

STATE OF NEVADA

JOE LOMBARDO
Governor



DR. KRISTOPHER SANCHEZ
Director

BRETT K. HARRIS, ESQ.
Labor Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE LABOR COMMISSIONER

January 6, 2025

Via Email and U.S. Mail

Roger L. Grandgenett II
Littler Mendelson, P.C.
3960 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169-5937

Re: Request for Advisory Opinion—Daily Overtime Calculation for a 4/10 Employee

Dear Mr. Grandgenett,

Pursuant to Nevada Administrative Code (“NAC”) Section 607.650, an Advisory Opinion has been requested clarifying whether daily overtime is necessary for an employee who makes less than 1.5x minimum wage, regularly works a “4/10s” schedule, and works more than ten hours in a single workday.

FACTS PRESENTED

In the proposed hypothetical contained within the Request for Advisory Opinion, a daily-overtime eligible employee works an agreed upon shift of four, ten-hour workdays per week (“4/10s”). On the first day of the work week, the employee works twelve hours instead of ten hours. The employee subsequently works ten hours on the other three regular workdays. For purposes of this Advisory Opinion Request, the Labor Commissioner presumes the private employee is not employed on a public works project pursuant to NRS 338, as those employees are governed by NRS 338.020 regarding the payment of overtime and the effect of a 4/10s schedule.

ADVISORY OPINION REQUEST

Specifically, in your Request for Advisory Opinion you ask the following:

1. Can the employer not pay daily overtime to the employee for that day (and the three other workdays during the 4/10 shift) as the Supplemental Guidance seems to opine or was the Supplemental Guidance on this issue only applicable during the Covid-19 emergency?

2. Or does the same “control” and “decision” analysis set forth in the Nevada Labor Commissioner Advisory Opinion AO 2013-04 and the Supplemental Guidance thereto, apply to situations where an employee works more than 10 hours during a 4 day/10-hour shift. If so, and if the reason for the work in excess of 10 hours on a given day during the 4/10 shift is within the employer’s decision/control, is the employer required to pay 2 hours of daily overtime for the other 3 days worked of 10 hours in addition to the hours worked in excess of 10 on the given day?

LEGAL AUTHORITY

NRS 608.018 indicates when overtime wages are due to private employees in Nevada. The law requires that:

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. NRS 608.018(1)-(2).

Since 2013, the Office of the Labor Commissioner has acted under the guidance of Nevada Labor Commissioner Advisory Opinion 2013-04 regarding interpretations of 4/10 schedules. That Advisory Opinion was subsequently updated July 2016 and January 2021. However, the crux of the interpretation of NRS 608.018 remains the same: if an employee regularly works a 4/10s schedule, and that schedule is altered based on reasons outside of the employer’s control, the employer would not usually be liable to pay daily overtime rates.

ANALYSIS

1. Can the employer not pay daily overtime to the employee for that day (and the three other workdays during the 4/10 shift) as the Supplemental Guidance seems to opine or was the Supplemental Guidance on this issue only applicable during the Covid-19 emergency?

In the proposed hypothetical, the employee is working forty-two hours in one week. As such, the employer must pay at least two hours overtime pay. The question then becomes whether the employer must pay *only* two hours of overtime pay for the hours over ten on day 1, or whether the calculation would require ten hours of overtime pay for the hours over eight on days 1, 2, 3, and 4 of the employee’s work week. This question hinges on the “control” and “decision” analysis set forth in the Nevada Labor Commissioner’s prior Advisory Opinions on 4/10 schedules.

2. Or does the same “control” and “decision” analysis set forth in the Nevada Labor Commissioner Advisory Opinion AO 2013-04 and the Supplemental Guidance thereto, apply to situations where an employee works more than 10 hours during a 4 day/10-hour shift. If so, and if the reason for the work in excess of 10 hours on a given day during the 4/10 shift is within the employer’s decision/control, is the employer required to pay 2 hours of daily overtime for the other 3 days worked of 10 hours in addition to the hours worked in excess of 10 on the given day?

In the proposed hypothetical, the employee works a regular 4/10s schedule with an hourly rate of pay less than 1.5x minimum wage. As such, the employee is still entitled to daily overtime. However, daily overtime under this scenario begins to accrue after ten hours worked in one workday because that is the length of the employee’s regularly scheduled workday. As such, the employee is entitled to daily overtime on day 1 of her four-day work week for hours eleven and twelve. If after day 1 the employee works her regular ten-hour schedule on days 2, 3, and 4, the employer would only be required to pay for two overtime hours on day 1 for the week. This is based on the employee being entitled to daily overtime over ten hours as a regular 4/10s employee.

Whichever party chooses to deviate from the employee’s regular schedule is key to the application of daily overtime. If an employee requests to “flex” her schedule, the employer will not have to pay overtime if the employee does not work more than forty hours in the work week. For example, if the hypothetical employee works twelve hours on day 1 because she needs to leave after eight hours on day 3, and assuming the employer agrees to the adjustment in the employee’s schedule, the employer would not be responsible for paying the employee daily overtime on day 1 because it was the employee’s choice to move the hours around. Also in this scenario, the employee still works her regular forty-hour week, not more, so there is no weekly overtime accrued.

If an employer unilaterally changes the employee’s regular 4/10s schedule by agreeing to allow the employee to work twelve hours on day 1, but later reducing the number of hours worked on a subsequent day, it could expose itself to daily overtime calculations over eight hours for failing to adhere to the employee’s regular 4/10s schedule. For example, if the employee from the above example works twelve hours on day 1, works her regular ten-hour shift on day 2, flexes her two-hour overage on day 3, but her employer sends her home two hours early on day 4, she would only have a thirty-eight-hour work week. In that scenario, the employer would owe the employee daily overtime for four hours on day 1 and two hours on day 2. Ultimately, whether the employer has “control” over the change is still at the center of the analysis.

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 that this Advisory Opinion be modified or abandoned. Should you need additional clarification, please do not hesitate to contact our office at (702) 486-2650.

Sincerely,



Brett K. Harris, Esq.
Labor Commissioner