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Governor

STATE OF NEVADA

DR. KRISTOPHER SANCHEZ
Director

BRETT HARRIS
Labor Commissioner



**DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE LABOR COMMISSIONER**

January 24, 2024

Roger L. Grandgenett II
Littler Mendelson, P.C.
3960 Howard Hughes Parkway
Suite 300
Las Vegas, Nevada 89169
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Re: Request for Advisory Opinions

Dear Mr. Grandgenett,

Pursuant to Nevada Administrative Code (“NAC”) Section 607.650, an Advisory Opinion has been requested clarifying three matters under the jurisdiction of the Office of the Labor Commissioner: (1) calculating overtime pay under Nevada Revised Statute 608.018 that is consistent with Nevada Revised Statutes 608.0126 and 608.0123; (2) calculation of overtime when an employee has split rates in a single shift; and (3) which forms of compensation may be included in the calculation of compensation for employment that is less than 1 ½ times the applicable minimum wage rate.

**I. CALCULATION OF OVERTIME (NRS 608.018) IN CONJUNCTION WITH
NRS 608.0126 & 608.0123**

Your first question presented in the Request for Advisory Opinion asked for clarification on the following statutes, and how the Office of the Labor Commissioner interprets them in conjunction with each other.

NRS 608.018 Compensation for overtime: Requirement; exceptions.

1. An employer shall pay 1 1/2 times an employee’s regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate set forth in [NRS 608.250](#) works:

- (a) More than 40 hours in any scheduled week of work; or
- (b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

2. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate set forth in [NRS 608.250](#) works more than 40 hours in any scheduled week of work.

3. The provisions of subsections 1 and 2 do not apply to:

(a) Employees who are not covered by the minimum wage provisions of [Section 16 of Article 15](#) of the Nevada Constitution;

(b) Outside buyers;

(c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than 1 month;

(d) Employees who are employed in bona fide executive, administrative or professional capacities;

(e) Employees covered by collective bargaining agreements which provide otherwise for overtime;

(f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended;

(g) Employees of a railroad;

(h) Employees of a carrier by air;

(i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan;

(j) Drivers of taxicabs or limousines;

(k) Agricultural employees;

(l) Employees of business enterprises having a gross sales volume of less than \$250,000 per year;

(m) Any salesperson or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment;

(n) A mechanic or worker for any hours to which the provisions of subsection 3 or 4 of [NRS 338.020](#) apply;

(o) A domestic worker who resides in the household where he or she works if the domestic worker and his or her employer agree in writing to exempt the domestic worker from the requirements of subsections 1 and 2; and

(p) A domestic service employee who resides in the household where he or she works if the domestic service employee and his or her employer agree in writing to exempt the domestic service employee from the requirements of subsections 1 and 2.

4. Any regulation of the Director of the Department of Health and Human Services concerning the payment of overtime to a home care employee adopted pursuant to [NRS 608.670](#) prevails over the general provisions of this section.

5. As used in this section:

(a) "Domestic worker" has the meaning ascribed to it in [NRS 613.620](#).

(b) "Home care employee" has the meaning ascribed to it in [NRS 608.530](#).

NRS 608.0123 "Week of work" defined. "Week of work" means 7 consecutive periods of 24 hours which may begin on any day and at any hour of the day.

The Office of the Labor Commissioner interprets NRS 608.0123 to permit employers to set a company-wide, consistent, start of the "week of work," or calculate "week of work" per individual employee when performing payroll, and the OLC audits records accordingly.

NRS 608.0126 “Workday” defined. “Workday” means a period of 24 consecutive hours which begins when the employee begins work.

An employee’s workday begins at the start of the employee’s first shift in the company’s week of work. The employee’s workday is individual to them, and the workday runs for a period of 24 consecutive hours. If the employee’s next shift begins within a current workday, those hours overlapping the 24 consecutive hour period could be subject to overtime pay laws.

The following chart shows how the Nevada Office of the Labor Commissioner calculates overtime when an employee’s daily start times cause overlapping workdays pursuant to NRS 608.0126. The following chart shows an example of an employee who is paid a rate less than 1 ½ times the minimum rate set forth in NRS 608.250, and therefore, overtime is calculated pursuant to NRS 608.018(1)(b). It also assumes an employee with a paid meal break when applicable.

