Office of the

Nevada Labor Commissioner

Nevada Department of Business and Industry

"Growing Business in Nevada"

# Overview of Public Works and Prevailing Wage Laws

# Nevada Revised Statutes (NRS) 338 and Nevada Administrative Code (338)


Shannon M. Chambers - Labor Commissioner

Lleta Brown – Deputy Labor Commissioner

Office of the Labor Commissioner

# 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 Office of the Labor Commissioner also establishes the prevailing wage for public works projects. Our office investigates claims and complaints relating to the non-payment of minimum wage, overtime, and the required prevailing wage on public works projects.

It is the 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 in an effort to promote the growth of business in Nevada. Additionally, it includes taking enforcement action when necessary, to ensure that Nevada's workers are treated fairly and compensated for all time worked.

19 Total Staff – 14 in Las Vegas; 5 in Carson City

# Overview of Office of the Labor Commissioner Continued and Statutory and Regulatory Authority Pursuant to Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC):

| | |
|---|---|
| NRS 607 – Office of the Labor Commissioner | NAC 607 – Rules of Practice |
| NRS 608 – Compensation, Wages and Hours | NAC 608 – Compensation, Wages and Hours |
| NRS 609 – Employment of Minors | NAC 609 – Employment of Minors |
| NRS 610 – *Apprenticeship (OWINN) | NAC 610 – *Apprenticeship (OWINN) |
| NRS 611 – Private Employment Agencies | NAC 611 – Private Employment Agencies |
| NRS 613 – Employment Practices** | NAC 613 – Employment Practices |
| NRS 614 – Organized Labor and Labor Disputes | NAC 338 – Public Works |
| NRS 338 – Public Works | |

** *NRS 613.040-13.070 and NRS 613.310-613.435 are not enforced by the Labor Commissioner.*

# Definitions of Public Work Project(s) (PWP) & Public Body

**"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)) - Project Amount $100,000 effective July 1, 2019, as set forth in Assembly Bill (AB)136 (Passed in 2019 Legislative Session).
https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6160/Text

**Exceptions** – Normal Maintenance (Janitorial, Landscaping, etc.) NRS 338.011

*Bombardier Case – Advance Opinion Available on our website:*

http://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/135%20Nev.%20Advance%20Opinion%203%20%201.17.19%20(3).pdf

Emergency = Disaster/Health, Safety, Welfare – NRS 338.011

Railroads – NRS 338.080

Project Under $100,000 (Cannot break project up)– NRS 338.080

**"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))

# Obtaining a Public Works Project (PWP) Number

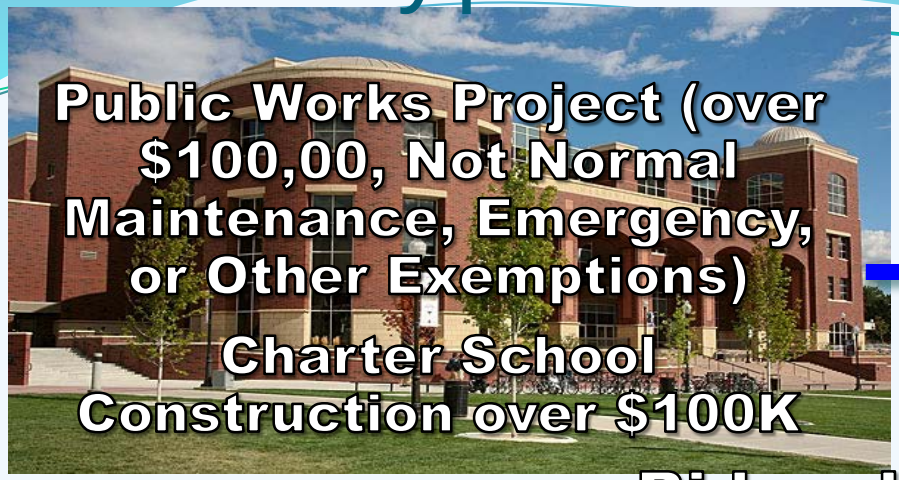
Awarding Bodies may now request a Public Works Project Identifying Number electronically by either:

Visiting our website at: www.labor.nv.gov and selecting the Request For Public Works Identifying Number option.

Or

Directly, by utilizing the link below.
https://nlc.i-sight.com/external/PWP/new

# The Typical Process of a PWP



Public Works Project (over $100,00, Not Normal Maintenance, Emergency, or Other Exemptions)

Charter School Construction over $100K

To Obtain a PWP Number Visit Our Website or Request a Number Directly, By Utilizing the Link Below:

https://nlc.i-sight.com/external/PWP/new

Bid and Award the Project as a Public Work

Work Begins

Certified Payroll Reports (CPR's):

Is the Worker Being Paid the Correct Prevailing Wage?

