

**ADOPTED REGULATION OF
THE LABOR COMMISSIONER
LCB File No. R185-24**

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

AUTHORITY: §§ 1 and 3, Nev. Const. Art. 15, § 16 and NRS 607.160; § 2, NRS 607.160.

A REGULATION relating to employment; specifying the minimum wage that an employer is required to pay an employee for each hour worked; requiring an employee to take certain actions before filing with the Labor Commissioner a claim or complaint for the payment of commissions owed; repealing certain obsolete regulations relating to the minimum wage; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Labor Commissioner to enforce all labor laws of this State and authorizes the Commissioner to adopt regulations to do so. (NRS 607.160) Before July 1, 2024, the Nevada Constitution required private employers to pay a minimum wage of \$5.15 per hour if the employer provided certain health benefits to employees or \$6.15 per hour if the employer did not provide such benefits. (Nev. Const. Art. 15, § 16, as it existed on June 30, 2024) In 2019 and 2021, the Legislature passed Assembly Joint Resolution No. 10 of the 80th Session, which proposed to amend the Nevada Constitution to instead set the minimum wage at \$12 per hour worked beginning July 1, 2024, regardless of whether the employer provides health benefits to employees. (File No. 40, Statutes of Nevada 2019, at page 4630; File No. 41, Statutes of Nevada 2021, at page 4035) At the 2022 General Election, the voters of this State approved Ballot Question No. 2, approving those amendments to the Nevada Constitution. As such, as of July 1, 2024, the Nevada Constitution requires an employer to pay a minimum wage of not less than \$12 per hour worked, regardless of whether the employer provides health benefits to employees.

Section 1 of this regulation revises certain provisions of existing regulations concerning the minimum wage that were adopted before July 1, 2024, to specify, consistent with the provisions of the Nevada Constitution, as those provisions currently exist, that the minimum wage for an employee in the State of Nevada is not less than \$12 per hour worked whether the employee is a full time, permanent, part-time, probationary or temporary employee. **Section 3** of this regulation repeals certain obsolete regulations that were adopted before July 1, 2024, which set out certain requirements and restrictions concerning the minimum wage a private employer is required to pay an employee per hour worked based upon whether the employer provides certain health benefits to the employee. (NAC 608.102-608.108, 608.123)

Existing regulations provide that if an employer and an employee agree that the employee is to be paid by commission based upon a sale, the employer is required to pay the employee when the commission becomes payable pursuant to the agreement. (NAC 608.120) **Section 2** of this regulation provides that before an employee may file a complaint or claim with the Labor Commissioner for the payment of commissions owed, the employee is required to submit a written request to the employer for the payment of the commissions owed. The request is required to include, without limitation, an accounting that shows the total amount of the commissions that the employee believes he or she is owed. Under **section 2**, after receiving the request, the employer has 15 days to: (1) respond to the request; (2) pay the employee the commissions owed; or (3) reach an agreement with the employee for payment of the commissions owed.

Section 1. NAC 608.100 is hereby amended to read as follows:

608.100 1. Except as otherwise provided in ~~subsections~~ *subsection 2*, ~~and 3,~~ the minimum wage for an employee in the State of Nevada is ~~the same~~ *not less than \$12 per hour worked* whether the employee is a full-time, permanent, part-time, probationary or temporary employee. ~~and:~~

~~—(a) If an employee is offered qualified health insurance, is \$5.15 per hour; or~~

~~—(b) If an employee is not offered qualified health insurance, is \$6.15 per hour.]~~

2. ~~[The rates set forth in subsection 1 may change based on the annual adjustments set forth in Section 16 of Article 15 of the Nevada Constitution.~~

~~—3.]~~ The minimum wage provided in subsection 1 does not apply to:

(a) A person under 18 years of age;

(b) A person employed by a nonprofit organization for after-school or summer employment;

(c) A person employed as a trainee for a period not longer than 90 days, as described by the

United States Department of Labor pursuant to section 6(g) of the Fair Labor Standards Act; or

(d) A person employed under a valid collective bargaining agreement in which wage, tip credit or other provisions set forth in Section 16 of Article 15 of the Nevada Constitution have been waived in clear and unambiguous terms.

~~{4. As used in this section, “qualified health insurance” means health insurance coverage offered by an employer which meets the requirements of NAC 608.102.}~~

Sec. 2. NAC 608.120 is hereby amended to read as follows:

608.120 1. If an employer and an employee agree that the employee is to be paid by commission based upon a sale, the employer shall pay each commission to the employee when the commission becomes payable pursuant to the agreement.

2. If the agreement described in subsection 1 is not in writing, the terms and conditions of the agreement may be determined by the facts and circumstances related to the course of dealing between the employer and the employee.

3. All commissions that an employer pays to an employee during a pay period may be used to meet the minimum wage requirement described in subsection ~~{3} 1~~ of NAC ~~{608.115.}~~ **608.100.**

4. Before an employee may file a complaint or claim for the payment of commissions owed, the employee shall submit to the employer a written request for the payment of the commissions owed. The request must include, without limitation, an accounting that shows the total amount of the commissions that the employee believes he or she is owed. The employer shall have 15 days after receiving the request to:

(a) Respond to the request;

(b) Pay the employee the commissions owed; or

(c) Reach an agreement with the employee for the payment of commissions owed.

