

**REVISED ADOPTED REGULATION OF
THE LABOR COMMISSIONER**

LCB File No. R115-01

Effective April 5, 2002

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

AUTHORITY: §§1-5, 7 and 20, NRS 338.012; §6, NRS 338.012 and 338.040; §8, NRS 338.012 and 338.013; §9, NRS 338.012 and 338.050; §§10-14, NRS 338.012 and 338.070; §§15-17, NRS 338.012 and 338.015; §18, NRS 338.012 and 338.017; §19, NRS 338.012 and 338.020; §§21 and 22, NRS 338.012, 338.020 and 338.030; §23, NRS 338.012 and 338.060.

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

Sec. 2. *“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.

Sec. 3. *“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.*

Sec. 4. *“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*

section 11 of this regulation for each month in which the contractor or subcontractor employs one or more workmen in connection with the public work.

Sec. 5. *“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 section 10 of this regulation for each month in which the contractor or subcontractor does not employ any workmen in connection with the public work.*

Sec. 6. *As used in NRS 338.040, the labor commissioner will interpret:*

1. “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.

2. “Necessary in the execution of the contract for the public work” to mean the performance of duties required to facilitate the construction, alteration or repair of the public work.

Sec. 7. *The existence of a contract between an awarding body and a contractor is not a bar to the enforcement by the labor commissioner of the provisions of this chapter and NRS 338.010 to 338.090, inclusive.*

Sec. 8. *1. A contractor who has been awarded a contract for a public work shall report the name and address of each subcontractor whom the contractor 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 contractor shall include, without limitation, in the report:*

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

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

(c) The scope of work to be performed by the subcontractor in connection with the public work.

2. A contractor engaged on a public work has the burden of proof in substantiating that he reported any subcontractors whom he has engaged for work on the public work to the labor commissioner pursuant to subsection 3 of NRS 338.013.

Sec. 9. 1. *For the purposes of this chapter and NRS 338.010 to 338.090, inclusive:*

(a) A workman employed on a public work must be paid based on the type of work that the workman actually performs on the public work and in accordance with the recognized class of the workman; and

(b) Each contractor and subcontractor shall be deemed to be the employer of each workman and apprentice who performs work directly for that contractor or subcontractor in the execution of a contract for a public work, whether the workman 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 workmen. 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 workmen.

Sec. 10. 1. *If a contractor or subcontractor engaged on a public work does not employ any workmen in any calendar month during which he 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 workmen on the public work during that month.*

2. 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 10 days after the end of a month in which the contractor or subcontractor did not employ any workmen on the public work.

Sec. 11. 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 workman as authorized by NRS 338.035, if any such contributions were made as part of the wages of that workman.

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

(a) *The type of work actually performed by the workmen; and*

(b) *In accordance with the recognized classes of workmen.*

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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, 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.*

Sec. 12. 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.*

Sec. 13. 1. *An awarding body shall cause such an examination of the certified payroll reports of a contractor or subcontractor to be made as may be necessary to assure compliance*

with the provisions of this chapter and NRS 338.010 to 338.090, 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 workmen in the recognized classes of the workmen; and

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

Sec. 14. 1. Upon its own initiative or upon notice 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 this chapter or NRS 338.010 to 338.090, 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.

2. An 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 of whether a contractor or subcontractor violated this chapter or NRS 338.010 to 338.090, inclusive, 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, its determination of whether a contractor or subcontractor violated this chapter or NRS 338.010 to 338.090, inclusive, and shall transmit a copy of the determination to the labor commissioner.*

5. *If, after an investigation, an awarding body determines that a contractor or subcontractor has failed to pay the correct wages to workmen 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 workmen and any applicable penalties, and shall immediately notify the labor commissioner in writing of its determination and resulting actions.*

6. *In addition to transmitting a copy of its determination to the labor commissioner pursuant to subsection 4, an awarding body shall transmit to the labor commissioner the following information pertaining to the determination:*

(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) 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;

(d) Copies of any claims or complaints received by the awarding body from the labor commissioner relating to the investigation;

(e) Copies of the applicable certified payroll reports and nonperformance payroll reports submitted by the contractor or subcontractor;

(f) If applicable, signed interview statements of employees of the contractor or subcontractor; and

(g) If applicable, computations of penalties and back wages for each workman, including, without limitation, the name, address and social security number of the workman.

7. Within 20 days after receipt of a determination issued by an awarding body pursuant to subsection 4, the labor commissioner will:

(a) Return the determination to the awarding body with a directive for further investigation; or

(b) Affirm or modify the determination 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 workmen.

