis of all legislation on each topic; only to identify bills on which the ABC lobbying team engaged so that our members can seek additional guidance from their individual legal counsel.

Construction Related Legislation

One of the common themes of the 2019 session was protecting the rights of workers. This found its way into the apprenticeship laws as well. Under existing law apprenticeship agreements must include a provision declaring that the apprentice will not be subject to discrimination on the basis of several categories. AB68 adds genetic information, national origin and age of 40 years or older to the list of categories included in an apprenticeship agreement for which discrimination is prohibited. It also changes the size of the State Apprenticeship Council form 9 voting member so 7 voting members.

As expected, the changes to prevailing wage we were able to achieve during the 2015 session we reversed this session. AB136 repeals prevailing wage reduction of 90% for schools and higher education, rolls back threshold from $250,000 to $100,000, and subject’s charter schools to prevailing wage requirements.

AB190 creates requirements for the discharge any part of a contractor’s obligation to pay prevailing wages to a worker by providing bona fide fringe benefits. Those
requirements include that the bona fide fringe benefits are paid equally for all hours worked in a calendar year by the worker for the contractor or subcontractor. It defines “bona fide fringe benefits” to mean a benefit in the form of a contribution that is made not less frequently than monthly to an independent third party pursuant to a fund, plan or program: (1) which is established for the sole and exclusive benefit of a worker and his or her family and dependents; and (2) for which none of the assets will revert to, or otherwise be credited to, any contributing employer or sponsor of the fund, plan or program.

The interpretation of benefits by the Labor Commissioner will be PTO, health insurance, and retirement. Any contractor that provides these benefits year-round will not be subjected to penalties or annualized benefits requirements. As of this time, the Labor Commissioner will be accepting self-certifications that benefits are being provided. However, this legislation will likely be refined in future legislative sessions to reflect how it’s implemented in states like New York.

Among the bills that will require immediate action by ABC Nevada is SB207 which requires contractors engaged on a public work who employ more than three workers to use one or more apprentices for at least 10 percent of the total hours of labor worked on vertical construction and at least 3 percent on horizontal construction.

The bill does allow a public body, upon the request of a contractor, to submit a request to the Labor Commissioner to modify or waive the percentage of hours of labor provided by one or more apprentices for good cause. A public body must submit such a request before an advertisement for bids has been placed, the opening of bids or the award of a contract for a public work, or after the public body has commenced work. Such a request must include any supporting documentation, including, without limitation, proof of denial of or failure to approve a request for apprentices. Refusal to sign an apprentice agreement with a particular union is not considered a valid reason for a waiver.

This legislation may have some constitutional challenges and may result in a lawsuit. In addition, it is likely to be refined and changed should the legislature remain in Democrat control. Either way, it will be critical for ABC to being to develop the apprenticeship programs necessary for our members to be able to comply with this new law.

Also, of note is SB493, which deals with misclassification of employees. The effort was to clarify what constitutes an independent contractor. The obvious concern here was to ensure that the traditional contractor/subcontractor relationships local governments utilize were left unimpacted. In the final version of the bill, we are comfortable that we can continue such practices as we currently do.

Another reform from 2015 session that was targeted this session was Chapter 40 construction defect law. AB 421 reduces the level of detail required in claims of defects, damages, or injuries to each residence or appurtenance that is the subject of the claim. Removed the requirement that an expert who provided an opinion of an alleged a
construction defect be present at an inspection. It also changes the statute of repose from 6 to 10 years.

Finally, as expected, **SB231** repealed the PLA prohibition statute that ABC was able to pass during the 2015 Session.

Among the public works bills that failed was **SB340**. This was among the measures of the most significant concern for local governments. It would have significantly broadened the payment of prevailing wage to include almost any delivery to the site of a public work. It had the potential of increasing the cost of public construction more dramatically than any bill in recent memory.

**Minimum Wage**

The promise to increase Nevada's minimum wage was among the top priorities of the Democrats going into the session. Legislative leaders made this clear, and it was a central part of the new governor's State of the State speech. It was evident from day one that the minimum wage in Nevada was going to be increased this session.

While the Democrats took some input on the issue early in the session, it became quickly evident that they were not looking for compromise or consensus on the subject. Instead, they seemed to focus their efforts on legal questions surrounding the issue. Once they resolved these concerns to their satisfaction, they moved forward decisively.

As in 2017, there was significant discussion regarding the constitutionality of increasing the minimum wage without a vote of the people. While this was left unresolved, the legislature was predictably comfortable with an opinion from the Legislative Counsel Bureau that they were within their right to increase the wage statutorily.

