

**PROPOSED REGULATION OF
THE LABOR COMMISSIONER**

LCB File No. R019-18

May 11, 2018

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

AUTHORITY: §§1-19, NRS 233B.050 and 607.160; §20, NRS 233B.120 and 607.160; §21,
NRS 233B.100 and 607.160.

A REGULATION relating to the Labor Commissioner; revising provisions relating to
administrative proceedings before the Labor Commissioner; and providing other
matters properly relating thereto.

Legislative Counsel's Digest:

Existing regulations provide that the Labor Commissioner may permit deviation from the provisions governing practice and procedure before the Commissioner under certain conditions. (NAC 607.010, 607.040) **Section 2** of this regulation requires the parties to a matter to be provided notice of the Commissioner's preliminary decision to permit deviation from those provisions and an opportunity to object not later than 15 days after the issuance of such notice. **Section 2** also requires the Commissioner to review such an objection and, if the objection lacks merit, to issue an order setting forth the provisions and findings which establish good cause to permit deviation from those provisions.

Existing regulations provide that the time within which any act must be done is computed by excluding the first day and including the last unless the last day is a Saturday, Sunday or legal holiday, in which case the next business day is the last day of the time limit. (NAC 607.045) **Section 3** of this regulation revises this computation to exclude all days before the second business day and include the last day unless the last day is a Saturday, Sunday or legal holiday, in which case the next business day is the last day of the time limit.

Existing regulations require certain notices, findings of fact, determinations, opinions, orders, written communications and other documents to be provided, delivered or served upon the Commissioner or other specified persons and set forth the methods by which the documents are required to be provided, delivered or served. (NAC 607.065, 607.125, 607.160, 607.170) **Sections 4, 10, 12 and 13** of this regulation revise the methods of providing, delivering or

serving the various documents to include United States mail, facsimile, electronic mail and electronic filing in certain circumstances.

Existing regulations: (1) require the Commissioner to issue a notice of claim for wages to an employer who is the subject of such a claim by an employee; (2) require the notice of claim for wages to include any penalties proposed by the Commissioner; and (3) provide that if the employer fails to respond to the notice of claim for wages by either settling or objecting to the claim, the Commissioner may issue a determination to the employer based on the facts as set forth in the claim. (NAC 607.075) **Section 5** of this regulation eliminates the requirement that the notice of claim for wages include any penalties proposed by the Commissioner and provides that the Commissioner may issue a determination to the employer based on the facts as set forth in the claim if the employer fails to respond to the notice of claim for wages by either settling or asserting a meritorious objection to the claim.

Existing regulations provide that an attorney representing a party in any proceeding before the Commissioner must be either a member in good standing of the State Bar of Nevada or associated with such a member. (NAC 607.090) **Section 7** of this regulation requires the attorney to submit a letter of representation to the Commissioner. **Section 15** of this regulation requires an attorney who represents a party at a prehearing conference to comply with these requirements.

Existing regulations set forth procedures by which a person who asserts a substantial interest in the outcome of a proceeding may petition the Commissioner to intervene in the proceeding. (NAC 607.110) **Section 9** of this regulation requires such a petition to be served on all parties and provides that the granting of the petition is governed by the rule of the Nevada Rules of Civil Procedure governing intervention.

Section 11 of this regulation eliminates the requirement that two copies accompany certain pleadings which are filed with the Commissioner.

Section 14 of this regulation clarifies that the provisions governing the investigation and conduct of hearings by the Commissioner apply to a claim, complaint or other pleading which alleges violations of provisions relating to employment on public works projects.

Existing regulations provide that: (1) contumacious conduct by a person at a hearing before the Commissioner is a ground for the exclusion of the person from the hearing and for the summary exclusion of the person from further participation in the proceedings; and (2) the Commissioner will bar such an excluded person from any further proceedings of the Commissioner unless the Commissioner grants a petition to rescind the order of exclusion. (NAC 607.340) **Section 17** of this regulation revises these provisions to provide that the Commissioner may bar an excluded person from any further proceedings of the Commissioner.

Section 18 of this regulation revises provisions governing the filing of briefs with the Commissioner.

Section 19 of this regulation revises provisions governing the making and obtaining transcripts of records of formal hearings.

Section 1. NAC 607.010 is hereby amended to read as follows:

607.010 The provisions of this chapter govern all practice and procedure before the Commissioner, including, without limitation, whenever he or she is adopting regulations, issuing declaratory orders, conducting inquiries and investigations, *conducting hearings* or determining contested cases.