Sec. 15. 1. If, pursuant to paragraph (b) of subsection 7 of section 14 of this regulation, the labor commissioner affirms or modifies a determination issued by an awarding body, the labor commissioner will serve a copy of the affirmed or modified determination 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.

2. A person who has been served a copy of a determination 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.

3. Except as otherwise provided in subsection 4, if an objection to a determination issued by an awarding body is filed with the labor commissioner within the period for objection prescribed in 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 awarding body included an assessment of back wages owed to workmen, 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 determination issued by the awarding body did not include an assessment of back wages owed to workmen, 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 transmitted to him by the awarding body pursuant to subsection 6 of section 14 of this regulation.

4. *If:*

(a) An objection is filed with the labor commissioner within the period for objection prescribed in subsection 2 and the determination does not meet the requirements of paragraph (a) or (b) of subsection 3; or

(b) An objection was not filed with the labor commissioner within the period for objection prescribed in subsection 2,

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the determination of the awarding body 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 an awarding body, the labor commissioner finds that a contractor or subcontractor violated this chapter or NRS 338.010 to 338.090, 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 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 determination issued by the labor commissioner pursuant to this subsection is deemed to be the final order of the labor commissioner on the matter.*

Sec. 16. 1. *If, after an investigation conducted or caused to be conducted by the labor commissioner, the labor commissioner finds that a person, including, without limitation, the officers, agents or employees of a public body, has violated this chapter or NRS 338.010 to 338.090, 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 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.

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.

3. Except as otherwise provided in subsection 4, if an objection to a determination issued by the labor commissioner pursuant to subsection 1 is filed with the labor commissioner within the period for objection prescribed in 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 workmen, 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 workmen, 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 is filed with the labor commissioner within the period for objection prescribed in subsection 2 and the determination does not meet the requirements of paragraph (a) or (b) of subsection 3; or

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(b) An objection was not filed with the labor commissioner within the period for objection prescribed in subsection 2, the determination issued by the labor commissioner pursuant to this section 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 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 this chapter or NRS 338.010 to 338.090, 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 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 determination issued by the labor commissioner pursuant to this subsection is deemed to be the final order of the labor commissioner on the matter.

Sec. 17. 1. *At a hearing held by the labor commissioner on a determination issued by an awarding body or the labor commissioner, a party may:*

(a) Provide additional evidence or refute the evidence in the determination.

(b) Call and examine witnesses. The party who is calling a witness must provide notice of the hearing to the witness. A party may request the labor commissioner to issue a subpoena requiring the attendance of a witness.

2. After such a hearing, the labor commissioner will issue his decision on the determination, including, without limitation, his findings of fact and conclusions of law based on the evidence presented and matters officially noticed at the hearing.

Sec. 18. 1. *If multiple periods of disqualification are imposed against a contractor or subcontractor pursuant to NRS 338.017, the periods of disqualification must run consecutively.*

2. The labor commissioner will maintain a list of contractors and subcontractors that have been disqualified temporarily from being awarded a contract for a public work pursuant to NRS 338.017 and will make that information available to the public upon request, including, without limitation, on the website that the labor commissioner maintains on the Internet or its successor.

Sec. 19. 1. *The subclassifications within the recognized classes of workmen 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 foreman.

(c) Journeyman. A journeyman is a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman 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 workmen.

Sec. 20. NAC 338.005 is hereby amended to read as follows:

338.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 338.010 and NAC ~~[338.070]~~ *338.007 and sections 2 to 5, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 21. NAC 338.020 is hereby amended to read as follows:

338.020 1. The labor commissioner will conduct a continuing program of obtaining and compiling information 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, approximate costs, dates of construction and types of projects;
- (3) The number of hours each recognized class of workmen is employed on each project;

and

(4) The respective rates of wages paid to each recognized class of workmen 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 and other information furnished by state and federal agencies.

3. When determining prevailing rates of wages, the labor commissioner may exclude from consideration any information submitted to him that is *untimely filed*, duplicative, incomplete or ~~otherwise~~ 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.

Sec. 22. NAC 338.060 is hereby amended to read as follows:

338.060 Copies of the labor commissioner’s determinations of prevailing rates of wages are available at his office and will be furnished to public bodies and interested persons upon request beginning on ~~September 20~~ *October 1* of each year.

Sec. 23. NAC 338.080 is hereby amended to read as follows:

338.080 1. If the state contractors’ board has established a monetary limit on the license of a contractor pursuant to NRS 624.220, the amount of any penalty imposed against the contractor pursuant to NRS 338.060 must be:

(a) If the monetary limit is less than \$250,000, ~~[\$10]~~ *\$20* for each calendar day or portion thereof.

