

IN THE SUPREME COURT OF NEVADA

<p>-----X</p> <p>BOULDER CAB, INC.,</p> <p style="padding-left: 40px;">Petitioners,</p> <p>vs.</p> <p>THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and For the County of Clark, and THE HONORABLE TIMOTHY C. WILLIAMS, District Judge,</p> <p style="padding-left: 40px;">Respondents,</p> <p style="padding-left: 40px;">AND</p> <p>DAN HERRING,</p> <p style="padding-left: 40px;">Real Parties in Interest</p> <hr/>	}	<p>Electronically Filed Dec 29 2015 10:00 a.m. Tracie K. Lindeman Clerk of Supreme Court</p> <p>Sup. Ct. No. 68949 Dist. Ct No.: a13-691551-C Dept. No. XVI</p>
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APPENDIX TO
RESPONDENTS' BRIEF

Leon Greenberg, NSB 8094
A Professional Corporation
2965 S. Jones Boulevard - Suite E-3
Las Vegas, Nevada 89146
Telephone (702) 383-6085
Fax: 702-385-1827

Attorney for Real Parties in Interest

REGISTER OF ACTIONS
CASE NO. A-12-669926-C

Michael Murray, Plaintiff(s) vs. A Cab Taxi Service LLC, Defendant(s)

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§
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Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **10/08/2012**
Location: **Department 1**
Cross-Reference Case Number: **A669926**

PARTY INFORMATION

Defendant	A Cab LLC	Lead Attorneys Esther Rodriguez <i>Retained</i> 7023208400(W)
Defendant	A Cab Taxi Service LLC	
Defendant	Nady, Creighton J	Esther C. Rodriguez <i>Retained</i> 7023208400(W)
Plaintiff	Murray, Michael	Leon Greenberg <i>Retained</i> 7023836085(W)
Plaintiff	Reno, Michael	Leon Greenberg <i>Retained</i> 7023836085(W)

EVENTS & ORDERS OF THE COURT

01/17/2013	Motion to Dismiss (9:00 AM) (Judicial Officer Cory, Kenneth) <i>Defendant's Motion to Dismiss Complaint</i>
	Minutes 01/17/2013 9:00 AM 01/17/2013 9:00 AM - Statements by the Court as to reasoning by Judge Jones and amendment to the Constitution. Ms. Rodriguez argued as to NRS 608.250. Mr. Greenberg referred to the first sentence in the Constitution and argued the term of employee. Statements by the Court. Mr. Greenberg argued the Court is bound by the Constitution. Ms. Rodriguez argued Judge Jones did take notice the amendment made no reference to NRS 608.250. Further arguments by counsel. COURT STATED FINDINGS and ORDERED, Motion DENIED. Mr. Greenberg to prepare the Order.
	Parties Present Return to Register of Actions

MEMORANDUM OF AGREEMENT

This Memorandum Of Agreement is made and entered into by and between **ABC Union Cab Company, Inc., Ace Cab, Inc., Vegas-Western Cab, Inc. A-N.L.V. Cab Company** and **Virgin Valley Cab Company**, hereinafter collectively referred to as the Employers, and the **United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial And Service Workers International Union (USW) AFL-CIO, CLC**, hereinafter referred to as the Union.

WHEREAS, the Employers and the Union are parties to and bound by a collective bargaining agreement for the period September 11, 2006 to September 11, 2009 covering all taxicab drivers of the Employers who are represented by the Union; and

WHEREAS, during the course of the 2006 negotiations which resulted in the collective bargaining agreement referenced above, , the Employers and the Union engaged in good faith bargaining regarding, in addition to other articles, Article 34 – Compensation For Services and Article 30 – Health and Welfare, which negotiations resulted in an increase in wages and benefits for the taxicab drivers employed by the Employers; and

WHEREAS, at the time of the referenced negotiations, all taxicab drivers of the Employers were specifically exempt from the minimum wage laws of the State of Nevada, pursuant to the provisions of Nevada Revised Statutes (N.R.S.) 608.250(2)(e); and

WHEREAS, the Employers and the Union, in negotiating the 2006 provisions of Article 34 – Compensation For Services and Article 30 – Health and Welfare and other relevant provisions of their collective bargaining agreement, contemplated and intended that any Nevada minimum wage law would not be applicable to the taxicab drivers covered by the collective bargaining agreement;

NOW, THEREFORE, the Employers and the Union hereby agree

1. That, pursuant to the terms of their current collective bargaining agreement covering the period September 11, 2006 to September 11, 2009, all taxicab drivers of the Employers covered by that Agreement are to be compensated for all hours of work performed in accordance with the provisions of Article 34 – Compensation For Services, Article 31 – Annual Bonus, Article 17 – Vacations, and Article 30 – Health

and Welfare and any other relevant specific provisions of their collective bargaining agreement and the level of compensation is not to be affected or modified in any way by any law of the State of Nevada establishing a minimum wage.

2. In accordance with the terms of the 2006-2009 collective bargaining agreement, the Employers and the Union agree to and do explicitly waive all of the provisions of Section 16 of Article 15 of the Nevada Constitution, pursuant to and in accordance with the provisions of Section 16(B) of Article 15 of the Nevada Constitution.
3. The provisions of this Memorandum Of Agreement are part of and hereby incorporated into the collective bargaining agreement between the Employers and the Union as though they were set forth therein.

DATED: April 23, 2008

AGREED:

ABC UNION CAB COMPANY, INC.,
ACE CAB, INC., VEGAS-WESTERN
CAB, INC., A-N.L.V. CAB COMPANY

AGREED:

UNITED STEEL, PAPER AND
FORESTRY, RUBBER
MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION AFL-CIO,
CLC,

By: Kevin A. Chapman

Its: Attorney

Date: 4/23/08

By: Samuel S. S. S.

Its: INT. STAFF REP.

Date: 4/23/08

BRIAN SANDOVAL
Governor

BRUCE BRESLOW
Director

THORAN TOWLER
Labor Commissioner

STATE OF NEVADA



Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER

<http://www.LaborCommissioner.com>

REPLY TO:

OFFICE OF THE LABOR COMMISSIONER
555 E. WASHINGTON AVENUE, SUITE 4100
LAS VEGAS, NEVADA 89101
PHONE (702) 486-2650
FAX (702) 486-2660

OFFICE OF THE LABOR COMMISSIONER
675 FAIRVIEW DRIVE, SUITE 226
CARSON CITY, NEVADA 89701
PHONE (775) 687-4850
FAX (775) 687-6409

June 4, 2013

NEAL GOLDEN
8316 DORADO BAY CT
LAS VEGAS, NV 89128

Reference: Your claim filed on 8/25/2010 against SUN CAB INC. DBA NELLIS CAB COMPANY

This letter is in reference to your claim filed against Sun Cab Inc. dba Nellis Cab Company. As discussed previously, your claim has been placed on hold, pending the outcome of the federal court decision regarding the exemptions from the minimum wage requirements. As soon as I have additional information for you, I will notify you. If you have an e-mail address, please let me know and I can send you communication via e-mail.

Thank you for your patience and cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lupe Martinez".

Lupe Martinez
Compliance/Audit Investigator II
Office of the Labor Commissioner
lmartinez@laborcommissioner.com
702-486-0833

BRIAN SANDOVAL
Governor

BRUCE BRESLOW
Director

Thorin Towler
Labor Commissioner

STATE OF NEVADA



Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER

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OFFICE OF THE LABOR COMMISSIONER
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CARSON CITY, NEVADA 89701
PHONE (775) 687-4850
FAX (775) 687-6409

January 15, 2013

NEAL GOLDEN
8316 DORADO BAY CT
LAS VEGAS, NV 89128

Reference: Your claim filed on 8/25/2010 against SUN CAB INC DBA NELLIS CAB COMPANY

This letter is in reference to your claim filed against SUN CAB INC DBA NELLIS CAB COMPANY. As indicated previously, there was an amendment to the Constitution of the State of Nevada. The amendment removed all exemptions to minimum wage provisions listed in NRS 608.250, according to the Nevada Attorney General. However, a federal court case is considering whether exemptions from minimum wage requirements as listed in NRS 608.250 are still valid.

Based on the above, your wage claim has been placed on indefinite hold pending the outcome of the court decision. A final ruling has not been made yet. In the meantime, please update our office with any changes to your mailing address or telephone number. As soon as I have additional information for you I will contact you by mail.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lupe Martinez".

Lupe Martinez
Compliance/Audit Investigator II
Office of the Labor Commissioner
lmartinez@laborcommissioner.com
702-486-0833

in this issue:

NOVEMBER 2006

Nevada voters overwhelmingly approved a constitutional amendment to raise the state minimum wage above the current federal minimum wage. Employers have only until November 28, 2006 to implement a new two-tiered minimum wage.

The Nevada Constitutional Minimum Wage

By Rick D. Roskelley

Introduction

On November 7, 2006, the voters of six states passed ballot initiatives to raise the state minimum wage above the current federal minimum wage of \$5.15 an hour. These states include Arizona, Colorado, Ohio, Missouri, Montana and Nevada. The Nevada initiative, entitled "Raise the Minimum Wage for Working Nevadans Act," was presented as an amendment to the Nevada Constitution and listed on the ballot as Question 6.

Nevada voters overwhelmingly approved Question 6, by a margin of 69% in favor to 31% opposed. The initiative, previously approved in the election of 2004, was presented to the voters a second time in 2006 in accordance with state law requiring voters to pass constitutional amendments in two consecutive general elections. Question 6 amends the Nevada Constitution to provide a minimum wage that must be paid by all employers employing employees in this state. The Amendment effectively sets the Nevada minimum wage at least \$1 higher than the federal minimum wage. The new minimum wage becomes effective November 28, 2006.

In general, the Nevada minimum wage amendment raises the minimum wage from \$5.15 per hour to \$6.15 per hour. The Amendment, however, is unique in that it permits employers who offer employees a qualified health insurance plan to pay a minimum wage at the former rate of \$5.15 per hour. This two-tiered approach, as well as existing daily overtime requirements, present challenges to proper application of Nevada's new minimum wage laws.

Nevada employers now have a very short

period to examine their current payroll practices and determine what changes need to be implemented to assure compliance with the new minimum wage requirements. To assist in this process, we have provided the following answers to common questions regarding the new minimum wage requirements.

Answers to Common Questions

When does the new minimum wage become effective?

Article 15, section 16 of the Nevada Constitution ("Amendment"), or the minimum wage law, becomes effective November 28, 2006.

Under what circumstances must we pay a minimum wage of \$6.15 per hour?

The Amendment establishes a two-tiered minimum wage system for Nevada. Employers who provide health benefits as defined by the Amendment are required to pay employees a minimum wage of \$5.15 per hour. Employers who do not provide qualified health benefits must pay a minimum wage of at least \$6.15 per hour.

What constitutes health benefits under the Amendment?

To constitute qualifying health benefits, a health plan has to provide coverage for the employee and the employee's dependents. In addition, the cost to the employee of participating in the plan offered by the employer cannot exceed 10% of the employee's gross taxable income.

What if the health plan requires a waiting period before employees are eligible to

receive health insurance?

The Amendment does not specifically address this issue. The Amendment simply defines “offering health benefits” as making health insurance available to the employee and the employee’s dependents at a total cost to the employee for premiums of not more than 10% of his or her gross taxable income.

During informal discussions, the office of the Labor Commissioner has expressed the opinion that employers could pay the minimum wage of \$5.15 an hour during a bona fide waiting period specified in the health plan offered employees. It is important to stress, however, that the Nevada Labor Commissioner has yet to provide formal guidance on this subject. Further, as is noted below, the Amendment creates a private right of action allowing an employee to sue the employer directly in state court for violation of the Amendment. A court will not be bound by the Labor Commissioner’s interpretations of the Nevada Constitution. Consequently, we urge caution in determining which minimum wage to pay during introductory or waiting periods. Our recommendation for the present is to pay a minimum wage of \$6.15 per hour until such time as the employee is eligible to receive health insurance.

What happens if an employee declines coverage?

This issue is also not specifically addressed in the Amendment. However, the Amendment requires only that an employer offer health benefits to the employee. Offering health benefits is defined as making health insurance available to the employee and the employee’s dependents at a total cost to the employee for premiums of not more than 10% of his or her gross taxable income. Consequently, if an employer offers an employee health benefits that meet the coverage and the premium requirements, the employer’s obligations should be met. The Labor Commissioner has informally confirmed the position that the Amendment requires only that the employer offer qualified health coverage and that the employee’s declining such coverage does not obligate the employer to pay the higher minimum wage. Once again, an employer should proceed with caution in determining which minimum wage to pay. The employer

should watch for official guidance and clarification on this issue from the Nevada Labor Commissioner.

What if an employee drops below the required number of working hours to remain eligible for coverage?

Once again, the Amendment does not address this issue. However, if an employee is ineligible to participate in health benefits of his or her employer, arguably the employer has not “offered” health benefits as required by the Amendment. Consequently, the best practice would be to monitor employees’ eligibility for health benefits and to pay the increased minimum wage of \$6.15 an hour for any work week in which the employee is not eligible for coverage.

If an employer offers the employee the choice between two or more health plans, do all of the choices need to meet the 10% test for the employer to be able pay the \$5.15 minimum wage?

Probably not. Although the Amendment does not specifically address this scenario, the fact that one of the options offered to the employee meets the requirement that the employee contribution be 10% or less of his or her gross taxable income appears to be sufficient. The Amendment only requires that the employer offer health benefits to the employee and his or her dependents at a total cost to the employee of 10% or less of his or her gross taxable income. It does not mandate that the particular plan selected by the employee meet the 10% test. The Labor Commissioner has confirmed informally that it is the position of his office that an employer may pay the \$5.15 minimum wage as long as one of the choices offered to the employee meets the 10% test regardless of the actual option selected by the employee. Once again, however, the employer should watch for official guidance and clarification on this issue from the Nevada Labor Commissioner.

What is the period of time an employer must use to determine the gross taxable income for purposes of determining if the employer has offered qualified health benefits?

Offering health benefits is defined in the Amendment as making health benefits available to the employee and the employee’s

dependents at a total cost to the employee of not more than 10% of his or her gross taxable income. The Amendment does not discuss the period of time that must be taken into account in determining if the 10% ceiling has been surpassed. At this point, we have received no formal guidance from the Labor Commissioner on the issue. Because health premium contributions are generally made on a pay period basis, the best practice would appear to be to measure the employee contribution for health benefits against the gross taxable wages for the pay period.

May an employer count tips or gratuities toward payment of the minimum wage?

No. The amendment specifically provides that tips and gratuities received by employees cannot be credited or offset against the minimum wage.

May an employer count commissions and similar compensation toward payment of the minimum wage?

Yes. Nevada law defines wages to include commissions owed the employee. It also defines wages as any amount that an employer agrees to pay an employee for the time the employee has worked, computed in proportion to time. To the extent employee compensation is a commission or is paid for time worked, it may be credited toward payment of the minimum wage.

What effect does the amendment have on daily overtime under Nevada law?

The effect of the Amendment on daily overtime is not certain at this point as the Labor Commissioner and the Attorney General have taken differing positions on the issue.

The Labor Commissioner has publicly taken the position that employees who are offered qualifying health benefits will be entitled to daily overtime if they make \$7.725 or less per hour. He has also stated the employees who are not offered a qualifying plan must be paid overtime on a daily basis if their hourly rate is less than \$9.225 per hour.

That advice, however, conflicts with an official Opinion of the Nevada Attorney General issued March 2, 2005. The Nevada overtime law is found in Nevada Revised Statutes (NRS) section 608.018. Currently, Nevada

imposes an overtime obligation for more than 8 hours work in a day for an employee whose regular wage rate is less than 1 1/2 times the minimum rate prescribed pursuant to NRS section 608.250. The minimum wage set in NRS section 608.250 is the same as the federal minimum wage, currently \$5.15 an hour. In his March 2, 2005 opinion, the Attorney General concluded that the passage of Question 6 would not effect the triggering of or exemption from daily overtime under Nevada law. He concluded that employees who make at least 1 1/2 times the minimum rate set pursuant to NRS section 608.250 (which mirrors the federal minimum) would continue to be exempt from daily overtime in Nevada. This would mean that daily overtime would not be required for employees making at least \$7.73 an hour.