Day	Start Time	End Time	Total Hrs Worked	Overlap	Reg Hrs	OT Hrs
<i>Employee’s</i>	<i>First</i>	<i>Workday</i>				
Wednesday	8:00 AM	4:00 PM	8		8	
Thursday	6:00 AM	8:00 AM	2	2		2
<i>New</i>	<i>Employee</i>	<i>Workday</i>				
	8:00 AM	3:00 PM	7		7	
Friday	4:00 AM	5:30 AM	1.5	1.5	1	0.5
<i>Employee</i>	<i>Day</i>	<i>Off</i>				
<i>New</i>	<i>Employee</i>	<i>Workday</i>				
Saturday	7:00 AM	3:00 PM	8		8	
	3:00 PM	4:00 PM	1			1
Total			27.5		24	3.5

In the above, the employee’s workday begins Wednesday at 8:00 a.m. The employee’s first shift ends at 4:00 p.m., and the next shift starts at 6:00 a.m. and ends at 3:00 p.m. Assuming the employee is paid a rate less than 1 ½ times the minimum rate set forth in NRS 608.250, the first two (2) hours of the employee’s second shift is calculated at the overtime rate before it resets to the regular rate at the start of the next NRS 608.0126 workday. An employee paid a rate not less than 1 ½ times the minimum rate set forth in NRS 608.250 is only paid overtime for hours worked in excess of forty (40) in one week of work. As such, whether their individual workday overlaps is irrelevant to the calculation of overtime pay.

As evidenced by the chart, there can be overlapping workdays, and there can be gaps between workdays. There cannot be more than seven (7) workdays in the “week of work”. This means an employee’s shift can split a company’s “week of work” in the event the company calculates a companywide “week of work” for purposes of payroll. To avoid confusion and unintentional noncompliance with overtime pay calculation, the Office of the Labor Commissioner recommends employers schedule employees with consistency to the extent possible.

II. APPLICABLE OVERTIME RATE FOR EMPLOYEE WITH SPLIT RATES IN SINGLE SHIFT

The Office of the Labor Commissioner does not recommend employers schedule employees for a split rate in a single shift. However, if an employer chooses to employ an employee in a split rate capacity in a single shift, the rate used for calculation of overtime is the one that applied to the employee's time at the time overtime pay becomes owed. For example, if the employee works ten (10) hours during a single workday, and is not regularly scheduled per a 4/10s agreement, and if the employee is paid a rate less than 1 ½ times the minimum rate set forth in NRS 608.250, overtime pay would be due for hours nine and ten at a rate pursuant to NRS 608.018(1)(b) calculated based on the rate employer paid employee at the time overtime pay became owed to the employee. If the employee is paid a rate not less than 1 ½ times the minimum rate set forth in NRS 608.250, the employee's overtime rate is calculated by the rate the employee was being paid at the time the overtime pay became due (when the employee works in excess of forty (40) hours in a week of work) for the rest of that employee's workday shift. If the employee has subsequent shifts in excess of forty (40) hours, and therefore paid at an overtime rate, the rate would be calculated by the employee's planned rate or rates for that shift. Notably this considers employees paid hourly. If the employee is paid salary or by piece rate, the employer must also consider NAC 608.125 in their calculation of the rate. Because of the significant complications caused by split rate shifts, the Office of the Labor Commissioner encourages employers to avoid scheduling employees at split rates for a single shift.

III. TYPES OF INCOME INCLUDED IN COMPENSATION FOR EMPLOYMENT WHEN CALCULATING WAGE RATE FOR OVERTIME PAY

Your Request for Advisory Opinion asks which types of compensation should or should not be considered when deciding an employee's wage rate for purposes of calculating overtime pay pursuant to NRS 608.018(1)(b). The following Nevada Revised Statutes and Nevada Administrative Codes consider types and forms of wages and compensation that are or are not appropriate in determining an employee's rate of pay/wage. The same should be considered when determining applicable wage rates for purposes of applying and calculating overtime pay.

NRS 608.012 "Wages" defined. "Wages" means:

1. The amount which an employer agrees to pay an employee for the time the employee has worked, computed in proportion to time;
2. Commissions owed the employee; and
3. Amounts due to a discharged employee or to an employee who resigns or quits pursuant to NRS 608.040, but excludes any bonus or arrangement to share profits.

