

ARGENTUM LAW

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Re: Changes to Prevailing Wage Laws in Nevada (AB 190 – 2019)

Dear Nevada Builders Alliance Members:

This letter is to better inform you of the changes the 2019 Nevada Legislature made to prevailing wage laws in Nevada. While these changes are numerous, rest assured that the changes do not affect jobs that were bid on and awarded prior to July 1, 2019.

Just this month, the Labor Commissioner introduced new prevailing wages that went into effect October 1, 2019 (see Senate Bill 247). Meaning that jobs that are awarded after that date will require employers to pay the new prevailing wages to their employees. These new prevailing wage rates are applicable for public works projects over \$100,000 bid/awarded October 1, 2019 through September 30, 2020. Those wages can be accessed on the Nevada Labor Commissioner website [here](#). The PW rates are now calculated based on 4 different regions of the state: (1) Clark County, (2) Southern Nevada Region (other than Clark County), (3) Washoe County, and (4) Northern Nevada Region (other than Washoe County) (See SB 243). Notably, if the job takes longer than 36 months to complete, then the PW rates in effect at the time of the bid (e.g. Oct. 1, 2019) could change after that 36-month period to reflect the new PW rates in effect on Oct. 1, 2022.

Importantly, the new changes passed by the legislature in AB 190 (2019) include changes to the types of benefits that are now considered “bona fide fringe benefits” that can be “annualized” to discharge part of the prevailing wage. For instance, fringe benefits under the new law does not include the use of a company car, tools, etc. Fringe benefits must “benefit the worker” and remain with the worker. However, an employer still may deduct the cost of the tools from the employee’s wages if the requirements of NAC 608.160 (“withholding of amounts from wages”) are met.

Additionally, the term “annualized” is based on the “calendar year.” To calculate the new fringe benefits annually, the employer is allowed to take “credit” for the annual cost of a benefit by converting those costs to an hourly cash equivalent: annual cost of fringe benefit divided by total number of hours worked by the employee in the year. For example, if a contractor/subcontractor contributes \$500 per month for insurance coverage, and the

employee is estimated to work a total of 1,920 hours (40hours x 48 weeks), then the effective annual contribution rate is determined by dividing \$6,000 (the annual cost of the health insurance @ \$500 per month for insurance x 12 months) by 1920 hours which equals \$3.125 per hour. Thus, the employer would be allowed to “discharge” i.e. take “credit” for the \$3.125, for each hour the employee works on the public works job. Likewise, the same example would apply to a 401k plan, vacation pay, and other similar programs. Moreover, the fringe benefit contribution would effectively be diluted in proportion to the non-prevailing wage hours worked by the employee. Finally, because the cost of a benefit will likely vary per employee, the credit must be individually determined.

If an employee is terminated before the fringe benefit is actually received (like holiday or vacation pay) and the employer has taken credit toward the prevailing wage obligation, the employer should reimburse the employee upon termination for the wages that the employee never received. For example, if the employer took credit for vacation pay in the amount of \$1.50 per hour and the employee worked 40 PW hours, that would equal to \$60 in vacation pay the employer took credit for. However, if the employee is terminated after a month and never receives any actual vacation days, then that employer would likely need to reimburse the employee the \$60 to ensure compliance with the new law.

Importantly, employers should take every precaution and upload their health plan or pension plan concurrently with their certified payroll. This will help ensure that the Department of Labor and the Public Body that awarded the contract are aware of the “bona fide” fringe benefits, the annualized calculation, and the amount taken credit for by the employer. Additionally, if an employer uploads a certified payroll and use “other” for “bona fide fringe benefits”, the employer should have description and be specific about what the “other” is.

Finally, if you have any follow up questions please email me at chase@argentumnv.com or visit our website at www.argentumnv.com.

Very truly yours,



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