

LCB File No. R115-04

**PROPOSED REGULATION OF THE OFFICE OF THE
LABOR COMMISSIONER**

Notice of Hearing and Intent to Act upon Regulations

The Office of the Nevada Labor Commissioner is proposing to adopt regulations pertaining to Chapter 608 of Nevada Administrative Code. Workshops were held on May 11, 2004 in Carson City, Nevada and on May 11, 2004 in Las Vegas, Nevada for the purpose of soliciting comments and information from interested persons prior to drafting proposed regulations. A copy of the proposed regulations is attached hereto.

A public hearing will be held on June 28, 2004 at 9:00 am at Nevada Department of Business and Industry Hearing Room located at 555 E. Washington Ave., Room 4412, Las Vegas, Nevada and teleconferenced to the Nevada Legislature Building located at 400 S. Carson St., Room 3137, Carson City, Nevada.

The purpose of the hearing is to solicit testimony from all interested persons regarding the adoption of regulations that pertain to Chapter 608 of NAC. The due date for submitting written information will be June 28, 2004.

A copy of all materials relating to the proposal may be obtained by contacting the Office of the Labor Commissioner, 555 E. Washington Avenue, Suite 4100, Las Vegas, NV 89101 or by calling (702) 486-2650.

This Notice of Hearing and Intent to Act upon Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

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

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

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

Legislative Building
401 S. Carson Street
Carson City, NV

Office of the Labor Commissioner
675 Fairview Drive, Suite 226
Carson City, Nevada 89701

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

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment.

Regulations are needed to establish some definitions and policies concerning the regulation of wages and hours statutes in Nevada. The agency has relied on statutory interpretation in this area, but has never undertaken steps to codify the interpretations in regulation form.

2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.

Subjects involved include:

- a. Definitions of commonly used terms;
- b. Payment for each hour worked;
- c. Commissions;
- d. Overtime;
- e. Payment for travel and training;
- f. Time and place of payment;
- g. Records of wages;
- h. Periods for meals and rest;
- i. Liability of employers;
- j. Claims for wages;
- k. Deductions from paychecks; and
- l. Overtime

3. The estimated economic effect of the regulation on the businesses which it is to regulate and on the public.

- a. **Adverse effects:** No adverse impacts are anticipated because these regulations merely codify existing policies, practices and interpretations used by the Labor Commissioner.
- b. **Beneficial effects:** By clarifying the legal obligations of employers, there could be a beneficial financial effect in that the potential liability for fines and penalties would be reduced as knowledge of the legal requirements becomes more widely available.
- c. **Immediate effects:** Because these regulations merely codify existing policies, practices and interpretations used by the Labor Commissioner, we do not anticipate any immediate effects.
- d. **Long term effects:** There could be a change in the number of reported violations and corresponding claims as employers and employees become aware of the requirements.

4. The estimated cost to the agency for enforcement of the proposed regulation.

It is not anticipated that the agency will see any increased costs as a result of these changes.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulations would not duplicate the regulations of any other state or federal agency, however, the regulatory scheme enforced by the U.S. Department of Labor has concurrent jurisdiction in some aspects.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

The proposed regulations are not required pursuant to federal law.

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

The proposed regulations are not more stringent than federal regulations governing the same activities.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation does not impose any new fee or increase any existing fee.

Persons wishing to comment upon the proposed action of Office of the Labor Commissioner may appear at the scheduled hearing or may address their comments, data, views, or arguments, in written form, to Terry Johnson, Nevada Labor Commissioner, 555 E. Washington Avenue Suite 4100, Las Vegas, Nevada 89101. Written submissions must be received by the Labor Commissioner on or before **June 28, 2004**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Labor Commissioner may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Labor Commissioner's website located at www.laborcommissioner.com, at the offices of the Labor Commissioner, located at 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada and 675 Fairview Drive, Suite 226, Carson City, Nevada, respectively, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed

to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

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EXPLANATION- Matter that is *italicized* is new; matter in brackets ~~{omitted material}~~ is material to be omitted.

