

**ADOPTED REGULATION OF
THE LABOR COMMISSIONER**

LCB File No. R072-00

§§1 to 5 and 7 to 12, inclusive, effective August 15, 2000

§6 effective July 1, 2001

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-12, NRS 338.012.

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 338.010 and section 3 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Recognized class of workmen” means a class of workmen recognized by the labor commissioner as being a distinct craft or type of work for purposes of establishing prevailing rates of wages. The term includes a class of workmen for which the labor commissioner has traditionally established a prevailing rate of wages and any other class of workmen the labor commissioner determines to be a distinct craft or type of work either on his own accord or after conducting a hearing pursuant to section 4 of this regulation.*

Sec. 4. *Upon his own initiative or at the request of any person who is required to be heard pursuant to subsection 5 of NRS 338.030, the labor commissioner may conduct a hearing to determine the need for a new recognized class of workmen if he is in doubt as to the adequacy of an existing recognized class of workmen.*

Sec. 5. NAC 338.010 is hereby amended to read as follows:

338.010 ~~{The}~~

1. Based on the information described in subsection 2 of NAC 338.020, the labor commissioner will determine the prevailing rate of wages paid to each *recognized* class of workmen in a locality as follows:

~~{1.}~~ (a) Where the *rate of wages is the same for the* majority of *the total hours worked by* a *recognized* class of workmen who are employed in the locality on construction similar to the proposed construction, ~~{are paid wages at the same rate,}~~ that rate will be determined as the prevailing rate.

~~{2.}~~ (b) Where there is no such majority, the prevailing rate for the *recognized* class of *workmen* will be determined as:

~~{a)}~~ (1) The rate *of wages* paid ~~{to}~~ *for* the greater number of ~~{workmen in}~~ *hours worked by* the *recognized* class of *workmen* if that number constitutes 30 percent or more of ~~{those so employed; or~~

~~{b)}~~ *the total number of hours worked by the recognized class of workmen; or*

(2) The average rate *of wages* paid ~~{to those so}~~ *per hour, based on the number of hours worked per rate, to a recognized class of workmen who are* employed if the number of ~~{workmen}~~ *hours* paid at the same rate is less than 30 percent of ~~{those so employed.~~

~~{3.}~~ *the total number of hours worked by the recognized class of workmen.*

(c) If no similar construction has been performed within the locality in the past year, the labor commissioner will consider wage rates paid on the nearest similar project of construction in ~~{the State of Nevada.}~~ *this state.*

2. If the labor commissioner determines that the prevailing rate of wages for a recognized class of workmen is a wage which has been collectively bargained, the labor commissioner may consider wage and benefit adjustments and classifications of workmen established in the collective bargaining agreement and may adjust the prevailing rate of wages for the recognized class of workmen in accordance with wage and benefit adjustments and classifications of workmen in the collective bargaining agreement.

Sec. 6. NAC 338.010 is hereby amended to read as follows:

338.010 1. Based on the information described in subsection 2 of NAC 338.020, the labor commissioner will determine the prevailing rate of wages paid to each recognized class of workmen in a locality as follows:

(a) Where the rate of wages is the same for the majority of the total hours worked by a recognized class of workmen who are employed in the locality on construction similar to the proposed construction, that rate will be determined as the prevailing rate.

(b) Where there is no such majority, the prevailing rate for the recognized class of workmen will be determined as:

(1) The rate of wages paid for the greater number of hours worked by the recognized class of workmen if that number constitutes ~~30~~ 40 percent or more of the total number of hours worked by the recognized class of workmen; or

(2) The average rate of wages paid per hour, based on the number of hours worked per rate, to a recognized class of workmen who are employed if the number of hours paid at the same rate is less than ~~30~~ 40 percent of the total number of hours worked by the recognized class of workmen.

(c) If no similar construction has been performed within the locality in the past year, the labor commissioner will consider wage rates paid on the nearest similar project of construction in this state.

