

SENATE BILL NO. 157—SENATOR FARLEY

PREFILED FEBRUARY 13, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing the payment of compensation for overtime and the requirement for a 30-minute meal period. (BDR 53-453)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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

AN ACT relating to compensation; requiring that payment of compensation for overtime occur only for hours worked in excess of 40 hours in a workweek; revising provisions relating to a 30-minute meal period; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 The Fair Labor Standards Act of 1938 requires that compensation for overtime
2 be paid to certain employees for hours worked in excess of 40 hours in any
3 workweek. (29 U.S.C. § 207) Under existing Nevada law, certain employees,
4 including certain classified employees of this State, certain employees of
5 contractors working on public works projects and certain other employees of
6 private employers, are entitled to compensation for overtime at a rate of 1 1/2 times
7 an employee’s regular wage rate for any hours worked in excess of 8 hours in any
8 workday or in excess of 40 hours in any workweek. (NRS 284.180, 338.020,
9 608.018) Existing Nevada law further provides that an employer must not employ
10 an employee for a continuous period of 8 hours without permitting the employee to
11 have a meal period of at least one-half hour. (NRS 608.019)

12 **Sections 1 and 3** of this bill revise the definition of “workday” to provide for
13 alternative beginning times for a workday. **Section 2** of this bill changes the term
14 “week of work” to “workweek.”

15 **Sections 4, 8 and 9** of this bill remove the provisions which require payment of
16 compensation for overtime for hours worked in excess of 8 hours in a workday
17 while retaining and revising the provisions to require payment of compensation of
18 overtime only for hours worked in excess of 40 hours in a workweek. **Section 4**
19 also removes numerous existing exemptions from the requirement to pay
20 compensation for overtime.



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21 **Section 5** of this bill revises the provisions relating to a 30-minute meal period
22 by requiring employers to provide a 30-minute meal period to any employee who
23 works a period of 8 or more hours in a workday and a second 30-minute meal
24 period if the employee works a period of 12 or more hours in a workday.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 608 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *A workday begins at 12:00 a.m. and ends at 11:59 p.m., unless*
4 *otherwise designated in advance of the applicable workweek in*
5 *writing by the employer to the employee. The employer may*
6 *designate a different workday for each employee.*

7 **Sec. 2.** NRS 608.0123 is hereby amended to read as follows:

8 608.0123 ~~["Week of work"]~~ *"Workweek"* means 7 consecutive
9 periods of 24 hours which may begin on any day and at any hour of
10 the day.

11 **Sec. 3.** NRS 608.0126 is hereby amended to read as follows:

12 608.0126 "Workday" means a period of 24 consecutive hours
13 which begins ~~[when the employee begins work.]~~ *at the same time*
14 *each calendar day of a workweek, as provided in section 1 of this*
15 *act.*

16 **Sec. 4.** NRS 608.018 is hereby amended to read as follows:

17 608.018 1. ~~[An employer shall pay 1 1/2 times an employee's~~
18 ~~regular wage rate whenever an employee who receives~~
19 ~~compensation for employment at a rate less than 1 1/2 times the~~
20 ~~minimum rate prescribed pursuant to NRS 608.250 works:~~

21 ~~—(a) More than 40 hours in any scheduled week of work; or~~

22 ~~—(b) More than 8 hours in any workday unless by mutual~~
23 ~~agreement the employee works a scheduled 10 hours per day for 4~~
24 ~~calendar days within any scheduled week of work.~~

25 ~~—2. An] Except as otherwise provided in subsection 2, an~~
26 employer shall pay 1 1/2 times an employee's regular wage rate
27 whenever an employee ~~[who receives compensation for employment~~
28 ~~at a rate not less than 1 1/2 times the minimum rate prescribed~~
29 ~~pursuant to NRS 608.250]~~ works more than 40 hours in any
30 ~~[scheduled week of work.~~

31 ~~—3.] workweek.~~

32 2. The provisions of ~~[subsections]~~ *subsection 1* ~~[and 2]~~ do not
33 apply to ~~[]~~ *an employee who is:*

34 (a) ~~[Employees who are not covered by the minimum wage~~
35 ~~provisions of NRS 608.250;~~

