

LCB File No. R055-07

PROPOSED REGULATION OF THE LABOR COMMISSIONER

(This regulation was previously adopted as T004-07)

NOTICE OF HEARING AND INTENT TO ACT UPON A REGULATION

The Office of the Nevada Labor Commissioner is proposing the permanent adoption of temporary regulations adopted by the Office of the Nevada Labor Commissioner, such regulations pertain to Chapter 608 of Nevada Administrative Code and address minimum wages.

Temporary regulations, identified as LCB File No. T004-07, were adopted by the Office of the Nevada Labor Commissioner on April 10, 2007, following a March 5, 2007 Public Hearing. Workshops on the temporary regulations were held on January 22, 2007 in Las Vegas, Nevada and on January 25, 2007 in Reno, Nevada for the purpose of soliciting comments and information from interested persons prior to drafting proposed regulations.

The public hearing has been scheduled for the following time and locations:

September 19, 2007

9:00 am
Sawyer Building, Room 4412
555 E. Washington Avenue
Las Vegas, Nevada 89101

Interested persons may also participate via teleconference at the following location:

Legislative Building, Room 3137

401 South Carson Street
Carson City, Nevada

The purpose of the hearing is to solicit testimony from all interested persons regarding the amendment of a regulation that pertains to Chapter 608 of NAC. 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 Michael Tanchek, Nevada Labor Commissioner, 675 Fairview Drive, Suite 226, Carson City, Nevada 89701. Written submissions must be received by the Labor Commissioner on or before Friday, September 14, 2007. 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.

NOTICE: A sign language interpreter will be provided if requested. The Office of the Labor Commissioner will make reasonable efforts to assist and accommodate persons with disabilities desiring to attend its meetings and hearings. Please call 775-687-4850 or 702-486-2650 at least five working days prior to the meeting or hearing.

A copy of all materials relating to the proposal may be obtained by contacting the

Office of the Labor Commissioner
675 Fairview Drive, Suite 226
Carson City, NV 89701
(775) 687-4850

Office of the Labor Commissioner
555 E. Washington Avenue, Suite 4100
Las Vegas, NV 89101
(702) 486-2650

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.

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, the main library in each county, 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.

On December 12, 2006 the Governor signed an emergency regulation regarding Nevada's new constitutional minimum wage. The emergency regulations were set to expire by statute on April 11, 2007. Temporary Regulations, identified as LCB File No. T004-07, were adopted by the Office of the Labor Commissioner and took effect on April 10, 2007. The temporary regulations are set to expire on November 1, 2007. These permanent regulations are needed to replace the temporary regulations.

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.

See the attached proposed regulations.

3. How to obtain a copy of the proposed regulation prepared by the Legislative Counsel Bureau.

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 for inspection and copying by members of the public during business hours 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 at the main public library in all counties in which an office of the agency is not maintained.

This information is also available on the Labor Commissioner's website located at www.laborcommissioner.com. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which are 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.

4. The estimated economic effect of the regulation on the businesses which 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.

5. A statement identifying the methods used to determine the impact on small business prepared pursuant to subsection 3 of NRS 233B.0608.

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.

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

The regulations per se should not result in any increased costs to the agency. However, the amendment itself could result in a substantial increase in the agency's enforcement workload primarily due to related overtime enforcement issues.

7. 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 local governmental agency. The state has concurrent jurisdiction with the US Department of Labor over wages and hours issues.

8. 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.

9. If the regulation includes provisions that are more stringent than a federal regulation that 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.

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

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

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

AUTHORITY: § § 1-10; Article 15, Section 16, the constitution of the State of Nevada, NRS 607.110, NRS 607.160.

Section 1. Chapter 608 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *Definition of minimum wage tiers.*

1. *The lower tier is from \$5.15 to \$6.14 per hour for employees who offered qualified health insurance benefits.*
2. *The upper tier is \$6.15 per hour for employees who are not offered qualified health benefits.*
3. *An employer must pay the upper tier rate unless the employee qualifies for the lower tier rate.*
4. *These rates may change based on the annual adjustments as set forth in Article 15, Section 16 of the Constitution of Nevada.*

