

LCB File No. R090-04

**PROPOSED REGULATION OF THE OFFICE OF
THE LABOR COMMISSIONER**

The Nevada Labor Commissioner is proposing the amendment of regulations pertaining to Chapter 338 of Nevada Administrative Code. A workshop was conducted March 23, 2004 in Las Vegas, Nevada and teleconferenced to Carson City, Nevada for the purpose of soliciting comments and information from interested persons prior to drafting proposed regulations.

A public hearing will be held May 4, 2004 at 9:00AM at the Grant Sawyer State Building, 555 E. Washington Ave., Room 4401, Las Vegas, Nevada and teleconferenced to the Nevada Legislature Building located at 400 S. Carson St., Room 2134, Carson City, Nevada. The purpose of the hearing is to receive public comment concerning the proposed regulations. The due date for submitting written comments is May 10, 2004.

A copy of the proposed regulations may be obtained by contacting the Office of the Labor Commissioner, 555 E. Washington Avenue, Suite 4100, Las Vegas, NV 89101 or by calling (702) 486-2795.

This Notice of Hearing and Intent to Act upon Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Office of the Labor Commissioner
555 W. Washington Avenue Suite 4100
Las Vegas, NV

Carson City District Courthouse
885 E. Musser Street
Carson City, NV

Grant Sawyer State Office Building (Lobby)
555 E. Washington Avenue
Las Vegas, NV

Legislative Building
401 S. Carson Street
Carson City, NV

Office of the Labor Commissioner
675 Fairview Drive, Suite 226
Carson City, Nevada 89701

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment.

Regulations are needed primarily to clarify certain provisions of the prevailing wage laws concerning "on site" versus "off site" work, the handling of settlement agreements and the applicability of prevailing wages to truck drivers.

2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.

Subjects involved include:

- a. The circumstances under which workmen will be deemed “employed at the site of a public work” and “necessary in the execution of a contract for a public work.”
- b. Conditions for settlement agreements for violations of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive.

3. The estimated economic effect of the regulation on the businesses which it is to regulate and on the public.

- a. **Adverse Effects:** No adverse effects are contemplated.
- b. **Beneficial Effects:** There will be greater clarity as to the circumstances under which prevailing wages apply/do not apply.
- c. **Immediate effects:** Contractors bidding on public works projects will have greater knowledge of the agency’s interpretations of legislative enacted provisions set forth in NRS 338.040.
- d. **Long Term effects:** Workers employed on public works projects will have a greater likelihood of earning the prevailing rates of wages intended by the legislature when enacting and amending the prevailing wage statutes.

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

It is not anticipated that the agency will see any increased costs as a result of these changes.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulations would not duplicate the regulations of any other state or federal agency.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

The proposed regulations are not required pursuant to federal law.

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

The proposed regulations are not more stringent than federal regulations governing the same activities.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation does not establish a new fee nor increases an existing fee.

Persons wishing to comment upon the proposed action of Office of the Labor Commissioner may appear at the scheduled hearing or may address their comments, data, views, or arguments, in written form, to Terry Johnson, Nevada Labor Commissioner, 555 E. Washington Avenue Suite

4100, Las Vegas, Nevada 89101. Written submissions must be received by the Labor Commissioner on or before **May 10, 2004**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Labor Commissioner may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Labor Commissioner's website located at www.LaborCommissioner.com, at the offices of the Labor Commissioner, located at 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada and 675 Fairview Drive, Suite 226, Carson City, Nevada, respectively, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

LCB File No. R090-04

**PROPOSED REGULATION OF THE OFFICE OF
THE LABOR COMMISSIONER**

AUTHORITY: §§1-3, NRS 338.012; § 4, NRS 338.040

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *Settlement agreements.*

1. An awarding body may not enter into, effect or approve any compromise or settlement of a violation of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive without the written approval of the Labor Commissioner.

2. Any compromise or settlement of a violation of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, that is not approved by the Labor Commissioner shall not be a bar to the enforcement of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, by the Labor Commissioner

Sec. 3. *Contributions made to a third person pursuant to a fund, plan or program in the name of the workman pursuant to NRS 338.035 must be made in accordance with the provisions of NRS 608.060 and NRS 608.070, respectively.*

Sec. 4. *Applicability of prevailing wages to truck drivers*

Workmen performing the craft of truck driver will, without limitation, be deemed employed on public works whenever they are:

- 1. Transporting materials to the public work and immediately incorporating such materials into the public work;*
- 2. Transporting materials between sites of a public work; or*
- 3. Exporting debris, waste, demolition or excavation material away from a public work, except for the exportation of such materials by a commercial solid waste company that is licensed for such activities.*

Sec. 5 NAC 338.009 is hereby amended to read as follows:

Workmen deemed to be employed on public works: Interpretation of certain statutory terms. 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 ~~and~~ *and any other site where a significant portion of the public work is constructed, provided that such site is established specifically for the performance of the contract for the public work. Except as provided in this subsection, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of a public work provided they are established to execute the contract for a public work or are dedicated exclusively, or nearly so, to execution of the contract for the public work. Not included in the site of a public work are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor, subcontractor or supplier whose location and continuance in operation are determined wholly without regard to*

a particular public work. For the purposes of this subsection, the term “supplier” has the meaning ascribed to it pursuant to NRS 338.450.

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~~ *construct, alter or repair* the public work *and without which the public work could not be completed.*