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## Department of Business & Industry OFFICE OF THE LABOR COMMISSIONER

<http://www.labor.nv.gov>

### **PUBLIC WORKS AND PREVAILING WAGE AND APPRENTICESHIP UTILIZATION ACT HANDBOOK WITH GUIDELINES AND RESPONSIBILITIES FOR AWARDDING BODIES AND CONTRACTORS AND THE OFFICE OF THE LABOR COMMISSIONER JULY 1, 2021**

#### **PLEASE NOTE THAT NEW NEVADA ADMINISTRATIVE CODE (NAC) 338 REGULATIONS BECAME EFFECTIVE JUNE 5, 2020. PLEASE SEE BELOW.**

The Legislative Commission of the Nevada Legislature approved new NAC 338 regulations on June 5, 2020. While not codified yet, they are effective June 5, 2020.

[Adopted Regulation of the Labor Commissioner LCB File No. R018-18 \(nv.gov\)](#)

- I. **PURPOSE** - This handbook is intended to provide general guidelines to help awarding bodies and contractors comply with Nevada's public works and prevailing wage laws and the Apprenticeship Utilization Act. This handbook is not intended to be a substitute for Nevada's statutes and regulations as set forth in the Nevada Revised Statutes (NRS) section 338 and Nevada Administrative Code (NAC) section 338, and any other applicable laws and regulations or court decisions. *This handbook is not intended as legal advice.*
- II. **GENERAL BACKGROUND:**
  - a. "PUBLIC WORK" defined (NRS 338.010 (18)) – Any project funded in whole or in part from public money 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.

b. "PUBLIC BODY" defined – 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. (See NRS 338.010(17))

c. DEFINITIONS FOR HORIZONTAL AND VERTICAL CONSTRUCTION

Horizontal Construction NRS 338.010 - Subdivision 13. "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 NRS 338.010 – Subdivision 24. "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.

d. PREVAILING WAGES & WAGES – Pursuant to NRS 338.020 and Assembly Bill (AB) 136 passed during 2019 Legislative Session (for Redevelopment Projects the contract amount is \$100,000 NRS 279.500), every contract over \$100,000 to which a public body is a party and that requires the employment of skilled or unskilled labor in the performance of a public work must contain in expressed terms the rate of wages to be paid to each of the classes of workmen. The rate of wages must not be less than the rate of such wages then prevailing in the county in which the public work is located. Unlike prevailing wage requirements under Federal law (Davis-Bacon) and requirements in many states that surround Nevada, Nevada's prevailing wage requirements may be met by providing a combination of wages and permissible bona fide fringe benefits to the mechanic or workman that are paid on a frequent basis, such as monthly.  
<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6203/Text>

WAGES DEFINED (NRS 338.020(25) – "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.

➤ Assembly Bill 136, passed during the 2019 Legislative Session, eliminates the 90% Nevada System of Higher Education (NSHE) and School Construction Rate – effective July 1, 2019.

e. Prevailing wage rates are published by the Office of the Labor Commissioner each-odd numbered year, see NRS sections 338.025 and 338.030 and Senate Bill (SB) 243 (2019 Legislative Session). These rates become effective October 1<sup>st</sup>. Amendments to those rates are published on an as needed basis and in even numbered years based on certain conditions and contain a specific effective date. Prevailing wage rates and amendments are posted on the Labor Commissioner's website [www.labor.nv.gov](http://www.labor.nv.gov)

f. EXCEPTIONS TO THE APPLICABILITY OF THE PREVAILING WAGE RATE:

- Contracts awarded pursuant to the provisions of NRS Chapter 332 or 333 which are directly related to the normal operation of the public body or the normal maintenance of its property. (See NRS 338.011(1)) *Please See Bombardier Case (135 Nev., Advance Opinion 3)*

[http://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/135%20Nev.%20Advance%20Opinion%203%20%201.17.19%20\(3\).pdf](http://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/135%20Nev.%20Advance%20Opinion%203%20%201.17.19%20(3).pdf)

- Contracts awarded to meet an emergency which threaten the health, safety or welfare of the public. (See NRS 338.011(2))
- Any contract for a public work whose estimated cost(s) is less than \$100,000.00. (Remember, a unit of a project may not be separated from the total cost to lower the total costs of the project below \$100,000.00.) (See NRS 338.080)
- Apprentices recorded/registered under the provisions of NRS Chapter 610. (See NRS 338.080)
- Any work performed by or for any railroad company. (See NRS 338.080)
- Design professionals as defined under NRS 338.010(8).

g. OVERTIME (see NRS 338.020).

1. Pursuant to the provisions of NRS 338.020, a contractor or subcontractor must pay any mechanic or workman 1 1/2 times the applicable prevailing wage rate for work performed on a public work over 40-hours in a workweek or 8-hours in any workday. Zone Rates are added to the hourly rate, and then overtime is calculated on that rate.

Premium Pay for work over 8-hours or 12-hours or such other time increment set forth in the Collective Bargaining Agreement or on a weekend or holiday. (See NRS 338.030)

2. An exception to the daily overtime rule may apply when, by mutual agreement, a mechanic or workman works a scheduled 10-hours per day for 4 calendar days (4/10's) within a scheduled week of work. The 4/10 schedule should be strictly adhered followed or overtime may become due. When working on multiple projects during a shift, the overtime rate is calculated using the rate of pay for work being performed when overtime becomes due. (See Advisory Opinion AO 2013-04) [A O 4 Day 10 Hour Shifts \(revised\).pdf \(nv.gov\)](#)

h. BENEFITS

While under Nevada law, part of an employer's/contractor's obligation for the payment of the applicable Prevailing Wage rate may be discharged by providing certain bona fide fringe benefits for the employee. It is important to note that the employer/contractor must make that contribution to a third person pursuant to a fund, plan or program in the name of the workman. Unless such contributions leave the employer/contractor and are received by the third person administrator in the name of the workman, there can be no discharge of any obligation. (See NRS 338.035)

“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. The term includes, without limitation, benefits for a worker that are determined pursuant to a collective bargaining agreement and included in the determination of the prevailing wage by the Labor Commissioner pursuant to NRS 338.030. (See NRS 338.035)

i. THINGS TO REMEMBER:

1. Salaried employees must be paid the applicable Prevailing Wage rate for the work they perform on a prevailing wage job site. They must be paid the applicable rate of wages for the classification of work performed. There is no “salaried employee” exception for any workman under NRS 338.
2. Owners (and their family members) must be paid the applicable prevailing wage rate for the work they perform on a prevailing wage job site. They must be paid the applicable rate of wages for the classification of work performed. There is no “owner” exception for any workman under NRS 338. (See Advisory Opinion AO 2015-06) <http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20OWNER%20OPERATORS%20AO%202015%2006.pdf>
3. Where there is a combination of federal and state funding on a public work project, the Federal Davis-Bacon rules/laws may apply, or the Prevailing Wage laws of the State of Nevada may apply if a Public Body maintains oversight of such a project. Under such circumstances, the State of Nevada and the Federal government have “concurrent jurisdiction” about enforcing Federal and state requirements. As a result, Awarding/Public Bodies must ensure that all contractors and subcontractors on such projects comply with both Federal and state requirements, and state requirements may be enforced if stricter or the state wages are higher.

j. APPRENTICESHIP UTILIZATION ACT – NRS 338.01165

[https://labor.nv.gov/Apprenticeship\\_Utilization\\_Act/Apprenticeship\\_Utilization\\_Act/](https://labor.nv.gov/Apprenticeship_Utilization_Act/Apprenticeship_Utilization_Act/)

NRS 338.01165 Requirements relating to use of apprentices on public works; modification or waiver of requirements; apprenticeship agreement; regulations. [Effective January 1, 2020.]

1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in vertical construction who employs a worker on a public work pursuant to [NRS 338.040](#) shall use one or more apprentices for at least 10 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.

2. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in horizontal construction who employs a worker on a public work pursuant to [NRS 338.040](#) shall use one or more apprentices for at least 3 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.

