

# PROPOSED REGULATION OF THE LABOR COMMISSIONER

LCB File No. R090-04

May 3, 2004

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

AUTHORITY: §§1-4, NRS 338.012; §5, NRS 338.040.

A REGULATION relating to public works; providing that the Labor Commissioner is not bound by the provisions of any agreement for the settlement of certain violations to which the Labor Commissioner is not a party; establishing requirements for contributions made to a third person in the name of a workman; providing the circumstances under which a workman performing the craft of truck driver will be deemed to be employed on a public work; revising the interpretation of “employed at the site of a public work” and “necessary in the execution of the contract for the public work;” and providing other matters properly relating thereto.

**Section 1.** Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

**Sec. 2.** *In enforcing the provisions of NRS 338.010 to 338.090, inclusive, and NAC 338.005 to 338.125, inclusive, and sections 2, 3 and 4 of this regulation, the Labor Commissioner is not bound by the provisions of any agreement for the settlement of a violation of NRS 338.010 to 338.090, inclusive or NAC 338.005 to 338.125, inclusive, and sections 2, 3 and 4 of this regulation, to which the Labor Commissioner is not a party.*

**Sec. 3.** *Contributions made pursuant to NRS 338.035 in the name of a workman 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.*

**Sec. 4.** *A workman who performs the craft of truck driver shall be deemed to be employed on a public work while:*

- 1. Transporting materials to the public work for immediate incorporation into the public work;*
- 2. Transporting materials between sites of a public work; or*
- 3. Except as otherwise provided in this subsection, transporting debris, waste, or demolition or excavation material away from a public work. A person who is employed by a business licensed to dispose of solid waste and who is transporting debris, waste, or demolition or excavation material away from a public work shall not be deemed to be employed on a public work.*

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

338.009 *1.* As used in NRS 338.040, the Labor Commissioner will interpret:

~~1.]~~ *(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 ~~;~~  
~~—2.]~~ *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 ~~[facilitate the construction, alteration]~~ *construct, alter* or repair ~~[of]~~ the public work ~~;~~ *and without which the public work could not be completed.*

*2. As used in this section:*

*(a)* “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.*

*(b) “Supplier” has the meaning ascribed to it in NRS 338.450.*