

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD WALDEN JR., NATHAN
ECHEVERRIA, AARON DICUS,
BRENT EVERIST, TRAVIS
ZUFELT, TIMOTHY RIDENOUR,
and DANIEL TRACY on behalf of
themselves and all others similarly
situated,

Appellants,

v.

THE STATE OF NEVADA ex rel
NEVADA DEPARTMENT OF
CORRECTIONS,

Respondent.

Case No. 82030 Electronically Filed
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JOINT APPENDIX VOLUME 2 OF 5

Mark R. Thierman, Nev. Bar No. 8285
mark@thiermanbuck.com
Joshua D. Buck, Nev. Bar No. 12187
josh@thiermanbuck.com
Leah L. Jones, Nev. Bar No. 13161
leah@thiermanbuck.com
Joshua R. Hendrickson, Nev. Bar No. 12225
joshh@thiermanbuck.com
THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, Nevada 89511
Tel. (775) 284-1500
Fax. (775) 703-5027
Attorneys for Appellants

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Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

ADAM PAUL LAXALT
Attorney General
ANN M. McDERMOTT
Litigation Bureau Chief
Nevada Bar No. 8180
JENNIFER K. HOSTETLER
Chief Deputy Attorney General
Nevada Bar No. 11994
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
T: (702) 486-3420
F: (702) 486-3773
Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD WALDEN JR., NATHAN
ECHEVERRIA, AARON DICUS, BRENT
EVERIST, TRAVIS ZUFELT, TIMOTHY
RIDENOUR, and DANIEL TRACY on behalf of
themselves and all other similarly situated,

Plaintiffs,

vs.

STATE OF NEVADA, NEVADA
DEPARTMENT OF CORRECTIONS, and
DOES 1-50,

Defendant.

Case No. 3:14-cv-00320-MMD-WGC

DEFENDANT'S RENEWED MOTION
FOR JUDGMENT ON THE PLEADINGS

COMES NOW Defendant, State of Nevada, *ex rel.* its Department of Corrections, by and through its attorneys, ADAM PAUL LAXALT, Attorney General for the State of Nevada, and JENNIFER K. HOSTETLER, Chief Deputy Attorney General, pursuant to FED. R. CIV. P. 12(c), hereby moves this Court for judgment in its favor as to all of Plaintiffs' claims because no relief is possible under the facts alleged in their Complaint.

This motion is made and based upon the pleadings and papers on file herein and the memorandum of points and authorities submitted herewith.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action arises out of an employment dispute regarding the payment of wages between the State of Nevada and its correctional officers. When reduced to its basic form, the above-named Plaintiffs contend that they are not properly compensated for work performed before and after their scheduled shifts at various correctional facilities throughout the State of Nevada.

On May 12, 2014, Plaintiffs, Donald Walden Jr., Nathan Echeverria, Aaron Dicus, Brent Everist, Travis Zufelt, Timothy Ridenour, and Daniel Tracy (collectively referred to as Plaintiffs) initiated a civil lawsuit against the State of Nevada, Department of Corrections (NDOC), by filing a Collective and Class Action Complaint (Complaint) in the First Judicial District Court in and for Carson City. See (ECF #1)¹. In their Complaint, Plaintiffs assert the following claims against NDOC under both federal and state law on behalf of themselves and other correctional officers: (1) failure to pay wages in violation of the Fair Labor Standards Act (FLSA); (2) failure to pay overtime wages in violation of the FLSA; (3) failure to pay minimum wages in violation of Article 15, Section 16 of the Nevada Constitution; and (4) breach of contract under Nevada law. *Id.* at pp. 6, 8-14. Plaintiffs' causes of action, premised upon violations of the FLSA, have been characterized as a collective action, whereas the state law claims have been characterized as a class action. *Id.*

NDOC removed Plaintiffs' action to this Court on June 17, 2014. See (ECF #1). On June 24, 2014, NDOC filed its Answer to Plaintiffs' Complaint. See (ECF #3). On August 6, 2014, Plaintiffs filed a motion for conditional certification of the FLSA collective action pursuant to 29 U.S.C. § 216(b) requesting that notice of the pending FLSA action be circulated to all correctional officers employed by the State within three years from the date the Complaint was filed. See (ECF #7). NDOC filed its opposition to Plaintiffs' motion (ECF # 28) on September 15, 2014. Plaintiffs filed their reply brief (ECF #36) on October 1, 2014. This Court granted Plaintiffs' motion (ECF #45) on March 16, 2014. NDOC file a Motion for Judgment on the

¹ This represents the Court's docket number throughout.

Pleadings (ECF #49) on April 3, 2015. Plaintiffs' filed their opposition to NDOC's Motion (ECF #52) on April 20, 2015. NDOC filed its Reply to Plaintiffs' opposition (ECF #57) on April 30, 2015. The parties then filed a Stipulation to Stay all Proceedings (ECF #79) pending the outcome of mediation, which was granted by this Court on December 16, 2015. (ECF #80). On December 16, 2015, the court denied the Defendant's Motion for Judgment on the Pleadings as moot without prejudice allowing the Defendant to seek to reinstate the motion in the event the parties were unable to resolve this dispute. (ECF #81). Following mediation, the parties then filed a Stipulation to Stay Litigation Pending Disposition of Defendant's Motion for Judgment on the Pleadings, which was granted by this Court on April 5, 2016. (ECF #'s 83 and 85). Defendant's now file this Renewed Motion for Judgment on the Pleadings.

NDOC files this Renewed Motion for Judgment on the Pleadings because no relief is possible under the facts alleged by Plaintiffs in their Complaint. For the reasons discussed below, Plaintiffs' claims are not viable as a matter of law, and should therefore be dismissed with prejudice.

II. RELEVANT FACTS

The named Plaintiffs consist of former and current classified employees of the State of Nevada who have served, or are currently serving, as correctional officers. See (ECF #1, at ¶¶ 5-12). Correctional officers are peace officers pursuant to NRS 289.220 "whose primary responsibilities are: (a) The supervision, custody, security, discipline, safety and transportation of an offender; (b) The security and safety of the staff; and (c) The security and safety of an institution or facility of the Department." NRS 209.131(5). Plaintiffs have worked at various facilities throughout the State, all of which are operated by NDOC. *Id.*; NRS 209.065. At least one of the named Plaintiffs has worked at multiple facilities during his service as a correctional officer. See (ECF #1, at ¶ 11). Plaintiffs are compensated for their work by payment of an hourly wage in accordance with the State Personnel System. *Id.* at ¶ 15. Plaintiffs are subject to a 14-day work period. *Id.*

Nevada has a statutory and regulatory scheme which sets forth the terms and conditions of employment for state employees. See e.g. NRS 284.010. Plaintiffs, and other

1 correctional officers throughout the State, are subject to the provisions of the State's
2 Personnel System as promulgated in Chapter 284 of the Nevada Revised Statutes. See NRS
3 284.013. As state employees, Plaintiffs must "[c]onform to, comply with and aid in all proper
4 ways in carrying out the provisions of [Chapter 284] and the regulations prescribed under it."
5 NRS 284.020(1)(a).

6 Plaintiffs' claims are based upon circumstances surrounding their arrival to and
7 departure from the NDOC institution in which they are assigned to work during their shifts.
8 See (ECF #1, at ¶¶ 17-18). Plaintiffs allege that upon arrival to their assigned correctional
9 institution, they are required to pass through security. *Id.* at ¶ 17. After passing through
10 security, Plaintiffs are allegedly required to report to the supervisor or sergeant on duty, at
11 which time they receive their assignments for the day, undergo a uniform inspection, and
12 collect any equipment needed for their assignment. *Id.* According to Plaintiffs, they then
13 proceed to their post, where they receive a briefing on the day's events from the correctional
14 officer who worked the previous shift. *Id.* Plaintiffs claim that they are required to perform
15 these activities without compensation. *Id.* It is worth noting that Plaintiffs admit that the time
16 spent passing through security does not constitute compensable time. *Id.*

17 Plaintiffs also contend that they are required to perform certain activities after their
18 scheduled shift without compensation. *Id.* at ¶ 18. According to Plaintiffs, after the conclusion
19 of their shift they are required to brief the arriving correctional officer who relieves them of duty
20 from their post, and return any equipment to the main office. *Id.* The correctional officers then
21 proceed through security and are free to leave the institution. *Id.*

22 In their Complaint, Plaintiffs do not acknowledge any distinctions in the procedures or
23 activities that take place at the various correctional institutions and facilities throughout the
24 State upon a correctional officer's arrival to and departure from their place of employment. It
25 is worth noting that the procedures or events that take place upon the arrival and departure of
26 correctional officers are in fact unique to each specific institution. The reason for the
27 difference in procedure across institutions is that each institution is different in a variety of
28 ways, including, but not limited to, the level of security provided, the actual size of the facility,

the number of employees, the technology used at each facility, the type of equipment used by correctional officers, and the type of weapons used by correctional officers. That being said, even if the procedures or activities were the same for every correctional facility at each institution across the State, NDOC would still be entitled to judgment in its favor as a matter of law with respect to Plaintiffs' FLSA and state law claims because the pleadings provide no basis for relief.

III. LEGAL ARGUMENT

A. Standard for Judgment on the Pleadings under FED. R. CIV. P. 12(c)

Judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is properly granted when, even if all material allegations in the non-moving party's pleadings are taken as true, the moving party is entitled to judgment as a matter of law. *Fajardo v. County of Los Angeles*, 179 F.3d 698, 699 (9th Cir. 1999); *Nelson v. City of Irvine*, 143 F.3d 1196, 1200 (9th Cir. 1998). In reviewing motions filed under Rule 12(c), the Court must assume the truthfulness of the material facts alleged in the complaint and draw all reasonable inferences in favor of the non-moving party. See *Nelson*, 143 F.3d at 1200. However, conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper motion under Rule 12(c). See *Vasquez v. L.A. Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A] plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do...Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnote omitted). See *McGlinchy v. Shull Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988)(explaining that the standards governing a Rule 12(c) motion for judgment on the pleadings are the same as those governing a Rule 12(b)(6) motion to dismiss for failure to state a claim.)

Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(c) motion. However, material which is properly submitted as part of the complaint may be considered on a motion to dismiss." *Hal Roach Studios, Inc. v. Richard*

Feiner & Co., 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990) (citation omitted). Similarly, “documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss” without converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), overruled on other grounds by *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

Under FED. R. EVID. 201, a court may take judicial notice of “matters of public record” or “records and reports of administrative bodies.” *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), abrogated on other grounds by *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991). For example, a regulation not included in the Nevada Administrative Code if adopted in accordance with law and brought to the attention of the court” is a “law subject to judicial notice.” NRS 47.140(6).

B. Plaintiffs’ First Cause of Action Premised upon Failure to Pay Minimum Wages in Violation of the FLSA, 29 U.S.C. § 201, et seq., and Plaintiffs’ Second Cause of Action Premised upon Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 201, et seq., Should be Dismissed

1. Plaintiffs Have Failed to Plead a Valid Minimum Wage Claim Under the FLSA

In order to state a claim for failure to pay minimum wage under the FLSA, a plaintiff must allege that his average hourly pay fell below the statutory minimum, *Adair v. City of Kirkland*, 185 F.3d 1055, 1063 (9th Cir. 1999):

The FLSA’s minimum wage provision entitles employees to a wage “not less than \$7.25 an hour.” To claim improper compensation under this provision, the plaintiffs must allege that the wages received fell below this statutory minimum. However, the workweek as a whole, not each individual hour within the work week, determines an employee’s “wages” for purposes of determining FLSA violations. Thus, an employer’s failure to compensate an employee for any particular hours worked does not necessarily violate the minimum wage provision of the FLSA. If the total wage paid to an employee in any given workweek divided by the total hours worked that week equals or exceeds the applicable minimum wage, there is no FLSA violation. To state a plausible minimum wage claim under this rule, therefore, a complaint must allege that the plaintiff’s weekly wages fall below the statutory minimum.

...

Sullivan v. Riviera Holdings Corp., No. 2:14-cv-165-APG-VCF, 2014 WL 2960303, at *2 (D. Nev. June 30, 2014)(internal citations omitted). See *Adair*, 185 F.3d at 1063 (“The district court properly rejected any minimum wage claim the officers might have brought by finding that their salary, when averaged across their total time worked, still pa[id] them above minimum wage.”)

In the Complaint, Plaintiffs contend that NDOC failed to pay them “their minimum hourly wage rate or their regular rate of pay, whichever is greater, for all hours worked during the relevant time period.” (ECF #1 at ¶ 37). The Plaintiffs’ First Cause of Action for “‘all hours worked,’ misunderstands the FLSA” because the FLSA does not require compensation on such basis. *Sullivan*, 2014 WL 2960303, at *2. The test is not whether employees receive pay based upon “all hours worked,” but rather, their average weekly pay must be reviewed. “If their average weekly pay does not fall below [the applicable minimum wage], then the FLSA does not grant them a remedy for minimum wage violations. This is so regardless of whether they were actually paid for each hour worked.” *Id.*

Because Plaintiffs do not allege that their average weekly wages fell below the statutory minimum, their First Cause of Action must be dismissed.

2. Plaintiffs Have Failed to Plead Sufficient Factual Allegations To State An Overtime Claim Under The FLSA

The Ninth Circuit Court of Appeals in *Landers v. Quality Communications* clarified the pleading standard with respect to FLSA claims, explaining that a plaintiff must recite more than conclusory allegations that follow the FLSA statutory language in order to avoid dismissal. *Landers v. Quality Commc’ns, Inc.*, 771 F.3d 638, 644 (9th Cir. 2014). In fact, “at a minimum, a plaintiff asserting a violation of the FLSA overtime provisions must allege that [t]he worked more than forty hours in a *given* workweek without being compensated for the hours worked in excess of forty during that week.” *Id.* at 645 (emphasis added). “Although plaintiffs in these types of cases cannot be expected to allege ‘with mathematical precision,’ the amount of overtime compensation owed by the employer, they should be able to specify at

...

1 least one workweek in which they worked in excess of forty hours and were not paid overtime
2 wages.” *Id.* at 646.

3 Noticeably absent from Plaintiffs’ Complaint are allegations that identify a specific
4 workweek in which Plaintiffs allegedly worked in excess of forty hours and were not paid
5 overtime. Plaintiffs generally contend that they worked over forty hours in a workweek or in
6 excess of the hours set forth in 29 U.S.C. § 207(K) and did not receive overtime
7 compensation. See (ECF #1 at ¶¶ 17-18). However, simply alleging that a plaintiff worked
8 more than forty hours per workweek is insufficient under *Landers*. Additionally, Plaintiffs
9 “estimate” that they “performed upwards of 30-minutes of compensable work before their
10 regularly scheduled shifts for which they were not paid” and “30-minutes of compensable
11 work” after their regularly scheduled shifts. See (ECF #1 at ¶¶ 17-18). However, the
12 Complaint is silent on the number of shifts the Plaintiffs worked each week and length of such
13 shifts to indicate that Plaintiffs were owed overtime based upon alleged compensable work.
14 See *Lever v. Trump Ruffin Tower I, LLC*, No. 2:14-cv-01009-RCJ-CWH, 2015 WL 133792 (D.
15 Nev. Jan. 9, 2015) (“[T]he Complaint needs to include a factual element that would allow the
16 Court to bridge Plaintiffs’ allegations of daily off-the-clock work with the total amount of time
17 that Plaintiffs worked in any given week.”) See also *Perez v. Wells Fargo & Co.*, 75 F. Supp.
18 3d 1184, (N.D. Cal. 2014) (finding that bare allegations that plaintiffs “regularly” or
19 “consistently” worked more than 40 hours a week fall short of the pleading standard under
20 *Landers*).

21 As Plaintiffs’ Complaint fails to state a FLSA claim for which relief can be granted under
22 controlling Ninth Circuit authority, Plaintiffs’ Second Cause of Action must be dismissed.

23 **3. The Portal-to-Portal Act, 29 U.S.C. § 251, et seq., Exempts**
24 **Compensation for Activity of the Kind Plaintiffs Allege They Were**
Not Compensated For

25 In the Complaint, Plaintiffs allege they performed various activities pre-shift and post-
26 shift for which they were not compensated. The FLSA was enacted in 1938, and established
27 the 40-hour workweek as we know it, by requiring pay at time and one-half for any hours
28 worked in excess of 40 hours per week. 29 U.S.C. § 201 et seq.; *IBP, Inc. v. Alvarez*, 546

U.S. 21, 25 (2005). Simply put, the FLSA sets out requirements for when employees must be paid, and for when they must be paid overtime. See 29 U.S.C. § 201 *et seq.* “Interpretations of the FLSA and its regulations are questions of law.” *Bamonte v. City of Mesa*, 598 F.3d 1217, 1220 (9th Cir. 2010).

The FLSA contains no definition of “work.” *Id.* Early on, the Supreme Court ruled the time that miners spent between entering mine openings and arriving at the underground work location was compensable. *Tenn. Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590 (1944). Similarly, the Supreme Court held “the time necessarily spent by the employees in walking to work on the employer’s premises, following the punching of the time clocks, was working time within the scope of [section] 7(a).” *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 691 (1946).

These decisions led to Congress amending the FLSA with the Portal-to-Portal Act in 1947 (PPA). “[T]he Portal-to-Portal Act of 1947 is primarily concerned with defining the beginning and end of the workday.” *Integrity Staffing Sols., Inc. v. Busk*, 135 S.Ct. 513, 520 (2014), *concurrency* Sotomayor, J. The PPA reads in pertinent part:

(a) except as provided in subsection (b) of this section, no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after May 14, 1947—

(1) Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) activities which are preliminary to or postliminary to said principal activity or activities, which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

(b) Notwithstanding the provisions of subsection (a) of this section which relieve an employer from liability and punishment with respect to an activity, the employer shall not be so relieved if such activity is compensable by either—

...

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, nor inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

29 U.S.C. § 254. As discussed more fully below, travel to and from the place where a principal activity is done is not compensable. 29 U.S.C. § 254(a)(1). Preliminary or postliminary activities which are not integral and indispensable to the principal activity are not compensable. 29 U.S.C. § 254(a)(2). The analysis of whether travel and activities outside the scheduled shift should be compensable depends upon the principal activity.

a) No employer shall be subjected to any liability or punishment under the FLSA for failing to compensate an employee for getting to and from the actual place of performance of the work pursuant to 29 U.S.C. § 254(a)(1); travel as work

Plaintiffs' FLSA claims fail as a matter of law because no employer is subject to liability for failing to compensate an employee for travel. To determine whether "time spent in travel is working time depends on the kind of travel involved." 29 C.F.R. § 785.33.

The "principal" activities referred to in the statute are activities which the employee is "employed to perform;" they do not include noncompensable "walking, riding, or traveling" of the type referred to in section 4 of the Act.

29 C.F.R. § 790.8(a).

[T]ravelttime at the commencement or cessation of the workday which was originally considered as working time under the Fair Labor Standards Act (such as underground travel in mines or walking from time clock to work-bench) need not be counted as working time unless it is compensable by contract, custom or practice.

29 C.F.R. § 785.34. Travel to the "actual place of performance" includes travel "within the employer's [physical] plant, mine, building . . . irrespective of whether such . . . traveling occur[s] . . . before or after the employee has checked in or out." 29 C.F.R. § 790.7(e).

. . .

The phrase, [sic] actual place of performance,” as used in section 4(a), thus emphasizes that the ordinary travel at the beginning and end of the workday to which this section relates includes the employee’s travel on the employer’s premises until he reaches his workbench or other place where he commences the performance of the principal activity or activities, and the return travel from that place at the end of the workday.

Id.

Travel while carrying tools is similarly explicated. The regulations explain that “the carrying by a logger of a portable power saw or other heavy equipment (*distinguishing from ordinary hand tools*) on his trip into the woods to the cutting area” would be compensable. 29 C.F.R. § 790.7(d) (emphasis added). As noted, the regulations distinguish hand tools from compensable tools such as a power saw or “heavy equipment.” *Id.*

Here, the Plaintiffs assert generally that they are entitled to be compensated for the time that it takes them to walk from the gatehouse of a facility to their assigned post. Their claim in this regard is set forth in paragraph 17 of the Complaint. (ECF #1, ¶ 17 ll.1-16). Plaintiffs first assert that they “must report to the supervisor or sergeant on duty for roll-call/check-in.” *Id.*, ¶ 17 l. 3. “Plaintiffs and putative class members would then proceed to their designated work station, which, given the size of the correctional facilities involved, could take up to 15-minutes or more per employee per shift.” *Id.*, ¶ 17 ll. 9-11. Plaintiffs also assert that “this pre-shift requirement is specifically set forth in the NDOC’s Administrative Regulations.” (ECF #1, 11 ll. 5-6).

NDOC requests that the court take judicial notice of the Administrative Regulations attached as Appendices A-D. See NRS 47.140(6) (explaining that matters subject to judicial notice include a “regulation not included in the Nevada Administrative Code if adopted in accordance with law and brought to the attention of the court.”) NDOC’s Administrative Regulations (ARs), as “rules, mandated by the legislature and adopted in accordance with statutory procedures, have the force and effect of law.” *Turk v. Nev. State Prison*, 94 Nev. 101, 104, 575 P.2d 599, 601 (1978), citing *Oliver v Spitz*, 76 Nev. 5, 8, 328 P.2d 158 (1960) and *State ex rel. Richardson v. Bd. of Regents*, 70 Nev. 144, 150, 261 P.2d 515, 518 (1953).

...

AR 326, which Plaintiffs cite to in their Complaint, addresses the posting of shifts and mandatory overtime. (ECF #1, ¶ 17; App. A, AR 326). Plaintiffs contend the following language in AR 326 establishes the pre-shift requirements that correctional officers engage in: “[A]ll correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.” (ECF #1, ¶ 17 ll. 6-8). However, this language is found in the section of the regulation addressing the procedure used when overtime work is needed and no correctional officer has volunteered to cover the overtime shift. The AR actually reads:

326.03 Management of Overtime

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish[sic] by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.

B. The mandatory overtime list will be restarted once exhausted or every 45 days.

C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.

D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.

E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.

(1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.

(a) If a volunteer is found, the shift supervisor /shift sergeant must approve the substitution prior to the person being allowed to work.

(b) If the substitution is approved, the officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.

(2) The employee has 1 hour to find a substitute whenever possible.

App. A, pp. 3-4, 326.03. According to AR 326, NDOC establishes a list of correctional officers at each institution based on seniority. *Id.* Officers must only check their position on the list and initial, signifying that they are aware of their position on the list that day, i.e. a correctional

1 officer in the top position or top three positions is more likely to be required to work overtime
2 that day than a correctional officer who is in the twentieth position. *Id.* Although the Plaintiffs
3 allege that AR 326 supports their claims of roll call and receiving their assignments for the
4 day, it does not.

5 Indeed, the most notable part of this regulation is that it does not require “roll call.” *Id.*
6 Correctional officers must only check their status, i.e. whether they are likely to be subject to
7 mandatory overtime after their shift that day; it has nothing to do with the work they perform.
8 This type of activity has been determined to be non-compensable in similar situations. In
9 *Carter v. Panama Canal Co.*, operators were assigned to a locomotive, but did not know its
10 location at the time they arrived at the locks. *Carter v. Panama Canal Co.*, 314 F. Supp. 386,
11 387 (D.D.C. 1970). The duty station was the locomotive. *Id.* They were required to check in
12 at an assignment board, leave a mark by their name, and then walk to the location where the
13 locomotive was left waiting for them. *Id.* The court ruled that “passing an assignment board
14 and walking 2 to 15 minutes to a locomotive is not an ‘integral part of an [sic] indispensable to’
15 the principal activity of operating a locomotive.” *Id.* at 391. The *Panama Canal* holding is in
16 accord with 29 C.F.R. § 790.8 which provides “[A]ctivities such as checking in and out and
17 waiting in line to do so would not ordinarily be regarded as integral parts of the principal
18 activity or activities.”

19 In an early post-PPA case, the court examined actions done by security guards in a
20 battery factory which parallel some of the general functions of correctional officers:

21 In the present case the plaintiff's claim for overtime as to each
22 guard is made up by aggregating three different kinds of activities:
23 (1) ‘On guard: duties—standing at a fixed post or making rounds
24 through the plant— (2) changing into and out of uniform, (3)
reporting to the captain's office to pick up equipment and receive
instructions, walking to and from the post, turning in equipment and
waiting in the locker room to punch out at the end of the shift.

25 *Battery Workers' Union Local 113, United Elec., Radio & Mach. Workers of Am., C. I. O. v.*
26 *Elec. Storage Battery Co.*, 78 F. Supp. 947, 949 (E.D. Pa. 1948). In *Battery Workers'*, guards
27 were required to report to the captain's office where they received instructions and some also
28 had to check out weapons. *Id.* Once checked in, guards had to walk to their post, which was

identified as being as little as 100 yards, or as much as four city blocks away. *Id.* at 948. The guards' claim for overtime was denied as being non-compensable. *Id.*

Accordingly, prior court decisions instruct that the travel time Plaintiffs seek to claim in overtime or as minimum wage is not compensable time under the FLSA.

b) No employer shall be subjected to any liability or punishment under the FLSA for failing to compensate for preliminary or postliminary activities pursuant to 29 U.S.C. § 254(a)(2)

In 2005, the U.S. Supreme Court in *IBP, Inc. v. Alvarez* reaffirmed its 1956 decision in *Steiner v. Mitchell* that § 4 of the Portal-to-Portal Act does not remove activities which are 'integral and indispensable' to 'principal activities' from liability for compensation. *IBP*, 546 U.S. at 33. The Court held that "any activity that is 'integral and indispensable' to a 'principal activity' is itself a 'principal activity' under § 4(a)." *Id.* at 37. However, the Court has recently clarified that "[t]he integral and indispensable test is tied to the productive work that the employee is *employed to perform*." *Integrity Staffing Sols., Inc. v. Busk*, 135 S.Ct. 513, 519 (2014); *see, e.g., IBP*, 546 U.S. at 42; *Mitchell, supra*, at 262; *Steiner v. Mitchell*, 350 U.S. 247, 249–251 (1956). *See also* 29 C.F.R. § 790.8(a). An activity is integral and indispensable to a principal activity "if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities." *Integrity Staffing* 135 S.Ct. at 517. This can be characterized as a two part test including (1) whether the activity is an intrinsic element of the principal activities; and (2) whether the employee can dispense with the activity and still perform the principal activities. *Id.*; *Bamonte*, 598 F.3d at 1225. In clarifying the integral and indispensable test, the U.S. Supreme Court determined that the Ninth Circuit's analyses of whether an activity was "required by the employer" and "for the benefit of the employer" are overbroad tests which cannot determine compensability. *Integrity Staffing*, 135 S.Ct. at 519.

Subsequent to the *Integrity Staffing* decision, in *Balestrieri v. Menlo Park Fire Protection Dist.*, 800 F.3d 1094 (9th Cir. 2015), the Court further interpreted the *Integrity Staffing* decision and held that firefighters who come to work early and spend what was expected to be leisure time before the shift, gathering and transporting turnout gear to a

visiting station, that activity is “preliminary” because it is not intrinsic to the firefighting activity that he is employed to perform. *Id.* at 1101.

Department of Labor regulations are in accord. The “principal” activities referred to in the statute are activities which the employee is “employed to perform.” 29 C.F.R. § 790.8(a). The words “principal activities” “should ‘be interpreted with due regard to generally established compensation practices in the particular industry and trade.’” *Id.* Principal activities “includes all activities which are an integral part of a principal activity.” 29 C.F.R. § 790.8(b).

(1) Tools

Plaintiffs characterize certain security items as “tools”. Yet, as a matter of law, these items are not tools within the NDOC and instead are more properly related to donning and doffing of safety gear. A regulatory definition of “tools” found in NAC 284.294(5), related to reimbursement for tool usage, specifically excludes “weapons or other protective equipment.” Further, the NDOC specifically regulates tools used by the department in AR 411. App. B, AR 411 Tool Control. This 20-page regulation identifies, classifies, inventories, and audits tools. None of the gear listed in the Plaintiffs’ allegations are included as a “tool” in this regulation. Similarly, the NDOC regulates the use of handcuffs and other restraints in AR 407, the use of chemical agents in AR 406, and the control of keys in AR 410. App. C. Additionally, weapons are maintained in an armory pursuant to AR 412, Armory Weapons and Control. App. C. *Id.*

Regardless of whether the items addressed are tools or gear, the Plaintiffs address both pre-shift and post-shift activities in their Complaint, in paragraphs 17 and 18 respectively. (ECF #1, ¶¶ 17-18 ll. 1-25). Their only allegation in support of compensability for these activities is that they are “required.” *Id.*, ¶¶ 17-18, ll. 3, 6 and 18-19.

In *Bamonte v. City of Mesa*, the activities of Mesa, Arizona police officers were at issue. The Ninth Circuit reviewed and relied upon the Supreme Court’s *IBP*² and *Steiner* cases from 2005 and 1956 respectively which addressed the compensability of donning and doffing clothing and gear. See *Steiner v. Mitchell*, 350 U.S. 247 (1956); *Alvarez v. IBP, Inc.*, 339 F.3d 894 (9th Cir. 2003) *aff’d*, 546 U.S. 21, 32 (2005). The Mesa officers had the ability to don and

² The Ninth Circuit’s decision in *IBP* was affirmed.

1 doff uniforms and gear at home. Gear specifically included: items of clothing, “a badge, a
 2 duty belt, a service weapon, a holster, handcuffs, chemical spray, a baton, and a portable
 3 radio.” *Bamonte*, 598 F.3d at 1227 citing *Abbe v. City of San Diego*, 2007 WL 4146696, at *7
 4 (S.D. Cal. Nov. 9, 2007). The Ninth Circuit instructed:

5 It is important to note . . . that the relevant inquiry is not whether
 6 the uniform *itself* or the safety gear *itself* is indispensable to the job
 7 – they most certainly are – but rather, the relevant inquiry is
 whether the nature of the work requires the donning and doffing
 process to be done on the employer’s premises . . .

8 *Id.* (emphasis in the original).³

9 In another case from within the Ninth Circuit, deputies, including those working in
 10 corrections, sought compensation for donning and doffing uniforms and gear. *Reed v. Cty. of*
 11 *Orange*, 716 F. Supp. 2d 876, 877 (C.D. Cal. 2010). Summary judgment was granted to
 12 Orange County based on the prior Supreme Court and Ninth Circuit opinions that “considered
 13 whether donning and doffing clothing and protective gear is integral and indispensable.” *Id.* at
 14 880, citing *Steiner*, 350 U.S. at 247; *Bamonte*, 598 F.3d at 1217; *Ballaris v. Wacker Siltronic*
 15 *Corp.*, 370 F.3d 901, 903 (9th Cir. 2004); and *IBP, Inc.*, 339 F.3d at 894. The court found that
 16 “there is no department-wide policy that requires all deputies to don and doff their uniforms at
 17 work.” *Reed*, 716 F. Supp. 2d at 883. “There is also no evidence to suggest that the uniform
 18 and gear are any less effective if they are donned at home versus at work.” *Id.*, citing *Abbe v.*
 19 *City of San Diego*, 2007 WL 4146696, at *6 (S.D. Cal., 2007) (holding that there was nothing
 20 about the process of donning and doffing the uniform that must be done at work in order for
 21 the officer to safely and effectively carry out law enforcement duties). The court concluded
 22 “no deputy dons and doffs his or her uniform at work because the nature of the work demands
 23 it.” *Id.* at 884.

24 Similarly, in the Third Circuit, correctional officers were not paid for their time to change
 25 into and out of their uniforms, although required to do so on the premises. *Turner v. City of*

26 ³ A large part of the analysis by the *Bamonte* court was based on its note that it “defined ‘work’ as ‘physical or
 27 mental exertion . . . controlled or required by the employer and pursued necessarily and primarily for the benefit
 of the employer.’” *Bamonte*, 598 F.3d at 1224 (first emphasis in original) (second emphasis added); accord
 28 *Tenn. Coal*, 321 U.S. at 598. But reliance on this definition “would sweep into ‘principal activities’ the very
 activities that the Portal-to-Portal Act was designed to address.” *Integrity Staffing* 135 S.Ct. at 519. The call
 here to focus on the “nature of the work” accords *Integrity Staffing*.

1 *Phila.*, 262 F.3d 222 (3d Cir. 2001). See *Turner v. City of Phila.*, 96 F. Supp. 2d 460, 461
 2 (E.D. Pa. 2000) *aff'd*, 262 F.3d 222 (3d Cir. 2001) (“Plaintiffs spent or spend two and one-half
 3 hours per week on average changing into and out of their uniforms.”) The foregoing cases
 4 demonstrate that in the industry and trade of corrections, compensation has not been
 5 established for donning and doffing of uniforms and gear. 29 C.F.R. § 790.8(a).

6 Plaintiffs cite to 29 U.S.C. [sic] § 553.221(b) for their assertion that pre-shift activities
 7 “which are an integral part of the employee’s principal activity or which are closely related to
 8 the performance of the principal activity, such as attending roll call” are compensable. (ECF
 9 #1, ¶ 15 ll. 7-12). The Ninth Circuit determined that this regulation “in no way establishes that
 10 the donning and doffing of uniforms and gear are compensable activities. Rather, the
 11 regulation merely provides that once work activities are defined, the employee must be
 12 compensated for the performance of all those defined work activities.” *Bamonte* at 1230, n.
 13 14.

14 NDOC correctional officers have no requirement to don or doff their uniforms and gear
 15 at their assigned facility or institution.⁴ While the several prisons may have differing methods
 16 for issuing handcuffs to correctional officers, no prison has a policy or procedure requiring all
 17 correctional officers to check out and return handcuffs each day as they report for duty. In
 18 accord with *Integrity Staffing*, it is irrelevant whether a correctional officer has handcuffs
 19 available to her as she goes through security, whether a correctional officer grabs a set of
 20 handcuffs from a counter while walking to his post, whether a more formal check-out
 21 procedure is followed, or whether handcuffs are waiting for the correctional officer at “their
 22 designated work station.” This is because the nature of the work only requires that a
 23 correctional officer have appropriate restraint mechanisms available to her at the time she
 24 must use them, that is to say, at the assigned post. Again, “no deputy dons and doffs his or
 25 . . .
 26 . . .

27
 28 ⁴ Noting again that the Plaintiffs cited to AR 326 in support of this allegation, but AR 326 includes no such direction.

her uniform at work because the nature of the work demands it.” *Reed, supra*, at 884. This same analysis also applies to allegations regarding radios, weapons, and tear gas. (ECF #1, ¶ 17 I. 5).

Further, weapons are not issued to officers who have direct contact with inmates. AR 412.01(1). Chemical agents are only for emergency use, and are not routinely issued to officers. AR 406.01(1) and (2)(C). Again, there is no requirement that officers check out handcuffs before the shift begins. AR 407.

Plaintiffs only allege that the correctional officers check out these items. In *Mitchell v. King Packing Co.*, the Supreme Court did not address compensability based on whether the knife was furnished by the knifeman or by the employer (so that the knifeman would have to be issued a knife in some fashion). *Mitchell v. King Packing Co.*, 350 U.S. 260, 262 (1956). Rather, the issue was that once whatever knife was going to be used that day was in the hand of the knifeman, the knifeman had to first sharpen the knife before using it. *Id.* Bringing in or checking out the knife was not the compensable activity; the compensable activity was sharpening the knife. *Id.* Here, the allegations are only that the Plaintiffs had to “collect” tools. (ECF # 1, ¶ 17). There is no allegation that the Plaintiffs had to do anything with the “tools” they pick up or sign out until they reach their post; without more *Mitchell* dictates that this is not compensable work.