Are certain employees exempt from the new minimum wage law?

The Amendment increases the number of employees who are entitled to be paid minimum wage. The only exemption allowed under the new Amendment is for employees who are under the age of eighteen and are employed by nonprofit organizations for after-school or summer employment or employed as trainees for a period not longer than 90 days.

No other employees qualify for the exemption. This will make it necessary for Nevada employers to track the hours of a much broader number of employees, including salaried employees who are exempt from overtime but not the new minimum wage.

Employers that have employees who were previously exempt from the minimum wage will need to make the necessary payroll adjustments. Domestic service employees, outside salespersons, agricultural employees, taxicab and limousine drivers, and casual baby sitters will no longer be exempt from the minimum wage. In addition, the special minimum wage for severely handicapped persons with certificates issued by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation are not included among the exemptions identified in the Amendment.

Are there automatic increases built into the minimum wage?

Yes. The Amendment provides that the minimum wage will automatically be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase is to be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%.

How can we find out about subsequent increases to the minimum wage?

The Governor or a State agency designated by the Governor will publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. This bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive the bulletin, but lack of notice shall not excuse noncompliance with this section.

Are we required to provide employees notice of increases to the minimum wage?

Yes. Employers must provide written notification of the rate adjustments to each employee and make the necessary payroll adjustments by July 1 following the publication of the bulletin.

May an employee agree to earn less than the minimum wage?

No. The Amendment may not be waived by agreement between an individual employee and employer. The only exception to this rule is in the case of a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of the Amendment.

The non-waiver provision of the Amendment will also make it more difficult to informally resolve disputes with employee over payment

of the minimum wage. Because an employee cannot waive his or her rights, a settlement agreement and release may not be binding on the employee.

What protections are offered to employees that complain about non-compliance with the Amendment?

The Amendment prohibits employers from discharging, reducing the compensation of or otherwise discriminating against any employee for using any civil remedies to enforce his or her rights under the Amendment. An employee claiming violation of the Amendment may bring an action against his or her employer in the courts of this State to enforce the provisions of the Amendment. An employee successfully prosecuting a suit under the Amendment is entitled to all remedies available under the law or in equity appropriate to remedy any violation, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce his or her rights under the Amendment shall be awarded his or her reasonable attorney's fees and costs.

Conclusion

The Amendment and interpretation of the new minimum wage requirements raise numerous questions, many of which will need to be resolved by the implementation of new regulations or statutes and maybe even resort to the courts.

It is currently anticipated that the Legislative Counsel will issue an opinion regarding the interaction of the Amendment and existing minimum wage and overtime statutes. It is also anticipated that the Labor Commissioner will issue formal guidance and regulations on implementation of the minimum wage. Until that happens, employers in Nevada will need to proceed with caution and carefully consider their course of action in complying with the Amendment.

All employers, however, should take the following steps to ensure compliance with the minimum wage:

1. Conduct an audit of all hourly employees to ascertain any potential issues of non-compliance with the two-tiered minimum wage. Employees who earn less than

\$6.15 an hour should either have their pay raised to \$6.15 an hour, or they must be provided with health insurance that meets the minimum coverage and cost requirements.

2. Review the salaries and hours worked of all salaried employees considered exempt under the Fair Labor Standards Act to determine if any arguably make less than the new minimum wage during any workweek. Remember, salaried exempt employees are not exempt from the new minimum wage.
3. Review the methods of tracking hours of all employees to ascertain that all hours worked are properly accounted for.
4. Implement, where necessary, procedures for tracking the hours worked of salaried employees. Remember, salaried exempt employees are not exempt from the new minimum wage. The employer will be required to demonstrate compliance with minimum wage requirements for even the traditionally exempt employees. Time records is one way to do this.
5. Review your compliance decisions with and responses to the new minimum wage with your labor counsel.

Rick D. Roskelley is a Shareholder in Littler Mendelson's Las Vegas office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Mr. Roskelley at rroskelley@littler.com.

AXICAB AUTHORITY # 1105184

LAST NAME Leary

FIRST NAME Dan

CAB # 8007

MEDALLION # 587

MONTH / DAY / YEAR 11 25 12

No. Go's 0 Radio Calls 0

Shift 4pm

Gas Gal. 3.862

10

Odometer

Stop	6041
Start	5952
Diff	89

Total Miles

3097
3007
90

Paid Miles

4737
4710
27

Trips

4308
4303
5

Total Money

504020
495090
8930

Extras

15920
15920
0

Credit Cards

50589
47389
3200

Total Money 8930

Not on Meter +

Run Out -

Meter Jumps -

Gross Book 8930

(NO RUN OUTS OVER \$25)

Gross Book	8930
Subtract Trip Charge (\$1.50)	750
Net Book	8180
Divide Net Book by 2	4090
Subtract Gas	1374
Gross Wage	2716

1	Transfer Gross Wage	27	16
2	Tips = Gross Wage x 16 (16%)	4	35
3	Total Income = Add 1 & 2	31	51
4	Taxes = Total Income x 20 (20%)	6	30
5	Add Trip Charge (\$1.50)	7	50
6	Add Gas	13	74
7	Add Extras	0	
8	Total = Add Boxes 1, 4, 5, 6 & 7	55	

SUBTRACT FROM BOX 8 (ROUND TOTALS)

List Subsidized Transportation Coupons	-
Med rides	-
In Cab Credit Cards	32
Dispatch Ran Credit Cards	-
CPO's	-
CASH TURN	23

CASH TURN IN 23

PAPER CLIP HERE

MONEY MEDRIDES COUPONS CPOs CREDIT CARDS

x 50 =
x 20 =
x 10 =
x 5 =
x 1 =

CLOCK IN - START OF SHIFT

Driver Signature

CLOCK OUT - END OF SHIFT

NOV 25 12:52 AM

This trip sheet is a complete and accurate report of my daily activity.

NOV 25 12:34

00320

RESPONDENT'S APPENDIX 10

RULES TO BE OBSERVED BY EMPLOYERS

EVERY EMPLOYER SHALL POST AND KEEP CONSPICUOUSLY POSTED IN OR ABOUT THE PREMISES WHEREIN ANY EMPLOYEE IS EMPLOYED THIS ABSTRACT OF THE NEVADA WAGE AND HOUR LAWS (NRS 608)

PLEASE NOTE: Every person, firm, association or corporation, or any agent, servant, employee or officer of any such firm, association or corporation, violating any of these provisions is guilty of a misdemeanor.

The legislature hereby finds and declares that the health and welfare of workers and the employment of persons in private enterprises in this state are of concern to the state and the health and welfare of persons required to earn their livings by their own endeavors require certain safeguards as to hours of service, working conditions and compensation therefor.

1. Discharge of employee: Whenever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately.
2. Quitting employee: Whenever an employee resigns or quits his employment, the wages and compensation earned and unpaid at the time of his resignation or quitting must be paid no later than the day on which he would have regularly been paid or 7 days after he resigns or quits, whichever is earlier.
3. An employer shall not employ an employee for a continuous period of 8 hours without permitting the employee to have a meal period of at least one-half hour. No period of less than 30 minutes interrupts a continuous period of work.
4. Every employer shall authorize and permit covered employees to take rest periods, which, insofar as practicable, shall be in the middle of each work period. The duration of the rest periods shall be based on the total hours worked daily at the rate of 10 minutes for each 4 hours or major fraction thereof. Authorized rest periods shall be counted as hours worked, for which there shall be no deduction from wages.
5. Effective July 1, 2010 each employer shall pay a wage to each employee of not less than \$7.25 per hour worked if the employer provides health benefits, or \$8.25 per hour if the employer does not provide health benefits. Offering health benefits means making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. Tips or gratuities received by employees shall not be credited as being any part of or offset against the minimum wage rates.
6. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of meals. In no case shall the value of the meals consumed by such employee be computed or valued at more than 35 cents for each breakfast actually consumed, 45 cents for each lunch actually consumed, and 70 cents for each dinner actually consumed.
7. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee whose wage rate is less than 1 1/2 times the minimum rate prescribed pursuant to the Constitution of the State of Nevada: (a) Works more than 40 hours in any scheduled week of work; or (b) Works more than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee whose wage rate is 1 1/2 times or more than the minimum rate prescribed pursuant to the Constitution, works more than 40 hours in any scheduled week of work.

The above provisions do not apply to: (a) Employees who are not covered by the minimum wage provisions of the Constitution (b) Outside buyers; (c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than one month; (d) Employees who are employed in bona fide executive, administrative or professional capacities; (e) Employees covered by collective bargaining agreements which provide otherwise for overtime; (f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended; (g) Employees of a railroad; (h) Employees of a carrier by air; (i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan; (j) Drivers of taxicabs or limousines; (k) Agricultural employees; (l) Employees of business enterprises having a gross sales volume of less than \$250,000 per year; (m) Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment; and (n) A mechanic or workman for any hours to which the provisions of subsection 3 or 4 of NRS 338.020 apply.

8. Every employer shall establish and maintain records of wages for the benefit of his employees, showing for each pay period the following information for each employee: (a) Gross wage or salary; (b) Deductions; (c) Net cash wage or salary; (d) Total hours employed in the pay period by noting the number of hours per day; (e) Date of payment.

9. Wages must be paid semi-monthly or more often.

10. Every employer shall establish and maintain regular paydays and shall post a notice setting forth those regular paydays in 2 conspicuous places. After an employer establishes regular paydays and the place of payment, the employer shall not change a regular payday or the place of payment unless, not fewer than 7 days before the change is made, the employer provides the employees affected by the change with written notice in a manner that is calculated to provide actual notice of the change to each such employee.

11. It is unlawful for any person to take all or part of any tips or gratuities bestowed upon his employees. Nothing contained in this section shall be construed to prevent such employees from entering into an agreement to divide such tips or gratuities among themselves.

12. An employer may not require an employee to rebate, refund or return any part of his or her wage, salary or compensation. Also, an employer may not withhold or deduct any portion of such wages unless it is for the benefit of, and authorized by written order of the employee. Further, it is unlawful for any employer who has the legal authority to decrease the wage, salary or compensation of an employee to implement such a decrease unless:

(a) Not less than 7 days before the employee performs any work at the decreased wage, salary or compensation, the employer provides the employee with written notice of the decrease; or

(b) The employer complies with the requirements relating to the decrease that are imposed on the employer pursuant to the provisions of any collective bargaining agreement or any contract between the employer and the employee.

13. All uniforms or accessories distinctive as to style, color or material shall be furnished, without cost, to employees by their employer. If a uniform or accessory requires a special cleaning process, and cannot be easily laundered by an employee, such employee's employer shall clean such uniform or accessory without cost to such employee.

For additional information or exceptions, contact the Nevada State Labor Commissioner: Carson City 775-687-4850 or Las Vegas 702-486-2650
TOLL FREE: 1-800-992-0900 Ext. 4350 Internet: www.LaborCommissioner.com

BRIAN SANDOVAL
Governor
State of Nevada

THORAN TOWLER
Nevada Labor Commissioner

BRUCE BRESLOW
Director
Nevada Department of Business & Industry

REVISED 11-13-2012

A-CAB Taxi Services, LLC
 4444 S. Valley View
 Las Vegas, NV 89103
 702-365-1900
 EIN: 88-0470590

Attorney:

Esther Rodriguez,

Ex. 7 (c)

NARRATIVE

COVERAGE

Subject firm is a 24-hour taxi cab service company. The firm is a Nevada limited liability corporation that began operations and incorporated in 2001. (See Exhibit C-1). There are no other branches located in Nevada. The corporate officer is Creighton J. Nady (100% owner). Creighton J. Nady and Jon Gathright are 3(d) employers as they are acting directly in the day-to-day decision making as it relates to employees. ADV YTD 2009 is (as of 04-07-09)-^{Ex. 4} 2008 ^{Ex. 4} and 2007-^{Ex. 4} Jon Gathright, General Manager provided ADV information.

The investigation period covers April 1, 2007 to April 09, 2009.

EXEMPTIONS

13(a) (1) is applicable to:

Creighton J Nady	Owner	\$455.00+	541.101
Jon Gathright	General Manager	\$55,000.00	541.102
	^{Ex. 7 (c)}		541.201

13(b) (17) All taxi cab drivers are overtime exempt.

All other non-taxi driver employees are paid by the hour. No other exemptions are applicable.

STATUS OF COMPLIANCE

Prior History: There was no prior enforcement action involving this firm.

MODO Instruction: The MODO is Phoenix, Arizona DO.

Ex. 7 (e)

Section 6: There were no minimum wage violations found. The review of the payroll records resulted in a determination that the drivers are paid on a commission basis. While there is no record of actual hours worked, the drivers have scheduled hours and complete a trip sheets. The trip sheets have gaps in the hours worked. Using the scheduled hours worked from shift start time to shift end time, less an estimated period of time for a meal period, it was determined that in most workweeks, the drivers receive minimum wage based on the gross wage paid. Any short fall based on the scheduled hours worked could be offset by a less inclusive number of hours worked as indicated by the trip sheets. The drivers also receive tips in addition to the gross wage paid by the employer.

Section 7: No overtime violations found

Section 11: No record keeping violations found

Section 12: There were no Child Labor violations found during this investigation.

DISPOSITION:

On April 30, 2009, I conducted a final conference at the firm. The following firm representatives were present for the final conference: Esther Rodriguez, legal counsel, Creighton Nady, owner, Jon Gathright, General Manager and [REDACTED] Ex. 7 (c)

[REDACTED] Ex. 7 (c) We discussed the findings of the investigation. The firm was advised that they must keep a record of actual hours worked and that the drivers, while exempt from overtime, must be paid at least the applicable minimum wage for all hours worked.

The firm was also advised that the State of Nevada minimum wage is currently \$6.85 per hour and that this investigation is being concluded with the firm's assurance of future compliance.

Ex. 7 (c)



Date: 6-10-09

Case I.D # 1726404
 Lucky Cab Company of Nevada Inc.
 DBA: Lucky Cab
 4195 W. Diablo Dr.
 Las Vegas, NV 89118
 EIN # 88-0269865
 Phone: 702-386-7485

Contact Information:
 Controller: Donald Chan
 Phone: Ex. 7(C)
 Fax:

FLSA NARRATIVE

COVERAGE:

The subject firm is a taxi-limo corporation that provides taxi and limo service to clients in the Las Vegas, Nevada area. The corporate headquarters is located at 4195 W. Diablo Dr. Las Vegas, NV 89118. The firm was incorporated in March, 1991 in the state of Nevada. The owner of the firm is Jason Awad (100 percent). The firm employs a total of Ex. 4 taxi drivers and Ex. 4 employees as a whole including all employees on the limo service. All of the taxi drivers are compensated on a commission and fixed tip rate basis per IRS agreement. The firm is engaged in interstate commerce as all taxi cars used by the drivers were purchased and manufactured out of the state of Nevada (See Ex.C-1-a – C-1-c and C-3-a – C-3-c).

Section 3(d) Employer: During the investigation it was determined that both President/Owner, Jason Awad and Controller, Donald Chan, both met the definition of 3(d) employer under the (Fair Labor Standards Act). Mr. Awad and Mr. Chan both run the day to day operations of the firm, both have the authority to hire or fire employees, ability to incorporate policy and procedures for the firm, and both act in the direct interest of the business in relation to the employees (See Ex. B-1, B-3, B-4, and C-1-a – C-1-C).

The annual dollar volume of Lucky Cab Company of Nevada Inc. exceeded \$500,000 for the past three years per statements and documentation provided controller, Donald Chan (See Ex.C-1 and C-2).

FY 2010: Ex. 4
 FY 2011:
 FY 2012:
 FY 2013:

Enterprise coverage is asserted for all employees under section 3(s)(1)(A) as two or more employees are engaged in commerce by using equipment that has been shipped by out of state providers, and the firm's annual dollar volume is more than \$500,000 per year (See Ex. C-1-c) Individual coverage is also applicable to all taxi drivers during the entire

investigative period as they processed credit card payments on a daily basis (See Ex. B-1, B-3, B-4, and C-1).

