

Chapter 608 of NAC

LCB File No. T004-07

**ADOPTED TEMPORARY REGULATION OF THE
OFFICE OF THE LABOR COMMISSIONER**

Filed with the Secretary of State on April 10, 2007

EXPLANATION- Matter that is *italicized* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: § § 1-10; Article 15, Section 16, the constitution of the State of Nevada, NRS 607.110, NRS 607.160.

Section 1. Chapter 608 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *Definition of minimum wage tiers.*

1. *The lower tier is from \$5.15 to \$6.14 per hour for employees who offered qualified health insurance benefits.*
2. *The upper tier is \$6.15 per hour for employees who are not offered qualified health benefits.*
3. *An employer must pay the upper tier rate unless the employee qualifies for the lower tier rate.*
4. *These rates may change based on the annual adjustments as set forth in Article 15, Section 16 of the Constitution of Nevada.*

Sec. 3. *Applicability of Minimum Wage.*

1. *The minimum wage applies to all employees in Nevada.*
2. *The only exceptions to the minimum wage are*
 - (a) *Persons under the age of 18; or*
 - (b) *Persons employed by a nonprofit organization for after school or summer employment; or*
 - (c) *Persons employed as trainees for a period not longer than ninety (90) days as interpreted by the U. S. Department of Labor pursuant to Section 6(g) of the Fair Labor Standards Act; or*
 - (d) *Persons employed under a valid collective bargaining agreement where Article 15, Section 16 of the Nevada Constitution relating to minimum wage, tip credit or other provisions included therein have been waived in clear and unambiguous terms.*
3. *There is no distinction between full-time, permanent, part-time, probationary, or temporary employees.*

Sec. 4. *In order to qualify for the lower minimum wage tier an employer must comply with all of the following:*

1. *Qualified health insurance coverage must be made available to the employee and the employee's dependents, if any. For the purposes of this section, qualified health insurance coverage is "available to the employee and employee's dependents" when an employer contracts for or otherwise maintains qualified health insurance for the class of employees of which the employee is a member, subject only to fulfillment of the conditions required to complete the coverage which are applicable to all similarly-situated employees within this class, unless the waiting period exceeds six months; and*
2. *The employee's share of the cost of the premium cannot exceed 10% of the employee's gross taxable income attributable to the employer as defined under the Internal Revenue Code;*
 - (a) *"Gross Taxable Income" attributable to the employer means the amount specified on the employee's W-2 issued by the employer and includes tips, bonuses or other compensation as required for purposes of federal individual income tax.*
 - (b) *To determine whether the employee's share of the premium does not exceed 10% of the employee's gross taxable income, the employer may:*
 - I. *For an employee for whom the employer has issued a W-2 for the immediately preceding year, divide the gross taxable income from the employer into the projected employee's share of the premiums for qualified health insurance for the current year;*
 - II. *For an employee for which the employer has not issued a W-2 and has payroll information for the four prior quarters, divide the combined total of gross taxable income normally calculated from this payroll information from these four quarters into the projected employee's share of the premiums for qualified health insurance for these four quarters;*
 - III. *For an employee for which there is less than an aggregate year of payroll information, the employer shall*
 - 1) *take the total payroll information available for the employee determine the combined total of gross taxable income normally calculated from this payroll information; and*
 - 2) *After dividing it by the number of weeks it represents and multiplying it by 52, divide this annualized number into the projected employee's share of the premiums for qualified health insurance for the current year;*
 - IV. *For a new employee, promoted employee, or an employee who turns eighteen years of age during employment, the employer shall wait until the employee has completed two normal payroll periods and then utilize this payroll information as set forth in subsection 3 above relating to an employee for which there is less than a complete year of employment; and*
3. *Offers a health benefit plan that meets one of the following requirements:*
 - (a) *The plan covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. Sec. 213 and any federal*

regulations relating thereto, if those expenses had been borne directly by those employees; or

(b) Provides health benefits pursuant to a Taft-Hartley trust which:

I. Is formed pursuant to 29 U.S.C. Sec. 186(c)(5); and

II. Qualifies as an employee welfare benefit plan under the Internal Revenue Service guidelines; or

(c) Is a qualified employee welfare benefit plan pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.

Sec. 5. An employer may decide to pay the maximum wage rate for minimum wage currently applicable in lieu of making any determination under this regulation that the employee may be paid the lower minimum wage rate.

Sec. 6. If a determination is made that the employee's share of the premium does not exceed 10% of the employee's gross taxable income from the employer, the employer may pay the employee through the end of the calendar year for which the determination has been made either:

1. The lowest minimum wage rate currently applicable; or

2. Any amount within the lower minimum wage tier currently applicable.

Sec. 7. If an employee declines coverage under a qualified health insurance plan offered by the employer, the employer must document that the employee has declined coverage. Declining coverage may not be a term or condition of employment.