In the end, the legislature processed, and the governor signed **AB456** which was pushed by Assembly Speaker Jason Frierson. This measure increased the minimum wage in Nevada to $12.00 an hour utilizing 75 cent incremental increases until 2024. They did however tacitly acknowledge there are outstanding legal questions by also processing a resolution which takes the increase to a vote of the people for a constitutional change, which opponents argued is required. **AJR10** will ask the voters to approve a constitutional amendment to clarify that the legislature can, in fact, increase the minimum wage of that State by statute.

Businesses groups are currently discussing next steps on the issue. Possible actions could include a lawsuit seeking an injunction until the constitutional question is resolved or running a competing ballot initiative. Either way, we are likely a great deal closer to the beginning of this debate in Nevada than we are to the end. If no action is taken to prevent the implementation of this act, the first increase will take place on July 1, 2019.

The issue of collective bargaining for state employees might seem unusual for a report dealing with legislative impacts on business. However, it is included here because of the potential financial impact it could have going forward on the financial obligations of
the state. Some estimates believe the impact could approach $1 billion in the next interim.

Collectively SB135, SB153 combine to create, for the first time, the right for state employees to bargain collectively. We only include this in the report because on its potential to have a significant impact on the state’s budget going forward and ultimately on taxation. While this was an issue listed by the Democrats as a priority and mentioned in the governor's State of the State address, its passage this session was far from certain until very late in the session. The problems for the bill began when it became more evident in the budgetary process that the fiscal note on the proposal could become significant.

In the end, the legislature chose to deal with the potential fiscal note by crafting a legislative mechanism that will allow state employees to bargain collectively, but that will give the governor final say over the results of those negotiations in his budgetary proposal.

**Employment Practices**

Another top priority of the Democrats was legislation that will ensure equal pay in the workplace. SB166 represented their effort at this goal this session. The bill specifically addresses the investigative process used by the Nevada Equal Rights Commission and the fine structure for violations. Ultimately, SB166 essentially aligns Nevada’s statute with federal statute on the issue.

Also, of note is SB493, which deals with misclassification of employees. The effort was to clarify what constitutes an independent contractor. The obvious concern here was to ensure that the traditional contractor/subcontractor relationships we utilize were left unimpacted. In the final version of the bill, we are comfortable that we can continue such practices as we currently do. In addition, the bill creates a task force to continue to look at the issue of employee misclassification.

In its original form, AB132 prohibited and employer from refusing to hire an individual who failed a "pre-hire" test for marijuana. We raised several concerns with this bill, including employee safety and federal preemption. We were able to secure amendments to the proposal to allow employees, at their discretion, to declare a safety exemption. In addition, the prohibition only applies to "pre-hire" testing. Employers can still test and deny employment after hiring. The only caveat is that if a test is done within 30 days of employment, the employer must allow the employee to retest, at his or her own expense, and use the results to challenge the positive test.

AB181 which passed and has been signed by the governor will prevent employers from requiring employees to appear in person to request sick leave. Employers are still permitted to require a doctor's note before they grant the leave.
SB40 will require the department of business and industry to establish in rules and regulations regarding fines and fees for violation of Federal OSHAS laws and will limit those fees at the state level to what is currently administered at the federal level. This will establish some certainty and consistency for business owners in Nevada.

As initially drafted, SB177 would have dramatically increased the ability of employees to sue their employers for complaints filed with the Nevada Equal Rights Commission. In the end, the bill was significantly amended to reduce fines and to provide a better balance between the rights of the employees and employers.

Among the most concerning/interesting bills relating to employment practice to fail this session was AB394, which would have required that any business or entity utilizing kiosks for any purpose pay fees equal to unemployment taxes on each device. This was not given a great deal of consideration this session, but the concept of penalizing automation is sure to be an issue that is revisited by future legislatures.

Other bills that failed to pass were AB251 which would have dramatically expanded provisions of law and penalties relating to employment discrimination, and AB197 which would have altered Nevada contract law to broaden the criteria under which a contract in the State can be declared "unconscionable."

Taxation

SB497 eliminates the requirement that businesses that do not meet the minimum threshold for paying the modified business tax, or MBT, file a return with the Nevada Department of Taxation.