Period of investigation: Limited Investigation, limited to all taxi drivers due to the amount of drivers, 11/07/2011 – 11/06/2014.

Ex. 7(E)

EXEMPTIONS:

Not Applicable as salary employees not reviewed under the investigation.

STATUS OF COMPLIANCE:

Ex. 7(C), Ex. 7(E)

Ex. 7(E)

Ex. 7(E)

Ex. 7(E)

Ex. 7(E)

Section 6: Minimum Wage. No minimum wage violations cited on firm. Such findings were based on [REDACTED] Ex. 7(E) other employees, statement provided by the employer, and payroll records provided by the firm. It was found that all taxi drivers were paid at least \$7.25 for all their hours worked during the entire investigative period (See Ex. A-1-a – A-1-h, B-1 – B-4, C-1-a – C-1-c, and D-10-a – D-16-g).

Section 7: Not applicable, as taxi drivers are exempt from overtime pay per Section 13(b)(17) of the FLSA.

Section 11: Record Keeping. A record keeping violation was cited on the firm. Based on the investigation, the employer failed to record and maintain actual hours worked per shift for every taxi driver. The employer recorded and paid all drivers for 12 hours for every shift regardless of the number of hours worked during each particular shift. The firm failed to record daily and weekly hours worked for all drivers during the investigative period. Such findings were based on payroll records provided by the employer that only reflected hours paid, but does not account for actual hours worked of the drivers (See Ex. A-1-a – A-1-h, C-1-a – C-1-c, and D-10-a – D-16-g).

Section 12: Child Labor. No violations found, the firm has not employed any person under the age of 18 during the entire investigative period, such finding were based on employee interviews and employer statement (See Ex. B-1 – B-4 and C-1-c).

DISPOSITION:

11/26/2014, the final conference was held at the firm. There present in the behalf of the firm was Controller; Donald Chan, Owner; Jason Awad. There present on the behalf of the U.S. Department of Labor, Wage and Hour Division was WHI [REDACTED] Ex. 7(C). There at the meeting WHI [REDACTED] Ex. 7(C) provided the following publications to the firm: Handy Reference Guide, FLSA poster in English and Spanish, Child Labor Poster, The Fair Labor Standards Act and Reg. 516 Record Keeping. WHI [REDACTED] Ex. 7(C) informed the firm that based on the findings of the investigation, no Section 212, Child Labor or Section 206, Minimum Wage violations were cited under the Fair Labor Standards Act.

WHI ^{Ex. 7(C)} informed the firm that Sec. 207, Overtime requirements of the act were not applicable to the taxi drivers as they are exempt from the overtime requirements per the regulations of the act. Mr. Awad stated he was aware of such overtime exemption.

WHI ^{Ex. 7(C)} proceeded to inform the firm that violations were cited on the firm under Section 211, Record Keeping of the act based on the investigation during the investigative period of 11/07/2011 to 11/06/2014. WHI ^{Ex. 7(C)} informed the firm that the firm failed to record and maintain hours worked on the payroll. Instead, the firm only recorded and maintained the 12 hours paid per shift to every driver even though such hours were not actual hours worked during certain shifts. WHI ^{Ex. 7(C)} explained to the firm that under the requirements of the act, the employer must record and maintain daily and weekly hours worked of employees. WHI ^{Ex. 7(C)} asked the firm why such violation occurred.

Mr. Chan stated that the firm was just making sure that the drivers would be paid for at least 12 hours per shift and that it didn't matter if the driver would only work 7 hours or the full 12 hours, the company just wanted to cover any possible minimum wage violations. WHI ^{Ex. 7(C)} asked the firm if they agree to comply in the future and how will they do so. Mr. Awad stated the firm will absolutely agree to comply. Mr. Awad and Mr. Chan both stated that the firm will require all drivers to clock in as soon as they arrive to the firm when they are to report for their shift and to clock out as they have been doing at the end of their shift. Mr. Chan stated such hours will be recorded and maintained going forward. WHI ^{Ex. 7(C)} also informed the firm that there were allegations that certain drivers would work 12 and a half hours during certain shifts, but that such hours did not trigger a minimum wage violation as a result of their pay for such particular work weeks at they earned at least \$7.25 during such work weeks. Mr. Awad stated that they firm will benefit greatly by recording and maintaining actual hours worked going forward to constantly verify that all drivers are earning at least minimum wage for all pay periods. Mr. Chan stated the firm will use 12.5 hours to compute minimum wage per shift, which will take into consideration the 30 minutes the drivers are required to arrive prior to their shift per employer policy, and such number of hours would cover if the drivers do not take the hour lunch break they are given to take. WHI ^{Ex. 7(C)} informed the firm that it is up to the employer to decide the number of hours to pay the drivers, but as long as they earn at least \$7.25 for all their hours worked for each particular pay period, there is no minimum wage violation. Mr. Awad stated that the firm will record and maintain actual hours worked by all the drivers to make sure the firm is following the law enforced by the Department of Labor.

WHI ^{Ex. 7(C)} informed the firm that no retaliation taken against any of the drivers as a result of the investigation is allowed by the Wage and Hour Division. Mr. Awad stated that no such action will be taken against any of them.

Ex. 7(E)

Publications Provided: Handy Reference Guide, Fact Sheet 44, CFR Regulations 516, 541, 778, 785, CL 101, Posters: FLSA, Polygraph, and Child Labor.

Recommendation: Recommend for the case to be closed upon being administratively

Ex. 7(C)

11/28/2014

FMLA: FMLA review of policy conducted and no discrepancies noted on the policy

(See Ex. D-17, D-17.1)

Ex. 7(C)

11/28/2014

Attorneys for Plaintiff, Thomas E. Perez, Secretary
United States Department of Labor

THOMAS E. PEREZ, Secretary of) Docket No.: 2:14-cv-1615
Labor, United States Department of)
Labor,) COMPLAINT FOR VIOLATIONS OF
) THE FAIR LABOR STANDARDS
Plaintiff,) ACT
v.)
)
)
A CAB LLC, a Nevada Limited)
Liability Company,)
CREIGHTON J. NADY, an individual,)
)
)
)
)
Defendants.)

RESPONDENT'S APPENDIX 20

Nevada Limited Liability Company, **CREIGHTON J. NADY**, as an individual, from violating the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201-219, hereinafter called the Act, pursuant to section 17 of the Act, 29 U.S.C. § 217; and to recover unpaid minimum wage compensation owing to defendants' employees, together with an equal amount as liquidated damages, pursuant to section 16(c) of the Act, 29 U.S.C. § 216(c).

2. Jurisdiction of this action is conferred upon the Court by sections 16(c) and 17 of the Act, 29 U.S.C. §§ 216(c) and 217, and 28 U.S.C. §§ 1331 and 1345.

3. Venue lies in the United States District Court, District of Nevada, Southern Division, pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events giving rise to the claim occurred in Las Vegas, Nevada.

4. (a) Defendant, **A CAB LLC**, is and at all times hereinafter mentioned was a corporation with an office and a place of business at 1500 Searles Avenue, Las Vegas, Nevada, 89101, within the jurisdiction of this Court, and is and at all times hereinafter mentioned was engaged in the operation of a taxicab business.

(b) Defendant, **CREIGHTON J. NADY**, an individual, at all times hereinafter mentioned acted directly or indirectly in the interest of **A CAB LLC**, in relation to its employees, by setting wages, hours, record keeping procedures, and hiring and firing such employees.

5. Defendant **A CAB LLC**, is and at all times hereinafter mentioned was engaged in related activities performed through unified operation or common control for a common business purpose, and is and at all times hereinafter

mentioned was an enterprise within the meaning of section 3(r) of the Act, 29 U.S.C. § 203(r).

6. Defendant **A CAB LLC**, is and at all times hereinafter mentioned was an enterprise engaged in commerce or in the production of goods for commerce within the meaning of sections 3(s)(1)(A) of the Act, 29 U.S.C. § 203(s)(1)(A), in that said enterprise at all times hereinafter mentioned had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has and has had an annual gross volume of sales made or business done of not less than \$500,000.

7. Defendants have willfully and repeatedly violated, and continue to violate, the provisions of sections 6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), by paying many of their employees wages at rates less than the applicable federal minimum wage in workweeks when said employees were engaged in commerce and in the production of goods for commerce or were employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, as aforesaid.

8. Defendants, employers subject to the provisions of the Act, repeatedly have violated, and continue to violate the provisions of sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), in that they failed to make, keep, and preserve adequate and accurate records of all employees and the wages, hours and other conditions and practices of employment maintained by them as prescribed by regulations duly issued pursuant to authority granted in the Act and found in 29 C.F.R. § 516, in that the defendants did not maintain and preserve records for at least one employee and/or such records fail to show adequately and

accurately, among other things, the hours worked each workday and the total hours worked each workweek, thereby depriving, interfering and impeding the ability of the employees, and derivatively the Secretary, to detect, identify and have notice of the underpayment of minimum wages due under the Act.

9. During the relevant statutory period and thereafter, defendants have willfully and repeatedly violated, and continue to violate, the aforesaid provisions of the Act. A judgment which enjoins and restrains such violations and includes the restraint of any withholding of payment of unpaid minimum wage and overtime compensation found by the court to be due to present and former employees under the Act is expressly authorized by section 17 of the Act, 29 U.S.C. § 217.

WHEREFORE, cause having been shown, plaintiff prays for a judgment against defendants as follows:

(a) For an Order pursuant to section 17 of the Act, 29 U.S.C. § 217, permanently enjoining and restraining defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them from prospectively violating the provisions of section 15 of the Act, 29 U.S.C. § 215; and

(b) For an Order

(1) pursuant to section 16(c) of the Act, 29 U.S.C. § 216(c), finding defendants liable for minimum wage compensation due defendants' employees and for liquidated damages equal in amount to the unpaid minimum wage compensation found due defendants' employees, including those listed in the attached Exhibit A (additional back wages and liquidated damages may be owed to

certain employees presently unknown to plaintiff for the period covered by this complaint);

(2) In the event liquidated damages are not awarded, pursuant to section 17 of the Act, 29 U.S.C. § 217, enjoining and restraining defendants, their officers, agents, servants, employees and those persons in active concert or participation with defendants, from withholding payment of unpaid back wages found to be due defendants' employees, and pre-judgment interest at an appropriate interest rate; and

(c) For an Order awarding plaintiff the costs of this action; and

(d) For an Order granting such other and further relief as may be necessary or appropriate,

Dated: October 1, 2014

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

SUSAN SELETSKY
FLSA Counsel

By: /s/ Andrew J. Schultz
ANDREW J. SCHULTZ
Trial Attorney

UNITED STATES
DEPARTMENT OF LABOR
Attorneys for the Plaintiff

Yellow-Checker Star Companies Case ID: 1284346

Nevada Yellow Cab Corp.
Nevada Checker Cab Corp.
Nevada Star Cab Corp.
3950 W. Tompkins Ave.
Las Vegas, NV 89103
Phone 702-873-8012
Fax 702-365-7864
EIN: Yellow
EIN: Checker
EIN: Star
Case ID. 1284346

XX A

NARRATIVE REPORT

LIMITED INVESTIGATION TAXICAB DRIVERS

COVERAGE:

The subject of this investigation is a service establishment operating as a taxi service. The companies were incorporated (Yellow 9-15-86) (Checker 6-20-86) and (Star 9-15-86) in the state of Nevada and began business the same date. The firm operates on a calendar year and it's ADV for the last two years was over

as indicated by Matt Towns (CFO)
(see Ex. C). There are two employees who handle goods, which have moved in interstate commerce such as (Auto Parts from LE Klein in Dallas, TX. and Transmissions from Trans Star Automotive in L.A. CA. All employees are covered under Sec. 3(s)(1)(A) of the FLSA for the entire investigative period of 07/01/01 to 05/31/03. The owners of subject firm are Milton Schwartz 16.67%, Howard Dudley 16.67%, Maratha Burton 16.67%, Peter Eliades 16.67%, Harry Eliades 16.67%, and David Willden 16.67% (see Ex. C). There has been no previous compliance action of this employer.
There are CBA's with ITPE AFL-CIO District #5. The 3(d) employer is Jack Owens 702-873-8012.

EXEMPTIONS:

13(b)(17) granted for the following: All taxi cab drivers

No other exemptions claimed, applicable or granted.

Yellow-Checker Star Companies Case ID: 1284346

X 7

STATUS OF COMPLIANCE:

Investigation of the subject firm was initiated by a complaint dated 03/25/03. The complainant alleged that the firm was not paying employees for all hours worked. The allegation was not substantiated by review of trip sheets, payroll records and interviews. The firm pays 100% commission to its drivers. The company also claims 20 % of the commission as a tip credit. The 20% tip credit is added to the commission for computing taxes on gross income. The 20% was an agreement with the IRS to tax the drivers on their tips (see Ex. D-1). The company was not keeping accurate time records on their drivers.

Section 6 – Minimum Wage, no violations found.

Section 7 – Overtime, no violations found

Section 11 – Record Keeping,

The company time records consisted of trip sheets and trip logs which were not totaled daily or weekly.

Section 12 – Child Labor Provisions, no violations found.

Computations:

No back wages found

DISPOSITION:

The final conference was held with Cathie Olendorff (Corporate Counsel), Jack Owens (General Manager), Matt Towns (C.F.O.), Bill Shranko (Dir. Operation and H. R.) on 7-17-03 at the corporate office. Enterprise coverage, MW, OT, RK, Hours Worked, and exemptions were discussed in detail and instructions were given for future compliance. Mr. Owens stated that the company had purchased a new computerized time keeping system the will track all hours worked by his employees. This system will total all hours worked at each company and compute a daily and weekly total of hours worded to compare to the commission paid and tip credit to make sure all employees are paid at least minimum wage. This system will be in place in 30 to 60 days. Currently the company is computing hours worked by times stamped on trip sheets.

Yellow-Checker Star Companies Case ID: 1284346

PUBS:

FLSA, Fact Sheet 44, 516 (Records), 541 (Exemptions), 778 (OT), 785 (Hours Worked),
Handy Reference Guide to the FLSA, and Elaws Advisors,

It is recommended that this case be closed administratively.

July, 23, 2003

Yellow Cab Company Case ID: 1612874

YELLOW CAB COMPANY CASE ID: 1612874

**NEVADA YELLOW CAB CORPORATION
dba YELLOW CAB COMPANY**

5225 WEST POST ROAD
LAS VEGAS, NV 89118
TEL. (702) 873-8012

EIN:

POINT OF CONTACT

MARC GORDON, Attorney
5225 WEST POST ROAD
LAS VEGAS, NV 89118
TEL. (702) 580-7600
FAX (702) 365-7864

ZEL BALES, Payroll Manager
5225 WEST POST ROAD
LAS VEGAS, NV 89118
(702) 933-1826
(702) 933-1634

FAIR LABOR STANDARDS ACT NARRATIVE REPORT

COVERAGE:

Subject firm is a taxi cab company. Firm was incorporated in Nevada on 07/18/1986. Subject firm forms part of a business enterprise called Yellow-Checker-Star Transportation. The enterprise is comprised of Yellow Cab Company (CASE ID: 1612874), Checker Cab Company (CASE ID: 1612877), and Star Cab Company (CASE ID: 1612876). All three (3) companies are located and headquartered at the above business location in Las Vegas, NV. Yellow-Checker-Star Transportation itself is not a legal entity. The business enterprise does not own or operate any other businesses.

The business enterprise is owned by a 6-member board of directors (See Ex. C-1-a). Its day to day business operations are run by Gene Auffert (CEO) and Bill Shranko (COO). They are all actively engaged in influencing the decision-making for the firm. All eight (8) individuals are 3(d) employers.