Sec. 2. NAC 607.040 is hereby amended to read as follows:

607.040 ~~{Notwithstanding any provision of this chapter to the contrary, in}~~

1. In special cases, upon a showing of good cause or the Commissioner's own motion, the Commissioner may permit deviation from the provisions of this chapter with regard to a matter if:

~~{1. The Commissioner determines that:~~

~~—(a) Compliance with those provisions is impractical or unnecessary; or~~

~~—(b) Deviation from those provisions would not adversely affect the substantial interests of the parties to the matter; and~~

~~—2.]~~ (a) Except when the requested deviation from those provisions is based upon the motion of the Commissioner, the person requesting the deviation provides to the Commissioner a specific reference to each provision of this chapter from which he or she is requesting deviation

~~{;}~~

(b) The Commissioner determines that deviation from those provisions would not adversely affect the substantial interests of the parties to the matter; and

(c) The parties to the matter are provided notice of the Commissioner's preliminary decision to permit deviation from those provisions and an opportunity to object to the decision not later than 15 days after the issuance of the notice.

2. Upon receipt of an objection pursuant to paragraph (c) of subsection 1, the Commissioner will review the objection to determine whether the objection has merit. If the Commissioner determines that the objection lacks merit, the Commissioner will issue an order setting forth the specific provisions and findings which establish good cause to permit deviation from the provisions of this chapter.

Sec. 3. NAC 607.045 is hereby amended to read as follows:

607.045 The time within which any act must be done will be computed by excluding *all days before* the ~~first~~ *second business* day and including the last *day* unless the last day is a Saturday, Sunday or legal holiday, in which case the next business day is the last day of the time limit.

Sec. 4. NAC 607.065 is hereby amended to read as follows:

607.065 1. A determination issued by the Commissioner will contain:

- (a) A clear and plain statement of each alleged violation;
- (b) A citation to the statute or regulation alleged to have been violated;
- (c) The relevant facts;
- (d) If applicable, any fines, penalties or other relief being proposed by the Commissioner; and

(e) Notice that the employer or other person who was the subject of the inquiry or investigation may object to the determination pursuant to NAC 607.070.

2. The Commissioner will cause a copy of the determination to be served by *United States mail, facsimile or electronic mail* upon each party.

3. The employer or other person to whom a determination is issued may:

(a) If he or she does not object to the matters set forth in the determination, resolve the matter by forwarding to the Commissioner an amount equal to any fines and penalties, and complying with the conditions of any other relief, proposed by the Commissioner in the determination; or

(b) If he or she objects to the matters set forth in the determination, file a written objection to the determination with the Commissioner pursuant to NAC 607.070.

4. If the employer or other person to whom a determination is issued fails to respond to the determination as provided in subsection 3, the Commissioner may issue an order affirming the determination. If the Commissioner issues such an order, the Commissioner will ~~serve~~ provide a copy of the determination and order by ~~certified~~ *United States mail* ~~on~~, *facsimile or electronic mail to* the employer or other person to whom the determination was issued and ~~on~~ to each complainant in the matter. An order issued by the Commissioner pursuant to this subsection constitutes the final order of the Commissioner on the matter.

Sec. 5. NAC 607.075 is hereby amended to read as follows:

607.075 1. Upon the filing with the Commissioner of a claim for wages, the Commissioner will review the claim to determine whether to take jurisdiction of the claim.

2. If the Commissioner, after reviewing the claim and conducting such further inquiry as he or she deems necessary, determines that the complainant has the ability to employ private

counsel or that the information submitted with the claim is insufficient to substantiate the claim, the Commissioner may decline to take jurisdiction of the claim or may return the claim to the complainant for further information necessary to substantiate the claim.

3. If the Commissioner takes jurisdiction of the claim, the Commissioner will issue a notice of claim for wages to the employer who is the subject of the claim and cause a copy of the notice of claim for wages to be served upon the employer.

4. A notice of claim for wages will set forth the claim of the employee and include:

- (a) The name of the employer;
 - (b) The name of the employee;
 - (c) A copy of the claim for wages;
 - (d) A citation to the statute or regulation alleged to have been violated;
 - (e) The hourly wage or commission rate claimed by the employee;
 - (f) The wages alleged to be owed to the employee;
 - (g) The basis on which the wages alleged to be owed to the employee were calculated; *and*
 - (h) ~~Any penalties proposed by the Commissioner; and~~
- ~~(i)~~ Notice to the employer that he or she may object to the notice of claim for wages.

