IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFF MYERS, Individually and on behalf of others similarly situated,

Appellant,

vs.

RENO CAB COMPANY, INC.,

Respondent.

_____/

No. 80448
District Ct. # CV15-01939

ARTHUR SHATZ and RICHARD FRATIS, Individually and on behalf of others similarly situated,

Appellants,

vs.

ROY L. STREET, Individually and d/b/a CAPITAL CAB,

Respondent.

No. 80449
District Ct. # CV15-01385

APPELLANTS' OPENING BRIEF

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NRAP RULE 26.1 DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

The undersigned's clients in this case, Appellants Jeff Myers, Arthur Shatz

and Richard Fratis are individuals and are not corporations or pseudonyms. The only counsel appearing for the appellants in this case, and currently expected to appear for them in the future in this case, is Leon Greenberg of Leon Greenberg Professional Corporation.

Dated: June 18, 2020

Respectfully submitted,

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JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal because it is an appeal of a final judgment.

The order granting defendants' motion for summary judgment constituting a final judgment was entered by the district court and served electronically with notice of entry on December 16, 2019. The notice of appeal was served and filed electronically on January 13, 2020.

NRAP RULE 17 ROUTING STATEMENT

This appeal should be assigned to the Supreme Court pursuant to NRAP Rule 17(a)(11) because its principal issues involve questions of first impression involving the Nevada Constitution. Specifically, this appeal involves two questions yet to be answered concerning the Nevada Constitution, Article 15, Section 16 (the "Minimum Wage Amendment" or the "MWA"). The first is whether a taxicab driver may still be an "employee" protected by the MWA when they are also "lessee" of the taxicab they are driving pursuant to a lease subject to NRS 706.473. The second is whether NRS 608.0155 abrogates and supercedes the holding of *Terry v. Sapphire Gentleman's Club*, 336 P.3d 951 (2014) regarding how it is determined if a worker is an "employee" or "independent contractor" under the MWA.

STATEMENT OF ISSUES PRESENTED

This appeal presents the following issues:

(1) Whether the Nevada Transportation Authority's ("NTA's") approval pursuant to NRS 706.473 of taxicab lease agreements between taxicab company lessors and taxicab driver lessees renders such taxicab drivers as a matter of law "independent contractors" and not "employees" entitled to the protections of the Nevada Constitution, Article 15, Section 16 (the "Minimum Wage Amendment" or the "MWA"); and

(2) Whether NRS 608.0155, enacted in 2015 and creating a conclusive presumption that certain workers are independent contractors, overrules the holding of *Terry v. Sapphire Gentleman's Club,* 336 P.3d 951 (Nev. Sup. Ct. 2014) that employee status for MWA purposes is determined under the "economic realities" test.

STATEMENT OF THE CASE

The two underlying cases were commenced in 2015 in the First Judicial District Court and subsequently transferred to the Second Judicial District Court and consolidated. JA 1-18, 36-38.[1] The appellants, Jeff Myers, Arthur Shatz, and

[1] Referenced page numbers of Appellants' and Respondents' Joint Appendix are referred to as "JA."

Richard Fratis (hereinafter "appellants" or "Taxi Drivers") allege the respondents, Reno Cab Company, Inc. and Roy L. Street dba Capital Cab (hereinafter "respondents" or "Cab Companies") failed to compensate them and a class of similarly situated Taxi Drivers with the minimum hourly wage required by the MWA. JA 1-18.

The Cab Companies moved for summary judgment in the district court in 2016. They claimed the Taxi Drivers were not employees entitled to the minimum wages required by the MWA but independent contractor lessees of the taxi cabs they drove. JA 48-209. The Taxi Drivers opposed that motion asserting material factual disputes existed as to whether they were employees within the meaning of the MWA under the "economic realities" test of employment adopted by *Terry v. Sapphire Gentleman's Club*, 336 P.3d 951 (Nev. Sup. Ct. 2014). JA 210-355. The district court in 2017 denied that motion, finding whether the Taxi Drivers were independent contractors or employees under the MWA was to be determined pursuant to NRS 608.0155 and not the "economic realities" test and that disputed material facts existed. JA 401-432.