3. On or after January 1, 2021, the Labor Commissioner, in collaboration with the State Apprenticeship Council, may adopt regulations to increase the percentage of total hours of

labor required to be performed by an apprentice pursuant to subsection 1 or 2 by not more than 2 percentage points.

4. An apprentice who graduates from an apprenticeship program while employed on a public work shall:

(a) Be deemed an apprentice on the public work for the purposes of subsections 1 and 2.

(b) Be deemed a journeyman for all other purposes, including, without limitation, the payment of wages or the payment of wages and benefits to a journeyman covered by a collective bargaining agreement.

5. A contractor or subcontractor engaged on a public work is not required to use an apprentice in a craft or type of work performed in a jurisdiction recognized by the State Apprenticeship Council as not having apprentices in that craft or type of work.

6. A public body may, upon the request of a contractor or subcontractor, submit a request to the Labor Commissioner to modify or waive the percentage of hours of labor provided by one or more apprentices required pursuant to subsection 1 or 2 for good cause. A public body must submit such a request, before an advertisement for bids has been placed, the opening of bids or the award of a contract for a public work or after the public body has commenced work on the public work. Such a request must include any supporting documentation, including, without limitation, proof of denial of or failure to approve a request for apprentices pursuant to subparagraph (3) of paragraph (d) of subsection 10.

7. The Labor Commissioner shall issue a determination of whether to grant a modification or waiver requested pursuant to subsection 6 within 15 days after the receipt of such request. The Labor Commissioner may grant such a request if he or she makes a finding that there is good cause to modify or waive the percentage of hours of labor provided by one or more apprentices required pursuant to subsection 1 or 2.

8. A public body, contractor or subcontractor may request a hearing on the determination of the Labor Commissioner within 10 days after receipt of the determination of the Labor Commissioner. The hearing must be conducted in accordance with regulations adopted by the Labor Commissioner. If the Labor Commissioner does not receive a request for a hearing pursuant to this subsection, the determination of the Labor Commissioner is a final decision for the purposes of judicial review pursuant to [chapter 233B](#) of NRS.

9. A contractor or subcontractor engaged on a public work shall enter into an apprenticeship agreement for all apprentices required to be used in the construction of a public work. If the Labor Commissioner granted a modification or waiver pursuant to subsection 7 because the Labor Commissioner finds that a request for apprentices was denied or the request was not approved within 5 business days as described in subparagraph (3) of paragraph (d) of subsection 10 and apprentices are later provided, then the contractor or subcontractor shall enter into an apprenticeship agreement for all apprentices later provided.

10. As used in this section:

(a) "Apprentice" means a person enrolled in an apprenticeship program recognized by the State Apprenticeship Council.

(b) "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.

(c) "Apprenticeship program" means an apprenticeship program recognized by the State Apprenticeship Council.

(d) "Good cause" means:

(1) There are no apprentices available from an apprenticeship program within the jurisdiction where the public work is to be completed as recognized by the State Apprenticeship Council;

(2) The contractor or subcontractor is required to perform uniquely complex or hazardous tasks on the public work that require the skill and expertise of a greater percentage of journeymen; or

(3) The contractor or subcontractor has requested apprentices from an apprenticeship program and the request has been denied or the request has not been approved within 5 business days.

É The term does not include the refusal of a contractor or subcontractor to enter into an apprenticeship agreement pursuant to subsection 9.

(e) “Journeyman” has the meaning ascribed to it in [NRS 624.260](#).

(f) “State Apprenticeship Council” means the State Apprenticeship Council created by [NRS 610.030](#).

(Added to NRS by [2019, 3154](#), effective January 1, 2020)

#### Horizontal Construction NRS 338.010 - Subdivision 13.

“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 NRS 338.010 – Subdivision 24.

“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.

For a public works project over \$100,000, the Apprenticeship Utilization Act – Nevada Revised Statutes (NRS) section 338.01165, would be triggered when there were more than 3 workers employed for each apprenticed craft or type of work to be performed on the public works project. NRS section 338.01165 does specify that for Horizontal Construction, if there are more than 3 workers employed for each apprenticed craft or type of work performed, then 3% of the total hours for that apprenticed craft or type of work performed must be worked by an apprentice. For Vertical Construction, it is 10% of the total hours for that apprenticed craft or type of work performed that must be worked by an apprentice.

The Office of the Labor Commissioner/Labor Commissioner (OLC/LC) has interpreted the plain language of NRS section 338.01165 in connection with the legislative history and intent to mean that there must be more than 3 employees/workers employed on the public works project/work site at any one time and/or the same time for each apprenticed craft or type of work performed to trigger the requirements of NRS section 338.01165. In other words, there must be a “crew” of more than 3 employees/workers for each apprenticed craft or type of work performed on the public works project/work site at the same time for the requirements of NRS section 338.01165 to apply. This could include a crew of more than 3 employee/workers of an apprenticed craft or type of work performed present at the same time on the project/work site for only 1 full day of work. The OLC/LC would also look to the potential rotation of crews to avoid the requirements of NRS section 338.01165.

k. NEVADA ADMINISTRATIVE CODE (NAC) 338 REGULATIONS EFFECTIVE JUNE 5, 2020

The Legislative Commission of the Nevada Legislature approved new NAC 338 regulations on June 5, 2020. While not codified yet, they are effective June 5, 2020.

[Adopted Regulation of the Labor Commissioner LCB File No. R018-18 \(nv.gov\)](#)

**III. GENERAL RESPONSIBILITIES OF THE AWARDING BODY:**

- a. REPORTS TO THE LABOR COMMISSIONER: Each of the following forms can be obtained from our website at [www.labor.nv.gov](http://www.labor.nv.gov).
- b. REQUEST FOR PUBLIC WORKS IDENTIFYING NUMBER (PWP NUMBER) referred to throughout NRS 338 as Identifying Number. (See NRS 338.013) The number is to be requested at the time the public body decides to undertake a public work. The public body is responsible for making the request from the Labor Commissioner.

The PWP Number may also be directly requested via the link below:

<https://nlc.i-sight.com/external/PWP/new>

- 1. The PWP Number is to be included in any advertisement or other type of solicitation, and the number must be included in any bid or other document submitted in response to the advertisement or other type of solicitation. Because of this, the awarding body is advised to request the number at the time it decides to undertake the public work. This should allow ample time for processing and issuing of the number by the Labor Commissioner. Try avoiding last minute requests, i.e., the day or two before the public work is to be advertised.

Do not confuse the PWP Number with other numbers that are often used on a project. For example, the contractor or public body may use a number it has assigned to the project for its own purposes. The Public Work Project Number issued by the Labor Commissioner looks like this: CC-2013-123

Advertise and bid the project based on the correct prevailing wage amount and rate.

- 2. Only one PWP Number should exist for each public work. The first two letters of the number represent the county in which the project is to be located. If the project is in multiple counties it will begin with Multi, for example:

Multi-2013-123

- c. APPRENTICESHIP UTILIZATION ACT NRS SECTION 338.01165 (SENATE BILL 207 PASSED DURING 2019 LEGISLATIVE SESSION) – EFFECTIVE 1/1/2020

<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6351/Text>

NRS 338.01165 Requirements relating to use of apprentices on public works; modification or waiver of requirements; apprenticeship agreement; regulations. [Effective January 1, 2020.]

- 1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in vertical construction who employs a

worker on a public work pursuant to [NRS 338.040](#) shall use one or more apprentices for at least 10 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.

2. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in horizontal construction who employs a worker on a public work pursuant to [NRS 338.040](#) shall use one or more apprentices for at least 3 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.

3. On or after January 1, 2021, the Labor Commissioner, in collaboration with the State Apprenticeship Council, may adopt regulations to increase the percentage of total hours of labor required to be performed by an apprentice pursuant to subsection 1 or 2 by not more than 2 percentage points.

4. An apprentice who graduates from an apprenticeship program while employed on a public work shall:

(a) Be deemed an apprentice on the public work for the purposes of subsections 1 and 2.

(b) Be deemed a journeyman for all other purposes, including, without limitation, the payment of wages or the payment of wages and benefits to a journeyman covered by a collective bargaining agreement.