Enterprise coverage is applicable. Subject firm operates on a calendar year from January 1st to December 31st. Gross annual dollar volume (ADV) is

Subject firm handles goods and materials that have been moved in commerce, such as propane from Utah and California. This information was provided by the firm's attorney, Marc C. Gordon, during the initial conference (See Ex. C-1-b). Subject firm currently employs a workforce of approximately 600 employees; all are cab drivers (See Ex. C-1-b). Individual coverage is potentially applicable to the employees as they are permitted to drive within a 100 mile radius from the employer's establishment, which permits drivers to drive across the Nevada-California state line (See Ex. C-1-b).

Checker Cab Company and Star Cab Company only employ cab drivers. Non-cab driver personnel (administrative staff, dispatchers, non-driver supervisors) are paid from Yellow Cab Company's payroll.

Yellow Cab Company Case ID: 1612874

~~XX~~ 7

This investigation is limited to only cab drivers.

Period for this investigation is from 01/03/2010 to 01/02/2012.

MODO is Las Vegas, NV. The employer is incorporated and headquartered in Las Vegas, NV (See Ex. C-1-a, C-1-b, C-2).

STATUS OF COMPLIANCE:

Prior history was found in WHISARD.

Reason for investigation:

This investigation was initiated by a complaint filed by former employee
Complainant alleged he did not receive the Federal minimum wage for
all hours worked.

The allegation was substantiated through interviews of current / former employees and the employer's time and payroll records.

\$ 142,365.55 in back wages due 570 current / former employees.

Complainant due \$ 0.00.

This is a limited investigation of only the cab drivers.

EXEMPTIONS:

The FLSA Section 13(b)(17) overtime exemption is applicable to all drivers employed by an employer engaged in the business of operating taxicabs.

Section 6: Minimum wage violations were found due 570 current / former employees totaling \$ 142,365.55.

Cab drivers are compensated on a commission and tip basis. During several workweeks, drivers' regular rates were below the Federal minimum wage. In addition, the employer made illegal deductions (for a chargeable vehicle accident, i.e. the driver was at-fault) which caused the regular rate to drop below or further drop below the Federal minimum wage. All other deductions were made according to compliance with 29 CFR 531.35-40.

Method of computations

Minimum wage back wages were computed by first determining the total wages owed based on hours worked multiplied by the Federal minimum wage and then subtracting gross wages paid. Gross wages paid excluded any deductions made by the employer due to a chargeable vehicle accident.

Yellow Cab Company Case ID: 1612874

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Hours were reconstructed with the assistance of the employer. The drivers receive trip sheets as soon as they arrive for their shift and report to the driver supervisor window. The trip sheets display the time the trip sheet is printed. A driver supervisor prints a trip sheet as soon as the driver reports for his shift. At the end of the shift, the driver turns in his completed trip sheet and total book to a cashier, who enters this information into the computer. The computer electronically records the time the cashier processes the driver's trip sheet and total book. This information was given during a telephone discussion with driver supervisor and confirmed through employee interviews (See Ex. B-3, 5, 7-9, 12, 13, 17). The employer was able to build a software program to retrieve this information from its computer systems.

Hours: Total hours for the biweekly pay period; start time = when driver checks-in at the window @ start of shift; end time = when driver submits his trip sheet and total book at the window @ end of shift

Breaks: Break time that was allotted to the driver; this time is already included in "hours." However, employee statement interviews revealed employees were NOT taking a bona fide meal break in accordance to 29 CFR 785.19 (See Ex. B- 1-3, 5, 8, 10, 15-17). Therefore, the figures in this column were NOT used in the computations.

Min wage: \$7.25 * Hours

Net book: Total book – trip charges – fuel charges – any other fees imposed by the Taxicab Authority
Note: trip charges = \$0.60 per trip; fuel charges = \$0.20 per trip

Commission: percentage of "Net book" paid to driver (between 39% and 43.5%; according to length of service)

Tips 9%: IRS mandate for drivers to report 9% of Total book to be taxed as tips
Note: driver keeps ALL tips

Extras: Additional flat rate paid per day for each shift in which drivers work as an elite fleet dispatcher or drive a special service vehicle

Deductions: Deductions from driver's paycheck due to a chargeable vehicle accident

Total Pay: Commission + Tips 9% + Extras – Deductions

EE Due: Min wage – Total Pay

Section 7: Overtime is not applicable to taxi cab drivers as they are subject to FLSA section 13(b)(17). Please refer to Exemptions section above.

Section 11: A recordkeeping violation was found. The employer did not readily have available the start and stop times of work for the drivers. In addition, the employer utilizes a time clock located in the drivers lounge for drivers to punch in and punch out in their trip sheets. According to employee statements, the time clock will at times be inaccurate (See Ex. B-5).

Yellow Cab Company Case ID: 1612874

X 1

Section 12: No violations were found for child labor.

FMLA Policy Review: Review of firm's FMLA policy disclosed compliance. The firm has the appropriate FMLA postings in the establishments and provides information on employee FMLA rights beginning on 1. Pg. 5 of the Policies and Procedures for Non-Driver Personnel, and 2. Pg. 8 of the Policy and Procedures Manual for Cab Drivers (See Ex. D-7, 8). This investigator provided the employer with WH-1419, WH-1420, FS 28, FS 28A, FS 28B, and FS 28C.

DISPOSITION:

A final conference was held at the employer's establishment on 05/09/2012. Present were the employer's attorney Marc Gordon, CEO Gene Auffert, payroll manager Zel Bales, comptroller Rob Cunningham, senior accountant Maranda Fisher, and Investigator. The provisions of the FLSA, including coverage, minimum wage, overtime, recordkeeping, exemptions, and child labor were discussed in detail.

The employer was informed of a minimum wage violation for 684 former/current hourly employees. During several workweeks, cab drivers earned below the Federal minimum wage of \$7.25 per hour and were not compensated for the difference. The employer agreed to comply by ensuring drivers are paid at least \$7.25 per hour and if not, they would be compensated the difference on a bi-weekly basis (pay period is biweekly and drivers are exempt from overtime per FLSA section 17(b)).

The employer and this investigator reviewed the 29 CFR 785 hours worked publication in detail regarding the definition of hours worked, specifically 29 CFR 785.19 (meal breaks), 29 CFR 785.14-16 (engaged to wait vs. waiting to be engaged), and 29 CFR 785.27-31 (training and meeting time). The employer understood in addition hours worked operating a cab, any trainings and meetings he requires employees to attend are hours compensable and must be included in the total hours worked for the workweek. The employer admitted that prior to the investigation, the firm did not check for minimum wage every week. He stated that upon researching the firm's pay practices at the start of the investigation, he was not satisfied with the payroll software they had in place because it did not have the capabilities of calculating what driver's were averaging per hour. By 01/2012, the firm developed software that calculated minimum wage due per cab driver based on the employee's start and stop times (see below).

The drivers receive trip sheets as soon as they arrive for their shift and report to the driver supervisor window. The trip sheets display the time the trip sheet is printed. A driver supervisor prints a trip sheet as soon as the driver reports for his shift. This information was given during a telephone discussion with driver supervisor Michael Balin and confirmed through employee interviews (See Ex. B-3, 5, 7-9, 12, 13, 17).

At the end of the shift, the driver turns in his completed trip sheet and total book to a cashier, who enters this information into the computer. The computer electronically records the time the cashier processes the driver's trip sheet and total book. The employer was able to build a software program to retrieve this information from its computer systems.

The employer agreed to future compliance. The employer stated this software will be a major factor in the firm's future compliance. The employer also understood what may qualify as hours compensable (such as meeting/training time and engaged to wait time) to satisfy the minimum wage regulations.

Yellow Cab Company Case ID: 1612874

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This investigator notified the employer of a recordkeeping violation. The employer did not readily have available the start and stop times of work for the drivers at the start of the investigation. To reconstruct the hours, the employer built a software program that could retrieve the check-in time (from the daily trip sheets) and check-out times (from the time the cashier electronically processes a driver's trip sheet and total book at the end of his shift). The firm developed and has been using this software since 01/2012. In addition, drivers allege there are time clocks located in the driver's lounge that display inaccurate dates and times (See Ex. B-5). Drivers normally use the time clocks to punch in and out on their trip sheets. This investigator informed the employer if he continues allowing the drivers to use the time clocks, they must be replaced or corrected to display the accurate time and date.

The employer agreed to future compliance by recording each hour worked. He also stated it will fix the time clocks or replace them altogether. The employer understood the software does not address other potential areas of hours worked (such as meeting/training time, meal breaks of less than 30 minutes, engaged to wait time). This investigator emphasized all hours worked must be recorded to satisfy the recordkeeping regulations.

The employer agreed to pay back wages of \$ 142,365.55 due 570 current/former employees by 07/31/2012, and signed the WH-56 and the Back Wage Compliance and Payment Agreement.

The complainant was notified over the telephone on 06/21/2012 of the final results of the investigation.

The following publications were made available to the employer: Handy Reference Guide, WH-1088, CFR 516, CFR 541, CFR 778, CFR 785, and WH-1330 (CL).

No further action necessary. CMPs not recommended.

Case is recommended to be closed administratively upon proof of payment.

Wage & Hour Investigator
06/21/2012

Star Cab Company Case ID: 1612876

STAR CAB COMPANY CASE ID: 1612876

**NEVADA STAR CAB CORPORATION
dba STAR CAB COMPANY**

5225 WEST POST ROAD
LAS VEGAS, NV 89118
TEL. (702) 873-8012

EIN:

POINT OF CONTACT

MARC GORDON, Attorney
5225 WEST POST ROAD
LAS VEGAS, NV 89118
TEL. (702) 580-7600
FAX (702) 365-7864

ZEL BALES, Payroll Manager
5225 WEST POST ROAD
LAS VEGAS, NV 89118
(702) 933-1826
(702) 933-1634

FAIR LABOR STANDARDS ACT NARRATIVE REPORT

COVERAGE:

Subject firm is a taxi cab company. Firm was incorporated in Nevada on 06/26/1986. Subject firm forms part of a business enterprise called Yellow-Checker-Star Transportation. The enterprise is comprised of Yellow Cab Company (CASE ID: 1612874), Checker Cab Company (CASE ID: 1612877), and Star Cab Company (CASE ID: 1612876). All three (3) companies are located and headquartered at the above business location in Las Vegas, NV. Yellow-Checker-Star Transportation itself is not a legal entity. The business enterprise does not own or operate any other businesses.

The business enterprise is owned by a 6-member board of directors (See Ex. C-1-a). Its day to day business operations are run by Gene Auffert (CEO) and Bill Shranko (COO). They are all actively engaged in influencing the decision-making for the firm. All eight (8) individuals are 3(d) employers.

Enterprise coverage is applicable. Subject firm operates on a calendar year from January 1st to December 31st. Gross annual dollar volume (ADV) is :

Subject firm handles goods and materials that have been moved in commerce, such as propane from Utah and California. This information was provided by the firm's attorney, Marc C. Gordon, during the initial conference (See Ex. C-1-b). Subject firm currently employs a workforce of approximately 300-400 employees; all are cab drivers (See Ex. C-1-b). Individual coverage is potentially applicable to the employees as they are permitted to drive within a 100 mile radius from the employer's establishment, which permits drivers to drive across the Nevada-California state line (See Ex. C-1-b).

Checker Cab Company and Star Cab Company only employ cab drivers. Non-cab driver personnel (administrative staff, dispatchers, non-driver supervisors) are paid from Yellow Cab Company's payroll.

Star Cab Company Case ID: 1612876

#7

This investigation is limited to only cab drivers.

Period for this investigation is from 12/27/2009 to 12/26/2011.

MODO is Las Vegas, NV. The employer is incorporated and headquartered in Las Vegas, NV (See Ex. C-1-a, C-1-b, C-2).

STATUS OF COMPLIANCE:

Prior history was found in WHISARD.

Reason for investigation:

This investigation was initiated by a complaint filed by current employee. Complainant alleged he did not receive the Federal minimum wage for all hours worked.

The allegation was substantiated through interviews of current / former employees and the employer's time and payroll records.

\$ 90,013.59 in back wages due 425 current / former employees.

Complainant due \$ 146.21.

This is a full investigation.

EXEMPTIONS:

The FLSA Section 13(b)(17) overtime exemption is applicable to all drivers employed by an employer engaged in the business of operating taxicabs.

Section 6: Minimum wage violations were found due 425 current / former employees totaling \$ 90,013.59.

Cab drivers are compensated on a commission and tip basis. During several workweeks, drivers' regular rates were below the Federal minimum wage. In addition, the employer made illegal deductions (for a chargeable vehicle accident, i.e. the driver was at-fault) which caused the regular rate to drop below or further drop below the Federal minimum wage. All other deductions were made according to compliance with 29 CFR 531.35-40.

Method of computations

Minimum wage back wages were computed by first determining the total wages owed based on hours worked multiplied by the Federal minimum wage and then subtracting gross wages paid. Gross wages paid excluded any deductions made by the employer due to a chargeable vehicle accident.

Star Cab Company Case ID: 1612876

Hours were reconstructed with the help of the employer.

The drivers receive trip sheets as soon as they arrive for their shift and report to the driver supervisor window. The trip sheets display the time the trip sheet is printed. A driver supervisor prints a trip sheet as soon as the driver reports for his shift. At the end of the shift, the driver turns in his completed trip sheet and total book to a cashier, who enters this information into the computer. The computer electronically records the time the cashier processes the driver's trip sheet and total book. The employer was able to build a software program to retrieve this information from its computer systems. This information was given during a telephone discussion with driver supervisor Michael Balin and confirmed through employee interviews (See Ex. B-1, 2, 4-6, 8).

<i>Hours:</i>	Total hours for the biweekly pay period; start time = when driver checks-in at the window @ start of shift; end time = when driver submits his trip sheet and total book at the window @ end of shift
<i>Breaks:</i>	Break time that was allotted to the driver; this time is already included in "hours." However, employee statement interviews revealed employees were NOT taking a bona fide meal break in accordance to 29 CFR 785.19 (See Ex. B- 2, 3, 5, 6). Therefore, the figures in this column were NOT used in the computations.
<i>Min wage:</i>	\$7.25 * Hours
<i>Net book:</i>	Total book – trip charges – fuel charges – any other fees imposed by the Taxicab Authority <u>Note:</u> trip charges = \$0.60 per trip; fuel charges = \$0.20 per trip
<i>Commission:</i>	Percentage of "Net book" paid to driver (between 39% and 43.5%; according to length of service)
<i>Tips 9%:</i>	IRS mandate for drivers to report 9% of Total book to be taxed as tips <u>Note:</u> driver keeps ALL tips
<i>Extras:</i>	Additional flat rate paid per day for each shift in which drivers work as an elite fleet dispatcher or drive a special service vehicle
<i>Deductions:</i>	Deductions from driver's paycheck due to a chargeable vehicle accident
<i>Total Pay:</i>	Commission + Tips 9% + Extras – Deductions
<i>EE Due:</i>	Min wage – Total Pay

Section 7: Overtime is not applicable to taxi cab drivers as they are subject to FLSA section 13(b)(17). Please refer to Exemptions section above.

Section 11: A recordkeeping violation was found. The employer did not readily have available the start and stop times of

Star Cab Company Case ID: 1612876

~~X~~ 1

work for the drivers. In addition, the employer utilizes a time clock located in the drivers lounge for drivers to punch in and punch out in their trip sheets. According to employee statements, the time clock will at times be inaccurate (See CASE ID: 1612877 Ex. B-3, 4, 9; See CASE ID: 1612874 Ex. B-5).

Section 12: No violations were found for child labor.

FMLA Policy Review: Review of firm's FMLA policy disclosed compliance. The firm has the appropriate FMLA postings in the establishments and provides information on employee FMLA rights beginning on 1. Pg. 5 of the Policies and Procedures for Non-Driver Personnel, and 2. Pg. 8 of the Policy and Procedures Manual for Cab Drivers (See Ex. D-7, 8). This investigator provided the employer with WH-1419, WH-1420, FS 28, FS 28A, FS 28B, and FS 28C.

DISPOSITION:

A final conference was held at the employer's establishment on 05/09/2012. Present were the employer's attorney Marc Gordon, CEO Gene Auffert, payroll manager Zel Bales, comptroller Rob Cunningham, senior accountant Maranda Fisher, and Investigator. The provisions of the FLSA, including coverage, minimum wage, overtime, recordkeeping, exemptions, and child labor were discussed in detail.

