

**ADOPTED REGULATION OF THE
LABOR COMMISSIONER**

LCB File No. R115-04

Effective August 25, 2004

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

AUTHORITY: §§1-19, NRS 607.160.

A REGULATION relating to employment; defining various terms relating to payment for work; establishing rules relating to payment of minimum wage, payment of commissions, payment for overtime and payment for travel and training; authorizing an employer to use an electronic payment system as an alternative location of payment; establishing rules governing the number of rest periods an employee is permitted to take; establishing rules governing the identification of the person liable for certain violations; establishing rules governing claims for wages, records of wages and deductions from paychecks; and providing other matters properly relating thereto.

Section 1. Chapter 608 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

Sec. 2. *As used in NAC 608.110 and sections 2 to 19, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Commissioner” means the Labor Commissioner or his authorized representative.*

Sec. 4. *“Day” means a calendar day, including any portion of a calendar day, unless otherwise specified by an applicable statute or regulation.*

Sec. 5. *“Employee” has the meaning ascribed to it in NRS 608.010.*

Sec. 6. *“Employer” has the meaning ascribed to it in NRS 608.011.*

Sec. 7. *“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.*

Sec. 8. *“Salary” means a wage rate based on a fixed dollar amount for a period of time other than an hour.*

Sec. 9. *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.*

Sec. 10. 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.*

Sec. 11. 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 section 10 of this regulation.*

Sec. 12. 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 (e) of subsection 2 of NRS 608.018.*

Sec. 13. 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.

Sec. 14. 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.

Sec. 15. *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.*

Sec. 16. 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.*

Sec. 17. 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.*

Sec. 18. 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.

Sec. 19. 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.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R115-04

The Labor Commissioner adopted regulations assigned LCB File No. R115-04 pertaining to Chapter 608 of the Nevada Administrative Code on July 23, 2004.

Notice date: 5/25/2004
Hearing date: 6/28/2004

Date of adoption by agency: 7/23/2004
Filing date: 8/25/2004

INFORMATIONAL STATEMENT

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

Public comment on the proposed rule was solicited on the agency website, posted notices, e-mail, and direct mail to persons on the agency 233B mailing list. Copies are available through the agency website or upon request from the agency.

(b) The number of persons who:

(1) Attended each hearing:

Nine people attended the hearing, four in Carson City and five in Las Vegas. The attendees represented a range of labor organizations, employer organizations, employment service providers, and law firms engaged in employment law.

(2) Testified at each hearing:

Three individuals testified at the hearing.

(3) Submitted to the agency written statements:

Written comments were received from six individuals and organizations.

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

Comments were solicited through posted notices, by direct mail to organizations and individuals on the agency mailing list, posting on the agency website, and by e-mail.

(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:

Three changes were made in the regulation based on the testimony received at the hearing.

(e) The estimated economic effect of the regulation on the business which it is to regulate and on the public.

Impact on businesses that are regulated:

(1) Both adverse and beneficial effects:

The regulation generally clarified existing practices and interpretations. No new requirements were established and the scope of the regulations did not expand. As a result, there are no anticipated adverse effects.

(2) Both immediate and long-term effects:

The immediate effect is the normal confusion that results whenever a change is made and the parties adjust to the new rules.

Impact on the public:

(1) Both adverse and beneficial effects:

The regulation should be neutral in terms of impacts on the public.

(2) Both immediate and long-term effects:

The regulation should be neutral in terms of short-term and long-term effects on the public.

(f) The estimated cost to the agency for enforcement of the proposed regulation:

There is no anticipated cost to the agency for enforcement.

(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 regulation overlaps regulations of the US Department of Labor, however, both agencies have concurrent jurisdiction over the subject matter and such overlap is normal and expected.

(h) If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions:

The only provisions that could be considered as more stringent would be those relating to overtime because Nevada's statutes in that area are more stringent.

(i) 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:

No new fees are involved.