

IDEAS FOR CHANGES TO WAGES AND HOURS REGULATIONS (NAC 608)

Section 1. Chapter 608 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to ???, inclusive, of this regulation.

Sec. 2. NAC 608.080 is hereby amended to read as follows:

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

Sec. 3. NAC 608.110 is hereby amended to read as follows:

NAC 608.110 Minimum wage. (NRS 608.250) The minimum wage for an employee in private employment who:

1. Is 18 years of age or older is \$5.15 per hour.
2. Is under 18 years of age is \$4.38 per hour **for the first ninety days of employment and shall be \$5.15 per hour thereafter.**

Sec. 4. NAC 608.115 is hereby amended to read as follows:

NAC 608.115 Payment for time worked. (NRS 607.160, 608.016, 608.250)

1. An employer shall pay an employee for all time worked [by the employee] at the direction of the employer, including time worked [by the employee] that is outside the **employee's regularly** scheduled hours of work [of the employee], **including but not limited to required preparatory activities prior to the beginning of a shift and required clean up activities after the end of the shift.**

2. If an employer pays an employee by salary, piece rate or any other wage rate except for a wage rate based on an hour of time, the employer shall pay [an amount] **a base hourly wage** that is at least equal to the minimum wage when the amount paid to [an] **the** employee [in] **for** a pay period is divided by the number of hours worked by the employee during the pay period **less any amount solely attributable to overtime.** This subsection does not apply to an employee who is exempt from the minimum wage requirement pursuant to NRS 608.250.

3. For the purpose of a claim for wages **filed by individuals paid on an hourly basis**, holidays, vacation days, sick days and any other days that an employee did not actually work are not counted as time worked by the employee.

Sec. 5. NAC 608.125 is hereby amended to read as follows:

NAC 608.125 Compensation for overtime. (NRS 607.160, 608.018)

1. An employer shall not substitute compensatory time in place of a wage payment for overtime that was worked by an employee.
2. **An employer must pay overtime based on the wage rate that is in effect at the time the overtime payment is required and may not average the wage rates of employees who are paid multiple rates during the work day.**

3[2]. If an employee is paid by salary, [piece rate or any other wage rate except for a wage rate based on an hour of time,] the **overtime wages due to employees who are not otherwise exempt from overtime** [rate of compensation] for the purposes of [paragraph (b) of subsection 2 of] NRS 608.018 [is determined by dividing the amount paid to an employee in a week by the number of hours worked by the employee during the week.] **shall be determined as follows:**

- a. **A base hourly wage rate for the week shall be determined by dividing the amount due for the workweek under the salary agreement between the parties by the total number of hours worked during the workweek. If the salary period is longer than a workweek, then the salary period shall be prorated based on the number of weeks in the salary period.**
- b. **If the base hourly wage rate is one and one half times the minimum wage prescribed in NRS 608.250 or more, the employee shall receive an amount equal to the base hourly wage rate for all hours worked plus one half the base hourly wage rate for all hours worked in excess of forty hours in the workweek.**
- c. **If the base hourly wage rate is less than one and one half times the minimum wage prescribed in NRS 608.250, the employee shall receive an amount equal to the base hourly wage rate for all hours worked plus:**
 - 1) **one half the base hourly wage rate for all hours in excess of eight hours in any workday; and**

2) one half the base hourly wage rate for all hours worked in excess of forty hours in the workweek that were not previously counted as being in excess of eight hours in a workday.

4[3]. The Commissioner will refer to 29 C.F.R. §§ 541.1 and 541.2 to determine if an employee is employed in a bona fide executive or administrative capacity for the purposes of paragraph (e) of subsection 2 of NRS 608.018.

NOTE: Don't use citation to federal rules, they change too frequently...list the requirements directly

OVERTIME...4/10s EXCEPTION...SCHEDULE MUST BE WORKED REGULARLY AND CONSISTENTLY

Sec. 6. NAC Chapter 608 is hereby amended by adding the following section:

In addition to the exceptions in NRS 608.018(3), the following types of work are exempt from overtime

(1) Casual babysitters;

(2) Domestic service employees who reside in the household where they work;

(3) Outside salespersons whose earnings are based on commissions;

(4) Employees engaged in an agricultural pursuit for an employer who did not use more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year;

(5) Taxicab and limousine drivers; and

(6) Severely handicapped persons whose disabilities have diminished their productive capacity in a specific job and who are specified in certificates issued by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation.