5. A contractor or subcontractor engaged on a public work is not required to use an apprentice in a craft or type of work performed in a jurisdiction recognized by the State Apprenticeship Council as not having apprentices in that craft or type of work.

6. A public body may, upon the request of a contractor or subcontractor, submit a request to the Labor Commissioner to modify or waive the percentage of hours of labor provided by one or more apprentices required pursuant to subsection 1 or 2 for good cause. A public body must submit such a request, before an advertisement for bids has been placed, the opening of bids or the award of a contract for a public work or after the public body has commenced work on the public work. Such a request must include any supporting documentation, including, without limitation, proof of denial of or failure to approve a request for apprentices pursuant to subparagraph (3) of paragraph (d) of subsection 10.

7. The Labor Commissioner shall issue a determination of whether to grant a modification or waiver requested pursuant to subsection 6 within 15 days after the receipt of such request. The Labor Commissioner may grant such a request if he or she makes a finding that there is good cause to modify or waive the percentage of hours of labor provided by one or more apprentices required pursuant to subsection 1 or 2.

8. A public body, contractor or subcontractor may request a hearing on the determination of the Labor Commissioner within 10 days after receipt of the determination of the Labor Commissioner. The hearing must be conducted in accordance with regulations adopted by the Labor Commissioner. If the Labor Commissioner does not receive a request for a hearing pursuant to this subsection, the determination of the Labor Commissioner is a final decision for the purposes of judicial review pursuant to [chapter 233B](#) of NRS.

9. A contractor or subcontractor engaged on a public work shall enter into an apprenticeship agreement for all apprentices required to be used in the construction of a public work. If the Labor Commissioner granted a modification or waiver pursuant to subsection 7 because the Labor Commissioner finds that a request for apprentices was denied or the request was not approved within 5 business days as described in subparagraph (3) of paragraph (d) of subsection 10 and apprentices are later provided, then the contractor or subcontractor shall enter into an apprenticeship agreement for all apprentices later provided.

10. As used in this section:



(a) "Apprentice" means a person enrolled in an apprenticeship program recognized by the State Apprenticeship Council.

(b) "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.

(c) "Apprenticeship program" means an apprenticeship program recognized by the State Apprenticeship Council.

(d) "Good cause" means:

(1) There are no apprentices available from an apprenticeship program within the jurisdiction where the public work is to be completed as recognized by the State Apprenticeship Council;

(2) The contractor or subcontractor is required to perform uniquely complex or hazardous tasks on the public work that require the skill and expertise of a greater percentage of journeymen; or

(3) The contractor or subcontractor has requested apprentices from an apprenticeship program and the request has been denied or the request has not been approved within 5 business days.

É The term does not include the refusal of a contractor or subcontractor to enter into an apprenticeship agreement pursuant to subsection 9.

(e) "Journeyman" has the meaning ascribed to it in [NRS 624.260](#).

(f) "State Apprenticeship Council" means the State Apprenticeship Council created by [NRS 610.030](#).

(Added to NRS by [2019, 3154](#), effective January 1, 2020)

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Vertical Construction NRS 338.010 – Subdivision 24.

"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.

#### **[APPRENTICESHIP UTILIZATION ACT INFORMATION](#)**

**[https://labor.nv.gov/Apprenticeship\\_Utilization\\_Act/Apprenticeship\\_Utilization\\_Act/](https://labor.nv.gov/Apprenticeship_Utilization_Act/Apprenticeship_Utilization_Act/)**

#### d. NOTIFICATION OF CANCELED OR DELAYED PUBLIC WORKS PROJECTS

Once a PWP Number has been requested and, for whatever reason, a project is to be canceled or delayed, the public body shall complete this form and submit it to the Labor Commissioner.

e. NOTICE OF AWARD FOR PUBLIC WORKS PROJECT

Each public body which awards a contract for any public work shall report its award to the Labor Commissioner within 10-days after the award, giving the name and address of the contractor to whom the public body awarded the contract and the identifying number for the public work. Public bodies failing to provide this information in a timely manner may be subject to administrative fine up to \$5,000.00 by the Labor Commissioner. (See NRS 338.015)

f. NOTICE OF COMPLETION FOR PUBLIC WORKS PROJECT

The public body which awarded the contract shall report the completion of all work performed under the contract to the Labor Commissioner before the final payment is due to the contractor by the public body. (Emphasis added). Public bodies failing to provide this information in a timely manner may be subject to administrative penalty up to \$5,000.00 by the Labor Commissioner. (See NRS 338.015)

If the public body is aware of an ongoing investigation or believes wages, forfeitures, or penalties apply for violations of NRS 338. 010 to NRS 338.090, inclusive, or NAC 338.005 to NAC 338.125, you should work with your legal counsel and the Office of the Labor Commissioner to assure lawful and adequate funds are withheld from payments.

- g. PROJECTS OVER 36 MONTHS: Assembly Bill 190 (2019) – NRS section 338.030 Subdivision 9. “If the contract for a public work: (a) Is to be awarded pursuant to a competitive bidding process, the prevailing wages in effect at the time of the opening of the bids for a contract for a public work must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the bids were opened, whichever is earlier. (b) Is not to be awarded pursuant to a competitive bidding process, except as otherwise provided in this paragraph, the prevailing rate of wages in effect on the date on which the contractor for the contract is selected by the awarding body must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the contractor was selected, whichever is earlier. If the contract is not entered into within 90 days after the date of the selection of the contractor, the prevailing rates of wages in effect on the date on which the contract is entered into must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the contract was entered into, whichever is earlier.” <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6293/Overview>

NRS 338.030 Subdivision 10. “If a contract for a public work is not completed or terminated within 36 months immediately following the date on which the bids were opened pursuant to paragraph (a) of subsection 9, within 36 months immediately following the date on which the contractor was selected, within 36 months immediately following the date the contract was entered into pursuant to paragraph (b) of subsection 9 or for any 36-month period thereafter until the contract is completed or terminated: “Except as otherwise provided in paragraph (b), the prevailing wages in effect on the last day of the 36-month period must be paid for the immediately following 36 months. (b) If the prevailing wages in effect on the last day of the 36-month period are lower than the prevailing wages paid during that 36-month period under the contract, the prevailing wages paid during that 36-month period must be paid for the immediately following 36 months.”

- h. RETENTION: The awarding/public body should hold retention on the project and not close out/complete a project or submit a Notice of Completion on the project until the awarding/public body verifies compliance with NRS 338 and NAC 338 and NRS 338.01165 – Apprenticeship Utilization Act and confirms there are no pending wage claims and/or complaints.

#### IV. REPORTING OF SUBCONTRACTORS:

Each contractor engaged on a public work shall report to the Labor Commissioner and the public body that awarded the contract the name and address of each subcontractor whom the contractor engages for work on the project within 10-days after the subcontractor commences work on the contract. There is a form for reporting subcontractors to the Labor Commissioner it can be obtained from our website. Include on all reports the PWP Number for the public work. (See NRS 338.013) Failure to provide this information in a timely manner may be cause for the imposition of administrative penalties or disqualification pursuant to NRS sections 338.015 and 338.017.

#### V. RECEIPT OF CERTIFIED PAYROLL REPORTS:

- a. WHAT IS A CERTIFIED PAYROLL REPORT/RECORD (CPR)? (See NRS 338.070; NAC 338.0056 and NAC 338.092-338.100) - The certified payroll report is a monthly record. It may be made up of two or more payroll reports, i.e., a contractor may pay its workers weekly and submit weekly certified payroll reports.

Each report may be submitted electronically on a form prescribed by the Labor Commissioner or in a format selected by the contractor or subcontractor that meets the requirements of the Labor Commissioner’s form and provides the required information. Each report must be accompanied by a statement of compliance, on a form prescribed by the Labor Commissioner, and executed by the contractor or subcontractor which certifies the truthfulness and accuracy of the payroll report.

