



BRIAN SANDOVAL
GOVERNOR

C.J. MANTHE
DIRECTOR

SHANNON CHAMBERS
LABOR COMMISSIONER

Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER

www.labor.nv.gov

OFFICE OF THE LABOR COMMISSIONER
555 E. WASHINGTON AVENUE, SUITE 4100
LAS VEGAS, NEVADA 89101
PHONE: (702) 486-2650
FAX (702) 486-2660

OFFICE OF THE LABOR COMMISSIONER
1818 COLLEGE PKWY., SUITE 102
CARSON CITY, NV 89706
PHONE: (775) 684-1890
FAX (775) 687-6409

PUBLIC WORKS AND PREVAILING WAGE GUIDELINES AND RESPONSIBILITIES OF AWARDING BODIES AND CONTRACTORS AND THE OFFICE OF THE LABOR COMMISSIONER

I. **PURPOSE** - This handbook is intended to provide general guidelines to help awarding bodies and contractors comply with Nevada's prevailing wage laws. This handbook is not intended to be a substitute for Nevada's statutes and regulations as set forth in the Nevada Revised Statutes (NRS) section 338 and Nevada Administrative Code (NAC) section 338, and any other applicable laws and regulations.

II. GENERAL BACKGROUND

- a. "Public work" defined – Any project funded in whole or in part from public money for the "new construction, repair or reconstruction" of a public building, road, utility etc. (See NRS 338.010(17))
- b. "Public body" defined – The State of Nevada or any county, city, town, school district or any public agency or any political subdivision sponsoring or financing a public work. (See NRS 338.010(16))
- c. Prevailing wages – Pursuant to NRS 338.020, every contract over \$250,000 (for Redevelopment Projects the contract amount is \$100,000) to which a public body is a party and that requires the employment of skilled or unskilled labor in the performance of a public work must contain in expressed terms the rate of wages to be paid to each of the classes of workmen. The rate of wages must not be less than the rate of such wages then prevailing in the county in which the public work is located. Unlike prevailing wage requirements under Federal law (Davis-Bacon) and requirements in many states that surround Nevada, Nevada's prevailing wage requirements may be met by providing a combination of wages and permissible benefits to the mechanic or workman.
 - i. Prevailing wage rates are published by the Office of the Labor Commissioner once a year, generally on October 1st. Amendments to those rates are published on an as needed basis and contain a specific effective date. Prevailing wage rates and amendments are posted on the Labor Commissioner's website www.labor.nv.gov

ii. Exceptions to the applicability of the prevailing wage rate:

1. Contracts awarded pursuant to the provisions of NRS Chapter 332 or 333 which are directly related to the normal operation of the public body or the normal maintenance of its property. (See NRS 338.011(1))
2. Contracts awarded to meet an emergency which threaten the health, safety or welfare of the public.(See NRS 338.011(2))
3. Any contract for a public work whose costs is less than \$250,000.00. (Remember, a unit of a project may not be separated from the total cost in order to lower the total costs of the project below \$250,000.00.) (See NRS 338.080)
4. Apprentices recorded/registered under the provisions of NRS Chapter 610. (See NRS 338.080)
5. Any work performed by or for any railroad company. (See NRS 338.080)
6. Design professionals as defined under NRS 338.010(7).

iii. Overtime (see NRS 338.020)

1. Pursuant to the provisions of NRS 338.020, a contractor or subcontractor must pay any mechanic or workman one and one half times the applicable prevailing wage rate for work performed on a public work in excess of forty hours in a workweek or eight hours in any workday.
2. An exception to the daily overtime rule may apply when, by mutual agreement, a mechanic or workman works a scheduled 10 hours per day for 4 calendar days within a scheduled week of work. (See Advisory Opinion AO 2013-04)

- iv. Benefits - While under Nevada law, part of an employer's/contractor's obligation for the payment of the applicable Prevailing Wage rate may be discharged by providing certain benefits for the employee. It is important to note that the employer/contractor must make that contribution to a third person pursuant to a fund, plan or program in the name of the workman. Unless such contributions leave the employer/contractor and are received by the third person administrator in the name of the workman, there can be no discharge of any obligation. (See NRS 338.035)

d. Things To Remember

- i. Salaried employees must be paid the applicable Prevailing Wage rate for the work they perform on a prevailing wage job site. They must be paid the applicable rate of wages for the classification of work performed. There is no "salaried employee" exception for any workman under NRS 338.

- ii. Owners (and their family members) must be paid the applicable prevailing wage rate for the work they perform on a prevailing wage job site. They must be paid the applicable rate of wages for the classification of work performed. There is no “owner” exception for any workman under NRS 338. (See Advisory Opinion AO 2015-06)
- iii. Federal Davis-Bacon rules, rates etc. do not supersede Nevada law where there is a combination of federal and state funding on a public work project or where the State of Nevada or a local government body or agency maintains oversight of such a project regardless of funding source. Under such circumstances, the State of Nevada and the Federal government have “concurrent jurisdiction” with regard to enforcing Federal and state requirements. As a result, Awarding/Public Bodies must ensure that all contractors and subcontractors on such projects comply with both Federal and state requirements.

