

**ADOPTED REGULATION OF THE
DIVISION OF INDUSTRIAL RELATIONS OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R110-25

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

AUTHORITY: §§ 1 and 2, NRS 618.295 and 618.880; §§ 3-6, NRS 618.295; §§ 7-13, NRS 618.295, 618.760 and 618.765.

A REGULATION relating to occupational safety; revising the address for certain deliveries to the Nevada Occupational Safety and Health Administration of the Division of Industrial Relations of the Department of Business and Industry; increasing the minimum total construction cost of construction projects to which certain standards are applicable, certain notices are required to be given and an elevator or personnel hoist is required to be installed in certain circumstances; revising certain factors for consideration in adjusting certain penalties for violations of certain laws and regulations governing safety and health; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Division of Industrial Relations of the Department of Business and Industry to adopt such regulations as are necessary to provide safe and healthful employment in those employments within its jurisdiction. (NRS 618.295)

Sections 1, 2 and 5-13 of this regulation revise the mailing addresses of the Nevada Occupational Safety and Health Administration of the Division to which certain notifications, filings, applications and petitions must be delivered. (NAC 618.369, 618.384, 618.695, 618.710, 618.910, 618.913, 618.919, 618.923, 618.934, 618.944, 618.952)

Existing regulations define the term “construction project” as a project which involves a total construction cost of \$10,000,000 or more, not including costs for any related highway construction project, or which exceeds certain size limitations, and for which a contractor is required to comply with the *Safety Requirements for Steel Erection*, ANSI A10.13, 1989 edition, published by the American National Standards Institute, certain notices are required to be given before commencing construction and, subject to certain exceptions, an elevator or personnel hoist for transporting workers is required to be installed in certain circumstances. (NAC 618.494, 618.503, 618.505, 618.507) **Section 3** of this regulation increases from \$10,000,000 or more to

\$20,000,000 or more the amount of the total construction cost for a construction project to which these provisions apply.

Existing regulations authorize the Division to adjust the amount of certain assessed penalties for violations of the Nevada Occupational and Safety and Health Act and regulations adopted pursuant thereto. (NAC 618.6484) **Section 4** of this regulation makes various revisions to the factors the Division is authorized to consider when adjusting the penalties.

Section 1. NAC 618.369 is hereby amended to read as follows:

618.369 A certifying authority shall notify in writing the ~~{Nevada Occupational Safety and Health Administration, 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102,}~~ *Enforcement Section* within 5 working days after the certifying authority denies a certificate of operation for a tower crane.

Sec. 2. NAC 618.384 is hereby amended to read as follows:

618.384 A certifying authority shall notify in writing the ~~{Nevada Occupational Safety and Health Administration, 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102,}~~ *Enforcement Section* within 5 working days after the certifying authority denies a certificate of operation for a crane which is used to erect or dismantle a tower crane.

Sec. 3. NAC 618.494 is hereby amended to read as follows:

618.494 1. "Construction project" means a project which involves:

(a) A total construction cost of ~~10,000,000~~ **\$20,000,000** or more, not including costs for any related highway construction project;

(b) A new building or structure which, when completed, will be 50,000 square feet or more;

or

(c) A new building or structure which, when completed, will be more than 60 feet above the ground or more than 48 feet below ground level.

2. For the purposes of this section:

(a) The height of a building or structure must be determined by measuring from the ground level to the highest structural level of the building or structure, including any parapet wall, mechanical room, stair tower or elevator penthouse structure, but not including any antenna, smokestack, flagpole or similar attachment.

(b) The depth of a building or structure must be determined by measuring from the ground level to the lowest floor level of the building or structure. The lowest level of a building or structure does not include any local depression such as a sump or an elevator pit.

(c) In computing the height of a building or structure, the depth of the building or structure must not be considered, and in computing the depth of a building or structure, the height of the building must not be considered.

