



Office of the Nevada Labor Commissioner

Nevada Department of Business and Industry
“Growing Business in Nevada”

Overview of Nevada Wage and Hour Laws; 2023 Legislative Updates; and Frequently Asked Questions and Guidance.

(Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) sections 607, 608, 613 and 338)

Brett Harris- Labor Commissioner
Malia Tatom – Deputy Labor Commissioner
Lupe Martinez – Chief Investigator
Joe Abughazaleh – Senior Investigator

Overview of Office of the Labor Commissioner

The Office of the Labor Commissioner (OLC) is the principal wage and hour and labor regulatory agency for the State of Nevada. The OLC is responsible for ensuring that minimum wage, prevailing wage, and overtime are paid to employees in Nevada, and that employee rest, break, and lunch periods are provided. In addition, the OLC has authority over the employment of minors, private employment agencies, professional employer organizations, other employment practices, and the Nevada State Apprenticeship Council.

It is the vision and mission of this office to resolve labor-related problems in an efficient, professional, and effective manner. This includes educating employers and employees regarding their rights and responsibilities under the law to promote the growth of business in Nevada. The OLC takes enforcement action when necessary to ensure that Nevada's workers are treated fairly and compensated for all time worked.

17 Total Staff – 15 in Las Vegas; 2 in Carson City
8 Investigators for the entire State of Nevada

Major Responsibilities

- Private Sector Employment
- Public Works Laws
 - Prevailing Wages On Public Works Projects
 - Apprenticeship Utilization Act
 - State Apprenticeship Council (July 1, 2021)
- Regulate Private Employment Agencies and Professional Employer Organizations (July 1, 2021)

Statutory and Regulatory Authority Pursuant to Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC):

OFFICE OF THE LABOR COMMISSIONER STATUTORY AND REGULATORY AUTHORITY

[Nevada Revised Statutes (NRS)]

NRS 607 – Office of the Labor Commissioner
NRS 608 – Compensation, Wages and Hours
NRS 609 – Employment of Minors
NRS 610 – State Apprenticeship Council
NRS 611 – Private Employment Agencies
NRS 613 – Employment Practices*
NRS 614 – Organized Labor and Labor Disputes
NRS 616B – Professional Employer Organizations
NRS 338 – Public Works

[Nevada Administrative Code (NAC)]

NAC 607 – Rules of Practice
NAC 608 – Compensation, Wages and Hours
NAC 609 – Employment of Minors
NRS 601 – State Apprenticeship Council
NAC 611 – Private Employment Agencies
NAC 613 – Employment Practices
NAC 338 – Public Works

**“An employer shall pay to the employee wages for each hour the employee works.”
NRS § 608.016**

WAGES

THE AGREED UPON RATE
PAID FOR ALL HOURS
WORKED

- Hourly rate
- Salary
- Commissions
- Piece work
- Shift work

*Meals and Sleep – NRS 608.155
NRS 608.0195

WAGES ARE NOT

- Bonuses
- Profit sharing
- Fringe benefits
(Exception on Prevailing Wage)

Definitions

Employer (NRS 608.011): Every person having control or custody of any employment, place of employment or any employee.

Employee (NRS 608.010): Male and female persons in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed.

Independent Contractor (NRS 608.0155 and NAC 608.155): Are not employees.

NAC 608.155 - 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.

INDEPENDENT CONTRACTOR PRESUMPTIONS

NRS 608.0155 - PERSONS PRESUMED TO BE INDEPENDENT CONTRACTORS

- Unless the person is a foreign national who is legally present in the United States, the person possesses or has applied for an employer identification number or social security number or has filed an income tax return for a business or earnings from self-employment with the Internal Revenue Service in the previous year; the person is required by the contract with the principal to hold any necessary state business license or local business license and to maintain any necessary occupational license, insurance or bonding; and the person satisfies three or more of the following criteria:
 - The person has control and discretion over the means and manner of the performance of any work and the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the principal in the contract; Except for an agreement with the principal relating to the completion schedule, range of work hours or, the person has control over the time the work is performed;
 - The person is not required to work exclusively for one principal unless: A law, regulation or ordinance prohibits the person from providing services to more than one principal; or the person has entered into a written contract to provide services to only one principal for a limited period.
 - The person is free to hire employees to assist with the work.
 - The person contributes a substantial investment of capital in the business of the person, such as the: purchase or lease of ordinary tools, material and equipment regardless of source; obtaining of a license or other permission from the principal to access any workspace of the principal to perform the work for which the person was engaged; and lease of any workspace from the principal required to perform the work for which the person was engaged.

