

**PROPOSED REGULATION OF THE
LABOR COMMISSIONER**

LCB FILE NO. R018-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 01/17/2018**

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NAC 338.005 Definitions. ([NRS 338.012](#)) As used in [NAC 338.005](#) to [338.125](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 338.010](#) and [NAC 338.0052](#) to [338.007](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Labor Comm’r by R072-00, eff. 8-15-2000; A by R115-01, 4-5-2002)

NAC 338.0052 “Apprentice” defined. ([NRS 338.012](#)) “Apprentice” means a person employed and individually registered in a bona fide apprenticeship program with:

1. The Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor; and

2. The State Apprenticeship Council pursuant to [chapter 610](#) of NRS and any regulations adopted pursuant thereto.

(Added to NAC by Labor Comm’r by R115-01, eff. 4-5-2002)

NAC 338.0054 “Awarding body” defined. ([NRS 338.012](#)) “Awarding body” means a public body, as that term is defined in [NRS 338.010](#), or any authorized agent or representative of a public body.

(Added to NAC by Labor Comm’r by R115-01, eff. 4-5-2002)

NAC 338.0056 “Certified payroll report” defined. ([NRS 338.012](#)) “Certified payroll report” means the record that a contractor or subcontractor engaged on a public work is required to submit to an awarding body pursuant to subsections 4 and 5 of [NRS 338.070](#) with a statement of compliance as required pursuant to subsection 1 of [NAC 338.094](#) for each month after the contractor or subcontractor commences working on the public work in which the contractor or subcontractor employs one or more workers in connection with the public work.

(Added to NAC by Labor Comm’r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

NAC 338.0065 “Nonperformance payroll report” defined. ([NRS 338.012](#)) “Nonperformance payroll report” means the report that a contractor or subcontractor engaged on a public work is required to submit to an awarding body pursuant to [NAC 338.098](#) for each month after the contractor or subcontractor commences working on the public work in which the contractor or subcontractor does not employ any workers in connection with the public work.

(Added to NAC by Labor Comm’r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

New NAC 338.006 “Normal Maintenance and Normal Operations Defined” (NRS 338.011 – Assembly Bill 172 2015 Session) “Normal Maintenance and Normal Operations” means those day to day activities such as janitorial, cleaning, and basic repair work that typically do not require a building permit or the hiring of a contractor whose activities require a contractor’s license that are performed by staff of the awarding body or whose performance is contracted out by the awarding body where the costs are under the \$250,000 public work project amount including labor, equipment, and supplies. Nothing in this section precludes an awarding body from awarding contracts pursuant to NRS section 332 and NRS section 333 or employing their own skilled labor staff to perform day to day maintenance or operations so long as the performance of these duties or projects is not separated or broken up to circumvent the \$250,000 public work project amount and the payment of prevailing wage pursuant to NRS section 338.020.

NAC 338.007 “Recognized class of workers” defined. ([NRS 338.012](#)) “Recognized class of workers” means a class of workers recognized and surveyed for by the Labor Commissioner as being a distinct craft or type of work for purposes of establishing prevailing rates of wages. The term includes the following class of workers and job descriptions as set forth in Attachment A for which the Labor Commissioner has traditionally established a prevailing rate of wages and any other class of workers the Labor Commissioner determines to be a distinct craft or type of work after conducting a hearing pursuant to [NAC 338.090](#). If after conducting a hearing pursuant to NAC section 338.090 the Labor

Commissioner establishes a new class of workers and/or amends the job descriptions for a class of workers, the Labor Commissioner shall transmit that information to the Legislative Counsel Bureau.

(Added to NAC by Labor Comm'r by R072-00, eff. 8-15-2000)

NAC 338.008 Contract between awarding body and contractor does not bar enforcement by Labor Commissioner or awarding body. ([NRS 338.012](#)) The existence or non-existence of a contract between an awarding body and a contractor is not a bar to the enforcement by the Labor Commissioner or the awarding body of the provisions of [NRS 338.010](#) to [338.090](#), inclusive, and [NAC 338.005](#) to [338.125](#), inclusive.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

Wages

NAC 338.009 Workers deemed to be employed on public works: Interpretation of certain statutory terms. ([NRS 338.012](#), [338.040](#))

1. As used in [NRS 338.040](#), the Labor Commissioner will interpret:

(a) "Employed at the site of a public work" to mean the performance of work in the execution of a contract for a public work at the physical place or places at which the work is performed or at which a significant portion of the public work is constructed, altered or repaired if such place is established specifically for the execution of the contract for the public work or dedicated exclusively, or nearly so, to the execution of the contract for the public work.

(b) "Necessary in the execution of the contract for the public work" to mean the performance of duties required to construct, alter or repair the public work and without which the public work could not be completed.