Yes! CPR's Have Also Been Submitted in a Timely Manner with No Complaints or Wage Claims

Project is Complete with No Problems!

Notify Labor Commissioner's Office of Completion

# General Responsibilities of the Public Body/Awarding Body & Charter School Construction over $100K

1. Request for PWP number.
2. Request for Waiver – Apprenticeship Utilization Act
3. Notification of canceled/delayed Public Works Projects.
4. Bid Project (See NRS 338.013; NRS 338.1385 et. seq.) – Prevailing Wage Rates in effect at the time of opening of bids remain in effect for the duration of the project (See NAC 338.040).
5. Notice of award for Public Works Projects
6. Project begins and Prevailing Wages are posted on jobsite (See NRS 338.020)
7. Monitor Certified Payroll Reports (CPR's).
8. Investigate Prevailing Wage Claims/Complaints (if necessary NRS 338.070)
9. Notice of completion for Public Works Project.

# General Responsibilities of the Contractors

1. Contractors report subcontractors working on Public Works Project 10 days after the subcontractor commences work. (See NRS 338.013)

2. Determine Need for Request for Waiver – Apprenticeship Utilization Act.

3. Contractors engaged on public works projects must submit certified payroll reports within 15 days after the end of the month. (See NRS 338.070)

3. General contractor is responsible for wages. (See NRS 608.150)

4. The contractor and any subcontractor must maintain payroll records. (See NAC 338.092 – 338.100)

# Prevailing Wage

**PREVAILING WAGE:** Published each odd numbered year by October 1st. (See also SB 243 – 2019 Legislative Session) The rates will be calculated by four Prevailing Wage Regions: Washoe County (Urban Region); Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Mineral, Storey, Pershing and White Pine (Northern Rural); Clark County (Urban Region); and Esmeralda, Lincoln and Nye (Southern Rural). (NRS 338.030; NAC 338.010) See SB243 passed 2019 Legislative Session.

https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6411/Text

**90% Rate on School Projects** – Eliminated pursuant to AB 136 – Effect July 1, 2019. See AB 136 passed during the 2019 Legislative Session.
https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6203/Text

**Charter Schools**: Charter Schools - Pursuant to AB 136 passed during the 2019 Legislative Session, Charter Schools are now subject to Public Works and Prevailing Wage laws.
https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6203/Text

# Prevailing Wage (cont.)

**NAC 338.020 – Information considered in determining Prevailing Wage Rates**:

Statements showing rates of wages paid on public and private projects, where the statements are signed by the contractors or their representatives and contain: (1) The names and addresses of the contractors and subcontractors; (2) The locations, approximate costs, dates of construction and types of projects; (3) The number of hours each recognized class of workers is employed on each project; and (4) The respective rates of wages paid to each recognized class of workers employed on each project. (b) Signed collective bargaining agreements that are on file with the Labor Commissioner on or before September 1 of each year preceding the annual determination of the prevailing rates of wages. (c) Wage rates determined by officials of the Federal Government for public construction and other information furnished by state and federal agencies.

**Zone Rates & Premium Pay (AB 190 - 2019 Legislative Session)**

Zone rates may apply along with Premium Pay for work in excess of a shift of 8 hours or 12 hours or such other time increment set forth in the Collective Bargaining Agreement or on a weekend or holiday.

# Prevailing Wage (cont.)

**Job Classifications & Job Descriptions:**

- **Currently there are 42 Job Classifications – (See NAC 338.090) Sub-classifications such as Foreman, General Foreman, and Journeyman can apply. Group Rates and Zone Rates (travel) and Premium Rates may also apply.**

- **The Prevailing Wage is calculated for each Job Classification for each region within the State of Nevada. If no work or rates are reported in a County, the rate may stay the same or the nearest Region with similar construction will apply. (See NAC 338.010)**

**Surveys:**

- **Survey process begins April 1st of each odd-numbered year (SB 243 – 2019 Legislative Session) and typically ends in the middle of July of each year. The Survey will now be conducted each odd number year.**

