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for agenda Item 14



NEVADA DEPARTMENT OF
BUSINESS AND INDUSTRY

Office of the Labor Commissioner

Public Works

NRS and NAC Chapter 338

Purpose

This presentation is intended to provide general guidelines to help public bodies and contractors comply with Nevada's prevailing wage laws. This presentation is not intended to be a substitute for Nevada's statutes and regulations.

General Background

- a. “Public work” defined – Any project funded in whole or in part from public money for the “new construction, repair or reconstruction” of a public building, road, utility, etc. (see NRS 338.010(15)) - Project Amount \$250,000
See also Assembly Bill 172

- a. “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(14))

Continued....

- a. Prevailing wages (See also Assembly Bill 172)
- b. Overtime (see NRS 338.020)
 - a. One and a half times the applicable prevailing wage rate for work performed on a public work in excess of 40 hours in a workweek or 8 hours in any workday.
 - b. 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 within a scheduled week of work***. It is important to understand that there must be strict compliance for the “4 10s” exception to apply.

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)

1. Request for PWP number
2. Notification of canceled/delayed public works projects
3. Notice of award for public works projects
4. Notice of completion for public works project
5. Notice of subcontractors

Receipt of Certified Payroll Reports

- a. What is a Certified Payroll Record? (NAC 338.092-338.100)

The certified payroll record is a monthly record. It may be made up of two or more payroll reports.

- b. Submission of certified payroll report: No later than 15 days after the end of the month. (see NRS 338.070)

- c. Late Submission: If the certified payroll is submitted late, it can result in a forfeiture.

Continued...

- a. Non-Performance
- b. Date Stamp
- c. What should be reported and certified?
 - Worker Name
 - Classification
 - Hour Worked
 - Apprentices
 - Benefits
 - Identification of Workers
 - Public Body's Right to Obtain Records

Review of Certified Payroll Reports

- a. Obligation of public body to investigate
- b. Timeliness
- c. Date stamp
- d. What to examine:
 - Completeness and accuracy.
 - If the worker is paid the required prevailing rate.
- e. What rate to apply: The worker must be paid the rate for the type of work actually performed.

Continued.....

- a. Daily Overtime: Over 8hrs in a work day.
- b. Daily Overtime Exception: 4 10's
- c. Weekly Overtime: Over 40 hrs in a work week.

Who must be paid the prevailing wage rate

NAC 338.009 Workers deemed to be employed on public works: Interpretation of certain statutory terms. (NRS 338.012, 338.040)

1. As used in NRS 338.040, the Labor Commissioner will interpret:

(a) “Employed at the site of a public work” to mean the performance of work in the execution of a contract for a public work at the physical place or places at which the work is performed or at which a significant portion of the public work is constructed, altered or repaired if such place is established specifically for the execution of the contract for the public work or dedicated exclusively, or nearly so, to the execution of the contract for the public work.

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

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

Payment of Prevailing Wage Rate Continued

- NAC 338.0095 Workers and apprentices: Payment of applicable prevailing rate of wage for type of work actually performed and in accordance with recognized class of workers; identification of employer. (NRS 338.012, 338.020)
- 1. For the purposes of NRS 338.010 to 338.090, inclusive, and NAC 338.005 to 338.125, inclusive:
 - (a) A worker employed on a public work must be paid the applicable prevailing rate of wage for the type of work that the worker actually performs on the public work and in accordance with the recognized class of the worker; and
 - (b) Each contractor and subcontractor shall be deemed to be the employer of each worker and apprentice who performs work directly for that contractor or subcontractor in the execution of a contract for a public work, whether the worker or apprentice is employed directly by the contractor or subcontractor or is furnished to the contractor or subcontractor by or through another person or entity such as an employee leasing company or equipment rental business.
- 2. Any person employed on a public work as an apprentice or listed on a certified payroll report as an apprentice who is not registered with the Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor and the State Apprenticeship Council must be paid not less than the applicable wage rate for the type of work actually performed by the person and in accordance with the applicable recognized class of workers. Any person designated as an apprentice performing work at the site of a public work who exceeds the ratio of apprentices to journeymen authorized under the registered program of apprenticeship must be paid not less than the applicable wage rate for the type of work actually performed by the person and in accordance with the applicable recognized class of workers.
- Workers who are enrolled in a bona fide apprenticeship program and registered with the Nevada State Apprenticeship Council are exempt from being paid the prevailing wage rate.

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- **EXCEPTION**: 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 NRS338.010(23); NRS338.010(7))

Continued....

- **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)

Reviewing Certified Payroll Reports

- In order to catch a potential problem before it occurs, it is a good idea to review the certified payroll reports.
 - Over 8 hours a day but no overtime was paid
 - Hours worked do not match
 - The employee appears to be underpaid
 - Subcontractors not reported
 - Work reported should match the work reported on the certified payroll report
 - Disproportionate mix of workers reported
 - Work outside normal hours

Investigation of Possible Violations

- a. What Triggers an Investigation by an Awarding Body?
 - Self Audit
 - Wage Claims
 - Third Party Complaints

Continued.....

- a. Steps in Conducting an Investigation
 - a. Preliminary Steps
 - b. Contact the Contractor/Prime Contractor
 - c. Employee Interviews
 - d. Identify, Contact and Interview Impartial Witnesses

- b. 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 Commission.”*

- c. Determination

- d. Assessment of Administrative Fines/Disqualification

- e. Investigative Costs

Responsibilities of the Contractors

- a. Contractors report 10 days after the subcontractor commences work.
- b. Contractors engaged on public works projects must submit the payroll reports within 15 days after the end of the month.
- c. General contractor is responsible for wages.
- d. The contractor and any subcontractor must maintain payroll records.

Responsibilities of The Office of the Labor Commissioner

- a. Establishing the Prevailing Wage Rate
 - Survey
 - Publication
 - Corrective Action
- b. Acceptance/initial review of a prevailing wage claim/complaint
- c. Referral of claim/complaint to awarding body for investigation
 - Notice to awarding body
 - Awarding bodies must investigate complaints or wage claims pursuant to NAC 338.110

Continued.....

a. Receipt of Determination

b. Hearing Process

- Pre-Hearing
- Final Hearing

Thank you

For complete NRS/NAC 338 and contact information visit:
www.laborcommissioner.com



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