The employer was informed of a minimum wage violation for 684 former/current hourly employees. During several workweeks, cab drivers earned below the Federal minimum wage of \$7.25 per hour and were not compensated for the difference. The employer agreed to comply by ensuring drivers are paid at least \$7.25 per hour and if not, they would be compensated the difference on a bi-weekly basis (pay period is biweekly and drivers are exempt from overtime per FLSA section 17(b)).

The employer and this investigator reviewed the 29 CFR 785 hours worked publication in detail regarding the definition of hours worked, specifically 29 CFR 785.19 (meal breaks), 29 CFR 785.14-16 (engaged to wait vs. waiting to be engaged), and 29 CFR 785.27-31 (training and meeting time). The employer understood in addition hours worked operating a cab, any trainings and meetings he requires employees to attend are hours compensable and must be included in the total hours worked for the workweek. The employer admitted that prior to the investigation, the firm did not check for minimum wage every week. He stated that upon researching the firm's pay practices at the start of the investigation, he was not satisfied with the payroll software they had in place because it did not have the capabilities of calculating what driver's were averaging per hour. By 01/2012, the firm developed software that calculated minimum wage due per cab driver based on the employee's start and stop times (see below).

The drivers receive trip sheets as soon as they arrive for their shift and report to the driver supervisor window. The trip sheets display the time the trip sheet is printed. A driver supervisor prints a trip sheet as soon as the driver reports for his shift. This information was given during a telephone discussion with driver supervisor and confirmed through employee interviews (See Ex. B-1, 2, 4-6, 8).

At the end of the shift, the driver turns in his completed trip sheet and total book to a cashier, who enters this information into the computer. The computer electronically records the time the cashier processes the driver's trip sheet and total book. The employer was able to build a software program to retrieve this information from its computer systems.

Star Cab Company Case ID: 1612876

#1

The employer agreed to future compliance. The employer stated this software will be a major factor in the firm's future compliance. The employer also understood what may qualify as hours compensable (such as meeting/training time and engaged to wait time) to satisfy the minimum wage regulations.

This investigator notified the employer of a recordkeeping violation. The employer did not readily have available the start and stop times of work for the drivers at the start of the investigation. To reconstruct the hours, the employer built a software program that could retrieve the check-in time (from the daily trip sheets) and check-out times (from the time the cashier electronically processes a driver's trip sheet and total book at the end of his shift). The firm developed and has been using this software since 01/2012. In addition, drivers allege there are time clocks located in the driver's lounge that display inaccurate dates and times (See CASE ID: 1612877 Ex. B-3, 4, 9; See CASE ID: 1612874 Ex. B-5). Drivers normally use the time clocks to punch in and out on their trip sheets. This investigator informed the employer if he continues allowing the drivers to use the time clocks, they must be replaced or corrected to display the accurate time and date.

The employer agreed to future compliance by recording each hour worked. He also stated it will fix the time clocks or replace them altogether. The employer understood the software does not address other potential areas of hours worked (such as meeting/training time, meal breaks of less than 30 minutes, engaged to wait time). This investigator emphasized all hours worked must be recorded to satisfy the recordkeeping regulations.

The employer agreed to pay back wages of \$ 90,013.59 due 425 current/former employees by 07/31/2012, and signed the WH-56 and the Back Wage Compliance and Payment Agreement.

The complainant was notified over the telephone on 06/21/2012 of the final results of the investigation.

The following publications were made available to the employer: Handy Reference Guide, WH-1088, CFR 516, CFR 541, CFR 778, CFR 785, and WH-1330 (CL).

No further action necessary. CMPs not recommended.

Case is recommended to be closed administratively upon proof of payment.

Wage & Hour Investigator
06/21/2012

CHECKER CAB COMPANY CASE ID: 1612877

NEVADA CHECKER CAB CORPORATION
dba CHECKER CAB COMPANY
 5225 WEST POST ROAD
 LAS VEGAS, NV 89118
 TEL. (702) 873-8012

EIN: 88-0220877

POINT OF CONTACT

MARC GORDON, Attorney
 5225 WEST POST ROAD
 LAS VEGAS, NV 89118

Ex. 7 (c)

5225 WEST POST ROAD
 LAS VEGAS, NV 89118

Ex. 7 (c)

FAIR LABOR STANDARDS ACT NARRATIVE REPORT

COVERAGE:

Subject firm is a taxi cab company. Firm was incorporated in Nevada on 07/18/1986. Subject firm forms part of a business enterprise called Yellow-Checker-Star Transportation. The enterprise is comprised of Yellow Cab Company (CASE ID: 1612874), Checker Cab Company (CASE ID: 1612877), and Star Cab Company (CASE ID: 1612876). All three (3) companies are located and headquartered at the above business location in Las Vegas, NV. Yellow-Checker-Star Transportation itself is not a legal entity. The business enterprise does not own or operate any other businesses.

The business enterprise is owned by a 6-member board of directors (See Ex. C-1-a). Its day to day business operations are run by Gene Auffert (CEO) and Bill Shranko (COO). They are all actively engaged in influencing the decision-making for the firm. All eight (8) individuals are 3(d) employers.

Enterprise coverage is applicable. Subject firm operates on a calendar year from January 1st to December 31st. Gross annual dollar volume (ADV) is Ex. 4 (CY 2009), Ex. 4 (CY 2010), and Ex. 4 (CY 2011) (See Ex. C-1-b). Subject firm handles goods and materials that have been moved in commerce, such as propane from Utah and California. This information was provided by the firm's attorney, Marc C. Gordon, during the initial conference (See Ex. C-1-b). Subject firm currently employs a workforce of approximately Ex. 4 employees; Ex. 4 (See Ex. C-1-b). Individual coverage is potentially applicable to the employees as they are permitted to drive within a 100 mile radius from the employer's establishment, which permits drivers to drive across the Nevada-California state line (See Ex. C-1-b).

Checker Cab Company and Star Cab Company only employ cab drivers. Non-cab driver personnel (administrative staff, dispatchers, non-driver supervisors) are paid from Yellow Cab Company's payroll.

This investigation is limited to only cab drivers.

Period for this investigation is from 12/27/2009 to 12/26/2011.

MODO is Las Vegas, NV. The employer is incorporated and headquartered in Las Vegas, NV (See Ex. C-1-a, C-1-b, C-2).

STATUS OF COMPLIANCE:

Prior history was found in WHISARD.

Reason for investigation:

Ex. 7 (e)

\$ 154,641.34 in back wages due 684 current / former employees.

Ex. 7 (c)

due \$ 0.00.

This is a full investigation.

EXEMPTIONS:

The FLSA Section 13(b)(17) overtime exemption is applicable to all drivers employed by an employer engaged in the business of operating taxicabs.

Section 6: Minimum wage violations were found due 684 current / former employees totaling \$ 154,641.34.

Ex. 4

During several workweeks, drivers' regular rates were below the Federal minimum wage. In addition, the employer made illegal deductions (for a chargeable vehicle accident, i.e. the driver was at-fault) which caused the regular rate to drop below or further drop below the Federal minimum wage. All other deductions were made according to compliance with 29 CFR 531.35-40.

Method of computations

Minimum wage back wages were computed by first determining the total wages owed based on hours worked multiplied by the Federal minimum wage and then subtracting gross wages paid. Gross wages paid excluded any deductions made by the employer due to a chargeable vehicle accident.

Hours were reconstructed with the assistance of the employer. The drivers receive trip sheets as soon as they arrive for their shift and report to the driver supervisor window. The trip sheets display the time the trip sheet is printed. A driver supervisor prints a trip sheet as soon as the driver reports for his shift. At the end of the shift, the driver turns in his completed trip sheet and total book to a cashier, who enters this information into the computer. The computer electronically records the time the cashier processes the driver's trip sheet and total book. This information was given during a telephone discussion Ex. 7 (c), Ex. 7 (e) (See Ex. B-3, 5, 7-9, 12, 13, 17). The employer was able to build a software program to retrieve this information from its computer systems.

Hours: Total hours for the biweekly pay period; start time = when driver checks-in at the window @ start of shift; end time = when driver submits his trip sheet and total book at the window @ end of shift

Breaks: Break time that was allotted to the driver; this time is already included in "hours." Ex. 7 (e)
(See Ex. B- 1-2, 4-6, 8, 10-12). Therefore, the figures in this column were NOT used in the computations.

Min wage: \$7.25 * Hours

Ex. 4

Ex. 4

EE Due: Min wage – Total Pay

Section 7: Overtime is not applicable to taxi cab drivers as they are subject to FLSA section 13(b)(17). Please refer to Exemptions section above.

Section 11: A recordkeeping violation was found. The employer did not readily have available the start and stop times of work for the drivers. In addition, the employer utilizes a time clock located in the drivers lounge for drivers to punch in and punch out in their trip sheets. Ex. 7 (e)

Ex. 7 (e) (See Ex. B-3, 4, 9).

Section 12: No violations were found for child labor.

FMLA Policy Review: Review of firm's FMLA policy disclosed compliance. The firm has the appropriate FMLA postings in the establishments and provides information on employee FMLA rights Ex. 4

(See Ex. D-7, 8). This investigator provided the employer with WH-1419, WH-1420, FS 28, FS 28A, FS 28B, and FS 28C.

DISPOSITION:

A final conference was held at the employer's establishment on 05/09/2012. Present were the employer's attorney Marc Gordon, CEO Gene Auffert, Ex. 7 (c) and Investigator Ex. 7 (e). The provisions of the FLSA, including coverage, minimum wage, overtime, recordkeeping, exemptions, and child labor were discussed in detail.

The employer was informed of a minimum wage violation for 684 former/current hourly employees. During several workweeks, cab drivers earned below the Federal minimum wage of \$7.25 per hour and were not compensated for the difference. The employer agreed to comply by ensuring drivers are paid at least \$7.25 per hour and if not, they would be compensated the difference on a bi-weekly basis Ex. 4. drivers are exempt from overtime per FLSA section 17(b)).

The employer and this investigator reviewed the 29 CFR 785 hours worked publication in detail regarding the definition of hours worked, specifically 29 CFR 785.19 (meal breaks), 29 CFR 785.14-16 (engaged to wait vs. waiting to be engaged), and 29 CFR 785.27-31 (training and meeting time). The employer understood in addition hours worked operating a cab, any trainings and meetings he requires employees to attend are hours compensable and must be included in the total hours worked for the workweek. Ex. 7 (e)

By 01/2012, the firm developed software that calculated minimum wage due per cab driver based on the employee's start and stop times (see below).

The drivers receive trip sheets as soon as they arrive for their shift and report to the driver supervisor window. The trip sheets display the time the trip sheet is printed. A driver supervisor prints a trip sheet as soon as the driver reports for his shift. This information was given during a telephone discussion Ex. 7 (c)

Ex. 7 (e)

(See Ex. B-1, 2, 4, 6, 7, 9-11).

At the end of the shift, the driver turns in his completed trip sheet and total book to a cashier, who enters this information into the computer. The computer electronically records the time the cashier processes the driver's trip sheet and total book. The employer was able to build a software program to retrieve this information from its computer systems.

The employer agreed to future compliance. The employer stated this software will be a major factor in the firm's future compliance. The employer also understood what may qualify as hours compensable (such as meeting/training time and engaged to wait time) to satisfy the minimum wage regulations.

This investigator notified the employer of a recordkeeping violation. The employer did not readily have available the start and stop times of work for the drivers at the start of the investigation. To reconstruct the hours, the employer built a software program that could retrieve the check-in time (from the daily trip sheets) and check-out times (from the time the cashier electronically processes a driver's trip sheet and total book at the end of his shift). The firm developed and has been using this software since 01/2012.

Ex. 7 (e)

Ex. 7 (e)

(See Ex. B-3, 4, 9). Drivers normally use the time clocks to punch in and out on their trip sheets. This investigator informed the employer if he continues allowing the drivers to use the time clocks, they must be replaced or corrected to display the accurate time and date.

The employer agreed to future compliance by recording each hour worked. He also stated it will fix the time clocks or replace them altogether. The employer understood the software does not address other potential areas of hours worked (such as meeting/training time, meal breaks of less than 30 minutes, engaged to wait time). This investigator emphasized all hours worked must be recorded to satisfy the recordkeeping regulations.

The employer agreed to pay back wages of \$ 154,641.34 due 684 current/former employees by 07/31/2012, and signed the WH-56 and the Back Wage Compliance and Payment Agreement.

Ex. 7 (e)

The following publications were made available to the employer: Handy Reference Guide, WH-1088, 29 CFR 516, 29 CFR 541, 29 CFR 778, 29 CFR 785, and WH-1330 (CL).

No further action necessary. CMPs not recommended.

Case is recommended to be closed administratively upon proof of payment.

Ex. 7 (c)

Wage & Hour Investigator
06/21/2012

Desert Cab Case ID: 1603481

DESERT CAB, INC.
 4675 S. WYNN RD.
 LAS VEGAS, NV 89103
 TEL. (702) 386-4828
 FAX (702) 386-6859

EIN: 88-0228015

FLSA NARRATIVE REPORT

COVERAGE:

Subject firm is a taxi cab company. Subject firm operates 1 location in Las Vegas, Nevada. Firm is an s-corporation that was incorporated in Nevada on 12/09/1986 and began operations in 08/1987.

The active owner and official in charge is George T. Balaban (President). He owns one-third of the company stock, and the other two-thirds are owned by his brother and sister, Brad and Dana Balaban (Directors). However, George T. Balaban is the only individual who is actively engaged in the day to day decision making of the firm. George T. Balaban is a 3(d) employer.

Enterprise coverage is applicable under section 3(a)(1)(A). ADV is [REDACTED]. Subject firm operates on a calendar year from January 1st to December 31st. Subject firm handles goods and materials that have been moved in commerce, such as office supplies, automobile parts from Florida, and propane from Florida. This information was provided by the President, George T. Balaban (See ex. C-1). Subject firm currently employs a workforce of approximately [REDACTED]; all are cab drivers (See ex. C-1). Individual coverage is applicable to all cab drivers as they could drive across state lines as part of their duties at any time. For example, a customer could possibly ask a cab driver to drive him/her from Las Vegas to California (See Exb. B-1,2, C-1).

Desert Cab only employs cab drivers. All other employees who work in relation to Desert Cab (office staff, dispatchers, and the owner himself) are employed by Multi-Service Leasing, Inc., owned by George and Brad Balaban. Both companies are located and headquartered in Las Vegas, NV.

This is a full investigation of Desert Cab, Inc.

Period for this investigation is from 08/01/2009 to 7/31/2011.

MODO is Las Vegas, NV. The employer is headquartered and only operates in Las Vegas, NV.

EXEMPTIONS:

FLSA section 13(b)(17) provides an overtime exemption to all taxi cab drivers. Exemption was granted.

STATUS OF COMPLIANCE:

No prior history was found in WHISARD.

Reason for investigation:

Exempt (7) (E)

Desert Cab Case ID: 1603481



This is a full investigation.

Section 6: A minimum wage violation was found due 493 current/ former employees totaling \$ 38,963.48.

Method of computations

Weekly hours and wages were determined through a review of time and payroll records. The employer was able to provide daily trip sheets and weekly payroll for each employee. Minimum wage violations were computed by dividing gross wages by hours worked. If the regular rate was below the Federal minimum wage of \$7.25 per hour, the difference was multiplied by total hours worked to arrive at minimum wage due for the workweek.

Example:

$$\text{Minimum wage due} = \text{Total Hours Worked} * [\$7.25 - (\text{Gross Wage}/\text{Total Hours Worked})]$$

There were 4 weeks total during which this investigator added 3 additional hours to total hours worked. These 4 weeks were the weeks during which there were safety meetings: weekending 11/21/09, 05/15/10, 11/20/10, and 05/21/11. This information was provided by the employer as well as time records reviewed by this investigator. Interviews of current and former employees confirmed bi-annual safety meetings between 2 to 4 hours long (See Ex. B-1-6, 10-17, 19-26).

