

**REVISED PROPOSED REGULATION OF
THE LABOR COMMISSIONER**

LCB File No. R124-08

December 17, 2009

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

AUTHORITY: §§1-6, NRS 607.160; §7, NRS 607.160, 608.016 and 608.250; §8, NRS 607.160 and 608.018.

A REGULATION relating to wages; establishing various provisions for the payment of employees; prohibiting certain employer deductions relating to the payment of gratuities; establishing provisions for the tracking of employee work hours; revising provisions for the payment for time worked; revising provisions concerning compensation for overtime; and providing other matters properly relating thereto.

Section 1. Chapter 608 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 1. *An employee who is paid on a salary basis:*

(a) Must be paid the full amount of his or her salary for any pay period in which the employee performs any work, regardless of the number of days or hours actually worked.

(b) Need not be paid for any workweek in which the employee performs no work unless the employee is ready, willing and able to work but no work is available to the employee.

2. *An employer may deduct a pro rata amount from an employee's salary:*

(a) For days not worked before the employee commences employment during the initial week of employment and for days not worked after the date on which employment ends during the week of termination of the employment;

(b) If the employee is absent from work for 1 or more full days because of personal reasons other than illness or disability;

(c) If the employee is absent from work for 1 or more full days because of illness or disability and the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary which is lost because of illness or disability;

(d) To offset amounts the employee receives as jury or witness fees or as military pay;

(e) If previously agreed upon between the employer and the employee, for penalties imposed in good faith against the employee for violations of safety rules of major significance;

(f) For unpaid disciplinary suspensions of 1 or more full days imposed in good faith against the employee for violations of workplace conduct rules or policies;

(g) For time during which the employee takes unpaid leave under the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq.; or

(h) For other deductions from the employee's salary, as agreed upon in writing between the employer and employee before any deduction is made.

3. Unless otherwise exempted, salaried employees are entitled to compensation for overtime.

Sec. 3. *An employer who permits patrons to pay gratuities by credit or debit card must pay the employee for whom the gratuity is intended the full amount of the gratuity as indicated on the credit or debit card receipt, without making any deductions for any credit or debit card processing fees or costs that the issuer of the credit or debit card may charge, including, without limitation, processing fees or costs for the conversion of the gratuity as charged to the credit or debit card to cash.*

Sec. 4. *An employer who uses a time clock to track employee work hours may adjust the time recorded to conform to an employee's regularly scheduled start and end times if:*

- 1. The policy is clearly written and posted in a conspicuous location adjacent to the time clock;*
- 2. The length of time adjusted is not greater than 7 1/2 minutes;*
- 3. Employees who clock in or out before their regularly scheduled times have their times adjusted forward to the regularly scheduled time;*
- 4. Employees who clock in or out after their regularly scheduled times have their times adjusted backward to the regularly scheduled time; and*
- 5. A complete accounting of the adjustments for each employee's time is made available upon request.*

Sec. 5. NAC 608.050 is hereby amended to read as follows:

608.050 As used in NAC 608.050 to 608.160, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 608.055 to 608.080, inclusive, have the meanings ascribed to them in those sections.

Sec. 6. NAC 608.080 is hereby amended to read as follows:

608.080 "Salary" means a wage rate based on a fixed dollar amount for a period of time other than an hour ~~[.]~~ *or a workday.*

Sec. 7. NAC 608.115 is hereby amended to read as follows:

608.115 1. An employer shall pay an employee for all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the *regularly* scheduled hours of work of the employee ~~[.]~~ *, including, without limitation:*

(a) Time required for preparatory activities before the beginning of a shift; and

(b) Time required for clean-up activities after the end of a shift.

2. If an employer pays an employee by salary, piece rate or any other wage rate except for a wage rate based on an hour of time, the employer shall pay ~~[an amount]~~ *a base hourly wage* that is at least equal to the *applicable* minimum wage when the amount paid to ~~[an employee in]~~ *the employee for* a pay period is divided by the number of hours worked by the employee during the pay period ~~[This subsection does not apply to an employee who is exempt from the minimum wage requirement pursuant to NRS 608.250.]~~, *less any amount that is solely attributable to overtime.*

3. For the purpose of a claim for wages ~~[.]~~ *filed by any person who is paid on an hourly basis*, holidays, vacation days, sick days and any other days that an employee did not actually work are not counted as time worked by the employee.

Sec. 8. NAC 608.125 is hereby amended to read as follows:

608.125 1. An employer ~~[shall]~~ :

(a) Shall pay overtime based on the wage rate that is in effect at the time the overtime payment is required without averaging the wage rates of an employee who is paid multiple rates during the workday; and

(b) Shall not substitute compensatory time in place of a wage payment for overtime that was worked by an employee.

2. If an employee is paid by salary, ~~[piece rate or any other wage rate except for a wage rate based on an hour of time, the rate of compensation]~~ *the overtime wages due to the employee who is not otherwise exempt from overtime* for the purposes of ~~[paragraph (b) of subsection 2 of NRS 608.018 is determined by dividing the amount paid to an employee in a week by the~~

~~number of hours worked by the employee during the week.]~~ *NRS 608.018 must be determined in accordance with subsection 3.*

3. A base hourly wage rate for 1 workweek is equal to the amount due for that workweek pursuant to a salary agreement between the employer and the employee divided by the total number of hours worked by the employee during the workweek. If the salary period is longer than 1 workweek, the salary period must be prorated based on the number of weeks in the salary period.

4. If the base hourly wage rate:

(a) Is 1 1/2 times the minimum wage set forth in NAC 608.100 or more, the employer must pay to the employee an amount equal to the base hourly wage rate for all hours worked plus 1/2 the base hourly wage rate for every hour worked in excess of 40 hours during the workweek.

(b) Is less than 1 1/2 times the minimum wage set forth in NAC 608.100, the employer must pay to the employee an amount equal to the base hourly wage rate for all hours worked:

(1) Plus 1/2 the base hourly wage rate for every hour worked in excess of 8 hours in any 1 workday; and

(2) Plus 1/2 the base hourly wage rate for every hour worked in excess of 40 hours during the workweek which was not otherwise counted towards being in excess of 8 hours in any 1 workday.

~~[3.]~~ *5.* The Commissioner will refer to *Subparts B and C of* 29 C.F.R. ~~[§§ 541.1 and 541.2]~~ *§ 541* to determine if an employee is employed in a bona fide executive or administrative capacity for the purposes of paragraph (d) of subsection 3 of NRS 608.018. *In determining*

whether an employee is employed in a bona fide executive or administrative capacity, the following conditions must also be met:

(a) To be deemed an executive employee, the employee:

- (1) Must be compensated on a salary basis at a rate of not less than \$455 per week;*
- (2) Must, as his or her primary duty, manage the entire enterprise or manage a customarily recognized department or subdivision of the enterprise;*
- (3) Must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and*
- (4) Must have either the authority to hire or fire other employees or the authority to give suggestions and recommendations with respect to the hiring, firing, advancement, promotion or any other change in the status of other employees, with such suggestions and recommendations given particular weight by the person or persons authorized to make the final decision; and*

(b) To be deemed an administrative employee, the employee:

- (1) Must be compensated on a salary or fee-based basis at a rate of not less than \$455 per week; and*
- (2) Must, as his or her primary duty, perform office-related or nonmanual work directly related to the management or general business operations of the employer or the employer's customers, including, without limitation, the exercise of discretion and independent judgment with respect to matters of significance.*