2. A person who provides services to the prime contractor or a subcontractor for a limited period of time at the site of the public work shall not be deemed to be employed at the site of the public work if the work performed by such service provider:

(a) Is not recognized as a class of workers; and

(b) The work performed is incidental or ancillary to the construction of the public work.

3. As used in this section, "site of a public work" includes job headquarters, a tool yard, batch plant, borrow pit or any other location that is established for the purpose of executing the contract for the public work or that is dedicated exclusively, or nearly so, to executing the contract for the public work. The term does not include a permanent home office, branch plant establishment, fabrication plant, tool yard or any other operation of a contractor, subcontractor or supplier if the location or the continued existence of the operation is determined without regard to a particular public work.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R090-04, 6-30-2004; R022-06, 5-4-2006)

NAC 338.0095 Workers and apprentices: Payment of applicable prevailing rate of wage for type of work actually performed and in accordance with recognized class of workers; identification of employer. ([NRS 338.012](#), [338.020](#))

1. For the purposes of [NRS 338.010](#) to [338.090](#), inclusive, and [NAC 338.005](#) to [338.125](#), inclusive:

(a) A worker employed on a public work must be paid the applicable prevailing rate of wage for the type of work that the worker actually performs on the public work and in accordance with the recognized class of the worker. The Office of the Labor Commissioner recognizes that employers who are signatory to collective bargaining agreements have the authority to assign work in accordance with established practice in that jurisdiction. ; and

(b) Each contractor and subcontractor shall be deemed to be the employer of each worker and apprentice who performs work directly for that contractor or subcontractor in the execution of a contract for a public work, whether the worker or apprentice is employed directly by the contractor or subcontractor or is furnished to the contractor or subcontractor by or through another person or entity such as an employee leasing company or equipment rental business.

2. Any person employed on a public work as an apprentice or listed on a certified payroll report as an apprentice who is not registered with the Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor and the State Apprenticeship Council must be paid not less than the applicable wage rate for the type of work actually performed by the person and in accordance with the applicable recognized class of workers. Any person designated as an apprentice performing work at the site of a public work who exceeds the ratio of apprentices to journeymen authorized under the registered program of apprenticeship must be paid not less than the applicable wage rate for the type of work actually performed by the person and in accordance with the applicable recognized class of workers.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

NAC 338.0097 Payment of wages through contributions in name of worker to third person pursuant to fund, plan or program. ([NRS 338.012](#), [338.035](#)) Contributions made pursuant to [NRS 338.035](#) in the name of a worker to a third person pursuant to a fund, plan or program must be made in accordance with the provisions of [NRS 608.060](#) and [608.070](#).

(Added to NAC by Labor Comm'r by R090-04, eff. 6-30-2004)

NAC 338.010 Method of determination of prevailing rate of wages for recognized class of workers. ([NRS 338.012](#), [338.020](#), [338.030](#))

1. Based on the information described in subsection 2 of [NAC 338.020](#), the Labor Commissioner will determine the prevailing rate of wages paid to each recognized class of workers as set forth in Attachment A pursuant to NAC 338.007 in each county as follows:

(a) Where the rate of wages is the same for the majority of the total hours worked by a recognized class of workers who are employed in the county on non-residential construction projects, that rate will be determined as the prevailing rate.

(b) Where there is no such majority, the prevailing rate for the recognized class of workers will be determined as set forth in NRS section 338.030:

(c) If no similar non-residential construction has been performed within the county in the past year, the Labor Commissioner may keep the rate of wages for that county the same for that year or consider the wage rates paid in the nearest county by measuring the distance between counties in a straight line between the county seats of the respective counties.

2. If the Labor Commissioner determines that the prevailing rate of wages for a recognized class of workers is a wage which has been collectively bargained, the Labor Commissioner shall recognize the group classifications set forth in the collective bargaining agreement and the wage and benefit adjustments and classifications of workers established in the collective bargaining agreement and adjust the prevailing rate of wages for the recognized class of workers in accordance with wage and benefit adjustments and classifications of workers in the collective bargaining agreement. Any adjustments made by the Labor Commissioner pursuant to this section will be published with an effective date that will apply to public works projects and public works projects contracts awarded after the effective date of publication.

