



Office of the Nevada Labor Commissioner

Nevada Department of Business and Industry "Growing Business in Nevada"

Overview of Nevada Wage and Hour Laws and 2019 Legislation



COVID-19 Bulletins, Guides, and Frequently Asked Questions

Shannon M. Chambers - Labor Commissioner
Lleta Brown – Deputy Labor Commissioner
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Office of the Labor Commissioner

Overview of Office of the Labor Commissioner

The Office of the Labor Commissioner (OLC) is the principal wage and hour and labor regulatory agency for the State of Nevada. The Office of the Labor Commissioner also establishes the prevailing wage for public works projects. Our office investigates claims and complaints relating to the non-payment of minimum wage, overtime, and the required prevailing wage on public works projects.

It is the mission of this office to resolve labor-related problems in an efficient, professional, and effective manner. This includes educating employers and employees regarding their rights and responsibilities under the law in an effort to promote the growth of business in Nevada. Additionally, it includes taking enforcement action when necessary, to ensure that Nevada's workers are treated fairly and compensated for all time worked.

20 Total Staff – 15 in Las Vegas; 5 in Carson City 9 Investigators for the entire State of Nevada

Major Responsibilities

Private Sector Employment

Prevailing Wages On Public Works Projects

Regulate Private Employment Agencies

Statutory and Regulatory Authority Pursuant to Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC):

NRS 607 – Office of the Labor Commissioner

NRS 608 - Compensation, Wages and Hours

NRS 609 – Employment of Minors

NRS 610 - *Apprenticeship (OWINN)

NRS 611 - Private Employment Agencies

NRS 613 - Employment Practices**

NRS 614 – Organized Labor and Labor Disputes

NRS 338 - Public Works

NAC 607 - Rules of Practice

NAC 608 - Compensation, Wages and Hours

NAC 609 - Employment of Minors

NAC 610 – *Apprenticeship (OWINN)

NAC 611 – Private Employment Agencies

NAC 613 - Employment Practices

NAC 338 – Public Works

^{**} NRS 613.040-13.070 and NRS 613.310-613.435 are not enforced by the Labor Commissioner.

"An employer shall pay to the employee wages for each hour the employee works."

NRS section 608.016

Definitions

Employer (NRS 608.011): Every person having control or custody of any employment, place of employment or any employee.

Employee (NRS 608.010): Male and female persons in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed.

Independent Contractor (NRS 608.0155 and NAC 608.155): Are not employees.

NAC 608.155 - 4. As used in this section, "independent contractor" means a self-employed person who agrees with a client to do work for the client, for a certain fee, according to the means or methods of the self-employed person and not subject to the supervision or control of the client except as to the result of the work.

Key Elements Of Nevada's Minimum Wage Requirements

Nevada Constitution – Article 15, Section 16
2006 Minimum Wage Amendment Passed by Voters
Assembly Bill (AB) 456 (2019 Legislative Session)will not change Two Tier System

- Two rates (Two Tier System)
- Tips cannot be used to offset payment of Minimum Wage (Tips can be pooled by employees pursuant to NRS 608.160)
- Can pay lower rate if Qualified Health Insurance offered/made available to employee Senate Bill (SB) 192
- Exemptions in NRS 608.250 No Longer Valid (Yellow Cab Case 2014)
 AB 456 removes exemptions in NRS 608.250 consistent with Yellow Cab
- Exemptions to Minimum Wage: Workers under the age of 18; Workers employed by a non-profit for after school or summer employment; and Trainees
- Collectively Bargained exemption

Minimum Wage Increase AB 456 (Passed 2019 Legislative Session)

Effective Date	Lower Tier	Higher Tier
July 1, 2020	\$8.00	\$9.00
July 1, 2021	\$8.75	\$9.75
July 1, 2022	\$9.50	\$10.50
July 1, 2023	\$10.25	\$11.25
July 1, 2024	\$11.00	\$12.00

How Minimum Wage Impacts The Daily Overtime Rates? (AB 456 Will Change These Rates Starting July 1, 2020)