Sec. 4. NAC 618.6484 is hereby amended to read as follows:

618.6484 1. Before issuing a citation, the Division may adjust the amount of a proposed penalty as provided in subsection 2 based on:

(a) The size of the employer;

(b) The good faith *efforts* of the employer ~~to~~ *to implement an effective safety program as described in NRS 618.383;*

(c) ~~The immediate abatement of a hazard; and~~

~~—(d)~~ The employer's history of previous violations ~~to~~ *;* **and**

(d) The immediate abatement of a hazard.

2. Except as otherwise provided in this subsection and subsection 4, the adjustments which may be made to a penalty pursuant to subsection 1 are as follows:

(a) ~~HA~~ *Except as otherwise provided in paragraph (b), a* reduction based on the number of employees that are employed by the cited employer, not to exceed a reduction of

~~70~~:

(1) *Seventy* percent of the penalty for an employer with ~~10~~ 25 or fewer employees ~~H~~;

(2) *Thirty percent of the penalty for an employer with at least 26 but not more than 100 employees; and*

(3) *Ten percent of the penalty for an employer with at least 101 but not more than 250 employees.*

(b) *For a violation that is classified as serious willful, a reduction based on the number of employees that are employed by the cited employer, not to exceed a reduction of:*

(1) *Eighty percent of the penalty for an employer with 20 or fewer employees;*

(2) *Fifty percent of the penalty for an employer with at least 21 but not more than 30 employees;*

(3) *Forty percent of the penalty for an employer with at least 31 but not more than 40 employees;*

(4) *Thirty percent of the penalty for an employer with at least 41 but not more than 50 employees;*

(5) *Twenty percent of the penalty for an employer with at least 51 but not more than 100 employees; and*

(6) Ten percent of the penalty for an employer with at least 101 but not more than 250 employees.

(c) A penalty may be reduced pursuant to ~~#{this paragraph}#~~ ***paragraphs (a) and (b)*** for:

- (1)*** A violation that is classified as serious or within a classification other than serious;
- (2)*** A violation of a willful nature; or
- (3)*** Repeated violations.

~~#{b}#~~ ***(d)*** A reduction based on the employer's demonstration of good faith ***efforts*** in implementing an effective safety program as described in NRS 618.383, not to exceed a reduction of ~~#{25}#~~ :

(1) Twenty-five percent of the penalty for an employer with a fully implemented and effective safety program, as determined by the inspector ~~#{1}#~~ ; ***or***

(2) Fifteen percent of the penalty for an employer with an implemented and effective safety program, which may be only minimally deficient, as determined by the inspector.

(e) A penalty may not be reduced pursuant to ~~#{this}#~~ ***paragraph (d)*** for:

- (1) A serious violation of high gravity;***
- (2)*** A violation of a willful nature; ~~#{or}#~~

~~—#{2}#~~ ***(3)*** Repeated violations ~~#{1}#~~.

~~—(c) A reduction based on the immediate correction by the employer of the cited hazard, not to exceed a reduction of 15 percent of the penalty. For the purposes of this paragraph, an immediate correction is one that is made not later than 24 hours after the violation is identified during an inspection. A penalty may not be reduced pursuant to this paragraph for:~~

~~—(1) A serious violation of high gravity;~~

- ~~— (2) A violation of a willful nature;~~
- ~~— (3) Repeated violations;~~
- ~~— (4) Failure to abate or correct a violation which was identified during an inspection;~~
- ~~— (5) Failure to report a fatality, the inpatient hospitalization of one or more employees, the amputation of a part of an employee's body or an employee's loss of an eye pursuant to the requirements of NRS 618.378; or~~
- ~~— (6) Failure or a major deficiency in:~~
 - ~~— (I) Establishing a written safety program pursuant to the requirements of NRS 618.383;~~
- ~~or~~
- ~~— (II) Carrying out the requirements of the program.~~
- ~~— (d) ;~~

