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BIENNIAL REPORT 2016 through 2018 – NEVADA REVISED STATUTES (NRS) 607.080

VISION AND MISSION

To continue to educate, inform, and guide Nevada employers and employees on wage and labor issues in an ever changing and growing economy to ensure that business keeps growing and employment opportunities keep expanding throughout the State of Nevada

The Office of the Labor Commissioner is the principal wage and hour and labor regulatory agency for the State of Nevada. It is the mission of this office to resolve labor-related problems in an efficient, professional, and effective manner. This includes educating employers and employees regarding their rights and responsibilities under the law in an effort to promote the growth of business in Nevada. Additionally, it includes taking enforcement action when necessary, to ensure that Nevada's workers are treated fairly and compensated for all time worked.

STATUTORY AUTHORITY NEVADA REVISED STATUTES (NRS) REGULATORY AUTHORITY/NEVADA ADMINISTRATIVE CODE (NAC)

NRS 607 – Office of the Labor Commissioner	NAC 607 – Rules of Practice
NRS 608 – Compensation, Wages and Hours	NAC 608 – Compensation, Wages and Hours
NRS 609 – Employment of Minors	NAC 609 – Employment of Minors
NRS 611 – Private Employment Agencies	NAC 611 – Private Employment Agencies
NRS 613 – Employment Practices*	NAC 613 – Employment Practices
NRS 614 – Organized Labor and Labor Disputes	NAC 338 – Public Works
NRS 338 – Public Works	

**NRS 613.040-13.070 and NRS 613.310-613.435 are not enforced by the Labor Commissioner.*

FUNDING – AGENCY 752/BUDGET ACCOUNT 3900

The Office of the Labor Commissioner receives its entire budget from the General Fund.

AGENCY STATISTICS

Wage Claims

Total Wage Claims for Fiscal Years (FY/FY's) 2017-2018 (July 1, 2016 – June 30, 2018) = 5,905 (FY17 2,920); (FY18 2,985)

Total Wages Collected for Claimants Fiscal Years 2017-2018 (July 1, 2016 – June 30, 2018) = \$2,377,782.36 (FY17 \$1,250,410.83); (FY18 \$1,127,371.53)

Total Penalties Collected and Paid to Wage Claimants for Fiscal Years 2017-2018 (July 1, 2016 – June 30, 2018) = \$265,007.70 (FY17 \$113,984.69); (FY18 \$151,023.01)

Prevailing Wage Claims

Total Prevailing Wage Claims for Fiscal Years 2017-2018 (July 1, 2016 – June 30, 2018) = 440 (FY17 292); (FY18 148)

Total Prevailing Wages Collected for Claimants for Fiscal Years 2017-2018 (July 1, 2016 – June 30, 2018) = \$353,736.53 (FY17 \$32,230.30); (FY18 \$321,506.23)

Total Penalties/Forfeitures Assessed for Fiscal Years 2017-2018 (July 1, 2016 – June 30, 2018) = \$202,391.56 (FY17 \$54,190.00); (FY18 \$148,201.56)

Public Works Projects Numbers (#'s)

Public Works Projects #'s for Fiscal Years 2017-2018 (July 1, 2016 – June 30, 2018) = 1,196 [FY17 551 (268 Northern Nevada/ 283 Southern Nevada)]; [FY18 645 (287 Northern Nevada/358 Southern Nevada)]

Administrative Penalties/Fines (Deposited in General Fund)

Total Administrative Fines for Fiscal Years 2017-2018 (July 1, 2016 – June 30, 2018) = \$146,508.05 (FY17 \$43,000.00) (FY18 \$103,508.05)

Private Employment Agencies

There are currently 136 Private Employment Agencies licensed in the State of Nevada.

I. AGENCY ACCOMPLISHMENTS SINCE LAST BIENNIAL REPORT

Las Vegas Office Move – During the 2015 Legislative Session, the Office of the Labor Commissioner received approval to move the Carson City and Las Vegas office locations. In March 2017, the Office of the Labor Commissioner moved into the Nevada Business Center at 3300 West Sahara Avenue, Suite 225, Las Vegas, Nevada, 89102. The new office is centrally located next to several Department of Business and Industry Divisions' and the Director's Office for the Department of Business and Industry.

