

**PROPOSED REGULATION OF THE
LABOR COMMISSIONER**

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PAYMENT AND COLLECTION OF WAGES

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PAYMENT AND COLLECTION OF WAGES

NAC 608.050 Definitions. ([NRS 607.160](#)) As used in [NAC 608.050](#) to [608.160](#), inclusive, 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.

(Added to NAC by Labor Comm’r by R115-04, eff. 8-25-2004; A by R055-07, 10-31-2007)

NAC 608.055 “Commissioner” defined. ([NRS 607.160](#)) “Commissioner” means the Labor Commissioner or their authorized representative.

(Added to NAC by Labor Comm’r by R115-04, eff. 8-25-2004)

NAC 608.060 “Day” defined. ([NRS 607.160](#)) “Day” means a calendar day, including any portion of a calendar day, unless otherwise specified by an applicable statute or regulation.

(Added to NAC by Labor Comm’r by R115-04, eff. 8-25-2004)

NAC 608.065 “Employee” defined. ([NRS 607.160](#)) “Employee” has the meaning ascribed to it in [NRS 608.010](#).

(Added to NAC by Labor Comm’r by R115-04, eff. 8-25-2004)

NAC 608.070 “Employer” defined. ([NRS 607.160](#)) “Employer” has the meaning ascribed to it in [NRS 608.011](#).

(Added to NAC by Labor Comm’r by R115-04, eff. 8-25-2004)

NAC 608.075 “Piece rate” defined. ([NRS 607.160](#)) “Piece rate” means a wage rate based on a unit of production. The term does not include a wage rate based on a unit of time or a wage rate based on commission.

(Added to NAC by Labor Comm’r by R115-04, eff. 8-25-2004)

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.

(Added to NAC by Labor Comm’r by R115-04, eff. 8-25-2004)

New NAC section and definition for Schedule of Work defined. *“Schedule of Work” means seven consecutive periods including all hours worked each day up to a maximum of 40 hours including all hours worked during the workweek and schedule of work. Hours worked over 40 in a scheduled week of work are subject to overtime pursuant to NRS 608.018.*

NAC 608.090 “Uniform” interpreted. ([NRS 607.160](#), [608.165](#)) As used in [NRS 608.165](#), the Commissioner interprets “uniform” to mean distinctive clothing which an employee of a business is required to wear and which serves as a clear means of identifying the employee with the business.

(Added to NAC by Labor Comm’r by R115-04, eff. 8-25-2004)

NAC 608.100 Minimum wage: Applicability; and Rates. ([Nev. Const. Art. 15, § 16](#); [NRS 607.160](#), [608.250](#))

1. Except as otherwise provided in subsection 2, 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 a temporary employee. The minimum wage rates and increases are set forth in Assembly Bill 456 passed during the 80th (2019) Session of the Nevada Legislature.

(a) The lower tier minimum wage can be paid if a health benefit plan or health benefits are made available to the employee and the employee’s dependents pursuant to NAC section 608.102.

(b) If a health benefit plan or health benefits are not made available to an employee or the employee’s dependents pursuant to NAC section 608.102 the higher tier minimum wage must be paid.

2. 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.

NAC 608.102 Minimum wage: Qualification to pay lower tier rate if a health benefit plan or health benefits have been made available to the employee and the employee’s dependents.. ([Nev. Const. Art. 15, § 16](#); [NRS 607.160](#), [608.250](#)) *For the purpose of determining the minimum wage that may be paid per hour to an employee in private employment*

an employer shall make a health benefit plan or health benefits available to an employee and the employee's dependents that meet the requirements of Senate Bill 192 passed during the 80th (2019) Session of the Nevada Legislature in order to pay the lower tier minimum wage rate.:

4. The waiting period for the health *benefit plan or health benefits* is not more than 6 months.

(Added to NAC by Labor Comm'r by R055-07, eff. 10-31-2007)

NAC 608.104 Minimum wage: Determination of whether employee share of premium of health benefit plan or health benefits exceeds 10 percent of gross taxable income. ([Nev. Const. Art. 15, § 16](#); [NRS 607.160, 608.250](#))

1. The share of the cost of the premium for the health benefit plan or health benefits paid by the employee must not exceed 10 percent of the gross taxable income of the employee excluding tips attributable to the employer under the Internal Revenue Code. 2. To determine whether the share of the cost of the premium of the *health benefit plan or health benefits* paid by the employee does not exceed 10 percent of the gross taxable income of the employee *excluding tips* 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 *excluding tips* paid by the employer into the projected share of the premiums to be paid by the employee for the health *benefits plan or health benefits* 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 *excluding tips* 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 *the health benefits plan or health benefits* for the current year;

(c) For an employee for whom there is less than 1 aggregate year of payroll information:

(1) Determine the combined total gross taxable income *excluding tips* 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 *a health benefit plan or health benefits* 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 *excluding tips* using the formula set forth in paragraph (c).