The Cab Companies renewed their motion for summary judgment in the district court in 2019. They asserted the NTA's approval of the Taxi Driver's lease agreements with the Cab Companies pursuant to NRS 706.473 rendered the Taxi

Drivers independent contractors and not employees under the MWA. JA 432-536. The Taxi Drivers in opposition asserted that the NTA's power was limited to approving taxicab lease agreements and did not include determining whether a taxicab lessee was an independent contractor under the MWA. They argued such lease approval was not germane to determining whether the Taxi Drivers were independent contractors and not employees under the MWA. JA 537-570. On December 16, 2019 the district court granted the Cab Companies summary judgment on the basis that the NTA's approval of the Taxi Drivers' lease agreements with the Cab Companies pursuant to NRS 706.473 rendered them independent contractors and not employees for the purposes of the MWA and this appeal ensued. JA 587-601.

STATEMENT OF FACTS

The Cab Companies are licensed to operate taxicab businesses by the NTA. Appellants labored as taxicab drivers for the Cab Companies. Their work in such capacity was governed, in part, by a written "Taxicab Lease Agreement" the form of which was approved by the NTA pursuant to NRS 706.473. JA 69-82, 148-160, 176-189. Those agreements provided the Taxi Drivers would be compensated for their work by retaining whatever "book" (fares) were collected from a taxicab's operation over a 12 hour period after paying the Taxi Companies $5.00 or $10.00 plus 50% of the "total book" plus gas and administrative fees. JA 82, 160, 189.

Those agreements did not provide for any minimum compensation to the Taxi Drivers, whether on a daily, hourly, or weekly basis. The agreements could, and as alleged by the Taxi Drivers did, on occasion result in the Taxi Drivers paying more to the Taxi Companies and for gas then they earned from the "book" share they received for transporting passengers. JA 227, 288-89, 310.

The Taxi Drivers allege that their compensation for their work for the Cab Companies was often less than the minimum hourly wage required by the MWA. JA 6, 15. The Taxi Companies assert the Taxi Drivers had substantial independence and control in performing their work. JA 84-85, JA 162-64. The Taxi Drivers dispute those assertions and insist the Taxi Companies exercised a large degree of control over their work. JA 224-227, 286-290, 307-310. The Taxi Drivers also assert their work for the Taxi Companies was governed by an extensive set of written and other rules and regulations separate from and in addition to the "Taxicab Lease Agreements." JA 315-326.

SUMMARY OF ARGUMENT

The district court erred in finding the NTA's approval of the Cab Companies' taxicab lease agreements pursuant to NRS 706.473 rendered taxicab drivers who signed those agreements "independent contractors" and not "employees" as a matter of law under the MWA. The NTA is granted the power by NRS 706.473 approve

Cab Companies' taxicab lease agreements. It is not granted the power to declare that lessees who sign such agreements, irrespective of all other facts and circumstances, are "independent contractors" as a matter of law for minimum wage purposes. The statutory and Nevada Constitutional language, scheme, and history, and this Court's precedents, provide no support for the district court's contrary conclusion.

The district court erred in finding NRS 608.0155, enacted in 2015, could abrogate this Court's earlier decision in *Terry v. Sapphire Gentleman's Club,* 336 P.3d 951, 958 (Nev. Sup. Ct. 2014), that employment for the purposes of the MWA is determined under the "economic realities" test. The Nevada Legislature is not granted the power under Nevada's Constitution to vary the terms of the MWA and NRS 608.0155 can only apply to situations that do not involve claims of "employment" under the MWA. The district court, by ignoring the supremacy of Nevada's Constitution, erred in finding NRS 608.0155 and not the "economic realities" test controlled the determination of whether the Taxi Drivers were employees of the Cab Companies under the MWA.