2. If the labor commissioner determines that the prevailing rate of wages for a recognized class of workmen is a wage which has been collectively bargained, the labor commissioner may consider wage and benefit adjustments and classifications of workmen established in the collective bargaining agreement and may adjust the prevailing rate of wages for the recognized class of workmen in accordance with wage and benefit adjustments and classifications of workmen in the collective bargaining agreement.

Sec. 7. NAC 338.020 is hereby amended to read as follows:

338.020 1. The labor commissioner will conduct a continuing program of obtaining and compiling information for use in determining prevailing rates of wages.

2. The kinds of information which the labor commissioner will consider in making determinations of prevailing rates of wages include:

(a) Statements showing rates of wages paid on public and private projects, where the statements *are signed by the contractors or their representatives and* contain:

(1) The names and addresses of the contractors and subcontractors;

(2) The locations, approximate costs, dates of construction and types of projects;

(3) The number of *hours each recognized class of* workmen *is* employed ~~[in each class]~~ on each project; and

(4) The respective rates of wages paid to ~~[such workmen.]~~ *each recognized class of workmen employed on each project.*

(b) Signed collective bargaining agreements.

(c) Wage rates determined by officials of the Federal Government for public construction and other information furnished by state and federal agencies.

3. When determining prevailing rates of wages, the labor commissioner may exclude from consideration any information submitted to him that is duplicative, incomplete or otherwise determined by the labor commissioner to be unverifiable.

4. As used in this section, “representative” means:

(a) An agent, officer or employee of a contractor or subcontractor who has been authorized to act in such a capacity by the contractor or subcontractor; or

(b) Any other person empowered by a written agreement with the contractor or subcontractor that authorizes the person to act on behalf of the contractor or subcontractor in submitting the information required pursuant to paragraph (a) of subsection 2.

Sec. 8. NAC 338.040 is hereby amended to read as follows:

338.040 1. A determination by the labor commissioner of the prevailing rates of wages in a locality *becomes effective on October 1 of each year and* remains effective for 1 year after ~~[the date on which the determination is issued]~~ *that date* except as otherwise provided in this section.

2. If a determination of prevailing rates expires between the opening of bids and the award of a contract for a particular project of public work, the labor commissioner, upon receiving a written notice of that fact, will allow the prevailing rates used for the bids to apply for the duration of the project.

3. After a contract has been awarded, the prevailing rates of wages in effect at the time of the opening of bids remain in effect for the duration of the project.

4. If a public body believes that a pattern of wages is not clearly established in a locality, it may request the labor commissioner to make a new determination of the prevailing wages in the locality. Such a request must be accompanied by the information outlined in paragraph (a) of subsection 2 of NAC 338.020.

Sec. 9. NAC 338.050 is hereby amended to read as follows:

338.050 At the request of a public body or upon his own initiative, the labor commissioner will correct any determination of prevailing wages which he has issued if he finds that it contains a clerical error. *A correction is applicable to all projects bid after the correction becomes effective.*

Sec. 10. NAC 338.060 is hereby amended to read as follows:

338.060 Copies of the labor commissioner's determinations of prevailing rates of wages are available at his office and will be furnished to public bodies and interested persons upon request ~~to~~ *beginning on September 20 of each year.*

Sec. 11. NAC 338.070 is hereby amended to read as follows:

338.070 The labor commissioner will regard himself as being in doubt concerning a prevailing rate of wages in a locality and will hold the required hearing in the locality whenever he finds that:

1. The data within his possession are not substantial enough; or
2. His other means of obtaining information are inadequate,

FLUSH to enable him to determine the prevailing rate of wages for any *recognized* class of workmen in the locality.

Sec. 12. 1. This section and sections 1 to 5 and 7 to 11, inclusive, become effective on the date of filing with the secretary of state.