Sec. 3. *Applicability of Minimum Wage.*

1. *The minimum wage applies to all employees in Nevada.*
2. *The only exceptions to the minimum wage are*
 - (a) *Persons under the age of 18; or*
 - (b) *Persons employed by a nonprofit organization for after school or summer employment; or*
 - (c) *Persons employed as trainees for a period not longer than ninety (90) days as interpreted by the U. S. Department of Labor pursuant to Section 6(g) of the Fair Labor Standards Act; or*
 - (d) *Persons employed under a valid collective bargaining agreement where Article 15, Section 16 of the Nevada Constitution relating to minimum wage, tip credit or other provisions included therein have been waived in clear and unambiguous terms.*
3. *There is no distinction between full-time, permanent, part-time, probationary, or temporary employees.*

Sec. 4. *In order to qualify for the lower minimum wage tier an employer must comply with all of the following:*

1. *Qualified health insurance coverage must be made available to the employee and the employee's dependents, if any. For the purposes of this section, qualified health insurance coverage is "available to the employee and employee's*

- dependents” when an employer contracts for or otherwise maintains qualified health insurance for the class of employees of which the employee is a member, subject only to fulfillment of the conditions required to complete the coverage which are applicable to all similarly-situated employees within this class, unless the waiting period exceeds six months; and*
- 2. The employee’s share of the cost of the premium cannot exceed 10% of the employee’s gross taxable income attributable to the employer as defined under the Internal Revenue Code;*
 - (a) “Gross Taxable Income” attributable to the employer means the amount specified on the employee’s W-2 issued by the employer and includes tips, bonuses or other compensation as required for purposes of federal individual income tax.*
 - (b) To determine whether the employee’s share of the premium does not exceed 10% of the employee’s gross taxable income, the employer may:*
 - I. For an employee for whom the employer has issued a W-2 for the immediately preceding year, divide the gross taxable income from the employer into the projected employee’s share of the premiums for qualified health insurance for the current year;*
 - II. For an employee for which the employer has not issued a W-2 and has payroll information for the four prior quarters, divide the combined total of gross taxable income normally calculated from this payroll information from these four quarters into the projected employee’s share of the premiums for qualified health insurance for these four quarters;*
 - III. For an employee for which there is less than an aggregate year of payroll information, the employer shall*
 - 1) take the total payroll information available for the employee determine the combined total of gross taxable income normally calculated from this payroll information; and*
 - 2) After dividing it by the number of weeks it represents and multiplying it by 52, divide this annualized number into the projected employee’s share of the premiums for qualified health insurance for the current year;*
 - IV. For a new employee, promoted employee, or an employee who turns eighteen years of age during employment, the employer shall wait until the employee has completed two normal payroll periods and then utilize this payroll information as set forth in subsection 3 above relating to an employee for which there is less than a complete year of employment; and*
 - 3. Offers a health benefit plan that meets one of the following requirements:*
 - (a) The plan covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. Sec. 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees; or*
 - (b) Provides health benefits pursuant to a Taft-Hartley trust which:*

- I. *Is formed pursuant to 29 U.S.C. Sec. 186(c)(5); and*
 - II. *Qualifies as an employee welfare benefit plan under the Internal Revenue Service guidelines; or*
- (c) *Is a qualified employee welfare benefit plan pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.*

Sec. 5. *An employer may decide to pay the maximum wage rate for minimum wage currently applicable in lieu of making any determination under this regulation that the employee may be paid the lower minimum wage rate.*

Sec. 6. *If a determination is made that the employee's share of the premium does not exceed 10% of the employee's gross taxable income from the employer, the employer may pay the employee through the end of the calendar year for which the determination has been made either:*

1. *The lowest minimum wage rate currently applicable; or*
2. *Any amount within the lower minimum wage tier currently applicable.*

Sec. 7. *If an employee declines coverage under a qualified health insurance plan offered by the employer, the employer must document that the employee has declined coverage. Declining coverage may not be a term or condition of employment.*

Sec. 8. *If an employer offers qualified health insurance with a waiting period of no more than 6 months, the employee may be paid at the lower tier wage rate. If an employer does not offer a qualified health insurance plan or the health benefit plan is not available or the health benefit plan is not provided within 6 months of employment, the employee must be paid the upper tier wage rate until such time as the employee becomes eligible and is offered coverage or when the insurance becomes effective. The term of the waiting period may be modified in a bona fide collective bargaining agreement, but only if the modification is explicitly set forth in such agreement in clear and unambiguous terms.*

Sec. 9. *For the purposes of complying with the daily overtime provisions of NRS 608.018(1), an employer shall pay overtime based on the minimum wage tier for which that employee is qualified.*

Sec. 10. NAC 608.110 is hereby repealed

~~[NAC 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.]~~