APPLICABLE STANDARD OF REVIEW

The district court's decision granting summary judgment is reviewed by the Supreme Court under a *de novo* standard without any deference to the district court's findings. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729; 121 P.3d 1026, 1029 (2005).

Summary judgment is only appropriate when the pleadings and other evidence indicate there is no genuine dispute as to any issues of material fact and the moving party is entitled to a judgment as a matter of law. *Id.* When reviewing a decision granting summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party. *Id.*

ARGUMENT

I. THE DISTRICT COURT ERRED IN FINDING NRS 706.473 GRANTED THE NTA THE POWER TO DEFINE EMPLOYMENT FOR MINIMUM WAGE PURPOSES

A. *Terry* held that employment for minimum wage purposes is determined under the "economic realties" test.

In *Terry* this Court was called upon to decide how it is determined whether a worker is an "employee" or an "independent contractor" under Nevada law for minimum wage purposes. After conducting an extensive review of Nevada's and other jurisdictions' precedents, the legislative and Nevada Constitutional history and the purpose of minimum wage laws, and taking into account other considerations, it concluded it would "....adopt the FLSA's [the federal Fair Labor Standards Act's] 'economic realities' test for employment in the context of Nevada's minimum wage laws." 336 P.3d at 954-958. In doing so it reversed the district court's decision to apply to Nevada's minimum wage laws the "five factor" test of employment used by Nevada's Industrial Insurance Act ("NIIA"). 336 P.3d at 953-54.

Terry rested its decision to adopt the "economic realities" test, and rejected the district court's use of the NIIA test of employment, based upon the different "underlying purpose" of the NIIA and Nevada's minimum wage laws; that "the Legislature had not clearly signaled its intent that Nevada's minimum wage scheme should deviate from the federally [FLSA] set course"; and the "practical reasons" of having Nevada's minimum wage test of employment conform to the FLSA's longstanding "economic realities" test. 336 P.3d at 957-958. There is no suggestion in *Terry* that any test other than the "economic realities" test is properly used, in any situation, to determine employment status under Nevada's minimum wage laws.

B. Even if *Terry* was ignored NRS 706.473 does not grant the NTA the power to define employment for minimum wage purposes.

Even if *Terry* was ignored no basis exists to find the NTA, through NRS 706.473, has the power to define taxi drivers as "independent contractors" for minimum wage purposes. That statute does not discuss granting the NTA the power to define who is, or is not, an independent contractor. It grants the NTA the power to approve of, and delineate the terms of, "a lease agreement" by a taxicab company with an independent contractor and is silent about how, or whether, the NTA

determines if a lessee is an independent contractor.[2] Nor does NRS 706.473 concern itself with whether such a leased taxicab driver is an employee of anyone. Rather, it accomplishes two things: it renders the lessor under such an NTA approved agreement jointly and severally liable with the lessee for violations of Chapter 706 and grants the NTA standing to intervene in any civil action involving such lease.[3] The NTA, by having the power to withhold approval of any proposed lease agreement, can also ensure the terms of such a lease do not restrict taxi cab service or allow a Cab Company to evade its obligations under Chapter 706.

NRS 706.473 grants the NTA the power to regulate taxicab lease terms. It also

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[2] NRS 706.473 (1) and (2):

(1) In a county whose population is less than 700,000, a person who holds a certificate of public convenience and necessity which was issued for the operation of a taxicab business may, upon approval from the Authority, lease a taxicab to an independent contractor who does not hold a certificate of public convenience and necessity.

(2) A person who enters into a lease agreement with an independent contractor pursuant to this section shall submit a copy of the agreement to the Authority for its approval. The agreement is not effective until approved by the Authority.

[3] NRS 706.473 (3) and (4):

(3) A person who leases a taxicab to an independent contractor is jointly and severally liable with the independent contractor for any violation of the provisions of this chapter or the regulations adopted pursuant thereto, and shall ensure that the independent contractor complies with such provisions and regulations.