(Added to NAC by Labor Comm'r eff. 12-1-83; A by R072-00, 8-15-2000; R072-00, 8-15-2000, eff. 7-1-2001)

NAC 338.015 Recognized classes of workers: Subclassifications; determination of prevailing rate of wages for each craft or type of work among class. ([NRS 338.012](#), [338.020](#), [338.030](#))

1. The subclassifications within the recognized classes of workers include, without limitation:
 - (a) Foreman. A foreman is a person who works with and supervises one or more journeymen performing a craft or type of work.
 - (b) General foreman. A general foreman is a person who works with and supervises one or more journeymen performing a craft or type of work, including, without limitation, one or more foremen.
 - (c) Journeyman. A journeyman is a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker performing a craft or type of work.
2. The Labor Commissioner will consider the kind of information described in subsection 2 of [NAC 338.020](#) to determine the applicable prevailing wage for each craft or type of work among the recognized class of workers.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002)

NAC 338.017 Truck drivers: Periods when deemed to be employed on public work. ([NRS 338.012](#), [338.040](#))

1. A worker who performs the craft of truck driver shall be deemed to be employed on a public work while:
 - (a). Transporting materials at the site of a public work; or
 - (b). Transporting materials between the sites of a public work.
2. A worker who performs the craft of truck driver shall not be deemed to be employed on a public work while:
 - (a) Transporting materials or equipment from the site of a public work to any other operation of a contractor, subcontractor, or supplier that is not at the site of a public work or created for the public work in accordance with NAC 338.009; or
 - (b) Transporting materials or equipment from a site that is not the site of a public work.

(Added to NAC by Labor Comm'r by R090-04, eff. 6-30-2004)

NAC 338.020 Compilation of information for use in determining prevailing rates of wages. ([NRS 338.012](#), [338.020](#), [338.030](#))

1. The Labor Commissioner will conduct an annual survey for use in determining prevailing rates of wages.
2. The kinds of information which the Labor Commissioner will consider in making determinations of prevailing rates of wages include:
 - (a) Statements showing rates of wages paid on public and private projects, where the statements are signed by the contractors or their representatives and contain:
 - (1) The names and addresses of the contractors and subcontractors;
 - (2) The locations, project name and cost, , and approximate dates of construction within the survey period;
 - (3) The number of hours each recognized class of workers is employed on each project; and
 - (4) The respective rates of wages as defined by NRS section 338.010 paid to each recognized class of workers employed on each project.
 - (b) Signed collective bargaining agreements that are on file with the Labor Commissioner on or before September 1 of each year preceding the annual determination of the prevailing rates of wages.

(c) Wage rates determined by officials of the Federal Government for public construction. 3. When determining prevailing rates of wages, the Labor Commissioner may exclude from consideration any information submitted to him or her that is untimely filed, duplicative, incomplete or determined by the Labor Commissioner to be unverifiable.

4. As used in this section, "representative" means:

(a) An agent, officer or employee of a contractor or subcontractor who has been authorized to act in such a capacity by the contractor or subcontractor; or

(b) Any other person empowered by a written agreement with the contractor or subcontractor that authorizes the person to act on behalf of the contractor or subcontractor in submitting the information required pursuant to paragraph (a) of subsection 2.

5. As used in NAC section 338.010 and this section, "nonresidential construction work" means any type of construction other than the construction of multifamily residences which are less than four stories in height and the construction of single-family residences.

(Added to NAC by Labor Comm'r, eff. 12-1-83; A by R072-00, 8-15-2000; R115-01, 4-5-2002)

NAC 338.040 Determination of prevailing rates of wages: Effective period; amendment; request for new determination. ([NRS 338.012](#), [338.020](#), [338.030](#))

1. A determination by the Labor Commissioner of the prevailing rates of wages in a locality becomes effective on October 1 of each year and remains effective for 1 year after that date except as otherwise provided in this section.

2. If the Labor Commissioner issues an amendment to a determination of prevailing rates of wages, the prevailing rates of wages that are set forth in the amendment:

(a) Will be effective:

(1) On the date specified in the amendment; or

(2) If an effective date is not specified in the amendment, 10 days after the issuance of the amendment.

(b) Will be applicable to all projects of a public work bid after the effective date of the amendment.

(c) Will expire upon the effective date of a subsequently issued applicable determination of the prevailing rates of wages.

3. After a contract has been awarded, the prevailing rates of wages in effect at the time of the opening of bids remain in effect for the duration of the project.

4. If a public body believes that a pattern of wages is not clearly established in a locality, it may request the Labor Commissioner to make a new determination of the prevailing wages in the locality. Such a request must be accompanied by the information outlined in paragraph (a) of subsection 2 of [NAC 338.020](#).

(Added to NAC by Labor Comm'r, eff. 12-1-83; A by R072-00, 8-15-2000; R207-03, 2-19-2004)

NAC 338.050 Determination of prevailing rates of wages: Correction of clerical errors. ([NRS 338.012](#), [338.020](#), [338.030](#)) At the request of a public body, any crafts affiliated with the State Federation of Labor or other recognized national labor organizations, the contractors of the locality or their representatives, or upon the initiative of the Labor Commissioner, the Labor Commissioner will correct any determination of prevailing wages which he or she has issued if he or she finds that it contains a clerical error. A correction is applicable to all projects bid after the correction becomes effective.