# Prevailing Wage (cont.)

**<u>Corrections, Objections, and Amendments</u>:**

- **Clerical errors can be corrected. (See NAC 338.050)**
- **Objections can be filed to the rates within 30 days after the rates are published. A Hearing may be held and evidence may be submitted that would justify an amendment of the published rates. (See NRS 338.020; and NAC 338.070)**
- **Public Bodies can request a new determination if a wage is not clearly established in a locality. (See NAC 338.040)**
- **Amendments become effective on a specified date or within 10 days of the amendment. (See NAC 338.040)**
- **Assembly Bill 190 (2019 Legislative Session) – If rates prevail based on Collective Bargaining Agreement, those rates can be adjusted and amended based on changes to the Collective Bargaining Agreement.**

# Establishing the Prevailing Wage Rate

**Survey** – Every odd-numbered year pursuant to SB 243 (2019 Legislative Session) and in accordance with NRS 338.030, the Office of the Labor Commissioner conducts a survey for construction work performed in the State of Nevada. The survey includes construction hours worked between July 1 of the previous calendar year and June 30 of the current year. Surveys should be submitted by July 15th of the surveyed year in order to be counted as part of the surveys considered to establish the Prevailing Wage Rate for that year.

**Collectively Bargained Rates:** AB 190 (2019 Legislative Session) – "If the Labor Commissioner determines that the prevailing wage for a craft or type of work is a wage that has been collectively bargained, the Labor Commissioner shall: (a) Include in his or her determination of that prevailing wage any compensation in addition to the basic hourly wage or benefit for the craft or type of work required to be provided by the collective bargaining agreement, including, without limitation, premium pay for hours worked in excess of a shift of 8 hours or 12 hours or such other time increment set forth in the agreement or on a weekend or holiday and zone pay. As used in this paragraph, "zone pay" means additional pay for performing work at a work site that is located in a zone established in a collective bargaining agreement. (b) Issue an amendment to the determination of the prevailing wage for the craft or type of work if the collective bargaining agreement provides for an increase in the wage before the next determination of that prevailing wage by the Labor Commissioner."
https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6293/Overview

# Prevailing Wage Rates for Extended Projects

**PROJECTS OVER 36 MONTHS**: Assembly Bill 190 (2019 Legislative Session) NRS 338.030 Subdivision 9. “If the contract for a public work: (a) Is to be awarded pursuant to a competitive bidding process, the prevailing wages in effect at the time of the opening of the bids for a contract for a public work must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the bids were opened, whichever is earlier. (b) Is not to be awarded pursuant to a competitive bidding process, except as otherwise provided in this paragraph, the prevailing rate of wages in effect on the date on which the contractor for the contract is selected by the awarding body must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the contractor was selected, whichever is earlier. If the contract is not entered into within 90 days after the date of the selection of the contractor, the prevailing rates of wages in effect on the date on which the contract is entered into must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the contract was entered into, whichever is earlier.”
https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6293/Overview

NRS 338.030 Subdivision 10. “If a contract for a public work is not completed or terminated within 36 months immediately following the date on which the bids were opened pursuant to paragraph (a) of subsection 9, within 36 months immediately following the date on which the contractor was selected, within 36 months immediately following the date the contract was entered into pursuant to paragraph (b) of subsection 9 or for any 36-month period thereafter until the contract is completed or terminated: “Except as otherwise provided in paragraph (b), the prevailing wages in effect on the last day of the 36-month period must be paid for the immediately following 36 months. (b) If the prevailing wages in effect on the last day of the 36- month period are lower than the prevailing wages paid during that 36-month period under the contract, the prevailing wages paid during that 36-month period must be paid for the immediately following 36 months.”

# Who must be paid the Prevailing Wage Rate?

NAC 338.009 Workers deemed to be employed on public works: Interpretation of certain statutory terms. (See NRS 338.012; NRS 338.020; and NRS 338.040)

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.

# Who must be paid the Prevailing Wage Rate (cont.)?

**NRS 338.020** - Hourly and daily rate of wages must not be less than Prevailing Wage Rate set for County.

**NRS 338.050** – Prevailing Wage applies to contract and temporary workers.

**NAC 338.0095** Workers and apprentices: Payment of applicable prevailing rate of wage for type of work actually performed and in accordance with recognized class of workers; identification of employer. (NRS 338.012, 338.020)

1. For the purposes of NRS 338.010 to 338.090, inclusive, and NAC 338.005 to 338.125, inclusive:

(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 on a certified payroll report 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 be paid not 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. Any person designated as an apprentice performing work at the site of a public work who exceeds the ratio of apprentices to journeymen authorized under the registered program of apprenticeship must be paid not 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.

# Apprenticeship Utilization Act

Senate Bill No. 207–Senators Brooks, Denis, Cannizzaro; Cancela, Dondero Loop, D. Harris, Ohrenschall, Parks, Ratti, Scheible, Spearman and Woodhouse

Joint Sponsors: Assemblymen Carrillo, Duran, Martinez and Smith

CHAPTER.....