III. GENERAL RESPONSIBILITIES OF THE AWARDING BODY

- a. REPORTS TO THE LABOR COMMISSIONER: Each of the following forms can be obtained from our website at www.labor.nv.gov.

- i. REQUEST FOR PUBLIC WORKS IDENTIFYING NUMBER (PWP NUMBER) referred to throughout NRS 338 as Identifying Number. (See NRS 338.013)

The number is to be requested at the time the public body decides to undertake a public work. The public body is responsible for making the request from the Labor Commissioner. The Labor Commissioner has a form available for that purpose. The form can be found at – www.labor.nv.gov.

- ii. The PWP Number is to be included in any advertisement or other type of solicitation, and the number must be included in any bid or other document submitted in response to the advertisement or other type of solicitation. Because of this, the awarding body is advised to request the number at the time it decides to undertake the public work. This should allow ample time for processing and issuing of the number by the Labor Commissioner. Try avoiding last minute requests, i.e., the day or two before the public work is to be advertised.

Do not confuse the PWP Number with other numbers that are often used on a project. For example the contractor or public body may use a number it has assigned to the project for its own purposes. The Public Work Project Number issued by the Labor Commissioner looks like this: CC–2013–123

- iii. Usually only one (1) PWP Number should exist for each public work. The first two letters of the number represent the county in which the project is to be located. However, projects that have different phases that cross over calendar years or applicable Prevailing Wage years may require separate PWP numbers based on separate contracts. If the project is located in multiple counties it will begin with Multi, for example: Multi–2013–123

- iv. Construction Manager at Risk (CMAR) Projects have a different timeline than other Public Works Projects. A PWP Number for a CMAR Project should be obtained when the CMAR Project is awarded and/or when the Guaranteed Maximum Price has been agreed to so that applicable Prevailing Wage rates apply.

b. NOTIFICATION OF CANCELED OR DELAYED PUBLIC WORKS PROJECTS

Once a PWP Number has been requested and, for whatever reason, a project is to be canceled or delayed, the public body shall complete this form and submit it to the Labor Commissioner.

c. NOTICE OF AWARD FOR PUBLIC WORKS PROJECT

Each public body which awards a contract for any public work shall report its award to the Labor Commissioner within 10 days after the award, giving the name and address of the contractor to whom the public body awarded the contract and the identifying number for the public work.

d. NOTICE OF COMPLETION FOR PUBLIC WORKS PROJECT

The public body which awarded the contract shall report the completion of all work performed under the contract to the Labor Commissioner before the final payment is due to the contractor by the public body. (Emphasis added).

If the public body is aware of an ongoing investigation or believes wages, forfeitures, or penalties apply for violations of NRS 338.010 to NRS 338.090, inclusive, or NAC 338.005 to NAC 338.125, you should work with your legal counsel and the Office of the Labor Commissioner to assure lawful and adequate funds are withheld from payments to the contractor to cover wages owed as well as forfeitures or penalties. Refer to the section on investigations and the withholding of payment to the contractor.

e. REPORTING OF SUBCONTRACTORS

Each contractor engaged on a public work shall report to the Labor Commissioner and the public body that awarded the contract the name and address of each subcontractor whom the contractor engages for work on the project within 10 days after the subcontractor commences work on the contract. There is a form for reporting subcontractors to the Labor Commissioner it can be obtained from our website. Include on all reports the PWP Number for the public work. (See NRS 338.013)

- f. If a public body is uncertain as to the applicability of prevailing wages to a certain project, the public body may seek formal assistance from the Labor Commissioner. Please remember to include all pertinent information regarding the project including, but not limited to, the total project costs, project location, and a detailed description of the scope and nature of the project. Such requests may be made by:

- i. Pursuant to the provisions of NRS 233B.120, file a Petition for Declaratory Order with the Office of the Labor Commissioner.

- ii. Request an Advisory Opinion from the Labor Commissioner pursuant to NAC 607.650.

IV. RECEIPT OF CERTIFIED PAYROLL REPORTS

- a. WHAT IS A CERTIFIED PAYROLL REPORT/RECORD (CPR)? (see NRS 338.070; NAC 338.094; and NAC 338.0056)

The certified payroll report is a monthly record. It may be made up of two or more payroll reports, i.e., a contractor may pay its workers weekly and submit weekly certified payroll reports.

Each report may be submitted on a form prescribed by the Labor Commissioner or in a format selected by the contractor or subcontractor that meets the requirements of the Labor Commissioner's form and provides the required information. Each report must be accompanied by a statement of compliance, on a form prescribed by the Labor Commissioner, and executed by the contractor or subcontractor which certifies the truthfulness and accuracy of the payroll report.