- (4) Failure to abate or correct a violation which was identified during an inspection;*
- (5) Any other violation identified during the same or a concurrent inspection in which a violation described in subparagraph (2), (3) or (4) is identified;*
- (6) Failure to report a fatality, the inpatient hospitalization of one or more employees, the amputation of a part of an employee's body or an employee's loss of an eye pursuant to the requirements of NRS 618.378; or*
- (7) Failure or a major deficiency in:*
 - (I) Establishing a written safety program pursuant to the requirements of NRS 618.383; or*
 - (II) Carrying out the requirements of the program.*

(f) An adjustment based on the cited employer's history of previous safety and health inspections, ~~{within the 5 years immediately preceding the issuance of the citation,}~~ as follows:

(1) A reduction of ~~{10}~~ *not more than 20* percent may be applied to the penalty for an employer which has:

(I) Been inspected ~~{previously}~~ *within the 5 years immediately preceding the issuance of the citation* with no citations issued; ~~{or}~~

(II) Been cited ~~{previously}~~ *within the 5 years immediately preceding the issuance of the citation* for violations which are classified as other than serious ~~{1}~~; *or*

(III) Not previously been inspected.

(2) No adjustment *otherwise authorized in this paragraph* may be applied to the penalty for an employer which ~~{has been cited for}~~ :

(I) Has been issued a citation for a serious violation, not ~~{of}~~ classified as high gravity ~~{1}~~, that has become a final order within the 5 years immediately preceding the issuance of the citation; or

(II) Has not been inspected within the 5 years immediately preceding the issuance of the citation but has been inspected before that 5-year period.

(3) An increase of 10 percent may be applied to the penalty for an employer which has been cited ~~{previously}~~ *within the 5 years immediately preceding the issuance of the citation* for:

(I) A serious violation of high gravity;

(II) Repeated violations;

(III) A violation of a willful nature; or

(IV) Failure to abate or correct violations that were previously cited.

(g) A reduction based on the immediate correction of the employer of the cited hazard, not to exceed a reduction of 15 percent of the penalty. For the purposes of this paragraph, an immediate correction is one that is made at the time of inspection for apparent violations that can be corrected immediately, made not later than 5 days for more complex abatement actions or made not later than 15 days if there are extenuating circumstances, including, without limitation, if items are required to be ordered and shipped. A penalty may not be reduced pursuant to this paragraph for:

(1) A serious violation of high gravity;

(2) A violation of a willful nature;

(3) Repeated violations;

(4) Failure to abate or correct a violation that was identified during an inspection;

(5) A blatant violation that can be easily corrected and that indicates the employer failed to take basic steps to manage the safety or health of workers; or

(6) A violation related to a fatal injury or illness or an incident resulting in serious injury.

3. Except as otherwise provided in subsection 4, adjustments made pursuant to subsection 2, if any, must be considered and applied in the order set forth in subsection 2.

4. A penalty may not be reduced to an amount less than the allowable monetary amount of the corresponding civil penalty for the applicable violation of 29 U.S.C. § 666, including any adjustments made to the civil penalty pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74.

5. Each district manager retains the authority to determine the appropriateness of any adjustment to a penalty and may refuse to consider an adjustment to a penalty if the district manager believes that imposing the full amount of the penalty is necessary to achieve the appropriate deterrent effect.

Sec. 5. NAC 618.695 is hereby amended to read as follows:

618.695 1. Before the Board is notified of an appeal or contest, all papers required to be filed must be filed with the Chief. ~~at 400 West King Street, Suite 400, Carson City, Nevada 89703.~~ After the Board is notified of an appeal or contest, all papers required to be filed must be filed with the Board at the address given in the notice of the appeal or contest.

2. Except as otherwise ordered by the Chief or the Board, all papers required to be filed must be filed by first-class certified mail, return receipt requested, or by personal delivery, with an affidavit of service.

