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## EFFECTIVE JULY 12, 2016 REVISION TO ADVISORY OPINION (AO) – AO-2013-04

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The Office of the Labor Commissioner has reviewed the current Advisory Opinion and finds that a minor revision is necessary to balance the needs of employees and employers. The following language replaces Paragraph III of AO 2013-04 – Four (4) Ten (10) Schedules or “4 10s.”

### **III. OVERTIME PAY IS NOT REQUIRED IF AN EMPLOYEE’S DECISION OR A CIRCUMSTANCE OUTSIDE OF THE EMPLOYER’S CONTROL IS THE REASON FOR A FAILURE TO WORK A SCHEDULED “4 10s.”**

The Office of the Labor Commissioner is tasked with enforcing Nevada’s wage and hour laws. This office attempts to do so in a way that is fair and beneficial to both Nevada employees and employers. As such, this office has attempted to come up with a fair solution to the unintended consequences of the “4 10s” exception to Nevada’s overtime law. The office revises its earlier opinion to address the payment of daily overtime when circumstances outside of the employer’s control exist and which prevent an employee from working a scheduled “4 10s”. This limited revision fairly balances the needs of employees and employers.

If an employee does not work a scheduled “4 10s” due to a decision made by the employee, for reasons within the employee’s control, or to the employee’s benefit, or due to circumstances that are out of the control of the employer, including, but not limited to inclement weather or other circumstances that make the employee’s scheduled work impossible or impracticable, the employer is only required to pay the employee’s regular wage for the hours the employee actually worked during that work week. When an employee does not work a scheduled “4 10s” due to circumstances out of the employer’s control, an employer may, but is not required to, offer an employee a make-up or replacement shift for the missed scheduled “4 10s” within any scheduled week of work. However, an employee shall not be obligated to work the offered make-up shift. An employer can always choose to pay an employee for a full 40 hour work week even if they worked less than 40 hours, and this Office would not penalize an employer for doing so.

It still remains opinion of this office that if an employee does not work a scheduled “4 10s” due to circumstances within the control of the employer, the employer is required to pay the employee overtime for any day during the work week in which the employee worked more than 8 hours.

Outside of the situations discussed in this advisory opinion, the usual overtime rules would apply. Due to the limited nature of the “4 10s” exception to Nevada’s overtime law, it is important for Nevada employers and employees to adhere to an agreed upon “4 10s” schedule.

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July 25, 2013

Michele Daugherty  
Associated Builders and Contractors, Inc.  
240 S. Rock Blvd., Suite 121  
Reno NV 89502

Re: Advisory Opinion of the Nevada Labor Commissioner  
The "4 10s" exception to Nevada's overtime law under NRS 608.018 and  
NRS 338.020 (AO 2013-04)

Ms. Daugherty:

In response to your request for an Advisory Opinion from the Nevada Labor Commissioner explaining this office's enforcement policy regarding the "4 10s" exception to Nevada's overtime law under NRS 608.018 and NRS 338.020, the Office of the Labor Commissioner has conducted a thorough review of all relevant statutes and regulations. It is the position of the Nevada Labor Commissioner that an employer is not required to pay overtime when it is a decision of the employee that results in an employee failing to work a scheduled "4 10s".

**I. NEVADA EMPLOYERS ARE REQUIRED TO PAY OVERTIME UNLESS  
THERE IS A MUTUAL AGREEMENT TO WORK A SCHEDULED "4 10s"**

Pursuant to NRS 608.018, an employer is required to pay 1.5 times an employee's regular wage rate when an employee works more than 40 hours in any scheduled week of work or more than 8 hours in any workday,<sup>1</sup> whichever happens first.<sup>2</sup> The same requirements apply to public works under NRS 338.020. However, an employer is not obligated to pay overtime if there is a mutual

<sup>1</sup> This office's policies regarding time clock rounding still apply. You can find the advisory opinion on time clock rounding on our website ([www.laborcommissioner.com](http://www.laborcommissioner.com)).

<sup>2</sup> Provided the employee's regular wage is less than 1.5 times minimum wage, which is currently \$10.875 if the employer offers qualifying insurance and \$12.375 if they do not.

agreement between the employee and the employer that the employee work a scheduled 10 hours per day for 4 days within any work week.

The “4 10s” exception to Nevada’s overtime law is beneficial to Nevada employers and employees alike. It provides employees flexibility in scheduling their work week and ensures that employers can still meet their needs. Nevertheless, this particular overtime exception has some unintended consequences.

## **II. THE “4 10s” EXCEPTION TO NEVADA’S OVERTIME LAW FREQUENTLY RESULTS IN EMPLOYERS HAVING TO PAY OVERTIME**

While this office recognizes the importance and many benefits of the “4 10s” exception to Nevada’s overtime law, there are also some unintended consequences that this office encounters with some frequency. There are many situations that would require an employer to pay employees overtime despite the “4 10s” exception. While it is impossible to describe every scenario that could or has arisen, there is one example that illustrates the point well—when an employee doesn’t work a full 10-hour shift on his or her fourth 10-hour day.

As the law is written now, when an employee does not work a full 10-hour shift on his or her fourth day, the employer is forced to pay two hours of overtime for each of the three previous days. This results in an additional expense to the employer that he or she must absorb and often must pass on to customers. Additionally, it often negatively affects the employer-employee relationship. This was not the intent of the “4 10s” exception.

## **III. OVERTIME IS NOT REQUIRED IF AN EMPLOYEE’S DECISION IS THE REASON FOR A FAILURE TO WORK A SCHEDULE “4 10s”**

The Office of the Labor Commissioner is tasked with enforcing Nevada’s wage and hour laws. This office attempts to do so in a way that is fair and beneficial to both Nevada employees and employers. As such, this office has attempted to come up with a fair solution to the unintended consequences of the “4 10s” exception to Nevada’s overtime law.

If an employee does not work a scheduled “4 10s” due to a decision made by the employee or for reasons within the employee’s control or to the employee’s benefit, the employer is only required to pay the employee’s regular wage for the hours the employee actually worked during that work week.<sup>3</sup> On the other hand, if an employee does not work a scheduled “4 10s” due to a decision made by the employer or for reasons not within the employee’s control, the employer is required

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<sup>3</sup> Nothing in this advisory opinion prohibits an employer from paying an employee for the full 40 hour work week even if the employee works less than 40 hours. It is not the policy of this office to penalize an employer who pays their employees for a full 40 hour work week when the employee worked less than 40 hours.

to pay the employee overtime for any day during the work week in which the employee worked more than 8 hours.<sup>4</sup>

Outside of the situations discussed in this advisory opinion, the usual overtime rules would apply. Due to the limited nature of the “4 10s” exception to Nevada’s overtime law, it is important for Nevada employers and employees to adhere to an agreed upon “4 10s” schedule.

### CONCLUSION

After a thorough review of all applicable statutes and authority, it is the position of the Nevada Labor Commissioner that an employer is not required to pay overtime when it is a decision of the employee that results in an employee failing to work a scheduled “4 10s”.

Sincerely,



Thoran Towler  
Nevada Labor Commissioner

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<sup>4</sup> Also, in the event of a natural disaster, which is outside the control of both the employee and employer, making it impossible for an employee to work a scheduled “4 10s”, the employer is only required to pay the employee’s regular wage rate for the hours the employee actually worked.