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SUPPLEMENTAL GUIDANCE ON 4-10 SCHEDULES ADVISORY OPINON 2013-04 – JANUARY 25, 2021

POTENTIAL DISCIPLINE OF AN EMPLOYEE:

If an employer is conducting and/or pursuing potential discipline of an employee and the employer decides to place the employee on suspension, leave without pay, administrative leave, or any other type of leave and/or absence from the employer's location/business where the employee works while the employer conducts an investigation and/or any other inquiry into the actions of the employee, the Labor Commissioner would not consider that to be a deviation from the 4-10 schedule that the employee may have been working. This would also apply to deviation from the 4-10 schedule for actual discipline that results in time away from work for a suspension, leave without pay, administrative leave, etc.

To the extent that the employer concludes the investigation, and the employee is brought back within the same week, the Labor Commissioner would still not view that as a deviation from the 4-10 schedule thereby triggering potential overtime pay for over 8-hours of work in a 24-hour period.

However, if a situation and/or circumstance was brought to the attention of the Labor Commissioner where the employer may have utilized potential discipline to circumvent paying daily overtime for work over 8-hours in a 24-hour period depending upon the hourly wage rate of the employee, the Labor Commissioner may investigate and could determine that daily overtime applies. The Labor Commissioner can decline jurisdiction if it appears that there is relief available under a collective bargaining agreement pursuant to Nevada Administrative Code (NAC) section 607.100.

ADDITIONAL HOURS/SHIFTS/WORK AFTER 4-10 SCHEDULE COMPLETED:

If an employee has completed a 4-10 schedule and worked 40-hours in a work week and the employer offers and/or the employee wants to and agrees to work additional hours/shifts after the 40-hours of work, the Labor Commissioner finds that this allowed and should not be prohibited. The employer would still be responsible for overtime for over 40-hours of work in a work week but allowing an employee to work additional hours after a 4-10 schedule should be allowed and can be agreed to by the employer and the employee.

The events related to the COVID-19 public health emergency have caused both employers and employees to adjust work schedules, hours, shifts, etc. Employers and employees should have the flexibility to provide additional hours/shifts/work for employees after a 4-10 schedule is completed so long as the employer complies with any applicable overtime requirements.