



# Welcome to the AUA Reform Tour!

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BROUGHT TO YOU BY THE NEVADA LABOR COMMISSIONER &  
SENATE BILL 82 FROM THE 2023 NEVADA LEGISLATIVE SESSION

# Brett K. Harris, Esq.

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- Nevada Labor Commissioner
- Appointed September 2022
- Nevada Resident Since 1992
- Attorney Since 2011
- Prior Small Business Owner



# Office of the Labor Commissioner

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## **ENFORCEMENT RESPONSIBILITIES**

- Wage & Hour Complaints
- Meal & Break Complaints
- General Complaints
- Prevailing Wage Project Regulation
- **Apprenticeship Utilization Act Regulation**
- Minor Employment

## **LICENSING RESPONSIBILITIES**

- Private Employment Agencies
- Professional Employer Organizations
- Public Works Project Numbers
- State Apprenticeship Council

# PUBLIC WORK & PUBLIC BODY

“**PUBLIC WORK**” (NRS 338.010 (19)): Any project for the new construction, repair, or reconstruction of a project financed in whole or in part from public money for:

- (a) Public buildings;
- (b) Jails and prisons;
- (c) Public roads;
- (d) Public highways;
- (e) Public streets and alleys;
- (f) Public utilities;
- (g) Publicly owned water mains and sewers;
- (h) Public parks and playgrounds;
- (i) Public convention facilities which are financed at least in part with public money; and
- (j) All other publicly owned works and property.

“**PUBLIC BODY**” (NRS 338.010(18)): 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.

# Office of the Labor Commissioner

## NRS 338 Claim Types

- Prevailing Wage
- Certified Payroll Report
- Apprenticeship Utilization Act

Prevailing Wage	Certified Payroll Report	Apprenticeship Utilization Act
Skilled workers employed on public works must be paid prevailing wage	Monthly report submitted to the Awarding/Public Body once contractor's work on the Public Works Project begins	Apprentice hours required from all contractors that work on Public Works Projects
Applies to Contract and Temporary Workers	Due no later than 15 days after the end of the month	10% of total hours for vertical construction  3% of total hours for horizontal construction
Rate is for type of work <i>actually performed</i>	Late submission results in penalty and/or forfeiture	AUA amended significantly by SB82

# Senate Bill 82

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- From the 82<sup>nd</sup> Legislative Session of the Nevada Legislature
- Sponsored by Senator Skip Daly & signed into law by Governor Lombardo
- **Applies to Contracts Bid January 1, 2024**, or after
  - SB 82 not applicable retroactively to Public Works Projects
  - PWP Contracts bid December 31, 2023, or prior follow SB 207 Procedure & Compliance mandates
- Significantly amended AUA procedure in 3 areas:
  - Compliance
  - Procedure
  - Penalties

# Apprenticeship Utilization Act (NRS 338.01165)



Added to Nevada law in 2019



Regulates and Requires the use of apprentices on Public Works Projects in Nevada



Contractors performing work on public works projects must employ apprentices for a minimum number of hours depending on the type of construction

# AUA: Who, What, Where, When, Why

Who	Contractors and Subcontractors
What	Employ apprentices for a minimum percentage of total hours worked
Where	On Public Works Projects in Nevada
When	<del>&gt;3 workers of an apprenticeable craft at one time (SB 207)</del> 400 hours of vertical construction or 800 hours of horizontal construction performed in an apprenticeable craft (SB 82)
Why	A skilled workforce in construction is essential to the economic well-being of Nevada (NRS 338.0116)



# AUA: The Basics

## “Contractors and Subcontractors”

“Contractor” means:

- (a) A person who is licensed pursuant to the provisions of chapter 624 of NRS.
- (b) A design-build team.

“Subcontractor” means a person who:

- (a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that the person is not required to be licensed pursuant to chapter 624 of NRS; and
- (b) Contracts with a contractor, another subcontractor or a supplier to provide labor, materials or services for a construction project.

# AUA: The Basics

## “Apprentice, Apprenticed Craft, & Apprenticeship Program”

“Apprentice” means a person employed and individually registered in a registered apprenticeship program with:

1. The Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor; and
2. The State Apprenticeship Council pursuant to chapter 610 of NRS and any regulations adopted pursuant thereto.