(b) If the monetary limit is \$250,000 or more but less than \$500,000, ~~[\$15]~~ *\$30* for each calendar day or portion thereof.

(c) If the monetary limit is \$500,000 or more but less than \$750,000, ~~[\$20]~~ *\$40* for each calendar day or portion thereof.

(d) If the monetary limit is \$750,000 or more, ~~[\$25]~~ \$50 for each calendar day or portion thereof.

2. If the state contractors' board has not established a monetary limit on the license of a contractor or has removed a monetary limit established on his license, the amount of the penalty imposed against the contractor pursuant to NRS 338.060 must be ~~[\$25]~~ \$50 for each calendar day or portion thereof.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R115-01**

The Labor Commissioner adopted regulations assigned LCB File No. R115-01 which pertain to chapter 338 of the Nevada Administrative Code on April 1, 2002.

Notice date: 8/10/2001
Hearing date: 9/14/2001

Date of adoption by agency: 4/1/2002
Filing date: 4/5/2002

INFORMATIONAL STATEMENT

A. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

Public comment was solicited by posting notices of the agency's intent at six different locations throughout the state and to the agency's website. Notices were also provided to various labor organizations in the state.

The public response varied depending on the specific subject matter contained in the proposed regulations. By and large, there was a determined need to clarify the duties of public bodies when enforcing the terms of the public works contracts. Some public bodies spoke in favor having more detailed expectations set forth (i.e. how often investigations should occur, with what degree of regularity should certified payroll reports be reviewed, etc.) Varying comments were also offered on the subject of defining "site of a public work" as required pursuant to NRS §388.040(2). Labor representatives favored a more general definition, while management supported a more narrowed definition.

Persons may obtain a copy of the summary of the public comments by contacting the Office of the Labor Commissioner, 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada 89101, (702) 486-2483.

B. The number of persons who:

1. Attended each hearing: Las Vegas: 47
Carson City: 28

2. Testified at each hearing: Las Vegas: 19
Carson City: 6

3. Submitted to the agency written statements: 42

C. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

In addition to the methods used for soliciting comments from the general public, comment was solicited from affected businesses by contacting the major contractor associations in the state. Associations contacted and noticed included: Associated General Contractors of Northern Nevada, Associated General Contractors of Southern Nevada, Associated Builders and Contractors, Northern Nevada, Associated Builders and Contractors, Southern Nevada, and the Nevada Contractors Association. While not “businesses,” public bodies that award contracts for public works projects are also affected and were noticed through contact with a consortium of such entities.

Affected businesses provided comments on what should be the definition of a “site of the public work.” Additionally, there were numerous comments expressing concerns that the proposed regulations ceded too much authority to the federal government’s Department of Labor at the expense of Nevada’s State Apprenticeship Council. Public bodies offered comments pertaining to excerpts of public contracts being submitted to the Labor Commissioner as part of an investigation file as opposed to the entire contract itself.

Interested persons may obtain a copy of the summary of the comments by contacting the Office of the Labor Commissioner, 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada 89101, (702) 486-2483.

D. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was not adopted without changes resulting from the public comment.

E. The estimated economic effect of the regulation on the business which it is to regulate and on the public. Stated separately, this includes:

- 1. Both adverse and beneficial effects: and**
- 2. Both immediate and long-term effects.**

1. Adverse effects of the regulation may include more detection of public works violations thereby creating more enforcement activities for the Labor Commissioner’s office. The regulations will provide benefits in that it will increase the likelihood that workers employed on public works projects will not only receive the appropriate wage payments, but do so in a more timely manner. Additionally, contractors will be able to compete in an environment more akin to the oft sought “level playing field” as a result of more compliance monitoring by the awarding bodies.
2. The immediate effect includes greater clarification of the responsibilities of awarding bodies. Many awarding bodies have commented that they are not exactly sure what they are supposed to be doing to comply with their statutory responsibilities. The instant regulations provide a regulatory scheme through which awarding bodies can have a better understanding of what is expected of them.

F. The estimated cost to the agency for enforcement of the proposed regulation.

At this time, the degree to which any additional enforcement costs will be experienced by the agency is not known. However, it is anticipated that the agency will be able to effectively administer the subject regulations within the confines of current budgetary expenditures.

G. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulations do not duplicate or overlap the regulations of any Nevada State agency or any branch of the federal government.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that regulate this same activity in Nevada.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There are no fees associated with the proposed regulations.