

STATE OF NEVADA

Audit Report

Office of Labor Commissioner

2011



Legislative Auditor
Carson City, Nevada

Audit Highlights



Highlights of Legislative Auditor report on the Office of Labor Commissioner issued on April 12, 2011. Report # LA12-02.

Background

The Office is responsible for enforcement of all labor laws not specifically vested in any other officer, board, or commission. The Office does not enforce statutes related to unemployment, workers compensation, workplace safety, employment discrimination, and public employees. Major responsibilities of the Office are: (1) to investigate complaints (referred to as claims) received from employees claiming their employer did not pay them the correct amount of wages, and (2) to establish and monitor the prevailing wage rates on public works projects.

The agency has an office in Las Vegas and in Carson City. As of September 2010, it had 18 employees. The Office is funded entirely by a General Fund appropriation. Expenditures were about \$1.42 million in fiscal year 2010. The Office also has a bank account under its custody. The account is used to deposit money received from employers and to write checks to claimants. Total deposits into the account in 2010 were a little over \$1.9 million.

Purpose of Audit

The purpose of this audit was to determine if the Office of Labor Commissioner has: (1) effective controls to safeguard the receipt and disbursement of claim monies, (2) sufficient controls in place to ensure the timely resolution of wage claims, and (3) sufficient and reliable information for management and external parties. Our audit focused on wage claims in fiscal year 2010, but included prior fiscal years for procedures concerning contractors with multiple substantiated claims.

Audit Recommendations

This audit report contains five recommendations to improve safeguarding of cash received from employers on behalf of claimants. In addition, the report has three recommendations to help ensure wage and hour claims are resolved timely. Finally, there are four recommendations to improve the information available to supervisors that monitor claim investigations and to external parties.

The Office accepted the 12 recommendations.

Recommendation Status

The Office's 60-day plan for corrective action is due on July 7, 2011. In addition, the six-month report on the status of audit recommendations is due on January 9, 2012.

Office of Labor Commissioner

Department of Business and Industry

Summary

By modifying its longstanding practices, the Office can get money to claimants faster, eliminate many time-consuming tasks performed by staff, and reduce the risk of money being lost or stolen. The current process for remitting money to claimants is inefficient and delays the delivery of money to claimants by 2 to 3 weeks. Most of the inefficiencies are a result of the Office's practice of depositing money received from employers into its outside bank account and then writing checks to disburse the money to claimants. Significant improvements can be achieved by sending checks received from employers directly to claimants, as is done in other states.

Although the Office resolved many claims timely, it can improve the effectiveness of its claim investigations by monitoring timeliness better, assessing penalties more consistently, and reporting amounts unpaid by employers to the State Controller to pursue collection. Finally, sufficient and reliable management information is needed to oversee investigations and to report important information to external parties, including the Governor, Legislature, and State Contractors' Board.

Key Findings

The information system used to record the collection and disbursement of cash held in an outside bank account is not adequately secured. Weaknesses included inadequate passwords, a lack of edit logs to track which employee creates or modifies a record, and the ability to modify system information at any time. These weaknesses increase the risk fraud could occur and go undetected. This account had disbursements of \$1.9 million in fiscal year 2010.

The Office's process for remitting money to claimants is inefficient and delays the delivery of money to claimants by 2 to 3 weeks. Most inefficiencies are a result of the longstanding practice of depositing money received from employers and then writing checks to claimants. Other inefficiencies come from the information system itself. Other states remit checks directly to claimants, which eliminates many tasks required by the Office's current process.

For most of the wage and hour claims filed, the employer did not object and therefore remitted money to the Office, which then forwarded the money to the claimant. However, when the employer filed an objection to the claim, the Las Vegas office often did not take timely action to resolve the claim. Some claims remained open for several months or even years without any action. Delays can cause financial hardship to workers and their families.

Penalties were not always assessed correctly or consistently. In 7 of 24 claims, the penalty was not calculated using the correct number of days as outlined in statute. In 12 of 24 claims, the penalties were not consistent with the Office's informal policy. The differences included some claims where the employer paid less than the required penalty, but the Office accepted the lesser payment without documenting why it was accepted or supervisory approval.

In fiscal year 2010, the Office did not report to the State Controller over \$1.7 million in debts owed by employers to the Office on behalf of claimants. When debts are not reported, the Controller is not able to pursue actions to collect monies owed to claimants.

The Office's information system does not provide sufficient and reliable information necessary to track and monitor wage and hour claim investigations. Specifically, the system can only be queried to show basic information such as the number of claims. Also, the Office had to review each of the almost 2,800 claims opened during the year to compile information for a performance measure, since the system could not provide the information.