The fact that a person is not conclusively presumed to be an independent contractor for failure to satisfy three or more of the criteria set forth in paragraph (c) of subsection 1 does not automatically create a presumption that the person is an employee.

SENATE BILL 493 (2019) – PRESUMPTION OF INDEPENDENT CONTRACTOR FOR CONSTRUCTION INDUSTRY

A natural person is conclusively presumed to be an independent contractor if the person is a contractor or subcontractor licensed pursuant to chapter 624 of NRS or is directly compensated by a contractor or subcontractor licensed pursuant to chapter 624 of NRS for providing labor for which a license pursuant to chapter 624 of NRS is required to perform and:

- (a) The person has been and will continue to be free from control or direction over the performance of the services, both under his or her contract of service and in fact;
- (b) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprises for which the service is performed; and
- (c) The service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged, of the same nature as that involved in the contract of service.

“Providing labor” does not include the delivery of supplies.

INDEPENDENT CONTRACTOR RULE UPDATE UNDER FAIR LABOR STANDARDS ACT (FLSA) – FEDERAL LAW

The United States Department of Labor withdrew the previous rule that was issued under the Trump Presidential Administration that would have narrowed the definition of employee under the Fair Labor Standards Act (FLSA).

<https://www.dol.gov/newsroom/releases/whd/whd20210505>

“We are looking at it, but in a lot of cases gig workers should be classified as employees,” Walsh [told Reuters](#). “These companies are making profits and revenue and I’m not (going to) begrudge anyone for that, because that’s what we are about in America. But we also want to make sure that success trickles down to the worker.” Secretary of Labor Marty Walsh on April 29, 2021.

<https://www.washingtonpost.com/business/2021/04/29/labor-walsh-gig-workers-employees/>

Task Force on Employee Misclassification

NRS 607.216 “Employee misclassification” defined. As used in NRS 607.216 to 607.2195, inclusive, unless the context otherwise requires, “employee misclassification” means the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws, including, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers’ compensation insurance, temporary disability insurance, wage payment and payroll taxes.

NRS 607.217 Communication of information relating to employee misclassification among Labor Commissioner, certain state agencies and the Attorney General. The offices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General:

1. Shall communicate between their respective offices, information relating to suspected employee misclassification which is received in the performance of their official duties, and which is not otherwise declared by law to be confidential.
2. May communicate between their respective offices, information relating to employee misclassification which is received in the performance of their official duties, and which is otherwise declared by law to be confidential, if the confidentiality of the information is otherwise maintained under the terms and conditions required by law.

NRS 607.218 Task Force on Employee Misclassification: Creation; appointment, qualifications and terms of members; vacancies; meetings; Chair and Vice Chair; quorum; compensation; administrative support.

1. The Task Force on Employee Misclassification is hereby created.
2. The Governor shall appoint to serve on the Task Force:
 - (a) One person who represents an employer located in this State that employs more than 500 full-time or part-time employees.
 - (b) One person who represents an employer located in this State that employs 500 or fewer full-time or part-time employees.
 - (c) One person who is an independent contractor in this State.
 - (d) Two persons who represent organized labor in this State.
 - (e) One person who represents a trade or business association in this State.
 - (f) One person who represents a governmental agency that administers laws governing employee misclassification.
3. The Governor may appoint up to two additional members to serve on the Task Force as the Governor deems appropriate.
11. The Labor Commissioner shall provide the personnel, facilities, equipment and supplies required by the Task Force to carry out its duties.

NRS 607.219 - 4. On or before July 1, 2020, and on or before July 1 of each subsequent year, submit a written report to the Director of the Legislative Counsel Bureau for submission to the Legislative Commission. The report must include, without limitation, a summary of the work of the Task Force and recommendations for legislation concerning employee misclassification.