AB538 eliminates the scheduled reduction in the Modified Business Tax (MBT) that was part of the final agreement on the MBT in 2015. This represented one of the most controversial issues during the 2019 session as Republicans argued that the elimination of the reduction was unconstitutional under the provisions of the Gibbon's Tax Restraint initiative, which requires a 2/3 majority to increase taxes in Nevada. The Legislative Counsel Bureau issued an opinion that the 2/3 requirement did not apply in this case. Republicans have vowed to file a lawsuit on the question.

Paid Sick Leave

How the Democratic majority would deal with the promise to provide paid sick leave for private sector employees was among the greatest concerns of ABC going into the session. In the end however, the majority leadership reached out to the business lobby and made a good faith effort to address our concerns. Two bills received the majority of attention on this issue, AB90 and SB312.

AB90 would have expanded the laws regarding sick leave to apply to care for family members. The bill did not include an exemption for small businesses. AB90 passed the Assembly on a party-line vote but was not processed in the Senate.
In its initial form SB312 would have mandated paid sick leave to be provided by all employers with more than 25 employees and would have implemented significant record keeping obligations on those businesses. As amended, the bill now creates a paid leave program. The final version provides considerable flexibility for employers and importantly changes the threshold for applicability to 50 employees instead of 25. The bill was amended in a way that removed the opposition of most business groups.

Workers Comp

Workers compensation reform represented another of the primary goals of the 2019 session. Among the top priorities of the majority in this regard was SB215, which sought to address occupational diseases for first responders. The bill was extremely broad as drafted but was negotiated to expand the current applicability of the law to firefighter hazardous materials instructors and arson investigators. It further expanded the list of known carcinogens to include those recently added to the list by the federal Center for Disease Control.

SB381 bill provides that the choice of a treating physician or chiropractor is a substantive right of an injured employee who has a claim under the Nevada Industrial Insurance Act. This reverses the 2007 decision of the Nevada Supreme Court in Valdez v. Employers Ins. Co.

AB370 alters the rate of compensation for specific recipients of total or partial disability whose claims were settled before 2004. It also makes changes to compensation for the survivors of injured workers.

Among the worker’s compensation legislation that failed was AB119, which would have mandated the acceptance of an industrial insurance claim by certain first responders and would have mandated specific compensation for such claims.

Also failing was AB138, which required industrial insurance claims to be decided under a liberal construction of statutes in favor of the injured employee or his or her dependents. It also proposed to place the injured employee at an advantage when determining compensation.

Marijuana

Marijuana was predictably another critical topic of discussion this session. In addition to AB 132 referenced under employment practices above, there were several other proposals considered.

AB 164 loosened the requirements on advertising for marijuana establishments and provided some new legislative direction to the Department of Taxation concerning promulgating regulations governing advertising.
**AB466** requires the State Treasurer to create a pilot program for the establishment of one or more closed-loop payment processing systems to facilitate certain financial transactions relating to marijuana while **SB346** allows for the development of training programs in the area of marijuana production and sales.

**ACR7** directs the legislative commission to conduct a study regarding driving under the influence of marijuana, and **SB 545** corrects an error from the last session and directs individual taxes from the sale of marijuana to be re-directed from the State's so-called "rainy day" to the distributive school account.

Finally, after much deliberation by the legislature, the governor signed **AB533** which creates the Cannabis Advisory Commission which represents Nevada's first real effort to regulate the cannabis industry in the State. Notable for local governments is **AB533's** prohibition against any local government adopting ordinances allowing marijuana consumption lounges until the commission has had the opportunity to make recommendations for their use.

Among the marijuana bills that failed was **SB434**, which sought to vacate convictions related to marijuana in some cases and have those records sealed.

**Immigration**

There was a great deal of conversation before the session regarding how the legislature should and would deal with immigration matters. In the end, there were two bills with potential impact to the businesses due to the implications for law enforcement. The first, **AB281** would have prohibited law enforcement from detaining an individual on an immigration-related charge unless there were additional legal violations associated with the detainment. This bill failed to advance.

As drafted initially, **AB376** would have required law enforcement to submit detailed reports to the State regarding the investigation, arrest, and detainment of undocumented persons. In the end, the bill was amended to require law enforcement to provide specific details to such a person as to the reason they are requesting information about their immigration status.

**Conclusion**

The Hardy Consulting Group once again expresses our appreciation to the Associated Builders and Contractors for the honor of representing the association's interests this session. In all, we believe we had a successful session. We wish to thank the staff and the government affairs committee for their participation in our efforts. The on the ground support we receive at all hours of the day and night from "headquarters" is invaluable to the process, and success is not obtainable with it.