

ADOPTED REGULATION OF THE LABOR COMMISSIONER

LCB File No. R090-04

Effective June 30, 2004

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

AUTHORITY: §§1-3, NRS 338.012; §4, NRS 338.040.

A REGULATION relating to public works; establishing requirements for contributions made to a third person in the name of a workman; providing the circumstances under which a workman performing the craft of truck driver will be deemed to be employed on a public work; revising the interpretation of “employed at the site of a public work” and “necessary in the execution of the contract for the public work” for the purposes of determining the circumstances under which a workman is deemed to be employed on a public work; and providing other matters properly relating thereto.

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *Contributions made pursuant to NRS 338.035 in the name of a workman to a third person pursuant to a fund, plan or program must be made in accordance with the provisions of NRS 608.060 and 608.070.*

Sec. 3. *A workman who performs the craft of truck driver shall be deemed to be employed on a public work while:*

- 1. Transporting materials at the site of a public work; or*
- 2. Transporting materials between the sites of a public work.*

Sec. 4. NAC 338.009 is hereby amended to read as follows:

338.009 *1.* As used in NRS 338.040, the Labor Commissioner will interpret:

~~1.1~~ (a) “Employed at the site of a public work” to mean the performance of work in the execution of a contract for a public work at the physical place or places at which the work is performed ~~;~~

~~—2.1~~ *or at which a significant portion of the public work is constructed, altered or repaired if such place is established specifically for the execution of the contract for the public work or dedicated exclusively, or nearly so, to the execution of the contract for the public work.*

(b) “Necessary in the execution of the contract for the public work” to mean the performance of duties required to ~~facilitate the construction, alteration~~ *construct, alter* or repair ~~of~~ the public work ~~;~~ *and without which the public work could not be completed.*

2. *As used in this section:*

(a) *“Site of a public work” includes job headquarters, a tool yard, batch plant, borrow pit or any other location that is established for the purpose of executing the contract for the public work or that is dedicated exclusively, or nearly so, to executing the contract for the public work. The term does not include a permanent home office, branch plant establishment, fabrication plant, tool yard or any other operation of a contractor, subcontractor or supplier if the location or the continued existence of the operation is determined without regard to a particular public work.*

(b) *“Supplier” has the meaning ascribed to it in NRS 338.450.*

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R090-04

The Labor Commissioner adopted regulations assigned LCB File No. R090-04 which pertain to chapter 338 of the Nevada Administrative Code on May 26, 2004.

Notice date: 4/5/2004
Hearing date: 5/4/2004

Date of adoption by agency: 5/26/2004
Filing date: 6/30/2004

INFORMATIONAL STATEMENT

(a) A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary:

Public comment on the proposed rule was solicited on the agency website, posted notices, e-mail, and direct mail to persons on the agency 233B mailing list. Copies are available through the agency website or upon request from the agency.

(b) The number of persons who:

(1) Attended each hearing:

Forty-three people attended the hearing, twenty-five in Carson City and seventeen in Las Vegas. The attendees represented a range of labor organizations, contractors, and government agencies.

(2) Testified at each hearing:

Eighteen individuals testified at the hearing.

(3) Submitted to the agency written comments: 0

Written comments were received from twenty individuals and organizations.

(c) A description of how comment was solicited from affected businesses, a summary of their response and an explanation how other interested persons may obtain a copy of the summary:

Comments were solicited through posted notices, by direct mail to organizations and individuals on the agency mailing list, posting on the agency website, and by e-mail.

(d) If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change:

Two changes were made in the regulation. The language concerning settlement agreements was deleted and the language concerning the applicability of prevailing wages to truck drivers was amended to reflect concerns raised at the hearing and in the written comments.

(e) The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public:

Impact on businesses that are regulated:

(1) Both adverse and beneficial effects:

The regulation generally clarified existing practices and interpretations. No new requirements were established and the scope of the regulations did not expand. As a result, there are no anticipated adverse effects. Clarifying the site of work analysis and better defining when prevailing wages apply to truck drivers should prove beneficial in that there would be fewer opportunities for conflict and the resulting investigative and litigation costs to all parties. This is particularly true in the case of truck drivers since the rule is intended to eliminate the current practice of “time splitting” where the wage rates for the drivers can change on the same trip depending on where the truck happens to be located at any particular point in time.

(2) Both immediate and long-term effects:

The immediate effect is the normal confusion that results whenever a change is made and the parties adjust to the new rules. Over the long-term, there will be less confusion over when the obligations to pay prevailing wages arise for certain types of work.

Impact on the public:

(1) Both adverse and beneficial effects:

The regulation should be neutral in terms of impacts on the public.

(2) Both immediate and long-term effects:

The regulation should be neutral in terms of short-term and long-term effects on the public.

(f) The estimated cost to the agency for enforcement of the adopted regulation:

There is no anticipated cost to the agency for enforcement.

(g) A description of any regulation of other state or government 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 regulation does not overlap the regulations of any other state or federal agency.

(h) If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions:

Not applicable.

(i) 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:

No new fees are involved.