MISCLASSIFICATION PROHIBITED

NRS 608.400 Misclassification prohibited; administrative penalties; notice and opportunity for hearing.

1. An employer shall not:

(a) Through means of coercion, misrepresentation or fraud, require a person to be classified as an independent contractor or form any business entity in order to classify the person as an independent contractor; or

(b) Willfully misclassify or otherwise willfully fail to properly classify a person as an independent contractor.

2. In addition to any other remedy or penalty provided by law, the Labor Commissioner may impose an administrative penalty against an employer who misclassifies a person as an independent contractor or otherwise fails to properly classify a person as an employee of the employer. An administrative penalty imposed pursuant to this section must be:

(a) For a first offense committed by an employer who unintentionally misclassifies or otherwise fails to properly classify a person as an employee of the employer, a warning issued to the employer by the Labor Commissioner.

(b) For a first offense committed by an employer who willfully misclassifies or otherwise willfully fails to properly classify a person as an employee of the employer, a fine of \$2,500 for the first incident of willfully misclassifying or willfully failing to properly classify one or more persons as an employee of the employer imposed by the Labor Commissioner.

(c) For a second or subsequent offense, a fine of \$5,000 for each employee who was willfully misclassified imposed by the Labor Commissioner.

3. Before the Labor Commissioner may enforce an administrative penalty against an employer for misclassifying or otherwise failing to properly classify an employee of the employer pursuant to this section, the Labor Commissioner must provide the employer with notice and an opportunity for a hearing as set forth in NRS 607.207. The Labor Commissioner may impose an administrative penalty as set forth in subsection 2 if the Labor Commissioner finds that:

(a) The employer misclassified a person as an independent contractor; or

(b) The employer otherwise failed to properly classify a person as an employee of the employer.

Key Elements Of Nevada's Minimum Wage Requirements

Nevada Constitution – Article 15, Section 16

2006 Minimum Wage Amendment Passed by Voters

Ballot Question No. 2 in the 80th Session- Passed (removing two-tiered system)

- Two rates until June 2024 – (Two Tier System) On July 1, 2024 there will only be one minimum wage rate, which will be \$12.00 per hour.
- Tips cannot be used to offset payment of Minimum Wage (Tips can be pooled by employees pursuant to NRS 608.160)
- Can pay lower rate if Qualified Health Insurance offered/made available to employee Senate Bill (SB) 192 (2019 Legislative Session)
- Exemptions in NRS 608.250 No Longer Valid (*Yellow Cab Case 2014*)
AB 456 removes exemptions in NRS 608.250 consistent with *Yellow Cab*
- Exemptions to Minimum Wage: Workers under the age of 18; Workers employed by a non-profit for after school or summer employment; and Trainees
- Collectively Bargained exemption

Minimum Wage Increase

AB 456 (Passed 2019 Legislative Session)

Effective Date	Lower Tier	Higher Tier
July 1, 2021	\$8.75	\$9.75
July 1, 2022	\$9.50	\$10.50
July 1, 2023	\$10.25	\$11.25
July 1, 2024	\$12.00	

How Minimum Wage Impacts The Daily Overtime Rates?

➤ Employers must pay 1-1/2 times an employee's regular wage rate whenever an employee who is paid less than 1-1/2 times the applicable minimum wage rate works more than 40 hours in any workweek or more than 8 hours in any workday*, unless otherwise exempted. (NRS 608.018)

❖ EMPLOYEE OFFERED QUALIFIED HEALTH BENEFITS

Pay Overtime at 1-1/2 times an Employee's Regular Rate if:

- (1) Employee works over 8 hours in a 24-hour period or over 40 hours in a week;
- (2) Employee is offered qualified health benefits;
- (3) Employee Makes Less than \$15.375 per hour. (Effective July 1, 2023)

❖ EMPLOYEE NOT OFFERED QUALIFIED HEALTH BENEFITS

Pay Overtime at 1-1/2 times an Employee's Regular Rate if:

- (1) Employee works over 8 hours in a 24-hour period or over 40 hours in a week;
- (2) Employee Makes Less than \$16.875 per hour. (Effective July 1, 2023)