(4) The Authority or any of its employees may intervene in a civil action involving a lease agreement entered into pursuant to this section.

requires joint and several lessor/lessee liability for compliance with NRS Chapter 706, as specified in NRS 706.473(3). Even if the NTA believes it has the power to define a taxi lessee as an "independent contractor" as a matter of law for the MWA or other purposes, such an assertion of authority by it has no weight. "...[A]n agency's interpretation of a statute is persuasive when the statute is one the agency administers." *Nev. Pub. Emplys. Ret. Bd. v. Smith*, 320 P.3d 560, 565 (Nev. Sup. Ct. 2013). The NTA does not administer the MWA and has no power over, or expertise in, Nevada's minimum wage laws.

The NTA's power to establish taxicab lease terms under NRS 706.473 is not relevant to whether the Taxi Drivers are, or are not, employees for minimum wage purposes. Such lease terms may, or may not, tend to establish a taxicab lessee is an independent contractor under the MWA. But in either event it is the lease terms themselves (if complied with) that may influence the resolution of the employee or independent contractor issue. The NTA's approval of the lease does not render the taxi lessee an independent contractor under the MWA.

C. The district court's understanding of *Yellow Cab of Reno* is erroneous and without any basis in law.

The district court rested its holding on the following findings drawn, exclusively, from what it found to be the law established by this Court in *Yellow Cab of Reno v. Second Judicial Dist. Ct.*, 262 P.3d 699, 704 (2011):

> The Court will grant the Motion because the Plaintiffs are independent contractors as a matter of law. Contrary to the Plaintiffs' argument, compliance with NRS 706.473 and NAC 706.3753 creates an independent contractor relationship as a matter of law. The *Yellow Cab* Court made this abundantly clear when it opined that "[t]he existence of this statutorily created independent contractor relationship turns not on the issue of control," but on the satisfaction of statutory and administrative requirements. 127 Nev. at 592, 262 P.3d at 704. In this case, all of the requirements in NRS 706.473 and NAC 706.3753 have been satisfied, thus creating an independent contractor relationship between the Plaintiffs and the Defendants. JA 598

The district court erred. In *Yellow Cab of Reno* this Court did *not* find, much less make "abundantly clear" that "compliance with NRS 706.473 and NAC 706.3753 creates an independent contractor relationship as a matter of law" for all purposes or for minimum wage purposes or even for any purpose except Chapter 706. The district court failed to read the sentence immediately following the language it cites, where this Court made clear whether "this statutorily created independent contract relationship" for the purposes of NRS Chapter 706 extended beyond that Chapter had not been addressed in Nevada:

> The statute is silent, however, as to whether the creation of an independent contractor relationship under that statute acts to bar the application of respondeat superior liability as is the case under traditional independent contractor relationships. *Id.*

Yellow Cab of Reno declined, in the context of that writ proceeding, to consider that issue and directed the district court to examine "...whether a statutorily recognized independent contractor relationship, established through compliance with

NRS 706.473 and the regulations promulgated in accordance with NRS 706.475, would allow Yellow Cab to avoid liability under a respondeat superior analysis." 262 P.3d at 704 and fn 6.

What *Yellow Cab of Reno* found was that Nevada's Court's had yet to determine whether NRS 706.473 could establish an "independent contractor" relationship for a legal liability *not* arising under Chapter 706, such as the common law *respondeat superior* liability at issue in that case. It never answered that question, much less found, as the district court held, that NRS 706.473 establishes an independent contractor relationship as a matter of law for minimum wage purposes.

D. Even it NRS 706.473 establishes independent contractor status for *respondeat superior* purposes it does not for minimum wage purposes.

Nevada's Courts have yet to address the precise question left unanswered by *Yellow Cab of Reno*. But even if they were to find NRS 706.473 displaces the common law *respondeat superior* analysis discussed in *Yellow Cab of Reno*, and establishes as a matter of law the absence of such a relationship, that finding would not extend to minimum wage claims.