(2) Briefing and Check-In

Plaintiffs also allege that before their shift begins, they “would be briefed by the outgoing correctional officer.” (ECF #1, ¶ 11 II.12-13). This allegation of “briefing” by itself cannot lead to liability. Where employees claimed to be required to read log books and exchange information as compensable pre-shift activities, the Ninth Circuit held that the time was not compensable. *Lindow v. United States*, 738 F.2d 1057, 1060 (9th Cir. 1984). Shifts could, and did, begin without employees reviewing the log books; the logs books were available and provided all the necessary information. *Id.*

Under the standard operating procedures in AR 301, supervisors need not make daily assignments, and officers reporting for duty already know their assignments. *Id.* The Class

1 Specifications for correctional sergeants and correctional lieutenants do include the words “roll
2 call,” but they are immediately explicated in a parenthetical as “(verifying attendance).”
3 Plaintiffs admit that “merely checking-in/out is not compensable.” (ECF #52, p. 11, n.5).

4 Additionally, NDOC does not require daily uniform inspections. AR 350. “Upon the
5 discretion of the respective Wardens, uninformed inspections will be held periodically. Uniforms
6 will be kept clean and neatly pressed.” AR 350.10.

7 Preliminary activities including checking mail, shift schedules, and notices have all
8 been held to be generic activities that are not essentially linked to the principal activity of
9 providing security to a facility. *Haight v. The Wackenhut Corp.*, 692 F.Supp.2d 339 (S.D.N.Y.
10 2010). While these tasks are required by the employer, they are not integral to the
11 employees' work. *Id.* at 346. These activities are not “akin to the meat cutters sharpening
12 knives in *King Packing Co.*” *Id.* Therefore, since they are not integral pre-shift activities,
13 Plaintiffs cannot be compensated for any alleged time taken to perform them. *See id.*

14 NDOC additionally points out that the allegation by Plaintiffs that they “were required to
15 stay past their scheduled shift to conduct the mandatory de-briefing with the oncoming
16 correctional officer,” (ECF #1, 11:19-20), is a *non sequitur*. If the correctional officers are all
17 reporting for duty early to be briefed by the outgoing officer, as alleged, then it does not follow
18 that officers also have to stay past the end of their shift to de-brief the oncoming officer.
19 These officers would necessarily be relieved of their duties on time by the next correctional
20 officer who is allegedly reporting early – prior to his/her shift to receive the briefing. Plaintiffs
21 cannot have it both ways; when alleged facts are contradictory so as to cast doubt as to their
22 plausibility, judgment is appropriate. *Rojas v. Roman Catholic Diocese of Rochester*, 660
23 F.3d 98 (2d Cir. 2011) *cert. denied*, 132 S.Ct. 1744 (2012). The only way that the facts as
24 alleged can be true is if the named Plaintiffs are the only correctional officers who are
25 reporting early; this necessarily defeats the collective action.

26 Since there is no allegation that the activities listed are otherwise integral and
27 indispensable to the work of correctional officers, (ECF #1), NDOC is entitled to judgment as a
28 matter of law.

c) **There is no allegation that Defendant knew or showed reckless disregard for the FLSA and their employees' compensable time, so any time period of liability should be limited to two years**

The FLSA includes a two-year limitations period for general claims, but includes a three-year period of time where willful violations are determined. 29 U.S.C. § 255(a).

An employer will be found in willful violation of the FLSA only if it can be determined that the employer knew or showed reckless disregard as to whether it was violating the statute. The fact that an employer acts unreasonably in determining its legal obligations is not sufficient to show that the employer acted recklessly.

Huss v. City of Huntington Beach, 317 F. Supp. 2d 1151, 1160 (C.D. Cal. 2000) *citing* *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128 (1988). Although the willful nature of an alleged FLSA violation is generally a question of fact, “where an employer has relied on substantial legal authority or upon the advice of counsel, a finding of willfulness may be precluded as a matter of law.” *Id.* at 1161, *citing* *Serv. Emps. Int’l Union, Local 102 v. Cty. of San Diego*, 60 F.3d 1346, 1355-56 (9th Cir. 1994).

Here, there is no allegation that the NDOC was reckless in determining its legal obligations. As detailed in the preceding sections, controlling authority shows that the time for which Plaintiffs allege they were working but not paid was not compensable time. Defendant paid wages and acted in good faith in conformity with and in reliance of administrative regulations, orders, rulings in accordance with 29 U.S.C. § 258.

The only manner in which Plaintiffs have been able to allege any compensable time was for holding of “roll call,” (ECF #1 at ¶¶ 11 I. 3; 15 I. 12; and 17 I. 9), but the regulation they have identified and allege requires “roll call,” (ECF #1, at ¶ 11 II. 5-9), does not. App. A. No allegation other than a bald assertion that NDOC “knew or should have known” supports their claims. Vague allegations amounting to recitation of the elements supported by conclusory statements are not sufficient to survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). No valid claim is presented and NDOC is entitled to judgment as a matter of law.

...

...

...

d) **No contract, written or unwritten, contains an express provision making the alleged activity compensable. 29 U.S.C. § 254(b)(1)**

The PPA reverses the exemption for certain employment activities if an express, written or unwritten contract provision has made those activities compensable.

Notwithstanding the provisions of subsection (a) of this section which relieve an employer from liability and punishment with respect to any activity, the employer shall not be so relieved if such activity is compensable by either--

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

29 U.S.C. § 254(b)(1). Even a non-written contract must demonstrate “both the intent of the parties to contract with respect to the activity in question and their intent to provide compensation for the employee's performance of the activity must satisfactorily appear from the express terms of the agreement.” 29 C.F.R. § 790.9(c). The contract must be one “making the activity compensable.” 29 C.F.R. § 790.9(d).

State of Nevada employees and employers are expressly prohibited from entering into contracts which result in “personal profit or compensation of any kind resulting from any contract or other significant transaction.” NRS 281.230(1).

Contracts with State. An employee shall not enter into a private contract with the State in any capacity that may be construed as an extension of his or her assigned duties or responsibilities to the State.

NAC 284.754. A State employee contract entered into in violation of NRS 281.230 is void. NRS 281A.540(2).

While these exclusions from the right to contract by Nevada State employees are all clear and unambiguous on their face, it bears repeating that where, as here (in Chapter 284 of the Nevada Revised Statutes), government employees are governed by statute, they are not controlled by a contract. In discussing federal employees and overtime compensation, the court noted that federal employees do not work under a “negotiated contract but a statute giving federal workers a right to overtime compensation. A statute is clearly not a contract.” *Panama Canal*, 314 F. Supp. at 392. The court in the *Panama Canal* case ultimately found

that the statutory requirement to pay overtime did not negate the PPA relief provided. There is no reason why a different conclusion should be reached concerning Nevada State employees governed by NRS 284.010 *et seq.* and its related regulations.

Beyond this, there is no express contract or contract provision which provides that correctional officers are to be paid for any of the activities alleged to be compensable in paras. 17 and 18 their Complaint, (ECF #1, at ¶ 11 ll.1-25). To the extent that the recitation that NDOC and Plaintiffs had an agreement to use a 14-day work period and establish a variable work schedule encompassing 80 hours is an allegation, (ECF #1, ¶ 10 ll.11-15 and n. 1), no specific work activity is alleged to be addressed in that “agreement.” Without express identification of the employee’s work activity, compensation is not required pursuant to 29 C.F.R. § 790.9(d). No pay liability is identified in a contract, written or not, and no wages are owing in this respect, and NDOC is entitled to judgment as a matter of law.

C. Plaintiffs’ Third Cause of Action Premised Upon Violation of Article 15, Section 16 of the Nevada Constitution Should be Dismissed Because the Amendment Does Not Provide a Private Right of Action for State Employees

In their third cause of action, Plaintiffs assert that NDOC violated the minimum wage requirements set forth in Article 15, Section 16 of the Nevada Constitution by not compensating Plaintiffs and other correctional officers for activities occurring before and after their regularly scheduled shifts. A determination of whether a private right of action exists is a question of law. *See e.g. Townsend v. Univ. of Alaska*, 543 F.3d 478, 482 (9th Cir. 2008). Plaintiffs’ third cause of action is not viable because Article 15, Section 16 of the Nevada Constitution does not confer on state employees a private right of action against state employers like NDOC.

Plaintiffs correctly state in their Complaint that Article 15, Section 16 of the Nevada Constitution establishes a minimum wage that must be paid by employers. *See NEV. CONST. art. 15, § 16(A).*⁵ Plaintiffs also correctly state that an “employee” claiming a violation of this constitutional amendment may file a court action to enforce the requirements set forth therein.

⁵ Section 16 of Article 15 is a constitutional amendment that was proposed by initiative petition and ratified by the citizens of Nevada in 2006.

1 *Id.* However, Plaintiffs fail to recognize that they have no private right of action to enforce the
2 provisions of Article 15, Section 16 of the Nevada Constitution because they do not constitute
3 “employees” as that term has been defined. Section 16(C) defines “employee” as “any person
4 who is employed by an employer as defined herein” NEV. CONST. art. 15, § 16(C).
5 “Employer” is defined as “any individual, proprietorship, partnership, joint venture, corporation,
6 limited liability company, trust, association, or other entity that may employ individuals or enter
7 into contracts of employment.” *Id.* Section 16(C) does not include the State of Nevada, its
8 agencies, or departments when defining “employer.” Indeed, Section 16(C) contains no
9 reference whatsoever to any governmental entity. Because the State is specifically excluded
10 from the definition of “employer,” it is not subject to the provisions of Article 15, Section 16.
11 This being so, individuals who are employed by the State have no basis for enforcing the
12 requirements set forth in amendment.

13 When the definition of “employer” is read as a whole and in the context of Section 16 in
14 its entirety, it becomes clear that the term was not meant to include the State or its agencies.
15 The first portion of the definition which enumerates specific classes or types of employers
16 identifies only those subjects that are involved in private enterprise. See NEV. CONST. art. 15,
17 § 16(C) (identifying “individual, proprietorship, partnership, joint venture, corporation, limited
18 liability company, trust, association”). The catch-all clause in the definition includes, “other
19 entit[ies] that may employ individuals or enter into contracts of employment.” Despite what
20 Plaintiffs would like the Court to believe, this catch-all clause cannot be construed to include
21 NDOC because the department does not enter into contracts of employment with its
22 correctional officers or any other employees. Instead, it hires individuals through the process
23 outlined in the State’s personnel system, and the terms and conditions of employment are
24 fixed by statute.

25 It is apparent that the State, its agencies, and departments were excluded from the
26 definition of “employer” in Section 16(C) because Nevada already had a comprehensive
27 statutory and regulatory scheme which set the terms and conditions of state employees,
28 including matters pertaining to compensation, at the time the constitutional amendment was

1 ratified. See NRS 281.005 to 281.671, inclusive; and NRS 284.010 to 284.430, inclusive.
2 The Nevada Legislature created the State Personnel System, which is codified in Chapter 284
3 of the Nevada Revised Statutes. As part of that system, the Legislature created the
4 Personnel Commission and granted it the authority to adopt rules and regulations to
5 implement the provisions of Chapter 284. See NRS 284.030-284.065. These regulations are
6 contained in Chapter 284 of the Nevada Administrative Code. See NAC 284.010 to 284.894,
7 inclusive. In fact, the Nevada Administrative Code contains an entire section which solely
8 addresses matters related to compensation of state employees. See NAC 284.158-284.294,
9 inclusive. Some of the terms and conditions of employment for correctional officers like
10 Plaintiffs are contained in the ARs adopted by NDOC. See NRS 209.131(6); AR 300-364,
11 inclusive. For example, AR 320 Salary Administration, specifically addresses the procedures
12 for overtime requests and approvals by NDOC employees. App. D.

13 In the instant matter, it is undisputed that Plaintiffs are current and former classified
14 employees of the State of Nevada. See NRS 284.150, 284.171(13), 289.220 and 289.480.
15 Therefore, matters pertaining to Plaintiffs' employment are specifically governed by the
16 provisions of Chapter 284 of the Nevada Revised Statutes and Chapter 284 of the Nevada
17 Administrative Code. See NRS 284.013(1), 284.065(2)(d). The mere existence of a
18 comprehensive personnel system which addresses employment related matters which are
19 specific to state employees, including the manner in which they are compensated for work
20 performed during regularly scheduled shifts and overtime, demonstrates that the provisions of
21 Article 15, Section 16 of the Nevada Constitution are inapplicable to state employers such as
22 NDOC. Accordingly, state employees have no basis for asserting a claim premised upon a
23 violation of Article 15, Section 16. Plaintiffs' remedies, if any, are confined to those provided
24 in statute and regulation.

25 It is worth noting that the section of Article 15 which immediately precedes the
26 constitutional amendment at issue in this case shows that the terms and conditions of state
27 employees are addressed by laws which are separate and apart from those that pertain to
28 private sector employees. Article 15, Section 15 of the Nevada Constitution specifically grants

the Nevada Legislature with the authority to create a merit system for state employees. See NEV. CONST. art. 15, § 15. The fact that the Nevada Constitution contains a separate section which specifically mandates a merit system for state employees is compelling.

The recent Nevada Supreme Court decision of *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. ___, 327 P.3d 518 (Adv. Op. 52, June 26, 2014), provides additional support that Article 15, Section 16 of the Nevada Constitution does not apply to NDOC and other state agencies. In *Thomas*, the Nevada Supreme Court was charged with determining whether the minimum wage amendment of Article 15, Section 16 supersedes the exception for taxicab drivers as provided for in the minimum wage statute of NRS 608.250(2)(e). *Id.* at 520. In so doing, the Court stated that Article 15, Section 16 addresses the “same subject matter” as NRS Chapter 608. *Id.* at 523. A cursory review of Chapter 608 reveals that it addresses conditions of employment in **private enterprise**. See NRS 608.005. The legislative declaration for NRS Chapter 608 provides as follows:

[T]he Legislature hereby finds and declares that the health and welfare of workers and the employment of persons in **private enterprise** in this State are of concern to the State and that 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.

Id. (emphasis added). The Nevada Supreme Court’s acknowledgement in *Thomas* that Article 15, Section 16 of the Nevada Constitution addresses the same subject matter as Chapter 608 of the Nevada Revised Statutes indicates that it applies only to employers and employees doing business in the private sector. Furthermore, this accords the Nevada Supreme Court’s longstanding opinion that “NRS Chapter 608 is not applicable to a situation involving a public employee.” *State, Dep’t of Human Res., Welfare Div. v. Fowler*, 109 Nev. 782, 788, 858 P.2d 375, 378 (1993).

Finally, the waiver provision contained in Section 16 militates in favor of a finding that Article 15, Section 16 is inapplicable to NDOC. Pursuant to subsection “B,” the provisions of § 16, including the minimum wage requirement, “may be waived by a bona fide collective bargaining agreement. . . .” NEV. CONST. ART. 15, § 16(C). An interpretation of “employer”

which includes the State and its agencies would be at odds with the waiver provision contained in § 16(B). Common sense dictates that the waiver provision would not be included in Article 15, Section 16 if the State and its agencies did, in fact, constitute “employers” under § 16(C) because it is well settled law that collective bargaining between the State and its employees is prohibited. *See Nev. Highway Patrol Ass’n v. State, Dep’t of Motor Vehicles*, 107 Nev. 547, 550, 815 P.2d 608, 610-11 (1991) (holding that the State and its agencies do not have the authority to enter into collective bargaining agreements with employees).

Plain and simply, Plaintiffs and the alleged class members are not employed by an entity that is subject to the minimum wage requirements set forth in Article 15, Section 16 of the Nevada Constitution. Those provisions strictly benefit individuals who are employed in the private sector. As such, Plaintiffs have no private right of action to enforce the provisions of Article 15, Section 16. Accordingly, Plaintiffs’ third cause of action fails as a matter of law, and should therefore be dismissed with prejudice.

D. Plaintiffs’ Fourth Cause of Action for Breach of Contract Must be Dismissed for Failing to State a Claim Upon Which Relief May be Granted

Plaintiffs also assert a cause of action against NDOC for breach of contract in violation of Nevada law. (ECF #1, ¶¶ 55-61). In order to prevail on a claim for breach of contract under Nevada law, Plaintiffs are required to allege and prove the following elements: (1) the existence of a valid contract, (2) a breach of the contract by NDOC, and (3) that the breach resulted in damages to Plaintiffs. *See Saini v. Int’l Game Tech.*, 434 F. Supp. 2d 913, 920 (D. Nev. 2006). Plaintiffs’ claim for breach of contract must be dismissed because no relief is possible under the facts alleged in the Complaint.

1. Plaintiffs’ complaint fails to sufficiently plead a claim for breach of contract

Plaintiffs’ claim for breach of contract fails because the Complaint does not contain sufficient factual matter to state a viable claim for relief which is plausible on its face. Pursuant to Rule 8(a)(2) of the Federal Rules of Civil Procedure, a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” In the case of *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), the United States Supreme Court

determined that “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of demonstrating that a claim is plausible. *Id.* The Court, in *Iqbal*, stated that “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.” *Id.*

In the case at bar, Plaintiffs’ claim for breach of contract is supported by nothing more than conclusory allegations. More importantly, Plaintiffs’ Complaint fails to allege specific facts demonstrating that Plaintiffs and NDOC entered into a contract. It is noteworthy that no contract is identified or attached to Plaintiffs’ Complaint. Because Plaintiffs’ claim for breach of contract is not sufficiently pled in the Complaint, said claim must be dismissed.

2. No contract exists between Plaintiffs and NDOC

Even if the Court were to determine that a claim for breach of contract was adequately pled in the Complaint, Plaintiffs’ claim would still fail as a matter of law because no valid contract exists between Plaintiffs and NDOC. The existence of a valid enforceable contract is an essential element for establishing a claim for breach of contract under Nevada law. See *Saini*, 434 F. Supp. 2d at 919-20. In the instant matter, Plaintiffs’ claim fails because it cannot be established that Plaintiffs entered into a contract with NDOC concerning wages and/or the manner in which they would be compensated for work performed as a correctional officer.

In Nevada, the employment relationship between the State and its employees is derived from statute, not contract. See *Shamberger v. Ferrari*, 73 Nev. 201, 207-209, 314 P.2d 384, 387-88 (1957) (recognizing that the statutory abolishment of office of surveyor general did not deprive respondent of either a contractual right or a property right). As previously discussed, Plaintiffs are state employees whose terms and conditions of employment, including compensation, are controlled by statute and regulation. See NRS 284.010-284.430, inclusive; NAC 284.010-284.894, inclusive. These statutory and regulatory conditions of state employment are not contractual. Furthermore, there is no procedure whereby the terms and conditions of employment can be altered or customized for specific employees. Nevada’s personnel system is specifically designed to govern and protect the

interests of state employees like Plaintiffs. See NRS 284.010(1). NRS 284.010 provides, in pertinent part, as follows:

1. The Legislature declares that the purpose of this chapter is:
 - (a) To provide all citizens a fair and equal opportunity for public service;
 - (b) To establish conditions of service which will attract officers and employees of character and ability;
 - (c) To establish uniform job and salary classifications;

NRS 284.010(1). NRS Chapter 284 applies to all officers and employees of any agency of the executive department of the State government unless specifically exempted by statute. See NRS 284.013(1)(c). In addition to setting out the manner in which state employees are compensated for their work, the personnel system contains procedures whereby employees can initiate proceedings or file grievances to resolve wage-related disputes with their employer. See e.g. NRS 284.073 (establishing the duties of the Employee-Management Committee).

No reasonable argument can be made that the terms and conditions of Plaintiffs' employment are contractual. NDOC does not even have the ability to enter into a contract with its employees for the purpose of addressing terms of employment such as compensation and other wage related matters. This is best illustrated by the fact that state agencies in Nevada do not have authority to enter into collective bargaining agreements with public employees. See *Nev. Highway Patrol Ass'n v. State, Dep't of Motor Vehicles*, 107 Nev. 547, 551, 815 P.2d 608, 610-11 (1991). Furthermore, as argued in section III. B(4) above, State of Nevada executive branch employees may not contract regarding "personal profit or compensation." NRS 281.230(1). Any such contract under the facts alleged, "is void." NRS 281A.540(2).

Moreover, courts have specifically held that public employees do not have a private right of action for breach of contract because public employment is derived by statute, not contract. See *Gibson v. Office of the Att'y Gen.*, 561 F.3d 920, 929 (9th Cir. 2009); *Bernstein v. Lopez*, 321 F.3d 903, 905-06 (9th Cir. 2003); *Wright v. Kan. Water Office*, 881 P.2d 567, 571 (Kan. 1994); *Personnel Div. of the Exec. Dep't v. St. Clair*, 498 P.2d 809, 811 (Or. App.

1 1972). The United States Supreme Court has held that a statute fixing salaries of state
2 officers creates no contract in their favor. *Dodge v. Bd. of Educ. of City of Chicago*, 302 U.S.
3 74, 78 (1937).

4 In the case of *Wright v. Kansas Water Office*, 881 P.2d 567 (Kan. 1994), the Kansas
5 Supreme Court considered the question of whether a state classified employee was employed
6 pursuant to a written contract. The court ultimately held that the employment relationship
7 between a classified employee and the State of Kansas did not arise out of contract. *Id.* at
8 571. In so holding, the court determined that the employment relationship was fixed by a
9 statute referred to as the “Kansas Civil Service Act.” The Kansas Civil Service Act discussed
10 in *Wright* is very similar to the State Personnel System set forth in Chapter 284 of the Nevada
11 Revised Statutes. Like Nevada’s personnel system, the Kansas Legislature adopted the
12 KCSA “to provide all citizens an equal opportunity for public service” and to “establish
13 conditions of service.” *Wright*, 881 P.2d at 572; NRS 18.010.

14 Like public employees in Kansas, the terms and conditions of Plaintiffs’ employment
15 are fixed by statute. As a result, there is simply no basis to conclude that the employment
16 relationship between Plaintiffs and NDOC arose out of a contract or agreement. Because no
17 contractual relationship exists between Plaintiffs and NDOC, Plaintiffs cannot state an
18 actionable claim for breach of contract. Accordingly, Plaintiffs’ fourth cause of action should
19 be dismissed with prejudice.

20 **IV. CONCLUSION**

21 Based upon the foregoing, NDOC is entitled to judgment in its favor as a matter of law
22 with respect to Plaintiffs’ federal and state law claims because no relief is possible under any
23 set of facts that Plaintiffs could prove in support of their claims. Plaintiffs’ first cause of action
24 for failure to pay minimum wages and Plaintiffs’ second cause of action for failure to pay
25 overtime wages fail as a matter of law because the Portal-to-Portal Act makes time spent
26 getting to and from the place of performance of work non-compensable, because preliminary
27 and postliminary activities are non-compensable, and because no express provision of a
28 contract makes any of the activities noted in the Complaint compensable. Plaintiffs’ third

1 cause of action for violation of Article 15, Section 16 of the Nevada Constitution is not viable
 2 because the amendment does not confer on state employees a private right of action to
 3 enforce its provisions against State employers. Plaintiffs' cause of action for breach of
 4 contract fails as a matter of law because it is insufficiently pled in the Complaint, and Plaintiffs
 5 cannot demonstrate that they had a contractual relationship with NDOC. As previously
 6 discussed, the terms and conditions of Plaintiffs' employment are fixed by statute, not
 7 contract. For the reasons discussed herein, the NDOC respectfully requests the Court to
 8 dismiss Plaintiffs' Complaint with prejudice.

9 Dated this 13th day of April, 2016.

10 ADAM PAUL LAXALT
 11 Attorney General

12 By: /s/ Jennifer K. Hostetler
 13 ANN M. McDERMOTT
 14 Litigation Bureau Chief
 15 JENNIFER K. HOSTETLER
 16 Chief Deputy Attorney General
 17 *Attorneys for Defendant*
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 26
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 28

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANT'S RENEWED MOTION FOR JUDGMENT ON THE PLEADINGS** with the Clerk of the Court by using the electronic filing system on the 13th day of April, 2016.

I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

Mark R. Thierman, Esq.
Joshua D. Buck, Esq.
Leah L. Jones, Esq.
Thierman Buck, LLP
7287 Lakeside Drive
Reno, Nevada 89511

/s/ TRACI PLOTNICK
An employee of the Office of the Attorney General

Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

ADAM PAUL LAXALT
Attorney General
ANN M. McDERMOTT
Litigation Bureau Chief
Nevada Bar No. 8180
JENNIFER K. HOSTETLER
Chief Deputy Attorney General
Nevada Bar No. 11994
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
T: (702) 486-3420
F: (702) 486-3773
Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD WALDEN JR., NATHAN
ECHEVERRIA, AARON DICUS, BRENT
EVERIST, TRAVIS ZUFELT, TIMOTHY
RIDENOUR, and DANIEL TRACY on behalf of
themselves and all other similarly situated,

Plaintiffs,

vs.

STATE OF NEVADA, NEVADA
DEPARTMENT OF CORRECTIONS, and
DOES 1-50,

Defendant.

Case No. 3:14-cv-00320-MMD-WGC

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APPENDIX “A”

APPENDIX “A”

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
326**

POSTING OF SHIFTS/OVERTIME

Supersedes: AR 326 (08/13/10); and AR 326 (Temporary, 07/14/14)
Effective Date: 09/16/14

AUTHORITY: NRS 284.055; 284.155; 284.175; 284.180 NAC 284.242; 284.245; 284.250 and C.F.R. Part 115

RESPONSIBILITY:

Wardens/Facility Managers are responsible to ensure there is sufficient staff on duty to safely operate their institutions and facilities.

An Associate Warden/facility manager are responsible to document attendance, management of relief factor usage by all uniformed staff, and ensure proper documentation is maintained.

326.01 STAFFING

1. NORMAL OPERATIONS

A. Normal operation staffing is utilized during the normal operations of an institution. This pattern will identify the staff required to run a specified post when all positions are utilized.

B. An Associate Warden will create a written staffing pattern identifying and prioritizing specific posts operating within the institution as either a pull position or a shut down position.

(1) A pull position is identified as a position in which the assigned officer may be pulled from that position and assigned elsewhere in the institution during their assigned shift.

(2) A shut down position is identified as a position in which the assigned officer may be pulled from his assigned post and the post closed with the officer being assigned elsewhere in the institution for their entire assigned shift.

C. Shift Sergeants reporting for their scheduled shifts will adjust the shift roster and fill all positions mandated to fulfill the minimum staffing requirements.

D. The shift sergeant will use all Sick/Annual positions first, and then use pull/shutdown positions as appropriate, in the order as listed by the institution.

E. If the minimum staffing has not been met, the on duty Shift Supervisor will contact an Associate Warden and request the minimum amount of overtime hours needed. The Associate Warden will then

notify the Warden for approval of the decision/overtime approved.

F. Only when all pull positions and shutdown positions have been utilized will overtime be considered.

2. EMERGENCY OPERATIONS

A. Emergency operation staff is the staffing pattern that identifies posts that must meet minimal requirements for officer and inmate safety. This pattern will identify those posts that are critical for running a specific area of the institution.

B. An Associate Warden will create a written staffing pattern identifying additional specific posts within the institution either as pull or shutdown positions; this staffing pattern will prioritize these positions in the order they are to be pulled / shut down in the event of an emergency or staff shortage.

C. Staffing will also be evaluated as to the absolute minimum required to safely operate a particular shift.

D. It may be necessary to modify or cancel some activities as a result of emergency staffing. The Warden/Associate Warden will be notified of the cancellation of any activity or program.

E. Only when all pull positions and shutdown positions have been utilized only then will overtime be considered. Authorization is only granted by the Warden/Designee.

326.02 RELIEF FACTOR MANAGEMENT (RFM)

1. Relief Factor Management (RFM) positions are to be:

A. Used for unscheduled annual leave relief to cover greater than normal sick leave, if it is available.

B. Used for pull and shutdown posts to cover greater than expected sick leave.

2. No more annual leave will be scheduled than there are relief factor management positions available to support the requested leave without overtime.

A. Staff should request annual leave per the requirements of AR 322 Types of Leave' and Leave Procedure.

B. Leave requests submitted without sufficient notice will not be granted if there is no relief factor to accommodate the leave without overtime except in a case of a personal emergency.

3. To the degree possible, Lieutenants and Sergeants should not be replaced, however, these positions may be used as a pull/shutdown position if designated by the institutional staff procedure,

4. Shift rosters for each institution and facility are to be organized so the components of the relief factor can be combined to identify specific staff to occupy RFM positions.

5. Relief factor for regular days off, sick leave, annual leave, or training, will not be combined in order to create new positions.

6. Days off are assigned to the post and not the person.

326.03 MANAGEMENT OF OVERTIME

1. Overtime is not guaranteed for any employee.

- A. Institutional/facility requirements will determine all overtime hired.
- B. All staff overtime requires the completion of DOC Form 1000, Authorization for Leave and Overtime Request Form,
- C. Staff cannot work more than two (2) consecutive double shifts.
- D. Unless an emergency situation occurs, no staff can work than more than a 16 hour shift in a 24 hour period.

2. Assigned staff may be reassigned when an institutional need exists.

3. Employees on modified duty assignments are not authorized to work overtime.

4. Correctional officers may be used to fill Senior Correctional Officer positions on a case by case basis. However Senior Correctional Officers may not be utilized to fill a Correctional Officer position.

5. A voluntary overtime list will be established and used prior to utilizing mandatory overtime. This voluntary overtime list will be re-started when exhausted.

- A. No employee who calls in sick or utilizes sick leave during any given pay period will be allowed to work voluntary overtime.
- B. If an employee accrues overtime during the first week of the pay period and then utilizes sick leave, that employee will not be permitted any voluntary overtime in the next pay period.
- C. No employee who must provide "proof" may work voluntary overtime until this status is modified.
- D. Employees who are in AWOL or LWOP status will not to be allowed to volunteer/eligible for overtime in the same pay period.

(1) If overtime is accrued during the first week of the pay period and then LWOP or AWOL is accrued, that employee will not be permitted to work voluntary overtime in the entire following pay period.

6. If overtime is required to maintain a safe and secure operation and insufficient staff voluntarily agrees to work, mandatory overtime will be initiated.

A. A list of Senior Correctional Officers, Correctional Officers, and Correctional Officer Trainees will be establish by based on least seniority in their hire date and last involuntary, i.e. mandatory, overtime date, will be established for each shift.

- B. The mandatory overtime list will be restarted once exhausted or every 45 days.
 - C. Adjustments will be made when an officer is reassigned to a new shift. That officer will be added to the mandatory list according to their last mandatory date.
 - D. Based on the least seniority the first time after shift bidding, staff will be selected by their last involuntary overtime date. Once completed, the employee will move to the bottom of the involuntary overtime list.
 - E. All correctional staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required to work mandatory overtime.
 - (1) If an employee is required to work mandatory overtime, that employee may be allowed to solicit a volunteer to work in his/her place.
 - (a) If a volunteer is found, the shift supervisor/shift sergeant must approve the substitution prior to the person being allowed to work.
 - (b) If the substitution is approved, the Officer originally scheduled to work the mandatory overtime will remain at the top of the mandatory overtime list until he/she actually works it.
 - (2) The employee has 1 hour to find a substitute whenever possible.
7. A written overtime tracking log must be approved by the appropriate Deputy Director.
- A. All overtime will be entered into the NSIS Computer Roster.
 - B. Verification will be made that the timesheet entry is properly coded and hours are correctly entered by viewing the timesheet of the staff member.
 - C. A written overtime tracking log will be utilized to ensure proper utilization of overtime and entry into the computer.

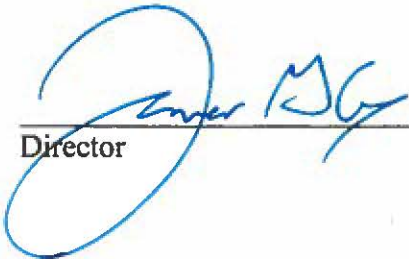
326.04 ANNUAL STAFFING REVIEW

1. At least once every year the institutions and facilities in collaboration with the PREA Coordinator, review the staffing plan to see whether adjustments are needed in the following areas:
 - A. The staffing plan.
 - B. The deployment of monitoring technology.
 - C. The allocation of Agency/Institution or Facility resources to commit to the staffing plan to ensure PREA compliance.
2. The Staffing Review will be submitted to the Deputy Director of Operations who will provide a copy to the PREA Coordinator for review. This Staffing Review will be submitted for all Institutions and Facilities

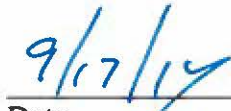
in the manner described in AR 301, "Shift Bidding", Section 301.01.

APPLICABILITY

1. This regulation requires an Operational Procedure for every institution and facility.
2. This regulation requires an audit.



Director



Date

APPENDIX “B”

APPENDIX “B”



Nevada Department Of Corrections

Administrative Regulation Control Sheet

AR Number:	AR 411
AR Title:	Tool Control

AR Revision History

Revision Details	Effective Date
This AR was reviewed by the Subject Matter Expert and it was determined that no changes are required as of this date.	10/20/14
No Additional revisions beyond this line.	---


 Director

10/20/14
 Date

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
411**

TOOL CONTROL

Supersedes: AR 411 (Temporary, 04/28/11)
Effective Date: 06/17/12

AUTHORITY: NRS 209.131

RESPONSIBILITY

1. Wardens/Facility Managers will ensure that procedures are established to carefully control the use, distribution and storage of tools to minimize the potential danger to staff, inmates and facility security that may be caused by their misuse.
2. Wardens/Facility Managers are responsible for the implementation of this regulation.
3. It shall be the responsibility of all staff to ensure and maintain compliance with this procedure on a regular and daily basis.

411.01 PROCEDURE

1. Each Warden or facility manager shall establish a comprehensive operational procedure which clearly defines each issue listed in this regulation, to include requiring that all personnel having access to tools familiarize themselves with the institution's or facility's operational procedure.
2. Institution/facility operational procedures will be adhered to by all work areas identified within the institution/facility who use and/or store tools.
 - A. Work areas include, but are not limited to:
 - (1) Food Service
 - (2) Maintenance
 - (3) Medical
 - (4) Yard Labor
 - (5) Prison Industries
 - (6) Vocational Programs
 - (7) Education

(8) Private or contract repair or maintenance personnel

3. Institution/facility operational procedures will include the following definitions:

A. Tool – Any instrument or minor piece of equipment requiring manual operation such as but not limited to, knives, scissors, long handled utensils, letter openers, maintenance tools, extension cords or water hoses.

B. Class “A” Tools (Extremely Hazardous) – Tools that can be used as weapons, to facilitate an escape or in an escape or to fabricate weapons.

C. Class “B” Tools (Hazardous) – A tool in its present state that can be conveniently used as a weapon and/or easily concealed.

D. Class “C” Tools (Non-hazardous) – A tool which in its present state can be used as a weapon only with difficulty; which must be extensively altered to be used as a weapon; or which cannot be easily concealed.

E. Shadow Board – a storage board upon which tools are stored, bearing a painted image or outline of each tool stored thereon and the corresponding code number.

F. Tool Control Coordinator – A person designated by the Warden or Facility Manager to coordinate the tool control plan at the facility.

(1) This need not be a full time assignment, but for the purpose of accountability the individual must have sufficient time to accomplish designated tasks.

4. Institution/facility operational procedures shall describe in detail procedures for:

A. Tool Request

B. Tool Add-on

C. Tool Turn-in, to include tool disposal

D. Lost Tools

E. Tool Inventory

F. Tool Quotas

G. Tool Check-in/Check-out

H. Tool Storage

I. Tool Identification, to include classification.

J. Tool Audits

411.02 TOOL REQUESTS

1. Work area supervisors, to include Maintenance, Prison Industries, School District and outside vendors, requesting to receive a new tool will complete a Tool Request Form (Attachment A) to be submitted to the Tool Control Coordinator and designated Associate Warden for approval.