5. Upon receiving a notice of claim for wages pursuant to this section, the employer may:

(a) If he or she does not object to the claim, settle the claim by forwarding to the Commissioner for disbursement to the employee the amount due the employee ~~including any penalties;~~ as set forth in the notice of claim for wages; or

(b) If he or she objects to the claim, provide written notice of the objection to the Commissioner within 15 days after the date of service of the notice of claim for wages. The

written notice must provide the specific reasons upon which the employer is objecting to the claim and the facts that substantiate those reasons.

6. If the employer fails to respond to the notice of claim for wages by either settling or ~~objecting~~ *asserting a meritorious objection* to the claim as provided in subsection 5, the Commissioner may issue a determination to the employer based on the facts as set forth in the claim. If the Commissioner issues such a determination, the Commissioner will cause service of the determination to be effected in accordance with the provisions of subsection 2 of NAC 607.065.

Sec. 6. NAC 607.080 is hereby amended to read as follows:

607.080 1. Upon receiving written notice from an employer of ~~his or her~~ *a meritorious* objection to a notice of claim for wages ~~it~~ *pursuant to subsection 5 of NAC 607.075*, the Commissioner will commence an investigation into the facts and circumstances in dispute to determine whether a violation of chapter 608 of NRS or any regulation adopted pursuant thereto has occurred in the course of an employment relationship.

2. The Commissioner may request from the parties to the dispute any information that the Commissioner believes is necessary to determine the facts of the dispute. If any party fails to provide such information as requested, the Commissioner may choose to disregard that information in any future proceeding concerning the claim.

3. Upon completing the investigation, the Commissioner will issue a determination, and cause service thereof to be effected, pursuant to *subsection 2 of* NAC 607.065.

Sec. 7. NAC 607.090 is hereby amended to read as follows:

607.090 The representation of a party in any proceeding before the Commissioner is subject to the following:

1. A party may represent himself or herself or designate one of his or her employees to represent him or her.
2. An attorney representing a party must be either a member in good standing of the State Bar of Nevada or associated with such a member of the State Bar of Nevada. *The attorney must submit a letter of representation to the Commissioner.*
3. Upon the request of a party and a showing of good cause, the Commissioner may permit any other person the party designates to represent the party.
4. A representative wishing to withdraw from a proceeding before the Commissioner must:
 - (a) Provide to the Commissioner and to each party to the proceeding written notice of the intent of the representative to withdraw; and
 - (b) Provide to the Commissioner the current address and telephone number of the party from whose representation the representative wishes to withdraw.

Sec. 8. NAC 607.095 is hereby amended to read as follows:

607.095 If it appears to the Commissioner that a complainant can afford to employ private counsel, the Commissioner may inquire into the financial condition of the complainant ~~to determine whether~~ *and may decline* to take jurisdiction of the matter.

Sec. 9. NAC 607.110 is hereby amended to read as follows:

- 607.110
1. A person who demonstrates a substantial, but not necessarily a direct, interest in the outcome of a proceeding may petition the Commissioner to intervene in the proceeding.
 2. A petition to intervene must include:

- (a) The nature and extent of the interest of the petitioner in the outcome of the proceeding;
- (b) The potential effect that a decision in the proceeding may have on the interest of the petitioner;
- (c) Whether any other means are available by which the interest of the petitioner may be protected;
- (d) The extent to which the interest of the petitioner may be represented by the other parties to the proceeding;
- (e) The extent to which the participation of the petitioner would assist in the development of a full and complete record;
- (f) The extent to which the participation of the petitioner would broaden the issues or delay the proceeding;
- (g) The extent to which the interest of the petitioner differs from the interest of the general public;
- (h) The extent to which the intervention of the petitioner would serve the public interest;
- (i) If the petitioner is seeking affirmative relief, the type of and basis for that relief;
- (j) Whether the petitioner intends to present evidence in the proceeding; and
- (k) The name and address of the petitioner.

3. *The petition to intervene must be served on all parties in accordance with NAC 607.160.*

4. The granting *by the Commissioner* of a petition to intervene is ~~subject solely to the discretion of the Commissioner.~~
~~—4.]~~ *governed by Rule 24 of the Nevada Rules of Civil Procedure.*

5. At any hearing, all parties, including, without limitation, interveners, may enter appearances, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the proceeding.