(Added to NAC by Labor Comm'r, eff. 12-1-83; A by R072-00, 8-15-2000)

NAC 338.060 Determination of prevailing rates of wages: Availability of copies. ([NRS 338.012](#), [338.020](#), [338.030](#)) Copies of the Labor Commissioner's determinations of prevailing rates of wages are available at his or her office and will be furnished to public bodies and interested persons upon request beginning on October 1 of each year.

(Added to NAC by Labor Comm'r, eff. 12-1-83; A by R072-00, 8-15-2000; R115-01, 4-5-2002)

NAC 338.065 Prevailing rates of wages for contract for public work entered into without opening of bids. ([NRS 338.012](#), [338.020](#), [338.030](#))

1. Except as otherwise provided in subsection 2, if a particular contract for a public work is to be entered into without the opening of bids, the prevailing rates of wages in effect on the date the contractor for the contract for the public work is selected by the awarding body will be in effect for the duration of the project.

2. If the contract for a public work is not entered into within 90 days after the date of the selection of the contractor for the contract for the public work by the awarding body, the prevailing rates of wages in effect on the date the contract is entered into will be in effect for the duration of the project.

(Added to NAC by Labor Comm'r by R207-03, eff. 2-19-2004)

NAC 338.070 Doubt concerning prevailing rate of wages in locality. ([NRS 338.012](#), [338.020](#), [338.030](#)) The Labor Commissioner will regard himself or herself as being in doubt concerning a prevailing rate of wages in a locality and will hold the required hearing in the locality whenever the Labor Commissioner finds that:

1. The data within his or her possession are not substantial enough; or

2. His or her other means of obtaining information are inadequate,

↳ to enable him or her to determine the prevailing rate of wages for any recognized class of workers in the locality.

(Added to NAC by Labor Comm'r, eff. 12-1-83; A by R072-00, 8-15-2000)

NAC 338.090 Hearing to determine need for new recognized class of workers. ([NRS 338.012](#), [338.020](#), [338.030](#)) Upon his or her own initiative or at the request of any person who is required to be heard pursuant to subsection 6 of [NRS 338.030](#), the Labor Commissioner may conduct a hearing to determine the need for a new recognized class of workers if he or she is in doubt as to the adequacy of an existing recognized class of workers. The Labor Commissioner shall consider the recognized class of workers and group classifications as set forth in collective bargaining agreements if that wage rate is established as the prevailing wage rate.

(Added to NAC by Labor Comm'r by R072-00, eff. 8-15-2000)

Reports and Records

NAC 338.092 Reports by contractors and subcontractors to Labor Commissioner: Form and contents; substantiation; provision to awarding body. ([NRS 338.012](#), [338.013](#))

1. Except as otherwise provided in subsection 2, a contractor who has been awarded a contract for a public work and all subcontractors hired by the contractor shall report the name and address of each subcontractor whom the contractor or subcontractor engages for work on the public work as required pursuant to subsection 3 of [NRS 338.013](#) on a form prescribed by the Labor Commissioner. The report must include, without limitation:

(a) The name of the owner or principal of the subcontractor;

(b) The telephone number and facsimile number, if any, of the subcontractor;

(c) The scope of work to be performed by the subcontractor in connection with the public work; and
(d) The number, if any, of the license issued to the subcontractor by the State Contractors' Board pursuant to [chapter 624](#) of NRS.

2. A contractor who has been awarded a contract for a public work and all subcontractors hired by the contractor do not need to report suppliers hired by the contractor or subcontractor to the Labor Commissioner pursuant to subsection 1.

3. A contractor engaged on a public work has the burden of proof in substantiating that he or she reported any subcontractors whom the contractor has engaged for work on the public work to the Labor Commissioner pursuant to subsection 3 of [NRS 338.013](#).

4. A contractor or subcontractor hired by the contractor shall provide a copy of the report to the awarding body and/or the Office of the Labor Commissioner upon request.

5. As used in this section, "supplier" has the meaning ascribed to it in [NRS 338.010](#).

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

NAC 338.094 Certified payroll report: Format; required information and documentation. ([NRS 338.012](#), [338.070](#))

1. Each certified payroll report:

(a) May be submitted on a form prescribed by the Labor Commissioner or in a format selected by the contractor or subcontractor that provides the information required pursuant to subsection 4 of [NRS 338.070](#);

(b) Must be accompanied by a statement of compliance, on a form prescribed by the Labor Commissioner, which is executed by the contractor or subcontractor and which certifies the truthfulness and accuracy of the payroll report; and

(c) Must include an itemization of all contributions made to a third person pursuant to a fund, plan or program in the name of a worker as authorized by [NRS 338.035](#), if any such contributions were made as part of the wages of that worker.

2. A contractor or subcontractor shall report workers on a certified payroll report for a public work:

(a) Based on the type of work actually performed by the workers;

(b) Based on the number of hours worked per worker per day; and

(c) In accordance with the recognized classes of workers.