A. No tools shall be procured or delivered to the job site without the prior approval of the Tool Control Coordinator or designated Associate Warden.

B. The Tool Control Coordinator will review the area's existing tool inventory prior to approving/denying any request to ensure there is not an excess of the same tool.

C. A copy of the Tool Request Form will be forwarded to the area supervisor and Warehouse Manager upon approval.

(1) All denied requests will be sent to the area supervisor with the reasons for denial.

D. All approved tools will be delivered to the Warehouse.

(1) The warehouse supervisor will notify the Tool Control Coordinator that the tool(s) are in.

(2) No tool will be issued by warehouse staff.

411.03 TOOL ADD-ON

1. The Tool Control Coordinator will be responsible for the classification of each new tool.

A. The Tool Control Coordinator will ensure each new tool has been properly etched, color coded and added to the appropriate inventory.

2. The Tool Control Coordinator will complete a Tool Add-on Form (Attachment B) for each tool added to an area's inventory.

A. Copies of this form will be distributed and maintained by the area supervisor and Tool Control Coordinator.

B. No tool will enter the facility without a copy of the completed and signed Tool Add-on Form.

411.04 TOOL TURN-IN RECEIPT

1. Area supervisors will complete a Tool Turn-in Form (Attachment C) for all unserviceable tools.

A. Broken or worn out tools will be given to the Tool Control Coordinator for proper disposal and removal from area inventory.

B. Broken or worn tools will be removed from the institution by the Tool Control Coordinator and destroyed in a manner that prevents them from being used for any purpose.

(1) This responsibility can not be delegated.

C. Area supervisors and the Tool Control Coordinator will maintain a copy of the Tool Turn-in Form for their records.

411.05 LOST TOOL REPORT

1. Any lost tool will be immediately reported to the on duty supervisor.

A. All inmates will remain at that location until a thorough search can be completed.

2. The area supervisor is responsible for completing a Lost Tool Report (Attachment D).

A. Copies of this report will be maintained by the area supervisor and forwarded to the designated Associate Warden and Tool Control Coordinator.

3. The Tool Control Coordinator will maintain a separate file of all missing tools.

A. All contraband/unauthorized tools discovered will be checked against this list and retained by the Tool Control Coordinator for re-issue or disposal.

411.06 TOOL INVENTORIES

1. A complete inventory of all tools and their location will be maintained by the area supervisor, Tool Control Coordinator and designated Associate Warden or facility manager.

A. Area supervisors will maintain a current and readily available copy of their complete tool inventory in a loose leaf binder.

2. Work area supervisors will conduct a tool inventory at the beginning and end of their shift.

- A. The supervisor shall indicate by signature that all tools are present at the end of each day.
 - B. Inmates can not complete a tool inventory.
3. A Weekly Tool Report (Attachment E) will be completed by the area supervisor.
- A. This report will be completed by the end of the business week.
 - B. A copy of this report will be forwarded to the Tool Control Coordinator.
 - C. Inmates can not complete a tool inventory.
4. A monthly tool audit will be conducted by the Tool Control Coordinator.
- A. This audit will relate to inventories, proper identification and storage of tools.
5. When inmates are assigned to tool cribs such as, Maintenance department, Vocational shops or Prison Industry, the inmate will be under the direct supervision of an employee assigned to the specific area.
- A. The employee shall conduct a sight inventory (an observation of all tool shadows to ensure every tool is present) at the beginning and end of each work day and before and after the inmates enter or leave their work areas. These inventories must be documented.
 - B. In addition, the supervising employee shall conduct spot checks of tools in use to ensure they are being used only by the individuals to whom they were assigned.
 - (1) In Prison Industries only, a tool may be shared in a common work-area when the tool has been identified as appropriate for such sharing by Prison Industry supervisors and the designated Associate Warden.
 - (2) The responsibility for returning the tool remains with the inmate who originally signed the tool out.
6. Tool control in the medical and dental departments will be accomplished as follows:
- A. The Director of Nursing Services shall maintain an accurate inventory of instruments such as scalpels and other tools.
 - B. These tools will be inventoried daily.
 - C. A complete inventory will be maintained in quadruplicate:
 - (1) One copy to be conspicuously displayed in storage area.

(2) One copy with the Director of Nursing Services.

(3) One copy to the Tool Control Coordinator.

(4) One copy with the designated Associate Warden.

D. Each shift will maintain a daily perpetual inventory of all needles and syringes by sizes.

411.07 TOOL REQUIREMENTS/QUANTITY

1. Each work area supervisor shall establish tool requirements/quantity for their area of responsibility.

2. Work area supervisors shall maintain and account for all tools within their area of responsibility.

3. All tools found in excess of need or not on the existing area inventory will be turned over to the Tool Control Coordinator with a completed tool turn-in receipt.

A. Tool(s) will be stored in a secured area for disposal by the Tool Control Coordinator.

411.08 TOOL CHECK-IN AND CHECK-OUT

1. All tools removed from their storage area will be logged out by the work area supervisor using a tool check-out log.

A. A log book or log sheet will be maintained for documenting the issuance and the return of tools.

B. The log shall include:

(1) The date issued

(2) Receiving inmate's name and NDOC number; or employee's name and the tool number

(3) Tool description, to include number

(4) Time checked out

(5) Issuing employee's name

(6) Time returned

(7) Name of the employee receiving the returned tools.

C. Inmates receiving tools will surrender their identification card to the work area supervisor.

(1) Work area supervisors will positively identify the inmate receiving the tool.

D. Work area supervisors will ensure the inmate(s) has been instructed in the proper use and understand all safety procedures for that tool.

(1) Documentation of the training must be maintained.

E. Inmates will be allowed to possess or use tools only when supervised.

F. Tools turned in upon completion of their use will be signed in by the work area supervisor.

(1) Work area supervisors will ensure the tool(s) is clean, undamaged and all parts of the tool are accounted for.

(2) Work area supervisors will note the time the tool was returned and who received the tool.

(3) After ensuring all the tools checked out by an inmate are returned, the inmate's identification card will be returned to the inmate.

411.09 TOOL STORAGE

1. All tools shall be stored in a steel cage/cabinet with a shadow board or tarp (tool boxes) and a secure locking device.

2. Tool storage cage/cabinet will be equipped with a shadow board.

A. Class "A" Tools will be stored over a red shadow.

B. Class "B" and Class "C" Tools over a Black shadow.

3. Over sized equipment such as, ladders will be under lock and chain or stored in a locked storage area when not in use, and will be inventoried daily.

4. Surgical, dental and other medical equipment shall be maintained in the safest manner possible in keeping with medical practice.

5. Reserve stock of hypodermic needles and syringes shall be kept in a locked and secure area and an accurate and current inventory maintained.

A. Only the minimum number of syringes and needles for proper operation of the medical department shall be available for daily use.

(1) All used and unserviceable syringes and needles shall be crushed or disposed of by some safe and secure manner designed to keep them out of inmate possession.

411.10 TOOL IDENTIFICATION

1. All tools will be etched to identify the tool and area where they are assigned.

A. Letter abbreviations for each facility and number of the tool will be etched on all institutional tools.

(1) Tools belonging to other entities (i.e. White Pines County-WPCSD, Carson County-CCSD, Clark County-CCSD) will be etched with the appropriate abbreviation.

B. All tools will be marked with an identification number.

C. Medical/Dental tools will not be marked because of size and character.

2. Tools will further be identified by color banding.

A. Class "A" tools will be visually identified by a red band at least ½ inch wide at the point of the least wear.

B. Class "B" tools will be visually identified by a blue band at least ½ inch wide at the point of the least wear.

C. Class "C" tools will be visually identified by a green band at least ½ inch wide at the point of least wear.

411.11 TOOL CLASSIFICATION

1. Class "A" tools are tools readily available to be used as weapons or used to facilitate an escape.

A. These tools are considered critical.

(1) All critical tools require direct supervision of an inmate in possession of these tools.

(2) A critical tool can not be removed from the area of intended use.

B. Critical tools include, but are not limited to the following:

- (1) Large Wire Cutters
- (2) Knives/Cleaver/Ice Picks
- (3) Hacksaws/Hacksaw Blades
- (4) Drill Bits/Grinder Wheels
- (5) Cutting Torches
- (6) Power Actuated Tools
- (7) Axes
- (8) Bolt Cutters
- (9) Hammers.
- (10) Scissors.
- (11) Large Wrenches (more than 8 inches)
- (12) Files/Rasps.
- (13) Dough Cutters.
- (14) Meat Forks.
- (15) Scalpels.
- (16) Screw Drivers/Chisels.
- (17) Ladders

C. Critical tools include those stated above in class "A", as well as additional tools, which are considered dangerous to the institution or inmate's well being as determined by the Warden/designee.

2. Class "B" tools: require direct observation of an inmate in possession of a Class "B" tool.

A. Class "B" tools include, but are not limited to the following:

- (1) Spatulas

(2) Small Wrenches (less than 8 inches)

(3) Serving Spoons

(4) Ladles

(5) Engravers

(6) Ropes

(7) Extension Cords

(8) Hoses

(9) Picks

(10) Wood Saws

B. Special events that require plastic utensils such as, spoons or spatulas, used by various inmate religious groups will be checked out from the culinary upon approval from the Warden/designee.

(1) These items will be added to the appropriate culinary tool inventory and ensure accountability.

3. Class "C" tools: require intermittent observation of an inmate in possession of a Class "C" tool.

A. Class "C" tools include but are not limited to the following:

(1) Shovels

(2) Rakes

(3) Push Brooms

(4) Mop Ringers

B. Any tool not listed above will be categorized by the Tool Coordinator and approved by the Warden or designee.

411.12 TOOL AUDITS

1. All correctional institutions/facilities will conduct an internal audit of their tool control procedure at least once per month.

A. Wardens or facility managers will designate staff to complete required monthly audits.

B. Audits will assess the strengths and/or weaknesses in the following areas:

- (1) Tool Request
- (2) Tool Add-on
- (3) Tool Turn-in, to include tool disposal
- (4) Lost Tools
- (5) Tool Inventory
- (6) Tool Quotas
- (7) Tool Check-in/Check-out
- (8) Tool Storage
- (9) Tool Identification, to include classification.
- (10) Tool Audits

411.13 OTHER SENSITIVE TOOLS AND EQUIPMENT

1. Ladders:

A. Inmates will not be allowed to use ladders without direct supervision.

B. All ladders will be under lock and chain or stored in a locked storage area when not in use, and they will be inventoried daily.

2. Scaffolds or Man Lift:

A. When it is necessary to leave scaffold at a site overnight, it shall be placed in an area, which provides adequate security and will be chained and padlocked.

(1) To prevent the scaffold from being easily freed, the chain will encompass more than one rung.

B. When not in use, all scaffolding will be broken down and stored.

C. As with other prison equipment, scaffolds will be checked and inventoried on a daily basis, unless stored in an outer warehouse.

D. Man lifts must have the approval of the Warden or Associate Warden to be brought onto the facility.

(1) It must be under custody escort for the entire time it is within the perimeter.

(2) It must not be stored within the perimeter.

(3) Operators must be properly trained and certified to use this equipment.

3. Ropes:

A. All ropes and cables will be safely stored and inventoried daily.

B. They will be transported and used only under the direct supervision of an employee.

4. Scissors:

A. Shears and scissors are considered extremely hazardous tools and will be issued on check-in/check-out basis.

(1) Only those scissors which are needed to complete a job will be issued.

(2) Spot inspections will be made of inmates who are using the scissors in designated industrial areas.

B. A daily inventory of all shears and scissors will be made, noting the condition of all items and how they are disposed of, if broken.

(1) All pieces of a broken tool must be turned in and lost or stolen tools will be reported to the shift supervisor, followed by a complete written report.

(2) The supervising employee is responsible for the issue, use and return of all shears and scissors.

(3) Only designated staff approved by the Warden or above will be allowed to have scissors in their work areas.

5. Grinders:

A. The use of grinding wheels is necessary in the operation of the maintenance division in an institution. SUCH EQUIPMENT CAN BE USED TO MAKE WEAPONS AND KEYS, SO STRICT SUPERVISION OF GRINDERS WILL BE MAINTAINED AT ALL TIMES.

B. Inmates will be allowed to use the equipment when authorized and under direct supervision of an employee.

C. When not in use, grinders will be kept locked, with the electrical power off. Portable grinders will be similarly restricted.

6. Hacksaws, reciprocating saws, Jig Saws, Band Saws, Saw Blades and Files

A. When hacksaws, reciprocating saws, jig saws, saw blades or files arrive at the institution, the Tool Control Coordinator will be notified to ensure proper handling and storage.

B. Hacksaws, reciprocating saws and jig saw blades and files will be in a locked steel cabinet/cage.

C. Employees checking out these items are to return them before going off duty.

D. All parts or broken tools are to be turned in by the employee that checked out the tool along with a tool Turn-in Receipt.

E. Missing blades or files will be reported immediately to the on duty shift supervisor, followed by a written report.

F. The report will explain the circumstances under which the blade or file was lost, efforts made to retrieve the missing item and a recommendation to prevent any future loss.

G. Security measures must start immediately if a loss is reported.

H. All hacksaws, reciprocating saws and jig saw blades and files will be etched with identifying marks on each side.

I. Inmate use will be strictly supervised.

J. The supervisor must maintain an inventory and procedure for handling all tools.

K. Band saw blades will be maintained on the band saw.

L. Replacement blades will be kept in a steel cabinet/cage.

M. Replacement blades will be kept to a minimum.

7. Gunpowder Actuated Tools

A. Gunpowder actuated tools, such as ramset guns and loads, will be stored in the institution armory along with weapons.

B. Such tools and loads will be issued only to the Maintenance supervisor after receiving the approval of the Warden or facility manager.

C. Custody staff will escort the user and be present during its use.

D. Under no circumstance will inmates be allowed to use this tool.

E. Inventory of loads will be maintained.

F. The inventory will be checked and adjusted whenever an inventory issue is made.

G. The person drawing the tool will verify the number of loads he/she is receiving, and will save the empty cartridge cases as they are used.

H. When the job is completed, verification of the exact numbers of live and expended loads will be made.

I. If there is any discrepancy, the on duty shift supervisor or facility manager will be immediately informed so that a search can be started for the missing loads.

8. Pneumatic/Electric Nail Guns

A. Nail guns require the Warden/Facility Manager's approval.

B. Only nail guns that require the compression tip to be compressed prior to pulling the trigger will be allowed.

C. Nail guns will only be issued to inmates after having received documented training in the proper use of the nail gun.

D. This training will also include safety procedures.

E. Nail guns that do not require the compression tip to be compressed to fire will not be allowed.

F. Institution/facility Operational Procedures are required to detail the use of pneumatic/electric nail guns with specifics unique to the needs of their institution/facility.

9. Acetylene Cutting Torches

- A. All cutting tips shall be stored in a steel cabinet/cage and accounted for on a daily log indicating the name of employee(s) using the tips.
- B. The log shall indicate date, time of issue and return, and shall be signed by the issuing employee, as well as the employee to whom the tips have been issued.
- C. Tips will be included in the monthly audit of tools as well as in the daily tool inspection.
- D. Employees checking out these items are to return them before going off duty.

10. Shop Equipment

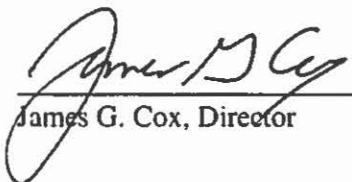
- A. Lathes, presses, sheet metal cutters and any type of shop equipment will only be used by inmates under direct observation of an employee.
- B. Inmates must be trained in the safe and proper use of shop equipment.
 - (1) Documentation of the training will be maintained by the supervisor.
- C. When not in use, such machines will have their power supply off by locked switches or master switch.
- D. To ensure the safety of inmates and employees, the working parts of shop equipment will be checked daily.

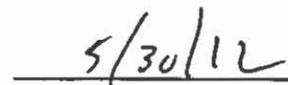
APPLICABILITY

- 1. This AR requires an Operational Procedure at all institutions/facilities.
- 2. This AR requires an audit.

ATTACHMENTS

Attachment A - DOC 1632 – Equipment, Tools or Material Transfer
Attachment B - DOC 1698 – Tool Add-on Form
Attachment C - DOC 1700 – Tool Turn-in Receipt
Attachment D - DOC 1701 – Lost Tool Report
Attachment E - DOC 1699 – Weekly Tool Report


James G. Cox, Director


Date

EQUIPMENT, TOOLS OR MATERIAL TRANSFER

DATE: _____

Shipped this date from: _____,

For delivery to: _____,

The following item(s):

QTY	DESCRIPTION
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Transfer Requested by: _____

Transfer Approved by: _____

(Picked up by) DATE: _____

(Delivered by) DATE: _____

(Received by) DATE: _____

CC: Sending Location / Originator
Receiving Location
Carrier

TOOL ADD-ON FORM

To: _____
(Area supervisor)

From: Tool Control Coordinator

Date: _____

The below listed tool(s) have been added to your tool inventory maintained by the Tool Control Coordinator and Associate Warden. It is your responsibility to add this tool(s) to your daily, weekly and master inventory. This tool(s) has been etched and color coded.

Name and description of tool(s) (to include tool numbers):

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

Tool Control Coordinator

Date

Cc: File

DOC 1698 (rev 9/09)

TOOL TURN-IN RECEIPT

To: Tool Control Coordinator

From:
(Area supervisor)

Date:

The below listed tool(s) are being turned-in for disposal and/or removal from area inventory.

Name and description (to include tool number):

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

Work area supervisor

Date

Received by (Tool Control Coordinator)

Date

Disposal date

Tool Control Signature

cc: File

DOC 1700 (rev 9/09)

LOST TOOL REPORT

To: Associate Warden

Via: Tool Control Coordinator

From: _____
(Area supervisor)

Date: _____

On _____ the below listed tool(s) was discovered missing/stolen from the
(Date & time)

(Work area)

This tool was last checked out to _____ at
(Name) (Inmate's back number)

(Time)

Description of tool (to include tool number):

1. _____
2. _____
3. _____
4. _____
5. _____

Circumstances surrounding the loss/stolen tool: _____

Name and time shift supervisor notified of missing tool(s): _____

Cc: Shift Supervisor
Tool Control Coordinator
Associate Warden
File

DOC 1701 (rev 9/09)

WEEKLY TOOL REPORT

To: Tool Control Coordinator

Via: Associate Warden

From: _____
(Area Supervisor)

Date: _____

Department: _____

I have verified the presence of all tools assigned to my area/shop and that these tools are properly stored in the approved/prescribed manner as of the end of my workday on:

_____.

Tool storage areas identified for warehousing of tool stocks are excluded from the daily accountability except when there is evidence of tampering.

NOTE: Reference Lost Tool Report

When ANY TOOL is missing, the Associate Warden, Tool Control Coordinator and Shift Supervisor shall be notified immediately by telephone.

A written report covering the details of the loss of tools will be submitted prior to the employee departing the institution. Forward the report to the Associate Warden with copies to the Tool Control Coordinator and Shift Supervisor. (See Lost Tool Report Form).

APPENDIX “C”

APPENDIX “C”




Nevada Department Of Corrections

Administrative Regulation Control Sheet

AR Number:	AR 406
AR Title:	Use of Chemical Agents

AR Revision History

Revision Details	Effective Date
This AR was reviewed by the Subject Matter Expert and it was determined that no changes are required as of this date.	04/28/14
No Additional revisions beyond this line.	---


 Director

5/6/14
 Date

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
406**

USE OF CHEMICAL AGENTS

Supersedes: AR 406 (Temporary, 06/23/11)
Effective Date: 01/05/12

AUTHORITY

NRS 209.131

RESPONSIBILITY

The Warden/Facility Manager and appropriate Division Administrators shall establish and maintain a procedure for the use of chemical agents on institutional grounds within the parameters set forth in Operational Procedures.

406.01 USE OF CHEMICAL AGENTS

1. Chemical agents should be used only in emergency situations. The proper use of chemical agents depends upon:

- A. The exercise of good judgment.
- B. A verbal warning of the intended action which precedes the use.
- C. The Warden, Associate Warden, Deputy Director, or Director authorizing its use.
- D. The Shift Supervisor may authorize use of chemical agents in emergencies when time does not permit obtaining prior approval.
- E. If part of a planned use of force, the incident will be videotaped.

2. The Warden shall establish and maintain an operational procedure for the use of chemical agents on institutional grounds within the following parameters:

- A. Chemical agents are to be used only when less serious methods of regaining control have not been successful or when such methods have been determined to be ineffective in resolving an emergency situation.
- B. Chemical agents shall never be used for the punishment of inmates.

C. Only properly trained and certified personnel may apply chemical agents.

(1) All officers working lockdown units will be properly trained in the use of chemical agents.

(2) Training shall be conducted yearly.

D. Using chemical agents in place of other methods of control is acceptable if the chemical agent is less likely to cause injury to the inmate(s) involved.

E. If possible, before chemical agents may be used, proper precautions must be taken in advance to minimize injury to inmates, especially those who are not involved in the immediate situation.

F. Each institution will maintain an up-to-date list of staff authorized and that are trained to deploy chemical agents. This list will be included in the Emergency Response Manuals available to Shift Supervisors, Incident Commanders, Associate Wardens and Wardens.

G. A current inventory shall be maintained of all chemical agents on hand.

H. A NOTIS entry is mandatory any time chemical agents are used. All appropriate documentation will be collected.

406.02 APPROVED CHEMICAL AGENTS

1. Approved chemical agents authorized to be used.

A. C/S (Orthochlorbenzalmalononitrile)

B. O/C (Oleoresin capsicum)

C. Pepper/Mace

D. Smoke

E. And any other chemicals as approved by the Director.

2. At no time will chemical agents be stored that are not on the approved list.

3. All outdated/obsolete chemical agents will be disposed of in an appropriate manner.

A. Documentation will be maintained on date, time, type, location, and method of disposal.

406.03 DECONTAMINATION

1. Following the use of chemical agents and the containment of the existing incident, the following actions will be taken:

A. Inmates or staff exposed to chemical agents will receive an immediate medical examination, which may include flushing of eyes, use of oxygen, and a check of vital signs and respiratory problems.

B. All inmates/staff exposed to chemical agents will receive a shower, unclothed and a change of clothes. Staff will be provided *a change of clothes* if needed.

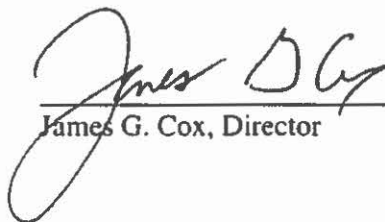
2. If necessary, all contaminated or affected areas will be cleaned with soap and water solution. Inmate property, bedding and cell supplies are to be removed and cleaned prior to reissue.

APPLICABILITY

1. This regulation applies to all employees of the Department.
2. This Administrative Regulation requires an Operational Procedure.
2. This Administrative Regulation requires an audit.

REFERENCES

ACA Standards, 4-4199 through 4-4203



James G. Cox, Director



Date

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
407**

USE OF HANDCUFFS AND RESTRAINTS

Supersedes: AR 407 (10/15/13); and AR 407 (Temporary, 02/18/14)
Effective Date: 03/18/14

AUTHORITY

NRS 209.131; NRS 209.376

RESPONSIBILITY

1. The respective Warden/Division Head is responsible for the overall operation of this regulation. Direct supervision of this regulation is the responsibility of the Shift Supervisor (Institution/facilities) or the Transportation Lieutenant/Sergeant (Central Transportation).
2. The Warden at each institution will:
 - A. Develop an Operational Procedure (OP) which lists the restraints authorized at that institution.
 - B. Ensure that the OP lists under what conditions each restraint can be applied.
 - C. Ensure that the OP identifies the authorization needed to use a particular restraint.
 - D. Ensure Custody Staff are trained to use restraints available at that institution.
 - E. Authorize Custody Staff to use selected restraints under the conditions listed in the OP.
3. All Custody personnel are responsible to use restraints only when authorized to do so and only when they have been trained on that particular type of restraint.

407.01 RESTRAINT DETERMINATION

1. All restraints will be used humanely, and restraining equipment will never be used as punishment or in any way that causes undue physical pain or restricts the blood circulation or breathing of an inmate.
2. The degree and duration of the use of a restraint device should be limited to the minimum necessary to control the situation or the offender and should never be used as punishment on an offender. The criteria for determining the degree of restraint will include the following:
 - A. Custody classification. Offenders will be restrained according to their classification unless they are being transported with a higher classification inmate, then all offenders will be restrained according to the highest level of custody designation in the transporting vehicle. For example: If a Minimum security inmate is being transported along with a Maximum security inmate, then both of them will be restrained in full restraints (leg irons, belly chains, and handcuffs).
 - B. Classification - review Pre-Sentence Investigation and Judgment of Conviction - regarding other co-defendants, witnesses and victims.
 - C. Violence potential as determined by criminal history and disciplinary record in regards to imminent threat of bodily harm to staff or other persons;
 - D. Escape potential or past or present threat of escape;
 - E. Nature and purpose of movement;
 - F. Assessment of the circumstances happening at the time;
 - G. The existence of potential threats by outside forces.

407.02 AUTHORIZED RESTRAINT EQUIPMENT

1. Only that equipment authorized by the Department shall be used on inmates during any transportation or movement. Application of mechanical restraint equipment shall conform to approved methods.
2. Authorized restraint equipment includes:
 - A. Handcuffs and Handcuffs with Waist Chain. Handcuffs and Handcuffs with Waist Chain are the standard items of restraint and will be the only restraint used unless specific authorization has been provided for additional restraint, an emergency exists or custody designations specify otherwise. Exceptions will be approved by the Warden or designee.

B. Leg Restraints. Leg restraints are to be used on inmates requiring maximum restraint or in instances to control acts of violence or escape. Leg restraints will be placed on the inmate with him/her kneeling and facing away from the Officer. In the case of an inmate with large legs that regular leg restraints will not work on, the Associate Warden or designee will approve the use of restraints designed for this type of application.

C. Control Chain. Control chains shall be used while escorting Maximum security or High Risk Potential inmates. This device is attached to the back of the waist chain. It should never be used to cause undue physical pain or restrict the blood circulation or breathing of an inmate.

D. Handcuff Cover. Each Institution will have hard plastic handcuff covers (black boxes) for the transporting of inmates who pose extreme escape risks. This device covers and shields the handcuff key openings.

E. Plastic Flex Cuffs. Plastic flex cuffs are authorized during an emergency situation. Caution must be used and recognition that these are only a temporary restraint and not to be inter-changed with use of the handcuff. There are also possibilities of swelling and care must be exercised in application of these devices. Some swelling will be noted the next day after prolonged use of the flex cuff. Flex cuffs must be applied tight enough to secure the wrists but not so tight they cause a constriction in blood flow. Inmates under restraint with flex cuffs must be under direct supervision and the cuffs checked every fifteen (15) minutes to ensure proper application.

407.03 DEGREES OF RESTRAINT

1. Inmates will be placed in restraint equipment when their behavior or security falls within the Department's policies or guidelines. The degree of restraint shall be determined by established criteria relevant to the safety of the individual inmate and other persons involved. Restraining equipment will never be used for punishment or in any way that causes undue physical pain or restricts the blood circulation or breathing of an inmate.

2. Degree of restraint during movements within the Institution:

A. Restraint equipment will be used according to the dictates of the institutional operational procedure and Post Orders. Post Orders will address specific requirements, if necessary.

B. The escorting officer as dictated by the institutional operational procedure and Post Orders will carry a set of handcuffs on his person for emergency use. An inmate may be placed in handcuffs at any time by an escorting officer when there is reason to believe there is imminent danger to the inmate or others. However, such action must be reported to the Shift Supervisor and written documentation completed.

C. If additional restraints are deemed necessary, the Shift Supervisor may authorize that a control chain, handcuff cover, or leg irons be used. The Shift Supervisor may determine that all

of the devices are necessary.

D. Use of restraints on pregnant offenders is governed by Administrative Regulation 455 and NRS 209.376.

3. Degree of restraint when transporting inmates outside of an Institution/Facility:

A. Maximum and Close Custody Inmates. At no time will an inmate of maximum or close custody status be transported without restraints. The types of restraints to be used are waist restraints and leg irons.

B. Medium Custody Inmates. Inmates of medium custody status are to be transported in waist and leg restraints.

C. Minimum Custody Inmates. Inmates of minimum custody status do not need restraints during transport.

D. Mixed Custody Levels. When transporting inmates with mixed custody levels, all inmates will be restrained according to the custody level of the highest risk inmate being transported.

E. Use of restraints on pregnant offenders is governed by Administrative Regulation 455 and NRS 209.376.

4. The power of decision regarding additional restraints is granted to the transporting officers. The transporting officers must use good judgment in the use of additional restraints in accordance with NRS 209.376. All restraints will be used humanely and restraining equipment will never be used as punishment or in any way that causes undue physical pain or restricts the blood circulation or breathing of an inmate.

407.04 MEDICAL

1. Legitimate medical conditions which do not permit the full utilization of routine restraint apparatuses will be evaluated on a case-by-case basis. To the extent possible, the arrangement of restraints will be modified to accommodate the medical condition. In any event, public safety should remain the overriding concern.

APPLICABILITY

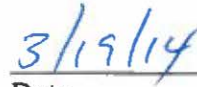
1. This AR requires an Operational Procedure for each institution and facility.
2. This regulation requires an audit.

REFERENCES

ACA Standard, 4th Edition, 4-4405



Director



Date



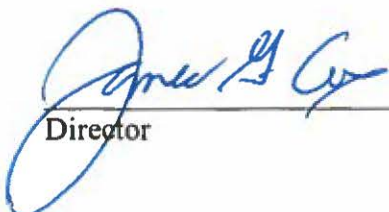
Nevada Department Of Corrections

Administrative Regulation Control Sheet

AR Number:	410
AR Title:	Key Control

AR Revision History

Revision Details	Effective Date
This AR was reviewed by the Subject Matter Expert and it was determined that no changes are required as of this date.	01/26/15
No Additional revisions beyond this line.	---


 Director


 Date

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
410**

KEY CONTROL

Supersedes: AR 410 (08/14/09)
Effective Date: 04/08/11

AUTHORITY: NRS 209.131

RESPONSIBILITY

1. Wardens/Facility Managers will ensure that an operational procedure is established to control the use, distribution, storage and inventory of keys to minimize the threat to facility security and misuse.
2. Wardens/Facility Managers are responsible for the implementation of this regulation.
 - A. Institutional Wardens may designate an Associate Warden to be responsible for the key control function.
3. All staff are responsible to have knowledge of and to comply with this regulation.

410.01 PROCEDURES

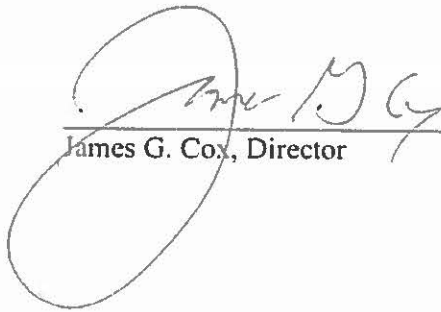
1. The Department of Corrections will develop and maintain a system of key control which will indicate the location of every key and lock at any hour at each institution/facility.
2. The Department will establish a confidential manual outlining specific key control procedures.
3. Staff will be allowed to bring personal keys into institution/facilities.

APPLICABILITY

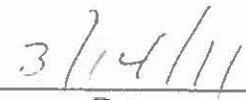
1. This regulation requires an Operational Procedure for all institutions/facilities.
2. The regulation requires annual audit by Department Administrators.

REFERENCES

ACA Standards: 4th Edition, 4-4195



James G. Cox, Director



Date

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
412**

ARMORY WEAPONS AND CONTROL

Supersedes: AR 412 (04/08/11); and AR 412 (Temporary, 08/11/14)
Effective Date: 09/16/14

AUTHORITY

NRS 209.131

RESPONSIBILITY

The Designated Associate Warden is responsible for the availability, control and use of all security equipment.

The Armory Officer is responsible for the day-to-day operation of the Armory.

412.01 ARMORY PROCEDURES

1. Only employees qualified to carry firearms shall be assigned to positions that are not accessible to inmates, i.e., towers, gun walks, mobile patrols, etc., except in emergencies.
2. An Armory Officer will be designated by the Warden to maintain Armory Operations.
3. When weapons or ammunition are delivered to the armory, the armory officer will receive and sign for the number of boxes or packages.
 - A. Packages or boxes will remain unopened.
 - B. The armory officer will notify the Warden and designated Associate Warden of the arrival.
 - C. The Warden/designee will designate representatives to jointly receive and cause the weapons and ammunition to be properly inventoried.
 - D. When weapons and/or ammunition are delivered to, or unloaded at the supply warehouse, they will immediately be placed in a secured area and a call will be placed to the designated Associate Warden who will immediately send a qualified post certified officer to pick up the property and lock it in the armory.


4. A monthly inventory will be conducted at all institutional Armory's and Post where weapons and ammunition is stored or maintained. The inventory will be sent to and reviewed by the Warden of the institution and copies will be retained on file.
5. The Warden will immediately report to the appropriate Deputy Director any weapons reported missing, broken, damaged, lost or stolen. Follow-up written documentation will also be sent to the Director via the appropriate Deputy Director as well as the Office of the Inspector General using the NOTIS incident function.
6. A classified manual has been developed to provide details of the operation of the armory.
7. All institutions will develop written procedures that are in compliance with the regulation for the handling, storage, and issuing of weapons.

APPLICABILITY

1. This Administrative Regulation is applicable to all employees of the Department.
2. This Administrative Regulation requires an audit.

REFERENCES

ACA Standards, 4th Edition, 4-4200, 4-4201



Director



Date

APPENDIX “D”

APPENDIX “D”

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
320**

SALARY ADMINISTRATION

Supersedes: AR 320 (03/19/13); and AR 320 (Temporary, 05/06/14)
Effective Date: 09/16/14

AUTHORITY

NRS 236.015, 284.065, 284.155, 284.175, 284.180
NAC 284.0663, 284.067, 284.071, 284.072, 284.0742, 284.100, 284.194, 284.210, 284.214,
284.218, 284.255, 284.256, 284.257, 284.292, 284.5255, 284.5895, 284.650

RESPONSIBILITY

All employees are responsible to have knowledge of and comply with this regulation.

320.01 OVERTIME

1. Overtime must be authorized by the Director, appropriate Deputy Director, Division Head, Warden, or their designees.
2. An employee who works overtime, must document this time on an Authorization for Leave and Overtime Request form (DOC-1000).
3. Non-exempt employees, as specified in the State Classification and Compensation Plan, shall earn overtime at the rate of time and one-half.
 - A. Exempt classified and unclassified employees are not entitled to compensation for overtime.
4. As a condition of employment, employees may be required to work overtime as required by a supervisor and as stated in AR 326, Posting of Shifts/Overtime.
5. Overtime is considered working in excess of eight hours in one calendar day for employees who are standard or non-standard.
 - A. A standard workweek is a work schedule of five shifts with the same number of hours each day and a maximum of 40 hours per week. The work schedule is Monday through Friday.

B. A non-standard workweek is a work schedule of five shifts with the same number of hours each day and a maximum of 40 hours per week. The work schedule is other than Monday through Friday.

6. Employees who have elected to work a variable work schedule (innovative) do not accrue overtime until either, 1) they have worked the 41st hour, if they have signed a 40-hour variable agreement, or 2) they have worked the 81st hour, if they have signed the 80-hour variable agreement.