Senate Bill 231 passed during the 2019 Legislative Session allowed the Labor Commissioner to enact regulations for electronic reporting of CPR’s. (See NAC 338.092-NAC 338.100)

**\*So long as the CPR(s) contain the required information pursuant to NAC 338.094 or the information required by the Labor Commissioner’s CPR form and are submitted timely, compliance will be presumed. Awarding Bodies shall not place special requirements such as arbitrary due dates, logos, or other special criteria on CPR reporting.**

- b. SUBMISSION OF CERTIFIED PAYROLL REPORT

The contractor engaged on the public work or subcontractor engaged on the public work shall ensure that a complete copy of the monthly certified payroll report/record is received by the public body awarding the contract no later than 15 days after the end of the month. (See NRS 338.070)

A subcontractor may submit to the prime contractor, for submission to the public body, a copy of the record no later than the later of ten days after the end of the month; or a date agreed upon by the contractor and subcontractor. Nothing prohibits a subcontractor from submitting a

copy of a certified payroll record for a calendar month directly to the public body by the 15<sup>th</sup> of the following month in which the reported workers were paid. Workers must be paid in accordance with the provisions of NRS 608.060 and NRS 608.070. These statutes state that employees must be paid at least twice a month and that agreements to deviate from the pay schedule can be made between the two parties if it is beneficial for both parties and the employee is not required by the employer to enter into the agreement.

It is the responsibility of the contractor or subcontractor to submit the monthly certified payroll record to the awarding/public body. Do not submit certified payroll reports to the Labor Commissioner unless requested by the Labor Commissioner's office. It is the responsibility of the public body to ensure that these reports are received timely. An awarding body shall cause to be affixed to each certified payroll report or nonperformance payroll report that the awarding body receives the actual date on which the awarding body received the certified payroll report or nonperformance payroll report. (See NAC 338.100)

If a contractor or subcontractor engaged on a public work does not employ any workers for 3 consecutive calendar months on the public work, the Labor Commissioner or the awarding body may, as determined is in the best interest of the State, request that the contractor or subcontractor submit a final nonperformance payroll report or other documentation demonstrating that the contractor or subcontractor has completed all the work on the public work for which the contractor or subcontractor was engaged. (See NAC 338.098)

c. LATE SUBMISSION

It makes no difference who submitted the certified payroll late. If the certified payroll is submitted late, it can result in a forfeiture being assessed pursuant to NRS 338.060(3). The forfeiture goes to the awarding body and is withheld from funds due the prime contractor. If the late payroll record is one belonging to a subcontractor, the prime contractor may have a remedy available to it under NRS 338.070.

d. NON-PERFORMANCE

For each month after the contractor or subcontractor commences working on the public work in which the contractor or subcontractor does not employ any workers in connection with the public work, the contractor or subcontractor shall, in lieu of submitting a certified payroll record for that month, submit to the awarding body a nonperformance payroll report certifying that the contractor or subcontractor did not employ any workers on the public work during that month. (See NAC 338.098)

A nonperformance payroll report must be completed on a form prescribed by the Labor Commissioner and must be submitted to the awarding body no later than 15 days after the end of a month in which the contractor or subcontractor did not employ any workers on the public work. (See NAC 338.098)

If a contractor or subcontractor engaged on a public work does not employ any workers for 3 consecutive calendar months on the public work, the Labor Commissioner or the awarding body may, as determined is in the best interest of the State, request that the contractor or subcontractor submit a final nonperformance payroll report or other documentation demonstrating that the contractor or subcontractor has completed all the work on the public work for which the contractor or subcontractor was engaged. (See NAC 338.098)

e. DATE STAMP

The public body shall cause to be affixed to each certified payroll report or nonperformance payroll report that the awarding body receives the actual date on which the awarding body received the certified payroll report or nonperformance payroll report. (See NAC 338.100)

f. WHAT NEEDS TO BE REPORTED and CERTIFIED?

1. THE NAME OF EACH WORKER.

2. THE CLASSIFICATION PERFORMED BY EACH WORKER. The classification is based on the type of work actually performed by the worker. Do not rely on titles such as supervisor, assistant, lead man, helper, HVAC, or other terms not included in the Nevada wage determination. The classification listed on a report must be in accordance with the recognized classes of workers, i.e., match an existing classification given the type of work actually performed. (See NRS 338.020)

3. EACH REPORT MUST INCLUDE THE NUMBER OF HOURS WORKED BY EACH WORKER PER DAY ON THE PUBLIC WORK. The report must not include any hours of work performed by the workers on another public work or private project. The hours multiplied by the rate of pay should match the gross wages paid for this job only because, the contractor or subcontractor is certifying what is paid for that worker for that project which is being reported on. If the worker is performing work on multiple prevailing wage projects, individual certified payroll reports/records for those other projects must be submitted. (See NAC 338.094)

g. APPRENTICES: When a contractor or subcontractor first lists an apprentice on a certified payroll report they must submit with that certified payroll report documentation to substantiate that the apprentice is 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. (Emphasis added). A properly enrolled and registered apprentice is exempt from NRS 338.020 to NRS 338.090, inclusive. An apprentice is paid pursuant to the terms of the apprenticeship agreement/standards for the type of work covered by apprenticeship standards. (See NRS 338.080)

Apprenticeship Ratio: Be sure to review the apprenticeship standards to see if they provide for a ratio of apprentices to journeymen. If the ratio is not complied with the apprentice is to be paid at full journeyman rate for the type of work performed. (See NAC 338.0095).

Compliance with NRS section 338.01165 – Apprenticeship Utilization Act (Passed during 2019 Legislative Session) – Ensure the reporting of Apprentices complies with NRS 338.01165 unless a Waiver has been granted by the Labor Commissioner. Apprentices shall be used and reported for at least 10 % of the total hours on vertical construction and 3 % of the total hours for horizontal construction of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work when more than three employees of each a craft are employed at the site of work.

**APPRENTICESHIP UTILIZATION ACT INFORMATION**

[https://labor.nv.gov/Apprenticeship\\_Utilization\\_Act/Apprenticeship\\_Utilization\\_Act/](https://labor.nv.gov/Apprenticeship_Utilization_Act/Apprenticeship_Utilization_Act/)

- h. **BENEFITS:** If the contractor or subcontractor makes contributions as authorized by NRS 338.035 and if any such contributions were made as part of the wages of that worker, an itemization of the contributions must be reported on the certified payroll report. The itemization should be indicated as a dollar per hour amount, rather than a lump sum. That dollar amount is to be paid for each hour worked including for each hour of overtime worked, however, the overtime rate of time and one-half does not apply.

“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. The term includes, without limitation, benefits for a worker that are determined pursuant to a collective bargaining agreement and included in the determination of the prevailing wage by the Labor Commissioner pursuant to NRS 338.030. (See NRS 338.035 and Assembly Bill 190 passed during 2019 Legislative Session)

<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6293/Text>

A contractor or subcontractor may, 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. A contractor or subcontractor who, 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. (See NRS 338.035)

“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.

“Defined contribution plan” has the meaning ascribed to it in 29 U.S.C. § 1002(34).  
<http://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter18&edition=prelim>

The provisions of NRS sections 338.030 and 338.035 and AB 190 relating to the reporting of annualized bona fide fringe benefits 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.