The economic realities test adopted by this Court in *Terry* overrides the common law test of employment and sometimes results in an individual being an independent contractor under the common law (or by extension under one statutory

scheme) and simultaneously an employee for minimum wage purposes. *See, Rutherford Food Corp. v. McComb,* 331 U.S. 722, 726-28 (1947) (Establishing "economic realities" test) citing Court of Appeals decision 156 F. 513 at 516-17 (Status of workers as independent contractors under the common law was not controlling and they were employees under the federal minimum wage law; the Court of Appeals noting it is "immaterial" that the workers were independent contractors for "other purposes" outside the minimum wage context.) *Terry* embraced this approach and expressly recognized that "employment" may mean different things under different Nevada laws, such as the NIAA and Nevada's minimum wage laws. 336 P.3d at 957-958. *See, also, Hays Home Delivery v. Emplrs Ins. Co.*, 31 P.3d 367, 369-370 (Nev. Sup. Ct. 2001) (Independent contractors in certain circumstances are employees for purposes of Nevada's workers compensation system, as established by *Meers v. Haughton Elevator,* 701 P.2d 1006 (Nev. Sup. Ct. 1985), and as also later codified by statute).

While, perhaps, NRS 706.473 can override a common law *respondent superior* analysis, no basis exists to find it can override the longstanding statutory, and now Nevada Constitutionally based, economic realities employment test for minimum wage purposes.

II. THE DISTRICT COURT ERRED IN FINDING NRS 608.0155 DISPLACES THE ECONOMIC REALITIES TEST OF EMPLOYMENT FOR CLAIMS BROUGHT UNDER THE MWA

A. This Court's 2014 determination in *Terry* that the "economic realities" test of employment applied to the MWA could not be abrogated in 2015 by NRS 608.0155.

This Court in *Terry* held it would "...adopt the FLSA's "economic realities" test for employment in the context of Nevada's minimum wage *laws*." 336 P.3d at 958 (emphasis added). Its use of the plural tense made clear this Court was not just interpreting "employment" under Nevada's statutes for minimum wage purposes but under all of its *laws* including the MWA. It was to that extent rendering an interpretation of a provision of Nevada's Constitution, not a mere statute.

Terry was issued in 2014 and declared what it meant to be an employee for minimum wage purposes under Nevada's laws. In respect to the MWA, passed in 2006, it was rendering such a decision as to what the MWA meant by "employment" as of its enactment in 2006. NRS 608.0155 was enacted by Nevada's Legislature after *Terry* was decided. The district court held that the enactment of NRS 608.0155 in 2015 evidenced an "intent" by Nevada's Legislature to "supercede the decisions in *Thomas* [*v. Nevada Yellow Cab Corp.*, 327 P. 518 (Nev. Sup. Ct. 2014)] and *Sapphire* [*Terry]...*" and "abrogate" *Terry's* adoption of the economic realities test. JA 408-409.

In upholding the abrogation of *Terry* by NRS 608.0155 the district court reasoned, citing *Thomas*, 327 P.3d at 521, that such statute was not " 'irreconcilably repugnant' " to the MWA but merely provided an "interpretive aid" by "...enumerating a clear test of who is and who is not an independent contractor, and therefore, who is and who is not excepted from the MWA's expanded protections." JA 410. It reasoned such action by the Legislature was not "constitutionally infirm," as found in *Thomas* in respect to the statutory minimum wage exemption for taxi drivers, since it "did not designate specific groups, such as taxi drivers, for its application or exemption." *Id.*

The district court, in upholding the Legislature's power to "abrogate" *Terry* by enacting NRS 608.0155, ignored the fundamental principal of constitutional supremacy. The "implicit repeal" by *Thomas* of the statutory minimum wage exemption for taxi drivers in NRS 608.250 arose from the MWA's broad and express definitions of an "employee" and the MWA's status as a constitutional, and not a mere statutory, provision. 327 P.3d at 521. That was also the result, as *Terry* emphasized, of the MWA expressing "the state's voters' wish that more, not fewer, persons would receive minimum wage protections." 336 P.3d at 955. The MWA, upon its enactment in 2006, entirely displaced NRS 608.250 and Nevada's Legislature (as acknowledged by the district court) could not simply reenact that

statute and supercede *Thomas* as the MWA did not grant it the power to amend the MWA's scope.