A. An innovative work schedule is a work schedule that differs from a standard or non-standard work week.

B. All employees shall sign a Variable Work Schedule Request form (DOC-1043). Employees electing such a schedule must do so prior to working a variable schedule.

C. Employees who do not elect a variable work schedule shall write “declined” through the variable section they are declining on the DOC-1043.

D. Employees noting “declined” on the DOC-1043, may not be scheduled to work a variable schedule (i.e., 12-hour or 10-hour shifts).

E. The variable work schedule agreement will remain in effect for Custody staff who bid for shifts that require a variable schedule (i.e., 12- hour shifts) until the next shift bidding cycle. Any subsequent change must be approved mutually by the Warden and the employee.

F. Each time an employee’s schedule changes, a new Variable Work Schedule shall be completed identifying the employee’s shift and regular days off.

7. Paid status is considered as time worked in calculating overtime.

8. To qualify for Post and Shift bidding an employee must be willing to sign a variable agreement.

320.02 SHIFT DIFFERENTIAL

1. Employees who work 8 hours or more, of which four consecutive hours must fall within the hours from 6 p.m. to 7 a.m. Employees are entitled to the differential pay for the amount of hours they work during that time period.

2. Shift differential rate is an adjustment of pay equivalent to 5% of the employee’s normal rate of pay when working a qualifying shift.

3. The shift differential rate will apply during the periods of time when an employee is on sick leave, annual leave, holidays and other leave with pay as long as the employee is still assigned to that shift when the leave is taken.

4. Employees that are assigned to attend training classes during a non-qualifying shift do not receive

shift differential while in training.

320.03 CALL BACK PAY

1. Each time a full time classified employee is called back to work on an unscheduled basis by their supervisor, they shall be credited with a minimum of two hours work at the rate of time and one-half.

A. The work must begin more than one hour after completion of the regularly scheduled shift.

B. The employee is called back to work without having been notified prior to the completion of their normal working day.

C. The employee is called back to work on their regularly scheduled day/time off.

D. The employee is called back on a holiday.

2. Call back pay shall not apply to employees receiving standby premium pay.

3. Employees with a PERS (Public Employees' Retirement System) membership date prior to December 31, 2009 will use the established call back codes:

A. PCALL-Callback Pay

B. ACALL-Callback Comp

4. Employees with a PERS (Public Employees' Retirement System) membership date of January 1, 2010 or later will use the following call back codes:

A. PCALX-Callback Pay/NO Ret

B. ACALX-Callback Comp/NO Ret

320.04 STANDBY STATUS

1. A non-exempt classified employee shall receive additional pay or compensatory time of 5% of their normal hourly rate for every hour they are on standby status outside of the parameters of their regular assigned shift.

2. An employee is on standby status when they are:

A. Directed to remain available for immediate contact during specified hours.

B. Prepared to work as the need arises, although the need to work might not arise.

C. Able to report to work within a reasonable time, usually within one-half hour.

D. Allowed to use the time waiting for notification to work for personal pursuits.

3. Any class designated in the NRS as a 24-hour class does not automatically qualify for standby premium pay.

320.05 HOLIDAYS

1. The rules for holiday pay apply only to the legal day of observance. The following days are declared legal holidays:

- A. January 1 (New Year's Day)
- B. Third Monday in January (Martin Luther King, Jr.'s Birthday)
- C. Third Monday in February (Presidents' Day)
- D. Last Monday in May (Memorial Day)
- E. July 4th (Independence Day)
- F. First Monday in September (Labor Day)
- G. Last Friday in October (Nevada Day)
- H. November 11 (Veterans' Day)
- I. Fourth Thursday in November (Thanksgiving Day)
- J. Friday following the fourth Thursday in November (Family Day)
- K. December 25 (Christmas Day)

2. When January 1, July 4, November 11 or December 25 falls upon a:

- A. Sunday, the Monday following shall be observed as the legal holiday; and
- B. Saturday, the Friday preceding shall be observed as the legal holiday.

3. Full time employees working a non-standard workweek are entitled to the same number of paid holidays as full time employees working a standard workweek.

4. A full time employee who works 40 hours per week, who does not work on a holiday, and is in paid leave status during any portion of their scheduled shift immediately before the holiday, is entitled to eight hours of holiday pay.

5. A full time employee whose regular work schedule is more than eight hours, but who has the day off because of a holiday, may use annual leave, compensatory time, have their schedule adjusted or, with approval of the appointing authority, be placed on leave of absence without pay to make up the difference of time in excess of the holiday pay.

6. The salary of an excluded classified or excluded unclassified employee must not be reduced solely because a holiday occurs on a scheduled workday.

7. An employee, other than excluded employees, must receive either: 1) cash payment, or 2) compensatory time, at employee's straight-time rate of pay for hours worked in addition to their regular pay if they work on the holiday.

8. An appointing authority may credit an employee for a holiday which occurs on the employee's regular day off by one of the following options:

A. Adjust the employee's schedule of work for the week during which the holiday occurs;

B. Credit the employee with day-off holiday pay for 8 hours if they are a full time employee and in a paid status during their scheduled shift preceding the holiday.

9. When an employee works their regular day off and that day off is a holiday, they are entitled to day-off holiday pay for 8 hours. The employee is entitled to receive paid overtime, or compensatory time, for the number of hours worked.

10. If an employee has an innovative work agreement on file and the holiday falls on his regular day off and the employee works the holiday, the employee is entitled to receive day-off holiday pay on an hour-for-hour basis not to exceed the number of hours of his established workday. The employee is also entitled to receive paid overtime, or compensatory time for the number of hours worked.

320.06 TIMESHEETS

1. Except as otherwise provided in subsection 2, an employee shall provide an accurate accounting of the hours worked and leave used during a pay period in the NEATS Timekeeping System, to include the specific times at which their shift starts and ends and regular days off.

2. Exception reporters must account for all exceptions in the pay period. Positive reporters must account for all hours worked in the pay period.

3. Employee exceptions or hours worked for positive reporters shall be reported on timesheets at beginning of shift.

4. The employee shall input and submit the timesheet in the NEATS system at the conclusion of each reporting cycle (pay period), no later than 12 PM, Wednesday, of the non-pay week for each pay period.

5. An exempt, classified or exempt, unclassified employee shall provide an accurate accounting of leave used when they are full-day exceptions.
6. An employee who falsifies their timesheet, or who causes or attempts to cause another employee to falsify a timesheet, will be subject to disciplinary action pursuant to AR 339.
7. Supervisors shall approve employee's NEATS timesheets under their authority, no later than 5 PM, Wednesday, of the non-pay week for each pay period.
8. A supervisor or payroll representative may change an entry on an employee's timesheet in accordance with the policy for the correction of errors on timesheet.
 - A. If the supervisor or payroll representative changes an entry on the employee's timesheet, the employee must be notified of the change and sign a copy of the timesheet. The signed timesheet shall be sent to the department's payroll office in Carson City via the facility's timekeeper.
 - B. If the employee contests the change to an entry on their timesheet, the employee is entitled only to their base pay for the workweek in question, until resolved.
 - C. The contested entry must be resolved as soon as practicable and any adjustment must be made during the next pay period following the resolution of the contested entry.
9. A supervisor who is negligent in reviewing and certifying the accuracy of an employee's timesheet may be subject to disciplinary action.

320.07 PAYCHECKS

1. Pay dates are on Friday, every other week. Pay dates which fall on a holiday will be paid the working day prior.
2. Payroll checks are not authorized for early distribution without approval by the Human Resources Division Administrator.
 - A. Early distribution may be requested by completing the Early Paycheck Distribution Request (DOC-1003).
3. Early distribution and/or cashing of paychecks without proper authorization may result in disciplinary action.
4. Direct Deposit of employee paychecks is mandatory, unless an exception is granted by the State Controller.

320.08 PAYMENT OF ACCUMULATED COMPENSATORY TIME

1. Payment of accumulated compensatory time will only be allowed with the approval of the Director or Deputy Director.

A. Individual requests for payment of accumulated compensatory time will be submitted in writing and forwarded to the appropriate Warden or Division Head, who will initial and forward to the Department Human Resources Payroll Office.

B. The Department Human Resources Payroll Office shall verify the balance and forward the request to the Deputy Director of Support Services to determine if the Department has sufficient funding available prior to final approval.

C. Payment shall be made depending upon the date of receipt in conjunction with payroll deadlines.

D. Compensatory time should not be accrued in excess of 120 hours.

E. Compensatory time incurred in excess of the 120-hour limit must be paid, unless the employee has written approval by the Director or designee.

2. Employees transferring from one budget account within the Department to another shall have their compensatory time paid off, unless the Deputy Director of Support Services informs the Department Payroll Office that the Department does not have the available funding.

3. Non-exempt employees transferring out of the Department, who have accrued compensatory time, shall have their compensatory time paid off unless the employee provides written approval from the receiving Department agreeing to assume the liability for the compensatory time and the employee concurs.

4. Employees terminating employment shall be paid for accrued compensatory time.

5. Involuntary compensatory time payment for employees may occur at the end of each fiscal year.

6. Employees must have a signed compensatory time election agreement (DOC-1048) on file prior to accumulating compensatory time.

320.09 MERIT PAY ADJUSTMENT

1. An employee whose last performance evaluation was standard or above and who has not attained the top step of their grade, shall receive a merit pay increase of one step on the pay progression date. The only exception to this would be through legislative action.

2. An employee whose last performance evaluation did not meet standard is not eligible for a merit pay increase until their overall performance evaluation is at least standard.

3. A subsequent, special evaluation not filed within 90 days, shall be deemed to be standard and the employee will be entitled to the merit pay increase, effective on the date on which the subsequent performance evaluation was due.

320.10 OVERPAYMENTS

1. Once an overpayment is discovered the active employee or inactive employee will be sent a Notification of Payroll Overpayment Letter.

2. The active employee or inactive employee will be given 10 working days to return the Acknowledgement of Overpayment/Agreement to Repay form.

3. For an active employee a repayment plan is negotiated and payment is set-up as a payroll deduction. For an inactive employee, repayment must be paid by personal check or money order.

4. If the inactive employee defaults on an agreement to repay an overpayment he will receive a Default on Agreement letter and be given ten working days to remit the amount due. Failure to provide the amount due will result in the employee being turned over to the State Controller's Office for collection.

5. Should employee refuse to acknowledge or repay the overpayment, the State Controller's Office will be notified through Central Payroll and legal action may be taken.

APPLICABILITY

1. This AR applies to all Department employees.

2. This AR requires an Operational Procedure for each institution, facility, and each Division.

3. This regulation does not require an audit.

 _____ Date 9/17/14

Director

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DONALD WALDEN JR., NATHAN
ECHEVERRIA, AARON DICUS, BRENT
EVERIST, TRAVIS ZUFELT, TIMOTHY
RIDENOUR, and DANIEL TRACY on
behalf of themselves and all other similarly
situated,

Plaintiffs,

v.

STATE OF NEVADA, NEVADA
DEPARTMENT OF CORRECTIONS,
and DOES 1-50,

Defendants.

Case No. 3:14-cv-00320-MMD-WGC

ORDER

I. SUMMARY

This dispute involves claims for payment of wages brought by Nevada Department of Corrections' ("NDOC") corrections officers against NDOC. Before the Court is NDOC's Renewed Motion for Judgment on the Pleadings ("Motion"). (ECF No. 86.) The Court has reviewed Plaintiffs' response (ECF No. 87) and NDOC's reply (ECF No. 93). For the reasons discussed below, the Motion is granted in part.

II. RELEVANT BACKGROUND

The following facts are taken from Plaintiffs' Collective and Class Action Complaint ("Complaint"). Plaintiffs are current and former corrections officers employed with NDOC as non-exempt hourly employees. (ECF No. 1 at 8-10.) NDOC has required corrections officers like Plaintiffs and others similarly situated to perform "work activities before and

1 after their regularly scheduled shifts for which they have not been compensated.” (*Id.* at
2 10.) In particular, Plaintiffs allege they were not paid minimum wage or overtime when
3 accounting for these additional hours worked. (*Id.* at 11.) Plaintiffs assert claims for failure
4 to pay minimum wage and overtime in violation of the Fair Labor Standards Act (“FLSA”),
5 failure to pay minimum wages in violation of Article 14 § 16 of the Nevada Constitution
6 and breach of contract. (*Id.* at 16-20.)

7 The Complaint was filed in the First Judicial District Court in and for Carson City.
8 (*Id.* at 7.) NDOC removed based on federal question jurisdiction. (*Id.* at 1-2.)

9 **III. LEGAL STANDARD**

10 A Rule 12(c) motion for judgment on the pleadings utilizes the same standard as
11 a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be
12 granted in that it may only be granted when it is clear to the court that “no relief could be
13 granted under any set of facts that could be proven consistent with the allegations.”
14 *McGlinchy v. Shull Chem. Co.*, 845 F.2d 802 (9th Cir. 1988) (citations omitted). Dismissal
15 under Rule 12(b)(6) may be based on either the lack of a cognizable legal theory or
16 absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica*
17 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

18 A plaintiff’s complaint must allege facts to state a claim for relief that is plausible
19 on its face. See *Ashcroft v. Iqbal*, 556 U.S. 662, 677, (2009). A claim has “facial
20 plausibility” when the party seeking relief “pleads factual content that allows the court to
21 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*
22 Although the court must accept as true the well-pled facts in a complaint, conclusory
23 allegations of law and unwarranted inferences will not defeat an otherwise proper [Rule
24 12(b)(6)] motion. *Vasquez v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell*
25 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation to
26 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
27 conclusions, and a formulaic recitation of the elements of a cause of action will not do.

28 ///

1 Factual allegations must be enough to raise a right to relief above the speculative level.”
 2 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnote omitted).

3 In addition, the Ninth Circuit Court of Appeals has recently clarified the pleading
 4 requirements for FLSA claims post *Twombly* and *Iqbal*. See *Landers v. Quality*
 5 *Communications, Inc.*, 771 F.3d 638 (9th Cir. 2015). The court stated that “at a minimum,
 6 a plaintiff asserting a violation of the FLSA overtime provisions must allege that she
 7 worked more than forty hours in a given workweek without being compensated for the
 8 hours worked in excess of the forty during that workweek.” *Id.* at 646. To establish a
 9 plausible claim for relief, a plaintiff may estimate “the length of her average workweek
 10 during the applicable period and the average rate at which she was paid, the amount of
 11 overtime wages she believes she is owed, or any other facts that will permit the court to
 12 find plausibility.” *Id.* at 645.

13 **IV. DISCUSSION**

14 **A. Sufficiency of Factual Allegations Supporting FLSA Claims**

15 NDOC argues that Plaintiffs fail to state their FLSA claims because Plaintiffs have
 16 not alleged that they were paid below the minimum wage for each pay period and that
 17 they worked more than forty hours in any workweek without compensation. (ECF No. 86
 18 at 6-8.) Plaintiffs counter that they were not compensated for performing the pre-shift and
 19 post-shift activities alleged in the Complaint. (ECF No. 87 at 5.) Plaintiffs have missed the
 20 point.

21 The FLSA requires compensation at or above the minimum wage, which is
 22 determined based on the hours worked within the workweek as a whole. *Adair v. City of*
 23 *Kirkland*, 185 F.3d 1055, 1063 (9th Cir. 1999). Employers are also required to pay
 24 overtime for any hours worked in excess of forty hours in a workweek.¹ 29 U.S.C. §
 25 207(a).

26 ¹Plaintiffs appear to acknowledge that the exception established in 29 U.S.C. §
 27 207(k) may apply. (ECF No. 1 at 18 (Plaintiffs seek overtime compensation for “all hours
 28 worked in excess of forty (40) hours [in] a workweek and/or in excess of the hours set
 forth in 29 U.S.C. § 207(k) during the relevant time period . . .”).)

1 Plaintiffs allege they were required to work but were not compensated for working
2 approximately “upwards to 30-minutes of compensable work” before, and after, “their
3 regularly scheduled shifts.” (ECF No. 1 at 11.) They allege entitlement “to compensation
4 at their regular rate of pay or minimum wage, whichever is higher, for all hours actually
5 worked.” (*Id.* at 15.) They also seek overtime compensation for hours worked in excess
6 of 40 hours in a workweek “and/or in excess of the hours set forth in 29 U.S.C. § 207(k).”
7 (*Id.* at 18.)

8 Plaintiffs’ allegations are not sufficient to allow the Court to draw the reasonable
9 inference that NDOC has failed to comply with the FLSA’s minimum wage and overtime
10 requirements as alleged in the first two claims for relief. Plaintiffs fail to allege sufficient
11 facts — such as the length of their workweek, the hours they purportedly worked for any
12 given workweek, their regular rate of pay or average rate of pay, and the amount of
13 overtime wages they believe are owed — to allow the Court to find plausibility. For
14 example, if Plaintiffs worked a 30-hour workweek, then NDOC’s failure to compensate
15 them for an additional hour per workday at the overtime rate would not violate the FLSA
16 because they worked no more than 37 hours, assuming a 7-day workweek.² Similarly, if
17 their hourly rate was significantly above the minimum wage, their hourly rate of pay may
18 still be above the minimum wage when their compensation for the workweek is averaged
19 across their total time worked for the workweek. Absent such additional allegations, the
20 Complaint fails to state a plausible claim for relief for failure to pay the minimum wage
21 and overtime as required under the FLSA.

22 The Court agrees with NDOC that the Complaint fails to state a claim for violations
23 of the FLSA’s overtime and minimum wage requirements in the first two claims for relief.
24 The first two claims will be dismissed. Accordingly, the Court declines to address the
25 remaining arguments raised in the Motion relating to the FLSA claims.

26 ///

27 ²Plaintiffs claim in their response that “the employees were all scheduled to work
28 a full 40 hours per week, or 80 hours per two weeks . . .” (ECF No. 87 at 4.) However, this
allegation is not asserted in the Complaint.

1 The Court has discretion to grant leave to amend and should freely do so “when
2 justice so requires.” *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990)
3 (quoting Fed. R. Civ. P. 15(a)). The Court cannot find that amendment would be futile
4 because Plaintiffs may be able to amend their Complaint to cure the deficiencies identified
5 above. The Court will therefore grant leave to amend.

6 **B. State Law Claims**

7 Because the Court dismisses the FLSA claims, albeit with leave to amend, the
8 Court declines to exercise supplemental jurisdiction over the remaining two state law
9 claims pursuant to 28 U.S.C. § 1367(c). The two state law claims for violation of Article
10 14 § 16 of the Nevada Constitution and for breach of contract are dismissed without
11 prejudice.

12 **V. CONCLUSION**

13 The Court notes that the parties made several arguments and cited to several
14 cases not discussed above. The Court has reviewed these arguments and cases and
15 determines that they do not warrant discussion as they do not affect the outcome of the
16 Motion.

17 It is therefore ordered that Defendant’s Renewed Motion for Judgment on the
18 Pleadings (ECF No. 86) is granted as set forth in this Order. Plaintiffs’ first two claims for
19 relief are dismissed without prejudice. Plaintiffs will be given thirty (30) days to amend
20 their complaint to cure the deficiencies identified in this Order. Failure to file an amended
21 complaint will result in dismissal of these two claims with prejudice. The Court declines to
22 exercise supplemental jurisdiction over the two state law claims and therefore dismisses
23 them without prejudice.

24 DATED THIS 20th day of March 2017.

25
26 

27 MIRANDA M. DU
28 UNITED STATES DISTRICT JUDGE

THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

Mark R. Thierman, Nev. Bar No. 8285
mark@thiermanbuck.com
Joshua D. Buck, Nev. Bar No. 12187
josh@thiermanbuck.com
Leah L. Jones, Nev. Bar No. 13161
leah@thiermanbuck.com
THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, Nevada 89511
Tel. (775) 284-1500
Fax. (775) 703-5027

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD WALDEN JR, NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE STATE OF NEVADA, *EX REL.* ITS NEVADA DEPARTMENT OF CORRECTIONS, and DOES 1-50,

Defendant.

Case No.: 3:14-cv-00320-MMD-WGC

FIRST AMENDED COLLECTIVE AND CLASS ACTION COMPLAINT

- 1) Failure to Pay Wages for All Hours Worked in Violation of 29 U.S.C. § 201, et. seq;
- 2) Failure to Pay Overtime in Violation of 29 U.S.C. § 207;
- 3) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;
- 4) Failure to Pay Overtime in Violation of NRS 284.180; and
- 5) Breach of Contract.

COME NOW Plaintiffs DONALD WALDEN JR, NATHAN ECHEVERRIA, AARON DICUS, BRENT EVERIST, TRAVIS ZUFELT, TIMOTHY RIDENOUR, and DANIEL TRACY (“Plaintiffs”) on behalf of themselves and all others similarly situated and allege the following:

All allegations in this Complaint are based upon information and belief except for those allegations that pertain to the Plaintiffs named herein and their counsel. Each allegation in this Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

1 hourly correctional officer at the Southern Desert Correctional Center from on or about July 2007
2 to the present.

3 7. Plaintiff BRENT EVERIST is a natural person who is and was a resident of the
4 State of Nevada at all relevant times herein and has been employed by Defendant as a non-exempt
5 hourly correctional officer at the High Desert State Prison from on or about May 1, 2006 to on or
6 about January 2014.

7 8. Plaintiff TRAVIS ZUFELT is a natural person who is and was a resident of the
8 State of Nevada at all relevant times herein and has been employed by Defendant as a non-exempt
9 hourly correctional officer at the Northern Nevada Correctional Center from on or about August
10 2009 to the present.

11 9. Plaintiff TIMOTHY RIDENOUR is a natural person who is and was a resident of
12 the State of Nevada at all relevant times herein and has been employed by Defendant as a non-
13 exempt hourly correctional officer at the Southern Desert Correctional Center from on or about
14 March 2007 to on or about April 2016.

15 10. Plaintiff DANIEL TRACY is a natural person who is and was a resident of the
16 State of Nevada at all relevant times herein and has been employed by Defendant as a non-exempt
17 hourly correctional officer from on or about October 2000 to the present and has worked at High
18 Desert State Prison, Women's Correctional Center, Southern Desert Correctional Center and Ely
19 State Prison during his employment.

20 11. Defendant STATE OF NEVADA, *EX. REL.* ITS DEPARTMENT OF
21 CORRECTIONS (hereinafter collectively "Defendant" or "NDOC") is a public agency subject to
22 the provisions of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et. seq.* and is an
23 employer entity under the Nevada Constitution, Nev. Const. Art. 15 § 16 (defining "employer"
24 as any "entity that may employ individuals").

25 12. The identity of DOES 1-50 is unknown at this time and this Complaint will be
26 amended at such time when the identities are known to Plaintiffs. Plaintiffs are informed and
27 believe that each of Defendant sued herein as DOE is responsible in some manner for the acts,
28

omissions, or representations alleged herein and any reference to “Defendant,” “Defendants,” or “NDOC” herein shall mean “Defendants and each of them.”

FACTUAL ALLEGATIONS

Background Facts Regarding Defendant’s Common Plans, Policies, and Practices of Failing to Compensate Correctional Officers for Compensable Time Worked

13. Plaintiffs have been employed as correctional officers at various correctional facilities throughout the state of Nevada. At all times relevant herein, the State of Nevada has operated 19 correctional facilities within the State of Nevada: two (2) transitional housing units, ten (10) conservation camps, and seven (7) correctional facilities (prisons). *See* NDOC Web site: <http://doc.nv.gov/Facilities/Home/> (last visited March 2, 2016). A facilities map can be found at this same Web address. As will be set forth in more detail below, the relevant operational procedures for working employees “off the clock” apply to each of these facilities.

14. Despite having been employed at different facilities, Plaintiffs experiences with regard to the claims alleged herein were similar, common, and typical of all other correctional officers employed by Defendant throughout the State during the relevant time period alleged herein. Namely, Plaintiffs were hourly paid employees of Defendant. By law and by agreement, Defendant is required to pay Plaintiffs, and all others similarly situated correctional officers, for all hours worked. However, Plaintiffs were required to perform work activities before and after their regularly scheduled shifts for which they were not compensated. Plaintiffs were required to work approximately a half hour per shift without compensation “off-the-clock” at the agreed upon hourly rate. In almost all work weeks or 80-hour two-week alternative work period during the Plaintiffs’ employment with Defendant, the additional time worked “off the clock” was in part or completely in excess of 40 hours a week or the 80 hours per two-week alternative variable work schedule and thus should have been compensated at an overtime rate of one and one half the employee’s regular rate of pay, as more fully set forth hereinafter.

15. At almost all times (except when taking paid time off or holidays) Plaintiffs were required to work and did work a 40 hour work week with an agreement in writing that all times worked in excess of 40 hours would be paid at one and one half their normal regular hourly rate,

1 or, in the cases of an alternative variable work week schedule, were required to work and did
 2 work, 80 hours within a two week period and with an agreement in writing that all hours worked
 3 in excess of 80 hours in a two week period would be paid at one and one half their normal regular
 4 hourly rate.

5 16. For all times relevant herein, Defendant maintained a system of time recording
 6 known as NEATS (“Nevada Employee Action and Timekeeping System”). Upon information
 7 and belief, NEATS records only the exceptions to the “scheduled” work hours worked by
 8 Plaintiffs and all members of the putative class, as well as any workweeks in which a plaintiff or
 9 class members worked less or more than the scheduled work times. The “scheduled” work hours
 10 are always 40 hours a week, or 80 hours within a two-week period if the alternative variable work
 11 period has been elected, except rare occasions where otherwise noted on the Defendant’s normal
 12 records. This system of recording time is sometimes referred to as exception time reporting, when
 13 only the hours worked the scheduled amount are recorded for later subtraction or overtime
 14 addition for payroll purposes from the scheduled 40 hours per week or 80 hours per two-week
 15 period. If the employee worked not less than the “scheduled hours” in a pay period, the
 16 employer’s business records kept in the normal course, would simply reflect that the employed
 17 worked his or her normal scheduled shift of 40 hours per workweek or 80 hours per two-week
 18 period of time (except the records do not reflect any off the clock time as stated herein).

19 17. However, Defendant did not properly count or record the time it took to perform
 20 the work activities prior to the start and/or after the conclusion of the scheduled work times, a
 21 violation of the record keeping requirements of the FLSA, as more fully alleged herein, as well
 22 as a violation of the overtime provisions of the FLSA, and a breach of the variable alternative
 23 workweek agreement signed by Defendant and each Plaintiff and class member.

24 18. As a matter of policy system wide, Plaintiffs were only compensated for their
 25 regularly scheduled shift times when they were at their work stations. Notwithstanding that their
 26 compensation was only for their scheduled shift times when they were at their work stations,
 27 Plaintiffs, and all others similarly situated NDOC correctional officers, were required to perform
 28

1 numerous work related activities prior to arriving at their work station and after leaving their work
2 station without any compensation at all.

3 19. Upon arriving to the correctional facility and passing through security (which
4 Plaintiffs do not allege to be compensable time), Plaintiffs were required to report to the
5 supervisor or sergeant on duty to check in, receive their assignments for the day, pass a uniform
6 inspection, and collect any and all tools that would be needed for their daily assignment (e.g.,
7 radios, keys, weapons, tear gas, hand cuffs). Indeed, this pre-shift requirement is specifically set
8 forth in the Nevada Department of Corrections' Administrative Regulations: "All correctional
9 staff will report to the shift supervisor/shift sergeant upon arrival to ensure their status if required
10 to work mandatory overtime." See <http://www.doc.nv.gov/sites/doc/files/pdf/AR326.pdf> (last
11 visited Feb. 25, 2014). Plaintiffs would then be required by the Defendant to proceed to their
12 designated work station, which, given the size of the correctional facilities involved, could take
13 up to 15-minutes or more per employee per shift. Once they arrived at their designated work
14 station, Plaintiffs were required by the employer to be and were briefed by the outgoing
15 correctional officer. Only after the employee had received instructions and/or briefing, would the
16 "scheduled" shift time begin. Plaintiffs were not compensated for any of this these pre-shift
17 activities.

18 20. By regulation, administrative operating procedure and in fact, Defendant required
19 Plaintiffs and every member of the class to perform these duties pre-shift and without
20 compensation each and every shift worked. On average, Plaintiffs estimate that they, and every
21 member of putative class, performed upwards to 30-minutes of compensable work before their
22 regularly scheduled shifts, each and every shift worked, for which they were not paid.

23 21. Similar to their pre-shift activities, Plaintiffs and class members were also
24 uniformly required to perform on a daily basis work activities without compensation after the end
25 of their regularly scheduled shift. Plaintiffs would routinely have to stay past their scheduled shift
26 to conduct the mandatory de-briefing with the oncoming correctional officer and then they would
27 have to return to the main office to return the various tools they attained for the day. Only upon
28

1 returning the tools, were they finally permitted to process through security (which Plaintiffs do
2 not allege to be compensable time) and leave the facility.

3 22. On average, Plaintiffs estimate that they performed upwards to 15 minutes of
4 compensable work after their regularly scheduled shifts, each and every shift worked, for which
5 they were not paid. By regulation, administrative operating procedure and in fact, Defendant
6 required Plaintiff and every member of the class to perform these duties post-shift and without
7 compensation daily.

8 23. Plaintiffs and plaintiff class members rely (and will rely at trial) on the records
9 maintained by the Defendant to establish the base hours worked per workweek or two-week
10 period of time. Plaintiff and class members will then rely on just and reasonable inferences from
11 a representative sampling of employees and expert research and opinions, such as the one attached
12 hereto as Exhibit A, for exact calculation of the amount of time due to be compensated at either
13 the regular rate (if there were additional hours worked before the employee worked his
14 “scheduled” shifts) and at time and one half time the regular rate for all overtime hours worked.

15 24. For the class for breach of contract under Rule 23 of the Federal Rules of Civil
16 Procedure, the expert report identified above calculated the \$9,487 per person amount of overtime
17 exposure based on a sampling of 220 putative class members. This figure is based on the random
18 survey that conducted and includes actual rates of pay, dates of employment, and the amount of
19 time spent performing pre- and post-shift work. The individual named-Plaintiffs’ working time
20 and payrates are similar and set forth in more detail hereinafter.

21 25. Upon Plaintiffs’ own observations, beliefs, and understanding of the Nevada
22 Department of Corrections’ Administrative Regulations, all correctional officers in the state of
23 Nevada were required to perform work off-the-clock. Almost all of this off-the-clock work
24 occurred in addition to a full 40 hour or 80 hour “scheduled” hours worked. The basis for this
25 conclusion is set forth in more detail below.

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**Specific Pre- and Post-Shift Activities That Were Required by Defendant and
Performed by Plaintiffs and Class Members**

26. Defendant's own regulations specify a list of work-related tasks that must be completed before the employee is considered to be at his or her scheduled post, ready for work and finally "on the clock" for purposes of Defendant's payroll compensation purposes.

27. For example, NDOC Administrative Regulation 326 states, in relevant part, that "All correctional staff will report to the shift supervisor/shift sergeant upon arrival"

28. The operational procedures at one of the prisons states as follows:

1. All Staff shall report for duty fully prepared for any work assignment.
 - Uniform and equipment shall be in accordance with A.R. 350.
2. Staff will report to the shift supervisor in the muster room for posting of their assignment.
 - Staff will report early enough to be on their post by the beginning of their shift.
 - Staff will report in person.
 - Areas of assignment or working hours do not exempt the staff from reporting for duty to the Shift Supervisor.
3. All Staff shall check their respective mailboxes prior to reporting for duty.

29. In furtherance of these directives, high ranking supervisors enforce Defendant's policy of requiring Correctional Officers to be at their post by the start of their shift. The following is an email excerpt sent to Correctional Officers by their Lieutenant:

A few people need to be reminded. You need to arrive on your post by the start of your shift (OP 032). It is approx. 10-15-minute walk from Operations to 9/12 quad. You need to incorporate this walk in your travel to work to ensure you arrive on time.

30. In addition to the written plan and policies of Defendant that mandate the performance of pre-shift work activities without compensation, the following work tasks must be performed by Plaintiffs and class members.

31. The first work related task performed by Plaintiffs and all class members "off the clock" before their scheduled work time is called MUSTER, and is described in detail as follows:

1 a. Prior to the beginning of a correctional officers' regularly scheduled shifts,
 2 each officer is required to report to the shift supervisor for "muster" (or "roll call") in
 3 order to receive assignments for the day, pass a uniform inspection, and receive pertinent
 4 information on the global status of the facility. Correctional officers indicated that they
 5 had to partake in these pre-shift tasks every day. Muster occurred after officers passed
 6 through security and metal detectors¹ but prior to the beginning of their regularly
 7 scheduled shift. Each officer had to attend muster to receive his/her assignment and for
 8 the express purpose of finding out the specific post the officer was assigned to for that
 9 day. Officers were required to report to their shift supervisor because correctional
 10 officers' assignments can change from day to day based on the needs of the institution and
 11 supervisors would not post officers to their shift without seeing them face-to-face).
 12 Indeed, Wardens of the various facilities have confirmed in sworn deposition testimony
 13 that this was a requirement of correctional officers' positions.

14 b. Another stated purpose of requiring Plaintiffs and all class member to
 15 report to Muster was for a uniform inspection by their shift supervisor. Administrative
 16 Regulation ("AR") 350 specified the correct uniforms for officers. In fact, officers could
 17 not proceed to their posts if they were not wearing the appropriate uniform, would be
 18 reprimanded (including being sent home) if their uniform was not up to standards, and
 19 had to remain in uniform until they fully exited the facility in case of an emergency or
 20 inmate situation.

21 c. Another stated purpose of requiring Plaintiffs and all class members to
 22 report to muster was to also give correctional officers information related to any new
 23 developments at the facility or issues relating to officer's employment such as security
 24 issues, lockdown situations, changes in rules, and inmate problems among other pertinent
 25 information by their shift supervisor prior to reporting to their assigned post.

27 ¹ Plaintiffs do *not* allege that the time it takes them to pass through the security check
 28 point/metal detectors is compensable work time.

1 32. In addition to attending Muster, whether in a group or at a common place to
2 retrieve and review written instructions, the next work related task performed by plaintiffs and all
3 class members “off the clock” before their scheduled work time was called GEAR
4 COLLECTION, and is described in detail as follows:

5 a. After the correctional officer has finished “muster” but prior to the
6 beginning of his or her regularly scheduled shift, officers are required to pick up
7 equipment and tools necessary and required to complete their daily job tasks, including
8 but not limited to: keys, radios, weapons, mail, reports, restraints, and pepper spray.
9 Correctional officers could not collect any tools and equipment needed for their post prior
10 to being assigned by the shift supervisor and proceeding to their post for their regularly
11 scheduled shift.

12 33. The next work related task performed by Plaintiffs and all class members “off the
13 clock” before their scheduled work time was called PASS DOWN and is described in detail as
14 follows:

15 a. In addition to receiving a briefing by their shift supervisor during the
16 muster process, correctional officers would also receive a briefing from the officer they
17 were relieving when they took over a post and prior to the beginning of their regularly
18 scheduled shift. Both of these briefings were necessary in order for the officer because
19 the briefings are officers’ “source of [] security system for the institution” facility-wide
20 and post specific.

