

Amendment No. 733

Assembly Amendment to Senate Bill No. 468 First Reprint (BDR 53-149)

Proposed by: Assembly Committee on Commerce and Labor

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

ALA/WLK



Date: 5/19/2017

S.B. No. 468—Makes changes relating to overtime and the calculation of hours worked for certain domestic service employees. (BDR 53-149)



SENATE BILL NO. 468—COMMITTEE ON
COMMERCE, LABOR AND ENERGY(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON SENIOR
CITIZENS, VETERANS AND ADULTS WITH SPECIAL NEEDS)

MARCH 27, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Makes changes relating to overtime and the calculation of hours
worked for certain domestic service employees. (BDR 53-149)FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

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

AN ACT relating to wages; authorizing a domestic service employee who resides in the household where he or she works and his or her employer to enter into a written agreement to exclude from the ~~employee's~~ wages of the domestic service employee certain specified periods for meals, sleep and other free time; authorizing such an agreement to be used to establish the number of hours worked by the domestic service employee during a pay period; revising provisions relating to the payment of certain compensation for overtime to a domestic service employee who resides in the household where he or she works; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires an employer to pay compensation to an employee for each hour the employee works. (NRS 608.016) Existing federal regulations allow a domestic service employee who resides in the household where he or she works and his or her employer to agree to exclude from the employee's wages certain periods of complete freedom from all duties. (29 C.F.R. § 552.102) **Section ~~HH~~ 1.5** of this bill enacts provisions based on federal regulations to provide that a domestic service employee who resides in the household where he or she works and his or her employer may agree to exclude from the domestic service employee's wages certain periods for meals, sleep and other periods of complete freedom from all duties. Under **section ~~HH~~ 1.5**, if a period excluded from the domestic service employee's wages is interrupted by a call to duty by the employer, the interruption must be counted as hours worked for which compensation must be paid. **Section 1.3 of this bill defines "domestic service employee" to mean an employee who performs any household services in or about a private residence or any other location at which a person resides and includes caregivers and other persons who are employed at a residential facility for groups.**

Existing law requires an employer to pay 1 1/2 times certain employee's regular wage rates for certain periods of overtime. (NRS 608.018) Under existing law, domestic service

employees who reside in the household where they work are exempt from this requirement. (NRS 608.018, 608.250) **Section 2.5** of this bill provides that ~~such an~~ a domestic service employee is exempt from the requirement to pay overtime compensation only if the domestic service employee and his or her employer have agreed in writing to exclude the domestic service employee from the requirement.

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:~~ the provisions set forth as sections 1.3 and 1.5 of this act.

Sec. 1.3. “Domestic service employee” means an employee who performs any household service in or about a private residence or any other location at which a person resides. The term includes, without limitation:

1. Caregivers and other persons who are employed at a residential facility for groups, as defined in NRS 449.017; and

2. Companions, babysitters, cooks, waiters, valets, housekeepers, nannies, nurses, janitors, persons employed to launder clothes and linens, caretakers, persons who perform minor repairs, gardeners, home health aides, personal care aides and chauffeurs of automobiles for family use.

Sec. 1.5. 1. If a domestic service employee resides in the household where he or she works, the employer and domestic service employee may agree in writing to exclude from the ~~employee’s~~ wages ~~of~~ of the domestic service employee:

(a) Periods for meals if the period for meals is at least one-half hour for each meal;

(b) Periods for sleep if the period for sleep excluded from the ~~employee’s~~ wages of the domestic service employee does not exceed 8 hours; and

(c) Any other period of complete freedom from all duties during which the domestic service employee may either leave the premises or stay on the premises for purely personal pursuits. To be excluded from the ~~employee’s~~ wages of the domestic service employee pursuant to this paragraph, a period must be of sufficient duration to enable the domestic service employee to make effective use of the time.

2. If a period excluded from the ~~employee’s~~ wages of the domestic service employee pursuant to this section is interrupted by a call to duty by the employer, the interruption must be counted as hours worked for which compensation must be paid.

3. An agreement pursuant to this section may be used to establish the ~~employee’s~~ total hours ~~employed~~ of employment of a domestic service employee in a pay period in lieu of maintaining precise records of the number of hours worked per day. The employer shall keep a copy of the agreement and indicate in the record of wages pursuant to NRS 608.115 that the ~~employee’s~~ work time of the domestic service employee generally coincides with the agreement. If it is found by the parties that there is a significant deviation from the initial agreement, a separate record must be kept for the period in which the deviation occurs or a new agreement must be reached that reflects the actual facts.