2. As used in 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, bonuses or other compensation as required for purposes of federal individual income tax.

(Added to NAC by Labor Comm'r by R055-07, eff. 10-31-2007)

NAC 608.106 Minimum wage: Declination by employee of health benefit plan or health benefits. ([Nev. Const. Art. 15, § 16](#); [NRS 607.160, 608.250](#)) If an employee declines coverage under a health *benefit plan or health benefits* that meet the requirements of [NAC 608.102](#) 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.

(Added to NAC by Labor Comm'r by R055-07, eff. 10-31-2007)

NAC 608.108 Minimum wage: Requirements for payment at higher rate; modification of term of waiting period. ([Nev. Const. Art. 15, § 16](#); [NRS 607.160, 608.250](#)) If an employer does not offer a health *benefit* plan *or health benefits that meet the requirements of NAC 608.102*, or the health *benefit* plan *or health benefits aren't* available or are not provided within 6 months of employment, the employee must be paid at least the *higher tier* minimum wage set forth in [NAC 608.100](#) until such time as the employee becomes eligible for and is offered coverage under a health *benefit* plan *or health benefits* that meet the requirements of [NAC 608.102](#) or until such *time as* a health *benefit* plan *or the health benefits* become 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.

(Added to NAC by Labor Comm'r by R055-07, eff. 10-31-2007)

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 scheduled hours of work of the employee.

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 that is at least equal to the minimum wage when the amount paid to an employee in a pay period is divided by the number of hours worked by the employee during the pay period. 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, 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.

(Added to NAC by Labor Comm'r by R115-04, eff. 8-25-2004)

NAC 608.120 Payment of commissions. ([NRS 607.160, 608.250](#))

1. If an employer and an employee agree that the employee is to be paid by commission based upon a sale, the employer shall pay each commission to the employee when the commission becomes payable pursuant to the agreement.

2. If the agreement described in subsection 1 is not in writing, the terms and conditions of the agreement may be determined by the facts and circumstances related to the course of dealing between the employer and the employee.

3. All commissions that an employer pays to an employee during a pay period may be used to meet the minimum wage requirement described in subsection 3 of [NAC 608.115](#).

4. *Before filing a claim or complaint for payment of commissions and employee shall request the commissions owed in writing from the employer. An employer shall have 15 days to respond to the employee's request for commissions, pay the commissions, or reach an agreement with the employee for commissions owed.*

(Added to NAC by Labor Comm'r by R115-04, eff. 8-25-2004)

NAC 608.123 Compensation for overtime: Payment based upon requirements for minimum wage. ([Nev. Const. Art. 15, § 16](#); [NRS 607.160, 608.018, 608.250](#)) For purposes of complying with the daily overtime provisions of subsection 1 of [NRS 608.018](#), an employer shall

pay overtime based upon the minimum wage which must be paid pursuant to the provisions of [NAC 608.100](#) to [608.108](#), inclusive.

(Added to NAC by Labor Comm'r by R055-07, eff. 10-31-2007)

NAC 608.125 Compensation for overtime: Miscellaneous requirements. ([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. 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 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.

3. The Commissioner will refer to 29 C.F.R. §§ 541.1 and 541.2 to determine if an employee is employed in a bona fide executive or administrative capacity for the purposes of paragraph (d) of subsection 3 of [NRS 608.018](#).

(Added to NAC by Labor Comm'r by R115-04, eff. 8-25-2004)

NAC 608.130 Payment for travel and training. ([NRS 607.160](#), [608.016](#), [608.250](#))

1. An employer shall pay an employee at a rate that is not less than minimum wage for any travel or training that is considered to be time worked by the employee pursuant to subsections 2 and 3.

2. Travel by an employee:

(a) Is considered to be time worked by the employee:

(1) If the travel is between different work sites during a workday; or

(2) If the employee is providing transportation for another employee on behalf of an employer who offers transportation for the convenience of his employees.

(b) Is not considered to be time worked by the employee if the travel is between the home of the employee and the place of work of the employee regardless of whether the employee works at a fixed location or at different places of work.

3. The training received by an employee:

(a) Is considered to be time worked by the employee if the training is required by the employer.

(b) Is not considered to be time worked by the employee if the training is required by an agency or entity other than the employer without regard to whether the training enables the employee to maintain eligibility for employment in a particular capacity or at a particular level.

(Added to NAC by Labor Comm'r by R115-04, eff. 8-25-2004)

NAC 608.135 Notice of regular paydays and place of payment; electronic payment. ([NRS 607.160](#), [608.080](#), [608.120](#))

1. In addition to the information required pursuant to [NRS 608.080](#), the notice described in [NRS 608.080](#) may include:

(a) Alternative paydays for use if a regular payday occurs on a nonbusiness day, including a Saturday, Sunday or holiday;

(b) Acceptable alternatives to the method of payment if an employee is not available for payment;

(c) Procedures for releasing payment to a third party; and

(d) Any other provision that the employer deems to be relevant if the provision does not violate any law or regulation of this State.

