

**ADOPTED REGULATION OF THE
DIVISION OF INDUSTRIAL RELATIONS
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R141-09

Effective April 28, 2010

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

AUTHORITY: §§1, 2 and 17-19, section 7 of Assembly Bill No. 148, chapter 432, Statutes of Nevada 2009, at page 2421 (NRS 618.973); §§3-11 and 14-16, sections 7 and 8 of Assembly Bill No. 148, chapter 432, Statutes of Nevada 2009, at page 2421 (NRS 618.973 and 618.977); §§12 and 13, sections 7, 8 and 15 of Assembly Bill No. 148, chapter 432, Statutes of Nevada 2009, at pages 2421 and 2425, respectively (NRS 618.973 and 618.977).

A REGULATION relating to occupational safety; providing for certain health and safety training for employees in the construction industry; and providing other matters properly relating thereto.

Section 1. Chapter 618 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 17, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Approved OSHA-10 continuing education course” means a 5-hour training course, offered to a person, that meets or exceeds one-half of the time, pro rata, of the guidelines issued by the Occupational Safety and Health Administration of the United States Department of Labor as they relate to the subject matter of OSHA-10 training courses, including, without limitation, federal safety and health regulatory requirements specific to the industry in which the employer of the person participates.*

Sec. 4. *“Approved OSHA-10 course” means a 10-hour course that is deemed approved by the Division pursuant to section 10 of this regulation.*

Sec. 5. *“Approved OSHA-30 continuing education course” means a 15-hour training course, offered to a person, that meets or exceeds one-half of the time, pro rata, of the guidelines issued by the Occupational Safety and Health Administration of the United States Department of Labor as they relate to the subject matter of OSHA-30 training courses, including, without limitation, federal safety and health regulatory requirements specific to the industry in which the employer of the person participates.*

Sec. 6. *“Approved OSHA-30 course” means a 30-hour course that is deemed approved by the Division pursuant to section 10 of this regulation.*

Sec. 7. *“Qualified alternative course instructor” means a person who possesses credentials in the field of safety that the Administrator determines to be adequate, pursuant to subsection 2 of section 16 of this regulation, to prepare the person to provide:*

- 1. An OSHA-10 alternative course; and*
- 2. An OSHA-30 alternative course.*

Sec. 8. *“Qualified continuing education course instructor” means a person who possesses credentials in the field of safety that the Administrator determines to be adequate, pursuant to subsection 2 of section 15 of this regulation, to prepare the person to provide:*

- 1. An approved OSHA-10 continuing education course; and*
- 2. An approved OSHA-30 continuing education course.*

Sec. 9. *“Valid completion card” means an unexpired completion card issued to a person for:*

- 1. An approved OSHA-10 course; or*

2. *An approved OSHA-30 course.*

Sec. 10. 1. *An OSHA-10 course, offered to a person, that meets or exceeds the guidelines issued by the Occupational Safety and Health Administration of the United States Department of Labor as they relate to the subject matter of OSHA-10 training courses, including, without limitation, federal safety and health regulatory requirements specific to the industry in which the employer of the person participates, shall be deemed by the Division to be an approved OSHA-10 course.*

2. *An OSHA-30 course, offered to a person, that meets or exceeds the guidelines issued by the Occupational Safety and Health Administration of the United States Department of Labor as they relate to the subject matter of OSHA-30 training courses, including, without limitation, federal safety and health regulatory requirements specific to the industry in which the employer of the person participates, shall be deemed by the Division to be an approved OSHA-30 course.*

Sec. 11. 1. *An employee may renew a valid completion card for an OSHA-10 course by completing an approved OSHA-10 course or approved OSHA-10 continuing education course before the expiration of the valid completion card. An employee who has renewed a valid completion card for an OSHA-10 course must provide his or her employer with the valid completion card and written proof of completion of an approved OSHA-10 course or approved OSHA-10 continuing education course.*

2. *An employee may renew a valid completion card for an OSHA-30 course by completing an approved OSHA-30 course or approved OSHA-30 continuing education course before the expiration of the valid completion card. An employee who has renewed a valid completion card for an OSHA-30 course must provide his or her employer with the valid completion card*

and written proof of completion of an approved OSHA-30 course or approved OSHA-30 continuing education course.