Sec. 7. NAC Chapter 608 is hereby amended by adding the following section:

Payment for time worked: Sleptime

1. Employees who are required to be at the workplace for a shift of less than 24 hours (ALTERNATIVE: 24 HOURS OR LESS) must be

paid for the entire time as hours worked, even if the employer allows sleep time during the shift.

2. If an employee is required to be at the workplace for a shift of 24 hours or more (ALTERNATIVE: MORE THAN 24 HOURS), the employer may deduct up to eight hours of sleeptime if the following conditions are met:
 - a. The employer and employee have a written agreement allowing the time deduction before the hours are worked;
 - b. The employer provides adequate sleeping facilities;
 - c. Interruptions in sleep are considered hours worked; and
 - d. The employee must get at least five hours of sleep during the sleeptime period.

Sec. 8. NAC Chapter 608 is hereby amended by adding the following section

Payment for time worked: Salaried employees

1. Employees who are paid on a salary basis shall be paid the full amount of the salary for any pay period in which the employee performs any work, regardless of the number of days or hours worked.
1. Employees who are paid on a salary basis do not need to be paid for any workweek in which they perform no work, however, if the employee is ready, willing and able to work, deductions may not be made for time when work is not available.
2. An employer may deduct a pro rata amount from the salary under the following conditions:
 - a. For days not worked prior to commencing employment during the initial week of employment and for days not worked after employment ends during the terminal week of employment;
 - b. The employee is absent from work for one or more full days for personal reasons other than sickness or disability;
 - c. The employee is absent from work for one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;
 - d. To offset amounts employees receive as jury or witness fees, or for military pay;

- e. For penalties imposed in good faith for infractions of safety rules of major significance as long as the penalties are agreed upon beforehand;
 - f. For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;
 - g. For weeks in which an employee takes unpaid leave under the Family and Medical Leave Act; or
 - h. For other agreed upon deductions from the salary agreed upon in writing by both the employer and employee before any deduction is made.
3. Unless otherwise exempted, salaried employees are entitled to compensation for overtime.

Sec. 9. NAC Chapter 608 is hereby amended by adding the following section

Discounting tips prohibited

1. An employer that permits patrons to pay gratuities by credit or debit card shall pay the employees the full face amount of the gratuity that the patron indicated on the credit or debit card slip, without any deductions for any credit or debit card processing fees or costs that the credit or debit card company or financial institution charges to liquidate the tip to cash.

NOTE: TIP POOLING RULES...WYNN SCENARIO

Sec. 10. NAC Chapter 608 is hereby amended by adding the following section

Employee time keeping

1. Employers who use a time clock to track employees' work hours may adjust the time recorded to conform to the employee's regularly scheduled start and stop times provided:
 - a. The policy is clearly written and posted in a visible location adjacent to the time clock;
 - b. The length of time adjusted is no greater than six minutes;
 - c. Employees who clock in or out before their regularly scheduled times have their time adjusted forward to the regularly scheduled time;

- d. Employees who clock in or out after their regularly scheduled times have their time adjusted backward to the regularly scheduled time; and
 - e. A complete accounting of the adjustments for their time is made available to each employee upon request.
2. Employers do not need to report total hours worked per day or for the workweek for salaried employees who are
- a. exempt from overtime; and
 - b. exempt from minimum wage or paid a salary greater than an amount equal to one and one half times minimum wage times seven workdays times twenty four hours per workday (\$1,300.00 per week).
- pursuant to state law.

Sec. 11. NAC Chapter 608 is hereby amended by adding the following section

Overpayment of wages

An employer may make an adjustment for wages previously and erroneously paid without the written consent of the employee provided such adjustment is made within one pay period of the error, the reason and amount of the error are provided to the employee in writing, and the amount of the adjustment does not create an undue hardship on the employee.

Sec. 12. NAC Chapter 608 is hereby amended by adding the following section

Work day and workweek definitions...????? Is there a way to deal with the moving target issue related to daily overtime given the clear language of the statute???