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Department of Business & Industry  
**OFFICE OF THE LABOR COMMISSIONER**

April 7, 2016

Ms. Hee-Garcia, Management Assistant  
Capitol Projects – City of Reno Public Works  
P.O. Box 1900  
Reno, Nevada 89505

**Re: Advisory Opinion – Apprenticeship Wages on Public Works Projects**

Dear Ms. Hee-Garcia:

Pursuant to Nevada Administrative Code (NAC) Section 607.650, an Advisory Opinion has been requested concerning the calculation of wages for Apprentices on Public Works Projects. This Advisory Opinion supersedes the Advisory Opinion issued in December 2015 based on a review of additional information.

Nevada Revised Statutes (NRS) Section 338.010, subsection 17 defines a Public Work as follows:

“Public work” means any project for the new construction, repair or reconstruction of the following:

(a) A project financed in whole or in part from public money for:

- (1) Public buildings;
- (2) Jails and prisons;
- (3) Public roads;
- (4) Public highways;
- (5) Public streets and alleys;
- (6) Public utilities;
- (7) Publicly owned water mains and sewers;
- (8) Public parks and playgrounds;
- (9) Public convention facilities which are financed at least in part with public money; and
- (10) All other publicly owned works and property.

NRS Section 338.010, subsection 24 defines Wages as: (a) The basic hourly rate of pay; and (b) the amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the worker.

NRS Section 338.020 requires payment of the prevailing wage on public works projects and states in relevant part as follows:

1. Every contract to which a public body of this State is a party, requiring the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor in the performance of public work, must contain in express terms the hourly and daily rate of wages to be paid each of the classes of mechanics and workers. The hourly and daily rate of wages must:
  - (a) Not be less than the rate of such wages then prevailing in the county in which the public work is located, which prevailing rate of wages must have been determined in the manner provided in NRS 338.030; and
  - (b) Be posted on the site of the public work in a place generally visible to the workers.

NRS Section 338.030 and NAC Section 338.010 govern the procedure and method for determining the Prevailing Wage Rate for each job classification/sub classification within each County in the State of Nevada. In 2015, the procedure and method were changed pursuant to Assembly Bill 172.

NRS Section 338.012 and NAC Section 338.007 provide the authority for the Labor Commissioner to establish classes of workers. It states in relevant part:

“Recognized class of workers” defined. (NRS 338.012)  
“Recognized class of workers” means a class of workers recognized by the Labor Commissioner as being a distinct craft or type of work for purposes of establishing prevailing rates of wages. The term includes a class of workers for which the Labor Commissioner has traditionally established a prevailing rate of wages and any other class of workers the Labor Commissioner determines to be a distinct craft or type of work either on his or her own accord or after conducting a hearing pursuant to NAC 338.090.

NAC Section 338.015 provides the authority to determine the Prevailing Wage rate for sub-classifications of workers.

**Recognized classes of workers: Sub classifications; determination of prevailing rate of wages for each craft or type of work among class.**

1. The sub classifications within the recognized classes of workers include, without limitation:

(a) Foreman. A foreman is a person who works with and supervises one or more journeymen performing a craft or type of work.

(b) General foreman. A general foreman is a person who works with and supervises one or more journeymen performing a craft or type of work, including, without limitation, one or more foremen.

(c) Journeyman. A journeyman is a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker performing a craft or type of work.

2. The Labor Commissioner will consider the kind of information described in subsection 2 of NAC 338.020 to determine the applicable prevailing wage for each craft or type of work among the recognized class of workers.

NRS Section 338.040 sets forth the requirements for when workers are deemed to be employed on public works.

**Workers deemed to be employed on public works.**

1. Except as otherwise provided by specific statute, workers who are:

(a) Employed at the site of a public work; and

(b) Necessary in the execution of the contract for the public work, are deemed to be employed on public works.

2. The Labor Commissioner shall adopt regulations to define the circumstances under which a worker is:

(a) Employed at the site of a public work; and

(b) Necessary in the execution of the contract for the public work.

NAC Section 338.009 provides as follows:

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

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

2. As used in this section, "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.

NAC Section 338.0095, subsection (1)(a) and (b), and subsection (2) set forth the requirements for payment of the prevailing wage on public works projects.