Sec. 12. 1. *If an employer provides to an employee an approved OSHA-10 continuing education course or an approved OSHA-30 continuing education course, the employer shall:*

- (a) Provide to the employee written proof of completion of the course;*
- (b) On request, provide to the Division written proof of completion of the course; and*
- (c) Retain a copy of the written proof of completion of the course for at least 5 years.*

2. *An employer may provide an approved OSHA-10 continuing education course or an approved OSHA-30 continuing education course online if the course is developed by, or with the assistance of, a qualified continuing education course instructor.*

Sec. 13. 1. *If an employer provides to an employee an OSHA-10 alternative course or an OSHA-30 alternative course, the employer shall:*

- (a) Provide to the employee written proof of completion of the course;*
- (b) On request, provide to the Division written proof of completion of the course; and*
- (c) Retain a copy of the written proof of completion of the course for at least 1 year.*

2. *The Division will deem approved, and an employer may provide, an OSHA-10 alternative course or an OSHA-30 alternative course online if the course:*

(a) Meets the requirements of paragraph (a) or (b) of subsection 4 of section 10 of Assembly Bill No. 148, chapter 432, Statutes of Nevada 2009, at page 2422 (NRS 618.983);
and

- (b) Is developed by, or with the assistance of, a qualified alternative course instructor.*

Sec. 14. *All courses described in sections 2 to 17, inclusive, of this regulation must be conducted and made available in a language and format that is understandable to each employee.*

Sec. 15. 1. *No person other than a trainer, as defined in subsection 3 of section 8.5 of Assembly Bill No. 148, chapter 432, Statutes of Nevada 2009, at page 2421 (NRS 618.980), or a qualified continuing education course instructor may provide an OSHA-10 continuing education course or an OSHA-30 continuing education course.*

2. The Administrator may determine that a person may act as a qualified continuing education course instructor if the person, without limitation:

(a) Is authorized by the Occupational Safety and Health Administration of the United States Department of Labor as a trainer, including, without limitation, if the person has completed OSHA 500, the Trainer Course for the Construction Industry;

(b) Has 3 years of experience in overseeing matters of occupational safety and health in the field of construction; or

(c) Has 2 years of experience in overseeing matters of occupational safety and health in the field of construction and has:

(1) A college degree in occupational safety and health; and

(2) Been designated as:

(I) A certified safety professional; or

(II) A certified industrial hygienist.

Sec. 16. 1. *No person other than a trainer, as defined in subsection 3 of section 8.5 of Assembly Bill No. 148, chapter 432, Statutes of Nevada 2009, at page 2421 (NRS 618.980), or*

a qualified alternative course instructor may provide an OSHA-10 alternative course or an OSHA-30 alternative course.

2. The Administrator may determine that a person may act as a qualified alternative course instructor if the person, without limitation:

(a) Is authorized by the Occupational Safety and Health Administration of the United States Department of Labor as a trainer, including, without limitation, if the person has completed OSHA 500, the Trainer Course for the Construction Industry;

(b) Has 3 years of experience in overseeing matters of occupational safety and health in the field of construction; or

(c) Has 2 years of experience in overseeing matters of occupational safety and health in the field of construction and has:

(1) A college degree in occupational safety and health; and

(2) Been designated as:

(I) A certified safety professional; or

(II) A certified industrial hygienist.

Sec. 17. For the purposes of NRS 618.950 to 618.990, inclusive, and sections 2 to 17, inclusive, of this regulation:

1. The phrase “person who actually performs physical work at a construction site that results in the construction, alteration or destruction involved in the construction project, including, without limitation, painting and decorating” from subsection 1 of NRS 618.957 is interpreted by the Division to mean a person who physically alters, adds to, subtracts from, improves, moves, wrecks or demolishes any building, highway, road, railroad, excavation or other structure, project, development or improvement, or does any part thereof, including the

erection of scaffolding or other structures or works in connection therewith, at a construction site for the construction project.