Section 7: Overtime is not applicable to taxi cab drivers as they are subject to FLSA section 13(b)(17).

Section 11: No recordkeeping violations were found.

Section 12: No child labor violations were found.

DISPOSITION:

A final conference was held at the employer's establishment on 09/20/2011. Present were President George T. Balaban and [REDACTED]. The provisions of the FLSA, including coverage, minimum wage, overtime, recordkeeping, exemptions, and child labor were discussed in detail.

The owner was informed of a minimum wage violation for 456 former/current hourly employees. During several workweeks, cab drivers earned below the Federal minimum wage of \$7.25 per hour and were not compensated for the difference. The employer agreed to comply by ensuring drivers were earning at least \$7.25 per hour and if not, that they would be compensated the difference on a weekly basis. The employer stated he has already begun checking to ensure his drivers are making minimum wage every week on Mondays.

The employer and this investigator went over the 29 CFR 785 hours worked publication in detail regarding what counted as hours worked, including any training and meeting times. He understood that each workweek stands alone and that hours cannot be averaged. He understood that any trainings and meetings he requires employees to attend are time compensable and must be included in the total hours worked for the workweek. The employer admitted that before the investigation, he had not understood that even though his drivers were paid on commission, they were still subject to the FLSA section 6 minimum wages requirements. He thought all the cab drivers were making above minimum wage every week.

The owner agreed to pay back wages of \$ 38,963.48 due 456 current/former employees by 10/20/2011, and signed the WH-56 and the Back Wage Compliance and Payment Agreement.

Desert Cab Case ID: 1603481

EXEMPTED FROM DISCLOSURE

The following publications were made available to the employer: Handy Reference Guide, WH-1330 (CL), CFR 516, CFR 541, CFR 778, and CFR 785.

No further action necessary. No CMPs recommended.

Case is recommended to be closed administratively upon proof of payment.

EXEMPTED FROM DISCLOSURE

Wage & Hour Investigator
09/21/2011

Western Cab Company Case ID: 1574184

Case File #: 1574184

Western Cab Company

801 S. Main Street
Las Vegas, NV 89101
Tel#: (702) 382-7100

EIN#: 20-8981212

Representative:

Moran Law Firm, LLC

John T. Moran, Jr., Attorney at Law

Ex. 7 (c)



FLSA Narrative Report

COVERAGE

Nature of Business & Section 3(d) employer: The subject of this investigation is a cab company. The company has been in business since the 1950's. Mr. Tobman (now deceased) purchased the company in 1967. The company became incorporated in the State of Nevada in September 1950 as Western Cab.

Ex. 4



Western Cab Company Case ID: 1574184

The corporate officers are: Helen Tobman Martin, Director; Marylin Tobman Moran, Director; Janie Tobman Moore, President; and Jean Tobman, Secretary & Treasurer.
Mrs. Jean Tobman is retired and mother of Helen, Marylin and Jean.

The General Manager Martha Sarver and Director Helen Tobman Martin handle all the day to day operations of the business; they hire and fire the staff; therefore they're both the 3(d) Employer (see Exhibit Tab C-1).

Individual Coverage: The cab drivers do have individual coverage since they receive credit card payments from the customers.

203(s)(A)(1)ii: The subject company does meet ADV with gross revenues of [Ex. 4] in 2008, [Ex. 4] in 2009, and [Ex. 4] YTD thru September 2010 (see Exhibit Tab C-1c).

[Ex. 4]

Period of Investigation: January 1, 2009 thru September 30, 2010

MODO Office: LVDO is MODO office.

EXEMPTIONS

213(a)(1) applicable to:

(1) Helen Tobman Martin, Director

541.100 Exemption

Manages business, hires & fires staff, and does the employee scheduling

[Ex. 7 (c), Ex. 4]

(2) Martha Sarver, General Manager

541.100 Exemption

Western Cab Company Case ID: 1574184

Manages business, hires & fires staff, and does the business accounting

Ex. 7 (c), Ex. 4

(3) Marilyn Tobman Moran, Director

541.100 Exemption

Helps manage the business, has authority to hire & fire staff, and assist both Martha & Helen.

213(a)(1) not applicable to:

Ex. 7 (e)

Per Martha Sarver and Helen Tobman

Ex. 7 (e)

the office staff only work 40 hours per week, no overtime.

Ex. 7 (e)

213(b)(1) applicable to: All mechanics servicing the taxicabs are exempt from overtime provisions. The mechanics duties affect the safety of operations of motor vehicles in transportation on public highways.

213(b)(17) applicable to: Taxicab drivers are exempt from overtime provisions.

No other exemptions were applicable.

STATUS OF COMPLIANCE

Ex. 7 (e)

Prior History: No prior history was found in Whisard under Western Cab Company.

Ex. 7 (e)

FMLA violations were found and lost wages of \$459.48 were computed and

Western Cab Company Case ID: 1574184

paid by Western Cab.

There were two other cases found from more than 10 years ago:

- 1) FMLA case #1249824 from 9/26/02 thru 11/7/02 with no monetary findings;
- 2) FLSA case #1046854 from 7/1/98 thru 7/1/00 with Western Limousine Service with 39 EE's due \$24,603.54.

Ex. 7 (e)

employer was not paying the required minimum wage rate for all hours worked. Taxicab drivers are paid a commission and employer was not verifying the commission earned by drivers when divided by the number of hours worked in the week was atleast the minimum wage rate or higher.

Section 206: The review of the company's payroll records confirmed employer was not paying minimum wage rate for all hours worked. When adding all earning, commission and tips, and dividing by the hours worked the drivers were making less than the minimum wage rate. Ex. 7 (e)

Ex. 7 (e)

(see exhibit D-1).

Computations: All earnings (commissions & tips) were divided by the average number of hours worked (60 per week), and if the rate was below the minimum wage rate, the difference was computed as back wages due employees. However, credit was given for bonuses employees received at the end of the year. All employees received bonuses according to the employment period with company. The first year of employment employees received \$50, second \$100, third \$300 and up to a max of \$500.

Note that the bonuses were also pro-rated to only count the portion due for the number of weeks back wages were computed. Example: employee receives \$500 bonus for the year and there were 10 weeks back wages were computed; therefore 500 would be divided by 26 Ex. 4 and then multiplied by 10 (number of weeks) and that's the portion of the bonus subtracted from the back wages computed to give employer credit for the bonus.

Section 207: No violations of overtime were found due cab drivers since they are exempt from overtime provisions. Ex. 7 (e)

Section 211: Record keeping violations were found since employer failed to keep and maintain accurate

Western Cab Company Case ID: 1574184

record of the employees work hours. Almost all cab drivers work a 12 hour shift, 5 days per week for a total of 60 hours per week, [REDACTED] Ex. 7 (e)

Section 212: No record of child labor violations were found, employer stated during initial conference that they did not hire minors under the age of 18. Minors cannot operate a taxicab, and the insurance will not insure a taxicab driven by a minor.

Civil Money Penalty Assessments: No CMPs recommended, as prior cases found occurred 10 years ago. Employer has agreed to comply and pay back wages.

DISPOSITION

A final conference was held on Nov. 15, 2011 with Owners, Helen Tobman Martin and Marilyn Tobman Moran; General Manager Martha Sarver, Attorney John T. Moran, WHI [REDACTED] Ex. 7 (c), and WHI [REDACTED] Ex. 7 (c). The conference was held at employers' establishment.

When employer was asked why minimum wage violations occurred, their response was they were not checking the employees were making atleast the minimum wage rate by dividing their weekly earnings by the hours worked. Since my initial conference appointment they have started checking for minimum wage.

I discussed the sections of Fair Labor Standards Act that were reviewed in the course of the investigation: Sections 206, 207, 211, 212 & 213). I explained in full details each section of the FLSA reviewed.

I also explained in full detail the minimum wage violations found under sections 206, and record keeping violations found under Section 211. I then asked how they would come into compliance and correct the problems that lead up to the violations to avoid future violations. The employers Martha Sarver and Helen Tobman explained they have added an area in the trip sheets the drivers fill out daily where they must document the hours worked in the day, from start to end of shift. They are also verifying drivers' are documenting the work hours that they don't forget to complete this new setion of the trip sheet. They are also closely tracking the work hours, adding them up weekly, and making sure the driver has earned minimum wage rate or higher.

They are also implementing a program to monitor closely the non-productive drivers for potential lay-off if

they do not make minimum wage or higher. They are also working on implementing a change for the drivers to pay for a percentage of the gas, but have not yet decided what percent the drivers will pay. All these changes they stated will help eliminate potential future violations.

Once compliance was discussed and agreed upon, I let them know the amount of the back wages found due for the number of employees. The back wages found were \$402,897.55 for 391 employees. Attorney John Moran asked if they could have a few days to look over the Summary of Unpaid Wages, and discuss how back wages would be paid and from where. I agreed and we planned to meet back on Wednesday, November 30, 2011 at 9:00am to sign WH-56 Summary of Unpaid Wages.

On December 1, 2011 I received a call from General Manager Martha Sarver explaining to me that the "wages" I had counted from the payroll records did not include the tips. I explained that the payroll records has the commission earned and the tips right below and underneath both is a total column for both and that is the amount that was counted as the employees' total wages. She pointed out to me that the two columns were not added to reflect the total underneath them. So I pulled up one of the payroll to verify and indeed she was correct. The total amount was the same as the commission amount therefore not adding in the tips the employee had declared. I explained to her I would need a week or two to add up the payroll records and make the necessary changes on the back wage computations. I also explained that although some employees may drop off the back wages computed, others may be added that had not been on the summary of unpaid wages before. She stated she understood. After I the added the payroll records and made the changes to the back wage computations, the results were: \$285,229.89 due 431 employees. On Tuesday, December 13, 2011 I dropped off the new computations sheets and Summary of Unpaid Wages (WH-56) to Martha Sarver, General Manager at employers' establishment. She explained the owners Helen Tobman and Marilyn Tobman as well as Attorney John Moran were all on vacation and would not return until after Christmas. I told her I needed to have the Summary of Unpaid Wages back and signed before the end of the year. She agreed to have it to me by Wednesday, December 28th.

On December 28th the Summary of Unpaid Wages (WH-56) was delivered to the office by courier. The owner Helen Tobman has agreed to pay the back wages to employees by Jan. 31, 21012, see signed Summary of Unpaid Wages in case file. The Receipt of Unpaid Wages (WH-58) for all 431 employees were printed and delivered to employers' establishment on Dec. 29th to be included in the envelope with checks.

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No further action is necessary.

Recommendation: It is recommended that this case be closed administratively upon receipt of back wages paid to employees.

Ex. 7 (e)

Publications: The employer was provided with an FS#44 and Handy Reference Guide to the FLSA included with the appointment letter. At initial conference, Owner, Helen Tobman Martin was provided with the following publications: 1261 & 1312.

Date: _____

Ex. 7 (c)

Wage Hour Investigator

Ex. 7 (e)



3 of 10 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEVADA

OPINION No. 2005-04

2005 Nev. AG LEXIS 4

March 2, 2005

SYLLABUS:

[*1]

BALLOTS; LABOR COMMISSIONER; WAGES: Notwithstanding the conclusion that the proposed amendment would effect an implied repeal of the provisions for calculation of the minimum wage and minimum wage entitlement found in *NRS 608.250*, the statutory exclusions from overtime compensation and the provisions of *NRS 608.250* relied upon in *NRS 608.018*, would stand as enacted for purposes of the overtime compensation law.

REQUESTBY:

Michael Tanchek, Nevada Labor Commissioner
Office of the Labor Commissioner
Department of Business and Industry
675 Fairview Drive, Suite 226
Carson City, Nevada 89701

OPINIONBY:

BRIAN SANDOVAL, Attorney General; PATRICIA PALM GASPARINO, Deputy Attorney General, Civil Division

OPINION:

As the Nevada Labor Commissioner, you are requesting an opinion regarding the potential effect of the amendment to the Nevada Constitution as proposed by the initiative placing Question No. 6, "Raise the Minimum Wage for Working Nevadans Act," on the 2004 General Election Ballot. Your questions concern the consequences of such an amendment upon Nevada's existing statutory framework for minimum [*2] wage and overtime compensation benefits. Notwithstanding the recent introduction of Assembly Bill 87 in the current session of the Nevada Legislature, the issues and conclusions of this opinion should be shared with appropriate legislative committees for consideration of prudent anticipatory statutory amendments to current laws that will be impacted by any passage of Question No. 6 amending the Nevada Constitution.

GENERAL BACKGROUND INFORMATION

Currently under *NRS 608.250*, certain employees in private employment are entitled to minimum wages at a rate to be established by the Nevada Labor Commissioner in accordance with federal law. Nevada's overtime compensation statute, *NRS 608.018*, incorporates select provisions of the minimum wage law at *NRS 608.250* to delineate which employees are excluded from entitlement to statutory overtime compensation. Complimenting these Nevada laws, the Fair Labor Standards Act of 1938, as amended (FLSA), at 29 U.S.C.A. § 201 *et seq.*, sets forth the minimum wage and overtime compensation benefits [*3] required by federal law. n1 Under the FLSA, the general minimum wage rate is set at \$ 5.15 per hour. 29 U.S.C.A. § 206(a)(1) (1998). In accordance therewith, the Nevada Labor Commissioner has also set Nevada's general minimum wage rate at \$ 5.15 per hour. *NAC 608.110(1)*.

n1 Although states remain free to enact their own laws governing minimum wages and overtime benefits, compliance with state legislation will not excuse noncompliance with the FLSA. 29 U.S.C.A. § 218(a) (1998); *Alaska Int'l Indus., Inc. v. Musarra*, 602 P.2d 1240, 1246 (Alaska 1979).

Ballot Question No. 6, which is aimed at raising Nevada's minimum wage rate, stemmed from an initiative petition. See Nev. Const. art. 19, § 2 (reserving to the people the power to propose, by initiative petition, amendments to the constitution, and to enact or reject them at the polls); *Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas*, 118 Nev. 749, 751, 59 P.3d 1180, 1181 (2002) [*4] (discussing the initiative power). The initiative proposes to amend Article 15 of the Nevada Constitution to add the following section addressing minimum wages:

*Sec. 16. Payment of minimum compensation to employees. A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents (\$ 5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents (\$ 6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over \$ 5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 [*5] of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.*

*B. The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in [*6] a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of*

this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.

*C. As used in this section, "employee" means any person who is employed by an employer as defined herein [*7] but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period of not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.*

D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.

Compilation of Ballot Questions 2004, Question No. 6, § 3.

A majority of Nevada voters voting on Question No. 6 in the 2004 general election approved the proposed constitutional amendment. However, before the proposed amendment can become effective, the Secretary of State must resubmit the question for its approval by the voters in the 2006 general election. [*8] If a majority of the 2006 general election voters also approve the proposed amendment, it will become part of the Nevada Constitution upon certification of the election results. Nev. Const. art. 19 § 2(4); NRS 295.035.

QUESTION ONE

Would the provisions of NRS 608.250 through NRS 608.290 be voided by the successful passage of the proposed amendment?

ANALYSIS

Neither the arguments for or against the initiative's passage nor the text of the proposed constitutional amendment refer directly to the existing minimum wage statutes. *See* Compilation of Ballot Questions 2004, Question No. 6. Even so, the primary focus of the initiative is on raising the current Nevada minimum wage of \$ 5.15 per hour, which wage is established pursuant to the statutory scheme. Thus it unmistakably appears that the voters intended for the proposed amendment to transform the existing statutory framework for minimum wages. The extent of the transformation that would actually be affected depends upon the extent of conflict between the proposed amendment and the existing statutes.

A constitutional [*9] amendment, ratified subsequent to the enactment of a statute, is controlling on any point covered in the amendment. *State ex rel. Nevada Orphan Asylum v. Hallock*, 16 Nev. 373, 378 (1882). Further, ratification of a constitutional amendment will render void any existing law that is in conflict with the amendment. Op. Nev. Att'y Gen. 08 (May 19, 1908); *see also* 16 AM. JUR. 2d *Constitutional Law* § 68 (1979) (if there is a conflict between a statute and a subsequently adopted constitutional provision, the statute must give way). We now consider the relevant statutory provisions in turn.