→ Such a report must not include any hours of work performed by the workers on another public work or private project.

3. When a contractor or subcontractor first lists an apprentice on a certified payroll report, the contractor or subcontractor must submit with that certified payroll report documentation to substantiate that the apprentice is registered with the Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor and the State Apprenticeship Council.

4. Upon the request of the awarding body and/or the Office of the Labor Commissioner, a contractor or subcontractor engaged on a public work shall provide to the awarding body payroll records and any other records deemed necessary by the awarding body to verify the accuracy of information contained in any certified payroll report submitted by the contractor or subcontractor.

5. Owner-Operators are not required to comply with the provisions of this section.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

NAC 338.096 Certified payroll report: Examination by awarding body. ([NRS 338.012](#), [338.070](#))

1. An awarding body and/or the Office of the Labor Commissioner shall cause such an examination of the certified payroll reports of a contractor or subcontractor to be made at reasonable times to

assure compliance with the provisions of [NRS 338.010](#) to [338.090](#), inclusive, and [NAC 338.005](#) to [338.125](#), inclusive. Such an examination may include, without limitation:

(a) Verifications with employees of the contractor or subcontractor of the wages paid to and the type of work actually performed by those employees;

(b) Review of records and other data concerning the payroll of the contractor or subcontractor;

(c) Verification of the registration of apprentices; and

(d) Evidence of payments to fringe benefit plans, if any.

2. In conducting an examination pursuant to this section, an awarding body shall verify:

(a) The accuracy of the reporting of workers in the recognized classes of the workers; and

(b) The ratio of apprentices to journeymen authorized under the registered program of apprenticeship.

3. If the examination of the certified payroll reports of a contractor or subcontractor reveal a potential violation of NRS 338.010 through 338.090, inclusive, or NAC 338.005 through 338.125, inclusive other than a late certified payroll report pursuant to NRS 338.060 subdivision (3), the awarding body shall notify the Office of the Labor Commissioner.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

NAC 338.098 Nonperformance payroll report: Submission in lieu of certified payroll report. ([NRS 338.012](#), [338.070](#))

1. If a contractor or subcontractor engaged on a public work does not employ any workers in any calendar month during which he or she is engaged on the public work, the contractor or subcontractor shall, in lieu of submitting a certified payroll report pursuant to subsections 4 and 5 of [NRS 338.070](#) for that month, submit to the awarding body a nonperformance payroll report certifying that the contractor or subcontractor did not employ any workers on the public work during that month. If a contractor or subcontractor engaged on a public work employs any workers in any calendar month after the submission of a nonperformance payroll report during which time he or she is engaged on the public work, the subcontractor shall submit the report required pursuant to NRS 338.070 and NAC 338.094.

2. If a contractor or subcontractor does not employ any workers for three consecutive calendar months during which he or she is engaged on a public work, they shall submit to the awarding body and/or the Office of the Labor Commissioner upon request, a final nonperformance payroll report or other documentation demonstrating that the work is completed and no further work will be performed on that public work.

3. A nonperformance payroll report must be completed on a form prescribed by the Labor Commissioner and must be submitted to the awarding body not later than 15 days after the end of a month in which the contractor or subcontractor did not employ any workers on the public work.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

NAC 338.100 Certified payroll report and nonperformance payroll report: Notation of date of receipt; submission to Labor Commissioner. ([NRS 338.012](#), [338.070](#))

1. An awarding body shall cause to be affixed to each certified payroll report or nonperformance payroll report that the awarding body receives the actual date on which the awarding body received the certified payroll report or nonperformance payroll report.

2. An awarding body shall, upon request of the Labor Commissioner, submit a copy of a certified payroll report or a nonperformance payroll report to the Labor Commissioner.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002)

Determination of Violation

NAC 338.105 “Determination and Determination Procedures” defined. (NRS 338.012) As used in [NAC 338.105](#) to [338.116](#), inclusive, “determination” means a proposed finding of the Labor Commissioner and/or an awarding body as to whether a violation of a provision of [NRS 338.010](#) to [338.090](#), inclusive, or [NAC 338.005](#) to [338.125](#), inclusive, has occurred. A determination by an awarding body that a certified payroll report was submitted late pursuant to NRS 338.060 subdivision (3) where forfeitures have been taken and no objection filed is not required to be submitted to the Office of the Labor Commissioner. If an objection has been filed and/or the awarding body has determined that further investigation is warranted the determination shall be forwarded to the Office of the Labor Commissioner.