Employers must pay 1-1/2 times an employee's regular wage rate whenever an employee who is paid less than 1-1/2 times the applicable minimum wage rate works more than 40 hours in any workweek or more than 8 hours in any workday*, unless otherwise exempted. (NRS 608.018)

***** EMPLOYEE OFFERED QUALIFIED HEALTH BENEFITS

Pay Overtime at 1-1/2 times an Employee's Regular Rate if:

- (1) Employee works over 8 hours in a 24-hour period or over 40 hours in a week;
- (2) Employee is offered qualified health benefits;
- (3) Employee Makes Less than \$12.00 per hour.

EMPLOYEE NOT OFFERED QUALIFIED HEALTH BENEFITS

Pay Overtime at 1-1/2 times an Employee's Regular Rate if:

- (1) Employee works over 8 hours in a 24-hour period or over 40 hours in a week;
- (2) Employee Makes Less than \$13.50 per hour.

*Four-Tens (4/10's) exception - By mutual agreement, the employee can work a schedule of four ten (4/10's) hour days in a workweek. Must be a regular and consistent schedule. If the 4/10 schedule is not followed it will revert to overtime. (See Advisory Opinion AO 2013-04)

NRS and NAC section 608 Overview

Non Standard Deductions (NAC 608.160):

- The employer is required to have the employee voluntarily authorize in writing the specific purpose, pay period, and amount of deduction.
- May not us a blanket authorization.
- Record Keeping (NRS 608.115 and NAC 608.140):
 - Gross wage or salary, deductions, net cash or salary, number of hours per day, date of payment); the records have to be kept for 2 years from the date the information was recorded.

Uniforms (NRS 608.165):

- If the uniforms clearly identify the employee with the business, the employer shall provide the uniform at no cost or deposit.
- The employer must also pay for any cost that is required for special cleaning of the uniform.

- Payment (NRS 608.060, NRS 608.070 and NRS 608.080):
- At least semimonthly and maintain the same scheduled paydays.
- Paystub (NRS 608.110 and NRS 608.115):
 - Itemized list of deductions showing the respective deductions made from the total amount of wages or compensation; any additional deduction should be authorized by the employee.
- Breaks & Lunches (NRS 608.019 and NAC 608.145):
 - Provide 10 minutes for each 3 1/2 hours worked and at least 30 minutes uninterrupted lunch break for employee working a continuous period of 8 hours.
- Employee Terminated or Resigned/Quit
 Payment (NRS 608.020 and NRS 608.030):
 - Immediately or within three days terminated by the employer.
 - Next regular payday or within 7 days resign or quit.

2019 Legislative Updates

- Senate Bill (SB) 312 Paid Time Off (7/1/19 for regulations - 1/1/2020 for all other purposes)
- Assembly Bill (AB) 132 Marijuana Testing Bill (1/1/2020)
- AB 181 Reporting Sick Time (5/15/2019)
- AB 456 Increase to Minimum Wage (7/1/2019 First Increase 7/1/2020)
- Assembly Joint Resolution (AJR) 10 Ballot proposal to increase the Minimum Wage paid to employees (2024)
- SB 192 Requirements of Qualified Health Benefit Plan (5/21/19 for regulations – 1/1/2020 for all other purposes)
- SB 493 Employee Misclassification Task Force & Independent Contractor Construction Industry Presumption (7/1/2020)

Bulletins and Guides

Bulletins and Guides can be obtained at www.labor.nv.gov

- Nursing Mothers Accommodations Assembly Bill 113, 2017 Legislative Session
- Tip Guide
- Notice to Employer of Sick or Injured Employee Assembly Bill 181, 2019
 Legislative Session
- Independent Contractor Information Sheet
- Meal and Rest Period Notice
- Request for Meal and Rest Period Waiver Form
- AB 132 Guide to the Marijuana Testing Bill