The new office location has plenty of parking, allows for walk in traffic, and has a public space and countertop where potential Wage Claimants can drop off or fill out paperwork as needed. The new location also has a Conference Room that can be utilized for hearings and meetings.

Full Implementation of Electronic Case Management System for Wage Claims and Public Works Projects and Prevailing Wage – A new Case Management System called i-Sight was also approved during the 2015 Legislative Session with additional upgrades approved during the 2017 Legislative Session relating to Public Works Projects and the Prevailing Wage Survey. On April 1, 2016, the i-Sight Case Management System for Wage Claims and General Complaints was fully implemented by the Office of the Labor Commissioner. It replaced an old unsupported case tracking system called the Labor Case Tracking System (LCTS) that was over 10 years old.

On April 1, 2018, the Prevailing Wage Survey and Public Works Projects upgrades were implemented. The i-Sight Case Management System provides for the Electronic Filing of Wage Claims, Prevailing Wage Claims, General Complaints, Public Works Project requests, and the Prevailing Wage Survey. It also provides for electronic reporting and responses, and for electronic communication concerning Wage Claims, Prevailing Wage Claims, and General Complaints, and for the production of documents within the system.

New Website – The Office of the Labor Commissioner's new website is www.labor.nv.gov
A tutorial video was also placed on the new website in both English and Spanish on how to file Wage Claims/Complaints with our office.

Education and Outreach – Since July of 2016, the Office of the Labor Commissioner has conducted over 20 training seminars for employers and employees. A brochure on the laws and regulations governing minimum wage and overtime was also developed and distributed to employers and employees throughout the State.

II. OFFICE OF THE LABOR COMMISSIONER STAFF

The Office of the Labor Commissioner is Legislatively Approved for nineteen (19) positions. Five positions are located in Carson City, with fourteen located in the Las Vegas Office. This includes the Labor Commissioner, Deputy Labor Commissioner, Chief Assistant, Nine (9) Investigator/Auditor positions, and Seven (7) Administrative Positions. The Labor Commissioner is located in Carson City. The Deputy Labor Commissioner, Chief Assistant and Chief Investigator positions are located in the Las Vegas Office.

The Labor Commissioner and Deputy Labor Commissioner are responsible for conducting any Hearings that may be required as a result of a Wage Claim/Complaint or on matters involving Public Works/Prevailing Wage.

III. CORE FUNCTIONS OF THE OFFICE OF THE LABOR COMMISSIONER

Employment Practices

The Labor Commissioner ensures that certain safeguards and enforcement mechanisms exist in the workplace with regard to hours of service and working conditions. (See NRS and NAC section 613).

Minimum Wage Calculation

The Nevada Constitutional Amendment (Article 15, Section 16A) passed in 2006, governing Nevada's Minimum Wage, also known as the "Minimum Wage Amendment (MWA)," requires that "[T]he Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1."

The Office of the Labor Commissioner is the State agency that has been designated to make the minimum wage calculation and publish the bulletin.

In 2016, 2017, and 2018, the Minimum Wage Rates for the State of Nevada did not increase from the year before. Currently, Minimum Wage is \$7.25 for employees who are offered qualified health benefits, and \$8.25 for employees who are not offered qualified health benefits.

NRS and NAC section 608 set forth the requirements and exemptions for minimum wage and overtime. The *Yellow Cab (2014)* case found that the exemptions to minimum wage as set forth in NRS 608.250 were not applicable and that the only exemptions to minimum wage were found in the Minimum Wage Amendment (under 18 yrs. old, employed by non-profit for after school or summer employment, or as a trainee for a period not longer than 90 days).

In 2016, the Nevada Supreme Court ruled in the *Hancock* case that employers only need to offer health benefits in order to pay the lower \$7.25 rate. Similarly, in 2018, the Nevada Supreme Court ruled in *MDC Restaurants* that as long as the health benefits offered and/or received were equal to \$1.00, employees could pay the lower \$7.25 rate.