This Court, by holding in *Terry* that the MWA applies the economic realities test of employment, was setting forth a requirement of Nevada's Constitution, not a statute. Absent authorization from the MWA itself to do so, Nevada's Legislature was powerless to "abrogate" and "supercede" that requirement of Nevada's Constitution by creating a different "test" or "interpretive tool" to control the MWA's application. *See*, *State ex. rel. Schneider v. Kennedy*, 587 P.2d 844, 847-54 (Sup. Ct. Kan. 1978) (Kansas Legislature could not define the term "open saloon" contained in Kansas Constitution as it was granted no such power under that constitution; statute authorizing alcohol sales under such legislative definition was invalid).

The Kansas Supreme Court aptly explained the obligation of courts to set aside invalid legislative attempts, such as NRS 608.0155, to "redefine" constitutional law in *State v. Nelson*, 502 P.2d 841, 846 (Sup. Ct. Kan. 1972):

> It is the function and duty of this court to define constitutional provisions. The definition should achieve a consistency so that it shall not be taken to mean one thing at one time and another thing at another time. It is the nature of the judicial process that the construction becomes equally as controlling upon the legislature of the state as the provisions of the constitution itself. (16 C.J.S. Constitutional Law s 13.) Any attempt by the legislature to obliterate the constitution so construed by the court is unconstitutional legislation and void. Whenever the legislature enacts laws prohibited by judicially construed constitutional provisions, it is the duty of the courts to strike down such laws.

The district court's finding that NRS 608.0155 exists in a permissive sphere of legislative initiative, because it is a mere "interpretive aid" that is unlike the superceded industry specific exemptions of NRS 608.250, is unexplained, illogical, and contrary to this Court's holdings in *Thomas* and *Terry*. None of the precedents cited by the district court support that finding. As *Thomas* explained "....a state legislature ' has not the power to enact any law conflicting with the federal constitution, the laws of congress, or the constitution of its particular State.' " *Thomas*, 327 P.3d at 521, *citing and quoting State v. Rhodes*, 3 Nev. 240, 250 (1867). This Court, in *Terry*, determined the meaning of "employment" under Nevada's Constitution for the purposes of the MWA. The Nevada Legislature's attempt to have NRS 608.0155 require the use of a different meaning of "employment" under the MWA is void.[4]

[4] NRS 608.0155 to the extent it regulates relationships outside of the context of the MWA is valid. It constitutes the law of Nevada in respect to claims not involving minimum wages and the few remaining minimum wage claims (such as those of employees under 18 years of age) outside the MWA's scope and that are governed by NRS 608.250.

CONCLUSION

Wherefore, for all the foregoing reasons, the Orders and Judgment appealed from should be reversed in their entirety.

Dated: June 18, 2020

Respectfully submitted,

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Certificate of Compliance With N.R.A.P Rule 28.2

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using 14 point Times New Roman typeface in wordperfect.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 3374 words.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules

of Appellate Procedure.

Dated this 18th day of June, 2020

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ADDENDUM

NEVADA STATUTES AND CONSTITUTION EXCERPTS

Nevada Constitution, Article 15, Section 16

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

all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.
C. As used in this section, “employee” means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. “Employer” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.
D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.
Credits
Approved and ratified 2006.