Required Postings

Required Postings can be obtained at <u>www.labor.nv.gov</u>

- Annual Minimum Wage and Overtime Bulletin(s)
- Rules to be Observed by Employers
- Notice of Limitations Affecting the Application of Lie Detector Tests
- Domestic Violence Victim's Bulletin Senate Bill 361, 2017 Legislative Session
- Domestic Worker's Bill of Rights Senate Bill 232, 2017 Legislative Session
- Paid Leave Senate Bill 312, 2019 Legislative Session
- Minimum Wage Bulletin Assembly Bill 456, 2019 Legislative Session





Office of the Nevada Labor Commissioner

Nevada Department of Business and Industry "Growing Business in Nevada"

Nevada Labor Commissioner COVID-19 Bulletins, Guides, and Frequently Asked Questions (FAQ's)

COVID-19 LEAVE GUIDANCE

STATE OF NEVADA



TERRY REYNOLDS

SHANNON CHAMBERS



Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER

www.labor.nv.gov

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MARCH 11, 2020 COVID-19 LEAVE GUIDANCE

On January 1, 2020, Senate Bill 312 became effective and stated as follows: "Every employer in private employment in the State of Nevada with 50 or more employees in the State of Nevada shall provide paid leave that accrues at a minimum of 0.01923 hours of paid leave for each hour of work performed. An employee is eligible to use leave on the 90° day of employment."

The COVID-19 virus has caused state, federal, and local agencies to issue guidance to employees in both the private and public sector on how to contain the spread of COVID-19. In some cases, state, federal, and local agencies have imposed mandatory government quarantines of individuals in certain areas who may have COVID-19 or have been exposed to it.

The Labor Commissioner is proactively issuing the following guidance to private employers and employees in the State of Nevada to address potential mandatory government quarantines because of COVID-19 and consistent with the intent of Senate Bill 312. IT IS IMPORTANT TO NOTE THAT THE DEPARTMENT IS NOT AWARE OF ANY PLANS TO IMPOSE MANDATORY QUARANTINES AT THIS TIME. It is recommended that employers with fewer than 50 employees also follow this guidance as needed. *Please also see below.

- 1. If an employee is subject to a mandatory government quarantine by a state, federal, or local agency and is unable to report to work, the employer should not count the mandatory government quarantine time as leave that is counted against the employee or taken from their leave balance. Because employees may not be accruing any type of leave or pay while under a mandatory government quarantine situation, this type of separation and/or leave from employment should not be counted against them.
- An employer is encouraged and can certainly choose to pay an employee for the time they are out on a mandatory government quarantine and offer alternative working arrangements, such as teleworking, or additional paid time off, but is not required to do so.
- 3. The employee could also choose to request to use paid leave or other applicable leave if available while out on a mandatory government quarantine, but that would be at the option of the employee. Family Medical Leave Act (FMLA) leave may also apply to the employee's situation, condition, and length of absence.

MANDATORY GOVERNMENT QUARANTINES AS A RESULT OF POTENTIAL EXPOSURE TO COVID-19 SHOULD NOT RESULT IN ANY LOSS OF LEAVE TO AN EMPLOYEE WORKING IN PRIVATE EMPLOYMENT IN THE STATE OF NEVADA UNLESS THE EMPLOYEE ELECTS TO USE LEAVE, INCLUDING PAID LEAVE, OR OTHER LEAVE IS REQUIRED TO BE USED, SUCH AS FMLA LEAVE.

*This guidance does not replace current collective bargaining agreements, agreements, contracts, and/or policies that have specific provisions relating to mandatory government quarantines and leave. However, these should be reviewed based on the guidance in this document and to address potential future situations.

Covid-19: Employer and Employee Information

Sheet



Nevada Department of Business and Industry

EMPLOYER & EMPLOYEE INFORMATION ON COVID-19

Can an employer cut my hours or terminate my employment?

•Yes. Nevada labor laws do not require employers to guarantee hours worked. In addition, because Nevada is an "at will" employment state, the employer or employee can terminate the employment relationship at any time with or without notice. It is recommended that employers explore other options before taking any of these actions.

Can an employer decrease or change my rate of pay?