*Four-Tens (4/10's) exception - By mutual agreement, the employee can work a schedule of four ten (4/10's) hour days in a workweek. Must be a regular and consistent schedule. If the 4/10 schedule is not followed it will revert to overtime. (See Advisory Opinion AO 2013-04)

Paid Leave – NRS 608.0197

An employer in private employment with not less than 50 employees shall provide paid leave to each employee of the employer pursuant to the provisions of NRS section 608.0197 as follows:

- An employee is entitled to at least 0.01923 hours of paid leave for each hour of work performed.
- Paid leave accrued may carry over for each employee between his or her benefit years of employment, except an employer may limit the amount of paid leave for each employee carried over to a maximum of 40 hours per benefit year.
- An employer shall: (1) Compensate an employee for the paid leave available for use by that employee at the rate of pay at which the employee is compensated at the time such leave is taken; and (2) Pay such compensation on the same payday as the hours taken are normally paid. (See NRS section 608.0197 and Senate Bill 312 (2019) for full requirements and exceptions and Advisory Opinion <https://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20SB%20312%20Paid%20Leave.pdf>)
- NRS section 608.0197 subsection 2(b) states: An employer shall allow an employee to use paid leave for any use, including, without limitation: (1) Treatment of a mental or physical illness, injury, or health condition. (2) Receiving a medical diagnosis or medical care. (3) Receiving or participating in preventative care. (4) Participating in caregiving; or (5) Addressing other personal needs related to the health of the employee. (See Senate Bill 209 – 2021 Legislative Session)

NRS 613.155 – An employer shall not require an employee to report to work to notify the employer of illness or injury. Employee still has to notify employer of illness or injury.

NRS and NAC section 608 Overview

- **Non-Standard Deductions (NAC 608.160):**
 - The employer is required to have the employee voluntarily authorize in writing the specific purpose, pay period, and amount of deduction.
 - May not use a blanket authorization.
- **Record Keeping (NRS 608.115 and NAC 608.140):**
 - Gross wage or salary, deductions, net cash or salary, number of hours per day, date of payment); the records have to be kept for 2 years from the date the information was recorded.
- **Uniforms (NRS 608.165):**
 - If the uniforms clearly identify the employee with the business, the employer shall provide the uniform at no cost or deposit.
 - The employer must also pay for any cost that is required for special cleaning of the uniform.
- **Payment (NRS 608.060, NRS 608.070 and NRS 608.080):**
 - At least semimonthly and maintain the same scheduled paydays.
- **Paystub (NRS 608.110 and NRS 608.115):**
 - Itemized list of deductions showing the respective deductions made from the total amount of wages or compensation; any additional deduction should be authorized by the employee.
- **Breaks & Lunches (NRS 608.019 and NAC 608.145):**
 - Provide 10 minutes for each 3 1/2 hours worked and at least 30 minutes uninterrupted lunch break for employee working a continuous period of 8 hours.
- **Employee Terminated or Resigned/Quit Payment (NRS 608.020 and NRS 608.030):**
 - Immediately or within three days – terminated by the employer.
 - Next regular payday or within 7 days – resign or quit.

NRS 608 Wage Claim Process – (See also NAC sections 607.060-607.080)

CLAIMS ARE FILED ONLINE

Case Opened- Completed Wage Claim has been accepted and entered into the Labor Case Tracking System.

Notice of Claim- Notice of Claim mailed to employer/respondent, allowing 15 days to respond.

Investigation- Review documents, evidence, statements, payroll records, objections to Wage Claim, and any other relevant documents. Review potential settlement offers.

Determination/Close Claim- Investigation found violation(s) of law. No violations found or lack of jurisdiction and the Wage Claim is closed.

Request Hearing/Final Order- A written objection is submitted by employer/respondent that has merit and requests a hearing in the matter. No response to Determination is received, so Determination proceeds to Final Order.

Collections- After a Final Order has been issued and the employer has not remitted payment, the case will be forwarded to the State Controller's Office for collection.