1 **Sec. 1.7. NRS 608.007 is hereby amended to read as follows:**

2 608.007 As used in this chapter, unless the context otherwise requires, the
3 words and terms defined in NRS 608.010 to 608.0126, inclusive, and section 1.3 of
4 this act have the meanings ascribed to them in those sections.

5 **Sec. 2. NRS 608.016 is hereby amended to read as follows:**

6 608.016 Except as otherwise provided in NRS 608.0195 ~~††~~ and section ††
7 1.5 of this act, an employer shall pay to the employee wages for each hour the
8 employee works. An employer shall not require an employee to work without
9 wages during a trial or break-in period.

10 **Sec. 2.5. NRS 608.018 is hereby amended to read as follows:**

11 608.018 1. An employer shall pay 1 1/2 times an employee's regular wage
12 rate whenever an employee who receives compensation for employment at a rate
13 less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works:

14 (a) More than 40 hours in any scheduled week of work; or

15 (b) More than 8 hours in any workday unless by mutual agreement the
16 employee works a scheduled 10 hours per day for 4 calendar days within any
17 scheduled week of work.

18 2. An employer shall pay 1 1/2 times an employee's regular wage rate
19 whenever an employee who receives compensation for employment at a rate not
20 less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works
21 more than 40 hours in any scheduled week of work.

22 3. The provisions of subsections 1 and 2 do not apply to:

23 (a) ~~Employees~~ Except as otherwise provided in paragraph (o), employees
24 who are not covered by the minimum wage provisions of NRS 608.250;

25 (b) Outside buyers;

26 (c) Employees in a retail or service business if their regular rate is more than 1
27 1/2 times the minimum wage, and more than half their compensation for a
28 representative period comes from commissions on goods or services, with the
29 representative period being, to the extent allowed pursuant to federal law, not less
30 than 1 month;

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

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

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

37 (g) Employees of a railroad;

38 (h) Employees of a carrier by air;

39 (i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate
40 basis or other delivery payment plan;

41 (j) Drivers of taxicabs or limousines;

42 (k) Agricultural employees;

43 (l) Employees of business enterprises having a gross sales volume of less than
44 \$250,000 per year;

45 (m) Any salesperson or mechanic primarily engaged in selling or servicing
46 automobiles, trucks or farm equipment; ~~†and†~~

47 (n) A mechanic or worker for any hours to which the provisions of subsection
48 3 or 4 of NRS 338.020 apply ~~††~~ and

49 (o) A domestic service employee who resides in the household where he or
50 she works if the domestic service employee and his or her employer agree in
51 writing to exempt the domestic service employee from the requirements of
52 subsections 1 and 2.

1 **Sec. 3.** NRS 608.115 is hereby amended to read as follows:

2 608.115 1. Every employer shall establish and maintain records of wages
3 for the benefit of his or her employees, showing for each pay period the following
4 information for each employee:

5 (a) Gross wage or salary other than compensation in the form of:

6 (1) Services; or

7 (2) Food, housing or clothing.

8 (b) Deductions.

9 (c) Net cash wage or salary.

10 (d) ~~Total~~ Except as otherwise provided in section ~~4~~ 1.5 of this act, total
11 hours employed in the pay period by noting the number of hours per day.

12 (e) Date of payment.

13 2. The information required by this section must be furnished to each
14 employee within 10 days after the employee submits a request.

15 3. Records of wages must be maintained for a 2-year period following the
16 entry of information in the record.

17 **Sec. 4.** NRS 608.180 is hereby amended to read as follows:

18 608.180 The Labor Commissioner or the representative of the Labor
19 Commissioner shall cause the provisions of NRS 608.005 to 608.195, inclusive,
20 and ~~section 4~~ sections 1.3 and 1.5 of this act to be enforced, and upon notice
21 from the Labor Commissioner or the representative:

22 1. The district attorney of any county in which a violation of those sections
23 has occurred;

24 2. The Deputy Labor Commissioner, as provided in NRS 607.050;

25 3. The Attorney General, as provided in NRS 607.160 or 607.220; or

26 4. The special counsel, as provided in NRS 607.065,

27 ➤ shall prosecute the action for enforcement according to law.

28 **Sec. 5.** NRS 608.195 is hereby amended to read as follows:

29 608.195 1. Except as otherwise provided in NRS 608.0165, any person who
30 violates any provision of NRS 608.005 to 608.195, inclusive, and ~~section 4~~
31 sections 1.3 and 1.5 of this act, or any regulation adopted pursuant thereto, is guilty
32 of a misdemeanor.

33 2. In addition to any other remedy or penalty, the Labor Commissioner may
34 impose against the person an administrative penalty of not more than \$5,000 for
35 each such violation.

36 **Sec. 6.** This act becomes effective on July 1, 2017.