

STATE OF NEVADA

REPLY TO:

BRIAN SANDOVAL
GOVERNOR

BRUCE BRESLOW
DIRECTOR

SHANNON CHAMBERS
LABOR COMMISSIONER



OFFICE OF THE LABOR COMMISSIONER
1818 COLLEGE PARKWAY, SUITE 102
CARSON CITY NEVADA 89706
TELEPHONE: (775) 684-1890
FACSIMILE: (775) 687 6409

Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER

April 7, 2016

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

Re: Advisory Opinion - Apprenticeship Wages on Public Works Projects

Dear Ms. Hee-Garcia:

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

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

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

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

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

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

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

1. Every contract to which a public body of this State is a party, requiring the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor in the performance of public work, must contain in express terms the hourly and daily rate of wages to be paid each of the classes of mechanics and workers. The hourly and daily rate of wages must:

- (a) Not be less than the rate of such wages then prevailing in the county in which the public work is located, which prevailing rate of wages must have been determined in the manner provided in NRS 338.030; and

- (b) Be posted on the site of the public work in a place generally visible to the workers.

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

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

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

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

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

1. The sub classifications within the recognized classes of workers include, without limitation:
 - (a) Foreman. A foreman is a person who works with and supervises one or more journeymen performing a craft or type of work.
 - (b) General foreman. A general foreman is a person who works with and supervises one or more journeymen performing a craft or type of work, including, without limitation, one or more foremen.
 - (c) Journeyman. A journeyman is a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker, or unskilled worker performing a craft or type of work.
2. The Labor Commissioner will consider the kind of information described in subsection 2 of NAC 338.020 to determine the applicable prevailing wage for each craft or type of work among the recognized class of workers.

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

Workers deemed to be employed on public works.

1. Except as otherwise provided by specific statute, workers who are:
 - (a) Employed at the site of a public work; and
 - (b) Necessary in the execution of the contract for the public work, are deemed to be employed on public works.
2. The Labor Commissioner shall adopt regulations to define the circumstances under which a worker is:
 - (a) Employed at the site of a public work; and
 - (b) Necessary in the execution of the contract for the public work.

NAC Section 338.009 provides as follows:

1. As used in NRS 338.040, the Labor Commissioner will interpret:
 - (a) "Employed at the site of a public work" to mean the performance of work in the execution of a contract for a public work at the physical place or places at which the work is performed or at which a significant portion of the public work is constructed, altered or repaired if such place is established specifically for the execution of the contract for the public work or

dedicated exclusively, or nearly so, to the execution of the contract for the public work.

(b) "Necessary in the execution of the contract for the public work" to mean the performance of duties required to construct, alter, or repair the public work and without which the public work could not be completed.

2. As used in this section, "site of a public work" includes job headquarters, a tool yard, batch plant, borrow pit or any other location that is established for the purpose of executing the contract for the public work or that is dedicated exclusively, or nearly so, to executing the contract for the public work. The term does not include a permanent home office, branch plant establishment, fabrication plant, tool yard or any other operation of a contractor, subcontractor or supplier if the location or the continued existence of the operation is determined without regard to a particular public work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Shannon M. Chambers
Labor Commissioner

NOVEMBER 10, 2020

**SUPPLEMENTAL GUIDANCE ON APPRENTICESHIP WAGES AND
APPRENTICESHIP TRAINING FEES/COSTS**

Pursuant to Nevada Administrative Code (NAC) Section 607.650, an Advisory Opinion on “Apprenticeship Wages” was issued on April 7, 2016. Please see the link below.

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

During the 80th Session of the Nevada Legislature (2019), several bills were passed that related to public works projects, prevailing wage, and bona fide fringe benefits. Mainly, Assembly Bill (AB) 190, provided a definition for “bona fide fringe benefits” and provided for certain other requirements regarding the annualization of bona fide fringe benefits.

Based on the new requirements of AB 190 and to provide further guidance on the issue of “Apprenticeship Wages,” the Office of the Labor Commissioner is providing the following supplemental guidance in addition to the previous Advisory Opinion.

Question #1: Are apprenticeship training costs/fees allowed as part of prevailing wages/wages under Nevada Revised Statutes (NRS) section 338.010, subsections 2 and 24?

Answer: Yes. As long as the apprenticeship training costs/fees are part of a bona fide fringe benefit in the name of the worker that meet the definitions set below, apprenticeship training costs/fees can be included as part of a bona fide fringe benefit that can offset the hourly prevailing wage rate.

However, any apprenticeship training costs/fees, must meet the requirements of NRS 338.010 subsections 2 and 24, and NRS section 338.035.

- **Contribution to an independent third party pursuant to a fund, plan, or program.**
- **Made not less frequently than monthly.**
- **Established for the sole and exclusive benefit of a worker and his or her family and dependents.**
- **None of the assets will revert to, or otherwise be credited to, any contributing employer or sponsor of the fund plan or program.**

NRS 338.010 subsection 2. “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.

