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March 3, 2023

Matthew T. Cecil
Of Counsel
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134

Re: Request for Advisory Opinion—NRS 338.020

Dear Mr. Cecil,

Pursuant to Nevada Administrative Code (“NAC”) Section 607.650, an Advisory Opinion has been requested clarifying the applicability and interpretation of Nevada Revised Statute 338.020.

FACTS PRESENTED

In February 2023, the Nevada Contractors Association (“NCA”) submitted a request for an advisory opinion regarding the interpretation of NRS 338.020 and collective bargaining agreements (“CBAs”) that address a four (4) ten (10) hour day workweek (“4/10 schedule”). Specifically, the NCA requested to know whether a CBA that defines a 4/10 schedule differently than NRS 338.020 is controlling authority for the purposes of compliance and enforcement.

AUTHORITY

NRS 338.020(3) establishes when a worker is entitled to overtime pay on a public works project. It states:

Except as otherwise provided in subsection 4, a contractor or subcontractor shall pay to a mechanic or worker employed by the contractor or subcontractor on the public work not less than one and one-half times the prevailing rate of wages applicable to the class of the mechanic or worker for each hour the mechanic or worker works on the public

work in excess of: (a) Forty hours in any scheduled week of work by the mechanic or worker for the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work; or (b) eight hours in any workday that the mechanic or worker was employed by the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work, unless by mutual agreement the mechanic or worker works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

NRS 338.020(4) then goes on to specify that:

the provisions of subsection 3 do not apply to a mechanic or worker who is covered by a collective bargaining agreement that provides for the payment of wages at not less than one and one-half times the rate of wages set forth in the collective bargaining agreement for work in excess of: (a) Forty hours in any scheduled week of work; or (b) Eight hours in any workday unless the collective bargaining agreement provides that the mechanic or worker shall work a scheduled 10 hours per day for 4 calendar days within any scheduled week of work. (Emphasis added).

ANALYSIS

Here, Nevada Revised Statute 338.020(3)-(4) are directly on point for NCA's request. If a collective bargaining agreement adequately addresses a 4/10 schedule, the language of the CBA controls for the purposes of compliance and enforcement.

Please be advised that this Advisory Opinion is limited to the specific facts and circumstances described herein. The Office of the Labor Commissioner may revisit this issue through the Administrative Rulemaking Process. Please be further advised that subsequent statutory or administrative rule changes or judicial interpretation of the statutes or rules upon which any opinion is based may require that this Advisory Opinion be modified or abandoned. Should you need additional clarification, please do not hesitate to contact our office at (702) 486-2650.

Sincerely,



Brett K. Harris
Labor Commissioner