***So long as the CPR(s) contain the required information pursuant to NAC 338.094 or the information required by the Labor Commissioner's CPR form and are submitted timely, compliance will be presumed. Awarding Bodies shall not place special requirements such as arbitrary due dates, logos, or other special criteria on CPR reporting.**

- b. SUBMISSION OF CERTIFIED PAYROLL REPORT

The contractor engaged on the public work or subcontractor engaged on the public work shall ensure that a complete copy of the monthly certified payroll report/record is received by the public body awarding the contract no later than 15 days after the end of the month. (See NRS 338.070)

A subcontractor may submit to the prime contractor, for submission to the public body, a copy of the record no later than the later of ten days after the end of the month; or a date agreed upon by the contractor and subcontractor. Nothing prohibits a subcontractor from submitting a copy of a certified payroll record for a calendar month directly to the public body by the 15th of the following month in which the reported workers were paid. Workers must be paid in accordance with the provisions of NRS 608.060 and NRS 608.070. These statutes state that employees must be paid at least twice a month and that agreements to deviate from the pay schedule can be made between the two parties as long as it is beneficial for both parties and the employee is not required by the employer to enter into the agreement.

It is the responsibility of the contractor or subcontractor to submit the monthly certified payroll record to the awarding/public body. Do not submit certified payroll reports to the Labor Commissioner unless requested by the Labor Commissioner's office. It is the responsibility of the public body to ensure that these reports are received timely. An awarding body shall cause to be affixed to each certified payroll report or nonperformance payroll report that the awarding body receives the actual date on which the awarding body received the certified payroll report or nonperformance payroll report. (See NAC 338.100)

c. LATE SUBMISSION

It makes no difference who submitted the certified payroll late. If the certified payroll is submitted late, it can result in a forfeiture being assessed pursuant to NRS 338.060(3). The forfeiture goes to the awarding body and is withheld from funds due the prime contractor. If the late payroll record is one belonging to a subcontractor the prime contractor may have a remedy available to it under NRS 338.070.

d. NON-PERFORMANCE

For each month after the contractor or subcontractor commences working on the public work in which the contractor or subcontractor does not employ any workers in connection with the public work, the contractor or subcontractor shall, in lieu of submitting a certified payroll record for that month, submit to the awarding body a nonperformance payroll report certifying that the contractor or subcontractor did not employ any workers on the public work during that month. (See NAC 338.098)

A nonperformance payroll report must be completed on a form prescribed by the Labor Commissioner and must be submitted to the awarding body no later than 15 days after the end of a month in which the contractor or subcontractor did not employ any workers on the public work.

e. DATE STAMP

The public body shall cause to be affixed to each certified payroll report or nonperformance payroll report that the awarding body receives the actual date on which the awarding body received the certified payroll report or nonperformance payroll report. (See NAC 338.100)

f. WHAT SHOULD BE REPORTED and CERTIFIED?

- i. The name of each worker.
- ii. The classification performed by each worker. The classification is based on the type of work actually performed by the worker. Do not rely on titles such as supervisor, assistant, lead man, helper, HVAC or other terms not included in the Nevada wage determination. The classification listed on a report must be in accordance with the recognized classes of workers, i.e., match an existing classification given the type of work actually performed. (see NRS 338.020)
- iii. Each report must include the number of hours worked by each worker per day on the public work. The report must not include any hours of work performed by the workers on another public work or private project. The hours multiplied by the rate of pay should match the gross wages paid for this job only, because the contractor or subcontractor is certifying what is paid for that worker on this project. (See NAC 338.094)

- iv. APPRENTICES: When a contractor or subcontractor first lists an apprentice on a certified payroll report they must submit with that certified payroll report documentation to substantiate that the apprentice is 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. (Emphasis added). A properly enrolled and registered apprentice is exempt from NRS 338.020 to NRS 338.090, inclusive. An apprentice is paid pursuant to the terms of the apprenticeship agreement for the type of work covered by apprenticeship agreement. (see NRS 338.080)

Apprenticeship Ratio: Be sure to review each apprenticeship agreement to see if it provides for a ratio of apprentices to journeymen. If the ratio is not complied with the apprentice is to be paid at full journeyman rate for the type of work performed. (See NAC 338.0095). Awarding bodies may contact the Office of the Labor Commissioner to verify the proper apprenticeship ration.

- v. BENEFITS:

If the contractor or subcontractor makes contributions as authorized by NRS 338.035 and if any such contributions were made as part of the wages of that worker, an itemization of the contributions must be reported on the certified payroll report. The itemization should be indicated as a dollar per hour amount, rather than a lump sum. That dollar amount is to be paid for each hour worked including for each hour of overtime worked, however, the overtime rate of time and one-half does not apply.

The contributions must be made to a third party fund, plan or program in the name of the worker. These contributions are not the same as a deduction from wages. The deductions are taken from what the worker is paid, the contributions are not. The most common examples of acceptable contributions include to health and welfare (medical insurance), retirement/pension, training/apprentice, or vacation. Any contribution other than health and welfare (medical insurance), retirement/pension, training/apprentice, or vacation should be questioned. It should not be permitted until discussed among the effected parties, including this office, refer to NRS 338.035.