 Yes. However, Nevada law requires a 7-day written notice before a decrease in wages can take effect. (NRS 608.100)

Can an employer pay less than minimum wage or not pay overtime?

•No. An employer must pay the current minimum wage of \$8.00 if health benefits are offered and \$9.00 if health benefits are not offered. Overtime is required to be paid for time worked over 8-hours in a 24-hour period if the employee makes less than \$12.00 (offered health benefits) and \$13.50 (not offered health benefits. Overtime pay is required for over 40 hours of work.

How often must an employee be paid?

•Employees must be paid at east semi-monthly. (NRS 608.060)

When must a discharged employee be paid?

• A discharged employee's wages shall be due and payable immediately. If not paid within 3-days penalties may apply. (NRS 608.020 & 608.040)

When must a quitting employee be paid?

 Final wages must be paid within 7-days after the employee resigns or by the next regularly scheduled payday, whichever is earlier. (NRS 608.030)

How often must breaks be given?

• An employee must begiven a paid, 10-minute break for each 4-hour period of work. In addition, employees are entitled to an unpaid, 30-minute meal period for each 8-hour period of work. (NRS 608.019 & NAC 608.145)

Does a sick employee have to report to work?

•No. An employee is not required to be physically present at work to notify his or her employer that he or she is sick or has sustained anon-workrelated injury and cannot work. (Assembly Bill (AB) 181-80th Legislative Session 2019)

•Does an employer have to provide paidleave?

•Yes. Effective January 1, 2020, yes, a private employer who employs 50 or more employees in the state of Nevada must provide 0.01923 hour of paid leave per hour of work performed. (Senate Bill (SB) 312-80th Legislative Session 2019)

Can an employer require me to stay away from work if I have recently traveled?

 Possibly. The Centers for Disease Control and Prevention (CDC) have imposed travel advisories and identified highly impacted areas. Travel to these areas or potential exposure to COVID-19 could require the employee to stay away from the office for a designated period.

If I am required to stay away from the office because of recent travel will I get paid?

Possibly. Employers may implement policies providing paid leave consistent with SB 312 or offer more generous paid leave policies. Employees may be required to utilize paid leave or Family Medical Leave Act (FMLA) leave depending upon the duration of the employee's absence and condition. Mandatory Quarantines may also require the employer to not count this leave against an employee and pay them for this leave or allow the employee to use paid leave.

Do I have to travel for work?

 Possibly. Employers can restrict and/or cancel travel to highly impacted areas identified by the CDC or cancel travel to other areas.

I have a vacation scheduled and my employer is now telling me I cannot take it?

 An employer can encourage employees not to travel to areas that have been identified by the CDC as highly impacted areas or where travel advisories have been imposed. Travel to other areas or vacations that have been previously approved should be allowed to continue. The employee and employer should monitor the website of the CDC for additional areas that could be identified as highly impacted and adjust travel accordingly.

Can an employer deduct cleaning costs or other charges relating to COVID-19 from my paycheck?

 No. Written authorization including the specific amount being deducted, the purpose for the deduction, and the pay period/date in which the deduction will be made is required. (NRS 608.110 & NAC 608.160)

Required Postings & Extensions

STEVE SISOLAK

TERRY REYNOLDS
Director
SHANNON M. CHAMBERS

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Department of Business & Industry

OFFICE OF THE LABOR COMMISSIONER http://www.labor.nv.gov

MARCH 24, 2020

REMINDER ABOUT NEVADA LABOR LAWS AND REQUIRED POSTINGS

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EXTENSIONS MAY BE GRANTED FOR EMPLOYER AND EMPLOYEE RESPONSES

REMINDER ABOUT NEVADA LABOR LAWS

The Office of the Labor Commissioner is the principal wage and hour and labor regulatory agency for the State of Nevada. Our office is responsible for ensuring that minimum wage, prevailing wage, and overtime are paid to employees in Nevada, and that employee rest, break, and lunch periods are provided.