Sec. 10. NAC 607.125 is hereby amended to read as follows:

607.125 Formal written communications and documents must be addressed to the Commissioner and will be deemed to be officially received only when delivered to the office of the Commissioner ~~[]~~ *by United States mail or electronic filing.*

Sec. 11. NAC 607.150 is hereby amended to read as follows:

607.150 ~~[1.—An original and two legible copies of every pleading, other than a complaint brought by the Commissioner, must be filed with the Commissioner in all matters before him or her.~~

~~—2.]~~ The Commissioner may direct that the party who filed a pleading make copies of it available to any other person who has requested copies, if the Commissioner first determines that the person making the request may be affected by the proceeding.

Sec. 12. NAC 607.160 is hereby amended to read as follows:

607.160 Except as otherwise provided by a specific regulation, notices, determinations, findings of fact, opinions and orders of the Commissioner, and any document filed by a party, may be personally served upon a party or served by *United States mail [], facsimile or electronic mail.* If served by mail, service shall be deemed to be complete when a true copy of the document, properly addressed and with postage paid, is deposited in the United States mail.

Sec. 13. NAC 607.170 is hereby amended to read as follows:

607.170 Each document that is required to be served must contain an acknowledgment of service ~~{or}~~, a certificate of mailing ~~{}~~ *or other proof that the document was successfully transmitted by facsimile or electronic mail.*

Sec. 14. NAC 607.200 is hereby amended to read as follows:

607.200 1. Upon the filing with the Commissioner of ~~{an}~~:

(a) A claim, complaint or other pleading which alleges a violation of, or seeks a remedy under, NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, pursuant to subsection 1 of NAC 338.107; or

(b) An administrative complaint by any person ~~{}~~ who alleges a violation of, or seeks a remedy under, any provision of this chapter, chapter 607 or 608 of NRS or chapter 608 of NAC,

↳ the Commissioner may investigate and conduct hearings concerning possible violations of law in all matters relating to his or her duties.

2. ~~{The}~~ *An administrative* complaint must include:

(a) The full name and address of the complainant;

(b) The full name and address of the respondent;

(c) A clear and concise statement of facts sufficient to establish that an alleged violation of law occurred, including, without limitation, the date, time and place of the alleged violation and the name of each person involved;

(d) A citation to the statute or regulation alleged to have been violated; and

(e) The relief requested by the complainant.

3. ~~[The]~~ *An administrative* complaint must be in writing and signed by the person making it. ~~[Two copies of the complaint must be filed with the Commissioner as required by NAC 607.150.]~~

4. ~~[The]~~ *An administrative* complaint must include a certification that the facts stated in the *administrative* complaint are true to the best knowledge and belief of the complainant.

5. The complainant shall serve a copy of the *administrative* complaint on the respondent and every other party identified in the complaint.

6. If, from the *claim*, complaint, *administrative complaint or other pleading*, it appears to the Commissioner that the charges may be well founded, the Commissioner will send written notice to the respondent at least 15 days before the date fixed for the hearing. The notice must itemize the charges and set forth the date of the hearing.

Sec. 15. NAC 607.300 is hereby amended to read as follows:

607.300 1. If any party disputes a claim or complaint, the Commissioner may require the parties to appear before him or her at a prehearing conference at a time and place designated by the Commissioner to establish the issues to be resolved at the hearing and discuss the settlement of the matter.

2. The Commissioner may enter reasonable orders governing the conduct of the prehearing conference and, for good cause, allow a party to appear via telephone.

3. The parties may be represented by counsel at the prehearing conference. *An attorney representing a party at the prehearing conference must comply with subsection 2 of NAC 607.090.*

4. The parties shall present all evidence then known to them that substantiates their respective positions during the prehearing conference.

5. A prehearing conference conducted pursuant to this section may not be recorded.

6. Offers of settlement discussed at the prehearing conference may not be used as an admission at any subsequent hearing, and the Commissioner will so inform the parties at the beginning of the prehearing conference.

7. At the prehearing conference, the parties shall make a good faith effort to resolve the matter through settlement or stipulation.

8. If the Commissioner determines that the matter cannot be resolved at the prehearing conference, he or she may issue a determination in the matter pursuant to NAC 607.065.

Sec. 16. NAC 607.310 is hereby amended to read as follows:

607.310 1. Hearings of a matter before the Commissioner will be held before the Commissioner or an authorized representative thereof.

2. Notice of the place, date and hour of a hearing must be served *in accordance with the provisions of NAC 607.160* at least 15 days before the date set for the hearing.

3. A hearing that has previously been continued may be reset on at least 10 days' notice.

4. Every hearing will be held at a place in this State designated by the Commissioner in the notice of hearing.

Sec. 17. NAC 607.340 is hereby amended to read as follows:

607.340 1. Any person appearing in a proceeding shall conform to recognized standards of ethical and courteous conduct required before the courts of this State. Every party to a hearing, his or her representative and all spectators shall conduct themselves in a respectful manner.