36 ~~—(b) Outside buyers;~~



- 1 ~~—(c) Employees in a retail or service business if their regular rate~~
2 ~~is more than 1 1/2 times the minimum wage, and more than half~~
3 ~~their compensation for a representative period comes from~~
4 ~~commissions on goods or services, with the representative period~~
5 ~~being, to the extent allowed pursuant to federal law, not less than 1~~
6 ~~month;~~
- 7 ~~—(d) Employees who are employed in bona fide executive,~~
8 ~~administrative or professional capacities;~~
- 9 ~~—(e) Employees covered by collective bargaining agreements~~
10 ~~which provide otherwise for overtime;~~
- 11 ~~—(f) Drivers, drivers' helpers, loaders and mechanics for motor~~
12 ~~carriers subject to the Motor Carrier Act of 1935, as amended;~~
- 13 ~~—(g) Employees of a railroad;~~
- 14 ~~—(h) Employees of a carrier by air;~~
- 15 ~~—(i) Drivers or drivers' helpers making local deliveries and paid~~
16 ~~on a trip rate basis or other delivery payment plan;~~
- 17 ~~—(j) Drivers of taxicabs or limousines;~~
- 18 ~~—(k) Agricultural employees;~~
- 19 ~~—(l) Employees of business enterprises having a gross sales~~
20 ~~volume of less than \$250,000 per year;~~
- 21 ~~—(m) Any salesperson or mechanic primarily engaged in selling~~
22 ~~or servicing automobiles, trucks or farm equipment; and~~
- 23 ~~—(n) A mechanic or worker for any hours to which the provisions~~
24 ~~of subsection 3 or 4 of NRS 338.020 apply.} Under 18 years of age;~~
- 25 *(b) Employed by a nonprofit organization for after school or*
26 *summer employment;*
- 27 *(c) Employed as a trainee for a period not longer than 90 days;*
28 *or*
- 29 *(d) Described in subsection 2 of NRS 284.148.*

30 **Sec. 5.** NRS 608.019 is hereby amended to read as follows:

31 608.019 1. An employer shall not employ an employee for ~~for a~~
32 ~~continuous period of~~ 8 hours *or more in a workday* without
33 *authorizing and* permitting the employee to have a meal period of
34 at least ~~one half hour. No period of less than 30 minutes interrupts~~
35 ~~a continuous period of work for the purposes of this subsection.~~

36 ~~—2.} 30 consecutive minutes. The obligation of an employer to~~
37 ~~authorize and permit a meal period pursuant to this subsection is~~
38 ~~not satisfied by a period of less than 30 consecutive minutes.~~

39 *2. An employer shall not employ an employee for 12 hours or*
40 *more in a workday without authorizing and permitting the*
41 *employee to have a second meal period of at least 30 consecutive*
42 *minutes. The obligation of the employer to authorize and permit a*
43 *second meal period pursuant to this subsection is not satisfied by a*
44 *period of less than 30 consecutive minutes.*



1 **3. A meal period required by subsection 1 or 2 may be unpaid**
2 **if the meal period is a bona fide meal period.**

3 **4.** Every employer shall authorize and permit all his or her
4 employees to take rest periods, which, insofar as practicable, shall
5 be in the middle of each work period. The duration of the rest
6 periods shall be based on the total hours worked daily at the rate of
7 10 minutes for each 4 hours or major fraction thereof. Rest periods
8 need not be authorized however for employees whose total daily
9 work time is less than 3 and one-half hours. Authorized rest periods
10 shall be counted as hours worked, for which there shall be no
11 deduction from wages.

12 ~~3-~~ **5.** This section does not apply to:

13 (a) Situations where only one person is employed at a particular
14 place of employment.

15 (b) Employees included within the provisions of a collective
16 bargaining agreement.

17 ~~4-~~ **6.** An employer may apply to the Labor Commissioner for
18 an exemption from providing to all or to one or more defined
19 categories of his or her employees one or more of the benefits
20 conferred by this section. The Labor Commissioner may grant the
21 exemption if the Labor Commissioner believes the employer has
22 shown sufficient evidence that business necessity precludes
23 providing such benefits. Any exemption so granted shall apply to
24 members of either sex.

25 ~~5-~~ **7.** The Labor Commissioner may by regulation exempt a
26 defined category of employers from providing to all or to one or
27 more defined categories of their employees one or more of the
28 benefits conferred by this section, upon the Labor Commissioner's
29 own motion or upon the application of an association of employers.
30 Each such application shall be considered at a hearing and may be
31 granted if the Labor Commissioner finds that business necessity
32 precludes providing that particular benefit or benefits to the
33 employees affected. Any exemption so granted shall apply to
34 members of either sex.