<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6293/Text>

i. **IDENTIFICATION OF WORKERS**

Each contractor and subcontractor engaged on a public work shall keep or cause to be kept an accurate record showing, for each worker, the name of the worker, the occupation of the worker, if the worker has a driver’s license or identification card, and an indication of the state or other jurisdiction that issued the license or card. The above information must be included on the certified payroll record. (See NRS 338.070)

An additional record, that is confidential, must be maintained that shows for each worker employed in connection with the public work, which has a driver's license or identification card, the name of the worker; the driver's license number or identification card number of the worker, and the state or other jurisdiction that issued the license or card. To the extent that social security numbers are still being used, it is recommended that only the last four digits be used. (See NRS 338.0117)

- j. PUBLIC BODY'S RIGHT TO OBTAIN RECORDS: A contractor or subcontractor engaged on a public work shall provide to the public body payroll records and any other records deemed necessary to verify the accuracy of information contained in any certified payroll report. This information is to be provided upon the request of the public body. The contractor and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work. (See NRS 338.070; NAC 338.094)
- k. RECORDS OPEN TO INSPECTION: If the awarding body uses an electronic system for submission of payroll reports by contractors and subcontractors, the awarding body shall make the payroll reports and payroll records it has received pursuant to NRS 338.070 and NAC 338.092, 338.094 and 338.096 available electronically to the Labor Commissioner and the public as soon as practicable after they are received by the awarding body. (See NAC 338.098)

## VI. REVIEW OF CERTIFIED PAYROLL REPORTS/RECORDS:

- a. OBLIGATION OF PUBLIC BODY TO REVIEW: Any public body awarding a contract shall investigate possible violations of the provisions of NRS 338.010 to NRS 338.090, inclusive, and NAC 338.005 to NAC 338.125, inclusive, committed during the execution of the contract. They must also determine whether a violation has been committed and inform the Labor Commissioner of any such violations. (See NRS 338.070)

**\*\*\*Determinations for late Certified Payroll Reports/Records where the Awarding Body is waiving the forfeiture, reversing a Determination, and/or there is no Objection should not be sent to the Office of the Labor Commissioner. If there is an Objection or other justification for sending to the Office of the Labor Commissioner, it is recommended that the Awarding Body contact the Office of the Labor Commissioner to discuss. (See NAC 338.096)**

- b. TIMELINESS: The monthly report/record, which will consist of two or more reports/records, needs to be received by the awarding body by the 15<sup>th</sup> of the following month in which the workers are paid.
- c. DATE STAMP: The public body awarding the public work is required to date stamp each report/record with the date that the report is received by the awarding body. This date stamp is needed as a means for the awarding body to identify when the report/record was received. The awarding body can then investigate for violations and issue determinations. If it is determined a violation occurred due to late filing, forfeitures must be calculated by the awarding body by way of a determination. The assessment of forfeitures can deter future late filing of certified payroll reports/records. (See NRS 338.060; NAC 338.100)

- d. **WHAT TO EXAMINE:** Examination of the certified payroll reports/records are to be made at reasonable times to ensure compliance with the provisions of NRS 338.010 to NRS 338.090, inclusive, and NAC 338.005 to NAC 338.125, inclusive. Such an examination should include such items as follows:

All workers performing work on-site are to be reported on the certified payroll report/record based on the following: (1) The type of work actually performed by the worker; (2) The number of hours worked per worker per day on this project only; and (3) The work and pay reported are in accordance with the recognized classes of workers. The certified payroll report/record must not include any hours of work performed by the workers on another public work or private project. (See NAC 338.094)

#### 1. COMPLETENESS AND ACCURACY:

Each report/record must supply adequate information as follows:

- Identify the project
- The period of time for which the report/record was submitted
- The public body that is to receive the report/record
- A brief description of the project
- The PWP Number
- The prime contractor or subcontractor for whom the workers have been reported
- The name of the prime contractor awarded the project
- The name of each on-site worker
- Apprentices and apprentice verification
- The days and hours worked
- The classification worked for each hour
- The rate paid for each hour
- The total hours worked on the project
- The gross pay for the period on this project only
- The net paid
- Itemization of contributions pursuant to NRS 338.035.

Any payroll report/record submitted should be sufficiently complete and accurate so that anyone who reviews the certified payroll report/record can determine whether: (1) Each worker has been paid the appropriate rate for the classification worked; (2) Paid for all hours worked; and (3) To ensure overtime is paid correctly when it applies.

Make sure that the reported classifications are in accordance with the jurisdictional classes recognized in the locality where the work is performed. This means each classification listed must be a classification listed in the Nevada prevailing wage determination that applies to the project. For example, there are no classifications such as a lead man, HVAC repair person, tractor operator, carpenter helper, or electrician assistant.



## 2. CHECK TO SEE IF THE WORKER IS PAID THE REQUIRED PREVAILING RATE:

Every public work contract must contain, in express terms, the rate of wages to be paid to each of the classes of mechanics and workers. The applicable prevailing wage rates must be posted on the site of the public work in a place generally visible to the workers. (See NRS 338.020)

If the rates that are posted or that are contained in the contract are incorrect, it does not mean the incorrect rates apply. Mistakes do not change the duty to pay in compliance with Nevada law. If both Federal Davis Bacon rates and Nevada prevailing rates apply to a project, typically the greater of the two rates is to be paid. However, Nevada does not enforce Federal Davis Bacon rates. The Office of the Labor Commissioner can only enforce the portion of the rates that apply under Nevada law.

3. "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. The term includes, without limitation, benefits for a worker that are determined pursuant to a collective bargaining agreement and included in the determination of the prevailing wage by the Labor Commissioner pursuant to NRS 338.030. (See NRS 338.035 and Assembly Bill 190 passed during 2019 Legislative Session)

- e. WHAT RATE TO APPLY: The worker must be paid the rate for the type of work actually performed. Misclassifications are not uncommon. Again, look at the type of work performed and not just the classification listed. For example, a worker may say that he/she is a cement mason and that they are being paid as a cement mason. In reality, they may be performing other types of work. If they are building forms more than one board high, they may be performing the work of a carpenter. If they are tying wire mesh or rebar used to reinforce concrete, they should be paid as an iron worker. If you are uncertain as to what classification a particular job may be, you may contact the Office of the Labor Commissioner for clarification.

Compare the rates reported on the certified payroll to the required rate. The actual rate paid is determined by adding the rate paid directly to the worker plus any contributions made to a third person pursuant to a fund, plan, or program in the name of the worker.

- Assembly Bill 136, passed during the 2019 Legislative Session, eliminates the 90% Nevada System of Higher Education (NSHE) and School Construction Rate – effective July 1, 2019. AB 136 is not retroactive and does not apply to jobs awarded prior to July 1, 2019.
- The bids submitted in response the solicitation and/or project should represent and be reflective of the work to be performed. For example, a contract for Electrical Work should contain bids that reflect Prevailing Wage Rates for Electricians and similar Electrical Job Classifications.
- Bids that have multiple Job Classifications combined as a single rate or multiple rates should be reviewed to determine if they are in fact responsive.  
For Example: Laborer/Electrician/Operator is not a Job Classification.

- f. **DAILY OVERTIME:** Review for proper payment of overtime. The overtime rate is 1 1/2 times the regular rate paid to the worker. Overtime is to be paid for every hour worked in excess of 8-hours in a workday. Overtime is to be paid at the rate of work being performed when overtime became due.

A workday is defined as a period of 24 consecutive hours that begins when the employee begins work. This can be confusing, so when determining overtime pay, keep the following things in mind:

- Once the 24-hour workday begins it is consecutive and lasts a full 24 hours.
- The 24-hour workday only resets on a new pay period or if there is a later start time.
- No 24-hour workday can overlap another, although there may be a gap between workdays.
- Generally, overtime for work over 8-hours in a workday will occur before overtime over 40-hours in a work week.

Zone Rates are added to the hourly rate, and then overtime is calculated on that rate.

Premium Pay for work in excess of a shift of 8-hours or 12-hours or such other time increment set forth in the Collective Bargaining Agreement or on a weekend or holiday. (See NRS 338.030)

- g. **DAILY OVERTIME EXCEPTION:** There is one exception to the overtime pay of work in excess of eight hours in a workday. If the worker and employer mutually agree to the employee working a scheduled 10-hours per day, for four calendar days (4/10's), within any scheduled week of work. (See NRS 338.020)

This is a very narrow definition. The scheduling of four-tens (4/10's) must be mutual. The worker must work the scheduled 4/10's. That means 10-hours each of the four days. No more, and no less. If these conditions do not occur, then overtime must be paid to the worker for all work in excess of 8-hours in a workday. (See NRS 338.020)

- h. **WEEKLY OVERTIME:** Nevada requires that overtime be paid for all hours worked in excess of 40-hours in any scheduled week of work. A week of work is defined as seven consecutive periods of 24-hours. The week of work may begin on any day, and at any hour of the day. (See NRS 338.020)

- i. **POTENTIAL ISSUES:** The certified payroll report is not to include days and hours worked on other jobs. However, a worker is to be paid for all time worked and applicable overtime. How does the public body know what hours the worker may have worked on the projects? It may be evident from the certified payroll report or you may find out by speaking with the workers. If that occurs and the worker believes he/she is due overtime, please have them contact our office and we will work with the awarding/public body to investigate all hours worked on all projects.

