

AGC'S Q & A ON AB 148

1. Does Nevada law now require an employee working on a construction site to carry a card certifying that he or she has completed a division of industrial relations approved OSHA 10 or OSHA 30 training course within the past five years?

Yes. The measure was passed as Assembly Bill 148 by the 2009 legislature. The law becomes effective January 1, 2010.

2. Must the employer or the employee pay for this mandatory training and should an employee be paid while attending this training?

The Nevada State Labor Commissioner Michael Tanchek has said under NAC 608.130 the OSHA 10 or 30-hour training is NOT considered compensable time since it is required by state law for a construction worker to have this training to work in the construction industry. Therefore, an employer bears no obligation to pay wages under this circumstance or the fee for the respective class; this is solely the burden of the employee. Tanchek has confirmed with his federal counterparts and they concur.

3. Do all existing employee OSHA 10 and OSHA 30 cards automatically expire in Nevada on the date this law becomes effective?

No. While the law itself becomes effective on January 1, 2010, the law also states that OSHA 10 and 30 cards expire five years from the date of issue. This being the case, a card issued to an employee on December 15, 2004 would be considered expired on January 1, 2010. However, another employee's card issued on January 15, 2008 would be considered valid until January 15, 2013.

4. Does this new law extend to private employers and their employees who are working on federal lands (i.e., Nevada Test Site, military installations, Bureau of Reclamation, etc.)?

Yes. Nevada OSHA has jurisdiction over private employers and their employees on federal lands but not federal agencies and federal employees. However, Nevada OSHA must obtain proper authorization to enter through Federal OSHA and also the appropriate federal agency.

5. Are there any other states with similar requirements?

Yes. Six other states also require OSHA 10-hour construction cards for their workers in certain situations: New York, Rhode Island, Massachusetts, Connecticut, New Hampshire and Missouri.

6. Is the OSHA 10 or OSHA 30 course the only acceptable training permitted by the Nevada Statute?

No. From January 1, 2010 through December 31, 2010 *only*, employers may conduct their own OSHA 10 or OSHA 30 "alternative course" that meets or exceeds the OSHA Outreach Training Guidelines for Construction established by the United States Department of Labor. This course must be approved by the safety committee of employers with more than 25 employees established pursuant to NRS 618-382.2(b). However, any construction worker or supervisor who has satisfied the requirement by completing an "alternative" course must complete an authorized OSHA 10 or OSHA 30 construction course and receive the appropriate course cards not later than January 1, 2011.

7. When does a construction worker or supervisor have to obtain an OSHA 10 or 30 card?

Not later than 15 days after being hired beginning January 1, 2010.

8. Can an employer make this required training a condition of employment prior to hiring a new employee?

An employer may do so according to the Nevada Office of the Labor Commissioner. An employer may require a prospective employee to present their OSHA 10 or OSHA 30 course completion card prior to hiring them.

9. What happens if an employee fails to obtain his OSHA completion card within 15 days?

An employer must terminate or suspend employment of any supervisor or construction worker who fails to present that employer with a current and valid OSHA 10 or OSHA 30 card approved by the Nevada Division of Industrial Relations.

10. What happens if my employer fails to comply with the statute?

Employers who fail to comply will face the following OSHA penalties: \$500 fine upon first violation and a \$1,000 fine upon the second violation. Third and subsequent violations will be fined pursuant to NRS 618.635.

11. Does an employer have any special appeal rights?

Yes. Before a fine or any other penalty is imposed upon an employer, they have the same rights to contest the citation as they do for any other OSHA citation.

12. Who is responsible for presenting the appropriate training card when summoned by the OSHA inspector on the jobsite?

It is the employee's responsibility to carry his OSHA training card with him on the jobsite at all times. At the OSHA regulatory preparation workshop on July 30, 2009, OSHA said they would accept a photocopy of the card. AGC recommends employers also keep a photocopy of the appropriate valid training card in the employee's file. If a card has been lost or stolen, an employee may contact their trainer and receive a replacement card for \$25.

13. What are the responsibilities of a general contractor who has employees regarding his own employees and those of the subcontractors under this statute?

The general contractor must comply with all requirements of the statute for their employees only. Each subcontractor must comply with all requirements for their employees only. An employer only has responsibility for their own employees.

14. How does the statute define the supervisory employee required to have an OSHA 30 completion card?

Supervisory employee means any person having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them, to adjust their grievances or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. The exercise of such authority shall not be deemed to place the employee in supervisory employee status unless the exercise of such authority occupies a significant portion of the employee's workday. As further discussed at the OSHA regulatory preparation workshop on July 30, 2009, this applies to supervisors who are on a construction site.

15. How does the statute define a construction worker required to have an OSHA 10 completion card?

Construction worker means a person who actually performs physical work at a construction site that results in the construction, alteration or destruction involved in the construction project including without limitation painting and decorating; or who supervises any person engaged in that work. The term does not include a person to the extent that the person performs or supervises another person who performs work which is conducted for the upkeep of an existing property for which a certificate of occupancy has been issued by the appropriate building inspector or other authority, and to prevent the property from degrading, to maintain the operational soundness of the property, including without limitation, by repairing the components of the property or by replacing components of the property with the same of similar components.

16. When I'm attending an OSHA 10 or 30 course, how do I know whether or not the instructor is actually authorized to teach the class?

Nevada requires each authorized trainer to display his trainer card in a conspicuous manner at each location where he provides an OSHA 10 or 30-hour course. No person other than an authorized trainer with a valid card may teach these courses. Guest speakers may assist but the authorized trainer must remain present. The card will have the instructor's name, the OSHA Training Center where the trainer received his card and the card's expiration date. Authorized trainers are required to renew their cards every four years.

17. How do I locate additional information on this statute such as finding an authorized trainer?

Please visit <http://www.nv1030.org>.

18. Does Federal OSHA have an anti-fraud program and, if so, how do I report suspected fraud?

Yes. Federal OSHA has established an anti-fraud program. The public is asked to call a new outreach fraud hotline at (847) 297-4810 to file complaints about program fraud and abuse. OSHA also has developed a new process for investigating and adjudicating complaints and a watch list of outreach trainers who have received disciplinary action will be posted on OSHA's public website at www.osha.gov.

