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Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER
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December 20, 2021

Cody L. Phinney, MPH
Deputy Administrator
Nevada Department of Health and Human Services
Division of Public and Behavioral Health
4150 Technology Way, Suite 300, Carson City, NV 89706

Re: Senate Bill 340 – Homecare Employment Standards Board

Dear Deputy Administrator Phinney:

The Nevada Labor Commissioner reviewed the issues raised from the November 2, 2021, meeting relating to Senate Bill 340 passed during the 81st Regular Session of the Nevada Legislature (2021). The Nevada Labor Commissioner offers the following comments and responses based on the issues presented. It appears that many of the issues raised do not fall under the jurisdiction of the Nevada Labor Commissioner and it is not clear if there are specific employers, agencies, entities, etc., that are the subject(s) of the issues raised, or if these are general issues related to homecare workers.

There appears to be a need for additional discussions once the Homecare Employment Standards Board is appointed and a meeting held.

Scope of Review and/or Investigation:

There are up to 291 Personal Care Agencies (PCAs) based on a list provided to the Nevada Labor Commissioner by the Nevada Department of Health and Human Services (DHHS) on December 15, 2021. The list does not designate or identify which PCA's have contracts with the State of Nevada.

To date, the Nevada Labor Commissioner has not received the new position (Compliance Audit/Investigator) associated with Senate Bill 340. If the purpose of the review and/or investigation based on the November 2, 2021, meeting, is to find the wages paid to employees working in the PCAs, then the Nevada Labor Commissioner would need additional time and/or information to complete this. DHHS and the Aging and Disability Services Division of DHHS may have this type of data and/or other data that could be provided. The Nevada Department of Employment, Training, and Rehabilitation (DETR), has some wage data by occupation.

The following links from DETR contain information on Occupational Employment and Wage Statistics (OEWS) and Occupational Employment and Wages (OES).

[Occupational Employment and Wage Statistics \(OEWS\) \(nevadaworkforce.com\)](https://www.nevadaworkforce.com/occupational-employment-and-wage-statistics)

[Occupational Employment and Wages \(OES\) \(nevadaworkforce.com\)](https://www.nevadaworkforce.com/occupational-employment-and-wages)

The following questions are relevant and may raise additional questions as to how broad and how long this review could potentially take.

1. What is the wage data/records being sought?
2. Is this data available from DHHS or another entity?
2. For what job classifications/titles, categories, etc.?
3. For what period?

Nevada Labor Commissioner Does Not Have Jurisdiction Over Health and Safety Issues:

The Nevada Labor Commissioner has no jurisdiction over workplace safety and/or health requirements that fall under the Nevada Division of Industrial Relations, The Nevada Department of Health and DHHS, and/or any other state or federal agencies that are responsible for enforcing state and federal laws relating to workplace safety or for facilities and/or agencies that may receive Medicaid funding, Medicare funding, and/or any other state or federal reimbursement related to homecare services.

Nevada Labor Commissioner Does Not Have Authority Over Medicaid Reimbursement Rates:

The Labor Commissioner has no authority over Medicaid reimbursement rates or how those are calculated and/or paid to providers.

If DHHS and/or any other state or federal agency as part of their contracts/service agreements, etc., negotiated a reimbursement rate and/or rate for employees that was higher than the state minimum wage, then that would be between those parties. The Nevada Labor Commissioner would enforce the hourly rate paid to the employees based on Nevada Revised Statutes (NRS) sections 607 and 608 and Nevada Administrative Code (NAC) sections 607 and 608.

Minimum Wage and Overtime and “Living Wage”:

The minimum wage is just a "minimum" that is now set in statute in NRS section 608.250. If an employer offers qualified health benefits, then they can pay the lower tier minimum wage rate and if they don't offer qualified health benefits, then the employer must pay the higher tier minimum wage rate. The minimum wage is set to go up in increments each July 1st until it reaches \$12.00 per hour (higher tier) rate effective July 1, 2024.

So long as an employer is paying employees the minimum wage under Nevada law, the Labor Commissioner would view that as compliance with NRS section 608.250. In the event the hourly rate paid to employees and agreed to by the parties is higher than the minimum wage, then the Labor Commissioner would enforce that pursuant to NRS section 608.016.

Assembly Joint Resolution 10 will be on the ballot next year in 2022 and it is proposed to raise the minimum wage to \$12.00 per hour by July 2024, and that would be the only rate, no lower rate for offering qualified health benefits.

Overtime is required to be paid for time worked over 8-hours in a 24-hour period if the employee makes less than \$13.125 (offered health benefits) and \$14.625 (not offered health benefits) or for over 40-hours of work in a workweek. (See NRS section 608.018.)