- vi. IDENTIFICATION OF WORKERS:

Each contractor and subcontractor engaged on a public work shall keep or cause to be kept an accurate record showing, for each worker, the name of the worker, the occupation of the worker, if the worker has a driver's license or identification card, and an indication of the state or other jurisdiction that issued the license or card. The above information must be included on the certified payroll record. (See NRS 338.070)

An additional record, that is confidential, must be maintained that shows for each worker employed in connection with the public work, who has a driver's license or identification card, the name of the worker; the driver's license number or identification card number of the worker, and the state or other jurisdiction that issued the license or card. To the extent that social security

numbers are still being used, it is recommended that only the last four digits be used. (See NRS 338.0117)

- vii. PUBLIC BODY'S RIGHT TO OBTAIN RECORDS: A contractor or subcontractor engaged on a public work shall provide to the public body payroll records and any other records deemed necessary to verify the accuracy of information contained in any certified payroll report. This information is to be provided upon the request of the public body. The contractor and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work. (see NRS 338.070; NAC 338.094)

V. REVIEW OF CERTIFIED PAYROLL REPORTS

- a. OBLIGATION OF PUBLIC BODY TO REVIEW: Any public body awarding a contract shall investigate possible violations of the provisions of NRS 338.010 to NRS 338.090, inclusive, and NAC 338.005 to NAC 338.125, inclusive, committed in the course of the execution of the contract. They must also determine whether a violation has been committed and inform the Labor Commissioner of any such violations. (See NRS 338.070)

*****Determinations for late Certified Payroll Reports where the Awarding is waiving the forfeiture, reversing a Determination, and/or there is no Objection should not be sent to the Office of the Labor Commissioner.**

- b. TIMELINESS: The monthly record, which will consist of two or more reports, needs to be received by the awarding body by the 15th of the following month in which the workers are paid.
- c. DATE STAMP: The public body awarding the public work is required to date stamp each report with the date that the report is received by the awarding body. This date stamp is needed as a means for the awarding body to identify when the report was received. The awarding body can then investigate for violations and issue determinations. If it is determined a violation occurred due to late filing, forfeitures must be calculated by the awarding body by way of a determination. The assessment of forfeitures can deter future late filing of certified payroll records. (See NRS 338.060; NAC 338.100)
- d. WHAT TO EXAMINE: Examination of the certified payroll reports are to be made at reasonable times to ensure compliance with the provisions of NRS 338.010 to NRS 338.090, inclusive, and NAC 338.005 to NAC 338.125, inclusive. Such an examination should include such items as follows:

All workers performing work on-site are to be reported on the certified payroll report based on the type of work actually performed by the worker, the number of hours worked per worker per day on this project only, and in accordance with the recognized classes of workers. The certified payroll report must not include any hours of work performed by the workers on another public work or private project. (See NAC 338.094)

i. Completeness and accuracy.

Each report must supply adequate information to identify the project, the period of time for which the report was submitted, the public body that is to receive the report, a brief description of the project, the PWP Number, the prime contractor or subcontractor for whom the workers have been reported, the name of the prime contractor awarded the project, the name of each on-site worker, the days and hours worked, the classification worked for each hour, the rate paid for each hour, the total hours worked on the project, the gross pay for the period on this project only, the net paid, and itemization of contributions pursuant to NRS 338.035.

Any payroll report submitted should be sufficiently complete and accurate so that anyone who reviews the certified payroll report can determine whether or not each worker has been paid the appropriate rate for the classification worked and for all hours worked and to ensure overtime is paid correctly when it applies.

Make sure that the reported classifications are in accordance with the jurisdictional classes recognized in the locality where the work is performed. Meaning, each classification listed must be a classification listed in the Nevada prevailing wage determination that applies to the project. For example, there are no classifications such as a lead man, HVAC repair person, tractor operator, carpenter helper, or electrician assistant.

ii. Check to see if the worker is paid the required prevailing rate.

Every public work contract must contain, in express terms, the rate of wages to be paid to each of the classes of mechanics and workers. The applicable prevailing wage rates must be posted on the site of the public work in a place generally visible to the workers. (See NRS 338.020)

If the rates that are posted or that are contained in the contract are incorrect, it does not mean the incorrect rates apply. Mistakes do not change what Nevada law requires. If both federal Davis Bacon rates and Nevada prevailing rates apply to a project the greater of the two rates is to be paid. However, Nevada does not enforce Davis Bacon rates. We can only enforce the portion of the rates that apply under Nevada law.

a. **WHAT RATE TO APPLY:** The worker must be paid the rate for the type of work actually performed. Misclassifications are not uncommon. Again, look at the type of work performed; not just the classification listed. For example, a worker may say that he is a cement mason and he is being paid as a cement mason. While in reality, he may be performing other types of work. If he is building forms more than one board high he may be performing the work of a carpenter. If he is tying wire mesh or rebar used to reinforce concrete he should be paid as an iron worker. If you are uncertain as to what classification a particular job may be, you may contact the Office of the Labor Commissioner for clarification.