AN ACT relating to apprentices; requiring a contractor or subcontractor to comply with certain requirements relating to the use of apprentices on public works; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law creates the State Apprenticeship Council and requires the Council to establish standards for programs of apprenticeship. (NRS 610.030, 610.090, 610.095) The purposes of such programs include, without limitation: (1) creating of the opportunity for persons to obtain training that will equip those persons to obtain profitable employment and citizenship; and (2) establishing an organized program for the voluntary training of those persons by providing facilities for training and guidance in the arts and crafts of industry and trade. (NRS 610.020) Existing law sets forth the requirements for a public body which sponsors or finances a public work to award a contract to a contractor for the construction of the public work. (Chapter 338 of NRS) Such requirements include, without limitation: (1) the payment of the prevailing wage in the county in which the public work is located; and (2) the establishment of certain fair employment practices for contractors in connection with the performance of work under the contract awarded by the public body. (NRS 338.020, 338.125)

**Section 1.7** of this bill requires a contractor or subcontractor engaged on a public work to employ one or more apprentices for a certain percentage of the total hours of labor performed on a public work, depending on the type of work performed. **Section 1.7** authorizes the Labor Commissioner to adjust the percentage of total hours of labor required to be performed by an apprentice beginning on January 1, 2021. **Section 1.7** also authorizes the Labor Commissioner to grant a modification or waiver from the requirements if the Labor Commissioner finds that there is good cause to do so. **Section 1.7** further requires that an apprentice who graduates from an apprenticeship program while employed on a public work be deemed: (1) an apprentice for certain purposes; and (2) a journeyman for certain other purposes, including, without limitation, the payment of wages. **Section 1.7** also requires a contractor or subcontractor to enter into an apprenticeship agreement for all apprentices required to be used in the construction of a public work.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.





THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 and 1.7 of this act.

**Sec. 1.3.** *The Legislature hereby finds and declares that:*

*1. A skilled workforce in construction is essential to the economic well-being of this State;*

*2. Apprenticeship programs are a proven method of training a skilled workforce in construction; and*

*3. Requiring the use of apprentices on the construction of public works will ensure the availability of a skilled workforce in construction in the future for this State.*

**Sec. 1.7.** *1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in vertical construction who employs a worker on a public work pursuant to NRS 338.040 shall use one or more apprentices for at least 10 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.*

*2. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in horizontal construction who employs a worker on a public work pursuant to NRS 338.040 shall use one or more apprentices for at least 3 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.*

*3. On or after January 1, 2021, the Labor Commissioner, in collaboration with the State Apprenticeship Council, may adopt regulations to increase the percentage of total hours of labor required to be performed by an apprentice pursuant to subsection 1 or 2 by not more than 2 percentage points.*

*4. An apprentice who graduates from an apprenticeship program while employed on a public work shall:*

*(a) Be deemed an apprentice on the public work for the purposes of subsections 1 and 2.*

*(b) Be deemed a journeyman for all other purposes, including, without limitation, the payment of wages or the payment of wages and benefits to a journeyman covered by a collective bargaining agreement.*

*5. A contractor or subcontractor engaged on a public work is not required to use an apprentice in a craft or type of work*

*performed in a jurisdiction recognized by the State Apprenticeship Council as not having apprentices in that craft or type of work.*

*6. A public body may, upon the request of a contractor or subcontractor, submit a request to the Labor Commissioner to modify or waive the percentage of hours of labor provided by one or more apprentices required pursuant to subsection 1 or 2 for good cause. A public body must submit such a request, before an advertisement for bids has been placed, the opening of bids or the award of a contract for a public work or after the public body has commenced work on the public work. Such a request must include any supporting documentation, including, without limitation, proof of denial of or failure to approve a request for apprentices pursuant to subparagraph (3) of paragraph (d) of subsection 10.*

*7. The Labor Commissioner shall issue a determination of whether to grant a modification or waiver requested pursuant to subsection 6 within 15 days after the receipt of such request. The Labor Commissioner may grant such a request if he or she makes a finding that there is good cause to modify or waive the percentage of hours of labor provided by one or more apprentices required pursuant to subsection 1 or 2.*

*8. A public body, contractor or subcontractor may request a hearing on the determination of the Labor Commissioner within 10 days after receipt of the determination of the Labor Commissioner. The hearing must be conducted in accordance with regulations adopted by the Labor Commissioner. If the Labor Commissioner does not receive a request for a hearing pursuant to this subsection, the determination of the Labor Commissioner is a final decision for the purposes of judicial review pursuant to chapter 233B of NRS.*