“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.

“Apprenticeship program” means an apprenticeship program recognized by the State Apprenticeship Council

# AUA: The Basics

## “Public (Awarding) Body & Public Work”

“Public body” means the State, county, city, town, school district or any public agency of this State or its political subdivisions sponsoring or financing a public work

“Public work” means any project for the new construction, repair or reconstruction of a project financed in whole or in part from public money for:

- (a) Public buildings;
- (b) Jails and prisons;
- (c) Public roads;
- (d) Public highways;
- (e) Public streets and alleys;
- (f) Public utilities;
- (g) Publicly owned water mains and sewers;
- (h) Public parks and playgrounds;
- (i) Public convention facilities which are financed at least in part with public money; and
- (j) All other publicly owned works and property.

# Horizontal vs. Vertical Construction (By Project Not Individual Contractor's Work)

“Horizontal construction” means any construction, alteration, repair, renovation, demolition or remodeling necessary to complete a public work, including, without limitation, any irrigation, drainage, water supply, flood control, harbor, railroad, highway, tunnel, airport or airway, sewer, sewage disposal plant or water treatment facility and any ancillary vertical components thereof, bridge, inland waterway, pipeline for the transmission of petroleum or any other liquid or gaseous substance, pier, and any other work incidental thereto. The term does not include vertical construction, the construction of any terminal or other building of an airport or airway, or the construction of any other building.

“Vertical construction” means any construction, alteration, repair, renovation, demolition or remodeling necessary to complete a public work for any building, structure or other improvement that is predominantly vertical, including, without limitation, a building, structure or improvement for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, and any other work or improvement appurtenant thereto

Senate Bill 82  
AUA Reform  
By Category

Compliance

Procedure

Penalties

# Apprenticeship Utilization Act Compliance

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WHAT'S THE SAME? WHAT'S CHANGING?

# AUA Compliance: What's the Same?

Apprentice hours required when contractors perform work on public work project



Minimum required hours are based on a percentage of total hours worked

Requirement is for apprenticeable crafts in the jurisdiction

Vertical Construction = 10% of apprentice hours required

Horizontal Construction = 3% of apprentice hours required



Who Qualifies as an Apprentice

Individuals enrolled in a Registered Apprenticeship Program; and

In the appropriate craft or type of work



# AUA Compliance: What's New?

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Compliance period is an Annual Requirement instead of a Per Project Requirement



Trigger is number of hours worked annually instead of number of workers employed per project

Vertical Construction = 10% of Total Hours

- AUA Compliance required at 400 Hours per apprenticeable craft
- 400 Vertical Hours = 40 Apprentices Hours

Horizontal Construction = 3% of Total Hours

- AUA Compliance required at 800 Hours per apprenticeable craft
- 800 Horizontal Hours = 24 Apprentices Hours



Who Qualifies as an Apprentice?

IF an apprentice is not available → Contractors signatory to CBAs with a union that sponsors an apprenticeship that is not longer than 3 years can use graduates of the program within 36 months of graduation to count towards apprenticeship requirement



# AUA Procedure: What's the Same?

## Requesting Apprentices

- Use form from [labor.nv.gov](http://labor.nv.gov)
- Directly from Registered Apprenticeship Program (RAP)
  - Not more than 10 Days before work
  - Not more than 5 days after commencing work
- Documentation of unavailability, denials, or no shows
  - Keep a copy of the request; and
  - Save the denial, evidence of nonresponse, or no show
  - You will need to submit documentation in the event you do not meet required apprentice hours.

**Coordinate apprentice start date with  
RAP**

# AUA Procedural Changes

Previously	New Under SB82
Complaint Based Procedure Per Project	<b>Annual Report Due to the Office of the Labor Commissioner By February 15 of Following Year</b>
Awarding Body Performed AUA Compliance	Awarding Bodies Removed From AUA Compliance
AUA Compliance Waiver Supporting Documentation Submitted to Awarding Body	AUA Compliance Waiver Supporting Documentation Submitted to OLC With Annual Report
Waiver of Hours Permitted for “Good Cause”	Waiver of Hours Permitted for “Good Faith”
Waiver of Hours Granted Per Project	Ongoing Duty to Request Apprentices Throughout Work on the Public Work Project every 30 days
Statute of Limitations on AUA Investigations Two Years from Close of Project	Except for Good Cause, Investigations Initiated By May 1 of the Year Following Reporting Period

# Apprenticeship Utilization Act Penalties

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WHAT'S THE SAME? WHAT'S CHANGING?