2. The term “construction worker” does not include the following persons unless the persons are included within NRS 618.957 as interpreted by subsection 1:

(a) Any person engaged solely in architectural, building inspection, delivery, clerical, engineering, surveying or material testing work on a construction site;

(b) Any person engaged solely in administrative work on a construction site unless that person is a supervisory employee as defined NRS 618.967; or

(c) Any person who performs work on a construction site solely in his or her capacity as a public utility employee operating pursuant to safety regulations of the Public Utilities Commission of Nevada or 29 C.F.R. § 1910.

3. The phrase “components of the property” from subsection 2 of NRS 618.957 includes, without limitation, utility equipment.

Sec. 18. 1. A construction worker who was hired before April 28, 2010, shall comply with the provisions of sections 2 to 17, inclusive of this regulation by the later of:

- (a) Fifteen days after the construction worker was hired; or
- (b) April 28, 2010.

2. As used in this section, “construction worker” has the meaning ascribed to it in NRS 618.957.

Sec. 19. 1. This regulation becomes effective on April 28, 2010.

2. Sections 7, 13 and 16 of this regulation expire by limitation on December 31, 2010.

**INFORMATIONAL STATEMENT
FOR R141-09
PERMANENT REGULATIONS
OF THE
DIVISION OF INDUSTRIAL RELATIONS
DEPARTMENT OF BUSINESS AND INDUSTRY
STATE OF NEVADA**

The Administrator of the Division of Industrial Relations, Department of Business and Industry, State of Nevada, determined an emergency existed regarding the regulations necessary to implement Assembly Bill 148 (AB 148). Therefore, pursuant to NRS 233B.0613, the Administrator proposed and adopted emergency regulations which were endorsed by the Governor, Jim Gibbons. The emergency regulations expire April 28, 2010.

The full text of an original copy of the emergency regulations, Statement of Emergency with the Governor's endorsement, and the Informational Statement for the emergency regulations were filed with Office of the Secretary of State pursuant to subsection 3 of NRS 233B.070. As provided in NRS 233B.066, the Informational Statement for the emergency regulations did not contain paragraphs (a) to (d), inclusive, of subsection 1 of this statute.

On expiration of the emergency regulations the Division is adopting permanent regulations, LCB File No. R141-09. Accordingly, the Division hereby submits the following Informational Statement required by NRS 233B.066.

Description of how comment from members of the public, affected businesses and other interested persons was solicited, and a summary of the responses.

Comments were solicited by conducting a public workshop on July 30, 2009 and a public hearing on December 22, 2009. Notices were posted as required and placed on the Division's website. Notices were also sent to affected business organizations, labor unions, the Division's Advisory Council and members of the public.

The public workshop on July 30, 2009

The public workshop was held on July 30, 2009 at the Grant Sawyer Building, 555 East Washington, Room 4412, Las Vegas, Nevada and at the Nevada Legislative Building, 401 South Carson Street, Room 2135, Carson City, Nevada via a simultaneous video conference.

The number of persons who attended the workshop: 81 in Las Vegas and 29 in Carson City for a total of 110.

The number of persons who testified at the workshop: 22 in Las Vegas and 18 in Carson City for a total of 40.

The number of persons who submitted written statements to the Division as a result of the public workshop: 5

Summary of comments from public workshop:

The Labor Commissioner for the State of Nevada, Michael Tancheck, testified that the burden of paying for the cost of OSHA 10/30 training would fall on the employee, but the employer was not precluded from paying wages during training. He also indicated that he had discussed the matter with counterparts in the U.S. Department of Labor, and likewise they did not consider this to be compensable time. Employers could also pay wages for the training if it was a part of a collective bargaining agreement. Commissioner Tancheck further stated that the cost of the training is not something the Labor Commissioner's Office would be looking at or have any control over.

Questions were raised pertaining to the five year expiration date of the OSHA 10/30 card and its relationship to continuing education.

There were several comments regarding what types of activities were exempted from the requirements of AB 148. It was recommended that these be identified in the regulation.

Representatives from various public employers wanted to know if they were exempted from AB 148 like the Nevada Department of Transportation (NDOT). There were also several comments from the audience asking why the legislature exempted NDOT.

There were concerns from both public and private employers regarding what activities were considered maintenance and what were considered construction for purposes of AB 148.

Utility company representatives commented that AB 148 should not apply to them because they are regulated by other governmental agencies.