The recent events related to COVID-19 have generated multiple questions regarding Nevada labor laws and ongoing enforcement. Please be advised that Nevada labor laws are still being enforced by the Nevada Labor Commissioner and will continue to be enforced. Employers <u>MUST</u> continue to follow Nevada labor laws. Information about Nevada labor laws can be found on our website at www.labor.nv.gov and questions can be submitted to mail (@labor.nv.gov.

REQUIRED POSTINGS

The following postings are required to be posted by private employers in Nevada. The Nevada Labor Commissioner does conduct inspections to verify postings.

Required Postings can be obtained at www.labor.nv.gov

- Annual Minimum Wage and Overtime Bulletin(s)
- Rules to be Observed by Employers
- Notice of Limitations Affecting the Application of Lie Detector Tests
- Domestic Violence Victim's Rights Bulletin
- Domestic Worker's Bill of Rights
- Paid Leave

EXTENSIONS MAY BE GRANTED FOR EMPLOYER AND EMPLOYEE RESPONSES

Based on recent events and the Governor's decision to have non-essential businesses shut down, it is possible that an employer or employee may not be able to respond to wage claims/complaints within 15-days. Even a business that is deemed essential may not be able to respond within 15-days due to circumstances outside of their control. The Labor Commissioner may extend the time for response pursuant to Nevada Administrative Code (NAC) section 607.040 based on good cause and the public health emergency relating to COVID-19. This may be done on a case by case basis.

Telework Guide

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TELEWORK GUIDE

Nevada labor laws do not prevent employers from encouraging employees to work from home or to reach an agreement with their employees to work from home. These types of work arrangements have become necessary due to the COVID-19 Public Health Emergency. However, it is important to recognize that Nevada Labor Laws still apply.

Employees <u>may not</u> be classified as Independent Contractors merely because they are performing work at a different location other than their regular place of work, or from their home.

For information regarding determining Independent Contractor status please refer to Nevada Revised Statutes (NRS) section 608.0155 and Nevada Administrative Code (NAC) section 608.155(4). Pursuant to NRS section 608.400, willful misclassification may result in a fine of \$5,000.00 for each employee who is misclassified.

- Employees must be paid for each hour worked. (NRS section 608.016) Employers
 may not elect to have employees work without pay and claim the work was
 performed on a voluntary basis.
- Employees must be paid for Overtime Hours worked unless there is a specific exemption that applies. (NRS section 608.018)
- Employers must maintain Daily Time Records reflecting how many hours each
 employee worked. (NRS section 608.115) There are <u>no</u> special provisions that
 provide an exemption to this requirement and it applies to all employees regardless
 of the pay structure.
- Employees should maintain a Telework Log documenting the hours worked during the Workweek.
- Employees must be permitted to take a 10-minute Paid Rest Period for every 4-hours of work or fraction thereof and a 30-minute unpaid Meal Period for every continuous 8-hours of work. (NRS section 608.019)
- Employers may not reduce the Rate of Pay unless the employee has been provided with a written 7-day notice prior to the new rate taking effect. (NRS 608.100)
- Employees may not be paid less than the applicable Minimum Wage unless there
 is a specific exemption that applies. (NRS section 608.250 & NAC section 608.100)
- Employers must establish and maintain a Regular Pay Day. (NRS section 608.080)
- Employees must be paid at least Semi-Monthly. (NRS section 608.070)
 However, the employer may choose to pay wages more frequently.

Release(s) of Liability as a Condition of Employment

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COVID-19 Release(s) of Liability as a Condition of Employment Information for Employers and Employees

An Employer Cannot Ask an Employee to Waive Rights or Benefits Under Nevada's Industrial Insurance Act (Workers' Compensation)

Pursuant to statute, a contract requiring an employee to waive rights or benefits under Nevada's Industrial Insurance Act is void. (Nevada Revised Statutes (NRS) section 616B.609)

Employers Need to Determine if the Potential Release of Liability Violates Public Policy

Employees in Nevada are presumed to be "at-will" which potentially gives an employer the right to discharge an employee for any reason so long as the reason does not violate public policy. However, an employer should work with their available human resources staff and legal counsel if possible and review the applicable laws and regulations and available legal authority to determine if a release of liability violates public policy.

