

SENATE BILL NO. 193—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

FEBRUARY 25, 2015

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing the payment of minimum wage and compensation for overtime. (BDR 53-989)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to employment; revising provisions governing the payment of minimum wage and compensation for overtime; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Labor Commissioner, in accordance with federal law, to establish by regulation the minimum wage which may be paid to an employee in private employment in this State. (NRS 608.250) **Section 1** of this bill requires the Labor Commissioner, in adopting those regulations, to ensure that the minimum wage for the employee is \$9 per hour, if the employer of the employee does not offer health insurance for the employee in accordance with regulations adopted by the Labor Commissioner.

The Fair Labor Standards Act of 1938 requires that compensation for overtime be paid to certain employees for hours worked in excess of 40 hours in any week of work. (29 U.S.C. § 207) Under existing Nevada law, certain employees, including certain classified employees of this State, certain employees of contractors working on public works projects and certain other employees of private employers, are entitled to compensation for overtime at a rate of 1 1/2 times an employee's regular wage rate for any hours worked in excess of 8 hours in any workday or in excess of 40 hours in any week of work. (NRS 284.180, 338.020, 608.018) **Sections 2-4** of this bill remove the provisions which require payment of compensation for overtime for hours worked in excess of 8 hours in any workday, while retaining the provisions which require payment of compensation for overtime for hours worked in excess of 40 hours in any week of work.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 608 of NRS is hereby amended by adding thereto a new section to read as follows:

In adopting the regulations establishing the minimum wage which may be paid pursuant to NRS 608.250, the Labor Commissioner shall ensure that the minimum wage for each employee to which those regulations apply is at least \$9 per hour, if the employer of the employee does not offer health insurance for the employee in accordance with regulations adopted by the Labor Commissioner.

Sec. 2. NRS 608.018 is hereby amended to read as follows:

608.018 1. ~~{An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works:~~

~~—(a) More than 40 hours in any scheduled week of work; or
—(b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.~~

~~—2. An}~~ *Except as otherwise provided in subsection 2, an employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee* ~~{who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250}~~ *works more than 40 hours in any scheduled week of work.*

~~{3.}~~ *2.* The provisions of ~~{subsections}~~ *subsection 1* ~~{and 2}~~ do not apply to:

(a) Employees who are not covered by the minimum wage provisions of NRS 608.250;

(b) Outside buyers;

(c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than 1 month;

(d) Employees who are employed in bona fide executive, administrative or professional capacities;

(e) Employees covered by collective bargaining agreements which provide otherwise for overtime;

(f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended;

(g) Employees of a railroad;



- (h) Employees of a carrier by air;
- (i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan;
- (j) Drivers of taxicabs or limousines;
- (k) Agricultural employees;
- (l) Employees of business enterprises having a gross sales volume of less than \$250,000 per year;
- (m) Any salesperson or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment; and
- (n) A mechanic or worker for any hours to which the provisions of subsection 3 or 4 of NRS 338.020 apply.

Sec. 3. NRS 284.180 is hereby amended to read as follows:

284.180 1. The Legislature declares that since uniform salary and wage rates and classifications are necessary for an effective and efficient personnel system, the pay plan must set the official rates applicable to all positions in the classified service, but the establishment of the pay plan in no way limits the authority of the Legislature relative to budgeted appropriations for salary and wage expenditures.

2. Credit for overtime work directed or approved by the head of an agency or the representative of the head of the agency must be earned at the rate of time and one-half, except for those employees described in NRS 284.148.

3. Except as otherwise provided in subsections 4, 6 ~~6, 7~~ and ~~9, 1~~ 8, overtime is considered time worked in excess of ~~8~~:

- ~~—(a) Eight hours in 1 calendar day;~~
- ~~—(b) Eight hours in any 16-hour period; or~~
- ~~—(c) A) a 40-hour week.~~

4. Firefighters who choose and are approved for a 24-hour shift shall be deemed to work an average of 56 hours per week and 2,912 hours per year, regardless of the actual number of hours worked or on paid leave during any biweekly pay period. A firefighter so assigned is entitled to receive 1/26 of the firefighter's annual salary for each biweekly pay period. In addition, overtime must be considered time worked in excess of:

- (a) Twenty-four hours in one scheduled shift; or
- (b) Fifty-three hours average per week during one work period for those hours worked or on paid leave.