Sec. 3. NAC 608.102, 608.104, 608.106, 608.108 and 608.123 are hereby repealed.

TEXT OF REPEALED SECTIONS

608.102 Minimum wage: Qualification to pay lower rate to employee offered health insurance. (Nev. Const. Art. 15, § 16; NRS 607.160, 608.250) To qualify to pay an employee the minimum wage set forth in paragraph (a) of subsection 1 of NAC 608.100, an employer must meet each of the following requirements:

1. The employer must offer a health insurance plan which:

(a) Covers those categories of health care expenses that are generally deductible by an employee on his or her individual federal income tax return pursuant to 26 U.S.C. § 213 and any federal regulations relating thereto, if such expenses had been borne directly by the employee; or

(b) Provides health benefits pursuant to a Taft-Hartley trust which:

(1) Is formed pursuant to 29 U.S.C. § 186(c)(5); and

(2) Qualifies as an employee welfare benefit plan:

(I) Under the guidelines of the Internal Revenue Service; or

(II) Pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §

1001 et seq.

2. The health insurance plan must be made available to the employee and any dependents of the employee. The Labor Commissioner will consider such a health insurance plan to be available to the employee and any dependents of the employee when:

(a) An employer contracts for or otherwise maintains the health insurance plan for the class of employees of which the employee is a member, subject only to fulfillment of conditions required to complete the coverage which are applicable to all similarly situated employees within the same class; and

(b) The waiting period for the health insurance plan is not more than 6 months.

3. The share of the cost of the premium for the health insurance plan paid by the employee must not exceed 10 percent of the gross taxable income of the employee attributable to the employer under the Internal Revenue Code, as determined pursuant to the provisions of NAC 608.104.

608.104 Minimum wage: Determination of whether employee share of premium of qualified health insurance exceeds 10 percent of gross taxable income. (Nev. Const. Art. 15, § 16; NRS 607.160, 608.250)

1. To determine whether the share of the cost of the premium of the qualified health insurance paid by the employee does not exceed 10 percent of the gross taxable income of the employee attributable to the employer, an employer may:

(a) For an employee for whom the employer has issued a Form W-2 for the immediately preceding year, divide the gross taxable income of the employee paid by the employer into the projected share of the premiums to be paid by the employee for the health insurance plan for the current year;

(b) For an employee for whom the employer has not issued a Form W-2, but for whom the employer has payroll information for the four previous quarters, divide the combined total of gross taxable income normally calculated from the payroll information from the four previous quarters into the projected share of the premiums to be paid by the employee for qualified health insurance for the current year;

(c) For an employee for whom there is less than 1 aggregate year of payroll information:

(1) Determine the combined total gross taxable income normally calculated from the total payroll information available for the employee and divide that number by the number of weeks the total payroll information represents;

(2) Multiply the amount determined pursuant to subparagraph (1) by 52; and

(3) Divide the amount calculated pursuant to subparagraph (2) into the projected share of the premiums to be paid by the employee for qualified health insurance for the current year; and

(d) For a new employee, promoted employee or an employee who turns 18 years of age during employment, use the payroll information for the first two normal payroll periods completed by the employee and calculate the gross taxable income using the formula set forth in paragraph (c).

2. As used in this section, “gross taxable income of the employee attributable to the employer” means the amount specified on the Form W-2 issued by the employer to the employee and includes, without limitation, tips, bonuses or other compensation as required for purposes of federal individual income tax.

608.106 Minimum wage: Declination by employee of coverage under health insurance plan. (Nev. Const. Art. 15, § 16; NRS 607.160, 608.250) If an employee declines coverage

under a health insurance plan that meets the requirements of NAC 608.102 and which is offered by the employer, the employer must maintain documentation that the employee has declined coverage. Declining coverage may not be a term or condition of employment.

608.108 Minimum wage: Requirements for payment at higher rate; modification of term of waiting period. (Nev. Const. Art. 15, § 16; NRS 607.160, 608.250) If an employer does not offer a health insurance plan, or the health insurance plan is not available or is not provided within 6 months of employment, the employee must be paid at least the minimum wage set forth in paragraph (b) of subsection 1 of NAC 608.100 until such time as the employee becomes eligible for and is offered coverage under a health insurance plan that meets the requirements of NAC 608.102 or until such a health insurance plan becomes effective. The term of the waiting period may be modified in a bona fide collective bargaining agreement if the modification is explicitly set forth in such agreement in clear and unambiguous terms.

608.123 Compensation for overtime: Payment based upon requirements for minimum wage. (Nev. Const. Art. 15, § 16; NRS 607.160, 608.018, 608.250) For purposes of complying with the daily overtime provisions of subsection 1 of NRS 608.018, an employer shall pay overtime based upon the minimum wage which must be paid pursuant to the provisions of NAC 608.100 to 608.108, inclusive.