Several persons recommended the regulation should specify that only those employers with construction standard industrial codes (SIC 15, 16, and 17) be affected by AB 148.

Concerns were raised about on-line and/or video conferencing OSHA 10/30 training providers and if these courses are acceptable for purposes of AB 148. Concerns were also expressed concerning potential fraud.

A question was raised as to whether an authorized OSHA outreach construction instructor with a valid OSHA 500 card would also need to have a current OSHA 10/30 card when engaged in construction work.

There were several questions pertaining to what curriculum would be used for alternative and continuing education training; who can conduct the training; and how training would be documented. There were also several concerns expressed about the "portability" of alternative and continuing education training when workers move from employer to employer.

There was testimony that the term construction sites needed to be better defined, and other testimony indicating that it was already adequately defined by OSHA.

Concern was expressed regarding the 15 day “grace period” permitted for employees to obtain their training pursuant to AB 148.

Various interested parties expressed concern as to who was considered to be a supervisory employee and how the requirement for an OSHA 30 hour card would be enforced.

Questions were raised concerning the methodology Nevada OSHA would use to enforce AB 148.

The Public Hearing on December 22, 2009

The public hearing was held on December 22, 2009 at the Grant Sawyer Building, 555 East Washington, Room 4412, Las Vegas, Nevada and at the Nevada Legislative Building, 401 South Carson Street, Room 2134, Carson City, Nevada via a simultaneous video conference.

The number of persons who attended the public hearing: 114 in Las Vegas and 67 in Carson City for a total of 181.

The number of persons who testified at the public hearing: 25 in Las Vegas and 16 in Carson City for a total of 41.

The number of persons who submitted written statements to the Division as a result of the public hearing: 13

Summary of comments from public hearing:

Many comments were made regarding the OSHA 10/30 hour training, stating the language needs to be more specific as to the required curriculum and guidelines for continuing education.

Some comments were made questioning who is qualified to teach the OSHA 10/30 hour continuing education courses, and whether in-house training would be acceptable.

Questions were raised whether on-line and video-conference training was acceptable. Some attendees asked if a list of verifiable training courses would be available.

Many employers commented that they believed continuing education training should be relevant to their industry’s type of work; they asked what industry specific courses or subjects taught in-house would be considered part of the 10 hour course.

Some questioned if a construction worker’s training continued with them to another job.

Others expressed concern about the cost of training costs and the language in the proposed regulation stating an employer may elect, but is not required to pay for training or the employee’s time. Some believed this is unacceptable, stating the employer should pay the training costs; others disagreed.

Small business owners stated training costs would be a huge financial burden.

Several business representatives requested an extension on the training date deadline; they believed there were an insufficient number of trainers and/or training classes, especially in rural locations. Others, including union representatives, stated there was plenty of time and opportunity to comply with the training requirements.

Many raised concerns regarding OSHA 10/30 cards; companies requested language in the regulation to explain what was required on the cards to verify training, expiration of training, validity of cards, copies of cards, lost cards, carrying of cards, and what Nevada OSHA will require when it is on a construction site.

Some suggested that a centralized location for OSHA 10/30 training records should be maintained.

Some asked if an employee would have to be terminated for not taking their required continuing education courses by January 1, 2010. There were also questions about employees hired before and/or after January 1, 2010.

One person questioned how temporary workers could be trained within the 15 day deadline if they worked at various jobsites for only a few days at a time.

A question was asked if this regulation is mandated on all state and city employees in Nevada.

Many people who testified mentioned the need for clarification and definition regarding the distinction between construction work and maintenance work on a construction site; they identified delivery truck drivers, vendors, utility workers and engineers. It was agreed by many attendees there was a need for more information in order to comply with AB 148.

A suggestion was made to define construction workers on the basis of either a SIC code or other type of administrative code or legal specification, specifically groups 1500, 1600, and 1700.

Public utilities stated they were already regulated by specific provisions in 29 CFR 1910, Nevada's Public Utilities Commission or the federal Department of Transportation.

Still others requested clarification of 29 CFR 1910.32 as it related to the AB 148, particularly, 1910.32(f) ("competent person") and 1910.32(m) ("qualified person").

One employer requested Nevada OSHA approve its training program for purposes of AB 148. Some employers wanted "stickers" to be mandated to verify OSHA 10/30 training cards and trainers.