# AUA Penalties: What's the Same?

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## Investigations for AUA violations will result in Determinations

- Same objection rights and procedure under NRS & NAC 338
- Same Hearing procedure after objection
- Same Petition for Judicial Review and Appeal to District Court

Administrative Penalty up to \$5,000 for violations of NRS  
338.010—NRS 338.130

Disqualification pursuant to NRS 338.017 if NRS 338.015  
Administrative Penalty imposed

# AUA Penalties: What's New?

No Forfeitures to the Awarding Body

Failure to Submit Report

- \$10,000 to \$75,000 Penalty; OR
- Disqualification from 180 Days to 2 Years

Penalty Structure is Based on Severity of  
Apprentice Hour Deficiency

- 7.5%-9.94% for Vertical Construction or 2%-2.94% for Horizontal Construction
  - \$2 per deficient hour or \$2,500
  - Whichever is More
- 4%-7.44% for Vertical Construction or 1%-1.94% for Horizontal Construction
  - \$4 per deficient hour or \$3,000
  - Whichever is More
- 0%-3.94% for Vertical Construction or 0%-0.94% for Horizontal Construction
  - \$6 per deficient hour or \$5,000
  - Whichever is More

# Tracking & Reporting Hours on Public Works Projects for SB 82

PLEASE VISIT  
[LABOR.NV.GOV](http://LABOR.NV.GOV) FOR  
HELPFUL RESOURCES

## SB 82 Checklist for Contractors and Subcontractors

- Track all hours worked annually on Public Works Projects per craft
  - For example, for 2024: January 1, 2024 through December 31, 2024
  - Preserve time records for Public Works Projects that identify hours worked by craft, region, & type of construction
- Employ apprentices for 3% of horizontal construction hours
- Employ apprentices for 10% of vertical construction hours
- Request apprentices directly from Registered Apprenticeship Programs (RAP)
  - Nevada RAP: [Current Apprenticeship Programs](#)
  - Apprentice hours not required in jurisdictions without a RAP in the jurisdiction
- Preserve documentation of denials, nonresponses, no shows, and/or any other documentation evidencing an inability to employ apprentices on Public Works Projects
- Between January 1 and February 15, submit Apprentice Utilization Act (AUA) report to the Office of the Labor Commissioner at [www.labor.nv.gov](http://www.labor.nv.gov)
  - AUA report information:
    - Contractor identification
    - Dates of reporting period
    - Declaration of Truthfulness
    - Total hours worked on Public Works Projects
    - Craft for those hours
    - Whether vertical or horizontal construction was performed
    - Hours worked by apprentices
    - Registered Apprenticeship Program used for apprentices
  - Documentation Supporting Insufficient Apprentice Hours
    - Acceptable:
      - Denials/unavailability from RAP
        - Emails
        - Records
        - Letters
        - Text messages
        - Phone records
      - No Shows/Walk-Offs/Failed Pre-Hire Screening
        - Records
        - Emails

### Alarm Installer

Yes No

Was a minimum of 800 horizontal hours performed on Nevada Public Works Projects for this craft?

Was a minimum of 400 vertical hours performed on Nevada Public Works Projects for this craft?

<b>Horizontal hours</b>	<b>Vertical hours</b>
Total hours worked:	Total hours worked:
Total hours of apprentice craft:	Total hours of apprentice craft:
Total % of apprentice craft hours:	Total % of apprentice craft hours:
Apprenticeship Program used:	Apprenticeship Program used:

There were no Apprentices available from an Apprenticeship Program Registered by the Nevada State Apprenticeship Council within the jurisdiction where the public work is to be completed.

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# The Office of the Labor Commissioner

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