3. The filing is effective at the time of mailing.

Sec. 6. NAC 618.710 is hereby amended to read as follows:

618.710 1. If an affected employee is not represented by an authorized employee representative, the employer shall, immediately upon receipt of the notice sent by the Enforcement Section to the Board, post, where the citation is required to be posted, a copy of the statement informing affected employees of their right to participate as a party and of the availability of all pleadings for inspection and copying at reasonable times. The notice may be in the following form:

(Name of employer)

Your employer has been cited by the Chief of the Occupational Safety and Health Enforcement Section of the Division of Industrial Relations of the Department of Business and Industry for violation of the Nevada Occupational Safety and Health Act, chapter 618 of NRS. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Board. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Board in NAC 618.650 to 618.848, inclusive. Notice of intent to participate must be sent, at least 30 days before the date of the hearing, to:

Occupational Safety and Health Review Board

~~{400 West King Street, Suite 200~~

~~—Carson City, Nevada 89703}~~ *The mailing address designated for the Occupational Safety and Health Review Board on the Internet website of the Division of Industrial Relations of the Department of Business and Industry at [https://dir.nv.gov/OSHA/Review Board/Review Board Main Page/](https://dir.nv.gov/OSHA/Review_Board/Review_Board_Main_Page/).*

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace).

If appropriate, the second sentence of this notice may be deleted and the following sentence may be substituted:

The reasonableness of the period prescribed by the Chief for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Board.

2. The authorized employee representative must be served with the notice in subsection 1 and with a copy of the notice of the appeal or contest.

3. A copy of the notice of the hearing to be held before the Board must be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of the hearing at or near the place where the citation is required to be posted.

4. A copy of the notice of the hearing to be held before the Board must be served by the employer on the authorized representative of any employee who has entered an appearance as of the date the notice is received by the employer.

5. If a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall serve a copy on the authorized representative as prescribed in subsection 3 of NAC 618.707 and file proof of the service.

6. If a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and the response filed in support of the contest must be provided to the employer for posting as prescribed in subsection 1.

7. An authorized employee representative who files a notice of contest shall serve a copy of the notice on any other authorized employee representative whose members are affected employees.

8. Where posting is required by this section, the posting must be maintained until the commencement of the hearing or until an earlier disposition of the contest or appeal.

Sec. 7. NAC 618.910 is hereby amended to read as follows:

618.910 1. A person who wishes to apply for an initial license as a contractor, supervisor, abatement worker or consultant must submit a signed, completed application with all necessary documentation to the Enforcement Section on a form provided by the Enforcement Section, accompanied by a copy of any valid government-issued identification card of the applicant.

2. An application for initial licensing must be delivered to the Enforcement Section . ~~at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102 or 4600 Kietzke Lane, Suite F-153, Reno, Nevada 89502.~~

3. The Enforcement Section may, within 30 days after the receipt of an application, require further information to determine whether the application should be approved or denied.

4. If the Enforcement Section requests further information from an applicant and does not receive that information within 60 days after the date of the request, the application will be considered abandoned and the request for an initial license will be denied.

5. An applicant must include his or her mailing address on the application and immediately notify the Enforcement Section of any change in that address. Any notification of a change of address received by the Enforcement Section acts as an amendment to the original application. The address stated on the original application or as amended must be the proper mailing address for all filings, postings and communications made by mail between the Enforcement Section and the applicant.

6. A license issued by the Enforcement Section is valid:

(a) Until the expiration date of the certificate for a training course or a refresher training course; or

(b) For 1 year,

↳ whichever occurs earlier.

Sec. 8. NAC 618.913 is hereby amended to read as follows:

618.913 1. A licensee must submit an application for the renewal of his or her license before the license expires.

2. An application for the renewal of a license must be submitted on a form provided by the Enforcement Section and delivered to the Enforcement Section . ~~at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102 or 4600 Kietzke Lane, Suite F-153, Reno, Nevada 89502.~~

3. An application must be accompanied by:

(a) Evidence that the applicant has, within the preceding 12 months, completed a refresher training course approved by the EPA for his or her discipline; and

(b) The applicable fee for renewal.