*9. A contractor or subcontractor engaged on a public work shall enter into an apprenticeship agreement for all apprentices required to be used in the construction of a public work. If the Labor Commissioner granted a modification or waiver pursuant to subsection 7 because the Labor Commissioner finds that a request for apprentices was denied or the request was not approved within 5 business days as described in subparagraph (3) of paragraph (d) of subsection 10 and apprentices are later provided, then the contractor or subcontractor shall enter into an apprenticeship agreement for all apprentices later provided.*

*10. As used in this section:*

*(a) "Apprentice" means a person enrolled in an apprenticeship program recognized by the State Apprenticeship Council.*





*(b) "Apprenticed craft or type of work" means a craft or type of work for which there is an existing apprenticeship program recognized by the State Apprenticeship Council.*

*(c) "Apprenticeship program" means an apprenticeship program recognized by the State Apprenticeship Council.*

*(d) "Good cause" means:*

*(1) There are no apprentices available from an apprenticeship program within the jurisdiction where the public work is to be completed as recognized by the State Apprenticeship Council;*

*(2) The contractor or subcontractor is required to perform uniquely complex or hazardous tasks on the public work that require the skill and expertise of a greater percentage of journeymen; or*

*(3) The contractor or subcontractor has requested apprentices from an apprenticeship program and the request has been denied or the request has not been approved within 5 business days.*

*➥ The term does not include the refusal of a contractor or subcontractor to enter into an apprenticeship agreement pursuant to subsection 9.*

*(e) "Journeyman" has the meaning ascribed to it in NRS 624.260.*

*(f) "State Apprenticeship Council" means the State Apprenticeship Council created by NRS 610.030.*

**Sec. 2.** NRS 338.015 is hereby amended to read as follows:

338.015 1. The Labor Commissioner shall enforce the provisions of NRS 338.010 to 338.130, inclusive ~~[.]~~ *, and section 1.7 of this act.*

2. In addition to any other remedy or penalty provided in this chapter, if any person, including, without limitation, a public body, violates any provision of NRS 338.010 to 338.130, inclusive, *and section 1.7 of this act,* or any regulation adopted pursuant thereto, the Labor Commissioner may, after providing the person with notice and an opportunity for a hearing, impose against the person an administrative penalty of not more than $5,000 for each such violation.

3. The Labor Commissioner may, by regulation, establish a sliding scale based on the severity of the violation to determine the amount of the administrative penalty to be imposed against the person pursuant to this section.

4. The Labor Commissioner shall report the violation to the Attorney General, and the Attorney General may prosecute the person in accordance with law.

**Secs. 3-7.** (Deleted by amendment.)

**Sec. 7.5.** The amendatory provisions of this act do not apply to a contract for a public work for which bids have been submitted before January 1, 2020.

**Sec. 8.** This act becomes effective on January 1, 2020.

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OFFICE OF THE LABOR COMMISSIONER
1818 COLLEGE PARKWAY, SUITE 102
CARSON CITY, NEVADA 89706
PHONE (775) 684-1890
FAX (775) 687-6409
E-Mail: mail1@labor.nv.gov

# STATE OF NEVADA
## Office of the Labor Commissioner

OFFICE OF THE LABOR COMMISSIONER
3360 W. SAHARA AVE. SUITE 225
LAS VEGAS, NEVADA 89102
PHONE (702) 486-2650
FAX (702) 486-2660
E-Mail: publicworks@labor.nv.gov

## REQUEST FOR APPRENTICE AVAILABILITY ON A PUBLIC WORK

Senate Bill (SB) 207 states in part: "A contractor or subcontractor employing a worker as defined in NRS 338.040 . . . shall use one or more apprentices for at least 10 % of the total hours on vertical construction and 3 % of the total hours for horizontal construction of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work when more than three employees of each craft are employed at the site of work."