➤ The appointing authority shall designate annually the length of the work period to be used in determining the work schedules for such firefighters. In addition to the regular amount paid such a firefighter for the deemed average of 56 hours per week, the firefighter is entitled to payment for the hours which comprise the difference between the 56-hour average and the overtime threshold



of 53 hours average at a rate which will result in the equivalent of overtime payment for those hours.

5. The Commission shall adopt regulations to carry out the provisions of subsection 4.

~~6. [For employees who choose and are approved for a variable workday, overtime will be considered only after working 40 hours in 1 week.~~

~~—7.] Employees who are eligible under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., to work a variable 80-hour work schedule within a biweekly pay period and who choose and are approved for such a work schedule will be considered eligible for overtime only after working 80 hours biweekly. [except those eligible employees who are approved for overtime in excess of one scheduled shift of 8 or more hours per day.~~

~~—8.] 7.~~ An agency may experiment with innovative workweeks upon the approval of the head of the agency and after majority consent of the affected employees. The affected employees are eligible for overtime only after working 40 hours in a workweek.

~~[9.] 8.~~ This section does not supersede or conflict with existing contracts of employment for employees hired to work 24 hours a day in a home setting. Any future classification in which an employee will be required to work 24 hours a day in a home setting must be approved in advance by the Commission.

~~[10.] 9.~~ All overtime must be approved in advance by the appointing authority or the designee of the appointing authority. No officer or employee, other than a director of a department or the chair of a board, commission or similar body, may authorize overtime for himself or herself. The chair of a board, commission or similar body must approve in advance all overtime worked by members of the board, commission or similar body.

~~[11.] 10.~~ The Budget Division of the Department of Administration shall review all overtime worked by employees of the Executive Department to ensure that overtime is held to a minimum. The Budget Division shall report quarterly to the State Board of Examiners the amount of overtime worked in the quarter within the various agencies of the State.

~~[12.] 11.~~ A state employee is entitled to his or her normal rate of pay for working on a legal holiday unless the employee is entitled to payment for overtime pursuant to this section and the regulations adopted pursuant thereto. This payment is in addition to any payment provided for by regulation for a legal holiday.

Sec. 4. NRS 338.020 is hereby amended to read as follows:

338.020 1. Every contract to which a public body of this State is a party, requiring the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or



unskilled labor in the performance of public work, must contain in express terms the hourly and daily rate of wages to be paid each of the classes of mechanics and workers. The hourly and daily rate of wages must:

(a) Not be less than the rate of such wages then prevailing in the county in which the public work is located, which prevailing rate of wages must have been determined in the manner provided in NRS 338.030; and

(b) Be posted on the site of the public work in a place generally visible to the workers.

2. When public work is performed by day labor, the prevailing wage for each class of mechanics and workers so employed applies and must be stated clearly to such mechanics and workers when employed.

3. Except as otherwise provided in subsection 4, a contractor or subcontractor shall pay to a mechanic or worker employed by the contractor or subcontractor on the public work not less than one and one-half times the prevailing rate of wages applicable to the class of the mechanic or worker for each hour the mechanic or worker works on the public work in excess of ~~1~~:

~~—(a) Forty~~ 40 hours in any scheduled week of work by the mechanic or worker for the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work. ~~1; or~~

~~—(b) Eight hours in any workday that the mechanic or worker was employed by the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work, unless by mutual agreement the mechanic or worker works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.]~~

4. The provisions of subsection 3 do not apply to a mechanic or worker who is covered by a collective bargaining agreement that provides for the payment of wages at not less than one and one-half times the rate of wages set forth in the collective bargaining agreement for work in excess of ~~1~~:

~~—(a) Forty~~ 40 hours in any scheduled week of work. ~~1; or~~

~~—(b) Eight hours in any workday unless the collective bargaining agreement provides that the mechanic or worker shall work a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.]~~

5. The prevailing wage and any wages paid for overtime pursuant to subsection 3 or 4 to each class of mechanics or workers must be in accordance with the jurisdictional classes recognized in the locality where the work is performed.



1 6. Nothing in this section prevents an employer who is
2 signatory to a collective bargaining agreement from assigning such
3 work in accordance with established practice.