21 34. Correctional officers were actually trained to show up early during their time at
22 the academy in order to complete all of these pre-shift tasks. And, if they showed up at the time
23 their regularly scheduled shift started, their supervisors would reprimand them for not showing
24 up early enough to complete these tasks so that they could assume their post at their regularly
25 scheduled shift start time. In Defendant’s party admission Warden Williams confirmed in
26 deposition under oath that officers would have to get in a half hour early “to clear and do
27 everything” and that he had seen officers “come in ten minutes to the start of their shift. And I’m
28 scratching my head, if he [shift supervisor] assigns them to a tower or something, how are they

1 going to get to their shift on time.” See Exhibit B, attached hereto, Deposition Transcript of
2 Warden Brian Williams, hereinafter “Williams Depo” at 133:17:22 and 134:12-17 and 136:2-4.

3 35. Because of the time it took for Plaintiffs and all class members to collect gear after
4 Muster, and the time it took to walk to their actual post assignments, correctional officers would
5 get to Muster upwards to 30 minutes before their official shift start time in order to make sure
6 they were present at their post prior the other officer’s end of shift/ beginning of their shift to be
7 briefed by that outgoing officer prior to the incoming officer’s regularly scheduled shift start time,
8 and in order to complete all these required work tasks, and to get the other officer out as near as
9 possible to the end of his or her shift.

10 36. In addition to these uncompensated pre-shift work activities, Defendant required
11 plaintiff and all class members to engage in uncompensated POST SHIFT ACTIVITIES as
12 follows:

13 a. At the end of correctional officers’ regularly scheduled shift, each officer,
14 was required to provide a pass down of information to the officer who was relieving that
15 post. Plaintiffs and all class members could not do their jobs without these briefings and
16 debriefings because the briefings contained “critical safety information.” In fact, Warden
17 Williams specifically testified that communication and exchange of information between
18 officers is “key in everything we do.” Williams Depo at 121:14-17 and 122:20-21.

19 b. In addition, just because the correctional officers had been relieved
20 officially at the end of their shift, didn’t mean Plaintiff and all other class members done
21 working without compensation. After being “officially relieved”, plaintiff and all other
22 class members had to return that same equipment and/or drop off/complete paperwork and
23 they still had to adhere to all rules and regulations until they exited the gatehouse in case
24 something happened on their way out. For instance, one officer indicated that they were
25 trained at the academy that they always must be ready to respond and that correctional
26 officers “get paid for what they might have to do.”

27 37. Because of the time it took for Plaintiffs and all class members to debrief the
28 incoming officer who was relieving them, return collected gear picked up at the beginning of their

1 shift, and complete paperwork correctional officers would spend approximately another 15
2 minutes or more after the end of their official shift end time.

3 **Defendant's Scheduling Policies, Contracts of Employment for the Payment of**
4 **Overtime, and Hours Worked Yet Unpaid for the Named-Plaintiff/Class**
5 **Representatives**

6 38. Plaintiffs and class members were all scheduled for and worked overtime hours,
7 either over 40 hours per workweek and/or over 80 hours during the two-week work period.

8 39. There is no need for guesswork for whether overtime is owed for Plaintiffs and
9 class members. Indeed, all NDOC facilities adhere to set of uniform published policies and
10 regulations. For example, Operational Procedure 320, which applies to all facilities and is
11 attached hereto as Exhibit C, defines overtime as follows:

12 Overtime-Hours worked in excess of 8 hours in one calendar day; 40 hours
13 in a week or an 80-hour variable work schedule within a biweekly pay
14 period.

15 40. Administrative Regulation (AR) 320, also applicable to all facilities, attached
16 hereto as Exhibit D, states in relevant part:

17 Non-exempt employees, as specified in the State Classification and
18 Compensation Plan, shall earn overtime at the rate of time and one-half.

19 41. The Nevada Department of Corrections Variable Work Schedule requests
20 constitutes an agreement to pay overtime rates after an employee works 40 hours in a week, or, if
21 the employee elects to work an 80-hour variable (innovative) work schedule, then to pay overtime
22 premium rates for all hours worked in excess of 80 in a two-week period. For all class members,
23 the form states:

24 For employees who choose and are approved for a variable workday, overtime
25 will be considered only after working 40 hours in one week.

26 42. The agreement also states that Overtime will be paid under the Nevada Revised
27 Statute 284.180. Overtime will be considered only after working 80 hours biweekly. The
28 overtime rate for public employees specified in NRS 284.180 "must be earned at the rate of time
and one-half" their regular rate of pay.

43. Like every other member of the class, the hours worked can be determined by reference to the Defendant's exception time reporting records, the aforementioned NEATS, and by the addition of the times worked before and after each shift "off the clock" which were not recorded by Defendant. The regular pay rate is reflected in the Defendant's pay grade records as the rate that the Defendant has agreed to pay for all hours worked (not including time and one half for overtime premium pay). Like most public-sector agencies, Defendant has agreed to follow the federal OMB regulations, and to include holidays and sick days as hours actually worked, which are noted as exceptions on the NEATS form when applicable. Like all class members, the named Plaintiffs were required to and did sign a "Nevada Department of Corrections Variable Work Schedule Request," an exemplar copy of which is attached hereto and marked as Exhibit E.

44. Plaintiff **DONALD WALDEN** worked for NDOC as a Correctional Officer at the Southern Desert Correctional Center ("SDCC") from on or about February 24, 2003 to February 14, 2013. His rate of pay was approximately \$23.00 or \$24.00 per hour as of the last he day worked. During his ten-year career with NDOC Plaintiff Walden has worked a variety of different shifts and was assigned to a variety of different job posts. For instance, he has held the following job posts and worked the following shifts dating back to 2011:

a. In 2012 through separation of employment, he was the Senior Officer assigned to Search and Escort on swing shift, until he was hurt on the job in May, and agreed to work a 14-day variable work schedule of 80 hours during that work period. Plaintiff Walden routinely worked at least 80 hours a work period (not counting the hours he worked without compensation).

b. In 2011, Plaintiff Walden was the Senior Officer for Unit 8 (lock down unit) on day shift and was scheduled to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He routinely worked at least 80 hours a work period (not counting the hours he worked without compensation).

c. Plaintiff Walden spent an average of 45 minutes or more pre- and post-shift performing required work activities, as described above, off the clock and without

1 compensation, each and every shift worked. Thus, because Defendant required Plaintiff
 2 Walden to work at least 45 minutes of uncompensated work time each and every shift
 3 worked, at the required overtime rate of pay of one and one half time his regular rate of
 4 pay of approximately \$35.25 (\$23.50 X 1.5) for .75 hours of overtime, he is owed \$26.44
 5 for each shift worked, or \$6,345.60 (\$26.44 X 240 shifts per year) per year worked. As an
 6 example, Plaintiff Walden most recently worked his full schedule of 10 shifts for the pay
 7 period of January 7, 2013 through January 20, 2013 and was required to complete the pre-
 8 and post-shift work tasks described above, off the clock and without compensation. In
 9 both workweeks, Plaintiff Walden worked 5 eight (8) hour shifts for a total of 40 hours
 10 per workweek. Because he was not compensated for these work activities, Plaintiff
 11 Walden worked 3.75 hours of overtime for each workweek and is owed \$132.19 (3.75 X
 12 \$35.25) for each of these workweeks.

13 45. Plaintiff **NATHAN ECHEVERRIA** has worked for NDOC as a Correctional
 14 Officer at the Southern Desert Correctional Center (“SDCC”) from on or about May 1, 2006 to
 15 the present. Plaintiff Echeverria’s rate of pay is approximately \$23.50 per hour. During his 11
 16 years of employment by NDOC Plaintiff Echeverria has worked a variety of different shifts and
 17 was assigned to a variety of different job posts. For instance, he has held the following job posts
 18 and worked the following shifts dating back to 2011:

19 a. In 2014, he was assigned to Unit 5 B and was scheduled to work a 14-day
 20 variable work schedule of 80 hours. During that work period, he routinely worked at least
 21 80 hours a work period (not counting the hours he worked without pay as set forth below).

22 b. In 2013, he was assigned to Visitation and was scheduled to work a 14-day
 23 variable work schedule of 80 hours during that work period. He routinely worked at least
 24 80 hours a work period (not counting the hours he worked without compensation).

25 c. In 2012, he was assigned to Visitation and was scheduled to work a 14-day
 26 80 hours a work period (not counting the hours he worked without pay as set forth below).

1 d. In 2011, he was assigned to Unit 7 A and was scheduled to work a regular
2 schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He routinely worked
3 at least 80 hours a work period (not counting the hours he worked without compensation).

4 e. Plaintiff Echeverria spent an average of 45 minutes or more pre- and post-
5 shift performing required work activities, as described above, off the clock and without
6 compensation, each and every shift worked. Thus, because Defendant required Plaintiff
7 Echeverria to work at least 45 minutes of uncompensated work time each and every shift
8 worked, at the required overtime rate of pay of one and one half time his regular rate of
9 pay of approximately \$35.25 ($\23.50×1.5) for .75 hours of overtime, he is owed \$26.44
10 for each shift worked, or \$6,345.60 ($\26.44×240 shifts per year) per year worked. As
11 an example, Plaintiff Echeverria most recently worked his full schedule of 8 shifts for the
12 pay period of September 30, 2013 through October 13, 2013 and was required to complete
13 the pre- and post-shift work tasks described above, off the clock and without
14 compensation. In both workweeks, Plaintiff Echeverria worked 4 ten (10) hour shifts for
15 a total of 40 hours per workweek. Because he was not compensated for these work
16 activities, Plaintiff Echeverria worked 3.75 hours of overtime for each workweek and is
17 owed \$132.19 ($3.75 \times \35.25) for each of these workweeks.

18 46. Plaintiff **AARON DICUS** has worked for NDOC as a Correctional Officer at the
19 Southern Desert Correctional Center ("SDCC") from on or about July 2007 to on or about July
20 2014 and High Desert State Prison ("HDSP") from on or about July 2014 to the present. Plaintiff
21 Dicus' rate of pay is approximately \$21.17 per hour. During his ten-year career with NDOC,
22 Plaintiff Dicus has worked a variety of different shifts and was assigned to a variety of different
23 job posts. For instance, he has held the following job posts and worked the following shifts dating
24 back to 2011:

25 a. Currently, he is assigned to Unit 5 A/B and is scheduled to work a regular
26 schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He routinely works
27 at least 80 hours a work period (not counting the hours he works without compensation).
28

1 b. In 2016, he was assigned to Unit 6 C/D and Unit 1 A/B and was scheduled
2 to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He
3 routinely worked at least 80 hours a work period (not counting the hours he worked
4 without compensation).

5 c. In 2015, he was assigned to Unit 6 A/B and was scheduled to work a
6 regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He routinely
7 worked at least 80 hours a work period (not counting the hours he worked without
8 compensation).

9 d. In July 2014, he was assigned to Unit 4 C/D at HDCC and was scheduled
10 to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He
11 routinely worked at least 80 hours a work period (not counting the hours he worked
12 without compensation).

13 e. In 2014, from January to July he was assigned to Unit 1 and was scheduled
14 to work a 14-day variable work schedule of 80 hours during that work period. He routinely
15 worked at least 80 hours a work period (not counting the hours he worked without
16 compensation).

17 f. In 2013, he was assigned to Unit 1 and was scheduled to work a 14-day
18 variable work schedule of 80 hours during that work period. He routinely worked at least
19 80 hours a work period (not counting the hours he worked without compensation).

20 g. In 2012, he was assigned to Unit 2 and a Relief Post and was scheduled to
21 work a 14-day variable work schedule of 80 hours during that work period. He routinely
22 worked at least 80 hours a work period (not counting the hours he worked without
23 compensation).

24 h. In 2011, he was deployed in Afghanistan.

25 f. Plaintiff Dicus spends an average of 45 minutes or more pre- and post-shift
26 performing required work activities, as described above, off the clock and without
27 compensation, each and every shift worked. Thus, because Defendant requires Plaintiff
28 Dicus to work at least 45 minutes of uncompensated work time each and every shift

1 worked, at the required overtime rate of pay of one and one half time his regular rate of
 2 pay of approximately \$31.76 ($\21.17×1.5) for .75 hours of overtime, he is owed \$23.82
 3 for each shift worked, or \$5,716.80 ($\23.82×240 shifts per year) per year worked. As an
 4 example, Plaintiff Dicus most recently worked his full schedule of 10 shifts for the pay
 5 period of January 16, 2017 through January 29, 2017 and was required to complete the
 6 pre- and post-shift work tasks described above, off the clock and without compensation.
 7 In both workweeks, Plaintiff Dicus worked 5 eight (8) hour shifts for a total of 40 hours
 8 per workweek. Because he was not compensated for these work activities, Plaintiff Dicus
 9 worked 3.75 hours of overtime for each workweek and is owed \$119.10 ($3.75 \times \31.76)
 10 for each of these workweeks.

11 47. Plaintiff **BRENT EVERIST** worked for NDOC as a as a Correctional Officer at
 12 the High Desert State Prison ("HDSP") from on or about May 1, 2006 to on or about December 2014.
 13 Plaintiff Everist's rate of pay was approximately \$22.80 per hour. During his almost 9-year career
 14 with NDOC Plaintiff Everist worked a variety of different shifts and was assigned to a variety
 15 of different job posts. For instance, he has held the following job posts and worked the following
 16 shifts dating back to 2011:

17 a. In 2014, he was assigned to Housing Unit 1 CD Control and was scheduled
 18 to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He
 19 routinely worked at least 80 hours a work period (not counting the hours he worked
 20 without compensation).

21 b. In 2013, he was assigned to Housing Unit 1 CD Control and was scheduled
 22 to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He
 23 routinely worked at least 80 hours a work period (not counting the hours he worked
 24 without compensation).

25 c. In 2012, he was assigned to Housing Unit 4 AB Floor and was scheduled
 26 to work a 14-day variable work schedule of 80 hours during that work period. He routinely
 27 worked at least 80 hours a work period (not counting the hours he worked without pay as
 28 set forth below).

1 d. In 2011, he was assigned to Housing Unit 3 AB Control and was scheduled
2 to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He
3 routinely worked at least 80 hours a work period (not counting the hours he worked
4 without compensation).

5 e. Plaintiff Everist spent an average of 45 minutes or more pre- and post-shift
6 performing required work activities, as described above, off the clock and without
7 compensation, each and every shift worked. Thus, because Defendant required Plaintiff
8 Everist to work at least 45 minutes of uncompensated work time each and every shift
9 worked, at the required overtime rate of pay of one and one half time his regular rate of
10 pay of approximately \$34.20 ($\25.65×1.5) for .75 hours of overtime, he is owed \$25.65
11 for each shift worked, or \$6,156.00 ($\25.65×240 shifts per year) per year worked. As
12 an example, Plaintiff Everist most recently worked his full schedule of 10 shifts for the
13 pay period of January 20, 2014 through February 2, 2014 and was required to complete
14 the pre- and post-shift work tasks described above, off the clock and without
15 compensation. In both workweeks, Plaintiff Everist worked 5 eight (8) hour shifts for a
16 total of 40 hours per workweek. Because he was not compensated for these work activities,
17 Plaintiff Everist worked 3.75 hours of overtime for each workweek and is owed \$128.25
18 ($3.75 \times \$34.20$) for each of these workweeks.

19 48. Plaintiff **TRAVIS ZUFELT** works for NDOC as a Correctional Officer at the
20 Northern Nevada Correctional Center (“NNCC”) from on or about January 2010 to the
21 present. Plaintiff Zufelt’s rate of pay is approximately \$22.00 per hour. During his seven-year
22 career with NDOC Plaintiff Zufelt has worked a variety of different shifts and was assigned to a
23 variety of different job posts. For instance, he has held the following job posts and worked the
24 following shifts dating back to 2011:

25 a. Currently he is assigned to the Medical Transport Team and is scheduled
26 to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He
27 routinely works at least 80 hours a work period (not counting the hours he works without
28 compensation).

1 b. In 2016, he was assigned to the Culinary and was scheduled to work a
2 regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He routinely
3 worked at least 80 hours a work period (not counting the hours he worked without
4 compensation).

5 c. In 2015, he was assigned to B-Team Days Central Control and was
6 scheduled to work a 14-day variable work schedule of 80 hours during that work period.
7 He routinely worked at least 80 hours a work period (not counting the hours he worked
8 without compensation).

9 d. In 2014, he was assigned to B-Team Days Central Control and was
10 scheduled to work a 14-day variable work schedule of 80 hours during that work period.
11 He routinely worked at least 80 hours a work period (not counting the hours he worked
12 without compensation).

13 e. In 2013, he was assigned to Unit 3 B-Team Nights and was scheduled to
14 work a 14-day variable work schedule of 80 hours during that work period. He routinely
15 worked at least 80 hours a work period (not counting the hours he worked without
16 compensation).

17 f. In 2012, he was assigned to Graveyard S&E and was scheduled to work a
18 regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He routinely
19 worked at least 80 hours a work period (not counting the hours he worked without
20 compensation).

21 g. In 2011, he was assigned to Graveyard 8 Hours Unit 7B and was scheduled
22 to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He
23 routinely worked at least 80 hours a work period (not counting the hours he worked
24 without compensation).

25 h. Plaintiff Zufelt spends an average of 45 minutes or more pre- and post-shift
26 performing required work activities. Thus, because Defendant required Plaintiff Zufelt to
27 work at least 45 minutes of uncompensated work time for each shift worked, at the
28 required overtime rate of pay of one and one half time his regular rate of pay of

1 approximately \$33.00 ($\22.00×1.5) for .75 hours of overtime, he is owed \$24.75 for
 2 each shift worked, or \$5,940.00 ($\24.75×240 shifts per year) per year worked. As an
 3 example, Plaintiff Zufelt most recently worked his full schedule of 10 shifts for the pay
 4 period of March 26, 2017 through April 9, 2017 and was required to complete the pre-
 5 and post-shift work tasks described above, off the clock and without compensation. In
 6 both workweeks, Plaintiff Zufelt worked 5 eight (8) hour shifts for a total of 40 hours per
 7 workweek. Because he was not compensated for these work activities, Plaintiff Zufelt
 8 worked 3.75 hours of overtime for each workweek and is owed \$123.75 ($3.75 \times \33.00)
 9 for each of these workweeks.

10 49. Plaintiff **TIM REDENOUR** worked for NDOC as a Correctional Officer at the
 11 Southern Desert Correctional Center (“SDCC”) from on or about March 2007 to on or about April
 12 2016. Plaintiff Ridenour’s rate of pay as of the last day of his employment was approximately
 13 \$24.00 per hour. During his ten-year career with NDOC Plaintiff Ridenour has worked a variety
 14 of different shifts and was assigned to a variety of different job posts. For instance, he has held
 15 the following job posts and worked the following shifts dating back to 2011:

16 a. In 2016, he was assigned to Search and Escort B, days B Day Shift and
 17 was scheduled to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a
 18 work week. He routinely worked at least 80 hours a work period (not counting the hours
 19 he worked without compensation).

20 b. In 2015, he was assigned to Search and Escort B, days B Day Shift and
 21 was scheduled to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a
 22 work week. He routinely worked at least 80 hours a work period (not counting the hours
 23 he worked without compensation).

24 c. In 2014, he was assigned to Search and Escort B, days B shift, and was
 25 scheduled to work a 14-day variable work schedule of 80 hours during that work period.
 26 He routinely worked at least 80 hours a work period (not counting the hours he worked
 27 without compensation).
 28

1 d. In 2013, he was assigned to Search and Escort B, days B shift and was
2 scheduled to work a 14-day variable work schedule of 80 hours during that work period.
3 He routinely worked at least 80 hours a work period (not counting the hours he worked
4 without compensation).

5 e. In 2012, he was assigned to Unit 2 A Officer, days B shift and then Search
6 and Escort B, days B shift and was scheduled to work a 14-day variable work schedule of
7 80 hours during that work period. He routinely worked at least 80 hours a work period
8 (not counting the hours he worked without compensation).

9 f. In 2011, he was assigned to the swing shift and was scheduled to work a
10 regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He routinely
11 worked at least 80 hours a work period (not counting the hours he worked without
12 compensation).

13 g. Plaintiff Ridenour spent an average of 45 minutes or more pre- and post-
14 shift performing required work activities, as described above, off the clock and without
15 compensation, each and every shift worked. Thus, because Defendant required Plaintiff
16 Ridenour to work at least 45 minutes of uncompensated work time each and every shift
17 worked, at the required overtime rate of pay of one and one half time his regular rate of
18 pay of approximately \$36.00 (\$24.00 X 1.5) for .75 hours of overtime, he is owed \$27.00
19 for each shift worked, or \$6,480.00 (\$27.00 X 240 shifts per year) per year worked. As an
20 example, Plaintiff Ridenour most recently worked his full schedule of 7 shifts for the pay
21 period of November 26, 2012 through December 9, 2012 and was required to complete
22 the pre- and post-shift work tasks described above, off the clock and without
23 compensation. In both workweeks, Plaintiff Ridenour worked 6 twelve (12) hour shifts
24 and 1 eight (8) hour shift for a total of 80 hours pay period. Because he was not
25 compensated for these work activities, Plaintiff Ridenour worked 5.25 hours of overtime
26 for the two-week work period and is owed \$189.00 (3.75 X \$36.00) in overtime for this
27 pay period.
28

1 50. Plaintiff **DANIEL TRACY** has worked for NDOC as a Correctional Officer at the
 2 Southern Desert Correctional Center (“SDCC”) from on or about October 9th, 2000 to on or about
 3 December 2015, and Ely State Prison (“ESP”) from on or about January 2016 to the present.
 4 Plaintiff Tracy’s rate of pay is approximately \$26.00 per hour. During his seventeen-year career
 5 with NDOC Plaintiff Tracy has worked a variety of different shifts and was assigned to a variety
 6 of different job posts. For instance, he has held the following job posts and worked the following
 7 shifts dating back to 2011:

8 a. Currently he is assigned to A Unit and is scheduled to work a 14-day
 9 variable work schedule of 80 hours during that work period. He routinely works at least
 10 80 hours a work period (not counting the hours he works without compensation).

11 b. In 2015, he was assigned as Gym Officer and was scheduled to work a
 12 regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He routinely
 13 worked at least 80 hours a work period (not counting the hours he worked without
 14 compensation).

15 c. In 2014, he was assigned as Gym Officer and was scheduled to work a
 16 regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He routinely
 17 worked at least 80 hours a work period (not counting the hours he worked without
 18 compensation).

19 d. In 2013, he was assigned as Gym Officer and was scheduled to work a
 20 regular schedule of 5 days a week, 8 hours a day, 40 hours in a work week. He routinely
 21 worked at least 80 hours a work period (not counting the hours he worked without
 22 compensation).

23 e. In 2012, he was assigned to K Officer for part of the year and was
 24 scheduled to work a 14-day variable work schedule of 80 hours during that work period.
 25 He routinely worked at least 80 hours a work period (not counting the hours he worked
 26 without compensation). He was also assigned as Lead Officer for Units One and Two for
 27 part of the year, and was scheduled to work a regular schedule of 5 days a week, 8 hours
 28

1 a day, 40 hours in a work week. He routinely worked at least 80 hours a work period
2 (not counting the hours he worked without compensation).

3 f. In 2011, he was assigned to the Women's Correctional Center and was
4 scheduled to work a regular schedule of 5 days a week, 8 hours a day, 40 hours in a work
5 week. He routinely worked at least 80 hours a work period (not counting the hours he
6 worked without compensation).

7 g. Plaintiff Tracy spent an average of 45 minutes or more pre- and post-shift
8 performing required work activities, as described above, off the clock and without
9 compensation, each and every shift worked. Thus, because Defendant required Plaintiff
10 Tracy to work at least 45 minutes of uncompensated work time each and every shift
11 worked, at the required overtime rate of pay of one and one half time his regular rate of
12 pay of approximately \$39.00 (\$26.00 X 1.5) for .75 hours of overtime, he is owed \$29.25
13 for each shift worked, or \$7,020.00 (\$29.25 X 240 shifts per year) per year worked. As an
14 example, Plaintiff Tracy worked his full schedule of 10 shifts for the pay period of March
15 17, 2014 through March 30, 2014 and was required to complete the pre- and post-shift
16 work tasks described above, off the clock and without compensation. In both workweeks,
17 Plaintiff Tracy worked 5 eight (8) hour shifts for a total of 40 hours per workweek.
18 Because he was not compensated for these work activities, Plaintiff Tracy worked 3.75
19 hours of overtime for each workweek and is owed \$146.25 (3.75 X \$39.00) for each of
20 these workweeks.

21 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

22 51. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this
23 Complaint as though fully set forth herein.

24 52. Plaintiffs bring this action on behalf of themselves and all other similarly situated
25 and typical employees as both a collective action under the FLSA and a true class action under
26 Nevada law. There are opt-in plaintiffs for all facilities except Ely Conservation Camp and
27 Northern Nevada Traditional Housing. In addition to having valid consent to sue forms filed from
28

1 correctional officers from all but one conservation camp and one transitional housing unit,
2 Plaintiffs' Expert Survey included respondents from all 19 locations.²

3 53. The statute of limitations under the FLSA is 3 years for willful violations.

4 54. The statute of limitations for violation of a constitutional duty under Nevada law
5 is 2 years.

6 55. The statute of limitations for violation of a statutory obligation under Nevada law
7 is 3 years.

8 56. The statute of limitations for breach of a contract under Nevada law is 6 years.

9 57. The FLSA and Nevada Classes are defined as follows: **All persons who were**
10 **employed by Defendant as correctional officers at any time during the applicable statute of**
11 **limitations time period.**

12 58. With regard to the conditional certification mechanism under the FLSA, Plaintiffs
13 are similarly situated to those that they already represent and those that they further seek to
14 represent for the following reasons, among others:

15 A. Defendant employed Plaintiffs as hourly employees who did not receive
16 pay for all hours that Defendant suffered or permitted them to work, and did not receive
17 overtime premium pay of one and one half their regular rate of pay for all hours worked
18 in excess of forty (40) hours in a workweek, or 80-hour variable workweek. Plaintiffs and
19 all opt-ins were scheduled for and did work either 40-hours per workweek or 80 hours for
20 a two-week work period but were not compensated for the time spent performing the off
21 the clock activities above. The time spend performing these off the clock activities was
22 in excess of the scheduled for, and worked, 40 hours per workweek and/or 80 hours per
23 2-week work period.

24 B. Plaintiffs' situations are similar to those they seek to represent because
25 Defendant failed to pay Plaintiffs and all other Class Members for all time they were
26 required to work, including time spent performing off-the-clock activities, pursuant to a

27 ² This action has already been conditionally certified. See ECF No. 45. Five-hundred and
28 forty-two (542) persons have opted-in to this action. See ECF Nos. 9, 10, 12, 15, 16, 18, 19, 24,
34, 35, 37, 38, 40, 41, 43, 44, 46, 55, 59, 60, 61, 62, 63, 64, 65, 66, 67, 70, 71, 76, 77, 78, and 82.

1 uniform policy, plan and/or practice embodied in part in the applicable administrative
2 regulations themselves.

3 C. Common questions of fact and/or law exist whether the time spent by
4 Plaintiffs and all other Class Members engaging in off-the-clock activities is compensable
5 under federal law and whether Defendant failed to pay Plaintiffs and Class Members one
6 and one half times their regular rate for all hours worked in excess of 40 hours a week or
7 80-hour variable workweek.

8 D. Upon information and belief, Defendant employs, and has employed, in
9 excess of 3,000 Class Members within the applicable statute of limitations.

10 E. Plaintiffs have filed their consents to sue with the Court and 542 similarly
11 situated persons have opted-in to this action.

12 F. Defendant has known or should have known its policies alleged herein
13 were unlawful and that they owe employees this money, and have willfully failed to pay
14 their employees properly. Indeed, paying employees for engaging in work related
15 activities such as receiving assignments, picking up tools/gear, and passing down job
16 related information are generally understood to be compensable activities and the failure
17 to pay for such activities prior to and after the initiation of this action represents willful
18 misconduct on part of the Defendant. Defendant's actions or omissions giving rise to this
19 complaint were thus not in good faith and/or were not based upon an informed, reasonable
20 belief that Defendant's behavior was lawful.

21 59. Pursuant to the decision of the Ninth Circuit Court of Appeals in *Busk v. Integrity*
22 *Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013), both opt-in
23 collective or representative treatment of claims under the federal FLSA and FRCP Rule 23 Class
24 treatment of pendant state law claims may be maintained in the same action. Therefore, FRCP
25 Rule 23(b)(3) Class treatment for all non-FLSA claims alleged in this complaint is appropriate in
26 this case for the following reasons:
27
28

1 A. The Class is Sufficiently Numerous: Upon information and belief,
2 Defendant employs, and has employed, in excess of 3,000 Class Members within the
3 applicable statute of limitations.

4 B. Plaintiffs' Claims are Typical to Those of Fellow Class Members: Each
5 Class Member is and was subject to the same practices, plans, or policies as Plaintiffs—
6 Defendant required Class Members to perform off-the-clock activities without
7 compensation.

8 C. Common Questions of Law and Fact Exist: Common questions of law and
9 fact exist and predominate as to Plaintiffs and the Class, including, without limitation:
10 Whether the time spent by Plaintiffs and Class Members engaging in off-the-clock
11 activities is compensable under Nevada law. Specifically, in addition to the allegations
12 made above, all of the policies and procedures of NDOC facilities requiring work
13 activities to pre- and post-shift are essentially the same. Each facility requires
14 Correctional Officers to report to their sergeant on-duty, pre-shift, for roll call, to have
15 their uniforms checked, to get their assignment for the day, and collect any tools they may
16 need to perform their assignment for that day (e.g., radio, tear gas, handcuffs). After
17 engaging in these pre-shift activities, correctional officers are then required to proceed to
18 their assigned post to conduct a debriefing with the outgoing officer. All of this time has
19 been, and continues to be, non-compensable pursuant to NDOC's policies, procedures,
20 rules and regulations. At the end of the shift, correctional offices are supposed to engage
21 in many of the same pre-shift activities, but in reverse order.

22 D. Plaintiffs are Adequate Representatives of the Class: Plaintiffs will fairly
23 and adequately represent the interests of the Class because Plaintiffs are members of the
24 Class, they have issues of law and fact in common with all members of the Class, and they
25 do not have interests that are antagonistic to Class members.

26 E. A Class Action is Superior/Common Claims Predominate: A class action
27 is superior to other available means for the fair and efficient adjudication of this
28 controversy, since individual joinder of all members of the Class is impractical, and

common claims of whether Plaintiffs and Class Members are entitled to compensation for the work activities performed predominate over individual issues. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense. Furthermore, the expenses and burden of individualized litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

FIRST CAUSE OF ACTION

Failure to Pay Wages in Violation of the FLSA, 29 U.S.C. § 201, *et seq.*

(On Behalf of Plaintiffs and the FLSA Class Against Defendant)

60. Plaintiffs reallege and incorporate by reference all the paragraphs above in this Complaint as though fully set forth herein.

61. Pursuant to the FLSA, 29 U.S.C. § 206, *et seq.*, Plaintiffs and Class Members are entitled to compensation at their regular rate of pay or minimum wage rate, whichever is higher, for all hours actually worked.

62. 29 U.S.C. §203(e)(1)(C) defines employee, for purposes of the FLSA, to include any individual employed by a State, political subdivision of a State, or an interstate governmental agency.

63. With certain exceptions not relevant here, the minimum wage provisions of Section 6 and the overtime provisions of Section 7 of the Fair Labor Standards is and was applicable to employees of governmental agencies including but not limited to correctional officers during the time period alleged herein. 29 U.S.C. § 206(b); PL 99–150 (S 1570), PL 99–150, November 13, 1985, 99 Stat 787; *see, e.g., Adderly v. City of Atlanta, Ga.*, CIV.A. 1:08-CV-2111-, 2009 WL 1456575 (N.D. Ga. May 22, 2009).

64. Once the work day has begun, all time suffered or permitted by the employer to be worked by the employee is compensable at the employee's applicable rate of pay, whether scheduled or not.

65. By engaging in the conduct explained above, Defendant paid Plaintiffs and Class Members \$0 for working off-the-clock.

66. By failing to compensate Plaintiffs and Class Members for the time spent engaging in off-the-clock activities identified above, Defendant failed to pay Plaintiffs and the Class Members for all hours worked.

67. Defendant's unlawful conduct has been widespread, repeated, and willful. Defendant knew or should have known that its policies and practices have been unlawful and unfair. The actions of Defendant were willful and deliberate and without good cause, from the relevant time period until the date of judgment after trial. Indeed, Defendant has been on notice at least since the inception of this lawsuit in 2014 that they have not compensated Plaintiffs and Class Members for the time spent performing pre- and post-shift activities but have done nothing to correct their illegal behavior.

68. Wherefore, Plaintiffs demand for themselves and for all others similarly situated, that Defendant pay Plaintiffs and all other members of the Class their minimum hourly wage rate or their regular rate of pay, whichever is greater, for all hours worked during the relevant time period alleged herein together with liquidated damages, attorneys' fees, costs, and interest as provided by law.

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages in Violation of the FLSA, 29 U.S.C. § 207

(On Behalf of Plaintiffs and the FLSA Class Against Defendant)

69. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

70. 29 U.S.C. Section 207(a)(1) provides as follows: "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged

1 in commerce or in the production of goods for commerce, for a workweek longer than forty hours
 2 unless such employee receives compensation for his employment in excess of the hours above
 3 specified at a rate not less than one and one-half times the regular rate at which he is employed.”

4 71. 29 U.S.C. Section 207(k) provides as follows:

5 No public agency shall be deemed to have violated subsection (a) of
 6 this section with respect to the employment of any employee in fire
 7 protection activities or any employee in law enforcement activities
 8 (including security personnel in correctional institutions) if—

9 (1) in a work period of 28 consecutive days the employee
 10 receives for tours of duty which in the aggregate exceed the
 11 lesser of

12 (A) 216 hours, or

13 (B) the average number of hours (as determined by the
 14 Secretary pursuant to section 6(c)(3) of the Fair Labor
 15 Standards Amendments of 1974) in tours of duty of
 16 employees engaged in such activities in work periods of 28
 17 consecutive days in calendar year 1975; or

18 (2) in the case of such an employee to whom a work period of at
 19 least 7 but less than 28 days applies, in his work period the
 20 employee receives for tours of duty which in the aggregate
 21 exceed a number of hours which bears the same ratio to the
 22 number of consecutive days in his work period as 216 hours (or
 23 if lower, the number of hours referred to in clause (B) of
 24 paragraph (1)) bears to 28 days,

25 compensation at a rate not less than one and one-half times the
 26 regular rate at which he is employed.

27 72. Once the work day has begun, all time suffered or permitted by the employer to be
 28 worked by the employee is compensable at the employee’s applicable rate of pay, whether
 scheduled or not.

73. By engaging in the conduct explained above, Defendant paid Plaintiffs and Class
 Members \$0 for working off-the-clock.

74. By failing to compensate Plaintiffs and Class Members either in cash payment or
 compensating time off at one and one half the hours worked for the time spent engaging in off-

1 the-clock activities identified above, Defendant failed to pay Plaintiffs and Class Members
 2 overtime for all hours worked in excess of forty (40) hours in a week in violation of 29 U.S.C.
 3 Section 207(a)(1) and/or in excess of the hours set forth in 29 U.S.C. Section 207(k).

4 75. Defendant has not satisfied this obligation to pay for all hours worked in excess of
 5 40-hour per week and/or in excess of the hours set forth in 29 U.S.C. Section 207(k) at one and
 6 one half the employees regular rate by the payment of money nor by the grant of compensatory
 7 time off as provided in 29 U.S.C. §207(o).

8 76. As set forth above, the time spent performing the pre- and post-shift activities that
 9 are the subject of this action was performed after Plaintiffs and all other similarly situated
 10 individuals had worked at least 40 hours in a workweek and/or 80 hours in a 2-week work period.
 11 Therefore, the uncompensated activities in question were performed during overtime hours for
 12 which Plaintiffs and similarly situated class members were denied overtime compensation by
 13 Defendant as a result of its unlawful pay practices.