NRS 608.250

Responsibility for Wage Calculation

NRS 608.250 governs the minimum wage for private employment and provides as follows:

1. Except as otherwise provided in this section, the Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum wage which may be paid to employees in private employment within the State. The Labor Commissioner shall prescribe increases in the minimum wage in accordance with those prescribed by [*10] federal law, unless he determines that those increases are contrary to the public interest.

2. The provisions of subsection 1 do not apply to:

(a) Casual babysitters,

(b) Domestic service employees who reside in the household where they work.

(c) Outside salespersons whose earnings are based on commissions.

(d) Employees engaged in an agricultural pursuit for an employer who did not use more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year.

(e) Taxicab and limousine drivers.

(f) Severely handicapped persons whose disabilities have diminished their productive capacity in a specific job and who are specified in certificates issued by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation.

3. It is unlawful for any person to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any person for a wage less than that established by the Labor Commissioner pursuant to the provisions of this section.

This statute's provisions for calculation of the minimum wage and the responsibility therefor are completely covered by and conflict [*11] with the corresponding provisions of the proposed amendment. First, like *NRS 608.250*, the proposed amendment provides a comprehensive minimum wage calculation method which is applicable to private employment. *See Proposed Amendment, § 16(A),(C)* (setting forth a minimum wage calculation applicable to "any . . . entity that may employ individuals or enter into contracts of employment").

Second, obvious conflict is revealed when comparing the competing methods of wage calculation. Specifically, *NRS 608.250(1)* requires that the Labor Commissioner, "in accordance with federal law, establish . . . the minimum wage" and "prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless he determines that those increases are contrary to the public interest." By the terms of these provisions, the minimum wage rate cannot be higher than the federal minimum wage rate (which is currently \$ 5.15 per hour). However, the proposed amendment sets the minimum wage rate at either \$ 5.15 or \$ 6.15 per hour, depending upon whether an employer provides sufficient health benefits. The proposed [*12] amendment also vests the Governor or a state agency designated by him with the responsibility of publishing adjustments to the minimum wage and requires those adjustments to be based upon increases in the federal minimum wage or increases in the Consumer Price Index not to exceed 3% per year, whichever is greater. *See Proposed Amendment, § 16(A)*.

Based on this overlapping and contradictory coverage, the existing statutory provisions would not survive the proposed amendment. Instead, the proposed amendment would supplant and repeal by implication the provisions of *NRS 608.250* for wage calculation and the responsibility therefor.

Exclusions Based on Employee Type

Also apparent from a comparison of the proposed amendment and statute is the disagreement on the issue of which

employees are entitled to minimum wages. *NRS 608.250(2)* sets forth various exclusions from the statutory minimum wage entitlement for certain types of employees, *i.e.*, casual babysitters, domestic service employees who reside in the household where they work, etc. However, *NRS 608.250* [*13] does not provide any exclusion which is based on an employee's age, n2 the nonprofit status of an employer, or training periods of employment. In contrast, the proposed amendment does not exclude from its minimum wage coverage the types of employees listed at *NRS 608.250(2)*, except to the extent that those types of employees may also be "under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days." Proposed Amendment, § 16(C) (defining "employee" for coverage purposes to exclude certain employees under age eighteen).

n2 Previously, *NRS 608.250* expressly allowed for a minimum wage for minors that was eighty-five percent of the minimum wage for adults; however, the pertinent statutory language was deleted in 2001 when the statute was amended to allow the Labor Commissioner to establish prevailing wages in accordance with federal law. *See* 2001 Nev. Stat., ch. 90, § 9, at 564-65. Cf. *NAC 608.110(2)* (setting forth a lesser minimum wage for employees under age eighteen).

[*14]

The effect of the proposed amendment on the *NRS 608.250* exclusions is controlled by two presumptions. First, the voters should be presumed to know the state of the law in existence related to the subject upon which they vote. *Op. Nev. Att'y Gen.* 153 (December 21, 1934). Second, it is ordinarily presumed that "where a statute is amended, provisions of the former statute omitted from the amended statute are repealed." *McKay v. Board of Supervisors*, 102 Nev. 644, 650, 730 P.2d 438, 442 (1986). In keeping with these presumptions, the people, by acting to amend the minimum wage coverage and failing to include the statutory exclusions in the proposed amendment, are presumed to have intended the repeal of the existing exclusions so that the new minimum wage would be paid to all who meet its definition of "employee." Accordingly, the proposed amendment would effect an implied repeal of the exclusions from minimum wage coverage at *NRS 608.250(2)*.

NRS 608.260

Civil Court Remedies for Evasion of Minimum Wage Laws

Each competing minimum wage scheme provides a complete [*15] civil court remedy for evasion of its requirements. *See NRS 608.260* (stating, in part, "The employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage."); *compare* Proposed Amendment, § 16(B) (an employee may bring an action against his employer in the courts of this state and shall be entitled to all appropriate remedies available under the law or in equity, including back pay, damages, reinstatement or injunctive relief, and if prevailing, shall be entitled to reasonable attorney's fees and costs). As the proposed amendment has completely covered the topic of a civil court remedy, providing for even greater relief, its remedy would supplant and repeal by implication the existing civil remedy provision at *NRS 608.260*.

NRS 608.270(1) and *NRS 608.290(2)*

Administrative Enforcement of Minimum Wage Laws

NRS 608.270(1)(a) states that the "Labor Commissioner shall . . . administer and enforce the provisions of *NRS 608.250* [*16] ." In addition, *NRS 608.290(2)* provides with regard to violations of *NRS 608.250* that "in addition to any other remedy or penalty, the Labor Commissioner may impose against the person an administrative penalty of not more than \$ 5,000 for each such violation." The presumptive partial repeal of *NRS 608.250* notwithstanding, legal authority suggests that the proposed amendment would serve to modify these statutes as necessary to effectuate their continued use in enforcing the new minimum wage law.

The proposed amendment is silent with respect to the administrative enforcement authority of the Labor Commissioner and his imposition of administrative sanctions. Where, as here, "express terms of repeal are not used, the presumption is always against an intention to repeal an earlier statute, unless there is such inconsistency or repugnancy [between the laws] as to preclude the presumption, or the [new law] revises the whole subject-matter of the former. [Citations omitted.]" *Ronnow v. City of Las Vegas*, 57 Nev. 332, 365, 65 P.2d 133, 145 (1937). [*17] [Text altered.] The statutes in question here are consistent with the basic provisions of the proposed amendment.

The minimum wage changes proposed by Question No. 6, though materially different in wage outcome, applicability and civil court remedy, essentially create a new method of calculating the wage rate and do not attempt to alter the underlying current statutory basis for administrative enforcement of the new wage by the Labor Commissioner. By providing for a higher minimum wage and a more extensive civil court remedy, the people intended to strengthen an employee's ability to assert his right to the minimum wage. The current administrative enforcement jurisdiction of the Labor Commissioner is well-suited to serve this general purpose, and it merely strengthens what the proposed amendment seeks to guaranty. *See Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001) (statutes must be interpreted consistently with their general purposes); *see also Rogers v. Heller*, 117 Nev. 169, 176 n.17, 18 P.3d 1034, 1038 n.17 (2001) (recognizing that rules of statutory construction apply [*18] to constitutional provisions).

The current minimum wage statutes evidence the Legislature's clear intent that the Labor Commissioner should enforce Nevada's minimum wage law and impose administrative sanctions for violations thereof. Additionally, *NRS 607.160(1)(a)(2)* provides that "the Labor Commissioner . . . shall enforce *all labor laws* of the State of Nevada . . . the enforcement of which is not specifically and exclusively vested in any other officer, board or commission." [Emphasis added.] *NRS 607.160(3) -- (6)* contemplate the Labor Commissioner will impose administrative penalties and pursue administrative and civil actions for violation of Nevada's labor laws. Further, *NRS 607.170(1)* allows the Labor Commissioner to prosecute claims and commence actions to collect wages for any person who is unable to afford counsel.

The intent behind the administrative enforcement provisions at *NRS 608.270(1)(a)* and *NRS 608.290(2)*, *i.e.*, that the Labor Commissioner shall enforce the state's [*19] minimum wage law, is likely to prevail despite the specific references to *NRS 608.250* in *NRS 608.270(1)(a)* and *NRS 608.290*. *McKay*, 102 Nev. at 650, 730 P.2d at 443 (the intent behind a law will prevail over the literal sense of the words used in the law). However, given the specific references to *NRS 608.250* in *NRS 608.270(1)(a)* and *NRS 608.290*, it is conceivable that a court of law could find the Legislature intended the existing enforcement statutes apply only to the minimum wage as calculated under *NRS 608.250*, and not recognize the amendment to the Nevada Constitution as merely augmenting the statutes establishing the Labor Commissioner's pre-amendment administrative enforcement authority. If so, the intent behind existing statutes would be upset by allowing them to stand as enforcement tools for the new law, and the statutes should be treated as repealed. [*20] *See City and County of San Francisco v. County of San Mateo*, 896 P.2d 181, 195 (Cal. 1995) (Mosk, J., concurring) (existing statutes must be treated as repealed if the intent behind them would be thwarted by allowing them to stand in the face of a constitutional amendment). On the other hand, the more likely and appropriate conclusion is that the proposed amendment would modify these enforcement statutes to allow for the Labor Commissioner's enforcement of the new minimum wage law. *Cf. Perry v. Consolidated Special Tax Sch. Dist. No. 4*, 103 So. 639, 642 (Fla. 1925) (recognizing that previous statutory provisions, as modified by constitutional amendment, are sufficient to effectuate new constitutional provisions so that new provisions may be enforced even though they are not contained in or contemplated by present statutes).

NRS 608.270(1)(a), (2), NRS 608.280, and NRS 608.290(1)

Criminal Enforcement of Minimum Wage Laws

NRS 608.270(1)(a) and (2) establish that the district attorneys will prosecute [*21] violations of *NRS 608.250* and, for the willful failure to do so, will be subject to a misdemeanor conviction and removal from office. In addition, *NRS 608.280* requires the Attorney General to prosecute willful violations of *NRS 608.270*. Finally, *NRS 608.290(1)* also

makes the violation "of *NRS 608.250* or any regulation adopted pursuant thereto" a misdemeanor. For the same reasons given in the preceding section of this opinion (addressing the proposed amendment's effect upon the Labor Commissioner's administrative enforcement authority), it is also likely that a court would find that the proposed amendment only modifies, rather than repeals, the existing criminal enforcement statutes. In short, by enacting these criminal statutes the Legislature plainly intended that criminal sanctions would be used as a tool to enforce the state minimum wage law. Although, as with the provisions discussed in the preceding section, it is possible that a court could determine that the Legislature's intent [*22] is ambiguous with respect to application of the criminal enforcement statutes to the new minimum wage law. After considering this risk, the reasonable and fair conclusion is that the legislative intent behind the existing provisions is consistent with using these provisions to enforce the new minimum wage law. The criminal enforcement statutes are also consistent with the proposed amendment's apparent purpose of strengthening an employee's ability to collect minimum wages. The people, by presumption, were aware of the law's provisions when voting in favor of the proposed amendment. *See Op. Nev. Att'y Gen. 153* (December 21, 1934). As both the initiative and the proposed amendment are silent as to repeal of the criminal enforcement provisions, these provisions are likely to survive as modified to effectuate their continued use as an enforcement tool for the new minimum wage law. *See Ronnow v. City of Las Vegas, 57 Nev. at 332, 365, 65 P.2d 133, 145 (1937).*

CONCLUSION TO QUESTION ONE

If the proposed constitutional amendment is approved at the 2006 general election as established by certified election results, it would supplant and [*23] repeal by implication the wage calculation and coverage provisions of *NRS 608.250* and the civil remedy of *NRS 608.260*. *NRS 608.270(1)* and *NRS 608.290(2)* would likely be found to have been modified as necessary to effectuate the Labor Commissioner's enforcement of the new minimum wage. The criminal enforcement provisions of *NRS 608.270(1)(b)* and (2), *NRS 608.280*, and *NRS 608.290(1)* also would likewise be found to be modified to allow for their continued use in enforcing the new minimum wage law.

QUESTION TWO

Would the passage of the proposed amendment require the payment of the minimum wage to those types of employees currently excluded under *NRS 608.250(2)*?

ANALYSIS

As discussed in response to Question One above, the proposed amendment does not contain any of the exceptions to coverage currently set forth at *NRS 608.250(2)* [*24]. The only exception under the proposed amendment is for employees who are "under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days." Proposed Amendment, § 16(C) (defining "employee" for coverage purposes to exclude certain employees under age eighteen). In light of this, the exclusions under *NRS 608.250* are repugnant to the proposed amendment, the plain wording of which requires payment of the minimum wage regardless of whether an employee is currently excluded under *NRS 608.250(2)*. Consequently, the proposed amendment would effect an implied repeal of the exclusions set forth at *NRS 608.250* from minimum wage coverage.

CONCLUSION TO QUESTION TWO

The proposed amendment would require payment of the new minimum wage to employees who are currently excluded under *NRS 608.250(2)* from entitlement to minimum wages, unless those employees fall outside the amendment's definition of a protected "employee."

QUESTION [*25] THREE

Does the language of Section 16(B) of the proposed amendment specifically and exclusively vest the enforcement of the minimum wage provisions with the courts, so as to preempt the enforcement jurisdiction of the Labor

Commissioner?

ANALYSIS

Your question alludes to the language of *NRS 607.160(1)(a)(2)*, which states, "The Labor Commissioner . . . shall enforce all labor laws of the State of Nevada . . . the enforcement of which is not specifically and exclusively vested in any other officer, board or commission." As discussed in response to Question One above, the provisions of *NRS 607.160* and *NRS 607.170*, as well as the provisions under *NRS 608.270(1)(a)* and *NRS 608.290(2)*, demonstrate the Legislature's intent that the Labor Commissioner enforce Nevada's minimum wage law, even as amended or supplanted by the instant initiative. Therefore, the proposed amendment would likely only modify the existing statutes as needed for such enforcement. The proposed amendment's civil remedy [*26] at section 16(B) would supplant the existing statutory civil remedy at *NRS 608.260*, but this would have no additional affect on the existing statutes providing for the Labor Commissioner's enforcement jurisdiction in other areas.

Moreover, section 16(B) of the proposed amendment provides, in relevant part, that an employee "may bring an action against his or her employer in the courts of this State to enforce the provisions of this section." [Emphasis added.] The use of the word "may" in this context indicates that the remedy is intended to be permissive and it does not indicate exclusivity of the remedy. *D'Angelo v. Gardner*, 107 Nev. 704, 721 n.11, 819 P.2d 206, 217 n.11 (1991); *Ewing v. Fahey*, 86 Nev. 604, 608, 472 P.2d 347, 350 (1970). Indeed, the analogous provision currently set forth in *NRS 608.260* states that an "employee may . . . bring a civil action," and this remedy coexists with other statutes providing for enforcement by the Labor Commissioner. Thus the proposed amendment's civil remedy at section [*27] 16(B) does not specifically and exclusively vest authority elsewhere or divest the Labor Commissioner of all of his jurisdiction.

CONCLUSION TO QUESTION THREE

Section 16(B) of the proposed amendment does not interfere with all of the enforcement jurisdiction of the Labor Commissioner. It is likely that authority not specifically in contradiction to the amendment would survive a legal challenge.

QUESTION FOUR

Would preemption of *NRS 608.250* have any effect on the statutory exclusions from entitlement to overtime compensation set forth in *NRS 608.018*?

ANALYSIS

The overtime compensation statute, *NRS 608.018*, should not be affected by the proposed amendment, even though it partially relies on *NRS 608.250*.

NRS 608.018 provides, in relevant part:

1. Except as otherwise provided in this section, an employer shall pay one and one-half times an employee's regular wage rate whenever an employee works:

(a) More than 40 hours in any scheduled week of work; or

(b) More than 8 hours in [*28] any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

2. The provisions of subsection 1 do not apply to:

(a) Employees who are not covered by the minimum wage provisions of *NRS 608.250*;

(b) Employees who receive compensation for employment at a rate not less than one and one-half times the minimum rate prescribed pursuant to *NRS 608.250*;

....