You may use this form to request an Apprentice or determine availability of an Apprentice from a Registered Apprenticeship Program in the applicable craft or trade in the area of the Public Works Project. For information about Registered Apprenticeship Programs in your area and Registered Apprentices, please visit www.labor.nv.gov or the Nevada State Apprenticeship Council at www.owinn.nv.gov/Apprenticeship/AboutSAC/ **The Governor's Office of Workforce Innovation (OWINN) is responsible for the Nevada State Apprenticeship Council and the approval and registration of Apprenticeship Programs and Apprentices.*
*Requests for dispatch must be in writing and submitted at least 5 business days in advance (excluding weekends and holidays) via first class mail, fax or email. Proof of submission will be required. Please refer to Nevada Revised Statutes section 610 and Nevada Administrative Code section 610 for the laws and regulations governing Registered Apprenticeship Programs and Registered Apprentices.*

**Request Submitted to:** **Date Request Submitted:** _____

**Name of Applicable Apprenticeship Committee:** _____

**Address:** _____

**Phone:** (_____)_____ **Fax:** (_____)_____

**E-Mail:** _____

**Contact Person/Title:** _____

**Requestor Information:**

**Contractor/Subcontractor:** _____ **License Number:** _____

**Phone:** (_____)_____ **Fax:** (_____)_____

**Address:** _____

**E-Mail:** _____

**Availability Request Information**

**Number of Apprentice(s) Required:** _____ **Craft or Trade:** _____

**Apprentice(s) to Report:** _____ **(5 business days' notice required) Time to Report:** _____

**Name of Person to Report to:** _____ **Address to Report to:** _____

**Project Information**

**Contract Name/ Number:** _____ **Project Location:** _____

**Awarding Body Name:** _____ **Phone:**(_____)_____

**Contact Person/Title:** _____ **E-Mail:** _____

**Project Location:** _____

Printed Name/Title | Signature | Date

**By signing this form you certify that the information you have provided is true and correct to the best of your knowledge.*

Request Approved: ☐ Request Denied: ☐

Notes: _____

Printed Name/Title: | Signature: | Date

**Date Received:** _____ **Date Returned:** _____

OFFICE OF THE LABOR COMMISSIONER
1818 COLLEGE PARKWAY, SUITE 102
CARSON CITY, NEVADA 89706
PHONE (775) 684-1890
FAX (775) 687-6409
E-Mail: mail1@labor.nv.gov

# STATE OF NEVADA
Office of the Labor Commissioner

OFFICE OF THE LABOR COMMISSIONER
3300 W. SAHARA AVE. SUITE 226
LAS VEGAS, NEVADA 89102
PHONE (702) 486-2650
FAX (702 486-2660
E-Mail: publicworks@labor.nv.gov

## APPRENTICESHIP UTILIZATION ACT WAIVER REQUEST

Senate Bill (SB) 207 states in part: "A contractor or subcontractor employing a worker as defined in NRS 338.040 . . . shall use one or more apprentices for at least 10 % of the total hours on vertical construction and 3 % of the total hours for horizontal construction of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work when more than three employees of each craft are employed at the site of work."

A Public Body, upon the request of a contractor or subcontractor, may submit a request for a modification or waiver of the percentage of hours of labor of one or more apprentices prior to (1) the bid advertisement; (2) the bid opening; or (3) the award of the contract if, "Good Cause" exists. The Labor Commissioner may also grant a waiver from the requirements of SB 207 after work on the public work has commenced if the public body, contractor or subcontractor submits documentation and evidence that meets the requirements to establish "Good Cause."

**Public Works Project (PWP) #** _____
**Awarding Body:** _____

**Address:** _____

**Phone:** (_____) _____ **Fax:** (_____) _____
**Contact Person/Title:** _____
**E-Mail:** _____
**Contractor/Subcontractor:** _____
**Address:** _____

Please check the box for the reason for a Waiver Request and provide/submit supporting documentation/evidence:

Yes No
☐ ☐ **There are no apprentices available from an apprenticeship program within the jurisdiction of the where the public work is to be completed as recognized by the State apprenticeship Council.**

Yes No
☐ ☐ **The contractor or subcontractor is required to perform uniquely complex or hazardous tasks on the public work that require the skill and expertise of a greater percentage of journeymen.**

Yes No
☐ ☐ **The contractor or subcontractor has requested apprentices from an apprenticeship program and the request has been denied or the request has not been approved within 5 business days.**

**Please attach additional documentation/evidence supporting the Waiver Request or describe why it is not available or cannot be provided:**

_____

Printed Name/Title _____ Signature _____ Date _____

**By signing this form you certify that the information you have provided is true and correct to the best of your knowledge.*

Please Submit Request Via Email To : Publicworks@labor.nv.gov

**For Office of the Labor Commissioner's Use Only:**
Waiver Request Approved: ☐ Waiver Request Denied: ☐

Notes: _____

Printed Name/Title: _____ Signature: _____ Date _____

**Date Received:** _____ **Date Returned:** _____

APPRENTICE AGREEMENT

(SINGLE PUBLIC WORKS PROJECT ONLY)

The Employer referenced below has been awarded a bid on the below-listed Public Works Project and is not signatory to a Collective Bargaining Agreement with any labor union or labor organization within the geographic area for which the Employer will be performing work. Nothing in this Apprentice Agreement ("Agreement") shall be construed in any way whatsoever as binding the Employer to any Collective Bargaining Agreement.