Compare the rates reported on the certified payroll to the required rate. The actual rate paid is determined by adding the rate paid directly to the worker plus any contributions made to a third person pursuant to a fund, plan, or program in the name of the worker.

- b. DAILY OVERTIME: Review for proper payment of overtime. The overtime rate is one and one-half times the regular rate paid to the worker. Overtime is to be paid for every hour worked in excess of eight hours in a workday. There is no required premium pay for weekend or holiday work. (See NRS 338.020)

A workday is defined as a period of 24 consecutive hours that begins when the employee begins work. This can be confusing, so when determining overtime pay, keep the following things in mind:

- i. Once the 24 hour workday begins it is consecutive and lasts a full 24 hours.
 - ii.No 24 workday can overlap another, although there may be a gap between workdays.
 - iii. Generally, overtime for work in excess of eight hours in a workday will occur before overtime over 40 hours in a work week.
- c. DAILY OVERTIME EXCEPTION: There is one exception to the overtime pay of work in excess of eight hours in a work day. If the worker and employer mutually agree to the employee working a scheduled ten hours per day, for four calendar days, within any scheduled week of work. (See NRS 338.020)

This is a very narrow definition. The scheduling of four-tens must be mutual. The worker must work the scheduled four, ten hour days. That means 10 hours each of the four days. No more, and no less. If these conditions do not occur then overtime must be paid to the worker for all work in excess of eight hours in a workday. (See NRS 338.020)

- d. WEEKLY OVERTIME: Nevada requires that overtime be paid for all hours worked in excess of 40 hours in any scheduled week of work. A week of work is defined as seven consecutive periods of 24 hours which may begin on any day and at any hour of the day. (See NRS 338.020)
- e. POTENTIAL ISSUES: The certified payroll report is not to include days and hours worked on other jobs. However, a worker is to be paid for all time worked and applicable overtime. How does the public body know what hours the worker may have worked on the projects? It may indicate on a certified payroll report or you may find out by speaking with the workers. If that occurs and the worker believes he/she is due overtime have them contact our office and we will work with the public body to investigate all hours worked on all projects.

There are no state requirements for weekend, holiday or many of the other commonly accepted premium pay rates.

VI. WHO MUST BE PAID THE PREVAILING RATE

- a. Workers, mechanics, and laborers; skilled, semi-skilled, or unskilled in the performance of work at the site of the work that is necessary to the construction of the public work are to be paid the applicable prevailing wage rate for the type of work performed, regardless of skill level and regardless of whether that worker is employed lawfully or unlawfully. (See NRS338.040; NAC338.009)

- b. FOREMAN AND GENERAL FOREMAN. A foreman is defined as a person who works with and supervises one or more journeymen performing a craft or type of work. A general foreman is defined as 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. (see NAC338.015)

f. EXCEPTIONS:

APPRENTICES: Workers who are enrolled in a bona fide apprenticeship program and registered with the Nevada Apprenticeship Council are exempt from being paid the prevailing wage rate.

When a contractor or subcontractor first lists an apprentice on a certified payroll report, the contractor or subcontractor must submit with that certified payroll report documentation to substantiate that the apprentice is registered in a bona fide apprenticeship program and registered with the Nevada Apprenticeship Council.

The apprenticeship program will state what rate the apprentice is to be paid at. Most apprenticeship programs will provide a ratio of apprentices to journeymen and the employer must abide by that ratio. Lastly the apprentice must be performing the type of work that is within the type of apprenticeship he/she is enrolled. For example a laborer apprentice is not to perform carpenter, electrical, iron work, etc. If the employer does not comply with all of these requirements the worker is to be paid the full journeyman rate for the type of work performed.

DESIGN PROFESSIONAL: The exception being a design professional. A design professional is defined as a person who is licensed as a professional engineer or a professional land surveyor, pursuant to chapter 625 of the NRS; a person who holds a certificate of registration to engage in the practice of architecture, interior design, or residential design, pursuant to chapter 623 of the NRS; or a person who holds a certificate of registration to engage in the practice of landscape architecture, pursuant to chapter 623A of the NRS. (See NRS 338.010(23); NRS 338.010(7))

VII. REVIEWING CERTIFIED PAYROLL REPORTS

In order to catch a potential problem before it occurs, it is a good idea to review the certified payroll reports. Below are some examples of things to look out for.

- An employee worked more than 8 hours a day but no overtime was paid. Perhaps they are working four-tens. Make sure the employee did, in fact, work four, ten hour shifts.
- The hours worked do not match what the employee was paid.
- The employee appears to be underpaid. There are several instances that would cause the employee to appear to be underpaid. The employee could be an apprentice. Make sure that the proper apprentice documents are on file. The calculations could be incorrect; review your numbers. Additionally, check to make sure that contributions were taken into account.