(d) Salesmen earning commissions in a retail business if their regular rate is more than one and one-half times the minimum wage, and more than one-half their compensation comes from commissions;

....

(k) Drivers of taxicabs or limousines;

(l) Agricultural employees; n3

n3 The provisions of *NRS 608.018* do not refer to, rely on, or parallel the provisions of *NRS 608.250* and would not be affected by the repeal of the *NRS 608.250* scheme for minimum wage. Furthermore, it should be noted that *NRS 608.180* -- *608.195* provide for civil and criminal enforcement and remedies for violations of *NRS 608.018*. This enforcement scheme is unrelated to the topic of minimum wage and would likewise remain unaffected by the proposed amendment.

[*29]

As set forth above, *NRS 608.018(2)(a)* incorporates by reference the standard for minimum wage entitlement in *NRS 608.250*. By this, *NRS 608.018(2)(a)* excludes from entitlement to statutory overtime compensation those employees who are also not entitled to minimum wages. *NRS 608.250(2)* sets forth a list of employees who are not entitled to minimum wages, including casual babysitters, taxicab and limousine drivers, and certain domestic service employees, outside salespersons, employees engaged in agriculture and severely handicapped persons. *NRS 608.250(2)(a)* -- (f).

The exclusions at *NRS 608.250(2)(d)* (for employees "engaged in agricultural pursuit for an employer who did not use more than 500 man-days of agricultural labor") and in *NRS 608.250(2)(e)* (for "taxicab and limousine drivers") are also subsumed in other corresponding statutory exclusions from overtime compensation. In particular, *NRS 608.018(k)* [*30] and (l) set forth exclusions which are at least as broad as those at *NRS 608.250(2)(d)* and (e) and which do not depend on or refer to *NRS 608.250*. Accordingly, any question as to the continuing validity of *NRS 608.250(2)* cannot affect the lack of entitlement to statutory overtime compensation for taxicab and limousine drivers or for agricultural employees.

On the whole, the exclusions from statutory overtime coverage, as incorporated from *NRS 608.250(2)*, are complimentary to the exclusions under the FLSA's overtime compensation provisions. n4 Hence, it is apparent that the Legislature intended to enact state overtime compensation law that was generally consistent with federal law on the same topic and to exclude from statutory overtime compensation the types of employees identified at *NRS 608.250(2)*. This intent should be respected regardless of changes in the law on the distinct subject matter of minimum wages.

n4 See, e.g., 29 U.S.C.A. § 213(a)(1) (1998) (addressing outside salespersons); 29 U.S.C.A. § 213(a)(6) (1998) (addressing employees employed in agriculture); 29 U.S.C.A. §§ 213(a)(7), 214(c) (1998) (addressing handicapped workers); 29 U.S.C.A. § 213(a)(15) (1998) (addressing casual babysitters and those engaged in domestic service).

[*31]

Moreover, *NRS 608.018(2)(a)* does not depend on the aspects of *NRS 608.250* that offend the proposed amendment, *i.e.*, the provisions for minimum wage calculation and entitlement. Because the subject of the proposed amendment is the minimum wage and not entitlement to overtime compensation, *NRS 608.018(2)(a)* does not conflict with the organic provisions of the proposed amendment. Therefore, *NRS 608.018(2)(a)*, which incorporates the identification of types of employees found in *NRS 608.250(2)*, would survive the limited repeal of *NRS 608.250(2)* specific to its exclusion from minimum wage coverage for the same types of employees.

In contrast, the exclusions from statutory overtime entitlement set forth at *NRS 608.018(2)(b)* and (d) rely on the calculation of the minimum wage under *NRS 608.250*. Subsection (2)(b) expressly does so, excluding from overtime compensation "employees [*32] who receive compensation for employment *at a rate not less than one and one-half times the minimum rate prescribed pursuant to NRS 608.250.*" [Emphasis added.] Subsection 2(d) excludes "salesmen earning commissions in a retail business *if their regular rate is more than one and one-half times the minimum wage, and more than one-half their compensation comes from commissions.*" [Emphasis added.]

The apparent intent behind *NRS 608.018(2)(b)* and (d) was to exclude from overtime compensation employees and certain salesmen who earned as a regular rate at least one and one-half times the minimum rate set by the Labor Commissioner -- a rate that is limited by the rate provided by federal law. *See NRS 608.250(1)*. In enacting *NRS 608.018(2)(b)* and (d), the Legislature could not have anticipated that overtime compensation would be required even though an employee earned more than one and one-half times the rate under federal law and *NRS 608.250*. Incorporation of the wage calculation at [*33] *NRS 608.250* into *NRS 608.018* reflects the Legislature's determination as to the proper balance of state interests. Amending or supplanting *NRS 608.018(2)(b)* or (d) with the higher minimum wage rate of the proposed amendment would prove more costly for employers and would frustrate the apparent intent of the Legislature to tie this variable in the overtime calculation to the federal minimum wage. n5 For this reason, and even more so because the proposed amendment is not concerned with overtime compensation, it would not effect a repeal or modification of these overtime compensation exclusions linked to *NRS 608.250*.

n5 For example, the current minimum wage rate is \$ 5.15 per hour. This rate multiplied by one and one-half equals \$ 7.73 per hour. Thus under *NRS 608.018(2)(b)* and (d), statutory overtime compensation is required until an employee or salesman with sufficient commissions earns at least \$ 7.73 per hour. Under the proposed amendment, assuming no adequate insurance is provided, the minimum wage would be initially set at \$ 6.15 per hour. This rate multiplied by one and one-half equals \$ 9.23 per hour. If the calculation from the proposed amendment were incorporated into *NRS 608.018(2)(b)* and (d), then an employee would be entitled to statutory overtime compensation until he earned \$ 9.23 per hour.

[*34]

The rule that all statutes in force and not inconsistent with the new constitutional provisions shall continue until amended or repealed by the Legislature seems particularly apt here. *See 16 AM. JUR. 2d Constitutional Law* § 67. Under this rule, the minimum wage calculation provisions of *NRS 608.250*, as incorporated into *NRS 608.018(2)(b)* and (d), should continue for the purpose of requiring the Labor Commissioner to establish a wage rate to be used in determining entitlement to statutory overtime compensation under *NRS 608.018(2)(b)* and (d).

CONCLUSION TO QUESTION FOUR

Notwithstanding the conclusion that the proposed amendment would effect an implied repeal of the provisions for calculation of the minimum wage and minimum wage entitlement found in *NRS 608.250*, the statutory exclusions from overtime compensation and the provisions of *NRS 608.250* relied upon in *NRS 608.018*, would [*35] stand as enacted for purposes of the overtime compensation law.

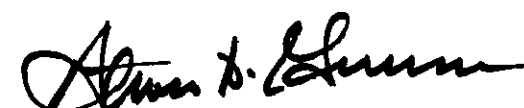
Legal Topics:

2005 Nev. AG LEXIS 4, *35

For related research and practice materials, see the following legal topics:

Administrative LawAgency RulemakingRule Application & InterpretationGeneral

OverviewGovernmentsLegislationExpirations, Repeals & SuspensionsGovernmentsLegislationInitiative & Referendum



CLERK OF THE COURT

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DISTRICT COURT**CLARK COUNTY, NEVADA**

9 MICHAEL MURRAY, and MICHAEL) Case No.: A-12-669926-C
 10 RENO, Individually and on)
 behalf of others similarly) Dept.: I
 11 situated,)
)
 12 Plaintiffs,)
)
 13 vs.)
)
 14 A CAB TAXI SERVICE LLC, and A)
 CAB, LLC,)
 15)
 Defendants.

DECISION AND ORDER

18 This matter having come before the Court on the defendants'
 19 motion to dismiss plaintiffs' complaint¹ pursuant to NRCP Rules
 20 12(b)(1) and 12(b)(5), such motion having come before the Court for
 21 oral argument on January 17, 2012, with Esther C. Rodriguez, Esq.,
 22 arguing on behalf of the defendants and Leon Greenberg, Esq.,
 23 arguing on behalf of the plaintiffs, and after due consideration of
 24 the arguments, briefs and papers submitted by counsel for the
 25 parties, and the record of these proceedings;

27
 28 ¹ The Complaint served in this case indicated the first named
 plaintiff as Michael Murphy although the Court's docket indicates
 his name is Michael Murray which is such person's correct name.
 Defendants do not concede that the caption of this order is proper.

1 **THE COURT FINDS:**

2 **Summary of Plaintiffs' Claims and the Parties' Dispute**

3 Plaintiffs allege they were formerly employed by defendants as
4 taxi cab drivers. They allege when they were so employed the
5 defendants were obligated to pay them a minimum wage as provided for
6 under Nevada's Constitution Article 15, Section 16 ("Section 16").
7 They further allege they were not paid such minimum wage. As a
8 result, they allege they are entitled to damages and other
9 relief as provided for by Section 16 and certain penalties
10 pursuant to NRS § 608.040. Defendants claim Section 16 does not
11 confer any right to a minimum wage upon taxi drivers and moves
12 to dismiss on that basis.

13 **Discussion**

14 The Court's decision ultimately rests upon the supremacy
15 of Nevada's Constitution in all matters of law not otherwise
16 controlled by federal law or the United States Constitution.
17 The very first sentence of Section 16, in paragraph "A,"
18 provides:

19 Each employer shall pay a wage to each employee of not
20 less than the hourly rates set forth in this section.

21 This language is clear, direct and unambiguous.

22 Accordingly, the Court's inquiry is limited to determining
23 whether the parties are "employer" and "employee" for the
24 purposes of Section 16. Defendants assert Section 16 was
25 intended only to raise the minimum wage and not disturb the
26 exemptions to Nevada's minimum wage requirements in Nevada
27 Revised Statutes 608.250(2). In resolving such assertion the
28 starting point for the Court must, of course, be the language

1 of Section 16 itself. In Section 16, paragraph "C," the
2 following definition of "employee" is provided:

3 As used in this section, "employee" means any person who
4 is employed by an employer as defined herein but does not
5 include an employee who is under eighteen (18) years of
6 age, employed by a nonprofit organization for after school
or summer employment or as a trainee for a period not
longer than ninety (90) days.

7 Again, this language is clear, direct and unambiguous.
8 Through such language Section 16 extends its minimum wage
9 requirements to all employees except those set forth in paragraph
10 "C." Such paragraph "C" does not include taxi drivers among the
11 employees excluded from the reach of Section 16.

12 Defendants argue that Section 16 makes no mention of the
13 exemptions in Nevada Revised Statutes 608.250(2) and implied repeal
14 occurs only when there is irreconcilable repugnancy between the two
15 laws compelling the conclusion that the later enactment necessarily
16 repeals the earlier. They further argue where express terms of
17 repeal are not used, the presumption is always against an intention
18 to impliedly repeal an earlier statute. In support of these
19 contentions they cite *Washington v. State*, 30 P.3d 1134, 1170 (Sup
20 Ct. Nev. 2001), *Mengelkamp v. List*, 501 P.2d 1032, 1034 (Sup. Ct.
21 Nev. 1972), and the authorities discussed therein. Accordingly, in
22 defendants' view, this Court must find that the two laws can exist
23 and be read in harmony; and Section 16 did not supplant the
24 exemptions specified in Nevada Revised Statute 608.250(2).

25 Unfortunately for defendants, the foregoing clear and
26 unambiguous language of Section 16, paragraph "A," and the clear and
27 unambiguous language of paragraph "C" setting forth who is an
28 "employee" for the purposes of Section 16, renders the Court unable

1 to conduct the intent analysis urged by defendants and reach the
2 disposition they desire.

3 An examination of the intent or purpose behind a constitutional
4 provision is only proper when ambiguity exists in the language of
5 the provision. If there is no ambiguity the provision must be
6 applied in accordance with its plain meaning. See, *Halverson v.*
7 *Miller* 186 P.3d 893, 897 (Nev. Sup. Ct. 2008); *Nevadans for Nevada*
8 *v. Beers*, 142 P.3d 339, 347 (Nev. Sup. Ct. 2006); and *Rogers v.*
9 *Heller*, 18 P.3d 1034, 1038, n. 17 (Nev. Sup. Ct. 2001). The Court
10 discerns no ambiguity in the language of Section 16 and none has
11 been brought to its attention by defendants. Under such
12 circumstances, for the Court to engage in an analysis of the intent
13 behind Section 16, and by doing so override its express, clear, and
14 unambiguous language, would be antithetical to our system of
15 constitutional law. The people of the State of Nevada, through the
16 democratic process, have made Section 16 the supreme law of the
17 State of Nevada by placing its provisions in Nevada's Constitution.
18 This Court is duty bound to enforce Section 16 and its clear
19 language.

20 The provisions of NRS 608.250(2) make no mention of Section 16
21 and speak only of providing an exemption to the requirements set
22 forth in NRS 608.250(1). Nor does Section 16 grant the legislature
23 the power to modify any of its requirements. Section 16, being a
24 constitutional provision not subject to legislative modification,
25 must displace any conflicting statute. Accordingly, the provisions
26 of NRS 608.250 are not controlling upon plaintiffs' claims brought
27 under Section 16.

28 In reaching its decision, the Court acknowledges it has been

1 advised of the contrary conclusion rendered in the opinion issued by
 2 United States District Court Judge Jones in *Lucas v. Bell*
 3 *Transportation*, 2009 U.S. Dist. LEXIS 72549, (D. Nev. June 23, 2009).
 4 It has also been made aware that the holding of *Lucas* has been
 5 adopted by two of the judges of this Court.² With all due respect
 6 to its judicial brethren, this Court must decline to follow *Lucas*
 7 which this Court believes has not appropriately recognized, and
 8 respected, the clear language and primacy of Section 16.

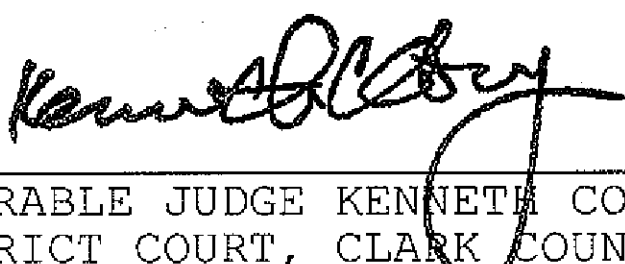
9 The Court realizes application of Section 16 to the defendants,
 10 and its industry, represents a significant change for how such
 11 employers must conduct business. The Court is effectuating such
 12 change because it is required to do so, it passes no judgment on the
 13 wisdom of such change. [REDACTED]

14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]

18 Conclusion

19 Defendants' motion to dismiss pursuant to NRCP Rules 12(b)(1)
 20 and 12(b)(5) is denied.

21
 22 IT IS SO ORDERED this 8 day of Feb, 2013

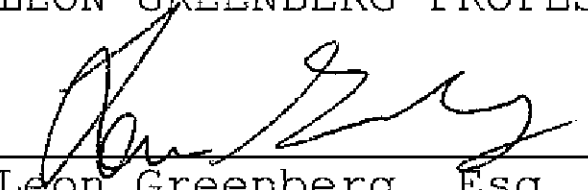
23 
 24
 25 HONORABLE JUDGE KENNETH CORY
 26 DISTRICT COURT, CLARK COUNTY
 27 ER

28 ² See, *Thomas v. Nevada Yellow Cab*, A-12-661726-C, August 30,
 2012 and *Gilmore v. Desert Cab*, A-12-668502-C.

1 Submitted by:

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3

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12 Attorney for the Defendants

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CERTIFICATE OF MAILING

The undersigned certifies that on December 28, 2015, she served the within:

RESPONDENTS' ANSWER AND
APPENDIX TO WRIT OF MANDAMUS

by court electronic service to

Robert A. Winner
WINNER & CARSON, P.C.
510 South Eighth Street
Las Vegas, NV 89101

and

by depositing the same in the U.S. mail, first class postage, prepaid, addressed as follows:

The Honorable Timothy C. Williams
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/Sydney Saucier

Sydney Saucier