

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

LCB File No. R055-07

August 6, 2007

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

AUTHORITY: §§1-10, Nev. Const. art. 16, § 15, Chapter 159, Statutes of Nevada 2007, at page 541 and NRS 607.160.

A REGULATION relating to minimum wages; clarifying the employees to whom minimum wages must be paid; determining the applicability of 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 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 under the guidelines of the Internal Revenue Service; or

(3) Qualifies as an employee welfare benefit plan 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 less than 6 months; and

3. The share of the cost of the premium for the health insurance plan paid by the employee does not exceed 10% 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% 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 one 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 1 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 1 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.

TEXT OF REPEALED SECTION

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.