- You get a report from a subcontractor for who has not been reported properly to the public body. Get the paperwork in order and notify the contractor, who failed to report their subcontractor, that a violation occurred.
- Look for classifications that are not in accordance with recognized classifications. You may get a report saying owner/operator and no further information. Owner/operators are not exempt from being reported and being paid the prevailing rate. You may see a worker reported as a supervisor. Again, look at the type of work actually performed rather than the title given to the worker. Many classifications require the payment of the prevailing rate to foremen and general foremen.
- The type of work reported for that subcontractor should match the work reported on the certified payroll report. When a subcontractor is reported, the report is to include the scope of work to be performed by the subcontractor in connection with the public work. If the subcontractor is reported as performing iron work but the certified payroll reports indicate labors and carpenters there may be a potential issue.
- Check for a disproportionate mix of workers reported. If a contractor or subcontractor is framing a building and lists half of its workers as laborers, there may be a problem.
- If field reports or observations indicate work outside normal hours, perhaps overtime is being worked. This should be indicated on the certified payroll reports.
- If workers appear to be working eight hour days or full weeks, but only partial days and weeks are being reported, further review might be needed.

VIII. INVESTIGATION OF POSSIBLE VIOLATIONS.

a. WHAT TRIGGERS AN INVESTIGATION BY AN AWARDING BODY?

- i. SELF AUDIT: A public body awarding a contract shall investigate possible violations and determine whether a violation has been committed and inform the Labor Commissioner of any such violations. Such an investigation may be initiated based upon any information, formal or informal, that comes to the attention of the awarding body. This includes, but is not limited to:
 1. Concerns identified during the review of certified payroll reports.
 2. Concerns expressed by or to the awarding body's project manager.
 3. Calls or letters received by the awarding body.

***** The Awarding Body should provide notice to the Office of the Labor Commissioner of any Self Audits in order to obtain technical assistance as needed.**

- ii. WAGE CLAIMS: A wage claim is submitted by an individual who maintains that they performed work on a prevailing wage project. The wage claim provides specific details as to the scope of work performed, the actual wages paid, and classification of work that individual believes they performed. Such a claim may be for unpaid wages, misclassification, unpaid overtime, or a combination of alleged violations.

***** The Awarding Body should provide notice to the Office of the Labor Commissioner of any Wage Claims prior to conducting an Investigation.**

- iii. THIRD PARTY COMPLAINTS: A third party complaint is generally filed against a specific contractor performing work on a prevailing wage project. The allegations may be made on behalf of an individual worker or a group or class of employees.

***** The Awarding Body should provide notice to the Office of the Labor Commissioner of any Third Party Complaints prior to conducting an Investigation.**

- iv. COMMON REASONS FOR WHICH COMPLAINTS/WAGE CLAIMS ARE FILED:

- 1. Misclassification of the worker
- 2. Mistaken belief that the worker is not subject to payment of prevailing wages for work performed
- 3. Failure to pay overtime
- 4. Failure to meet the applicable journeyman to foreman ratio
- 5. Failure to meet the applicable apprentice to journeyman ratio
- 6. Failure to remit payment for benefits to the third party administrator
- 7. Using impermissible benefits to meet the prevailing wage rate

b. STEPS IN CONDUCTING AN INVESTIGATION

i. PRELIMINARY STEPS

- 1. Determine Jurisdiction
 - 1. Was the project a “public work” owned by this awarding body?
 - 2. Was the worker, or class of worker, subject to the payment of prevailing wage?

***** JURISDICTIONAL ISSUES: Before initiating an Investigation involving the assignment of work pursuant to a Collective Bargaining Agreement, the Awarding Body should contact the Office of the Labor Commissioner to determine if jurisdiction is proper.**

2. Compile all necessary information. While the information necessary for a complete and comprehensive investigation will vary depending upon the issue(s) involved, most will entail a review of the following:
 1. The complaint/claim received.
 2. Copies of the applicable certified payroll reports for the contractor/time in question.
 3. Daily reports maintained by the awarding body's project manager and maintained by the prime contractor.
 4. Copies of the applicable prevailing wage rate determination for the location and time in question.
 5. Copies of workers classification descriptions for any possible job classification at issue.
 6. A signed copy of the public works contract, with special attention to the scope of work described in the contract.
 7. All applicable time and payroll records for the identified contractor. This will include, but not be limited to: time cards, cancelled checks, payroll journals, and supporting documentation applicable to the payment of benefits to third party administrators.
 8. Pay stubs and time records maintained by the worker(s) in question.

ii. Contact the contractor/prime contractor.

1. At the very onset of the investigation, advise both the contractor and prime contractor of the nature and scope of the investigation and your expectation of cooperation throughout the process.
2. Obtain all contact information necessary to conduct the investigation. This will include the names, addresses, titles, and responsibilities of individuals having any authority with the project in question.
3. Request any supporting documentation that will assist in your investigation.
4. Interview any individual that may be able to provide pertinent details regarding the case. This may include project managers, supervisors, foremen, and/or other individuals working on the project site. Depending upon the issue being investigated, this may also include individuals responsible for payroll accounting, purchasing, and third party administrators.

iii. Employee Interviews.