35 **8. As used in this section, "bona fide meal period" means a**
36 **period during which an employee is completely relieved from duty**
37 **for the purposes of eating food. Such a period is not counted as**
38 **hours worked and does not include rest periods. As used in this**
39 **subsection, an employee is "relieved from duty" if he or she is not**
40 **required to perform any duty, whether active or inactive, while**
41 **eating. It is not necessary that an employee be permitted to leave**
42 **the premises if he or she is otherwise completely freed from duties**
43 **during the meal period.**



1 **Sec. 6.** NRS 608.180 is hereby amended to read as follows:

2 608.180 The Labor Commissioner or the representative of the
3 Labor Commissioner shall cause the provisions of NRS 608.005 to
4 608.195, inclusive, *and section 1 of this act* to be enforced, and
5 upon notice from the Labor Commissioner or the representative:

6 1. The district attorney of any county in which a violation of
7 those sections has occurred;

8 2. The Deputy Labor Commissioner, as provided in
9 NRS 607.050;

10 3. The Attorney General, as provided in NRS 607.160 or
11 607.220; or

12 4. The special counsel, as provided in NRS 607.065,

13 ↪ shall prosecute the action for enforcement according to law.

14 **Sec. 7.** NRS 608.195 is hereby amended to read as follows:

15 608.195 1. Except as otherwise provided in NRS 608.0165,
16 any person who violates any provision of NRS 608.005 to 608.195,
17 inclusive, *and section 1 of this act*, or any regulation adopted
18 pursuant thereto, is guilty of a misdemeanor.

19 2. In addition to any other remedy or penalty, the Labor
20 Commissioner may impose against the person an administrative
21 penalty of not more than \$5,000 for each such violation.

22 **Sec. 8.** NRS 284.180 is hereby amended to read as follows:

23 284.180 1. The Legislature declares that since uniform salary
24 and wage rates and classifications are necessary for an effective and
25 efficient personnel system, the pay plan must set the official rates
26 applicable to all positions in the classified service, but the
27 establishment of the pay plan in no way limits the authority of the
28 Legislature relative to budgeted appropriations for salary and wage
29 expenditures.

30 2. Credit for overtime work directed or approved by the head
31 of an agency or the representative of the head of the agency must be
32 earned at the rate of time and one-half, except for those employees
33 described in NRS 284.148.

34 3. Except as otherwise provided in subsections 4, 6 ~~7 and 9,~~
35 *and 8*, overtime is considered time worked in excess of ~~7~~:

36 —(a) ~~Eight hours in 1 calendar day;~~

37 —(b) ~~Eight hours in any 16-hour period; or~~

38 —(c) ~~A 40-hour week.~~ *40 hours in any workweek.*

39 4. Firefighters who choose and are approved for a 24-hour shift
40 shall be deemed to work an average of 56 hours per week and 2,912
41 hours per year, regardless of the actual number of hours worked or
42 on paid leave during any biweekly pay period. A firefighter so
43 assigned is entitled to receive 1/26 of the firefighter's annual salary
44 for each biweekly pay period. In addition, overtime must be
45 considered time worked in excess of:



- 1 (a) Twenty-four hours in one scheduled shift; or
- 2 (b) Fifty-three hours average per week during one work period
- 3 for those hours worked or on paid leave.
- 4 ➤ The appointing authority shall designate annually the length of
- 5 the work period to be used in determining the work schedules for
- 6 such firefighters. In addition to the regular amount paid such a
- 7 firefighter for the deemed average of 56 hours per week, the
- 8 firefighter is entitled to payment for the hours which comprise the
- 9 difference between the 56-hour average and the overtime threshold
- 10 of 53 hours average at a rate which will result in the equivalent of
- 11 overtime payment for those hours.

12 5. The Commission shall adopt regulations to carry out the

13 provisions of subsection 4.

14 6. ~~For employees who choose and are approved for a variable~~

15 ~~workday, overtime will be considered only after working 40 hours~~

16 ~~in 1 week.~~

17 ~~7.~~ Employees who are eligible under the Fair Labor Standards

18 Act of 1938, 29 U.S.C. §§ 201 et seq., to work a variable 80-hour

19 work schedule within a biweekly pay period and who choose and

20 are approved for such a work schedule will be considered eligible

21 for overtime only after working 80 hours biweekly. ~~except those~~

22 ~~eligible employees who are approved for overtime in excess of one~~

23 ~~scheduled shift of 8 or more hours per day.~~

24 ~~8.~~ 7. An agency may experiment with innovative workweeks

25 upon the approval of the head of the agency and after majority

26 consent of the affected employees. The affected employees are

27 eligible for overtime only after working 40 hours in a workweek.