14 77. Defendant's unlawful conduct has been widespread, repeated, and willful.
 15 Defendant knew or should have known that its policies and practices have been unlawful and
 16 unfair. The actions complained of herein were willful and deliberate and without good cause,
 17 from the relevant time period until the date of judgment after trial. Indeed, Defendant has been
 18 on notice at least since the inception of this lawsuit in 2014 that they have not compensated
 19 Plaintiffs and Class Members for the time spent performing pre- and post-shift activities but have
 20 nothing to correct their illegal behavior.

21 78. Wherefore, Plaintiffs demand for themselves and for all others similarly situated,
 22 that Defendant pay Plaintiffs and all members of the Class one and one half times their regular
 23 hourly rate of pay for all hours worked in excess of forty (40) hours a week and/or in excess of
 24 the hours set forth in 29 U.S.C. Section 207(k) during the relevant time period alleged herein
 25 together with liquidated damages, attorneys' fees, costs, and interest as provided by law.

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION

Failure to Pay Minimum Wages in Violation of the Nevada Constitution

(On Behalf of Plaintiffs and the Nevada Class Against Defendant)

79. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.

80. Article 15 Section 16 of the Nevada Constitution sets forth the requirements the minimum wage requirements in the State of Nevada and further provides that “[t]he provisions of this section may not be waived by agreement between an individual employee and an employer. ... 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.”

81. Article 15, Section 16 of the Constitution does not contain any statute of limitations. There is a written agreement of employment at will, and for an hourly rate of pay. Therefore, the relevant statute of limitations is contained in NRS 11.190(1) (recognizing that an obligation founded upon instrument carries a 6-year statute of limitations).

82. Once the work day has begun, all time suffered or permitted by the employer to be worked by the employee is compensable at the employee’s applicable rate of pay, whether scheduled or not.

83. By engaging in the conduct explained above, Defendant paid Plaintiffs and Class Members \$0 for working off-the-clock.

84. By failing to compensate Plaintiffs and Class Members for the time spent engaging in “off-the-clock” work activities as described above identified above, Defendant failed to pay Plaintiffs and Class Members the Nevada Constitutional minimum wage for that uncompensated time in violation of the Nevada Constitution.

FOURTH CAUSE OF ACTION

(On Behalf of Plaintiffs and the Nevada Class Against Defendant)

91. As set forth above, the time spent performing the pre- and post-shift activities that are the subject of this action was performed after Plaintiffs and all other similarly situated individuals had worked at least 40 hours in a workweek and/or 80 hours in a 2-week work period. Therefore, the uncompensated activities in question were performed during overtime hours for which Plaintiffs and similarly situated class members were denied overtime compensation by Defendant as a result of its unlawful pay practices.

THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

10. For damages pursuant to Defendant's breach of contract;
11. For interest as provided by law at the maximum legal rate;
12. For reasonable attorneys' fees authorized by statute;
13. For costs of suit incurred herein;
14. For pre-judgment and post-judgment interest, as provided by law, and
15. For such other and further relief as the Court may deem just and proper.

DATED: April 19, 2017

/s/Mark R. Thierman

Mark R. Thierman
Joshua D. Buck
Leah L. Jones

Attorneys for Plaintiffs

Index of Exhibits

- A. Employment Research Corporation Expert Report Dated November 23, 2015
- B. Excerpts from Deposition of Brian Williams
- C. Operating Procedure 320
- D. Administrative Regulation 320
- E. Variable Work Schedule Request

THIERMAN BUCK LLP

7287 Lakeside Drive

Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027

Email info@thiermanbuck.com www.thiermanbuck.com

EXHIBIT A

***Employment Research Corporation
Expert Report
Dated November 23, 2015***

EXHIBIT A



Employment Research Corporation

305 E. Eisenhower Pkwy, Suite 316, Ann Arbor, MI 48108 ■ Phone: 734-477-9040 ■ Fax: 734-477-9060

November 23, 2015

Joshua Buck
Thierman Buck LLP
7287 Lakeside Dr.
Reno, NV 89511

Re: Donald Walden Jr. et al. v. The State of Nevada, Nevada Department of Corrections, and DOEs 1-50.

Dear Mr. Buck,

We were asked to conduct a survey for the purpose of determining whether or not employees of the Nevada Department of Corrections (NDOC) engaged in off-the-clock activities and the amount of time employees performed work activities for the defendant outside their regularly scheduled shift hours.

Background – Malcolm S. Cohen, PhD

I am the president of Employment Research Corporation, a firm located in Ann Arbor, Michigan, that specializes in employment and wage and hour research. I obtained my Ph.D. in Economics from MIT, with specialties in Econometrics and Labor Economics. After graduating from MIT, I worked for the U.S. Bureau of Labor Statistics in Washington, D.C. I have taught at the University of Maryland, the University of Michigan, and the University of Minnesota. The classes I have taught include Statistics, Economics, Labor Market Information, Human Resource Management, Human Resource Information Systems, and Econometrics. I served as Director of the Institute of Labor and Industrial Relations at the University of Michigan from 1980 to 1993. I have conducted extensive research on labor market issues, new hires, labor shortages and labor market information. I have written over 50 articles and books on related topics. I have either testified or been a consultant in over 1,000 audits or cases and testified over 150 times. I have also served as an expert to the EEOC and U.S. Department of Labor. I have prepared reports and testified in state and federal wage and hour cases. I have conducted, analyzed and evaluated numerous surveys. I have also conducted analyses of governmental and private sector databases.

Under contract to the Wage and Hour Division of the U.S. Department of Labor, I prepared detailed estimates of the number and characteristics of the exempt and non-exempt employees for congressionally mandated minimum wage studies published in June 1998 and January 2001. Also, under contract to the Wage and Hour Division, I prepared a report describing major changes in the U.S. economy and estimating how those changes would impact the viability of 29 CFR § 541 regulatory requirements (namely, The "New Economy" and Its Impact on Executive, Administrative and Professional Exemptions to the Fair Labor Standards Act (FLSA)). The DOL submitted each of these reports to the U.S. Congress for its information and use in considering proposed regulations and legislation. My Curriculum Vitae and disclosures are attached as Appendix A.

Employment Research Corporation

Background – Laura R. Steiner, MBA

I am the vice president of Employment Research Corporation. I obtained my Master's of Business Administration from Yale University. I have over 20 years' experience in project management, research design, survey research, analysis and consulting. I have designed and conducted surveys and analyzed and presented survey data in numerous matters, including consumer market research projects, user interface design projects, and in class action employment matters for plaintiffs and defendants. My Curriculum Vitae is attached in Appendix A.

Documents reviewed

The following information was reviewed in preparing our report:

1. The complaint in Donald Walden Jr. et al. v. The State of Nevada, Nevada Department of Corrections, and DOEs 1-50, dated May 9, 2014.
2. ORDER dated March 16, 2015.
3. Declarations of the following individuals:
 - a. Erica Brown, dated September 30, 2014.
 - b. Gilbert Ramirez, dated September 30, 2014.
 - c. Joel Tying, dated September 30, 2014.
 - d. Brent Everist, dated July 16, 2014.
 - e. Daniel Tracy, dated June 30, 2014.
 - f. Donald Walden, dated July 18, 2014.
 - g. Nathan Echeverria, dated June 30, 2014.
 - h. Gene Columbus, dated August 4, 2014.
 - i. Timothy Ridenour, dated June 29, 2014.
 - j. Travis Zufelt, dated July 22, 2014.
 - k. Joseph Allison, dated September 30, 2014.
 - l. Francisco Bautista, Jr., dated September 20, 2014.
4. Nevada Department of Corrections Administrative Regulation 326 Posting of Shifts/Overtime, dated July 20, 2010.
5. Page 3 of Posting of Shifts/Overtime OP 326 Southern Desert Correctional Center, dated November 6, 2013.
6. Email with the subject "FWD: 9/12 quad brief" from Aaron Dicus to Nathan Echeverria, dated May 10, 2014.
7. Excel files titled "Consents not on class list (Autosaved)," "Copy of CLASS LIST," "Missing Addresses and Duplicates," "NDOC-Class List – Consents," and "NDOC-Class List – Consents (Duplicates)" received on September 8, 2015.
8. Email dated September 11, 2015 from Tamara Toles indicating that Christopher Trautman and James Baumgras were dismissed from the lawsuit.



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9. Surveys of 220 respondents conducted by Employment Research Corporation.¹

Background

According to the complaint, plaintiffs claim that defendant NDOC failed to pay wages for all hours worked, including overtime, for time spent working “off-the-clock.” Plaintiff’s claim this “off-the-clock” work was required by defendant both before and after their scheduled shifts. This work included reporting to the supervisor or sergeant on duty for roll call/check in, receiving assignments for the day, passing a uniform inspection, collecting tools/gear needed for assignments, proceeding to designated work stations, participating in mandatory debriefing, returning tools/gear and for other off-the-clock pre-shift and post-shift activities.

It is our understanding that the time period of the analysis is from May 12, 2008 to the present.

Survey of Employees

In order to determine the incidence of unpaid pre- and post-shift work activities, we conducted a survey of potential claimants. Employees and former employees were asked about their employment status (current or former), work facility and post, days worked per week or two weeks, year-end pay rates, employment history, and work activities before and after scheduled shift times. In addition they were asked to estimate the time typically spent on work activities before and after their shifts, and to comment on their time estimates.

Survey Methodology

The survey was conducted in two waves, a pretest and final wave. We received a list of 2,945 potential class members, who were current and former employees of the Nevada Department of Corrections. We also received a list of people who signed consent forms. Twelve of those who signed consent forms were not on the original class list, and were added, to make 2,957 potential class members. From this, a list of 2,864 potential class members was used, after removing 1 duplicate, 2 people who were dismissed from the lawsuit, and 90 people for whom no address was available (marked “unable to locate” in the Excel file that was provided by defendant).² Employees were eligible to be contacted regardless of whether they signed consent-to-join forms (“opt-ins”) or not.

We randomly selected 200 potential class members from the list provided for the pretest wave. These individuals were sent a mail survey and cover letter with a self-addressed stamped envelope (see Appendix B for survey and cover letter). In the letter they were also offered an option to complete the survey by Internet or phone. Current and former employees who were randomly chosen for the pretest wave were additionally attempted to be contacted by phone for a phone survey. Because of the low mail response rate (3.5%), it was determined that only a phone survey would be done for the final wave.

¹ Telephone interviewing was conducted under Employment Research Corporation’s direction by Burnett Research, a survey research call center with over 25 years’ experience conducting telephone surveys and other research projects (see Appendix C for more information).

² Originally 99 people were marked as “unable to locate,” but nine of them had contact information in the Consents file.



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For the final wave, names were randomly chosen to be contacted by phone from September 29, 2015 until the closing date November 4, 2015. In total, we attempted to contact 886 current and former employees in the final wave. At least five attempts were made during daytime, evening and weekend times. No compensation was offered or provided for answering the survey.

The following procedures were put into place to reduce response bias.

- (1) A pretest of 200 randomly selected current and former employees was conducted to test survey procedures and to determine if respondents understood the questions. Mail surveys received and phone interviewer and supervisor feedback from telephone interviews were reviewed.
- (2) Mail/web pretest survey non-respondents, and all employees randomly selected for the final wave were contacted by phone at least five times during daytime, evening and weekend times to reduce bias in who answered the survey.
- (3) Phone surveys were conducted by trained and supervised interviewers according to established survey research practices.

The complete list of telephone survey questions, along with the cover letter and mailing for the pretest, are contained in Appendix B. Further information on the survey research calling company is available in Appendix C.

We requested data on characteristics of the class members, such as location worked and status as current or former employee. At the time of this report we have not received this information. Should we receive these items we can conduct bias testing based on this data. In addition, had the defendants provided this information in advance, we could have substantially shortened the length of the survey, which would be expected to increase the response rate.

Response Rate

The following table shows the number of respondents by method. As noted above, after the pretest, the methodology was changed to phone-based only.

Table 1: Summary of Survey Respondents, by Wave and Method

Wave	Interviews/Surveys Completed				Contacts Attempted	Response rate
	Phone	Web**	Mail**	Total		
Pretest	32	1	6	39	200	19.5%
Final	181	0	0	181	886	20.4%
Total	213	1	6	220	1,086	20.3%

** Pretest only

We can see from the table above that the receipt of a letter in addition to a phone call did not increase the response rate in the pretest.



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We also calculated a cooperation rate, or the number of completed interviews for sample elements in which a contact was verified. Many of the sample elements had disconnected phones, no answer or answering machine for all attempts made. The following table shows the cooperation rate in cases where a qualified respondent was reached.

Table 2: Cooperation Rate

Wave	Completes	Contacts made (completes + refusals + terms+ outstanding appointments)	Cooperation rate (Completes / contacts made)
Pretest	39	81	48.1%
Final	181	309	58.6%
Total	220	390	56.4%

More than half of qualified respondents reached by phone completed the survey.

Each individual for whom a contact was attempted was given a disposition. The dispositions were coded into the categories in Table 3. Full details of the dispositions and how they were coded is listed in Appendix D.

Table 3: Dispositions

Disposition	Wave		Total
	Pretest	Final	
Completed survey	39	181	220
Outstanding Appointment	0	2	2
Refusal	32	107	139
Termination mid-interview	10	19	29
No contact made	119	577	696
Total	200	886	1,086

Survey Results

The respondents included 47.3% current and 52.7% former employees. Employees worked at approximately twenty different locations, with some employees working at more than one location in the time period. See Appendix E for a list of these locations.

Respondents were asked to think about their assignments at the NDOC since 2008, and indicate activities they had ever done after going through the security check and before their scheduled shift start time, or after their scheduled shift end time. They were then asked to estimate the time they spent on pre- and post-shift work.



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Over 99% of the respondents indicated at least one work activity before their scheduled shift. Table 4 summarizes activities performed by the respondents before their scheduled shift began. Appendix F shows this table with only the final wave included.

Table 4: Work Activities Before Scheduled Shift Started (Q4a)

Activity	Number	Percent
Reporting to supervisor or sergeant on duty / muster	198	90.0%
Receiving assignments for the day	197	89.5%
Meeting with shift commanders for daily briefing	135	61.4%
Checking mailbox	182	82.7%
Passing uniform inspection	137	62.3%
Collecting tools needed for daily assignments, such as radios, keys, weapons, tear gas or handcuffs	200	90.9%
Debriefing by outgoing officer	188	85.5%
Other work activities	52	23.6%
One or more work activities before scheduled shift started	216	98.2%*
No listed work activities before scheduled shift started but gave pre-shift time estimate greater than 0 minutes.	2	0.9%
Performed pre-shift work activities (Listed one or more work activities before scheduled shift started and/or gave time estimate greater than 0 minutes for pre-shift activities)	218	99.1%**
No listed work activities before scheduled shift started and gave time estimate of 0 minutes.	2	0.9%
Total Respondents	220	100%

* Standard error of 0.9%

** Standard error of 0.6%

As shown in Table 4, above, the most common activities performed before work were reporting to supervisor or sergeant on duty / muster (90.0%), receiving assignments for the day (89.5%) and collecting tools needed for daily assignments (90.9%). Approximately 24% listed other work activities, which included escorting inmates and visitors, pat downs and writing reports.

Looking at activities after the scheduled shift ended, almost 96% of the respondents indicated that they performed at least one work activity after the scheduled shift. Everyone who reported performing work activities after their scheduled shift time also reported work activities before the scheduled shift. Table 5 summarizes activities performed by the respondents after their scheduled shift ended. Appendix F shows this table with only the final wave included.

**Table 5: Work Activities After Scheduled Shift Ended (Q4b)**

Activity	Number	Percent
Debriefing with the oncoming correctional officer	184	83.6%
Returning tools needed for daily assignments, such as radios, keys, weapons, tear gas or handcuffs	195	88.6%
Other work activities	65	29.5%
One or more work activities after scheduled shift ended	203	92.3%*
No listed work activities before scheduled shift started but gave post-shift time estimate greater than 0 minutes.	8	3.6%
Performed post-shift work activities (Listed one or more work activities after scheduled shift ended or gave time estimate greater than 0 minutes for post-shift activities)	211	95.9%**
No listed work activities after scheduled shift ended and gave time estimate of 0 minutes	9	4.1%
Total Respondents	220	100%

* Standard error of 1.8%

** Standard error of 1.3%

As shown in Table 5, above, the most common activity performed after work was returning tools (88.6%). Approximately 30% listed other work activities, which included checking or dropping off mail, report writing, and signing and turning in paperwork.

Looking at activities both before and after the scheduled shift, over 99% of respondents indicated that they performed at least one work activity outside of the scheduled shift time or gave a time estimate of more than 0 minutes for pre- or post-shift activities.

In total, respondents indicated that they performed an average of 28.0 minutes of work outside their scheduled shift time daily (95% confidence interval of 26.2 to 29.7 minutes).³

On average, respondents spent 15.9 minutes on pre-shift work.⁴ Example comments about this time were:

- “The posts were very far away. You had to speak to your supervisor and find your post. Post assignments were not routine. Say I was tower officer, but they needed overtime for the day, I could call my supervisor and tell them I would do overtime but I want to be tower officer, they would

³ Based on 220 respondents.

⁴ 95% confidence interval of 14.8 to 17.1 minutes



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bump my post. I always got there about 30 minutes prior to my post, because of how long it took to walk there.”

- “It depends on where you need to go, because some places are farther than others, some posts you don't need to relieve anybody but other times you got a good 30 or 40 minute walk so you got to get there really early.”
- “It was an unspoken mandatory thing they wanted for everyone. It was extremely timely for people to have to be there a half hour early.”
- “Normally it would take 5 minutes to walk to the unit, so we had to be there 15 minutes earlier. We were there 20 minutes earlier every day. If you had to do anything else, like check your mailbox, you had to show up even earlier, or do it at the end of the shift. We were instructed we were supposed to be on post 15 minutes before the shift start. That wasn't always the case, but more than not we would have to show up 20 minutes early to be on time.”
- “Your shift does not start until 6, and you don't get paid until 6, so you have to get there early without pay.”
- “We have to arrive there at least between 15 to 20 minutes to check in so we can relieve the officer at the unit there, that way we're not late relieving them on time. We don't get paid for being there 20 minutes early and checking in.”
- “Part of it would be clearing security. That could take close to 10 minutes. We would have to check the unit inboxes for unit mail. That could take about 8 minutes. Then there is checking in with the supervisor to see your assignments. I would get there early.”

On average, respondents spent 12.1 minutes on post-shift work.⁵ Example comments about this time were:

- “Mostly it's when someone arrives on shift on the hour you have to let them know what's going on. You have to return gear and make sure it's all there, and then get on out the door.”
- “Sometimes walking back and turning in equipment. Sometimes stopping by a supervisor and explaining what happened that day, or filling out a report.”
- “I would get my report together and debrief ongoing officers.”
- “Distance between some posts to main prison, dropping off keys or radio and logging in inmate property or evidence and turning in reports. Parking and walking off prison grounds for inmate hospital duty.”
- “We were not allowed to leave until our reports were finished or if an event happened we would stay to make sure the other officers were covered.”

Damages

Based on the survey answers, we constructed a damages illustration. For each respondent we used the reported hourly wage and schedule in each year, together with their estimated off-the-clock time worked each day. We assumed that all “off-the-clock” hours were owed pay at the overtime rate (1.5

⁵ 95% confidence interval of 11.2 to 13.0 minutes

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times the hourly rate).⁶ The total amount of damages for the 220 survey respondents is \$2,087,062, or an average of \$9,487 per respondent.

This damages illustration could be updated to include the entire class if we were to receive additional information such as payroll records, dates of employment, and other information. It is our understanding that this information was requested but has not been received.

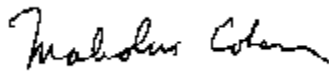
Summary

Based on the survey data, at least 99% of respondents performed work activities before or after their shift. Respondents spent an average of almost 16 minutes performing work duties before their shift began, and an average of over 12 minutes after their shift ended, with an average of 28 minutes a day.

The average survey respondent had damages of approximately \$9,500.

The contents of this report represent my opinion to a reasonable degree of professional certainty. This report is based on analysis conducted by ourselves or by members of the staff of Employment Research Corporation under my direction. We reserve the right to alter our opinion should additional information become available.

Sincerely,



Malcolm S. Cohen, Ph.D.
President
Employment Research Corporation



Laura R. Steiner, MBA
Vice President
Employment Research Corporation

⁶ We assumed 50 weeks per year to account for vacation.



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305 E. Eisenhower Pkwy, Suite 316, Ann Arbor, MI 48108 ■ Phone: 734-477-9040 ■ Fax: 734-477-9060

APPENDIX A

1– CURRICULUM VITAE OF DR. MALCOLM S. COHEN

2 – CASES DR. COHEN TESTIFIED IN LAST FOUR YEARS

3 – CURRICULUM VITAE OF Ms. LAURA R. STEINER

4 – CASES Ms. STEINER TESTIFIED IN LAST FOUR YEARS

5 – RATES CHARGED FOR THIS CASE

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1 — Curriculum Vitae

Malcolm S. Cohen

Employment Research Corporation
305 E. Eisenhower Parkway, Suite 316
Ann Arbor, Michigan 48108
Telephone: (734) 477-9040
Fax: (734) 477-9060
mc@employmentresearch.com

Current Position

President, Employment Research Corporation, 1997-present

Previous Positions

Lecturer, Statistics, Human Resources Management and Human Resource Information Systems, Industrial Relations Center, Carlson School of Management, University of Minnesota, 1994-1996

Institute of Labor and Industrial Relations, University of Michigan

Director, 1980-1993

Co-Director of Research, 1973-1993

Associate Director of Research, 1972-1973

Associate Research Scientist, 1986-1994

Assistant Professor, University of Michigan, 1968-1972

Economist, U.S. Bureau of Labor Statistics, 1967-1968

Education

Ph.D., Economics, Massachusetts Institute of Technology, 1967

B.A., Economics, Summa Cum Laude, University of Minnesota, 1963

Professional Affiliations

Labor and Employment Relations Association

National Association of Forensic Economics

Economic and Statistical Consulting

Analyzed mitigation of efforts of individuals to find jobs in wrongful termination and other employment matters.

Prepared analyses of economic loss in cases involving wage and hour, premature death, injury, termination from work, and age, race, and gender discrimination. Worked on analyses for plaintiffs and defendants. Appeared as an expert witness in depositions and trials. Prepared affidavits, reports, and computer analyses

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Presented a paper to the American Board of Vocational Experts (ABVE) annual meeting on how to use help wanted advertisements and labor market data to determine mitigation efforts of individuals, 2015.

Directed study of the impact of the New Economy on the overtime provisions of the Fair Labor Standards Act for the U.S. Department of Labor, 2001

Faculty, 29th Annual Labor and Employment Law Institute, sponsored by the Institute for Continuing Legal Education, the Michigan Law Schools, and The Michigan State Bar Association and the FMCS, 2004

Consultant to Migration Institute on Guest Workers for the U.S. Department of State, 2002

WHO Temporary Advisor, World Health Organization, 2002

Directed study for the Corporation for Public Broadcasting to assess the training needs of Public Broadcasting employees through the year 2000. Study completed in 1995

Consultant to Time-Life's *Money Magazine*, 1995

Consultant to Wage-Hour Administration on analysis of Minimum Wage Coverage, 1997 and 2000

Consultant to the Advisory Council on Unemployment Insurance, 1995

Called in as a consultant to the federal government's Cost of Living Council. The assignment involved estimating the economic impact of fringe benefit and pension plans on labor costs and employee compensation

Lecturer on occupational forecasting and career opportunities

Consultant to Washtenaw County, Michigan, to determine patterns in wage and job status by gender and race

Prepared review of human investment programs in Michigan for the Senate Fiscal Agency

Commissioned by the Secretary of Labor's Commission on Labor Quality to do a study of the US Employment Service

Consultant in data base management

Guest of Jane Pauley on the TODAY show to discuss the impact of unemployment

Research Assistant to Robert Solow while he was a member of the National Commission on Technology, Automation and Economic Progress. Wrote "The Effect of Wages on the Relative Employment of Unskilled Labor" for the Commission, which was published in its report

Selected Publications

"Using Online Help-Wanted Advertising Data and Other Indicators to Access Whether a Plaintiff's Job Search was Sufficient to Mitigate Damages" with Laura R. Steiner, *The Earnings Analyst, Official Journal of the American Rehabilitation Economics Association*, vol. 13, 2013: 13-34

"Measuring Global Skills Shortages" with Professor Mahmood A. Zaidi, *The Sterling Public Servant, A Global Tribute to Sylvia Ostry*. Quebec: McGill-Queen's University Press, 2004.

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Global Skill Shortages with Professor Mahmood A. Zaidi. Cheltenham, UK: Edward Elgar Publishing, 2002.

The "New Economy" and Its Impact on Executive, Administrative and Professional Exemptions to the Fair Labor Standards Act (FLSA) with Don Grimes, U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, January 2001.

"Global Skill Shortages" with Mahmood A. Zaidi, *Proceedings of the Forty-eighth Annual Conference on the Economic Outlook*. Ann Arbor: Research Seminar in Quantitative Economics, University of Michigan, November 2000.

"Labor Shortages, Pay and Training in NAFTA Countries" with Mahmood A. Zaidi, *The North American Journal of Economics and Finance*, vol. 9 No. 1, (1998): 89-103.

Labor Shortages: As America Approaches the Twenty-first Century. Ann Arbor: University of Michigan Press, 1995.

"Labor Force Trends and Their Relationship to the Trucking Industry." *Changing Trucking to Match a Changing Work Force*. SP-979 Warrendale: Society of Automotive Engineers, November, 1993.

"Boom or Bust? Are There Skill Shortages in Professional and Executive Occupations?" *Workforce 1*, no. 1 (Spring 1992):31-7.

"The Labor Shortages of the 1990s." *The Economic Outlook for 1992, proceedings of the Thirty-ninth Annual Conference on the Economic Outlook*. Ann Arbor: Research Seminar in Quantitative Economics, University of Michigan, November 1991.

"Strategic Planning for Employment and Training." *Evaluation Forum*, no. 8 (February, 1991):15-20.

"Research Expectations in IR and HR Units: Views of Internal and External Constituencies." *Proceedings of the Industrial Relations Research Association Annual Meeting*. Madison: Industrial Relations Research Association, University of Wisconsin.

"The Role of the Employment Service" with David W. Stevens. *Investing in People, A Strategy to Address America's Workforce Crisis*. Washington, DC: Commission on Workforce Quality and Labor Market Efficiency, US Department of Labor, September 1989.

"Developing A Wage Record Archive: Some Implementation Issues." *The Feasibility of a National Wage Record Database: Four Working Papers*. Washington, DC: Northeast-Midwest Institute, January 1989.

"Unions and Jobs: The US Auto Industry--Comment" with George A. Fulton. *Journal of Labor Research* VIII, no. 3 (Summer 1987):307-10.

"The Economic Outlook for the Metropolitan Areas of Michigan" with George A. Fulton and Donald R. Grimes. *The Economic Outlook for 1987, proceedings of the Thirty-fourth Annual Conference on the Economic Outlook*. Ann Arbor: Research Seminar in Quantitative Economics, University of Michigan, November 1986.

"Structural/Frictional vs. Deficient Demand Unemployment: Comment" with Arthur R. Schwartz and Donald R. Grimes. *American Economic Review* 76, vol. 1 (March 1986):268-72.

"Deriving Labor Turnover Rates from Administrative Records." *Record Linkage Techniques--1985*. Washington, DC: US Department of Treasury, Internal Revenue Service, December 1985.

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"New Hires by Industry and Area" with Arthur R. Schwartz. *The Economic Outlook for 1984, proceedings of the Thirty-first Annual Conference on the Economic Outlook*. Ann Arbor: Research Seminar in Quantitative Economics, University of Michigan, November 1983.

Methodology for Determining Whether There are Sufficient Workers Available in Various Occupations: An Aid in the Certification of Immigrants, with Arthur R. Schwartz. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, July 1982.

"New Measures of Labor Turnover" with Arthur R. Schwartz. *Monthly Labor Review* 103, vol. 11 (November 1980):9-13.

A Study of On-Line Use of Job Information in Employment Service Local Offices. 2 vols. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, October 1975.

"The LMIS Model: An Econometric Model of Local Urban Labor Markets" with C. Russell Hill and Harold T. Shapiro. *1974 Proceedings of the Business and Economic Statistics Section - American Statistical Association*. Washington, DC: American Statistical Association, 1974.

On the Feasibility of a Labor Market Information System, 3 vols. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, July 1974.

"A Life Cycle Model of the Household's Time Allocation" with Frank P. Stafford. *Annals of Economic and Social Measurement* 3, vol. 3 (July 1974):447-62.

"A Model of Work Effort and Productive Consumption" with Frank P. Stafford. *Journal of Economic Theory* 7, vol. 3 (March 1974):333-47.

"A Monte Carlo Study of Complex Finite Distributed Lag Structures" with Robert Gillingham and Dale Heien. *Annals of Economic and Social Measurement* 2, vol. 1 (February 1973):53-63.

"Area Employment Conditions and Labor Force Participation: A Microstudy" with Robert I. Lerman and Samuel A. Rea, Jr. *Journal of Political Economy* 79, vol. 5 (September-October 1971):1153-63.

"Sex Differences in Compensation." *Journal of Human Resources* VI, no. 4 (Fall 1971):434-47.

"Labor Market Information Project." *Statistical Reporter* no. 72-1 (July 1971):2-4.

"The Behavior of Help-Wanted Advertising: A Reply" with Robert Solow. *Review of Economics and Statistics* LII, vol. 4 (November 1970):442-3.

A Micro Model of Labor Supply, with Samuel A. Rea, Jr. and Robert I. Lerman. Washington, DC: US Department of Labor, Bureau of Labor Statistics, 1970.

"Quantitative Methods: Models and Simulation - A Summary of Techniques." Proceedings of the 1969 Annual Forum, Association for Institutional Research. Chicago: Association for Institutional Research, 1970.

"The Direct Effects of Federal Manpower Programs in Reducing Unemployment." *Journal of Human Resources* IV, vol. 4 (Fall 1969):491-507.

"Married Women in the Labor Force." *Monthly Labor Review* 92, vol. 10 (October 1969):31-5.

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"Micro Data In Manpower Study." *Monthly Labor Review* 92, vol. 4 (April 1969):53-4.

"The Micro Approach to Manpower Research." *Proceedings of the Twenty-First Annual Winter Meeting, Industrial Relations Research Association*. Madison: Industrial Relations Research Association, University of Wisconsin, 1969.

"The Behavior of Help-Wanted Advertising" with Robert Solow. *Review of Economics and Statistics* XLIX, vol. 1 (February 1967):108-10.

"Variability by Skill in Cyclical Unemployment" with William H. Gruber. *Monthly Labor Review* 90, vol. 8 (August 1967):8-11.

"The Effect of Wages on the Relative Employment of Unskilled Labor." *Adjusting to Change. Appendix Volume III, Technology and the American Economy, The Report of the National Commission on Technology, Automation, and Economic Progress*. Washington, DC: US Government Printing Office, 1966.

"Labor Unions and the Antitrust Strawman." *Labor Law Journal* (February 1963):201-15.

Papers Presented at National and International Professional Associations

"FELA/Railroad Workers: A Case Analysis from an Economic Perspective" presented to the American Rehabilitation Economics Association, (AREA), Reno, Nevada, June 5, 2015

"WANTED Technologies: One Billion Help Wanted Advertisements Database: Uses & Limitations."
Presented by Malcolm Cohen, Ph.D. at: American Board of Vocational Experts (ABVE) 2015 Annual Conference, San Antonio, TX, March 21, 2015, co-authored by Malcolm S. Cohen and Laura R. Steiner

"A Scientific Approach to Mitigation of Economic Damages in Discrimination and Wrongful Discharge" presented by Dr. Cohen to National Association of Forensic Economists (NAFE) Forensic Economics II Session at the 2012 ASSA Meeting, Chicago, IL, January 7, 2012, co-authored by Malcolm S. Cohen and Laura R. Steiner

"FELA/Railroad Workers: A Case Analysis from an Economic Perspective" presented to the American Rehabilitation Economics Association, (AREA), Chicago, IL, June 13, 2009

"Executive Compensation – The Bubble has Burst" seminar presented with Arnstein and Lehr LLP, Chicago, IL at the American Bar Association Conference, Key West, FL, March 27, 2009

"Choosing a Measure of Worklife" presented to the American Rehabilitation Economics Association, (AREA), Pittsburgh, PA, May 17, 2008

"Globalization, Skill Shortages and Surpluses in Selected Countries" session title: Can Labor Markets of the Network Economy Cope with Economic Shocks and World Political Uncertainty International Industrial Relations Association, 13th World Congress, Frankfurt, Germany, June 30, 2003

"Global Skill Shortages in the 21st Century" with Mahmood Zaidi, Carlson School of Management, University of Minnesota at the International Industrial Relations Association 12th World Congress, Tokyo, Japan, May 29, 2000.

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"Labor Shortages and Pay Across National Borders" with Mahmood Zaidi, Carlson School of Management, University of Minnesota at the International Industrial Relations Association 11th World Congress, Bologna, Italy, September 23, 1998.

"Labor Shortages, Pay and Training in North America" with Mahmood Zaidi, Carlson School of Management, University of Minnesota at the Industrial Relations Research Association and The North American Economics and Finance Association joint session in Chicago, IL, January 3, 1998.

"Pay and Shortages" with Mahmood Zaidi, International Industrial Relations Association Study Group on Pay Systems, New Orleans, LA, January, 1997.

"Economic Conditions in the Construction Industry." Sheet Metal Contractors Association, Detroit, Nov. 18, 1992.

"The Future of the Trucking Industry: Labor Force Trends." Society of Automotive Engineers, Truck and Bus Meeting, Toledo, November 17, 1992.

"Measuring Engineering Shortages." Conference on "Engineers in America's Future: Shortage or Surplus?" Sponsored by the Engineering Manpower Commission of the American Association of Engineering Societies, Washington, DC, September 11, 1991.

"Measurement of Labor Shortages." Industrial Relations Research Association, 43rd annual meeting (joint session with the North American Economics and Finance Association), Washington, DC, December 28, 1990.

"Strategic Planning for Employment and Training." National Employment Service/Labor Market Information Directors' Conference, Dearborn, Michigan, May 2-4, 1990.

"Labor, Leisure and Amenities over the Day" with Frank P. Stafford. Econometric Society, New Orleans, December 27, 1971.

"The Effects of Family Income and Area Employment Conditions on Labor Force Participation--A Micro Study" with Robert I. Lerman and Samuel A. Rea, Jr. Annual Meeting of the Allied Social Science Associations, New York, December 30, 1969.

Other Teaching and Related Experience

Taught seminar in Quantitative Economics, a second-year graduate course covering applied topics in econometrics, University of Maryland, Spring 1968.

Taught Intermediate Micro, Macro Economic Theory, Human Capital, and Labor Economics, in the Department of Economics, University of Michigan, 1968-80.

Chairman, Management Information System Team, a team charged with responsibility for determining the University of Michigan's management information requirements, 1969.

Chairman of the Program for Human Resource Development at the University of Michigan, a Rackham graduate certificate program, varied terms, 1975-88. The program was initially located in the Vocational Education Department within the School of Education from 1976-1978.

Adjunct Research Scientist in the Urban Technological Environmental Planning Department, 1986-89.