Employee Working Environments and Conditions

NRS Chapter 618 sets forth the Nevada Occupational Safety and Health Act. The purpose of the Nevada Occupational Safety and Health Act and the purpose of the chapter is "to provide safe and healthful working conditions for every employee." (NRS 618.015.) Employers should review these provisions when considering a release of liability.

Contract Enforcement and a Release of Liability

Depending upon the language and provisions contained in a release of liability, it is possible that the principles of contract interpretation and contract law could come into play in terms of the enforcement and applicability of a release of liability. Again, it is recommended that an employer work with their available human resources staff and legal counsel if possible, to review the applicable laws and regulations and available legal authority to determine if a release of liability can be enforced as a contract based on its terms.

Future Federal or State Statutory or Regulatory Changes Regarding Employer Liability and COVID-19

The Office of the Labor Commissioner will continue to monitor any changes at the federal and state level regarding employer liability and release(s) of liability as they relate to the COVID-19 public health emergency. If new laws and regulations are enacted that address the issue of employer liability as it relates to COVID-19, they will be posted on the Office of the Labor Commissioner website at www.labor.nv.gov along with existing labor laws and regulations.

FEDERAL GUIDANCE ON "HYBRID" SCHOOLS – FAMILIES FIRST CORONOAVIRUS RESPONSE ACT FREQUENTLY ASKED QUESTIONS https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

#98 - My child's school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances? (added 08/27/2020)

Yes, you are eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively "closed" to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child's remote-learning days.

#99 - My child's school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances? (added 08/27/2020)

No, you are not eligible to take paid leave under the FFCRA because your child's school is not "closed" due to COVID-19 related reasons; it is open for your child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If your child is home not because his or her school is closed, but because you have chosen for the child to remain home, you are not entitled to FFCRA paid leave. However, if, because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid leave to care for him or her. See FAQ 63.

Also, as explained more fully in FAQ 98, if your child's school is operating on an alternate day (or other hybrid-attendance) basis, you may be eligible to take paid leave under the FFCRA on each of your child's remote-learning days because the school is effectively "closed" to your child on those days.

#100 - My child's school is beginning the school year under a remote learning program out of concern for COVID-19, but has announced it will continue to evaluate local circumstances and make a decision about reopening for in-person attendance later in the school year. May I take paid leave under the FFCRA in these circumstances? (added o8/27/2020)

Yes, you are eligible to take paid leave under the FFCRA while your child's school remains closed. If your child's school reopens, the availability of paid leave under the FFCRA will depend on the particulars of the school's operations. See FAQ 98 and 99.

Nevada Roadmap to Recovery: Important Links

Nevada Health Response

• https://nvhealthresponse.nv.gov/nevada-united/

Full Document Phase One Initial - Guidance

• https://nvhealthresponse.nv.gov/wp-content/uploads/2020/05/Roadmap-to-Recovery-Phase-One-Initial-Guidance.pdf

CDC Reopening Guidance: Cleaning and Disinfecting Public Spaces Including Your Workplace, School, Home, and Business

• https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html

Industry-Specific Guidance Released for Phase 1 Reopening in Nevada

• https://nvhealthresponse.nv.gov/wp-content/uploads/2020/05/Industry-specific-Guidance-Documents-1.pdf

Office of the Labor Commissioner

http://labor.nv.gov/Employer/Bulletins Guides/

Labor Commissioner Website and Contact Information

www.labor.nv.gov - Website

Mail1@labor.nv.gov – General Questions

PublicWorks@labor.nv.gov - Public Works/Prevailing Wage Questions

<u>AUA@labor.nv.gov</u> – Apprenticeship Utilization Act Questions

Northern Nevada:

- David Gould, Senior Investigator, (775) 684-1890
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Southern Nevada:

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- Lupe Martinez, Chief Investigator, (702) 486-2650

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