

**PROPOSED REGULATION OF THE  
LABOR COMMISSIONER**

(This draft replaces the one posted May 26, 2008)

***PROPOSED LANGUAGE***

~~[LANGUAGE RECOMMENDED FOR DELETION]~~

**Sec. 1.** Chapter 608 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

**Sec. 2.** NAC 608.080 is hereby amended to read as follows:

NAC 608.080 “Salary” defined. (NRS 607.160) “Salary” means a wage rate based on a fixed dollar amount for a period of time other than an hour *or a workday*.

**Sec. 3.** NAC 608.115 is hereby amended to read as follows:

NAC 608.115 Payment for time worked. (NRS 607.160, 608.016, 608.250)

1. An employer shall pay an employee for all time worked ~~[by the employee]~~ at the direction of the employer, including time worked ~~[by the employee]~~ that is outside the *employee’s regularly scheduled hours of work* ~~[of the employee]~~, *including, but not limited to, preparatory activities required by the employer prior to the beginning of a shift and clean up activities after the end of the shift.*

2. If an employer pays an employee by salary, piece rate or any other wage rate except for a wage rate based on an hour of time, the employer shall pay ~~[an amount]~~ *a base hourly wage* that is at least equal to the *applicable* minimum wage when the amount paid to ~~[an]~~ *the* employee ~~[in]~~ *for* a pay period is divided by the number of hours worked by the employee during the pay period *less any additional amounts solely attributable to overtime.* ~~[This subsection does not apply to an employee who is exempt from the minimum wage requirement pursuant to NRS 608.250.]~~

3. For the purpose of a claim for wages *filed by individuals paid on an hourly basis*, holidays, vacation days, sick days and any other days that an employee did not actually work are not counted as time worked by the employee.

**Sec. 4.** NAC 608.125 is hereby amended to read as follows:

NAC 608.125 Compensation for overtime. (NRS 607.160, 608.018)

1. An employer shall not substitute compensatory time in place of a wage payment for overtime that was worked by an employee.

2. An employer must pay overtime based on the wage rate that is in effect at the time the overtime payment is required and may not average the wage rates of employees who are paid multiple rates during the work day.

~~3[2].~~ If an employee is paid by salary, ~~[piece rate or any other wage rate except for a wage rate based on an hour of time,]~~ the *overtime wages due to employees who are not otherwise exempt*

*from overtime ~~[rate of compensation]~~ for the purposes of ~~[paragraph (b) of subsection 2 of]~~ NRS 608.018 ~~[is determined by dividing the amount paid to an employee in a week by the number of hours worked by the employee during the week.] shall be determined as follows:~~*

*a. A base hourly wage rate for the week shall be determined by dividing the amount due for the workweek under the salary agreement between the parties by the total number of hours worked during the workweek. If the salary period is longer than a workweek, then the salary period shall be prorated based on the number of weeks in the salary period.*

*b. If the base hourly wage rate is one and one half times the minimum wage prescribed in NRS 608.250 or more, the employee shall receive an amount equal to the base hourly wage rate for all hours worked plus one half the base hourly wage rate for all hours worked in excess of forty hours in the workweek.*

*c. If the base hourly wage rate is less than one and one half times the minimum wage prescribed in NRS 608.250, the employee shall receive an amount equal to the base hourly wage rate for all hours worked plus:*

*(1) one half the base hourly wage rate for all hours in excess of eight hours in any workday; and*

*(2) one half the base hourly wage rate for all hours worked in excess of forty hours in the workweek that were not previously counted as being in excess of eight hours in a workday.*

*~~4[3].~~ In order to determine whether an employee is in a bona fide executive or administrative position all of the following conditions must be met*

*a. For executive employees*

*(1) The employee must be compensated on a salary basis at a rate not less than \$455 per week;*

*(2) The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;*

*(3) The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and*

*(4) The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.*

*b. For administrative employees*

*(1) The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week;*

*(2) The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and*

*(3) The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.*

**Sec. 5.** NAC Chapter 608 is hereby amended by adding the following section:

*1. In order to qualify for the four ten hour day exemption from daily overtime as set forth in NRS 608.018(1)(b), the employees must regularly and consistently work a full-time schedule comprising four working days per workweek and up to ten hours per work day.*

*2. In addition to the exceptions in NRS 608.018(3), the following types of work are exempt from overtime*

*a. Casual babysitters;*

*b. Domestic service employees who reside in the household where they work;*

*c. Outside salespersons whose earnings are based on commissions.*

**Sec. 6.** NAC Chapter 608 is hereby amended by adding the following section:

*Payment for time worked: Salaried employees*

*1. Employees who are paid on a salary basis shall be paid the full amount of the salary for any pay period in which the employee performs any work, regardless of the number of days or hours worked.*

*2. Employees who are paid on a salary basis do not need to be paid for any workweek in which they perform no work, however, if the employee is ready, willing and able to work, deductions may not be made for time when work is not available.*

*3. An employer may deduct a pro rata amount from the salary under the following conditions:*

*a. For days not worked prior to commencing employment during the initial week of employment and for days not worked after employment ends during the terminal week of employment;*

*b. The employee is absent from work for one or more full days for personal reasons other than sickness or disability;*

*c. The employee is absent from work for one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;*

*d. To offset amounts employees receive as jury or witness fees, or for military pay;*

*e. For penalties imposed in good faith for infractions of safety rules of major significance as long as the penalties are agreed upon beforehand;*

*f. For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;*

*g. For weeks in which an employee takes unpaid leave under the Family and Medical Leave Act; or*

*h. For other agreed upon deductions from the salary agreed upon in writing by both the employer and employee before any deduction is made.*

*4. Unless otherwise exempted, salaried employees are entitled to compensation for overtime.*

**Sec. 7.** NAC Chapter 608 is hereby amended by adding the following section:

**Discounting tips prohibited**

1. An employer that permits patrons to pay gratuities by credit or debit card shall pay the employees the full face amount of the gratuity that the patron indicated on the credit or debit card slip, without any deductions for any credit or debit card processing fees or costs that the credit or debit card company or financial institution charges to liquidate the tip to cash.

**Sec. 8.** NAC Chapter 608 is hereby amended by adding the following section:

***Employee time keeping***

*1. Employers who use a time clock to track employees' work hours may adjust the time recorded to conform to the employee's regularly scheduled start and stop times provided all of the following conditions are met:*

*a. The policy is clearly written and posted in a visible location adjacent to the time clock;*

*b. The length of time adjusted is no greater than seven and a half minutes;*

*c. Employees who clock in or out before their regularly scheduled times have their time adjusted forward to the regularly scheduled time;*

- d. Employees who clock in or out after their regularly scheduled times have their time adjusted backward to the regularly scheduled time; and*
- e. A complete accounting of the adjustments for their time is made available to each employee upon request.*