Wage Claim Disputes

Resolving wage disputes between employers and employees is the major responsibility and service provided by the Office of the Labor Commissioner. The process for the filing and resolution of Wage Claims is set forth in NRS and NAC sections 607 and 338. Once a Wage Claim is filed, it is assigned to an Investigator for Investigation. In most cases, the Wage Claim is able to be resolved prior to a Hearing. Because of the financial impact unpaid wages can have on employees and their families, we strive to resolve all claims as quickly as possible and within 90 days.

In Fiscal Years 2017-2018 (July 1, 2016 – June 30, 2018) the office received 5,905 claims and recovered \$2,377,782.36 in wages and \$265,007.07 in penalties for Wage Claimants.

Public Works/Prevailing Wage Enforcement and Administration

The Office of the Labor Commissioner determines minimum Prevailing Wage Rates to be paid on public works projects, as defined by NRS 338.010(16). The Office acts as the impartial body to set the prevailing wage rates for all job classifications and trades in all Nevada counties. This process is conducted through the survey process.

The agency administers and assigns identifying numbers for Public Works Projects as requested by Awarding Bodies (city, county, state, school district, etc.) and monitors and maintains contractor and subcontractor project files, including, certified payroll reports. Assembly Bill (AB) 172 passed during the 2015 Legislative Session raised the Public Works Project amount from \$100,000 to \$250,000. AB 172 also required payment of Prevailing Wages on school projects at 90% of the minimum Prevailing Wage Amount, and exempted Charter School Construction from Prevailing Wage requirements. In Fiscal Years 2017-2018 (July 1, 2016-June 30, 2018), there were 1,196 Public Works Projects numbers issued, with 555 in Northern Nevada, and 641 in Southern Nevada.

The Office of the Labor Commissioner also investigates Complaints/Wage Claims for failure to pay the required Prevailing Wage Rates. In Fiscal Years 2017-2018 (July 1, 2016 – June 30, 2018), there were 440 Prevailing Wage Complaints/Claims, with a total of \$353,736.53 in wages collected in addition to \$202,391.56 in penalties/forfeitures assessed.

If an Awarding Body or Contractor fails to comply with the Public Works Project/Prevailing Wage laws, they may be subject to an Administrative Fine/Penalty, and potential referral to the State Contractor's Board for Disqualification. In Fiscal Year 2018 alone (July 1, 2017 – June 30, 2018), a total of \$103,508.05, in Administrative Fines/Penalties were collected by this office and deposited in the General Fund.

Training from our office is conducted year round for Awarding Bodies and Contractors on Public Works/Prevailing Wage requirements.

Private Employment Agencies

The Office of the Labor Commissioner provides licensing and regulatory oversight of all Private Employment Agencies, commonly known as "Temp Agencies," in the state. (See NRS 611 and NAC 611). This includes enforcing the applicable application fee and the fee limits that Private Employment Agencies may assess individuals seeking employment through their firm. There are currently 136 licensed Private Employment Agencies.

Producer-Promoter Permits

NRS 608.310 requires a producer-promoter to obtain a permit from the Labor Commissioner and establish that they have the required bond or security deposit to pay employees. A “producer-promoter” means a natural person or a firm, association or corporation, which supervises or finances a production or attempts to organize a production. A “production” means a stage or screen production or a radio or television program using artists and includes the technical personnel used to create and produce it. Our office has received just a handful of claims related to these events that were quickly resolved.

Employment of Minors

The Labor Commissioner ensures that child labor laws outlined in NRS 609 and NAC 609 are adhered to, providing for the safety of minors in the workplace and ensuring they only work certain jobs, certain hours, and at certain ages. The Office of the Labor Commissioner collects and monitors work permits issued to minors.

2017 Legislative Summary

ASSEMBLY BILL 113 (Effective July 1, 2017) – Adds a new section to Nevada Revised Statutes (NRS) Section 608. This bill provides certain accommodations for nursing mothers whose child is under 1 years of age. Certain employers are to provide reasonable break times and a clean, private place for an employee who is a nursing mother to express breast milk. An exemption applies if the employer: (1) has fewer than 50 employees and compliance would cause an undue hardship; or (2) is a licensed contractor and the employee is performing construction at a construction jobsite that is at least 3 miles from the regular place of business of the employer.