NRS 338.010 subsection 24. “Wages” means:

(a) The basic hourly rate of pay; and

(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other bona fide fringe benefits which are a benefit to the worker.

NRS 338.035 Discharge of part of obligation of contractor or subcontractor engaged on public work to pay wages by providing bona fide fringe benefits in name of worker.

1. Except as otherwise provided in subsection 7, the obligation of a contractor engaged on a public work or a subcontractor engaged on a public work to pay wages in accordance with the determination of the Labor Commissioner may be discharged in part by providing bona fide fringe benefits in the name of the worker.

2. A contractor or subcontractor may, pursuant to subsection 1, discharge any part of his or her obligation to pay wages in accordance with the determination of the Labor Commissioner only to the extent that the bona fide fringe benefits provided in the name of the worker are annualized.

3. A contractor or subcontractor who, pursuant to subsection 1, discharges any part of his or her obligation to pay wages in accordance with the determination of the Labor Commissioner shall provide to the Labor Commissioner and the public body that awarded the contract for the public work any information requested by the Labor Commissioner or the public body, as applicable, to verify compliance with this section.

4. In addition to any other remedy or penalty provided in this chapter, after providing the contractor or subcontractor with notice and an opportunity for a hearing, the Labor Commissioner shall, if the Labor Commissioner finds that the contractor or subcontractor has violated a provision of this section:

(a) For the first violation, impose against the contractor or subcontractor an administrative penalty of not less than \$20 nor more than \$50 for each calendar day or portion thereof that each worker employed on the public work is affected by the violation, up to a maximum of \$2,500;

(b) For the second or any subsequent violation within 5 years after the date of imposition of an administrative penalty pursuant to paragraph (a), impose against the contractor or subcontractor an administrative penalty of not less than \$20 nor more than \$50 for each calendar day or portion thereof that each worker employed on the public work is affected by the violation, up to a maximum of \$5,000;

(c) Require the contractor or subcontractor to make the affected worker whole by paying to the worker as wages any amounts disallowed as bona fide fringe benefits in a manner prescribed by the Labor Commissioner;

(d) Report the violation to the Attorney General, and the Attorney General may prosecute the contractor or subcontractor in accordance with law; and

(e) In addition to notifying the State Contractors' Board pursuant to [NRS 338.017](#), notify the provider of workers' compensation for the contractor or subcontractor, the Employment Security Division of the Department of Employment, Training and Rehabilitation and the public body that awarded the contract for the public work of the violation.

5. The amount of the penalty to be imposed pursuant to subsection 4 must be based on the sliding scale adopted by regulation pursuant to [NRS 338.060](#).

6. If a penalty is imposed pursuant to this section, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the Labor Commissioner.

7. The provisions of this section do not apply with regard to:

(a) A worker whose benefits are determined pursuant to a collective bargaining agreement; or

(b) Contributions made in the name of the worker by a contractor or subcontractor to a defined contribution plan to the extent that the amount contributed does not exceed 25 percent of the hourly prevailing rate of wages for the worker on the public work.

8. As used in this section:

(a) "Annualized" means an amount paid equally for all hours worked in a calendar year by the worker for the contractor or subcontractor who is providing bona fide fringe benefits.

(b) "Defined contribution plan" has the meaning ascribed to it in 29 U.S.C. § 1002(34).

(Added to NRS by [1983, 1574](#); A [2003, 2415](#); [2005, 813](#); [2019, 702](#))

Question #2: Can the costs of apprenticeship training be deducted from the worker/employee outside of a bona fide fringe benefit and/or “fringe package” that meets the definitions of NRS sections 338.010 subsections 2 and 24?

Answer: No. Unless the apprenticeship training costs/fees are part of a bona fide fringe benefit and/or “fringe package,” they cannot be deducted from the worker/employee/apprentice as a separate deduction. In addition, Nevada Administrative Code (NAC) section 610.433 specifically excludes requiring an apprentice to pay for the costs of training.

A separate deduction to an apprentice that does not meet the definition of a bona fide fringe benefit or is not part of a “fringe package,” would violate NAC section 610.433 and NRS section 338.010 subsections 2 and 24, and NRS section 338.035.

NAC 610.433 Costs of training. ([NRS 610.090](#), [610.144](#))

1. Except as otherwise provided in subsection 2, a program must pay the costs of training an apprentice. An apprentice is not liable for and may not be required to pay any costs for training, including, but not limited to, costs for classroom facilities, college credits, tuition or instructors. The provisions of this subsection do not void or disallow a subscription agreement that has been found to be valid in a court of competent jurisdiction.

2. A program may require an apprentice to pay the costs of his or her books, tools and any license required to work in his or her trade.

3. As used in this section, “subscription agreement” means an agreement between a program and an apprentice whereby the apprentice agrees to repay the costs of the program if the program of apprenticeship is terminated.

(Added to NAC by Apprenticeship Council, eff. 11-14-97)