N.R.S. 608.0155

608.0155. Persons presumed to be independent contractor
Currentness
1. Except as otherwise provided in subsection 2, for the purposes of this chapter, a person is conclusively presumed to be an independent contractor if:
(a) Unless the person is a foreign national who is legally present in the United States, the person possesses or has applied for an employer identification number or social security number or has filed an income tax return for a business or earnings from self-employment with the Internal Revenue Service in the previous year;
(b) The person is required by the contract with the principal to hold any necessary state business license or local business license and to maintain any necessary occupational license, insurance or bonding in order to operate in this State; and

(c) The person satisfies three or more of the following criteria:
(1) Notwithstanding the exercise of any control necessary to comply with any statutory, regulatory or contractual obligations, the person has control and discretion over the means and manner of the performance of any work and the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the principal in the contract.
(2) Except for an agreement with the principal relating to the completion schedule, range of work hours or, if the work contracted for is entertainment, the time such entertainment is to be presented, the person has control over the time the work is performed.
(3) The person is not required to work exclusively for one principal unless:
(I) A law, regulation or ordinance prohibits the person from providing services to more than one principal; or
(II) The person has entered into a written contract to provide services to only one principal for a limited period.
(4) The person is free to hire employees to assist with the work.
(5) The person contributes a substantial investment of capital in the business of the person, including, without limitation, the:
(I) Purchase or lease of ordinary tools, material and equipment regardless of source;
(II) Obtaining of a license or other permission from the principal to access any work space of the principal to perform the work for which the person was engaged; and
(III) Lease of any work space from the principal required to perform the work for which the person was engaged.

The determination of whether an investment of capital is substantial for the purpose of this subparagraph must be made on the basis of the amount of income the person receives, the equipment commonly used and the expenses commonly incurred in the trade or profession in which the person engages.
2. A natural person is conclusively presumed to be an independent contractor if the person is a contractor or subcontractor licensed pursuant to chapter 624 of NRS or is directly compensated by a contractor or subcontractor licensed pursuant to chapter 624 of NRS for providing labor for which a license pursuant to chapter 624 of NRS is required to perform and:
(a) The person has been and will continue to be free from control or direction over the performance of the services, both under his or her contract of service and in fact;
(b) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprises for which the service is performed; and

(c) The service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged, of the same nature as that involved in the contract of service.
3. The fact that a person is not conclusively presumed to be an independent contractor for failure to satisfy three or more of the criteria set forth in paragraph (c) of subsection 1 does not automatically create a presumption that the person is an employee.
4. As used in this section:
(a) “Foreign national” has the meaning ascribed to it in NRS 294A.325.
(b) “Providing labor” does not include the delivery of supplies.
Credits
Added by Laws 2015, c. 325, § 1, eff. June 2, 2015. Amended by Laws 2019, c. 528, § 10.5, eff. July 1, 2019.
N. R. S. 608.0155, NV ST 608.0155
Current through the end of the 80th Regular Session (2019)

NRS 706.473

Leasing of taxicab to independent contractor: Authorization in certain counties; limitations; approval of agreement; liability for violations; intervention in civil action by Authority
Currentness
1. In a county whose population is less than 700,000, a person who holds a certificate of public convenience and necessity which was issued for the operation of a taxicab business may, upon approval from the Authority, lease a taxicab to an independent contractor who does not hold a certificate of public convenience and necessity. A person may lease only one taxicab to each independent contractor with whom the person enters into a lease agreement. The taxicab may be used only in a manner authorized by the lessor's certificate of public convenience and necessity.
2. A person who enters into a lease agreement with an independent contractor pursuant to this section shall submit a copy of the agreement to the Authority for its approval. The agreement is not effective until approved by the Authority.
3. A person who leases a taxicab to an independent contractor is jointly and severally liable with the independent contractor for any violation of the provisions of this chapter or the regulations adopted pursuant thereto, and shall ensure that the independent contractor complies with such provisions and regulations.
4. The Authority or any of its employees may intervene in a civil action involving a lease agreement entered into pursuant to this section.

Credits

Added by Laws 1993, p. 2649. Amended by Laws 1997, c. 482, § 186; Laws 2011, c. 253, § 300, eff. July 1, 2011.

CERTIFICATE OF SERVICE

I certify that on June 19, 2020 I served a copy of the foregoing APPELLANTS' OPENING BRIEF upon all counsel of record by ECF system which served all parties electronically.

Dated this 19th Day of June, 2020

/s/ *LEON GREENBERG*

Leon Greenberg