Sec. 8. If an employer offers qualified health insurance with a waiting period of no more than 6 months, the employee may be paid at the lower tier wage rate. If an employer does not offer a qualified health insurance plan or the health benefit plan is not available or the health benefit plan is not provided within 6 months of employment, the employee must be paid the upper tier wage rate until such time as the employee becomes eligible and is offered coverage or when the insurance becomes effective. The term of the waiting period may be modified in a bona fide collective bargaining agreement, but only if the modification is explicitly set forth in such agreement in clear and unambiguous terms.

Sec. 9. For the purposes of complying with the daily overtime provisions of NRS 608.018(1), an employer shall pay overtime based on the minimum wage tier for which that employee is qualified.

Sec. 10. NAC 608.110 is hereby repealed

~~*[NAC 608.110 Minimum wage. (NRS 608.250) The minimum wage for an employee in private employment who:*~~

~~*1. Is 18 years of age or older is \$5.15 per hour.*~~

~~*2. Is under 18 years of age is \$4.38 per hour.]*~~

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T004-07**

The Office of the Labor Commissioner adopted temporary regulations assigned LCB File No. T004-07 which pertain to chapter 608 of the Nevada Administrative Code on March 6, 2007.

INFORMATIONAL STATEMENT

Pursuant to NRS 233B.066, the Office of the Labor Commissioner provides the following information concerning newly adopted temporary regulations for NAC 608.

(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, direct mail to persons on the agency 233B mailing list, public workshops, and press releases. Copies of the summary are available through the agency website or upon request from the agency.

(b) The number of persons who:

(1) Attended each hearing:

Forty-four people attended the hearing, twenty-five in Las Vegas and nineteen in Carson City.

(2) Testified at each hearing:

Seven individuals testified at the hearing.

(3) Submitted to the agency written statements:

Written comments were received from six individuals and organizations.

Andrea McHenry of Administaff and Cecilia Renn Kurzweg of ADP Total Source submitted comments concerning health insurance provided by professional employer organizations (PEO) who sponsor and maintain benefit plans for clients pursuant to “co-employment relationships.”

Gary Reed a Nevada casino dealer submitted comments concerning the 10% gross taxable income requirement.

Tom Haynie representing Manpower Inc. of Southern Nevada and the Nevada Staffing Association submitted questions concerning the insurance requirements.

Jen Sarafina of the Kamer, Zucker & Abbott law firm submitted comments concerning the insurance requirements.

Samuel McMullen representing the Nevada Restaurant Association, Retail Association of Nevada, and Las Vegas Chamber of Commerce submitted language related to trainees as defined in section 3(2)(c) of the regulation.

(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, by e-mail, press releases and workshops.

(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:***

Several changes were made in the proposed regulation. Section 4(1) the language concerning contracting for and maintaining health insurance was changed to accommodate other types of health insurance. Section 4(1) was also changed to reflect a standard waiting period of 6 months. Section 4(2)(b)(IV) was changed to include employees who are promoted. A change was suggested to Section 4, which would give the labor commissioner discretion to consider other types of health benefits, however, the change was not adopted because the labor commissioner felt that the office currently lacks the expertise to make such determinations. Section 7 was changed to eliminate the requirement for a signed waiver of coverage. Section 8 was changed to reflect that the standard six month waiting period could be waived in a collective bargaining agreement.

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

Impact on businesses that are regulated:

(1) ***Both adverse and beneficial effects:***

The constitutional amendment itself may generate both adverse and beneficial effects however those effects have yet to be identified and quantified. The regulations are intended to clarify the constitutional requirements in order to minimize adverse effects from confusion over the requirements conversely a clearer understanding of the requirements provides a benefit to businesses attempting to attain compliance.

(2) ***Both immediate and long-term effects:***

The immediate effect of the regulations is to provide a clearly understanding of the requirements of the constitutional amendment related to minimum wage in order to apprise employers and employees of their rights and responsibilities. Over the long term it will make it easier for employers to understand what they need to do to stay in compliance.

Impact on the public:

(1) ***Both adverse and beneficial effects:***

The regulation should be neutral in terms of impacts on the public, however the effect of the constitutional amendment itself should be significant but cannot be assessed at this time.

(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:***

We anticipate that there will be additional costs to the agency for enforcement primarily related to increased claims and complaints related to enforcement of the state's daily overtime requirements.

(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:***

Nevada's minimum wage parallels the federal minimum wage as set forth in the Fair Labor Standards Act. Because the FLSA is not a preemptive statute there are instances where regulation duplicates federal regulations. For example, section 3(2)(c) which adopts the federal standards for trainees duplicates the federal regulation in order to ensure that there is no gap in coverage for employees who otherwise may not be included under either regulation.

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

Because the constitutional amendment establishes a more stringent minimum wage requirement than currently exists under federal law the regulations are necessarily more stringent than the federal requirements, with the exception of those provisions such as section 3(2)(c), described above, which are intended to harmonize state and federal requirements wherever possible.

(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.

Submitted this 10th day of April 2007

MICHAEL TANCHEK
LABOR COMMISSIONER