## **VII. WHO MUST BE PAID THE PREVAILING RATE:**

- a. **WORKERS, MECHANICS, AND LABORERS; SKILLED, SEMI-SKILLED, OR UNSKILLED** in the performance of work at the site of the work that is necessary to the construction of the public work are to be paid the applicable prevailing wage rate for the type of work performed, regardless of skill level, license held, and regardless of whether that worker is employed lawfully or unlawfully. This does not include an instance in which a person provides services to the

prime contractor or a subcontractor at the site of a public work for a limited period of time if the services provided: (1) Do not include work typically performed by a recognized class of workers; and (2) Are incidental or ancillary to the construction, repair or reconstruction of the public work. (See NRS 338.040; NAC338.009) (See Advisory Opinion AO-2015-05)  
<http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20SERVICE%20PROVIDER%20AO%202015%2005.pdf>

- b. FOREMAN AND GENERAL FOREMAN: A foreman is defined as a person who works with and supervises one or more journeymen performing a craft or type of work. A general foreman is defined as 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. (See NAC338.015)

## VIII. EXCEPTIONS:

- APPRENTICES: Workers who are enrolled in a bona fide apprenticeship program and registered with the Nevada Apprenticeship Council are exempt from being paid the prevailing wage rate.

When a contractor or subcontractor first lists an apprentice on a certified payroll report/record, the contractor or subcontractor must submit with that certified payroll report/record documentation to substantiate that the apprentice is registered in a bona fide apprenticeship program and registered with the Nevada Apprenticeship Council.

The apprenticeship program standards/agreement will state what rate the apprentice is to be paid at and the rate can be set by a Collective Bargaining Agreement. Most apprenticeship program standards will provide a ratio of apprentices to journeymen and the employer must comply with that ratio. Lastly, the apprentice must be performing the type of work that is within the type of apprenticeship he/she is enrolled. For example, a laborer apprentice is not to perform carpenter, electrical, iron work, etc. If the employer does not comply with all these requirements the worker is to be paid the full journeyman rate for the type of work performed.

Compliance with NRS section 338.01165 – Apprenticeship Utilization Act (Passed during 2019 Legislative Session) – Ensure the reporting of Apprentices complies with NRS 338.01165 unless a Waiver has been granted by the Labor Commissioner. Apprentices shall be used and reported for at least 10 % of the total hours on vertical construction and 3 % of the total hours for horizontal construction of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work when more than three employees of each a craft are employed at the site of work.

- DESIGN PROFESSIONAL: The exception being a design professional. A design professional is defined as a person who is licensed as a professional engineer or a professional land surveyor, pursuant to chapter 625 of the NRS; a person who holds a certificate of registration to engage in the practice of architecture, interior design, or residential design, pursuant to chapter 623 of the NRS; or a person who holds a certificate of registration to engage in the practice of landscape architecture, pursuant to chapter 623A of the NRS. (See NRS 338.010(23); NRS 338.010(7))

## IX. REVIEWING CERTIFIED PAYROLL REPORTS/RECORDS:

To catch a potential problem before it occurs, it is a good idea to review the certified payroll reports/records. Below are some examples of things to look out for.

- An employee worked more than 8 hours a day, but no overtime was paid. Perhaps they are working four-tens (4/10's). Make sure the employee did, in fact, work four, 10-hour shifts.
- The hours worked do not match what the employee was paid.
- The employee appears to be underpaid. There are several instances that would cause the employee to appear to be underpaid. The employee could be an apprentice. Make sure that the proper apprentice documents are on file. The calculations could be incorrect; review your numbers. Additionally, check to make sure that contributions were considered.
- You get a report from a subcontractor who has not been reported properly to the public body. Get the paperwork in order and notify the contractor, who failed to report their subcontractor, that a violation occurred.
- Look for classifications that are not in accordance with recognized classifications. You may get a report saying owner/operator and no further information. Owner/operators are not exempt from being reported and being paid the prevailing rate. You may see a worker reported as a supervisor. Again, look at the type of work actually performed rather than the title given to the worker. Many classifications require the payment of the prevailing rate to foremen and general foremen. See November 10, 2015, Advisory Opinion – Certified Payroll for Owner-Operators. <http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20OWNER%20OPERATORS%20AO%202015%2006.pdf>
- The type of work reported for that subcontractor should match the work reported on the certified payroll report. When a subcontractor is reported, the report is to include the scope of work to be performed by the subcontractor in connection with the public work. If the subcontractor is reported as performing iron work but the certified payroll reports indicate labors and carpenters, there may be a potential issue. See May 9, 2018, Advisory Opinion – Prevailing Wage Rate of Multiple Job Classifications. <http://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20Prevailing%20Wage%20Rate%20of%20Multiple%20Job%20Classifications.pdf>
- Check for a disproportionate mix of workers reported. If a contractor or subcontractor is framing a building and lists half of its workers as laborers, there may be a problem.
- If field reports or observations indicate work outside normal hours, perhaps overtime is being worked. This should be indicated on the certified payroll reports.
- If workers appear to be working 8-hour days or full weeks, but only partial days and weeks are being reported, further review might be needed.

**X. INVESTIGATION OF POSSIBLE VIOLATIONS:**

a. WHAT TRIGGERS AN INVESTIGATION BY AN AWARDING BODY?

- SELF AUDIT: A public body awarding a contract shall investigate possible violations and determine whether a violation has been committed and inform the Labor Commissioner of any such violations. Such an investigation may be initiated by the awarding body.

1. Concerns identified during the review of certified payroll reports.
2. Concerns expressed by or to the awarding body's project manager.
3. Calls or letters received by the awarding body.

**\*\*\* The Awarding Body should provide notice to the Office of the Labor Commissioner of any Self Audits to obtain technical assistance as needed.**

- WAGE CLAIMS: A wage claim is submitted by an individual who maintains that they performed work on a prevailing wage project. The wage claim provides specific details as to the scope of work performed, the actual wages paid, and classification of work that individual believes they performed. Such a claim may be for unpaid wages, misclassification, unpaid overtime, and/or a combination of alleged violations.

**\*\*\* The Awarding Body should provide notice to the Office of the Labor Commissioner of any Wage Claims prior to investigating.**

- THIRD PARTY COMPLAINTS: A third party complaint is generally filed against a specific contractor performing work on a prevailing wage project. The allegations may be made on behalf of an individual worker or a group or class of employees. (See NAC 338.105 and NAC 338.107)

**\*\*\* The Awarding Body should provide notice to the Office of the Labor Commissioner of any Third-Party Complaints prior to investigating.**

- COMMON REASONS FOR WHICH COMPLAINTS/WAGE CLAIMS ARE FILED:

1. Misclassification of the worker or apprentices.
2. Mistaken belief that the worker is not subject to payment of prevailing wages for work performed.
3. Failure to pay overtime.
4. Failure to meet the applicable journeyman to foreman ratio.
5. Failure to meet the applicable apprentice to journeyman ratio.
6. Failure to remit payment for benefits to the third-party administrator, fund, plan, or program.
7. Using impermissible benefits to meet the prevailing wage rate.
8. Unauthorized deductions.
9. Failure to comply with NRS 338.01165 – Apprenticeship Utilization Act.

b. PRELIMINARY STEPS IN CONDUCTING AN INVESTIGATION

1. DETERMINE JURISDICTION:

- ❖ Was the project a "public work" owned by this awarding body?
- ❖ Was the worker, or class of worker, subject to the payment of prevailing wage?