The below-listed Public Works Project meets the specifications of Senate Bill 207 of the 2019 Nevada Legislative Session ("Statute"), which requires employment of Apprentices in Public Works. The Employer is not a sponsor of an Apprenticeship Program covering the applicable trade or craft in the State of Nevada. The Employer requests the dispatch of Mr./Ms. _____, a registered Apprentice in the _____ ("Registered Apprenticeship Program"), whose Apprentice number is _____ ("Apprentice"), to the Employer for purposes of completing the below-listed Public Works Project.

**Name of Employer:** _____

**Employer's Address:** _____

**Nevada State Contractors**

**Board License Number:** _____

**Telephone Number:** _____

**Fax No.:** _____ **Email:** _____

This Agreement applies *only* to the following Public Works Project:

**Name of Project:** _____

**Project Address:** _____

_____

**General Contractor:** _____

**Owner:** _____

**Starting Date:** _____

**Duration:** _____

***This is not an official or approved form of the Office of the Labor Commissioner. The Office of the Labor Commissioner does not have jurisdiction over the approval, registration, standards, or agreements governing Registered Apprenticeship Programs or Registered Apprentices pursuant to Nevada Revised Statutes section 610 and Nevada Administrative Code section 610.***

# Exemptions From Payment of Prevailing Wage Rate

- **Apprentices** - Workers who are enrolled in a bona fide apprenticeship program and registered with the Nevada State Apprenticeship Council are *exempt* from being paid the prevailing wage rate. (See NAC 338.0095 above)

- See also Advisory Opinion on Apprenticeship Wages – Apprenticeship Wages can be established by Collective Bargaining Agreement.

http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20Apprentice%20Wages%20on%20Public%20Works%20Projects.pdf

- **Design Professionals** 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(7))

- **Service Providers** – See Advisory Opinion.

http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20SERVICE%20PROVIDERS%20AO%202015%2005.pdf

* Different rates may also apply for Foreman, General Foreman and Journeyman.

# Certified Payroll Reports (CPR's)

1. What is a Certified Payroll Report/Record (CPR)? (See NAC 338.092-338.100)

   The Certified Payroll Report/Record is a monthly report/record that is submitted to the Awarding/Public Body once the Public Works Project begins. It may be made up of two or more payroll reports and certifies that the Contractor/Subcontractor is paying the correct Prevailing Wage Rate for the Job Classification and type of work being performed.

- SB 231 Passed during the 2019 Legislative Session, will allow the Labor Commissioner to enact regulations for electronic reporting of CPR's. https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6381/Text

2. Submission of Certified Payroll Report:

   No later than 15 days after the end of the month. (See NRS 338.070)

3. Late Submission: If the Certified Payroll Report is submitted late, it can result in a penalty or forfeiture. (See NRS 338.060)

# Certified Payroll Reports (CPR's) (cont.)

4. <u>WHAT SHOULD BE REPORTED AND CERTIFIED (NAC 338.094)?</u>
   - Worker Name
   - Classification
   - Hours Worked
   - Rate of Pay
   - Apprentices
   - Bona Fide Fringe Benefits

<u>DATED/DATE STAMP</u>

<u>NONPERFORMANCE</u> – Contractor did not employ any workers on the Public Works Project for that month. (See NAC 338.098; NAC 338.100)

# Reviewing CPR's

1. Obligation of Awarding/Public Body to review CPR's and investigate as necessary. (See NRS 338.070)
2. Timeliness.
3. Dated/Date Stamp.
4. What to examine?:
   - Completeness and accuracy.
   - If the worker is paid the required Prevailing Wage Rate.
   - Were apprentices employed, if applicable.
5. Is the worker employed at the site of the Public Works Project and/or necessary to the execution of the contract? (See Advisory Opinion on Service Providers)
6. What rate to apply?: The worker must be paid the Prevailing Wage Rate for the type of work actually performed.

# Reviewing CPR's (cont.)

- In order to catch a potential problem before it occurs, it is a good idea to review the Certified Payroll Reports to identify problems such as the following:
  - Over 8 hours a day but no overtime was paid. (Overtime required to be paid for over 8 hours of work in 24 hour period; or Over 40 hours in a week –See NRS 338.020 and 608.018)
  - Double Time can be paid for Overtime. (See NRS 338.020(6))
  - 4/10 Schedules and Agreements are allowed. (See Advisory Opinion on 4/10's)
  - Hours worked do not match.
  - The employee appears to be underpaid.
  - Subcontractors not reported.
  - Work reported should match the work reported on the certified payroll report.
  - Disproportionate mix of workers reported.
  - Work outside normal hours.