(Added to NAC by Labor Comm’r by R207-03, eff. 2-19-2004)

NAC 338.107 Complaint of violation: Filing with Labor Commissioner; contents; service. (NRS 338.012, 338.015)

1. A person filing a complaint with the Office of the Labor Commissioner alleging that a violation of a provision of [NRS 338.010](#) to [338.090](#), inclusive, or [NAC 338.005](#) to [338.125](#), inclusive, has occurred with respect to the person shall:

(a) Provide in writing to the Labor Commissioner:

- (1) The full name and address of the person filing the complaint;
- (2) The full name and address of the person alleged to have committed the violation;
- (3) A clear and concise statement of facts sufficient to establish that an alleged violation of a provision of [NRS 338.010](#) to [338.090](#), inclusive, or [NAC 338.005](#) to [338.125](#), inclusive, has occurred, including, without limitation, the date, time and place of the alleged violation and the name of each person involved;
- (4) A citation to the specific statute or regulation alleged to have been violated;
- (5) The relief requested by the person filing the complaint;
- (6) A certification by the person filing the complaint that the facts alleged in the complaint are true to the best knowledge and belief of the person filing the complaint; and
- (7) The signature of the person filing the complaint.

(b) Submit an original and one copy of the complaint to the Labor Commissioner with a certificate of service attached.

(c) Serve a copy of the complaint upon the person alleged to have committed the violation by:

- (1) Personal service; or
- (2) Regular mail.

2. A complaint filed with the Office of the Labor Commissioner alleging that an awarding body has violated a provision of NRS 338 or NAC 338 inclusive will be forwarded to the awarding body for an answer pursuant to NAC 338.108.

3. Any party can file a petition to intervene that shall meet the requirements and be granted or denied based on the provisions of NAC 607.110.

New NAC 338.108 “Answer to Complaint” and “Further Investigation”

1. A respondent, within 15 days after being served with a copy of a complaint, shall file an answer to the complaint with the Office of the Labor Commissioner and serve a copy of the answer on the complainant and every other person who is a party to the proceeding.

2. Matters that are alleged as an affirmative defense must be separately stated and numbered.

3. If, from the complaint and answer, it appears that further investigation is required, the Office of the Labor Commissioner may order the awarding body to conduct further investigation or the Office of the Labor Commissioner may conduct its own investigation. Complaints filed against the awarding body will be investigated by the Office of the Labor Commissioner.

4. If the respondent fails to answer within 15 days, the Commissioner may determine that the respondent is in default and issue a decision and order based solely on the facts as presented in the complaint. A decision issued by the Commissioner pursuant to this subsection constitutes the final order of the Commissioner on the matter.

(Added to NAC by Labor Comm'r by R207-03, eff. 2-19-2004)

NAC 338.110 Determination by awarding body: Procedure; factors for consideration; objection to determination. ([NRS 338.012](#), [338.015](#), [338.070](#))

1. Upon its own initiative or upon notice from the Labor Commissioner of a possible violation, an awarding body shall cause such an investigation to be made as may be necessary to determine whether a violation of a provision of [NRS 338.010](#) to [338.090](#), inclusive, or [NAC 338.005](#) to [338.125](#), inclusive, was committed in the course of the execution of a contract for a public work that was awarded by the awarding body. Such an investigation must commence and conclude within a reasonable time, except that the investigation must not exceed 30 days unless an additional period of time is approved by the Labor Commissioner. Upon commencing an investigation upon its own initiative, an awarding body shall notify the Labor Commissioner in writing as soon as is practicable.

2. If a contractor or subcontractor fails to provide to an awarding body information requested by the awarding body pursuant to subsection 4 of [NAC 338.094](#), the awarding body may request the Labor Commissioner to issue subpoenas on behalf of the awarding body to assist the awarding body in its investigation.

3. In making a determination, an awarding body shall consider:

- (a) Information contained in any claim or complaint against the contractor or subcontractor that was received by the Labor Commissioner;
- (b) Oral or written statements made by employees of the contractor or subcontractor or witnesses during interviews conducted by the awarding body;
- (c) Information contained in certified payroll reports applicable to the public work; and
- (d) Any other information that could reasonably assist the awarding body in determining whether a violation was committed.

4. Upon the conclusion of its investigation, an awarding body shall issue, in writing, the determination issued by the awarding body and shall:

- (a) Submit a copy of the determination issued by the awarding body to the Labor Commissioner;
- (b) Serve a copy of the determination issued by the awarding body upon the contractor or subcontractor alleged to have committed the violation;
- (c) If the contractor or subcontractor alleged to have committed the violation was not the prime contractor for the public work, serve a copy of the determination issued by the awarding body upon the prime contractor for the public work;
- (d) Serve a copy of the determination issued by the awarding body upon the person who filed the complaint; and
- (e) Serve a copy of the determination issued by the awarding body upon any other person who filed a claim or a complaint with the Labor Commissioner that related to the investigation.

5. If, after an investigation, an awarding body issues a determination that a contractor or subcontractor has failed to pay the correct wages to workers employed by the contractor or subcontractor in connection with a public work, the awarding body shall withhold and retain the wages due and owing to the workers and any applicable penalties.