1. At the very onset of the investigation, advise the worker/claimant of the nature and scope of the investigation and your expectation of cooperation throughout the process.
2. Do not limit the investigation to the claimant alone. If an issue affects one worker, very often the same issue will affect other workers on the projects.

- iv. Identify, contact, and interview impartial witnesses.
- c. Pursuant to the provisions of NAC 338.110, *all investigations by the awarding body must be completed within "30 days unless an additional period of time is approved by the Labor Commissioner."*
 - i. If during the investigative process it becomes apparent that a final written determination will not be completed with 30 days of receipt of that claim or complaint, submit a written request to the Labor Commissioner, or his designee, requesting an additional period of time to complete the investigation. Be specific as to how much time will be needed, as well as the reason for the delay. An extension of up to 30 days may be granted at a time.
 - ii. The failure of any awarding body to complete their investigation in the time required could result in the assessment of an administrative fine of up to \$5,000.00 by the Labor Commissioner. (see NRS 338.015)
- d. Determination

*****Determinations for late Certified Payroll Reports where the Awarding is waiving the forfeiture or there is no Objection should not be sent to the Office of the Labor Commissioner.**

- i. At the conclusion of the investigation on a ***Wage Claim or Third Party Complaint*** ***** (Not a late CPR Determination)**, the awarding body will issue a written determination containing their findings. That determination will include:
 - 1. A finding as to whether a violation of NRS Chapter 338 occurred and a statement of the facts and evidence that support that finding. ***The determination must include the information and documentation required pursuant to NAC section 338.110, subdivision (6).***
 - 2. If a violation occurred the Determination **must** contain the following pursuant to NAC section 338.110 subdivision (6):

"6. In addition to submitting a copy of the determination issued by the awarding body to the Labor Commissioner pursuant to subsection 4, the awarding body shall provide to the Labor Commissioner the following information pertaining to the determination issued by the awarding body:

 - (a) A detailed narrative of the findings of the investigation;***
 - (b) The name and address of the contractor or subcontractor and its responsible officers;***
 - (c) If a subcontractor is alleged to have committed the violation, the name and address of:***
 - (1) The prime contractor for the public work and its responsible officers; and***
 - (2) Any intermediate subcontractor and the respective responsible officers of that subcontractor;***

- (d) *A copy of the contract for the public work, or an excerpt of the portion of the contract that the Labor Commissioner determines is relevant, which must include, without limitation, information identifying the deadline by which bids on the contract were accepted, the date on which the contract was awarded and the scope of work performed by the contractor or subcontractor;*
- (e) *Copies of any claims or complaints received by the awarding body from the Labor Commissioner relating to the investigation;*
- (f) *Copies of the applicable certified payroll reports and nonperformance payroll reports submitted by the contractor or subcontractor;*
- (g) *If applicable, signed interview statements of employees of the contractor or subcontractor;*
- (h) *If applicable, computations of penalties and back wages for each worker, including, without limitation, the name, address and social security number of the worker; and*
- (i) *The identifying number requested from the Labor Commissioner by the public body pursuant to NRS 338.013."*

3. Include in the determination, notice of the appeal rights of any impacted party.

For your use, here is the NOTICE language that must be included in any determination issued by an awarding body in the State of Nevada. Please ensure that ALL parties are copied on the determination. This includes the Prime Contractor, all Subcontractors, and the claimant(s)/complainant(s).

Pursuant to the provisions of Nevada Administrative Code (NAC) 338.110, a person who is served a copy of this determination and who is aggrieved by the determination may file a written objection with the Office of the Labor Commissioner within 15 days after the date of service of the determination. The objection must include a statement of the grounds for the objection and evidence substantiating the objection. The objection must be submitted to:

[INSERT THE NAME AND ADDRESS OF THE CONTACT PERSON FROM THE OFFICE OF THE LABOR COMMISSIONER]

In addition, please submit a copy of your objection, with attachments to:

[INSERT THE NAME AND ADDRESS OF THE CONTACT PERSON FROM THE AWARDING BODY]

If the objection does not satisfy the aforementioned requirements, or if an objection is not filed with the Office of the Labor Commissioner in a timely manner, the determination of the **[NAME OF AWARDING BODY]** may be confirmed as a Final Order of the Labor Commissioner.

- e. ASSESSMENT OF ADMINISTRATIVE FINES/DISQUALIFICATION – If, as a result of the investigation, it becomes apparent that the actions of the contractor or subcontractor warrant disqualification pursuant to the provisions of NRS 338.017, the assessment of administrative fines and disqualification must be stated in the determination. If such sanctions are sought, include a detailed description of the actions or behavior of the contractor or subcontractor in that written determination.
- f. INVESTIGATIVE COSTS – Pursuant to the provisions of NRS 338.060(7), an awarding body may seek reimbursement for investigative costs. If such costs are sought, include that request in the written determination along with a clear and concise statement describing how such costs were calculated.