SENATE BILL 232 (Effective January 1, 2018) – Adds a new section to Nevada Revised Statutes (NRS) Section 608. This bill enacts the Domestic Workers’ Bill of Rights. An employer and employee may mutually agree in the employment contract for compensation to consist of lodging and meals. Lodging may not be computed at more than five times the statutory minimum hourly wage for each week that lodging is provided to the employee. The value of the meal may not be computed at more than 100 percent of the statutory minimum hourly wage per day. A domestic worker residing in the household where they work may mutually agree with the employer in writing to be exempt from section 1 and 2 of NRS 608.018. Additionally an employer is to provide a domestic worker a written agreement outlining the terms of their employment. If a domestic worker is hired to work for 40 hours per week or more, his or her employer must provide a period of rest of at least 24 consecutive hours in each calendar week and at least 48 consecutive hours during each calendar month. The domestic worker may agree in writing to work on a scheduled day of rest, but must be compensated for such time pursuant to this section.

SENATE BILL 318 (Effective October 1, 2017) – Amends Nevada Revised Statutes (NRS) 608.0195. This bill expands the existing statute to employees who provide personal care services and allows sleep time to be excluded from payment unless the sleep time is interrupted for a certain period of time. If an employee is required to be on duty for 24 hours or more, the employer and employee may agree in writing to exclude from the employee’s wages a regularly scheduled sleeping period not to exceed 8 hours if adequate sleeping facilities are furnished by the employer of an

employee or in the home in which an employee provides personal care services. If the sleeping period is interrupted by any call for service by the employer, or for service to a person to whom the employee provides personal care services, the interruption must be counted as hours worked. If the sleeping period is interrupted by any call for service by the employer or for service to a person to whom the employee provides personal care services to such an extent that the sleeping period is less than 5 hours, the employee must be paid for the entire sleeping period.

SENATE BILL 361 (Effective January 1, 2018) – Adds a new section to Nevada Revised Statutes (NRS) Section 608. This bill provides that an employee who has been employed by an employer for at least 90 days and who is a victim of an act of which constitutes domestic violence, or whose family or household member is a victim of an act which constitutes domestic violence, is entitled to not more than 160 hours of leave in one 12-month period. The leave may be paid or unpaid by the employer. The employer of an employee who takes hours of leave pursuant to this section may require the employee to provide to the employer documentation that confirms or supports the reason the employee is requesting leave.

SENATE BILL 468 (Effective July 1, 2017) – Adds a new section to Nevada Revised Statutes (NRS) Section 608. This bill defines what a domestic service employee is. It also allows the following deductions from wages if the domestic service employee resides in the home and the employee and employer agree to in writing: 1) periods for meals of at least ½ hours; 2) periods for sleep not in excess of 8 hours; and 3) periods where the employee has complete freedom. The bill allows an agreement to be used to establish the total hours of employment in a pay period in lieu of maintaining a precise record of the number of hours worked per day. A domestic worker residing in the household where they work may mutually agree with the employer in writing to be exempt from section 1 and 2 of NRS 608.018.

SENATE BILL 516 (Effective July 1, 2017) - Pursuant to the passage of Senate Bill 516 during the 79th Legislative Session, the Governor's Office of Workforce Innovation (OWINN) is responsible for Nevada's Registered Apprenticeship programs and State Apprenticeship Council as of July 1, 2017.

***SENATE BILL 253 (Effective October 1, 2017)** – Adds a new section to Nevada Revised Statutes (NRS) Section 613. Enforcement of NRS 613 is overseen by the Nevada Equal Rights Commission and not the Office of the Labor Commissioner. This bill establishes the Nevada Pregnant Workers' Fairness Act. Employers, unless there would be undue hardship imposed against the business, must provide reasonable accommodations to pregnant employees or applicants relating to pregnancy, childbirth, or a related medical condition.

**Not enforced by the Office of the Labor Commissioner.*