2. An employer may use an electronic payment system, including, but not limited to, a direct deposit, debit card or similar payment system, as an alternative location of payment if:

- (a) The employee can obtain immediate payment in full;
 - (b) The employee receives at least one free transaction per pay period and any fees or other charges are prominently disclosed to and subject to the written consent of the employee;
 - (c) The alternative location of payment is easily and readily accessible to the employee;
 - (d) There are no other requirements or restrictions that a reasonable person would find to be an unreasonable burden or inconvenience; and
 - ~~(e) The use of an electronic payment system is optional at the election of the employee.~~
- ~~—(Added to NAC by Labor Comm'r by R115-04, eff. 8-25-2004)~~

NAC 608.140 Provision of records of wages to employee. ([NRS 607.160](#), [608.115](#))
Within 10 days after a request by an employee, an employer shall provide the records of wages required to be kept by the employer pursuant to [NRS 608.115](#) to the employee, including, but not limited to, an employee that is paid by salary, piece rate or any other wage rate.

(Added to NAC by Labor Comm'r by R115-04, eff. 8-25-2004)

NAC 608.145 Periods for rest and meals. ([NRS 607.160](#), [608.019](#))

1. Unless an employee is exempt pursuant to [NRS 608.019](#), an employee that works at least 3 1/2 continuous hours is permitted:

- (a) One 10-minute rest period if the employee works at least 3 1/2 continuous hours and less than 7 continuous hours;
- (b) Two 10-minute rest periods if the employee works at least 7 continuous hours and less than 11 continuous hours;
- (c) Three 10-minute rest periods if the employee works at least 11 continuous hours and less than 15 continuous hours; or
- (d) Four 10-minute rest periods if the employee works at least 15 continuous hours and less than 19 continuous hours.

2. An unpaid lunch break is not considered when determining the number of hours worked by an employee for the purposes of subsection 1.

3. An employee may voluntarily agree to forego any rest period or meal period. The employer has the burden to prove the existence of any such agreement.

(Added to NAC by Labor Comm'r by R115-04, eff. 8-25-2004)

NAC 608.150 Investigations to determine liability for violations. ([NRS 607.160](#))

1. In determining the person to be held liable for a violation of this chapter or [chapter 608](#) of NRS, the Commissioner may investigate the conduct of the business enterprise and the extent of custody or control exercised by a person over the place of employment or any employee.

2. The investigation of the conduct of the business enterprise may include, but is not limited to:

- (a) Whether the person had the power to hire or fire employees;
- (b) Whether the person supervised or had control over the schedule of work of employees or the conditions of employment of employees;
- (c) Whether the person determined or had control over the method or rate of payment of employees;
- (d) Whether the person maintained the records of employment; and

(e) If more than a single business is involved in the business enterprise, whether the person had control of the businesses or operated the businesses for a common purpose.

(Added to NAC by Labor Comm'r by R115-04, eff. 8-25-2004)

NAC 608.155 Claims for wages unpaid when due. ([NRS 607.160](#))

1. Before an employee may file a claim for wages unpaid when due, the employee shall make a good faith attempt to collect any wages due the employee from an employer at the normal place and in the normal method that payment is made to employees of the employer.

2. An independent contractor may not file a claim for wages unpaid when due.

3. In a claim for wages unpaid when due, the following presumptions will apply, if applicable, unless the Commissioner receives evidence that he deems to be sufficient to rebut the presumption:

(a) An employee who has been placed on an indefinite suspension by an employer will be presumed to have been discharged by the employer;

(b) An employee who has not been paid by an employer will be presumed to have been discharged by the employer; and

(c) An employee who fails to report to work will be presumed to have abandoned his job.

4. As used in this section, "independent contractor" means a self-employed person who agrees with a client to do work for the client, for a certain fee, according to the means or methods of the self-employed person and not subject to the supervision or control of the client except as to the result of the work.

(Added to NAC by Labor Comm'r by R115-04, eff. 8-25-2004)

NAC 608.160 Withholding of amounts from wages due. ([NRS 607.160](#), [608.110](#))

1. Without the written authorization of an employee, an employer may withhold from the wages due the employee:

(a) Any amount required by law; and

(b) Any employee contribution to a benefit program, such as health insurance or a pension plan, as permitted pursuant to [NRS 608.110](#).

2. Except as otherwise provided in subsection 1, an employer may not deduct any amount from the wages due an employee unless:

(a) The employer has a reasonable basis to believe that the employee is responsible for the amount being deducted by the employer;

(b) The deduction is for a specific purpose, pay period and amount; and

(c) The employee voluntarily authorizes the employer, in writing, to deduct the amount from the wages.

3. An employer may not use a blanket authorization that was made in advance by the employee to withhold any amount from the wages due the employee.

(Added to NAC by Labor Comm'r by R115-04, eff. 8-25-2004)