AUTHORITY: §§1-13, NRS 607.160(1)(b), NRS 233B.040-050; §10, NRS 608.011; §§2-4, NRS 608.012; §§3,5,6, NRS 608.016; §§5, NRS 608.018; §9, NRS 608.019; §11, NRS 608.020; §11, NRS 608.030; §11, NRS 608.040; §7, NRS 608.080; §12, NRS 608.110; §8, NRS 608.115; §2, NRS 608.165; §§4,6, NRS 608.250.

Section 1. Chapter 608 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec.2. **DEFINITIONS**

- A. *“Commissioner” means the Labor Commissioner or his authorized representative.*
- B. *“Day” means a calendar day unless otherwise specified by statute or regulation and includes any portion thereof.*
- C. *“Independent contractor” means a self-employed person, firm, corporation or other business entity who, for an agreed upon fee, undertakes to perform services for a client according to his or its own means and methods and is not subject to the supervision or control of the other contracting party, except as to the results of the work.*
- D. *“Piece work” means wages based on a unit of production other than time, but does not include commissions.*
- E. *“Salary” means a rate of pay is based on a fixed dollar amount for a period of time other than hourly.*
- F. *“Uniform” means distinctive clothing required to be worn by employees of a business that serves as a clear means of identification with the business.*

Sec.3. **PAYMENT FOR EACH HOUR WORKED.**

- A. *Employees must be paid for all time worked at the direction of the employer, regardless of whether such time is outside of the employee’s scheduled hours of work.*
- B. *If an employer elects to pay an employee on a salary basis, the employee must be paid his full salary regardless of the total of number hours worked during the pay period, unless the employer can demonstrate that the employment agreement allows a different amount to be paid.*
- C. *An employee being paid on a salary, piecework, or on any other basis other than hourly must be paid an amount at least equal to minimum wage when the amount paid is divided by the total number of hours worked during the previous month, unless the employee is exempt from the minimum wage requirements of NRS 608.250.*

D. Holidays, vacation days, sick days and other days when an employee did not actually work are not counted towards time worked for the purpose of determining a claim for wages.

Sec. 4. COMMISSIONS

A. Commissions shall be paid when they become payable under the terms of the commission sales agreement between the employer and employee.

B. If the commission sales agreement is not reduced to writing, the terms and conditions of the agreement may be ascertained from the facts and circumstances of the course of dealing between the employee and employer.

C/ Unless exempted by statute, employees paid by commission must be paid at least minimum wage for all time worked during each semi-monthly pay period.

D. Any commissions paid may be used to meet the minimum wage obligation.

Sec.5. OVERTIME

A. Employers may not substitute compensatory time in place of wage payments for overtime.

B. In determining whether employees who are not otherwise exempted from overtime by statute and are paid on a salary, piecework, or on any other basis than hourly are exempt from the payment of overtime pursuant to NRS 608.218(2)(b), the applicability of overtime is determined by dividing the wages received by the number of hours worked during the work week in question.

C. In determining whether an employee is employed in a bonafide executive, administrative, or supervisory capacity, the Commissioner may refer to 29 C.F.R. §§ 541.1 through 541.3, inclusive.

Sec.6. PAYMENT FOR TRAVEL AND TRAINING.

A. Travel

1. Travel between an employee's home and workplace is not considered time worked regardless of whether the employee works at a fixed location or at different job sites.

2. Travel between different job sites during the workday is considered time worked.

3. If the employer provides transportation for the convenience of the employees, the driver providing the transportation on behalf of the employer must be paid for driving time.

B. Training

1. Employee training that is required by an employer is considered time worked.

2. Training that is required by an agency or entity other than the employer that enables the employee to maintain eligibility for employment in a particular capacity or at a particular level is not considered time worked.