1. (a) A worker employed on a public work must be paid the applicable prevailing rate of wage for the type of work that the worker actually performs on the public work and in accordance with the recognized class of the worker; and

(b) Each contractor and subcontractor shall be deemed to be the employer of each worker and apprentice who performs work directly for that contractor or subcontractor in the execution of a contract for a public work, whether the worker or apprentice is employed directly by the contractor or subcontractor or is furnished to the contractor or subcontractor by or through another person or entity such as an employee leasing company or equipment rental business.

2. Any person employed on a public work as an apprentice or listed as an apprentice who is not registered with the Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor and the State Apprenticeship Council must not be paid less than the applicable wage rate for the type of work actually performed by the person and in accordance with the applicable recognized class of workers.

Exemptions to the Prevailing Wage requirements include the following: (1) Contracts awarded which are directly related to the normal operation of the Public Body or the normal maintenance of its property (NRS 338.011); (2) Contracts awarded to meet an

emergency which threatens the health, safety, or welfare of the public (NRS 338.011); (3) Any contract for a public work under \$250,000 and charter schools construction (Assembly Bill 172-2015 Legislative Session); (4) Apprentices recorded under the provisions of NRS 610 (NRS 338.080); (5) Any work performed by or for any railroad company (NRS 338.080); and (6) Design professionals as defined under NRS 338.010.

NAC Sections 338.092 and 338.094 require contractors/subcontractors to submit Certified Payroll Reports to the Awarding Body certifying that the required Prevailing Wage Rate was paid to a Worker or Apprentice on a Public Works Project.

NAC Section 338.0052 defines an Apprentice as: “[A] person employed and individually registered in a bona fide apprenticeship program with (1) the Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor, and, (2) The Nevada State Apprenticeship Council pursuant to chapter 610 of the NRS. . . .”

Pursuant to NRS Sections 610.090 and 610.144, the State Apprenticeship Council sets the rules and standards for Apprenticeship Programs approved within the State of Nevada. As part of its approval process, the Nevada State Apprenticeship Council approves the wages to be paid to apprentices on Public Works Projects pursuant to NAC Sections 610.480 and 610.485. NAC Section 610.485 provides that the wages paid to an Apprentice employed on a Public Work Project shall not be less than the Period-Percentages set forth in the standards approved by the State Apprenticeship Council for the Prevailing Wage of a Journeyman as established by the Office of the Labor Commissioner (OLC). NAC Section 610.485 subdivision (4) also establishes a minimum wage that must be paid to apprentices. The rates that are the subject of this Advisory Opinion exceed this minimum wage.

NAC Section 610.490 provides that the State Apprenticeship Council may adjust the minimum and profitable wage for an apprentice in the construction industry after February 1st of each year. NAC Section 610.490, subsections 5(a) and (b) provide that these adjustments will be “not later than August 1st of each year, or upon the renewal of or execution of a new Collective Bargaining Agreement, if the wage for apprentices is set by or in conjunction with a Collective Bargaining Agreement.” In the examples that were provided, the apprenticeship wages were set by Collective Bargaining Agreements (CBAs) pursuant to NAC Section 610.490. In addition, the taxable wages set forth in these CBAs appear to meet the required Period-Percentages for Journeyman as set forth in NAC 610.485.

Because these CBAs were already negotiated in accordance with NAC 610.490, and the wages meet the required Period-Percentages for taxable income pursuant to NAC 610.485, the wages paid pursuant to these CBAs meet the requirements of the provisions referenced above. Therefore, the City of Reno should accept the wages paid to apprentices for the CBAs referenced in the Request for Advisory Opinion and process the Certified Payroll Reports or payments due to the Contractor/Subcontractor in accordance

with this Advisory Opinion. Any penalties, forfeitures, or wages due, shall be waived based on this Advisory Opinion. The City of Reno is only responsible for the lesser of the CBA wages paid to apprentices or the Period-Percentages established by the State Apprenticeship Council based on the Prevailing Wage of the Journeyman as established by the OLC.

This Advisory Opinion is based on the information presented at this time and may be subject to change based on changes in laws and regulations, information of non-compliance, and any additional relevant information that may justify an additional review/interpretation of the new or additional information presented.

Should you need any additional clarification, please do not hesitate to contact me at your earliest opportunity at (775) 684-1890.

Sincerely,



Shannon M. Chambers  
Labor Commissioner