IX. RESPONSIBILITIES OF THE CONTRACTORS

- a. The general contractor has 10 days after the subcontractor commences work to report the subcontractor to the awarding body and the Labor Commissioner's Office. The Labor Commissioner's Office will provide forms to be used for reporting subcontractors.
- b. In accordance with NRS 338.070(4-6) contractors engaged on public works projects must submit the payroll reports within 15 days after the end of the month. A statement of compliance must be completed for each payroll report submitted. The nonperformance forms must be completed for weeks when no work is done by the contractor or subcontractor.
- c. A general contractor is responsible for wages of its workers and those of the subcontractors. Pursuant to NRS 608.150, the general contractor is responsible for all labor wages incurred on the public works projects.
- d. The contractor and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work.
- e. The Labor Commissioner, or a person designated by the Labor Commissioner, may enter any public or private works or place of employment at any reasonable time to gather facts and statistics and make a record thereof.

X. RESPONSIBILITIES OF THE OFFICE OF THE LABOR COMMISSIONER

a. ESTABLISHING THE PREVAILING WAGE RATE.

- i. SURVEY – Each year, in accordance to NRS 338.030, the Office of the Labor Commissioner conducts a survey for construction work performed in the State of Nevada. The survey includes commercial hours worked between July 1 of the previous calendar year and June 30 of the current year. Surveys must be submitted by July 15th of the current year in order to be counted for the upcoming year.
- ii. PUBLICATION: The prevailing wages for the upcoming year are posted by Office of the Labor Commissioner in late September. The rates are effective October 1st through September 30th of the following year.
- iii. CORRECTIVE ACTION: Within 30 days after the wages are published a public body or other persons entitled to be heard pursuant to NRS 338.030(5), may submit an objection with evidence in substantiate that a different wage prevails in a county.

b. Acceptance/initial review of a prevailing wage claim/complaint.

- i. A prevailing wage complaint or wage claim may be filed with the Labor commissioner in accordance with NAC 338.107. The complaint must include the following information:
 1. The name and contact information of the person or entity making the complaint.
 2. The name and contact information of the person or entity who is alleged to have committed the violation.
 3. A statement containing the details of the violation.
 4. The statutes believed to be the basis of the complaint.
 5. The remedy requested in the complaint.
 6. Signature certification of the person making the complaint.

c. Referral of claim/complaint to awarding body for investigation

- i. Notice to awarding body - Copies to Prime contractor/contractor. When the Office of the Labor Commissioner receives a complaint or wage claim the awarding body is notified via U.S. Mail of the complaint. Copies of the complaint are served to the Prime and subcontractors for the project named in the complaint.
- ii. Awarding bodies must investigate complaints or wage claims pursuant to NAC 338.110. Within 30 days of receipt there must be a determination issued. The awarding body may request additional time to conclude its investigation. This time must be approved by the Labor Commissioner's Office.

- d. Receipt of Determination.
 - i. Review by the Office of the Labor Commissioner: Upon receipt of a determination issued by an awarding body, the Office of the Labor Commissioner will review the determination. At that time, it may be returned to the awarding body with directives for further investigation; be modified; be affirmed, with a request for amounts of wages and penalties; set for a hearing; or dismissed due to the Labor Commissioner declining to assert jurisdiction.
 - ii. The awarding body will ensure that all parties were properly served with a copy of the determination and that proper notice of appeal/objection rights was provided.
 - iii. The Office of the Labor Commissioner may, if the determination is deemed inadequate for whatever reason, may return it to the awarding for further investigation.
 - iv. If an appropriate objection is filed by a party to the action, the Office of the Labor Commissioner may forward that objection to the awarding body to review for further investigation.
 - v. The awarding body will ensure that all parties were properly served with a copy of the amended determination and that proper notice of appeal/objection rights was provided.
 - vi. If no objection to either the determination or amended determination is filed, the Office of the Labor Commissioner will review the determination and will issue a Final Administrative Order affirming, modifying or dismissing the determination issued by the awarding body.
- e. HEARING PROCESS – If an appropriate objection has been filed by a party to a prevailing wage claim or complaint, the Labor Commissioner or his designee will begin the hearing process.
 - i. Pre-Hearing – A formal pre-hearing conference will be scheduled and properly noticed by the Labor Commissioner or his designee. During the course of the prehearing conference, the Labor Commissioner or his designee will work with all parties to:
 - 1. Clearly identify any and all issues in dispute.
 - 2. Attempt to reach an appropriate resolution to any and all issues with appropriate guidelines and parameters established by the Labor Commissioner or their designee.
 - 3. If attempts to resolve all matters prove unsuccessful, the Labor Commissioner or their designee may set the matter for Hearing and issue a Notice of Hearing.
- f. FINAL HEARING – Formal Administrative Hearings are conducted by the Labor Commissioner or their designee pursuant to the provisions of NAC 338.116, NRS and NAC Chapter 607 and NRS Chapter 233B. Within 30 days of the conclusion of the hearing, the Labor Commissioner or his designee shall issue a Final Order.

NOTES