# Reviewing CPR's (cont.)

- **Apprenticeship Ratio:** Be sure to review the apprenticeship standards/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 ratio.

- **Compliance with Apprenticeship Utilization Act**– Ensure compliance unless a Waiver has been granted by the Labor Commissioner. Apprentices shall be used and reported for at least 10 % of the total hours on vertical construction and 3 % of the total hours for horizontal construction of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work when more than three employees of each a craft are employed at the site of work.

- **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.

# Reviewing CPR's Cont'd

- **"Bona fide fringe benefit"** means a benefit in the form of a contribution that is made not less frequently than monthly to an independent third party pursuant to a fund, plan or program: (a) Which is established for the sole and exclusive benefit of a worker and his or her family and dependents; and (b) For which none of the assets will revert to, or otherwise be credited to, any contributing employer or sponsor of the fund, plan or program. The term includes, without limitation, benefits for a worker that are determined pursuant to a collective bargaining agreement (CBA) and included in the determination of the prevailing wage by the Labor Commissioner pursuant to NRS 338.030. *Must also be made not less than monthly and annualized if no CBA.

  (Assembly Bill 190 passed during 2019 Legislative Session)
  https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6293/Text

# Investigation of Possible Violations
## (See NRS 338.070 & NAC 338.105 – 338.116)

What Triggers an Investigation by an Awarding/Public Body?

- Self Audit
- Wage Claims/Complaints
- Third Party Complaints

***** The Awarding Body should provide notice to the Office of the Labor Commissioner of any Self Audits, Wage Claims, or Third Party Complaints prior to conducting an Investigation in order to obtain technical assistance as needed.**

# Investigation of Possible Violations (cont.)

1. Steps in Conducting an Investigation
   a. Preliminary Steps
   b. Contact the Contractor/Prime Contractor
   c. Employee Interviews
   d. Identify, Contact and Interview Impartial Witnesses
   e. Review Actual Paychecks and Paystubs to see if they match CPR

2. 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."***

3. Determination – CPR violation or Prevailing Wage Claim. (See NAC 338.110)

******Determinations for late Certified Payroll Reports where the Awarding Body is waiving the forfeiture, should not be sent to the Office of the Labor Commissioner. For questions about this, please contact our office.***

4. Assessment of Penalties/Forfeitures. (See NRS 338.060; 338.090; NAC 338.120 Sliding Scale based on Contractor Bond Amount)

5. Assessment of Administrative Fines/Disqualification. (See NRS 338.015; NRS 338.017)

6. Investigative Costs. (See NRS 338.090)

# Complaint Process

1. Acceptance/initial review of a Prevailing Wage Claim/Complaint. (See NAC 338.105-NAC 338.116)
2. Office of the Labor Commissioner Investigation. (See NAC 338.114) or;
3. Referral of Prevailing Wage Claim/Complaint to Awarding/Public body for Investigation.
   - Notice to awarding body
   - Awarding bodies investigate complaints or wage claims pursuant to NAC 338.110
4. Receipt of Determination.
5. Action on Determination – Objections Filed. (See NAC 338.105 - NAC 338.116)
6. Hearing Process. (If Necessary)
   - Pre-Hearing
   - Final Hearing
   - Final Order and Decision
   - Petition for Judicial Review
   - Possible Appeal to Appellate Court, etc.

# Additional Guidance from the Office of the Labor Commissioner

Request for Advisory Opinion – NAC 607.650

Petition for Declaratory Order – NAC 607.670

Awarding/Public Body Working Groups

Awarding/Public Body Handbook/Guide

# Contacts for Public Works/Prevailing Wage

Southern Nevada:

- Lleta Brown, Deputy Labor Commissioner, (702) 486-2650

Northern Nevada:

- David Gould, Senior Investigator, (775) 684-1890
- Jennafer Jenkins, Auditor/Investigator, (775) 684-1890

# Thank you

For complete NRS/NAC 338 laws and regulations and contact information visit:
www.labor.nv.gov
You can also send general questions to mail1@labor.nv.gov
For Public Works/Prevailing Wage questions you can send them to
publicworks@labor.nv.gov
Phone: (775) 684-1890/Carson City or (702) 486-2650/Las Vegas