The Nevada Labor Commissioner cannot speak to what is considered to be a “living wage.” The COVID-19 public health emergency and ongoing situation has resulted in job losses and many individual workers choosing to leave the workforce. While the availability of vaccines has improved the public health emergency, Nevada remains towards the top of the list as far as states with a high unemployment rate, especially in Clark County. It is not clear if “displaced” workers will change jobs, careers, etc., and the current employment environment has many examples of many employers offering positions well above the minimum wage with no applicants. The following data below is from DETR from 2019.

| OES 2019 | | | | | |
|---|------------|-------------|-------------|-------------|------------------|
| Wage Type | Employment | Mean Wage | Entry Wage | Median Wage | Experienced Wage |
| Total, All Occupations | | | | | |
| Hourly | 1,392,684 | \$22.70 | \$10.69 | \$17.51 | \$28.70 |
| Annual | 1,392,684 | \$47,210.00 | \$22,220.00 | \$36,410.00 | \$59,710.00 |
| Personal Care and Service Occupations | | | | | |
| Hourly | 70,633 | \$13.73 | \$8.46 | \$10.49 | \$16.37 |
| Annual | 70,633 | \$28,560.00 | \$17,590.00 | \$21,820.00 | \$34,040.00 |
| Healthcare Practitioners and Technical Occupations | | | | | |
| Hourly | 64,514 | \$44.03 | \$21.73 | \$39.02 | \$55.18 |
| Annual | 64,514 | \$91,590.00 | \$45,200.00 | \$81,160.00 | \$114,780.00 |

[Occupational Employment and Wage Statistics \(OES\) \(nevadaworkforce.com\)](http://nevadaworkforce.com/occupational-employment-and-wage-statistics)
[Occupational Employment and Wages \(OES\) \(nevadaworkforce.com\)](http://nevadaworkforce.com/occupational-employment-and-wages)

Working Hours and Breaks and Lunches and Termination of Employment:

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. Nevada labor laws do require a 7-day written notice before a decrease in wages can take effect pursuant to NRS section 608.100.

An employee must be given a 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 pursuant to NRS section 608.019 and Nevada Administrative Code (NAC) section 608.145.

Payment for Travel and Training:

NAC section 608.130 Payment for travel and training. (NRS 607.160, 608.016, 608.250)

1. An employer shall pay an employee at a rate that is not less than minimum wage for any travel or training that is considered to be time worked by the employee pursuant to subsections 2 and 3.

2. Travel by an employee:

(a) Is considered to be time worked by the employee:

(1) If the travel is between different work sites during a workday; or

(2) If the employee is providing transportation for another employee on behalf of an employer who offers transportation for the convenience of his employees.

(b) Is not considered to be time worked by the employee if the travel is between the home of the employee and the place of work of the employee regardless of whether the employee works at a fixed location or at different places of work.

3. The training received by an employee:

(a) Is considered to be time worked by the employee if the training is required by the employer.

(b) Is not considered to be time worked by the employee if the training is required by an agency or entity other than the employer without regard to whether the training enables the employee to maintain eligibility for employment in a particular capacity or at a particular level.

Paid Leave and Paid Sick Leave:

Effective January 1, 2020, 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 pursuant to NRS section 608.0197.

Assembly Bill 190 passed during the 81st Regular Session of the Nevada Legislature (2021) states in relevant part: 1. Except as otherwise provided in this section, if an employer provides paid or unpaid sick leave for the use of his or her employees, the employer must allow an employee to use any accrued sick leave to assist a member of the immediate family of the employee who has an illness, injury, medical appointment or other authorized medical need to the same extent and under the same conditions that apply to the employee when taking such leave.

2. An employer may limit the amount of sick leave that an employee may use pursuant to subsection 1 to an amount which is equal to not less than the amount of sick leave that the employee accrues during a 6-month period.

Wage Claim and Complaint Process Currently Exists in NRS 607 and 608 and NAC 607 and 608:

NRS sections 607 and 608 and NAC sections 607 and 608 provide the authority for the Nevada Labor Commissioner to investigate wage claims and complaints. There is a formal process set out in these statutes and regulations for resolving wage claims and complaints and provides the parties with notice and an opportunity to be heard.

If there are potential violations that should be reported to the Nevada Labor Commissioner, then it is recommended that they be filed under this process as this is the existing statutory and regulatory framework to resolve these issues in the most efficient manner.

Additional Information and Clarification on Next Steps:

The Nevada Labor Commissioner website at www.labor.nv.gov provides information for Nevada employees and employers on Nevada labor laws. Required bulletins and postings, claim/complaint forms, guides, information sheets, etc., can all be found on our website.

The Nevada Labor Commissioner looks forward to working with the Homecare Employment Standards Board, DHHS, the representatives involved in the November 2, 2021, meeting, and any other parties, representatives and/or agencies at the State and federal level to further clarify what the next steps will be in 2022 for the Homecare Employment Standards Board.

Sincerely,

A handwritten signature in blue ink that reads "Shannon M. Chambers". The signature is fluid and cursive, with the first name being the most prominent.

Shannon M. Chambers
Labor Commissioner
State of Nevada