2. Contumacious conduct by any person at a hearing before the Commissioner is a ground for the exclusion of the person from the hearing and for the summary exclusion of the person from further participation in ~~the~~ *subsequent* proceedings ~~relating thereto~~. The Commissioner ~~will~~ *may* bar any person excluded pursuant to this subsection from attending any further proceedings of the Commissioner. ~~unless the Commissioner grants a petition to rescind the exclusion pursuant to subsection 3.~~

3. A person excluded from proceedings by the Commissioner pursuant to subsection 2 may petition the Commissioner to rescind the exclusion. The Commissioner will grant the petition if he or she finds sufficient evidence that the contumacious conduct that led to the exclusion of the person will not reoccur.

Sec. 18. NAC 607.450 is hereby amended to read as follows:

607.450 1. The Commissioner may order briefs to be filed and specify a *page limit and* time limit for their filing.

2. ~~Three copies~~ *One copy* of any requested brief must be filed with the Commissioner in matters before him or her.

3. An acknowledgment of service, ~~or~~ a certificate of mailing *or, in the case of service by facsimile or electronic mail, comparable evidence of service* must accompany each brief to other parties of record.

4. Following the filing of briefs and after deciding contested motions, the Commissioner may set the matter for oral argument and give reasonable notice to all parties.

Sec. 19. NAC 607.510 is hereby amended to read as follows:

607.510 The Commissioner will ~~[cause]~~ *work with the parties to facilitate* a record to be made of all formal hearings. ~~[Parties desiring a copy of a transcript may obtain it from the Commissioner upon payment of the proper fee.]~~

Sec. 20. NAC 607.670 is hereby amended to read as follows:

607.670 1. Except as otherwise provided in subsection 3, a person may file a petition with the Commissioner requesting that the Commissioner issue a declaratory order concerning the applicability of a statute, regulation or decision of the Commissioner.

2. A petition for a declaratory order must include:

(a) The name and address of the petitioner;

(b) The reason for requesting the declaratory order;

(c) A statement of the facts that support the petition for a declaratory order; and

(d) A clear and concise statement of the question or matter to be decided by the

Commissioner.

3. A person may not file a petition for a declaratory order concerning a question or matter that is an issue in a pending administrative, civil or criminal proceeding in which the person is a party.

4. The Commissioner may refuse to review a petition that requests the issuance of a declaratory order if the original petition is not accompanied by two *legible* copies of the petition ~~[as required by NAC 607.150]~~ or the petition does not contain the information required by subsection 2.

5. The Commissioner may:

(a) Conduct a hearing to determine issues of fact or to hear arguments relating to a petition for a declaratory order and may enter reasonable orders that govern the conduct of the hearing.

(b) Request that the petitioner provide additional information or arguments relating to the petition.

(c) Issue a declaratory order based on the contents of the petition and any material submitted with the petition.

(d) Consider relevant decisions that have been issued by the Commissioner or any other entity which apply or interpret the statute, regulation or decision in question.

(e) Consider any other information he or she determines is relevant to the question or matter to be decided by the Commissioner.

(f) Enter any reasonable order to assist his or her review of the petition.

6. The Commissioner will maintain a record of the declaratory order that is indexed by subject matter and will mail a copy of the declaratory order to the petitioner within 60 days after:

(a) The petition is filed;

(b) A hearing is conducted concerning the petition; or

(c) Any additional information or written argument is received by the Commissioner,

↪ whichever occurs later.

Sec. 21. NAC 607.680 is hereby amended to read as follows:

607.680 1. Any person who wishes to petition for the adoption, filing, amendment or repeal of a regulation of the Commissioner must file with the Commissioner the original and two *legible* copies of the petition . ~~[as required by NAC 607.150.]~~

2. A petition for the adoption, filing, amendment or repeal of a regulation must include:

- (a) The name and address of the petitioner;
 - (b) A clear and concise statement, including, if applicable, the proposed language, of the regulation to be adopted, filed, amended or repealed;
 - (c) The reason for petitioning for the adoption, filing, amendment or repeal of the regulation;
- and
- (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.
3. The Commissioner may refuse to act upon a petition for the adoption, filing, amendment or repeal of a regulation if:
- (a) The original petition is not accompanied by two *legible* copies of the petition; or
 - (b) The petition does not contain the information required by subsection 2.
4. The Commissioner will notify the petitioner in writing of his or her decision with regard to the petition within 30 days after the petition is filed.