GENERAL EMPLOYMENT COMPLAINT

- NON-WAGE RELATED VIOLATIONS
- MAY BE ANONYMOUS COMPLAINT
- ADMINISTRATIVE FINE UP TO \$5,000 (NRS 608.195)
- MAY BE USED IN LIEU OF SOME WAGE PENALTIES
- MOST COMMON VIOLATION IS FAILURE TO KEEP RECORDS
- PROCESS TYPICALLY FOLLOWS NAC SECTIONS
607.060-607.080

82nd Regular Session of the Nevada Legislature 2023

EMPLOYMENT BILLS

- **AB 163**: Provides leave to victims of sexual assault to obtain and participate in medical treatment, safety planning, and prosecution of the perpetrator
- **AB 259**: Revises provisions governing wages for persons with disabilities
- **SB 145**: Revises provisions related to employee misclassification
- **SB 147**: Defines payment of wages terms for employees on “nonworking status”
- **SB 344**: Paid leave for parents and guardians to attend school functions

PUBLIC WORKS/PREVAILING WAGE/APPRENTICESHIP BILLS

- **AB 210**: Revises provisions governing public works
- **AB 235**: Revises provisions governing public works projects
- **AB 305**: Adds a requirement for the use of female apprentices on public works projects
- **AB 391**: Revises provisions governing public works
- **SB 82**: Changes Apprenticeship Utilization Act compliance and reporting
- **SB 226**: Revises provisions governing public works
- **SB 299**: Revises provisions related to monorails
- **SB 301**: Revises provisions governing public works
- **SB 433**: Revises provisions relating to prevailing wages

Bulletins and Guides

Bulletins and Guides can be obtained at www.labor.nv.gov

- Nursing Mothers Accommodations – Assembly Bill 113, 2017 Legislative Session
- Tip Guide
- Notice to Employer of Sick or Injured Employee – Assembly Bill 181, 2019 Legislative Session
- Independent Contractor – Information Sheet & Tips to Avoid Misclassification
<http://labor.nv.gov/uploadedFiles/labornvgov/content/Employer/Tips%20to%20Avoid%20Misclassification.pdf>
- Meal and Rest Period Notice
- Request for Meal and Rest Period Waiver Form
- AB 132 Guide to the Marijuana Testing Bill

Required Postings

Required Postings can be obtained at www.labor.nv.gov

- Annual Minimum Wage and Overtime Bulletin(s)
- Rules to be Observed by Employers
- Notice of Limitations Affecting the Application of Lie Detector Tests
- Domestic Violence Victim's Bulletin – Senate Bill 361, 2017 Legislative Session
- Domestic Worker's Bill of Rights – Senate Bill 232, 2017 Legislative Session
- Paid Leave – Senate Bill 312, 2019 Legislative Session
- Minimum Wage Bulletin – Assembly Bill 456, 2019 Legislative Session
- Family Sick Leave Bill – Assembly Bill 190, 2021 Legislative Session
- Notice of Career Enhancement Program and Job Connect from Department of Employment, Training and Rehabilitation (DETR), Assembly Bill 307, 2021 Legislative Session
- Paid Leave for COVID-19 Vaccination, Senate Bill 209, 2021 Legislative Session



Office of the Nevada Labor Commissioner

Nevada Department of Business and Industry
“Growing Business in Nevada”

Nevada Labor Commissioner Bulletins, Guides, and Frequently Asked Questions (FAQ's)

Additional Guidance from the Office of the Labor Commissioner

Request for Advisory Opinion – NAC 607.650

Petition for Declaratory Order – NAC 607.670

Training and Seminars for Employees and Employers

Employer Association and Employee Associations

Awarding/Public Body Working Groups

Awarding/Public Body Handbook/Guide

Labor Commissioner Website and Contact Information

www.labor.nv.gov - Website

Mail1@labor.nv.gov – General Questions

PublicWorks@labor.nv.gov – Public Works/Prevailing Wage Questions

AUA@labor.nv.gov – Apprenticeship Utilization Act Questions

Northern Nevada:

- Michael Smith, (775) 684-1890

Southern Nevada:

- Brett Harris, Labor Commissioner, (702) 486-2650
- Malia Tatom, Deputy Labor Commissioner, (702) 486-2650
- Lupe Martinez, Chief Investigator, (702) 486-2650
- Joe Abughazaleh, Senior Investigator, (702) 486-2650