Some questioned whether a temporary supervisor on a jobsite was required by AB 148 to have OSHA 30 training.

Another person asked if number or fines imposed would be based on the number of employees who did not have a valid OSHA 10/30 cards. Still another suggested that employees as well as employers be subjected to fines.

Representatives from various companies asked how emergency regulations could be put into place by January 1, 2010, when there were so many unanswered questions; they also wondered how Nevada OSHA would enforce the regulations.

Explanation of how members of the public, affected businesses and other interested persons may obtain a copy of the Informational Statement and summaries:

Members of the public, affected businesses and other interested person may obtain a copy of this Informational Statement with summaries by viewing and/or printing a copy at/from the Division of Industrial Relations, Nevada OSHA website: <http://dirweb.state.nv.us/OSHA/osha.htm>; or, by contacting, Resty Malicdem, Program Coordinator, Nevada OSHA: malicdem.resty@dol.gov. Copies may also be obtained at Nevada OSHA offices: 1301 North Green Valley Parkway, Suite 200, Henderson, Nevada 89074, or 400 Kietzke Lane, Suite F-153, Reno, Nevada 89502.

Changes to the regulations or a summary of the reasons for adopting the regulations without change:

Several changes were made to the regulations as a result of comments received. The Division deleted provisions addressing employee pay and fees for OSHA 10/30 training. The Division added provisions requiring alternative and continuing education training to be performed by a “Qualified alternative course trainer” and a “Qualified continuing education course trainer,” respectively, authorized on-line training courses and clarified that physical work regulated by 29 CFR 1926 is covered by the regulation.

Statement of the estimated economic effect of the regulations on the businesses which it is to regulate and on the public:

Businesses (Adverse/Immediate and long term): The adverse economic effect of the regulations is unknown. Businesses engaged in construction work may or may not pay the cost of OSHA-10/30 training or for employee time to attend training. If a business does not pay for training or an employee’s time to attend training, the adverse economic impact is probably minimal. Conversely, if a business pays for training and/or an employee’s time, the adverse economic impact, depending on the number and type of employees (supervisor/non-supervisor), could be significant. The requirement for OSHA-10/30 training is a new requirement, Accordingly, if there are adverse economic effects, they will be more acute in the immediate future; in the long term, the effects will be more moderate, given the 5 year period for renewal of OSHA-10/30 training and continuing education.

Businesses (Beneficial/ Immediate and long term): The beneficial economic impact of the regulations will depend on reduction of the number and magnitude of workplace accidents and

injuries achieved by requiring OSHA-10/30 training. The Division is unable to predict whether there is a difference between the immediate and long term beneficial effect of the regulations.

Public (Adverse/ Immediate and long term): As with businesses, the adverse economic effect of the regulations is unknown. Similarly, if businesses engaged in construction work do not pay for OSHA-10/30 or employee's time to attend training, there will be no adverse economic effect to pass on the public. On the other hand, if a business does pay for training and/or and employee's time, the cost, or a portion of the cost, may be passed on to the public.

Public (Beneficial/Immediate and long term): Like businesses, the beneficial economic impact of the regulations depends on the reduction of the number and magnitude of workplace accidents and injuries achieved by requiring OSHA-10/30 training. The Division is unable to predict whether there is a difference between the immediate and long term beneficial effect of the regulations.

Statement identifying methods used by agency in determining impact of a small business prepared pursuant to subsection 3 of NRS 233B.0608: The Division considered the purpose and scope of Assembly Bill 148 and necessary regulations. Based on this review, the Division found the impact was difficult to measure because some businesses may chose to pay for OSHA-10/30 training and employee time for training while others may not.

Estimated cost of enforcement of proposed regulations: The Division does not anticipate any additional cost for enforcing the proposed regulations.

Description of any overlap or duplication of existing state or federal regulations: None.

A summary of the regulations if it includes provisions that are more stringent than similar federal regulations: There are no similar federal regulations.

If the regulations impose a new fee or increases an existing fee, the total amount the agency expects to collect and the manner in which the money will be used: The regulations do not impose a new fee or increase an existing fee.

Dated this 24^h day of March, 2010.