6. In addition to submitting a copy of the determination issued by the awarding body to the Labor Commissioner pursuant to subsection 4, the awarding body shall submit any information gathered during the investigation and provide that to the Labor Commissioner along with the following information pertaining to the determination issued by the awarding body:

- (a) A detailed narrative of the findings of the investigation;
- (b) The name and address of the contractor or subcontractor and its responsible officers;
- (c) If a subcontractor is alleged to have committed the violation, the name and address of:
 - (1) The prime contractor for the public work and its responsible officers; and
 - (2) Any intermediate subcontractor and the respective responsible officers of that subcontractor;
- (d) A copy of the contract for the public work, or an excerpt of the portion of the contract that the Labor Commissioner determines is relevant, which must include, without limitation, information identifying the deadline by which bids on the contract were accepted, the date on which the contract was awarded and the scope of work performed by the contractor or subcontractor;
- (e) Copies of any claims or complaints received by the awarding body from the Labor Commissioner relating to the investigation;
- (f) Copies of the applicable certified payroll reports and nonperformance payroll reports submitted by the contractor or subcontractor;
- (g) If applicable, signed interview statements of employees of the contractor or subcontractor;
- (h) If applicable, computations of penalties and back wages for each worker, including, without limitation, the name, address and social security number of the worker; and
- (i) The identifying number requested from the Labor Commissioner by the public body pursuant to [NRS 338.013](#).

7. If a person who filed a claim or complaint with the Labor Commissioner relating to the investigation that is the subject of the determination issued by the awarding body submits a request to the awarding body to receive the information submitted by the awarding body to the Labor Commissioner pursuant to subsection 6, the awarding body shall provide to the person that information.

8. A person who has been served a copy of a determination issued by an awarding body pursuant to subsection 4 and who is aggrieved by the determination issued by the awarding body may file a written objection with the Labor Commissioner within 15 days after the date of service of the determination issued by the awarding body. Such an objection must be accompanied by a short statement of the grounds for the objection and evidence substantiating the objection. The awarding body issuing the determination shall insert a statement to this effect into the determination issued by the awarding body.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

NAC 338.112 Determination by awarding body: Action by Labor Commissioner; objection to and hearing on modified determination; disposition. ([NRS 338.012](#), [338.015](#))

1. Within 30 days after receipt of a determination issued by an awarding body pursuant to the provisions of [NAC 338.110](#), the Labor Commissioner will:

- (a) Return the determination issued by the awarding body to the awarding body with a directive for further investigation;

(b) Modify the determination issued by the awarding body;

(c) Affirm the determination issued by the awarding body and, if any wages or penalties were withheld by the awarding body, direct the awarding body to forward to the Labor Commissioner the sums withheld for disbursement to the workers;

(d) Conduct its own investigation;

(e) Set the matter that is the subject of the determination issued by the awarding body for an administrative hearing before the Labor Commissioner; or

(f) Decline to assert jurisdiction over the matter that is the subject of the determination issued by the awarding body.

2. If, pursuant to subsection 1, the Labor Commissioner:

(a) Modifies a determination issued by an awarding body, the Labor Commissioner will serve a copy of the modified determination by mail on the contractor or subcontractor who was the subject of the investigation and any person who filed a claim or complaint with the Labor Commissioner relating to the investigation.

(b) Affirms a determination issued by an awarding body, the Labor Commissioner will issue an order affirming the determination issued by the awarding body. The order affirming the determination issued by the awarding body is deemed to be the final order of the Labor Commissioner on the matter.

(c) Sets the matter that is the subject of the determination issued by the awarding body for an administrative hearing before the Labor Commissioner, the Labor Commissioner will conduct a hearing on the matter.

(d) Declines to assert jurisdiction over the matter that is the subject of the determination, the Labor Commissioner will issue an order dismissing the determination issued by the awarding body. The order dismissing the determination issued by the awarding body is deemed to be the final order of the Labor Commissioner on the matter.

3. A person who has been served a copy of a modified determination pursuant to paragraph (a) of subsection 2 and who is aggrieved by the modified determination may file a written objection with the Labor Commissioner within 15 days after the date of service of the modified determination. Such an objection must be accompanied by a short statement of the grounds for the objection and evidence substantiating the objection.

4. If an objection to a determination issued by an awarding body and modified by the Labor Commissioner is filed with the Labor Commissioner pursuant to subsection 3, the Labor Commissioner will, within 15 days after the period for objection has expired, schedule a hearing on the modified determination if:

(a) The modified determination included an assessment of back wages owed to workers, an administrative penalty or fine, or a recommendation of the imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to [NRS 338.017](#); or

(b) The modified determination did not include an assessment of back wages owed to workers, an administrative penalty or fine, or a recommendation of the imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to [NRS 338.017](#), but the Labor Commissioner determines that the objection has merit on other grounds after reviewing the determination and the information submitted to him or her by the awarding body pursuant to subsection 6 of [NAC 338.110](#).

