

**ADOPTED REGULATION OF THE  
LABOR COMMISSIONER**

**LCB File No. R055-07**

Effective October 31, 2007

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

AUTHORITY: §§1-12, Nev. Const. Art. 15, § 16 and NRS 607.160 and 608.255.

A REGULATION relating to minimum wages; clarifying the employees to whom minimum wages must be paid; determining the applicability of the rate of minimum wage that is required to be paid based on the provision of a health insurance plan by an employer; 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 to 7, inclusive, of this regulation.

**Sec. 2. 1.** *Except as otherwise provided in subsections 2 and 3, the minimum wage for an employee in the State of Nevada is the same 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 section 3 of this regulation.*

*Sec. 3. To qualify to pay an employee the minimum wage set forth in paragraph (a) of subsection 1 of section 2 of this regulation, 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 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 section 4 of this regulation.*

**Sec. 4. 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. For purposes of 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.*

**Sec. 5.** *If an employee declines coverage under a health insurance plan that meets the requirements of section 3 of this regulation 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.*

**Sec. 6.** *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 section 2 of this regulation until such time as the employee becomes eligible for and is offered coverage under a health insurance plan that meets the requirements of section 3 of this regulation 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.*

**Sec. 7.** *For purposes of complying with the daily overtime provisions of section 1 of NRS 608.018, an employer shall pay overtime based upon the minimum wage which must be paid pursuant to the provisions of sections 2 to 6, inclusive, of this regulation.*

**Sec. 8.** 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 to 7 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. 9.** NAC 608.225 is hereby amended to read as follows:

608.225 “Handicapped worker” means a person whose productive capacity for the work to be performed is impaired by a physical or mental disability to the extent that he is unable to earn at least the minimum wage prescribed for him by ~~NAC 608.110.~~ *section 2 of this regulation.*

**Sec. 10.** NAC 608.240 is hereby amended to read as follows:

608.240 “Nondisabled worker” means a person whose productive capacity for the work to be performed is not impaired by any physical or mental disability or, if impaired, is not impaired

to the extent that he is unable to earn at least the minimum wage prescribed for him by ~~NAC 608.110.~~ *section 2 of this regulation.*

**Sec. 11.** NAC 608.250 is hereby amended to read as follows:

608.250 “Special minimum wage” means the wage paid to a handicapped worker, pursuant to a certificate issued by the Division, which is less than the minimum wage otherwise prescribed for that worker by ~~NAC 608.110.~~ *section 2 of this regulation.*

**Sec. 12.** NAC 608.110 is hereby repealed.

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**TEXT OF REPEALED SECTION**

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**608.110 Minimum wage. (NRS 608.250)** The minimum wage for an employee in private employment who:

1. Is 18 years of age or older is \$5.15 per hour.
2. Is under 18 years of age is \$4.38 per hour.

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R055-07**

The Labor Commissioner adopted regulations assigned LCB File No. R055-07 which pertain to chapter 608 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

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

Copies of the proposed regulations, notices of workshop and notices of intent to act upon regulation were sent by U.S. mail to persons who were known to have an interest in the rule-making process of the Office of the Labor Commission as well as any person who had specifically requested such notice. These documents were also made available at the website of the Office of the Labor Commissioner, [www.laborcommissioner.com](http://www.laborcommissioner.com), mailed to all county libraries in the State of Nevada and posted at the following locations:

Office of the Labor Commissioner  
555 W. Washington Avenue  
Suite 4100  
Las Vegas, NV

Grant Sawyer State Office Building (Lobby)  
555 E. Washington Avenue  
Las Vegas, NV

Office of the Labor Commissioner  
675 Fairview Drive  
Suite 226  
Carson City, NV

Carson City District Courthouse  
885 E. Musser Street  
Carson City, NV

Legislative Building  
401 S. Carson Street  
Carson City, NV

State of Nevada Bradley Building  
2501 Sahara Avenue  
Las Vegas, NV

Prior to the September 20, 2007 public hearing in which the submitted amendments to NAC 608 were adopted, there were two workshops and a public hearing on the adoption of temporary regulation held in an effort to solicit public comment on these issues. The temporary regulations,

adopted on March 5, 2007, were identified by LCB File No. T004-07. In addition, interested parties have been encouraged to submit written public comment.

Copies of the written comments may be obtained by contacting the Office of the Labor Commission at 675 Fairview Drive, Carson City, Nevada 89701.

- 2. The Number of persons who:**
  - a. Attended the September 20, 2007 Public Hearing: 8**
  - a. Testified during the August 28, 2002 Public Hearing: 3**
  - b. Attended the March 5, 2007 Public Hearing (Temp. Reg.): 44**
  - c. Testified during the August 28, 2002 Public Hearing: 7**
  - d. Attended the January 25, 2007 Workshop: 119**
  - e. Attended the January 22, 2007 Workshop: 60**
  - f. Written comments received by the Labor Commissioner:**

Written comments were submitted by:

James S. Cogburn	Dennis Kist
Cicilia Renn Kurzweg	Samuel P. McMullen
Andrea C. McHenry	Jen J. Sarafina
Gary Reed	Tom Haynie
Larry Harvey	

- 3. A description of how comment was solicited from the affected businesses, a summary of their response, and an explanation as to how other interested parties may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. Copies of the written comments may be obtained by contacting the Office of the Labor Commission at 675 Fairview Drive, Carson City, Nevada 89701.

- 4. 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 permanent Regulation was adopted on September 20, 2007 and included changes suggested by those who had submitted written comments and supported by those providing direct testimony. The changes concerned the six-month waiting period for employers offering comprehensive health coverage.

- 5. The estimated economic effect of the adopted regulation on the businesses that it is to regulate and on the public.**

- a. Adverse Effects:** No adverse effects are contemplated from the regulations per se, however effects from the constitutional amendment itself are significant but cannot be quantified at this time.

- b. Beneficial Effects:** As a result of the regulations there should be less confusion among employers and employees resulting from ambiguities in the text of the amendment.

- c. Immediate effects:** See 3b.

- d. Long Term effects:** See 3b

**6. The Estimated cost to the agency for enforcement of the adopted regulation.**

There will be no additional cost to the agency for enforcement of this Regulation.

**7. A description of any regulation of other state or governmental 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 would not duplicate the regulations of any other state or local governmental agency. The state has concurrent jurisdiction with the US Department of Labor over wages and hours issues.

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

Nevada's constitutional minimum wage provisions are more stringent than federal law and these regulations reflect those higher standards. Among the provisions that are more stringent than the federal requirements are the minimum wage rates, annual adjustments, exemptions, and overtime.

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

The proposed regulation does not establish a new fee nor increases an existing fee.

**10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

To determine the impact on small business, the agency solicited testimony from impacted business during the temporary rule-making process. That process included two workshops and a public hearing. While the impact of the constitutional amendment that necessitated this rule-making process may be significant, although impossible to quantify at this time, the proposed regulations per se have no adverse impact.