**\*\*\*JURISDICTIONAL ISSUES: Before initiating an Investigation involving the assignment of work pursuant to a Collective Bargaining Agreement, the Awarding Body should contact the Office of the Labor Commissioner to determine if jurisdiction is proper.**

2. COMPILE ALL NECESSARY INFORMATION: While the information necessary for a complete and comprehensive investigation will vary depending upon the issue(s) involved, most will entail a review of the following:
    - a. The complaint/claim received.
    - b. Copies of the applicable certified payroll reports for the contractor/time in question.
    - c. Daily reports maintained by the awarding body's project manager and maintained by the prime contractor.
    - d. Copies of the applicable prevailing wage rate determination for the location and time in question.
    - e. Copies of workers classification descriptions for any possible job classification at issue.
    - f. A signed copy of the public works contract, with special attention to the scope of work described in the contract.
    - g. All applicable time and payroll records for the identified contractor. This will include, but not be limited to: timecards, cancelled checks, payroll journals, and supporting documentation applicable to the payment of benefits to third party administrators.
    - h. Pay stubs and time records maintained by the worker(s) in question.
  3. CONTACT THE CONTRACTOR INCLUDING PRIME/GENERAL CONTRACTOR AND/OR SUBONTRACTOR.
    - ❖ At the very onset of the investigation, advise both the contractor and prime contractor of the nature and scope of the investigation and your expectation of cooperation throughout the process.
    - ❖ Obtain all contact information necessary to conduct the investigation. This will include the names, addresses, titles, and responsibilities of individuals having any authority with the project in question.
    - ❖ Request any supporting documentation that will assist in your investigation.
  4. EMPLOYEE INTERVIEWS.
    - ❖ At the very onset of the investigation, advise the worker/claimant of the nature and scope of the investigation and your expectation of cooperation throughout the process.
    - ❖ Do not limit the investigation to the claimant alone. If an issue affects one worker, very often the same issue will affect other workers on the projects.
    - ❖ Ask what they were paid and what deductions were taken out?
  5. IDENTIFY, CONTACT AND INTERVIEW IMPARTIAL OR OTHER WITNESSES.
    - ❖ Interview any individual that may be able to provide pertinent details regarding the case. This may include project managers, supervisors, foremen, and/or other individuals working on the project site. Depending upon the issue being investigated, this may also include individuals responsible for payroll accounting, purchasing, and third-party administrators.
  6. INVESTIGATION TIMELINE:
    - ❖ Pursuant to the provisions of NAC 338.110, *all investigations by the awarding body must be completed within "30 days unless an additional period of time is approved by the Labor Commissioner."*
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- ❖ If during the investigative process it becomes apparent that a final written determination will not be completed with 30 days of receipt of that claim or complaint, submit a written request to the Labor Commissioner, or his designee, requesting an additional period of time to complete the investigation. Be specific as to how much time will be needed, as well as the reason for the delay. An extension of up to 30 days may be granted at a time.
- ❖ The failure of any awarding body to complete their investigation in the time required could result in the assessment of an administrative fine of up to \$5,000.00 by the Labor Commissioner. (See NRS 338.015)

c. DETERMINATION - At the conclusion of the investigation, the awarding body will issue a written Determination containing their findings. That Determination will include:

**\*\*\* Determinations for late Certified Payroll Reports/Records where the Awarding Body is waiving the forfeiture, reversing a Determination, and/or there is no Objection should not be sent to the Office of the Labor Commissioner**

1. A finding as to whether a violation of NRS Chapter 338 occurred and a statement of the facts and evidence that support that finding. ***The Determination must include the information and documentation required pursuant to NAC section 338.110, subdivision (6).***
2. IF A VIOLATION OCCURRED:
  - ❖ Describe the nature of the violation. Make specific reference to NRS/NAC provision.
  - ❖ If back wages are due to a worker(s), include the amount that is due to the worker and how it was calculated. (Very often, a spread sheet may be attached to help serve this purpose.)
  - ❖ Please ensure that the amounts in the attached spreadsheet and in the Determination are accurate and consistent.
  - ❖ Identify any forfeiture or penalty amount that is being assessed along with how that amount was calculated.
  - ❖ If an administrative penalty and disqualification is included in a Determination, state the specific grounds and facts that warrant such a request and the opportunity for a Hearing.
  - ❖ Include in the Determination, notice of the appeal rights of any impacted party.

***For your use, here is SAMPLE NOTICE language that must be included in any Determination issued by an Awarding Body in the State of Nevada. Please ensure that ALL parties are copied on the determination. This includes the Prime Contractor, all Subcontractors, and the claimant(s)/complainant(s).***

“Pursuant to the provisions of Nevada Administrative Code (NAC) 338.110, a person who is served a copy of this Determination and who is aggrieved by the Determination may file a written Objection with the Office of the Labor Commissioner within 15 days after the date of service of the Determination. The Objection must include a statement of the grounds for the objection and evidence substantiating the Objection. The Objection must be submitted to:”

**[INSERT THE NAME AND ADDRESS OF THE CONTACT PERSON FROM THE OFFICE OF THE LABOR COMMISSIONER]**

In addition, please submit a copy of your Objection, with attachments to:

**[INSERT THE NAME AND ADDRESS OF THE CONTACT PERSON FROM THE AWARDING BODY]**

If the Objection is requesting that the Awarding Body review additional information and/or documentation, then upon receipt of the Objection, the Awarding Body should consider whether additional information and/or documentation should be reviewed. If the review changes the outcome of the Determination, the Awarding Body should notify the Office of the Labor Commissioner as soon as possible.

\*If the Objection does not satisfy the requirements, or if an Objection is not filed with the Office of the Labor Commissioner in a timely manner, the Determination of the **[NAME OF AWARDING BODY]** may be confirmed as a Final Order of the Labor Commissioner.

- d. ASSESSMENT OF ADMINISTRATIVE PENALTIES/DISQUALIFICATION – If, because of the investigation, it becomes apparent that the actions of the contractor or subcontractor warrant disqualification pursuant to the provisions of NRS 338.017, the assessment of administrative penalties (NRS 338.015 up to \$5K per violation) and disqualification must be stated in the Determination. If such sanctions are sought, include a detailed description of the actions or behavior of the contractor or subcontractor in that written Determination.
- e. INVESTIGATIVE COSTS – Pursuant to the provisions of NRS 338.060(7), an awarding body may seek reimbursement for investigative costs. If such costs are sought, include that request in the written Determination along with a clear and concise statement describing how such costs were calculated.
- f. RETENTION AND PAYMENT INFORMATION - Please also include the following:  
(1) Amount of Retention being held; and (2) Payment information. See link below.  
<http://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/2018%20Awarding%20Bodies%20Requirement%20for%20Determinations.pdf>

#### **XI. RESPONSIBILITIES OF THE CONTRACTORS:**

- The general contractor has 10-days after the subcontractor commences work to report the Subcontractor to the awarding body and the Labor Commissioner's Office. The Labor Commissioner's Office has forms to be used for reporting subcontractors at [www.labor.nv.gov](http://www.labor.nv.gov). Failure to provide this information in a timely manner may be cause for the imposition of administrative penalties pursuant to NRS section 338.015.
- In accordance with NRS 338.070(4-6) contractors engaged on public works projects must submit the payroll reports within 15-days after the end of the month. A statement of compliance must be completed for each payroll report submitted. The nonperformance forms must be completed for weeks when no work is done by the contractor or subcontractor.
- A general contractor is responsible for wages of its workers and those of the subcontractors. Pursuant to NRS 608.150, the general contractor is responsible for all labor wages incurred on the public works project(s) and private projects.
- Apprenticeship Utilization Act – NRS 338.01165. The contractor/subcontractor must comply with the provisions of NRS 338.01165 – Apprenticeship Utilization Act.  
[https://labor.nv.gov/Apprenticeship Utilization Act/Apprenticeship Utilization Act/](https://labor.nv.gov/Apprenticeship%20Utilization%20Act/Apprenticeship%20Utilization%20Act/)



- The contractor and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work.
- The Labor Commissioner, or a person designated by the Labor Commissioner, may enter any public or private works or place of employment at any reasonable time to gather facts and statistics and make a record thereof.

