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NRS 338.040 Workmen deemed to be employed on public works.

1. Except as otherwise provided by specific statute, workmen who are:
 - (a) Employed at the site of a public work; and
 - (b) Necessary in the execution of the contract for the public work,
 are deemed to be employed on public works.
 2. The labor commissioner shall adopt regulations to define the circumstances under which a workman is:
 - (a) Employed at the site of a public work; and
 - (b) Necessary in the execution of the contract for the public work.
- [3:139:1937; A 1941, 389; 1931 NCL § 6179.53]—(NRS A 2001, 1147)

ADMINISTRATIVE REGULATIONS.

Interpretation of terms, NAC 338.009

NEVADA CASES.

Meaning of "at the site of the work" under former version of section. Before 2001, NRS 338.040 provided that "[w]orkmen employed by contractors or subcontractors or by public bodies 'at the site of the work' and necessary in the execution of any contract for public works are deemed to be employed on public works." For the purposes of this former version of NRS 338.040, "at the site of the work" did not limit prevailing wage coverage to only those persons performing work at the main project site, but extended such prevailing wage coverage to include persons who were employed at locations other than the main project site, provided that such persons were performing work necessary to the execution of the public works contract in question. *State v. Granite Constr. Co.*, 118 Nev. ___, 40 P.3d 423 (2002)—(Adv. Op. No. 9)

ATTORNEY GENERAL'S OPINIONS.

Truck driver is entitled to the prevailing wage whenever he is on a public work site and delivers materials necessary to the work being performed on the site. A truck driver who delivers materials to a public work site in Nevada must be paid the prevailing wage (see NRS 338.020) for any time that his work satisfies the two-part test set forth in NRS 338.040; i.e., whenever he is both physically on the public work site and the delivery is necessary to the work being performed on the site. AGO 93-01 (3-16-1993)

Rescinded, AGO 95-07 (5-30-1995)

Truck drivers who deliver materials are not entitled to the prevailing wage when they deliver materials to a public works project. Truck drivers who drive trucks to the site of a public work project located in Nevada to deliver materials for immediate use at the site do not have to be paid the prevailing wage in accordance with NRS 338.020. Such drivers are either sellers or suppliers not subject to the prevailing wage requirements. Further, the function of delivering and unloading materials would not constitute work on the job site (see NRS 338.040). AGO 95-07 (5-30-1995)

NRS 338.050 Contractual relationships: Applicability of NRS 338.010 to 338.090, inclusive. For the purpose of NRS 338.010 to 338.090, inclusive, except as otherwise provided by specific statute, every workman who performs work for a public work covered by a contract therefor is subject to all of the provisions of NRS 338.010 to 338.090, inclusive, regardless of any contractual relationship alleged to exist between such workman and his employer.

[4:139:1937; A 1941, 389; 1931 NCL § 6179.54]—(NRS A 2001, 1148)

NRS 338.060 Forfeitures when workmen paid less than designated rates or not reported to public body; forfeiture clause in contracts; regulation establishing sliding scale for penalties; recovery of investigative costs and attorney's fees by labor commissioner.

1. A contractor engaged on public works shall forfeit, as a penalty to the public body in behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each workman employed on the public work:

(a) Is paid less than the designated rate for any work done under the contract, by the contractor or any subcontractor under him.

(b) Is not reported to the public body awarding the contract as required pursuant to NRS 338.070.

The public body awarding the contract shall cause a stipulation to this effect to be inserted in the contract.

2. The labor commissioner shall, by regulation, establish a sliding scale based on the size of the contractor's business to determine the amount of the penalty to be imposed pursuant to subsection 1.

3. If a penalty is imposed pursuant to this section, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the labor commissioner.

[6:139:1937; A 1941, 389; 1931 NCL § 6179.56]—(NRS A 1993, 896; 1997, 3355; 2001, 1148)

ADMINISTRATIVE REGULATIONS.

Penalties, NAC 338.120

NRS 338.070 Investigations by public bodies; withholding of forfeited sums; maintenance and inspection of records regarding employees; penalty for noncompliance.

1. Any public body and its officers or agents awarding a contract shall:

(a) Investigate possible violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the course of the execution of the contract, and determine whether a violation has been committed and inform the labor commissioner of any such violations; and

(b) When making payments to the contractor of money becoming due under the contract, withhold and retain all sums forfeited pursuant to the provisions of NRS 338.010 to 338.090, inclusive.

2. No sum may be withheld, retained or forfeited, except from the final payment, without a full investigation being made by the awarding body or its agents.

3. It is lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the failure of the subcontractor to comply with the terms of NRS 338.010 to 338.090, inclusive. If payment has already been made to the subcontractor, the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

4. The contractor and each subcontractor shall keep or cause to be kept an accurate record showing the name, the occupation and the actual per diem, wages and benefits paid to each workman employed by him in connection with the public work.

5. The record must be open at all reasonable hours to the inspection of the public body awarding the contract, and its officers and agents. The contractor or subcontractor shall ensure that a copy of the record for each calendar month is received by the public body awarding the contract no later than 10 days after the end of the month. The copy must be open to public inspection as provided in NRS 239.010. The record in the possession of the public body awarding the contract may be discarded by the public body 2 years after final payment is made by the public body for the public work.

6. Any contractor or subcontractor, or agent or representative thereof, performing work for a public work who neglects to comply with the provisions of this section is guilty of a misdemeanor.

[7:139:1937; 1931 NCL § 6179.57]—(NRS A 1977, 789; 1985, 274; 1987, 1045; 1989, 464; 2001, 1148)