2. Section 6 of this regulation becomes effective on July 1, 2001.

NOTICE OF ADOPTION OF REGULATION

Pursuant to NRS § 233B.064, please be advised the Office of the Labor Commissioner adopted regulations on July 10, 2000 assigned to LCB File No. R072-00 pertaining to Chapter 338 of the Nevada Administrative Code. A copy of the regulations as adopted, the *Information Statement* required pursuant to NRS §233B.066, and the *Form for Filing Administrative Regulations* are attached hereto.

INFORMATION STATEMENT

A. A description of how public comment was solicited, a summary of the public response, and an explanation of how other interested persons may obtain a copy of the summary.

Public comment was solicited via notices submitted to the Las Vegas Review Journal, Las Vegas Sun, Reno Gazette Journal, Nevada Appeal and other major print media throughout this state. Notices were also sent to each County library for posting and placed prominently throughout the state at various government and public buildings.

The public response was generally supportive of the efforts to revise the regulations, which had never been revised since their adoption nearly two decades ago. There was varied discussion with some of the specifics of the proposals. The issues that generated the most comments were: the use of collective bargaining agreements in determining the prevailing rates of wages, whether public works projects should be included in the annual prevailing wage survey, and the proposed elimination of the “30% rule” which enables a prevailing wage to be determined based on the wages paid to as few as thirty percent of the workers in a class.

Persons may obtain a copy of the summary of the public comments by contacting the Office of the Labor Commissioner, 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada 89101, (702) 486-2483.

B. The number of persons who:

- | | |
|---|----------------------------------|
| 1. Attended each hearing: | Las Vegas: 98
Carson City: 49 |
| 2. Testified at each hearing: | Las Vegas: 19
Carson City: 12 |
| 3. Submitted to the agency written statements: | 121 |

C. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

In addition to the methods used for soliciting comments from the general public, comment was solicited from affected businesses by contacting the major contractor associations in the state. Associations contacted and noticed included: Associated General Contractors, Northern, Nevada, Associated General Contractors, Southern Nevada, Associated Builders and Contractors, Northern Nevada, Associated Builders and Contractors, Southern Nevada, and the Nevada Contractors Association. Additionally, comments were solicited via notice of hearing to the Nevada Taxpayer's Association.

The responses from the various contractor associations too were generally supportive. Some spoke in favor of maintaining the “30%” rule while some called for its deletion. Comments were also split on the subject of utilizing collective bargaining agreements to determine the prevailing rates of wages. There were also comments made for and against the labor commissioner comparing demographically similar counties where a given community reported no hours for a given craft or type of work.

Interested persons may obtain a copy of the summary of comments by contacting the Office of the Labor Commissioner at 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada 89101, (702) 486-2483.

D. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation underwent changes between the time it was initially proposed and the version that was eventually adopted. This was based in large part on verbal and written comments received from the public and affected businesses.

E. The estimated economic effect of the regulation on business which it is to regulate and on the public. Stated separately, this includes:

- 1. Both adverse and beneficial effects; and**
- 2. Both immediate and long-term effects.**

1. The proposed revisions are expected to provide mostly beneficial effects on the business it is to regulate. Because of the revisions, businesses will be able to participate in the annual prevailing wage survey with increased accuracy and efficiency for example. This should reduce the amount of time spent preparing the survey data, thereby significantly benefiting the business. Adversely, there are no estimated economic affects to be experienced by regulated businesses as a result of the proposed revisions.
2. The immediate effect includes greater clarification of the prevailing wage regulations. For years, there have been items that were somewhat ambiguous. The long-term effect

includes prevailing wage determinations that will be more consistent with rates paid in the communities to which they apply.

F. The estimated cost to the agency for enforcement of the proposed regulation.

There is no additional cost to the agency for the enforcement of the proposed regulations.

G. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulations do not duplicate or overlap the regulations of any Nevada State agency or any branch of the federal government. The purpose of these regulations is to set the minimum wages that must be paid on public works projects awarded pursuant to Section 338 of the Nevada Revised Statutes.

H. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that regulate this same activity in Nevada.

I. If the regulation provides a new fee or increase an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There are no fees associated with the proposed regulations.