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Labor Economist, US Bureau of Labor Statistics, Washington, DC, 1967-68.

Other Selected Papers Presented

Speaker at Labor and Employment Law Section, State Bar of Nevada, Las Vegas, Nevada, April 8, 2011

"How Economic and Statistical Research Can Provide a Scientific Basis for Testimony in Mitigation and Discrimination Cases," presented at Cleveland Inns of Court February 10, 2011

"Avoiding Employment Audits and Class Actions in an Era of Increased Enforcement" presented by ALI-ABA, January 26, 2011

"Measuring Labor Shortages and Surpluses" presented at the Midwest Innovation Initiative: Innovations in Labor Market Information – Institute for Work & the Economy, Chicago, IL July 21, 2009

"Measuring Labor Shortages" presented at the Labor Shortages and Comprehensive Immigration Reform Conference – Employment Policy Institute Economic Policy Institute Shortages Conference, Washington, DC, May 20, 2009

"The Comprehensive Employment Audit" presented to Livingston Area Human Resource Association (LAHRA), May 20, 2008

"Conducting an Employment Audit" presented to Greater Ann Arbor Society for Human Resource Management (GAASHRM), January 9, 2007

"The Comprehensive Employment Audit" seminar presented with Arnstein and Lehr LLP, Chicago, IL, June 21, 2006

"How Not to Lie with Statistics, Using Statistics in Discrimination Cases" presented to the Miller & Martin Academy, Atlanta, GA, February 2006

"How Economic Research Can Provide a Scientific Basis for Measuring Compensation Loss and Failure to Mitigate Damages" 29th Annual Labor and Employment Law Institute, sponsored by the Institute for Continuing Legal Education, the Michigan Law Schools, the Michigan State Bar Association and the FMCS, April 1, 2004

"Cross Country Institutions and Outcomes" (discussant). National Bureau of Economic Research, Inc. Universities Research Conference on Labor in the Global Economy, Cambridge, MA, May 12, 2001.

"The Employment Effects of Environmental Protection — A comment," University Of Michigan School of Natural Resources Conference on the Effect of Environmental Hazards on Minorities, January 24, 1993.

"Employment Prospects for Michigan." Venture Capitol Seminar, Grand Rapids, October 15, 1992.

"Labor Shortages: Myth or Reality?" The Staffing Industry Executive Forum, Chicago, June 2, 1992.

"Grand Rapids Growth: A Forecast for the Future." Economic Club of Grand Rapids (guest of honor and speaker), Grand Rapids, Michigan, January 13, 1992.

"Workforce Trends 1988-2000." Conference on "Economy 1990/2010," sponsored by the Southeast Michigan Council of Governments, Detroit, Michigan, April 16, 1991.

Employment Research Corporation

"Labor Force Trends in the Year 2000." University of Michigan Alumni Association, Ann Arbor, Michigan, November 20, 1990.

"Future Labor Force Trends." Taubman Company Employee Conference, Detroit, Michigan, October 4, 1990.

"Causes and Cures of Labor Shortages." Conference sponsored by the New Jersey Business and Industry Association and the Hon. Frank Lautenberg, Newark, NJ, October 2, 1990.

"Computers and the Public Employment Service of the Future." Conference on "Job Placement Technology for the 1990s." Sponsored by the US Department of Labor, Employment and Training Administration, Marina Del Rey, California, July 25, 1990.

"The Impact of Future Economic Trends on Labor." Walter and May Reuther Family Education Center, On3away, Michigan, February 1990.

"The Outlook for Muskegon." Chamber of Commerce breakfast, Muskegon, Michigan, May 19, 1988.

"What's Hot and What's Not in Today's Job Market." Wayne Counselor Academy, Flat Rock, Michigan, November 18, 1987.

"Alternatives to a Public Employment Service." Conference on "Work and the US Economy in the Year 2000." Sponsored by the US Department of Labor and the University of Southern California, Los Angeles, May 21, 1987.

"The Outlook for Southeast Michigan." Detroit Association for Business Economists, Dearborn, Michigan, February 28, 1985.

"Career Alternatives for Advanced Degree Holders." Rackham Graduate School conference on "Graduate Employment Opportunities." University of Michigan, Ann Arbor, February 11, 1984.

"Economics of Information" (panelist). American Society for Information Science, Boulder, Colorado, November 1971.

"The Outputs of the Labor Market Information Project." Second Annual Research and Reports Conference, United States Employment Service, Milwaukee, Wisconsin, October 1971.

"Manpower Planning and the 1970 Census." Southeastern Michigan Census Users Conference, Detroit, Michigan, June 1971.

"Micro Data and Labor Market Information." Michigan International Association of Personnel in Employment Security, Ann Arbor, Michigan, May 1971.

"Microdata Requirements and Public Policy" (discussant). National Bureau of Economic Research Workshop Series on the Computer and Applied Econometrics, Workshop on the Use of Microdata Sets in Economic Analysis, at the Brookings Institution, Washington, DC, October 22, 1970.

"The Micro Approach to Manpower Planning." International Manpower Seminar sponsored by the US Department of Labor, Washington, DC, June 1970.

Employment Research Corporation

Other Publications

"Study on the Feasibility of Using Labor Market Information for Alien Labor Certification Determination." In a joint edition of *Labor Notes* and *Labor Market Inform-the-Nation*. Washington, DC: National Governors' Association Center for Policy Research Training and Employment Program; and Interstate Conference of Employment Security Agencies, Inc., December 1990.

Occupational Employment Forecasts for the Flint SMSA, 1985-1986, with Arthur R. Schwartz and Donald R. Grimes. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, September 1985.

"US Labor Turnover: Analysis of a New Measure" with Arthur R. Schwartz. In *A Summary of ESP Results: Selected Research and Data by State*. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, March 1981.

"A Time-Series Forecasting Model of New Hires in California" with Alan Kett. In *Proceedings of the Employment Service Potential Meeting*. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, September 1979.

"A Feasibility Study of the Data Needed to Evaluate the Targeted Jobs Tax Credit Program" with Robert C. Bressan. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, August 1979.

A Time Series Forecasting Model of New Hires in California, with Alan Kett. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, July 1979.

"Estimates of State New Hire Rates" with Arthur R. Schwartz. In *Proceedings of the Employment Service Potential Conference*. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, November 1978.

Civilian Labor Force, Employment and Unemployment Forecasts, Michigan, East and Central Major Areas, with Harold T. Shapiro, Arthur R. Schwartz, and Alan Kett. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, June 1977.

Civilian Labor Force, Employment and Unemployment Forecasts, Southeast Michigan, with Harold T. Shapiro, George A. Fulton, and Arthur R. Schwartz. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, June 1977.

Civilian Labor Force, Employment and Unemployment Forecasts, Michigan, Western Major Areas, with Harold T. Shapiro, Arthur R. Schwartz, and Alan Kett. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, June 1977.

Civilian Labor Force, Employment and Unemployment Forecasts, State of Michigan, with Harold T. Shapiro and George A. Fulton. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, May 1977.

Civilian Labor Force, Employment and Unemployment Forecasts: Multi-County Balance of State Areas, with Harold T. Shapiro, Arthur R. Schwartz, Alan Kett, and Philip Mirowski. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, May 1977.

Wage and Salary Forecast, Michigan, with Arthur R. Schwartz. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, November 1976.

Employment Research Corporation

Civilian Labor Force, Employment and Unemployment Forecasts: Allocation to Prime Sponsors. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, June 1976.

Technical Appendix for An Econometric Model of a Local Urban Labor Market: The Jackson SMSA. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, August 1, 1976.

Civilian Labor Force, Employment and Unemployment Forecasts for the Flint SMSA. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, December 2, 1975.

An Econometric Model of a Local Urban Labor Market: The Flint SMSA. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, December 2, 1975.

An Econometric Model of a Local Urban Labor Market: The Denver, Colorado SMSA. Ann Arbor: Institute of Labor and Industrial Relations, University of Michigan, March 30, 1975.



2 — CASES TESTIFIED IN PAST FOUR YEARS

Cite	Deposition Date	Trial Date	Court	Case Number	Plaintiff or Defendant	Type
John Dec et al v Jerry Haggerty Chevrolet	11/11/2015		USDC Northern District of Illinois, Eastern Division	14 cv 00393	D	Mitigation
Anthony Zaya et al v Evanston Hospital et al		10/21/2015	Circuit Court of Cook County, Illinois	2010 L 6533	P	Injury Life Care Plan
Michael Parsons v Norfolk Southern	10/07/2015	11/17/2015	Circuit Court of Cook County, Illinois	2011 L 009265	P	Injury
Hostetler v Johnson Controls	09/16/2015			IN 59-00062	P	Survey Statistics
Missner v. Clifford	07/16/2015		Circuit Court Cook County, Illinois County Department, Law Division	06 L 012632	P	Economic Loss
Anthony Zaya Life Care Plan Evaluation	06/23/2015		Circuit Court of Cook County, Illinois	2010 L 6533	P	Injury
Kimberly Hartman v Dow Chemical		04/10/2015	USDC, Eastern District of Michigan, Northern Division, Bay City	13-14774-BC	D	Mitigation
Robert Walworth v MetroHealth	11/24/2014		Michigan Circuit Court, Kent County	13-1 1630-NH	P	Economic Loss
300 W Adams v Collazo et al Counter Claim	11/19/2014		Circuit Court of Cook County, Illinois County Department, Law Division	2013 L 00828	D	FLSA
Hoxsey and Limbacher v. McKinley, Inc. and Albert L. Berriz	11/12/2014		American Arbitration Association		D	Mitigation
Chance Kelham v. CSX Transportation	10/30/2014		USDC Northern District of Indiana, Hammond Division	12-CV-316	P	Injury
Hardie v. NCAA	10/14/2014		USDC Southern District of California	13CV0346 W DHB	D	Discrimination
Rick Riley et al v Mark Frank et al		06/18/2014	Common Pleas, Fulton County Ohio	12-CV-151	P	Injury
Harishkumar Patel v Reinalt-Thomas Corp., Goodyear	06/17/2014		Michigan Circuit Court, Berrien County	12-0336-NP	D	Injury
Nathan Horton v Delray Connectiong Railroad et al	06/04/2014		USDC, Eastern District of Michigan, Southern Division-Detroit	2:12-CV-15532	P	Injury
Wilson v Schell M.D.et al.	03/05/2014		State of Michigan, Circuit Court of Saginaw County	10-011155-NH-1	D	Malpractice
Brian Blair v CSX	02/04/2014	02/18/2014	Court of Common Pleas, Hamilton County, Ohio	A1102261	P	Injury
David Buszka v. Dairyland Excavating	01/10/2014		State of Michigan, Circuit Court, Montcalm County	12-K-16375-NO	P	Injury
John Kellogg v BNSF	07/12/2013		USDC Northern District of Illinois	1:11-CV-7603	P	Injury



Employment Research Corporation

Cite	Deposition Date	Trial Date	Court	Case Number	Plaintiff or Defendant	Type
Angelita Stevenson v Amtrak		06/19/2013	Circuit Court of Cook County in Chicago	08 L 000839	P	Injury
James Maratta v P C & I Security & Technologies Inc.		05/07/2013	State of Michigan, Circuit Court, Saginaw County	12-015786-CK-2	D	Injury
Schweihs Chase Home Finance v Safeguard Properties	05/01/2013		Circuit Court of Cook County, Illinois	10 L 11302	P	Economic Loss
Black and Black v. Kerzner International Holdings Ltd.	04/25/2013		USDC Southern District of Florida, Miami Division	12-CV-60301-WPD	D	Injury
Gutierrez v Reichert Excavating		02/26/2013	USDC, Southern District of Ohio, Columbus Division	2:11-CV-0396	P	Injury
Monise King v Beaumont		11/27/2012	USDC, Eastern District of Michigan	2:10-CV-13623	D	Mitigation
Plouffe v GM		Hearings 12/06/2012 11/19/2012 11/01/2012	State of Michigan, Third Circuit Court	11-007645-CL	D	Discrimination
Stransky et al. v HealthOne of Denver	10/24/2012		USDC, District of Colorado	11-CV-02888-WJM-MJW	P	FLSA
Lawrence Mathews v Meharry Medical College		10/17/2012	State of Tennessee, Circuit Court for Davidson County, 20th Judicial District	10C4751	D	Discrimination
David Bliss v BNSF	09/18/2012	05/20/2014	USDC of Nebraska	4:12-CV-3019	P	Injury
OFCCP v VF Jeanswear, Inc.	09/13/2012		US Department of Labor Office of Administrative Law Judges	2009-OFC-00008	D	Discrimination
Charles Sunnycalb v CSX		08/28/2012	Potter Stewart U.S. Courthouse, Cincinnati	1:10-CV-192	P	Injury
Castor, et al v. R.H. Marlin, Inc., et al.	06/27/2012		Wayne Superior Court, Indiana.	89DOI-1107-CT-00041	P	Injury
Kopf v Norfolk Southern		05/01/2012	Lucas County Court of Common Pleas, Toledo Ohio		P	Injury
Walsh v Kraft Foods		04/20/2012	Circuit Court, State of Michigan, Bay County	10-3663-NZ-KS	D	Mitigation
Estate of George Harris v E&R Towing	01/11/2012	01/23/2013	Circuit Court of Cook County, Illinois	09 L 8841	P	Death
Jim Shindler v University of Toledo	12/16/2011	02/14/2012	State of Ohio, Court of Claims, Columbus, OH	2010-13148	P	Injury
Camilotes v Resurrection Health		12/01/2011 Report	USDC, Northern District of Illinois, Eastern Division	10-CV-366	D	FLSA
Wendy Arrington v ATT Midwest, Michigan Bell	11/29/2011		USDC Eastern District of Michigan, Southern Michigan	2:10-CV-10975	P	FLSA



3 — Curriculum Vitae

Laura R. Steiner

Employment Research Corporation
305 E. Eisenhower, Suite 316
Ann Arbor, Michigan 48108
Telephone: (734) 477-9040
Fax: (734) 477-9060
lauras@employmentresearch.com

Current Position

Vice President, Employment Research Corporation, 2002-present

Previous Positions

Director, Marketing Consulting, User Interfaces, 2000-2002
Senior Consultant, Employment Research Corporation, 1997-1999
Account Executive/Group Manager, PERT Survey Research, 1993-1997
Manager, Analysis Group, PERT Survey Research, 1992-1993
Coordinator, Ethnic Advertising and Customer Satisfaction Programs, United States Postal Service, Northeast Regional Headquarters, 1990-1992

Education

MBA, Yale School of Management, 1991
BA, Comparative Literature, Magna Cum Laude, with high distinction, University of Michigan, 1987

Legal and Economic Consulting

Managed full-scale employment audits for large corporations in various industries. Audits included analysis of issues such as workforce, promotions, terminations, compensation and hiring. Worked with clients to design surveys and prepare instructions to collect internal company feedback from various regional offices.

Managed review, coding and analysis of human resources documents including job applications and personnel files in OFCCP and EEOC audits and other legal matters. Participated in negotiations with corporate, legal, and government representatives.

Prepared analyses of economic loss in cases involving premature death, injury, termination from work, and age, race, and gender discrimination. Worked on analyses for plaintiffs and defendants.

Conducted studies of employment mitigation including labor market analyses and evaluations of job market opportunities for given time periods and geographic areas.

Employment Research Corporation

Performed occupational analyses to determine overtime exemptions under the FLSA. Studies were based on interviews, observations, surveys, and in-depth review of documents such as job descriptions, personnel files, job postings, and performance evaluations.

Calculated damages in wage and hour cases under the FLSA and other state and local labor regulations. Conducted surveys to estimate time worked, and relied on payroll data, timekeeping data, and other information to estimate unpaid wages and penalties owed to plaintiffs.

Conducted studies of route assignments and account assignments. Analyzed all routes nationwide across multiple years of data. Benchmarked results to census population data to measure employee assignments into neighborhoods of various demographic compositions. Co-directed study for the Corporation for Public Broadcasting to assess the training needs of Public Broadcasting employees through the year 2000. This study addressed a variety of issues relating to diversity including staffing, programming, and audience demographics. Study completed in 1995.

Other Professional Experience

Author of "WANTED Technologies: One Billion Help Wanted Advertisements Database: Uses & Limitations." presented by Malcolm Cohen, Ph.D. and Laura R. Steiner, MBA at: American Board of Vocational Experts (ABVE) 2015 Annual Conference, San Antonio, TX, March 21, 2015, co-authored with Malcolm S. Cohen.

Author of "A Scientific Approach to Mitigation of Economic Damages in Discrimination and Wrongful Discharge" Presented by Malcolm Cohen, Ph.D. at: National Association of Forensic Economists (NAFE) Forensic Economics II Session at the 2012 ASSA Meeting, Chicago, IL, January 7, 2012, co-authored with Malcolm Cohen, Ph.D.

Author of "How Economic Research Can Provide a Scientific Basis for Measuring Compensation Loss and Failure to Mitigate Damages" 29th Annual Labor and Employment Law Institute, sponsored by the Institute for Continuing Legal Education, the Michigan Law Schools, the Michigan State Bar Association and the FMCS, April 1, 2004, co-authored with Malcolm Cohen, Ph.D. and Teresa Fulimeni, MA.

Member of the research team for a study of the impact of the 'New Economy' on the overtime provisions of the Fair Labor Standards Act for the U.S. Department of Labor, 2001.

Conducted usability testing and surveyed consumer perceptions of products including mobile internet, industry-specific search engines, web-based e-mail, and other high-tech consumer products among consumers in the United States, Israel, and Singapore.

Conducted small- and large-scale survey research products including customer satisfaction, internal employee surveys, new product introduction, advertising awareness, and customer tracking studies. Analyzed results and presented recommendations. Projects were completed for clients in a variety of industries including consumer products, healthcare, financial services, and technology companies.

While at the U.S. Postal Service, worked with advertising agencies on regional marketing campaigns for the Express Mail product line.

Coordinated efforts to increase customer satisfaction ratings with the Postal Service through employee training and employee interviewing. Tracked performance through survey research and large database analysis. Coordinated region-wide *Dale Carnegie* training of window clerks. Guided divisional training coordinators in implementation of training and customer satisfaction measurement issues.



Professional Affiliations

American Association for Public Opinion Research (AAPOR)

Society for Human Resource Management (SHRM)

4 — CASES TESTIFIED IN PAST FOUR YEARS

Cite	Deposition Date	Trial Date	Court	Case Number	Plaintiff or Defendant	Type
Hostetler v Johnson Controls	9/16/2015			IN 59-00062	P	Survey Research



5 — RATES

For trial and deposition testimony by Malcolm Cohen, the rate is \$500 per hour plus expenses.

For research by Malcolm Cohen, the rate is \$450 per hour.

For trial and deposition testimony by Laura Steiner, the rate is \$375 per hour plus expenses

For research by Laura Steiner, the rate is \$325 per hour

For trial and deposition testimony by a Senior Analyst the rate is \$375 per hour plus expenses.

For research by a Senior Analyst the rate is \$325 per hour

Analyst/Systems Analyst rate is \$275

Research Associate is \$175 - \$250

Research Assistant rate is \$125 - \$150 per hour



APPENDIX B. SURVEYS FOR PHONE AND MAIL

**SURVEY FOR PHONE (INCLUDES WEB AND PHONE INSTRUCTIONS)
NEVADA DEPARTMENT OF CORRECTIONS (NDOC)- HOURS WORKED SURVEY**

ISCALLIN. **(DO NOT READ) INTERVIEWER:** Did this respondent call in to do the survey?
IF YOU ARE NOT SURE, CODE "NO" BELOW.

Yes, respondent called in
No, regular outbound dialing

GREETING. Hello, may I please speak with **[INSERT NOL]**? **(INTERVIEWER: SPEAK WITH NOL ONLY)**

INTRO. Hello, my name is _____ from Employment Research of Ann Arbor Michigan. We are contacting current and former employees of the Nevada Department of Corrections in order to conduct research regarding overtime hours worked during the time period from May 12, 2008 to present.

1. What was your start date as a corrections officer for NDOC? ____/____/____ **[MM/DD/YYYY, ONLY FORCE YYYY]**

2. Are you still employed as a corrections officer for NDOC?
[IF NO] What was your end date? ____/____/____ **[MM/DD/YYYY, ONLY FORCE YYYY]**

3. Please **[IF COW: 'tell me' / IF WEB ONLY: 'list']** your location and job post for each year you worked since May 12, 2008. If you had more than one assignment in a calendar year, please **[IF COW: 'tell me' / IF WEB ONLY: 'list']** the assignment you had at the end of that year.

For each facility and job post, **[IF COW: 'tell me' / IF WEB ONLY: 'select']** your schedule, 80 hours every 14 days or 40 hours every 7 days, and **[IF COW: 'tell me' / IF WEB ONLY: 'indicate']** the number of days per work period you were typically scheduled on and off duty, and your pay rate at the end of that year. The days on duty plus days off duty should add up to 7 or 14, depending on your schedule.

We will ask about each year you worked from 2008 to present.

[IF COW: (AS NEEDED) At what facility did you work at the end of the year in (ASK ONE YEAR AT A TIME: 2015/2014/2013/2012/2011/2010/2009/2008)?

(AS NEEDED) And what was your ending job post?

(AS NEEDED) And what was your ending schedule, 80 hours every 14 days, or 40 hours every 7 days?

(AS NEEDED) How many days did you have on duty per work period? And how many off duty?

(AS NEEDED) And what was your ending pay rate?

(INTERVIEWER, PROCEED TO PREVIOUS YEAR UNTIL ALL ACCOUNTED FOR)

[ONLY ASK FOR YEAR LAST YEAR WORKED AND PRIOR, BASED ON Q2, E.G. IF THEIR LAST DATE IS IN 2010 DO NOT ASK 2011 - 2015]

Year	Facility at end of year	Ending Job Post	Ending schedule	Number of days on/off duty per work period	Ending Pay rate [DON'T FORCE RESPONSE]
Current/2015 <input type="checkbox"/> Not employed that year	[TEXT BOX]	[TEXT BOX]	<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	__ days on __ days off	\$__./__ / hr
2014 <input type="checkbox"/> Not employed that year	[TEXT BOX]	[TEXT BOX]	<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	__ days on __ days off	\$__./__ / hr
2013 <input type="checkbox"/> Not employed that year	[TEXT BOX]	[TEXT BOX]	<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	__ days on __ days off	\$__./__ / hr
2012 <input type="checkbox"/> Not employed that year	[TEXT BOX]	[TEXT BOX]	<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	__ days on __ days off	\$__./__ / hr
2011 <input type="checkbox"/> Not employed that year	[TEXT BOX]	[TEXT BOX]	<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	__ days on __ days off	\$__./__ / hr
2010 <input type="checkbox"/> Not employed that year	[TEXT BOX]	[TEXT BOX]	<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	__ days on __ days off	\$__./__ / hr
2009 <input type="checkbox"/> Not employed that year	[TEXT BOX]	[TEXT BOX]	<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	__ days on __ days off	\$__./__ / hr
2008 <input type="checkbox"/> Not employed that year	[TEXT BOX]	[TEXT BOX]	<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	__ days on __ days off	\$__./__ / hr

4. Now thinking about your assignments at the Nevada Department of Corrections since 2008, please **[IF COW: 'listen to' / IF WEB ONLY: 'look at']** the following list of activities and **[IF COW: 'tell me' / IF WEB ONLY: 'mark']** each one you have ever done *after going through the security check* and *before* your scheduled shift start time **[IF WEB ONLY: 'in column a']**, OR *after* your scheduled shift end time **[IF WEB ONLY: 'in column b']**.

a. [IF COW: Did you ever do any of the following *after* going through security and *before* your scheduled shift start time? (READ LIST, GET A YES OR NO AFTER EACH) / IF WEB ONLY: Work activities before scheduled shift started]

- ☐ Reporting to supervisor or sergeant on duty / muster
- ☐ Receiving assignments for the day
- ☐ Meeting with shift commanders for daily briefing
- ☐ Checking mailbox
- ☐ Passing uniform inspection
- ☐ Collecting tools needed for daily assignments, such as radios, keys, weapons, tear gas or handcuffs
- ☐ Debriefing by outgoing officer
- ☐ Other work activity (what?) **[DON'T FORCE RESPONSE]**
- ☐ Other work activity (what?) **[DON'T FORCE RESPONSE]**
- ☐ None of the above **[EXCLUSIVE]**

b. [IF COW: Did you ever do any of the following *after* your scheduled shift end time? (READ LIST, GET A YES OR NO AFTER EACH) / IF WEB ONLY: Work activities after scheduled shift ended]

- ☐ Debriefing with the oncoming correctional officer
- ☐ Returning tools needed for daily assignments, such as radios, keys, weapons, tear gas or handcuffs
- ☐ Other work activity (what?) **[DON'T FORCE RESPONSE]**
- ☐ Other work activity (what?) **[DON'T FORCE RESPONSE]**
- ☐ None of the above **[EXCLUSIVE]**

5. Thinking about any work you did *before* your scheduled shift started, approximately how long do you think it typically took you between the time you passed security until the scheduled shift start time? Please include any walking time after you checked in and received your assignment. *Please provide your answer in minutes.*
- _____ Minute(s)
6. **[IF COW: 'Do' / IF WEB ONLY: 'If']** you have any comments about this estimate **[IF COW: '?' / IF WEB ONLY: ', please explain below.']** **[TEXT BOX, DON'T FORCE RESPONSE]**

[IF Q4A=NONE OF THE ABOVE AND Q7>0 MINUTES]

6B. What were the work activities that took you **[INSERT MIN FROM Q7]** before your scheduled shift start time? **[TEXT BOX, DON'T FORCE RESPONSE]**

7. Thinking about any work you did *after* your scheduled shift ended, approximately how long do you think it typically took you between the time your shift ended and when you stopped performing any work activities. Please include any walking time on the way to returning tools and equipment or doing other work-related activities in your estimate. *Please provide your answer in minutes.*
- _____ Minute(s)

8. **[IF COW: 'Do' / IF WEB ONLY: 'If']** you have any comments about this estimate **[IF COW: '?' / IF WEB ONLY: ', please explain below.']**

[IF Q4B=NONE OF THE ABOVE AND Q7>0 MINUTES]

8B. What were the work activities that took you **[INSERT MIN FROM Q7]** after your scheduled shift end time? **[TEXT BOX, DON'T FORCE RESPONSE]**

9. **[FILL NAME AND ADDRESS INFORMATION FROM SAMPLE]**

10. **[COW ONLY]** Is the number I called the best number to reach you?

- ☐ Yes
☐ No

[IF NO] What is the best number to reach you? _____ **[DO NOT FORCE A RESPONSE]**

11. **[COW ONLY]** What is your email address? **[DO NOT FORCE A RESPONSE]**

12. **[IF COW]** Do you certify that your answers to the questions in this survey are true and correct to the best of your knowledge?

- ☐ Yes
☐ No

[IF WEB] I certify that my answers to the questions in this survey are true and correct to the best of my knowledge.

Type your name here to indicate agreement: **[TEXT BOX, DO NOT FORCE A RESPONSE]**

COMPLETE. Thank you for **[IF COW: 'completing' / IF WEB: 'filling out']** this survey.

You may now close your browser window.

[COW ONLY] (INTERVIEWER: CODE AS COMPLETE)

SURVEY FOR MAIL



7287 Lakeside Drive
Reno, NV 89511
T: (775) 284-1500
F: (775) 703-6027
info@thiermanbuck.com
www.ThiermanBuck.com

September 15, 2015

Dear <<name>>,

We are contacting current and former employees of the Nevada Department of Corrections in order to conduct research regarding overtime hours worked during the time period from May 12, 2008 to present. The research is being carried out by Employment Research Corporation of Ann Arbor, Michigan, in conjunction with a lawsuit regarding unpaid overtime.

By carefully and honestly answering the survey questions, you will provide important information about the hours you worked for the Nevada Department of Corrections from 2008 to present. Your feedback is very important to us. Please complete this survey and return to Employment Research Corporation in the enclosed postage-paid envelope no later than October 2, 2015.

You can complete the survey on paper, by phone or on the web:

- To complete the survey on paper, simply mail back in the enclosed, stamped envelope, OR
- To complete the survey by phone, call 1-800-430-1207. You will also need your ID number **IDNO**. You can call us anytime Monday through Friday from 4 am until 9 pm and Saturday from 7 AM until 5 PM Pacific Daylight Time, OR
- To complete the survey on the web go to surveys.live.bernett.com. Your User Name for the web is **WEBPIN**.

The survey will take about 10 minutes and we thank you very much for your time to complete it. Please be sure to complete the survey, by the September 30, 2015 deadline.

If you have any questions about the survey, please contact the survey department at survey@employmentresearch.com or call 1-800-430-1207.

Note that completion of this survey does not imply an attorney-client relationship.

Thank you for taking the time to complete the survey.

Regards,

A handwritten signature in black ink, appearing to read "MT", with a stylized flourish at the end.

Mark Thierman
Attorney at Law

Nevada Department of Corrections (NDOC) - Hours Worked Survey

Please fill in the following information about your employment as a corrections officer with the Nevada Department of Corrections.

1. What was your start date as a corrections officer for NDOC? ____/____/____

2. If no longer employed, what was your end date? ____/____/____

☐ Check here if currently employed

3. Please list your location and job post for each year you worked since May 12, 2008. *If you had more than one assignment in a calendar year, please list the assignment you had at the end of that year.*

For each facility and job post, select your schedule (80 hours/14 days or 40 hours/7 days), and indicate the number of days per work period you were typically scheduled on and off duty, and your pay rate at the end of that year. The days on duty plus days off duty should add up to 7 or 14, depending on your schedule.

Year	Facility at end of year	Ending Job Post	Ending schedule	Number of days on/off duty per work period	Ending Pay rate
Current/ 2015			<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	____ days on ____ days off	\$____.____/ hour
2014			<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	____ days on ____ days off	\$____.____/ hour
2013			<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	____ days on ____ days off	\$____.____/ hour
2012			<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	____ days on ____ days off	\$____.____/ hour
2011			<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	____ days on ____ days off	\$____.____/ hour
2010			<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	____ days on ____ days off	\$____.____/ hour
2009			<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	____ days on ____ days off	\$____.____/ hour
2008			<input type="checkbox"/> 80 hrs/14 days <input type="checkbox"/> 40 hrs/7 days	____ days on ____ days off	\$____.____/ hour

Continued on reverse side

4. Now thinking about your assignments at the Nevada Department of Corrections since 2008, please look at the following list of activities and check each one you have ever done *after going through the security check and before your scheduled shift start time in column a, OR after your scheduled shift end time in column b.*

a. Work activities before scheduled shift started

- ☐ Reporting to supervisor or sergeant on duty / muster
- ☐ Receiving assignments for the day
- ☐ Meeting with shift commanders for daily briefing
- ☐ Checking mailbox
- ☐ Passing uniform inspection
- ☐ Collecting tools needed for daily assignments, such as radios, keys, weapons, tear gas or handcuffs
- ☐ Debriefing by outgoing officer
- ☐ Other work activities(what?) _____
- ☐ Other work activities(what?) _____

b. Work activities after scheduled shift ended

- ☐ Debriefing with the oncoming correctional officer
- ☐ Returning tools needed for daily assignments, such as radios, keys, weapons, tear gas or handcuffs
- ☐ Other work activities(what?) _____
- ☐ Other work activities(what?) _____

5. Thinking about work you did before your scheduled shift started, approximately how long do you think it typically took you between the time you passed security until the scheduled shift start time? Please include any walking time after you checked in and received your assignment.

Minutes

6. If you have any comments about this estimate, please explain below.

7. Thinking about work you did after your scheduled shift ended, approximately how long do you think it typically took you between the time your shift ended and when you stopped performing any work activities. Please include any walking time on the way to returning tools and equipment or doing other work-related activities in your estimate.

Minutes

8. If you have any comments about this estimate, please explain below.

Contact information

9. Please fill in your name and contact information below and sign and date the survey form.

Name: _____	Mobile phone: _____
Address: _____	Home phone: _____
_____	E-mail: _____
I certify that my answers to the questions in this survey are true and correct to the best of my knowledge.	Signature: _____
	Date: _____

Thank you for filling out this survey. Please return in the enclosed envelope to:
Employment Research Corporation 305 E. Eisenhower, Suite 316 Ann Arbor, MI 48108

Employment Research Corporation

APPENDIX C. BERNETT QUALITY CONTROL AND INTERVIEWER TRAINING POLICIES

QUALITY CONTROL

- Interviewers are always thoroughly briefed on a project before they start dialing. They are taken through the survey question by question, as though it's being done with an interviewer and respondent, and allowed opportunity to ask question.
- Project debriefings are done at the close of the first night (and throughout the field period as necessary) to get feedback from the interviewing staff and reiterate key project goals.
- A minimum 10-15% of calls are monitored in real time (and meetings are conducted with the interviewer at that time to discuss performance).
- For studies that include cell phone numbers and have to be dialed manually, Bennett is not able to record all calls through their dialer, so live monitoring of 15%+ of all completes is done instead.
- "Skating" supervisors are on every shift, whose function is to move throughout the room motivating staff, providing instruction, and helping when needed. These supervisors also engage in over-the-shoulder monitoring to catch possible issues while they are occurring.
- In addition to the quality control standards in place for interviewing/supervising staff, project managers and programmers take an active role in checking and maintaining high quality throughout the life-span of the survey. A team of testers thoroughly reviews any survey programmed internally, dummy data checks are run on projects before they launch, and Bennett staff keep a close eye on data for any possible issues once a study does go live. Bennett embraces a proactive project management philosophy geared toward identifying and addressing potential problems as or before they occur in order to avoid costly, time consuming fixes on the back-end.

INTERVIEWER TENURE AND TRAINING

- Most of the "night shift" interviewers have been with the company 5+ months (many have, of course, working for Bennett much longer).
- Interviewers go through a two-day training program. The first day is all in-classroom. This training day includes: reviewing policies and procedures, covering interviewing standards, and role-playing/practice surveys. The second day, consists of review of interviewing standards, and practice on the phones (dialing on a very simple (non-client) survey). After the second day of training, interviewers are introduced to projects commensurate with the skills they have developed thus far.
- All new hires are on a three-month probationary period where with close monitoring of their progress. Regular performance review meetings are held, focusing on quality. Once Bennett is confident that they have fully grasped interviewing basics, they start working with them more closely on tactics to improve/maximize their productivity.
- Bennett utilizes an interviewer-mentoring program that has proven to be very helpful in getting new hires up to speed. Employees with exceptional interviewing skills are identified and promoted to a position called "Dialing Specialist". The dialing specialists still spend the majority of their day on the phones, but they sit next to new hires and interviewers who need a little extra attention and are thus able to work with them as needed throughout the shift while providing a great example of the attitude and skills that lead to success. Dialing specialists have been trained to help coach, mentor, and empower other interviewers.