NAC 608.075 "Piece rate" defined. ([NRS 607.160](#)) "Piece rate" means a wage rate based on a unit of production. The term does not include a wage rate based on a unit of time or a wage rate based on commission.

NAC 608.080 "Salary" defined. ([NRS 607.160](#)) "Salary" means a wage rate based on a fixed dollar amount for a period of time other than an hour.

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NAC 608.120 Payment of commissions. ([NRS 607.160](#), [608.250](#))

1. If an employer and an employee agree that the employee is to be paid by commission based upon a sale, the employer shall pay each commission to the employee when the commission becomes payable pursuant to the agreement.
2. If the agreement described in subsection 1 is not in writing, the terms and conditions of the agreement may be determined by the facts and circumstances related to the course of dealing between the employer and the employee.
3. All commissions that an employer pays to an employee during a pay period may be used to meet the minimum wage requirement described in subsection 3 of [NAC 608.115](#).

NRS 608.115 Records of wages.

1. Every employer shall establish and maintain records of wages for the benefit of his or her employees, showing for each pay period the following information for each employee:
 - (a) Gross wage or salary other than compensation in the form of:
 - (1) Services; or
 - (2) Food, housing or clothing.
 - (b) Deductions.
 - (c) Net cash wage or salary.
 - (d) Except as otherwise provided in [NRS 608.215](#), total hours employed in the pay period by noting the number of hours per day.
 - (e) Date of payment.
2. The information required by this section must be furnished to each employee within 10 days after the employee submits a request.
3. Records of wages must be maintained for a 2-year period following the entry of information in the record.

NAC 608.125 Compensation for overtime: Miscellaneous requirements. ([NRS 607.160](#), [608.018](#))

1. An employer shall not substitute compensatory time in place of a wage payment for overtime that was worked by an employee.
2. If an employee is paid by salary, piece rate or any other wage rate except for a wage rate based on an hour of time, the rate of compensation for the purposes of paragraph (b) of subsection 2 of [NRS 608.018](#) is determined by dividing the amount paid to an employee in a week by the number of hours worked by the employee during the week.
3. The Commissioner will refer to 29 C.F.R. §§ 541.1 and 541.2 to determine if an employee is employed in a bona fide executive or administrative capacity for the purposes of paragraph (d) of subsection 3 of [NRS 608.018](#).

NRS 608.154 Lodging as part of wages or compensation; exception.

1. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of lodging. In no case may the value of the lodging be computed at more than five times the statutory minimum hourly wage for each week that lodging is provided to the employee.
2. The monetary limitations on the value of lodging specified in subsection 1 do not apply to agricultural employees.

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NRS 608.155 Meals as part of wages or compensation; exception.

1. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of meals. In no case shall the value of the meals be computed at more than 100 percent of the statutory minimum hourly wage per day. In no case shall the value of the meals consumed by such employee be computed or valued at more than 25 percent of the statutory minimum hourly wage for each breakfast actually consumed, 25 percent of the statutory minimum hourly wage for each lunch actually consumed, and 50 percent of the statutory minimum hourly wage for each dinner actually consumed.

2. The monetary limitations on the value of meals, contained in subsection 1, do not apply to agricultural employees.

NRS 608.160 Taking or making deduction on account of tips or gratuities unlawful; employees may divide tips or gratuities among themselves.

1. It is unlawful for any person to:

(a) Take all or part of any tips or gratuities bestowed upon the employees of that person.

(b) Apply as a credit toward the payment of the statutory minimum hourly wage established by any law of this State any tips or gratuities bestowed upon the employees of that person.

2. Nothing contained in this section shall be construed to prevent such employees from entering into an agreement to divide such tips or gratuities among themselves.

Please be advised that this Advisory Opinion is limited to the specific facts and circumstances described herein. The Office of the Labor Commissioner may revisit this issue through the Administrative Rulemaking Process. Please be further advised that subsequent statutory or administrative rule changes or judicial interpretation of the statutes or rules upon which any opinion is based may require modification or abandonment of this Advisory Opinion.

Thank you for reaching out to the Office of the Labor Commissioner with your questions. We appreciate the opportunity to provide information and education regarding Nevada labor laws, and their application. Should you need any additional clarification, please do not hesitate to contact our office at (702) 486-2650.

Sincerely,



Brett K. Harris
Labor Commissioner