4. The renewal of a license is not effective until final action on the application is taken by the Enforcement Section.

5. An application for the renewal of a license must include the applicant's mailing address. The applicant shall immediately notify the Enforcement Section of any change in that address. Any notification of a change of address received by the Enforcement Section acts as an immediate amendment to the original application. The address stated on the original application or amended application must be the proper mailing address for all filings, postings and communications made by mail between the Enforcement Section and the licensee.

6. Before the license of a contractor or consultant may be renewed, the contractor or consultant must abate all conditions for which the contractor or consultant has been issued a citation by the Enforcement Section and pay all fines due to the Division.

Sec. 9. NAC 618.919 is hereby amended to read as follows:

618.919 1. A person who has complied with all of the requirements to be a contractor, except the requirements relating to experience, may apply to the Enforcement Section for permission to be a limited contractor.

2. An application made pursuant to subsection 1 must be made in writing and delivered to the Enforcement Section . ~~at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102 or 4600 Kietzke Lane, Suite F-153, Reno, Nevada 89502.~~

3. Permission to act as a limited contractor:

(a) Authorizes the limited contractor to perform a progression of projects for the abatement of asbestos, from simple inexpensive projects to difficult and complex projects;

(b) Is effective upon notification by the Enforcement Section; and

(c) Is limited to those situations where a project for the abatement of asbestos is supervised by a licensed supervisor who is experienced in the type of project performed.

Sec. 10. NAC 618.923 is hereby amended to read as follows:

618.923 1. A person who has complied with all the requirements to be a supervisor, except for the requirements relating to experience, may apply to the Enforcement Section for permission to be a probationary supervisor.

2. An application made pursuant to subsection 1 must be made in writing and delivered to the ~~Enforcement Section at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102.~~

Chief.

3. A person may act as a probationary supervisor for not more than 4 consecutive months.

4. Permission to act as a probationary supervisor is effective upon notification by the Enforcement Section and is limited to those situations where a project for the abatement of asbestos must have other licensed supervisors present to assist the probationary supervisory in organizing the work site and overseeing the project.

Sec. 11. NAC 618.934 is hereby amended to read as follows:

618.934 1. A person who has complied with all of the requirements to be an inspector, except for the requirements relating to experience, may apply to the Enforcement Section for permission to be an inspector trainee.

2. An application made pursuant to subsection 1 must be made in writing and delivered to the ~~Enforcement Section at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102.~~

Chief.

3. Permission to act as an inspector trainee is effective upon notification by the Enforcement Section and is limited to those situations in which all services provided as an inspector trainee will be rendered under the direct supervision of a licensed inspector or management planner.

Sec. 12. NAC 618.944 is hereby amended to read as follows:

618.944 1. A person who has complied with all of the requirements to be a monitor, except the requirement relating to experience, may apply to the Enforcement Section for permission to be a monitor trainee.

2. An application made pursuant to subsection 1 must be made in writing and delivered to the ~~{Enforcement Section at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102.}~~

Chief.

3. Permission to act as a monitor trainee is effective upon notification by the Enforcement Section and is limited to those situations in which all services provided as a monitor trainee will be rendered under the direct supervision of a licensed monitor.

Sec. 13. NAC 618.952 is hereby amended to read as follows:

618.952 1. A person may request the Enforcement Section to determine whether an activity is an activity for the abatement of asbestos and subject to the requirements of NAC 618.850 to 618.986, inclusive, by requesting the Enforcement Section to issue a declaratory order.

2. Any request for a declaratory order must be submitted in the form of a written petition and submitted to the ~~{Enforcement Section at 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada 89102.}~~ *Chief.* The petition must describe:

(a) The material containing asbestos;

- (b) The proposed activity;
- (c) The site at which the activity will be conducted;
- (d) The nature of the work to be done; and
- (e) The results of any tests conducted on samples of material to be disturbed or encapsulated.

3. The Enforcement Section will issue a declaratory order in writing not later than 15 days after receiving a written petition. The order must be signed by the Chief.

4. A declaratory order may be appealed to the Administrator within 15 days after it is issued. An order not appealed within that time is final.