APPENDIX D. DISPOSITIONS

Dispositions and Coded dispositions

Disposition - original	Coded Disposition	Count
Abandoned interview	Term	1
Add To Do Not Call List	Refusal	11
Answering machine	No Contact Made	373
Break Off Termination	Term	25
Business/Government Phone	No Contact Made	6
Busy	No Contact Made	20
Cell Phone	No Contact Made	58
Complete	Complete	220
Computer Tone	No Contact Made	6
Deceased	No Contact Made	1
Disconnected Phone	No Contact Made	1
Hard Appointment	Appointment	2
Hard Initial Refusal	Refusal	2
Language Barrier	No Contact Made	3
No answer	No Contact Made	136
Over quota	No Contact Made	1
Quit before Qualification	Term	3
Refusal by Proxy	Refusal	3
Respondent not available	No Contact Made	17
Soft Initial Refusal	Refusal	123
Wrong Number	No Contact Made	74



APPENDIX E. FACILITIES

Facilities represented (as reported by respondents)

Carlin Conservation Camp
Casa Grande Transitional Housing
Ely Conservation Camp
Ely State Prison
Florence McClure Women's Correctional Center
High Desert State Prison
Humboldt Conservation Camp
Jean Conservation Camp
Lovelock Correctional Center
Nevada Bootcamp
Nevada State Prison
Northern Nevada Correctional Center
Pioche Conservation Camp
Silver Springs Conservation Camp
Southern Desert Correctional Center
Three Lakes Valley Conservation Camp
Tonopah Conservation Camp
Warm Springs Correctional Center
Wells Conservation Camp
Other (Facility Not Specified, e.g. "Central Office," "Housing Unit," "Training")

**APPENDIX F. WORK ACTIVITIES BEFORE AND AFTER SCHEDULED SHIFT; ONLY FINAL WAVE INCLUDED****Table 4a: Work Activities Before Scheduled Shift Started, Final Wave Only**

Activity	Number	Percent
Reporting to supervisor or sergeant on duty / muster	164	90.6%
Receiving assignments for the day	162	89.5%
Meeting with shift commanders for daily briefing	112	61.9%
Checking mailbox	148	81.8%
Passing uniform inspection	109	60.2%
Collecting tools needed for daily assignments, such as radios, keys, weapons, tear gas or handcuffs	166	91.7%
Debriefing by outgoing officer	156	86.2%
Other work activities	45	24.9%
One or more work activities before scheduled shift started	178	98.3%*
No listed work activities before scheduled shift started but gave pre-shift time estimate greater than 0 minutes.	2	1.1%
Performed pre-shift work activities (Listed one or more work activities before scheduled shift started and/or gave time estimate greater than 0 minutes for pre-shift activities)	180	99.4%**
No listed work activities before scheduled shift started and gave time estimate of 0 minutes.	1	0.6%
Total Respondents	181	100%

* standard error of 0.9%

** standard error of 0.6%

**Table 5a: Work Activities After Scheduled Shift Ended, Final Wave Only**

Activity	Number	Percent
Debriefing with the oncoming correctional officer	153	84.5%
Returning tools needed for daily assignments, such as radios, keys, weapons, tear gas or handcuffs	163	90.1%
Other work activities	52	28.7%
One or more work activities after scheduled shift ended	169	93.4%*
No listed work activities before scheduled shift started but gave post-shift time estimate greater than 0 minutes.	7	3.9%
Performed post-shift work activities (Listed one or more work activities after scheduled shift ended or gave time estimate greater than 0 minutes for post-shift activities)	176	97.2%**
No listed work activities after scheduled shift ended and gave time estimate of 0 minutes	5	2.8%
Total Respondents	181	100%

* standard error of 1.8%

** standard error of 1.2%

EXHIBIT B

Excerpts of Deposition of Brian Williams

EXHIBIT B

In the Matter Of:
WALDEN vs. STATE OF NEVADA

3:14-cv-00320-LRH-WGC

BRIAN WILLIAMS

April 16, 2015



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EsquireSolutions.com

BRIAN WILLIAMS
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1 relieved, that officer that they're relieving, that
2 officer normally lets them know, hey, look, whites
3 and blacks, they've been having some grouping up.
4 So they'll get it word of mouth.

5 Q. So the officers kind of do, like, hey,
6 here is what is going on; I had problems with inmate
7 number so and so?

8 A. Right. Anything pertinent, like, cell
9 door on Housing C22, not secure; maintenance was
10 notified; but, you know, it's not locking, so just
11 to let you know, you might want to have a caseworker
12 do a housing unit change. With any pertinent
13 information, they talk, they communicate.

14 Q. It seems like that was probably pretty
15 critical in this line of work is to have open
16 communication and exchange of information.

17 A. Communication is key in everything. I
18 just met with an officer the other day who filed a
19 grievance. And like I told him, I said, "Would it
20 have hurt you to tell the other staff, hey, did you
21 get approval to have that inmate out"?

22 "Yes, I did. In accordance with OP such
23 and such, I contacted the shift supervisor, he said
24 I could have the inmate." No more questions asked.

25 But, instead, the officer put the inmate

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1 on the wall while he's walking with the staff, sent
2 the inmate back to the unit. The unit officer sent
3 the inmate back out. The officer put him on the
4 wall again, sent him back to the unit. And then he
5 was finally directed by the sergeant. He said, no,
6 I approve for that inmate to be out.

7 And then I told the chaplain, "Would it
8 have hurt you to tell that officer, no, no, no;
9 look, he's not on a call-out list, but I did get
10 approval from the shift supervisor like I'm
11 supposed; you can all him and verify."

12 It's done. But instead, he sent the
13 inmate back twice. And the third time, he was
14 allowed to come. In the meantime, the staff -- the
15 three staff are at each other's throat. And now the
16 officer has a meeting with the sergeant saying, hey,
17 look, blah, blah, blah, blah, this is your OP, this
18 is what it says. All that could have been
19 alleviated if, no, I did this. Oh, okay, I didn't
20 know. Communication is key in everything that we
21 do. So --

22 Q. Again, you're on, and there's stuff going
23 on in a particular area of housing -- you know,
24 Housing 1 or something, and you have a correctional
25 officer that comes on, the shift supervisor's got it

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1 morning until 1:00 in the afternoon.

2 Q. And that is the day shift?

3 A. That is the day shift. Then we have our
4 12-hour shifts that start at 5:00 in the morning
5 until 5:00 p.m.

6 Q. Let's just go with the eight-hour for
7 simplicity's sake for me.

8 A. Okay.

9 Q. And then I get complicated.

10 You're on at 5:00 in the morning, so the
11 incoming CO is expected to be at Housing 1 --

12 A. At 5:00.

13 Q. -- at 5:00, right?

14 A. Yes.

15 Q. Okay. Does the incoming officer, then --
16 does he or she clock in to a timekeeping system?

17 A. No. I've seen them come in a half an
18 hour early to clear and do everything. I have seen
19 them come in ten minutes to the start of their
20 shift. And I'm scratching my head, if he assigns
21 them to a tower or something, how are they going to
22 get to their shift in time.

23 So, I mean, it varies. In most staff --
24 like, I got this one officer, I don't know how he
25 does it, but he comes in. He comes in -- the guy

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1 comes in about ten minutes before his shift. And he
2 comes in, okay, you're Tower 2.

3 And he gets to Tower -- he leaves that
4 OPs building, and he is on his post before -- right
5 at the start of his shift or a little before the
6 start of his shift. As a matter of fact, his shift
7 supervisor couldn't believe he got there. And so
8 she called, and he answered the phone. So it was,
9 like, oh, you did make it there.

10 So how do they do it, I don't know. I
11 guess I'm getting old, can't move as fast, but --
12 yeah, they come in between 30 minutes. I have seen
13 them come in as short as ten minutes and go through
14 the metal detector and check in to their post.

15 Q. Because, I mean, they're expected to be
16 there at the time of their shift?

17 A. At the start of their shift, yes.

18 Q. And if they aren't, I mean, again, you're
19 talking maybe kind of counseling first, like, hey,
20 man, you got to get there on time, or is there a
21 written warning or anything like that?

22 A. Sometimes there is a warning. Most
23 likely it's going to be a performance card or
24 something saying, hey, you need to get on your post,
25 if that relieving officer complains. Like, look,

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1 A. Correct.

2 Q. So a lot of people will get there about a
3 half hour, 20 minutes before?

4 A. Correct.

5 Q. Yeah. I lost my train of thought.

6 The outgoing officer -- I mean, you know,
7 the incoming officer is supposed to be there at the
8 time of their shift, but they can arrive early,
9 right?

10 A. Some do, yes.

11 Q. And, then, does the outgoing shift
12 officer leave whenever the officer gets there? So
13 if they get there, let's just say five minutes
14 before the start of their shift, does the outgoing
15 officer wait until the end of their shift?

16 A. No. They're allowed -- once they're
17 properly relieved, they're allowed to leave.

18 Q. Okay.

19 A. When you read our policy, it says, "once
20 you're properly relieved." So once that officer
21 that's coming on relieves that officer, they're
22 pretty much free to go.

23 Q. And what policy is that?

24 A. It's either 326, 322 or 301. And there
25 may be -- some verbiage of that may be in all three.

EXHIBIT C

Operating Procedure 320

EXHIBIT C

**NEVADA DEPARTMENT OF CORRECTIONS
OPERATIONAL PROCEDURE #320**

SALARY ADMINISTRATION

Supersedes: OP 320 (Dated 09/21/10)
Effective Date: August 24, 2012
Review Date: August 24, 2013

AUTHORITY

Administrative Regulation # 320 – Salary Administration

RESPONSIBILITY

The Warden of Southern Desert Correctional Center has overall responsibility for overseeing the administration of this procedure.

It is the responsibility of the Associate Wardens to ensure compliance with this procedure.

It is the responsibility of every supervisor to ensure that all staff are adequately trained and adhere to this procedure.

It is the responsibility of all staff to be familiar with and to comply with this procedure.

DEFINITIONS

Call Back Pay – A full time classified employee must be paid two (2) hours of call back pay at the rate of time and one half of their normal rate of pay if they called back to work during their scheduled time off without having notified them before the completion of their last normal working day.

Classified Employee – All positions in the public sector which are not included in the unclassified service pursuant to NRS 284.150.

Holiday – A day that is designated to be a legal holiday pursuant to NRS 236.015.

Merit Salary Increase – A salary step increase of approximately five percent (5%) granted to those employees who are not at the top step of their grade.

Nonstandard workweek – A work schedule of five shifts with the same number of hours each day and a maximum of 40 hours per week throughout the year. The work schedule is other than Monday through Friday.

Overtime – Hours worked in excess of 8 hours in one calendar day; 40 hours in a week or an 80 hour variable work schedule within a biweekly pay period.

**OPERATIONAL PROCEDURE OP #320
SOUTHERN DESERT CORRECTIONAL CENTER**

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Paid status - The time that an employee is:

- Working
- On leave with pay, except catastrophic leave
- On a leave of absence due to a fiscal emergency declared pursuant to NAC 284.580.

Qualifying Shift - A scheduled period of work of at least 8 hours, of which 4 hours must fall within the hours of 6:00 pm to 7:00 am.

Shift Differential - An adjustment of pay equivalent to five percent (5%) of an employees' normal rate of pay when working a qualifying shift.

Standard workweek - A work schedule of five shifts with the same number of hours each day and a maximum of 40 hours per week throughout the year. The work schedule is Monday through Friday.

320.01 OVERTIME

1. Overtime will be kept to an absolute minimum and shift supervisors must have the approval of the Associate Warden of Operations or Warden prior to hiring overtime.
 - Shift supervisor must utilized all pull and shutdown position as defined in Operational Procedure 325 prior to any overtime being hired.
 - All overtime will be documented in NSIS and the Overtime Report.
 - Overtime codes will be used in the following order:
 - Coverage for vacant position
 - Employee on AWOL/LWOP
 - Coverage for sick leave including FMLA
 - Employee on military leave
 - Inmate emergency except for escape
 - Cover annual leave
 - Transportation coverage
 - Training
2. All employees who work overtime will complete an Authorization for Leave and Overtime Request Form DOC - 1000.
 - The supervisor approving the overtime will sign the DOC - 1000 will note the overtime code, sign the form and place the form in the employee's mailbox.
 - It is the employee's responsibility to sign and submit the DOC - 1000 to the institution's payroll department.
3. As a condition of employment, employees shall work overtime on short notice, on weekends and holidays, be recalled to work in cases of emergency or staff shortages on regular days off, or any and all other times so required, and be placed on stand-by status if and whenever necessary.
4. A reasonable advance notice of overtime will be one (1) hour if the situation allows.
 - The shift supervisor may give less advance notice depending on the needs of the institution such as, a last minute call-in.

5. No officer is to work more than a 16-hour shift.
 - The only exception will be in the event of a bona fide emergency.
6. Employees on Proof Status (sick leave abuse) duty are not authorized to volunteer for overtime.
 - An employee on Proof Status may be utilized for mandatory overtime.
7. Employees on modified duty are not authorized to work overtime.
8. Shift supervisors will maintain two (2) shift seniority lists:
 - Voluntary List:
 - Will list each officer with the most seniority to the least seniority.
 - Mandatory List
 - Will list each officer from the least seniority to the most seniority.
 - Shift supervisors will regenerate these lists every quarter and adjusted whenever staff are deleted from or added to the shift or after all staff has worked mandatory overtime.
9. The seniority lists will be prepared by each shift for utilization of the next shift
 - Shift supervisors will give their voluntary and mandatory overtime lists to the relieving shift supervisors.
 - First Shift to Second Shift
 - Second Shift to Third Shift
 - Third Shift to First Shift
 - Shift supervisors will use the volunteer list to hire overtime prior to mandatory overtime.
10. Shift supervisors will use the volunteer list to hire overtime prior to mandatory overtime.
 - The shift supervisor will contact each officer starting with the most seniority to the least seniority until the number of overtime officers is met.
11. If overtime is needed and insufficient staff voluntarily agrees to work, the following procedure will be adhered to:
 - The shift supervisor will select employees from the mandatory overtime list when mandatory overtime is needed.
 - Once that person is selected, the shift supervisor will write the date and total hours worked in a space or on a line next to the employee's name working the mandatory overtime.
 - On the next occasion requiring mandatory overtime, the supervisor will move up the seniority list, selecting employees who have not been chosen for mandatory overtime or who have not recently been selected for mandatory overtime.
 - The Vacation Relief Lieutenant will provide a staff seniority roster for this purpose.
12. Shift supervisors will record one of the below listed codes and the number of hours worked next to each officer's name:
 - Refused (R)
 - Employee chooses not to work overtime.
 - Refused equals the number of offered hours.
 - No Contact (N/C)
 - Employee was on days off or authorized leave status.
 - N/C equals zero hours.

- Date – Employee worked overtime
 - Working overtime equals the number of hours worked.
13. Shift supervisors will ensure equalization of the seniority lists within 24 hours.
- Equalization will be completed every quarter (3 months).
 - Shift supervisors will equalize the seniority lists they utilize.
 - Equalization is determined when all employees on the seniority list are within 24 hours of overtime worked or overtime refused.
 - Example:
Officer Smith worked overtime 8 hrs and refused 8 hours of overtime within the quarter. Officer Smith has a total of 16 hours. Officer Jones worked 8 hours overtime and refused 8 hours of overtime twice each within the quarter. Officer Jones has a total of 32 hours. Officer Adams was a no contact within the quarter. Officer Adams has a total of zero hours. Officers Smith and Jones are equalized because the difference in total hours is within 24. Officer Adams is not equalized because Officer Jones has more than a 24 hours difference. Officer Adams should have been offered more overtime.
 - Employees that transfer onto a shift during the quarter will be accredited with the highest number of hours on the list.

320.02 SHIFT DIFFERENTIAL

1. Employees who work eight (8) hours or more, of which four (4) consecutive hours must fall within the hours of 6:00 pm to 7:00 am, shall receive shift differential.
2. Shift differential rate is an adjustment of pay equivalent to five percent (5%) of the employee's normal rate of pay when working a qualifying shift.
3. The shift differential rate will apply during periods of time when an employee is on sick leave, annual leave, holidays and other leave with pay so long as the employee is still assigned to that shift when the leave is taken.
4. Employees who are assigned to attend training classes during a non-qualifying shift do not receive shift differential while in training.
5. An employee who works overtime in conjunction with a qualifying shift must be paid overtime at the differential rate of pay (PSDOT).

320.03 CALL BACK PAY

1. Each time a classified employee is called back to work on an unscheduled basis by their supervisor, they will be credited with a minimum of two (2) hours at the rate of time and one-half if:
 - The work begins more than one hour after completion of the regular shift, but ends more than one hour before the end of the next scheduled shift, provided that the time for the beginning work was not set at the request of the employee.

- The employee is called back to work without having been notified prior to the completion of their normal work day.
- The employee is called back to work on their regularly scheduled day/time off.
- The employee is called back on a holiday.

2. Call back pay shall not apply to employees receiving standby premium pay.

320.04 HOLIDAYS

1. The State has declared the following days as legal holidays:
 - January 1 (New Year's Day)
 - Third Monday in January (Martin Luther King Jr.'s birthday)
 - Third Monday in February (Presidents Day)
 - Last Monday in May (Memorial Day)
 - July 4th (Independence Day)
 - First Monday in September (Labor Day)
 - Last Friday in October (Nevada Day)
 - November 11 (Veterans Day)
 - Fourth Thursday in November (Thanksgiving Day)
 - Friday following the fourth Thursday in November (Family Day)
 - December 25 (Christmas Day)
2. The rules for holiday pay apply only to the legal day of observance.
 - When January 1, July 4th, November 11 or December 25th falls upon a:
 - o Sunday, the Monday following shall be observed as the legal holiday.
 - o Saturday, the Friday preceding shall be observed as the legal holiday.
3. Employees who work on observed holiday are entitled to 8 hours of Holiday Premium Pay (PHPRM).
 - An employee who works on an observed holiday and who is assigned to a qualifying shift must be paid overtime at the differential rate of pay (PSDOT).
4. Employees on their regular day off will receive 8 hours of day-off holiday pay (PDOH).
5. Holiday staffing will be essential posts only.
 - Employees assigned to non-essential posts will not report for duty that day and will code their time sheet with "Holiday Off".
6. When an employee works their regular day off and that day off is a holiday, they are entitled to day-off holiday pay for 8 hours and paid overtime or compensatory time for the number of hours worked.

320.05 PAYCHECKS

1. Pay dates are on Friday, every other week.
 - Pay dates that fall on a holiday will be paid the working day prior.

OPERATIONAL PROCEDURE OP #320
SOUTHERN DESERT CORRECTIONAL CENTER
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2. Payroll checks are not authorized for early distribution without authorized approval by the Division Administrator of Personnel Services.
3. Payroll checks will be secured in and distributed from the Gatehouse by the assigned officer.
 - The payroll check will only be issued to the addressed employee by the gatehouse officer.
 - The gatehouse officer will verify each employee by picture identification prior to issuing a payroll check.
 - The Warden may approve a written request to have another employee or family member to pick-up a payroll check.
 - The written request must be submitted at least one (1) week in advance of the pay date by the requesting employee.
 - The Warden will place a copy of the approved request in the payroll check lock box.
 - All employees or approved individual will sign for the payroll check upon pick-up from the gatehouse.

320.06 PAYMENT OF ACCUMULATED COMPENSATORY TIME

1. Payment of accumulated compensatory time will only be allowed with the approval of the Director, Deputy Director or designee.
 - Requests for payment of compensatory time will be submitted in writing to the Warden who will initial and forward to the Department Payroll Office.
 - The Department Payroll Office will verify the balance and forward the request to the Deputy Director of Support Services to determine if the department has sufficient funding available prior to final approval.
 - Payment will be made depending upon the date of receipt in conjunction with payroll deadlines.
2. Employees who transfer from one budget account to another will have their compensatory time paid off, unless the Deputy Director of Support Services informs the Department Payroll Office that the department does not have the funding.
3. Non-exempt employees transferring out of the department, who have accrued compensatory time, will have their compensatory time paid off unless the employee provides written approval from the receiving department agreeing to assume the liability for the compensatory time and the employee concurs.
4. Employees terminating employment will be paid for accrued compensatory time.
5. Involuntary compensatory time payment for employees may occur at the end of each fiscal year.

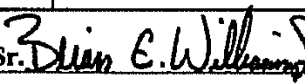
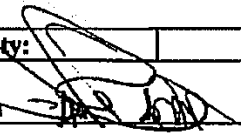
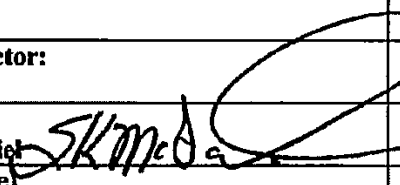
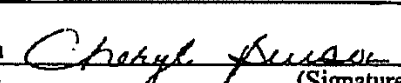
320.07 MERIT PAY ADJUSTMENTS

1. An employee whose last performance evaluation was standard or above and who has not attained the top step of their grade, must receive a merit pay increase of one step on the pay progression date, unless the Governor determines otherwise.
 - Merit pay adjustments have been suspended by SB 433 of the 2009 Legislative Session until June 2011
2. An employee whose last performance evaluation did not meet standard is not eligible for a merit pay increase until their overall performance evaluation is at least standard.
 - A subsequent, special evaluation not filed within 90 days, will be deemed to be standard and the employee will be entitled to the merit pay increase, effective on the date the subsequent performance evaluation was due.

320.08 OVERPAYMENTS

1. Once an overpayment is discovered the employee will be sent a Notification of Payroll Overpayment Letter.
2. The employee will be given 10 working days to return the Acknowledgement of Overpayment/Agreement to Repay form.
 - A repayment plan is negotiated and payment is set-up as a payroll deduction.

Signature Authority:

Warden of Facility:		AWO of Facility:	
Brian E. Williams, Sr.		Frank Dreesen	
(Printed Name)		(Printed Name)	(Signature)
(Signature)			
Deputy Director:		AWP of Facility:	
E.K. McDaniel		Cheryl Burson	
(Printed Name)		(Printed Name)	(Signature)
(Signature)			

CONFIDENTIAL XXXX
Yes

No

EXHIBIT D

Administrative Regulation 320

EXHIBIT D

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
320**

SALARY ADMINISTRATION

Supersedes: AR 320 (03/19/13); and AR 320 (Temporary, 05/06/14)
Effective Date: 09/16/14

AUTHORITY

NRS 236.015, 284.065, 284.155, 284.175, 284.180
NAC 284.0663, 284.067, 284.071, 284.072, 284.0742, 284.100, 284.194, 284.210, 284.214,
284.218, 284.255, 284.256, 284.257, 284.292, 284.5255, 284.5895, 284.650

RESPONSIBILITY

All employees are responsible to have knowledge of and comply with this regulation.

320.01 OVERTIME

1. Overtime must be authorized by the Director, appropriate Deputy Director, Division Head, Warden, or their designees.
2. An employee who works overtime, must document this time on an Authorization for Leave and Overtime Request form (DOC-1000).
3. Non-exempt employees, as specified in the State Classification and Compensation Plan, shall earn overtime at the rate of time and one-half.
 - A. Exempt classified and unclassified employees are not entitled to compensation for overtime.
4. As a condition of employment, employees may be required to work overtime as required by a supervisor and as stated in AR 326, Posting of Shifts/Overtime.
5. Overtime is considered working in excess of eight hours in one calendar day for employees who are standard or non-standard.
 - A. A standard workweek is a work schedule of five shifts with the same number of hours each day and a maximum of 40 hours per week. The work schedule is Monday through Friday.

B. A non-standard workweek is a work schedule of five shifts with the same number of hours each day and a maximum of 40 hours per week. The work schedule is other than Monday through Friday.

6. Employees who have elected to work a variable work schedule (innovative) do not accrue overtime until either, 1) they have worked the 41st hour, if they have signed a 40-hour variable agreement, or 2) they have worked the 81st hour, if they have signed the 80-hour variable agreement.

A. An innovative work schedule is a work schedule that differs from a standard or non-standard work week.

B. All employees shall sign a Variable Work Schedule Request form (DOC-1043). Employees electing such a schedule must do so prior to working a variable schedule.

C. Employees who do not elect a variable work schedule shall write “declined” through the variable section they are declining on the DOC-1043.

D. Employees noting “declined” on the DOC-1043, may not be scheduled to work a variable schedule (i.e., 12-hour or 10-hour shifts).

E. The variable work schedule agreement will remain in effect for Custody staff who bid for shifts that require a variable schedule (i.e., 12- hour shifts) until the next shift bidding cycle. Any subsequent change must be approved mutually by the Warden and the employee.

F. Each time an employee’s schedule changes, a new Variable Work Schedule shall be completed identifying the employee’s shift and regular days off.

7. Paid status is considered as time worked in calculating overtime.

8. To qualify for Post and Shift bidding an employee must be willing to sign a variable agreement.

320.02 SHIFT DIFFERENTIAL

1. Employees who work 8 hours or more, of which four consecutive hours must fall within the hours from 6 p.m. to 7 a.m. Employees are entitled to the differential pay for the amount of hours they work during that time period.

2. Shift differential rate is an adjustment of pay equivalent to 5% of the employee’s normal rate of pay when working a qualifying shift.

3. The shift differential rate will apply during the periods of time when an employee is on sick leave, annual leave, holidays and other leave with pay as long as the employee is still assigned to that shift when the leave is taken.

4. Employees that are assigned to attend training classes during a non-qualifying shift do not receive

shift differential while in training.

320.03 CALL BACK PAY

1. Each time a full time classified employee is called back to work on an unscheduled basis by their supervisor, they shall be credited with a minimum of two hours work at the rate of time and one-half.

- A. The work must begin more than one hour after completion of the regularly scheduled shift.
- B. The employee is called back to work without having been notified prior to the completion of their normal working day.
- C. The employee is called back to work on their regularly scheduled day/time off.
- D. The employee is called back on a holiday.

2. Call back pay shall not apply to employees receiving standby premium pay.

3. Employees with a PERS (Public Employees' Retirement System) membership date prior to December 31, 2009 will use the established call back codes:

- A. PCALL-Callback Pay
- B. ACALL-Callback Comp

4. Employees with a PERS (Public Employees' Retirement System) membership date of January 1, 2010 or later will use the following call back codes:

- A. PCALX-Callback Pay/NO Ret
- B. ACALX-Callback Comp/NO Ret

320.04 STANDBY STATUS

1. A non-exempt classified employee shall receive additional pay or compensatory time of 5% of their normal hourly rate for every hour they are on standby status outside of the parameters of their regular assigned shift.

2. An employee is on standby status when they are:

- A. Directed to remain available for immediate contact during specified hours.
- B. Prepared to work as the need arises, although the need to work might not arise.
- C. Able to report to work within a reasonable time, usually within one-half hour.

D. Allowed to use the time waiting for notification to work for personal pursuits.

3. Any class designated in the NRS as a 24-hour class does not automatically qualify for standby premium pay.

320.05 HOLIDAYS

1. The rules for holiday pay apply only to the legal day of observance. The following days are declared legal holidays:

- A. January 1 (New Year's Day)
- B. Third Monday in January (Martin Luther King, Jr.'s Birthday)
- C. Third Monday in February (Presidents' Day)
- D. Last Monday in May (Memorial Day)
- E. July 4th (Independence Day)
- F. First Monday in September (Labor Day)
- G. Last Friday in October (Nevada Day)
- H. November 11 (Veterans' Day)
- I. Fourth Thursday in November (Thanksgiving Day)
- J. Friday following the fourth Thursday in November (Family Day)
- K. December 25 (Christmas Day)

2. When January 1, July 4, November 11 or December 25 falls upon a:

- A. Sunday, the Monday following shall be observed as the legal holiday; and
- B. Saturday, the Friday preceding shall be observed as the legal holiday.

3. Full time employees working a non-standard workweek are entitled to the same number of paid holidays as full time employees working a standard workweek.

4. A full time employee who works 40 hours per week, who does not work on a holiday, and is in paid leave status during any portion of their scheduled shift immediately before the holiday, is entitled to eight hours of holiday pay.

5. A full time employee whose regular work schedule is more than eight hours, but who has the day off because of a holiday, may use annual leave, compensatory time, have their schedule adjusted or, with approval of the appointing authority, be placed on leave of absence without pay to make up the difference of time in excess of the holiday pay.

6. The salary of an excluded classified or excluded unclassified employee must not be reduced solely because a holiday occurs on a scheduled workday.

7. An employee, other than excluded employees, must receive either: 1) cash payment, or 2) compensatory time, at employee's straight-time rate of pay for hours worked in addition to their regular pay if they work on the holiday.

8. An appointing authority may credit an employee for a holiday which occurs on the employee's regular day off by one of the following options:

A. Adjust the employee's schedule of work for the week during which the holiday occurs;

B. Credit the employee with day-off holiday pay for 8 hours if they are a full time employee and in a paid status during their scheduled shift preceding the holiday.

9. When an employee works their regular day off and that day off is a holiday, they are entitled to day-off holiday pay for 8 hours. The employee is entitled to receive paid overtime, or compensatory time, for the number of hours worked.

10. If an employee has an innovative work agreement on file and the holiday falls on his regular day off and the employee works the holiday, the employee is entitled to receive day-off holiday pay on an hour-for-hour basis not to exceed the number of hours of his established workday. The employee is also entitled to receive paid overtime, or compensatory time for the number of hours worked.

320.06 TIMESHEETS

1. Except as otherwise provided in subsection 2, an employee shall provide an accurate accounting of the hours worked and leave used during a pay period in the NEATS Timekeeping System, to include the specific times at which their shift starts and ends and regular days off.

2. Exception reporters must account for all exceptions in the pay period. Positive reporters must account for all hours worked in the pay period.

3. Employee exceptions or hours worked for positive reporters shall be reported on timesheets at beginning of shift.

4. The employee shall input and submit the timesheet in the NEATS system at the conclusion of each reporting cycle (pay period), no later than 12 PM, Wednesday, of the non-pay week for each pay period.

5. An exempt, classified or exempt, unclassified employee shall provide an accurate accounting of leave used when they are full-day exceptions.
6. An employee who falsifies their timesheet, or who causes or attempts to cause another employee to falsify a timesheet, will be subject to disciplinary action pursuant to AR 339.
7. Supervisors shall approve employee's NEATS timesheets under their authority, no later than 5 PM, Wednesday, of the non-pay week for each pay period.
8. A supervisor or payroll representative may change an entry on an employee's timesheet in accordance with the policy for the correction of errors on timesheet.
 - A. If the supervisor or payroll representative changes an entry on the employee's timesheet, the employee must be notified of the change and sign a copy of the timesheet. The signed timesheet shall be sent to the department's payroll office in Carson City via the facility's timekeeper.
 - B. If the employee contests the change to an entry on their timesheet, the employee is entitled only to their base pay for the workweek in question, until resolved.
 - C. The contested entry must be resolved as soon as practicable and any adjustment must be made during the next pay period following the resolution of the contested entry.
9. A supervisor who is negligent in reviewing and certifying the accuracy of an employee's timesheet may be subject to disciplinary action.

320.07 PAYCHECKS

1. Pay dates are on Friday, every other week. Pay dates which fall on a holiday will be paid the working day prior.
2. Payroll checks are not authorized for early distribution without approval by the Human Resources Division Administrator.
 - A. Early distribution may be requested by completing the Early Paycheck Distribution Request (DOC-1003).
3. Early distribution and/or cashing of paychecks without proper authorization may result in disciplinary action.
4. Direct Deposit of employee paychecks is mandatory, unless an exception is granted by the State Controller.

320.08 PAYMENT OF ACCUMULATED COMPENSATORY TIME

1. Payment of accumulated compensatory time will only be allowed with the approval of the Director or Deputy Director.

A. Individual requests for payment of accumulated compensatory time will be submitted in writing and forwarded to the appropriate Warden or Division Head, who will initial and forward to the Department Human Resources Payroll Office.

B. The Department Human Resources Payroll Office shall verify the balance and forward the request to the Deputy Director of Support Services to determine if the Department has sufficient funding available prior to final approval.

C. Payment shall be made depending upon the date of receipt in conjunction with payroll deadlines.

D. Compensatory time should not be accrued in excess of 120 hours.

E. Compensatory time incurred in excess of the 120-hour limit must be paid, unless the employee has written approval by the Director or designee.

2. Employees transferring from one budget account within the Department to another shall have their compensatory time paid off, unless the Deputy Director of Support Services informs the Department Payroll Office that the Department does not have the available funding.

3. Non-exempt employees transferring out of the Department, who have accrued compensatory time, shall have their compensatory time paid off unless the employee provides written approval from the receiving Department agreeing to assume the liability for the compensatory time and the employee concurs.

4. Employees terminating employment shall be paid for accrued compensatory time.

5. Involuntary compensatory time payment for employees may occur at the end of each fiscal year.

6. Employees must have a signed compensatory time election agreement (DOC-1048) on file prior to accumulating compensatory time.

320.09 MERIT PAY ADJUSTMENT

1. An employee whose last performance evaluation was standard or above and who has not attained the top step of their grade, shall receive a merit pay increase of one step on the pay progression date. The only exception to this would be through legislative action.

2. An employee whose last performance evaluation did not meet standard is not eligible for a merit pay increase until their overall performance evaluation is at least standard.

3. A subsequent, special evaluation not filed within 90 days, shall be deemed to be standard and the employee will be entitled to the merit pay increase, effective on the date on which the subsequent performance evaluation was due.

320.10 OVERPAYMENTS

1. Once an overpayment is discovered the active employee or inactive employee will be sent a Notification of Payroll Overpayment Letter.

2. The active employee or inactive employee will be given 10 working days to return the Acknowledgement of Overpayment/Agreement to Repay form.

3. For an active employee a repayment plan is negotiated and payment is set-up as a payroll deduction. For an inactive employee, repayment must be paid by personal check or money order.

4. If the inactive employee defaults on an agreement to repay an overpayment he will receive a Default on Agreement letter and be given ten working days to remit the amount due. Failure to provide the amount due will result in the employee being turned over to the State Controller's Office for collection.

5. Should employee refuse to acknowledge or repay the overpayment, the State Controller's Office will be notified through Central Payroll and legal action may be taken.

APPLICABILITY

1. This AR applies to all Department employees.

2. This AR requires an Operational Procedure for each institution, facility, and each Division.

3. This regulation does not require an audit.

 _____ Date 9/17/14

Director

EXHIBIT E

Variable Work Schedule Request

EXHIBIT E

NEVADA DEPARTMENT OF CORRECTIONS
VARIABLE WORK SCHEDULE REQUEST

_____ **40 HOUR VARIABLE (INNOVATIVE) WORK SCHEDULE:** NRS 284.180, subsection 6, states: "For employees who choose and are approved for a variable workday, overtime will be considered only after working 40 hours in one week."

I hereby choose and request approval for a variable workday schedule. I understand that by doing so, I may with supervisory approval, adjust my work schedule in a week so I work more than 8 hours a day, provided I do not exceed 40 hours in a workweek without supervisory approval.

This variable work schedule agreement will be in effect until rescinded in writing by both the employee and the supervisor.

_____ **80 HOUR VARIABLE (INNOVATIVE) WORK SCHEDULE:** Under section 7(k) of the Fair Labor Standards Act and NRS 284.180, employees involved in law enforcement and fire protection may choose and be approved for a variable 80-hour schedule within a biweekly pay period.

I hereby choose and request approval for a variable biweekly work schedule. I understand that by doing so I may, with supervisory approval, adjust my work schedule during the 14 day biweekly work period. I also understand that this variable schedule is an exemption to the 40 hour seven day, overtime rule under the Fair Labor Standards Act.

This variable work schedule agreement will remain in effect for Custody staff who bid for shifts that require a variable schedule (ie., 12-hour shifts) until the next shift bidding cycle or a change must be approved mutually by the Warden and the employee.

Overtime will be paid under the Nevada Revised Statute 284.180. Overtime will be considered only after working 80 hours biweekly.

Agreed to on this _____ day of _____ in the year _____

Employees Printed Name: _____

Employee ID # _____ Budget Account _____

Employees Signature: _____ Date _____

Employee's Shift: _____ to _____ RDO's: _____

Approved By: _____
Supervisor's Signature Date

Note: Each time an employee changes their schedule, a new form must be completed to identify the shift and the RDO's (regular days off).

Distribution: Copy-NDOC Personnel File
Copy-Supervisor