28 ~~9.~~ 8. This section does not supersede or conflict with existing

29 contracts of employment for employees hired to work 24 hours a

30 day in a home setting. Any future classification in which an

31 employee will be required to work 24 hours a day in a home setting

32 must be approved in advance by the Commission.

33 ~~10.~~ 9. All overtime must be approved in advance by the

34 appointing authority or the designee of the appointing authority. No

35 officer or employee, other than a director of a department or the

36 chair of a board, commission or similar body, may authorize

37 overtime for himself or herself. The chair of a board, commission or

38 similar body must approve in advance all overtime worked by

39 members of the board, commission or similar body.

40 ~~11.~~ 10. The Budget Division of the Office of Finance shall

41 review all overtime worked by employees of the Executive

42 Department to ensure that overtime is held to a minimum. The

43 Budget Division shall report quarterly to the State Board of

44 Examiners the amount of overtime worked in the quarter within the

45 various agencies of the State.



1 ~~12.1~~ 11. A state employee is entitled to his or her normal rate
2 of pay for working on a legal holiday unless the employee is entitled
3 to payment for overtime pursuant to this section and the regulations
4 adopted pursuant thereto. This payment is in addition to any
5 payment provided for by regulation for a legal holiday.

6 **Sec. 9.** NRS 338.020 is hereby amended to read as follows:

7 338.020 1. Every contract to which a public body of this
8 State is a party, requiring the employment of skilled mechanics,
9 skilled workers, semiskilled mechanics, semiskilled workers or
10 unskilled labor in the performance of public work, must contain in
11 express terms the hourly and daily rate of wages to be paid each of
12 the classes of mechanics and workers. The hourly and daily rate of
13 wages must:

14 (a) Not be less than the rate of such wages then prevailing in the
15 county in which the public work is located, which prevailing rate of
16 wages must have been determined in the manner provided in NRS
17 338.030; and

18 (b) Be posted on the site of the public work in a place generally
19 visible to the workers.

20 2. When public work is performed by day labor, the prevailing
21 wage for each class of mechanics and workers so employed applies
22 and must be stated clearly to such mechanics and workers when
23 employed.

24 3. Except as otherwise provided in subsection 4, a contractor or
25 subcontractor shall pay to a mechanic or worker employed by the
26 contractor or subcontractor on the public work not less than one and
27 one-half times the prevailing rate of wages applicable to the class of
28 the mechanic or worker for each hour the mechanic or worker works
29 on the public work in excess of ~~1~~:

30 ~~—(a) Forty~~ 40 hours in any ~~1~~ ~~scheduled week of work~~ *workweek*
31 by the mechanic or worker for the contractor or subcontractor,
32 including, without limitation, hours worked for the contractor or
33 subcontractor on work other than the public work. ~~1~~ ~~or~~

34 ~~—(b) Eight hours in any workday that the mechanic or worker was~~
35 ~~employed by the contractor or subcontractor, including, without~~
36 ~~limitation, hours worked for the contractor or subcontractor on work~~
37 ~~other than the public work, unless by mutual agreement the~~
38 ~~mechanic or worker works a scheduled 10 hours per day for 4~~
39 ~~calendar days within any scheduled week of work.]~~

40 4. The provisions of subsection 3 do not apply to a mechanic or
41 worker who is covered by a collective bargaining agreement that
42 provides for the payment of wages at not less than one and one-half
43 times the rate of wages set forth in the collective bargaining
44 agreement for work in excess of ~~1~~:

45 ~~—(a) Forty~~ 40 hours in any ~~1~~ ~~scheduled week of work~~ ~~or~~



- 1 ~~— (b) Eight hours in any workday unless the collective bargaining~~
2 ~~agreement provides that the mechanic or worker shall work a~~
3 ~~scheduled 10 hours per day for 4 calendar days within any~~
4 ~~scheduled week of work.] *workweek.*~~
5 5. The prevailing wage and any wages paid for overtime
6 pursuant to subsection 3 or 4 to each class of mechanics or workers
7 must be in accordance with the jurisdictional classes recognized in
8 the locality where the work is performed.
9 6. Nothing in this section prevents an employer who is
10 signatory to a collective bargaining agreement from assigning such
11 work in accordance with established practice.

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