C. Travel and training time must not be paid at a rate less than minimum wage.

Sec.7. TIME AND PLACE OF PAYMENT

A. The notice of time and place of payment required by NRS 608.080 must include the following information:

1. The days or dates that are established as regular paydays.

2. The place at which payment will be made.

B. The notice of time and place of payment may also include the following information:

1. *Alternative paydays should a regularly scheduled payday occur on a non-business day, including weekends and holidays;*
 2. *Acceptable alternatives for method of payment when an employee is unavailable for payment;*
 3. *Procedures for releasing paychecks to third parties; and*
 4. *Any other provisions the employer deems relevant, so long as those provisions do not contravene any statute or regulation of the State of Nevada.*
- C. *Employers may utilize electronic payment systems as an alternative location of payment, including but not limited to, direct deposit, debit cards, and similar innovative payment systems so long as:*
1. *The employee may obtain immediate payment in full without any service charges or other fees being charged to the employee;*
 2. *The pay point is easily and readily accessible to the employee; and*
 3. *There are no other restrictions or requirements that are unreasonably burdensome or inconvenient for the employee.*

Sec.8. **RECORDS OF WAGES.**

- A. *Records of wages required by NRS 608.115 must be maintained by the employer and furnished to all employees including employees paid on a salary, piecework or any other non-hourly basis.*

Sec.9. **PERIODS FOR REST AND MEALS.**

- A. *Rest periods for non-exempt employees working at least three and a half continuous hours shall be provided according to the following schedule:*

<i>HOURS WORKED:</i>	<i>NUMBER OF TEN MINUTE BREAKS:</i>
<i>At least 3 1/2 but less than 7</i>	<i>1</i>
<i>At least 7 but less than 11</i>	<i>2</i>
<i>At least 11 but less than 15</i>	<i>3</i>
<i>At least 15 but less than 19</i>	<i>4</i>

- B. *In determining the hours worked, unpaid lunch periods shall not be included.*
- C. *Employees may voluntarily agree to forego breaks and meal periods, but the burden to prove the existence of the agreement is on employer.*

Sec.10. **LIABILITY OF EMPLOYERS**

- A. *In determining the person or persons to be held liable for violations of NRS Chapter 608 and NAC Chapter 608, the Commissioner may investigate the conduct of the business enterprise, the extent of the control or custody of any employment, place of employment or any employee exercised by said person or persons.*
- B. *The examination of the conduct of the business enterprise may include, but is not limited to:*
1. *Whether the person had the power to hire and fire employees;*

2. *Whether the person supervised or controlled employee work schedules or conditions of employment;*
3. *Whether the person determined the rate and method of payment;*
4. *Whether the person maintained employment records; and*
5. *If more than one single business entity is involved in the business enterprise, whether there is a unified operation or common control of the businesses by any person or persons for a common business purpose.*

Sec. 11. *CLAIMS FOR WAGES*

- A. *Prior to filing a claim for unpaid wages, the employee must make a good faith attempt to collect the wages due from an employer at the normal place and in the normal fashion that wages are paid.*
- B. *Independent contractors may not file claims for wages.*
- C. *Termination from employment*
 1. *For the purpose of determining when a claim for wages may arise;*
 - a. *An employee who has been placed on an indefinite suspension may be presumed as having been discharged by his employer.*
 - b. *An employer who fails to pay any employee may be presumed to have terminated that employee.*
 - c. *An employee who fails to report to work may be presumed to have abandoned his job.*
 2. *The presumptions in subsection 1 are rebuttable.*

Sec. 12. *DEDUCTIONS FROM PAYCHECKS*

- A. *Employers may withhold legally required amounts and employee contributions to benefit programs such as health insurance and pensions plans permitted under NRS 608.110 without the written authorization of the employee.*
- B. *Employers may use a deduction to offset wages paid in advance provided the employer can document the advance.*
- C. *No other amount may be deducted from an employee's paycheck unless*
 1. *The employer has a reasonable basis to conclude the employee is responsible for the money due;*
 2. *The deduction is for a specific purpose, pay period, and amount;*
 3. *The employee authorizes the deduction in writing; and*
 4. *The written authorization was made voluntarily by the employee.*
- D. *Employers may not use blanket authorizations made in advance in order to make deductions from an employee's paycheck.*