## **XII. RESPONSIBILITIES OF THE OFFICE OF THE LABOR COMMISSIONER:**

### **a. ESTABLISHING THE PREVAILING WAGE RATE**

1. SURVEY – Each odd-numbered year, in accordance with NRS sections 338.025 and 338.030, the Office of the Labor Commissioner conducts a survey for construction work performed in the State of Nevada. The survey includes commercial hours worked between July 1 of the previous calendar year and June 30 of the current year. Surveys should be submitted by July 15th of the surveyed year to be counted as part of the surveys considered to establish the Prevailing Wage Rate for that year, and published October 1<sup>st</sup>.

NRS 338.025 (Senate Bill 243 passed during 2019 Legislative Session) now establishes Four Regions for Prevailing Wage Rates: Two Urban Regions – Clark County and Washoe County; and Two Rural Regions – Remaining Counties in Southern Nevada and Remaining Counties in Northern Nevada.

<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6411/Text>

2. COLLECTIVELY BARGAINED RATES – NRS 338.030 (Assembly Bill 190 passed during the 2019 Legislative Session) – “If the Labor Commissioner determines pursuant that the prevailing wage for a craft or type of work is a wage that has been collectively bargained, the Labor Commissioner shall: (a) Include in his or her determination of that prevailing wage any compensation in addition to the basic hourly wage or benefit for the craft or type of work required to be provided by the collective bargaining agreement, including, without limitation, premium pay for hours worked in excess of a shift of 8 hours or 12 hours or such other time increment set forth in the agreement or on a weekend or holiday and zone pay. As used in this paragraph, “zone pay” means additional pay for performing work at a work site that is in a zone established in a collective bargaining agreement. (b) Issue an amendment to the determination of the prevailing wage for the craft or type of work if the collective bargaining agreement provides for an increase in the wage before the next determination of that prevailing wage by the Labor Commissioner.”  
<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6293/Overview>
3. PUBLICATION: The prevailing wages for the upcoming year are posted by Office of the Labor Commissioner in late September to provide for corrections and objections. The rates are effective October 1st through September 30th of the next two years and may be amended in an even numbered year if certain conditions are met. (See NRS 338.030)
4. OBJECTIONS TO PREVAILING WAGE RATES AND POTENTIAL ORRECTIVE ACTION AND AMENDMENTS: Within 30 days after the wages are published a public body or other persons entitled to be heard pursuant to NRS 338.030(5), may submit an objection with evidence in substantiate that a different wage prevails in a region.

- b. ACCEPTANCE/INITIAL REVIEW OF A PREVAILING WAGE CLAIM/COMPLAINT - A prevailing wage complaint or wage claim may be filed in accordance with NAC sections 338.105 and 338.107. [Complaint Information for Contractors and Awarding Bodies \(nv.gov\)](#)  
The complaint must include the following information:
1. The name and contact information of the person or entity making the complaint.
  2. The name and contact information of the person or entity who is alleged to have committed the violation.
  3. A statement containing the details of the violation and the statutes allegedly violated.
  4. The remedy requested in the complaint.
  5. Signature certification of the person making the complaint.
  6. Service upon the entity alleged to have committed the violation.
- c. LIMITATION ON ACTIONS: The Commissioner will not accept a complaint submitted pursuant to this section that is based on an act or omission that occurred more than 24-months before the date on which the complaint is filed with the Commissioner. (See NAC 338.107)
- d. DEFAULT DECISION: Failure to file an answer to a complaint pursuant to Section 2 of “Adopted Regulation of The Labor Commissioner” – LCB File No. R018-18, approved by the Legislative Commission on June 5, 2020, may result in a default decision being issued by the Labor Commissioner. 1. Within 15 days after being served a complaint pursuant to NAC 338.107, the person alleged to have committed the violation which is the subject of the complaint shall file an answer to the complaint with the Labor Commissioner and serve a copy of the answer on the complainant, if the identity of the complainant is included in the complaint, and every other person who is a party to the proceeding. 2. Matters that are alleged as an affirmative defense must be separately stated and numbered. 3. If, after reviewing the complaint and answer, the Labor Commissioner determines that further investigation is warranted, the Labor Commissioner will order the awarding body to conduct such further investigation pursuant to NAC 338.110, or the Labor Commissioner will conduct his or her own investigation. Complaints filed against the awarding body for which further investigation is warranted will be investigated by the Labor Commissioner. 4. If no answer is timely filed and served pursuant to subsection 1, the Labor Commissioner will determine that the person alleged to have committed the violation is in default and, within 30 days after the determination of a default, issue a decision and order based solely on the facts as presented in the complaint. A decision issued by the Labor Commissioner pursuant to this subsection constitutes the final order of the Labor Commissioner on the matter. [Complaint Information for Contractors and Awarding Bodies \(nv.gov\)](#)
- e. REFERRAL OF CLAIM/COMPLAINT TO AWARDING/PUBLIC BODY FOR INVESTIGATION:
1. If the awarding body, contractor, or subcontractor named in the complaint filed pursuant to NAC 338.107 file an answer to the complaint, the Labor Commissioner may refer the matter to the awarding body for further investigation.
  2. Awarding bodies must investigate complaints or wage claims pursuant to NAC 338.110. Within 30-days of receipt there must be a determination issued. The awarding body may request additional time to conclude its investigation. This time must be approved by the Labor Commissioner’s Office.
  3. The Office of the Labor Commissioner may also conduct its own investigation pursuant to NAC section 338.114.

f. RECEIPT OF DETERMINATION:

1. Review by the Office of the Labor Commissioner: Upon receipt of a Determination issued by an awarding body, the Office of the Labor Commissioner will review the Determination. At that time, it may be returned to the awarding/public body with directives for further investigation; be modified; be affirmed, with a request for amounts of wages and penalties; set for a hearing; or dismissed due to the Labor Commissioner declining to assert jurisdiction.
2. The awarding body will ensure that all parties were properly served with a copy of the Determination and that proper notice of appeal/objection rights were provided.
3. The Office of the Labor Commissioner may return the Determination for further investigation.
4. If an appropriate Objection is filed by a party to the action, the Office of the Labor Commissioner may forward that Objection to the awarding/public body to review for further investigation.
5. The awarding/public body will ensure that all parties were properly served with a copy of the the Determination and any Amended Determination(s) as applicable and that proper notice of appeal/objection rights were provided.
6. If no Objection to either the Determination or Amended Determination(s) as applicable are filed, the Office of the Labor Commissioner will review the Determination and will issue a Final Administrative Order affirming, modifying, or dismissing the determination issued by the Awarding/public body.

e. HEARING PROCESS – If an appropriate objection has been filed by a party to a prevailing wage claim or complaint, the Labor Commissioner or his/her designee may begin the hearing process.

➤ PRE-HEARING – A formal pre-hearing conference will be scheduled and properly noticed by the Labor Commissioner or their designee. During the prehearing conference, the Labor Commissioner their designee will work with all parties to:

1. Clearly identify any and all issues in dispute.
2. Attempt to reach an appropriate resolution to any and all issues with appropriate guidelines and parameters established by the Labor Commissioner or their designee.
3. If attempts to resolve all matters prove unsuccessful, the Labor Commissioner or their designee may set the matter for Hearing and issue a Notice of Hearing.

➤ FINAL HEARING – Formal Administrative Hearings are conducted by the Labor Commissioner or their designee pursuant to the provisions of NAC 338.116, NRS and NAC Chapter 607 and NRS Chapter 233B. Within 30-days of the conclusion of the hearing, the Labor Commissioner or their designee shall issue a Final Decision and Order.

f. ADVISORY OPINIONS, DECLARATORY ORDERS AND OTHER ASSISTANCE - If a public body, contractor, trade organization/association, etc., is uncertain as to the applicability of public works laws or prevailing wages on a certain project, they may seek formal assistance from the Labor Commissioner. Please remember to include all pertinent information regarding the project including, but not limited to, the total project costs, project location, and a detailed description of the scope and nature of the project. Such requests may be made by:

1. Pursuant to the provisions of NRS 233B.120, file a Petition for Declaratory Order with the Office of the Labor Commissioner.
2. Request an Advisory Opinion from the Labor Commissioner pursuant to NAC 607.650.

# NOTES

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