5. If:

(a) An objection is filed with the Labor Commissioner that does not meet the requirements of subsection 3; or

(b) An objection was not filed with the Labor Commissioner,
→ the determination issued by the awarding body and modified by the Labor Commissioner is deemed to be the final order of the Labor Commissioner on the matter.

6. If, after holding a hearing on a determination issued by an awarding body or a modified determination, the Labor Commissioner finds that a contractor or subcontractor violated a provision of [NRS 338.010](#) to [338.090](#), inclusive, or [NAC 338.005](#) to [338.125](#), inclusive, the Labor Commissioner will issue a written decision, which will include, without limitation, the relevant facts and applicable laws on which the decision was based. The Labor Commissioner will serve a copy of the decision by certified mail on the contractor or subcontractor who was the subject of the investigation and any person who filed a claim or complaint with the Labor Commissioner relating to the investigation. A decision issued by the Labor Commissioner pursuant to this subsection is deemed to be the final order of the Labor Commissioner on the matter.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

NAC 338.114 Determination by Labor Commissioner: Issuance and service; objection to and hearing on determination; disposition. ([NRS 338.012](#), [338.015](#))

1. If, after an investigation conducted by the Labor Commissioner on a complaint filed pursuant to NAC 338.107 or on a complaint filed against an awarding body, the Labor Commissioner finds that a person, including, without limitation, a contractor or subcontractor, the officers, agents or employees of a public body, has violated a provision of [NRS 338.010](#) to [338.090](#), inclusive, or [NAC 338.005](#) to [338.125](#), inclusive, the Labor Commissioner will issue a written determination, which will include, without limitation, the relevant facts and applicable laws on which the determination was based. The Labor Commissioner will serve a copy of the determination by mail on:

- (a) The person who was alleged to have committed the violation;
- (b) If a subcontractor is alleged to have committed the violation:
 - (1) The prime contractor for the public work; and
 - (2) Any intermediate subcontractors; and
- (c) Any other person who filed a claim or complaint with the Labor Commissioner relating to the investigation.

2. A person who has been served a copy of a determination issued by the Labor Commissioner pursuant to subsection 1 and who is aggrieved by the determination may file a written objection with the Labor Commissioner within 15 days after the date of service of the determination. Such an objection must be accompanied by a short statement of the grounds for the objection and evidence substantiating the objection. The Labor Commissioner will insert a statement to this effect into the determination issued by the Labor Commissioner.

3. If an objection to a determination issued by the Labor Commissioner pursuant to subsection 1 is filed with the Labor Commissioner that meets the requirements of subsection 2, the Labor Commissioner will, within 15 days after that period for objection has expired, schedule a hearing on the determination if:

- (a) The determination issued by the Labor Commissioner included an assessment of back wages owed to workers, an administrative penalty or fine, or an imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to [NRS 338.017](#); or
- (b) The determination issued by the Labor Commissioner did not include an assessment of back wages owed to workers, an administrative penalty or fine, or an imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to [NRS 338.017](#), but the Labor Commissioner determines that the objection has merit on other grounds.

4. If:

- (a) An objection to a determination issued by the Labor Commissioner is filed with the Labor Commissioner that does not meet the requirements of subsection 2; or
- (b) An objection was not filed with the Labor Commissioner,

↳ the Labor Commissioner will issue an order affirming the determination issued by the Labor Commissioner. The order affirming the determination issued by the Labor Commissioner is deemed to be the final order of the Labor Commissioner on the matter.

5. If, after holding a hearing scheduled pursuant to subsection 3 on a determination issued by the Labor Commissioner pursuant to subsection 1, the Labor Commissioner finds that a person, including, without limitation, the officers, agents or employees of a public body, has violated a provision of [NRS 338.010](#) to [338.090](#), inclusive, or [NAC 338.005](#) to [338.125](#), inclusive, the Labor Commissioner will issue a written decision, which will include, without limitation, the relevant facts and applicable laws on which the decision was based. The Labor Commissioner will serve a copy of the decision by certified mail on the person who is found to have committed the violation and any other person who filed a claim or complaint with the Labor Commissioner relating to the investigation. A decision issued by the Labor Commissioner pursuant to this subsection is deemed to be the final order of the Labor Commissioner on the matter.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)

NAC 338.116 Hearing on determination: Procedure. ([NRS 338.012](#), [338.015](#)) At a hearing held by the Labor Commissioner on a determination issued by an awarding body or the Labor Commissioner, the Labor Commissioner will use the procedures provided pursuant to NRS 233B and [chapter 607](#) of NAC to conduct the hearing.

(Added to NAC by Labor Comm'r by R115-01, eff. 4-5-2002; A by R207-03, 2-19-2004)