NRS 607.165 requires the Office to notify the State Contractors' Board when three substantiated claims have been made against a contractor in a 2-year period. The Office has not notified the Board in part because the Office's information system is not capable of easily identifying such contractors. Based on multiple queries of the system data and review of files, we identified 13 contractors with 3 or more claims in a 2-year period.

The Office has not prepared a report of its activities for external parties, including information on claims it investigated. NRS 607.080 requires the Commissioner to prepare a biennial report for the Governor and Legislature that includes statistical information relating to the Office's statutory objectives. Without such data, decision-makers might not have the information they need to make informed decisions regarding labor related trends.

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This report contains the findings, conclusions, and recommendations from our completed audit of the Office of Labor Commissioner. This audit was conducted pursuant to the ongoing program of the Legislative Auditor as authorized by the Legislative Commission. The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions.

This report includes 12 recommendations to improve the safeguarding of money received on behalf of claimants, the timeliness of wage and hour claim investigations, and the information available to management and external parties. We are available to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or other State officials.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul V. Townsend".

Paul V. Townsend, CPA
Legislative Auditor

March 31, 2011
Carson City, Nevada

Office of Labor Commissioner

Table of Contents

Introduction	1
Background.....	1
Scope and Objectives	3
Inadequate Controls Over the Collection and Disbursement of Cash for Unpaid Wages	5
Payment Process Lacks Controls and Causes Inefficiencies	5
Additional Cash Control Weaknesses	8
Transfer of Funds to Unclaimed Property Not Timely	11
Wage Claim Resolution Process Can Be Improved	13
Disputed Claims Not Resolved Timely	13
Penalties Not Assessed Correctly or Consistently	15
Amounts Unpaid by Employers Not Reported	16
Management Information Not Sufficient or Reliable	18
Reliable Information Needed to Monitor Claim Investigations.....	18
Sufficient Information Not Collected For External Parties	19
Limitations of Current Information System.....	21
Appendices	
A. Wage and Hour Claim Resolution Process.....	23
B. Prevailing Wage Claim Resolution Process.....	24
C. Audit Methodology.....	25
D. Response From the Office of Labor Commissioner	28
E. Auditor’s Comments on Agency Response.....	33

Introduction

Background

The Office of Labor Commissioner (Office) was created in 1915 and is currently an agency of the Department of Business and Industry. The mission of the Office is to enforce the labor laws of the State of Nevada in a manner that protects the rights of working families in a fair, professional, and timely manner. The Office is responsible for the enforcement of all labor laws in the State that are not specifically and exclusively vested in any other officer, board, or commission. The Office does not enforce statutes related to unemployment, workers compensation, workplace safety, employment discrimination, and public employees.

The major responsibilities of the Office are: (1) to investigate complaints (referred to as claims) received from employees claiming their employer did not pay them the correct amount of wages, and (2) to establish and enforce the prevailing wage rates on public works projects. State law allows the Office to commence a wage claim investigation for the purpose of collecting wages, commissions, and other demands on behalf of any person who is financially unable to employ private counsel. In addition, the Office conducts an annual survey to establish the prevailing wage rates in each county. Claims concerning violations of prevailing wage laws are filed with the Office, and then are forwarded to the public bodies for investigation.

Staffing and Budget

The Labor Commissioner has an office in Las Vegas and in Carson City, and as of September 2010 had 18 full-time employees. The Labor Commissioner is appointed by the Director of the Department of Business and Industry and the Office is funded entirely by a General Fund appropriation. Actual expenditures were approximately \$1.59 million in fiscal year 2009 and approximately \$1.42 million in fiscal year 2010. Exhibit 1 has further detail on expenditures for fiscal year 2010.

**Office of the Labor Commissioner
Expenditures
Fiscal Year 2010**

Exhibit 1

Category	Amount
Personnel	\$1,276,377
Operating	120,664
Travel	20,995
Information Services	5,419
Purchasing Assessment	170
Total	\$1,423,625

Source: State Accounting System.

The Office has an outside bank account, authorized by statute in 1967, under its custody. The bank account is used to deposit money received from employers, based on the Office's determination, for unpaid wages and penalties due to claimants. The Office then writes checks from this account to distribute the unpaid wages owed claimants. The average monthly account balance for fiscal year 2010 was \$416,298. The amount of receipts and disbursements from the account for each month during fiscal year 2010 is shown in Exhibit 2.

**Office of the Labor Commissioner
Bank Account Activity
Fiscal Year 2010**

Exhibit 2

	Receipts	Disbursements
Jul 2009	\$ 221,966	\$ 109,047
Aug 2009	149,932	193,570
Sep 2009	89,525	164,711
Oct 2009	206,233	189,063
Nov 2009	141,992	161,417
Dec 2009	370,236	235,589
Jan 2010	128,926	145,432
Feb 2010	97,661	108,717
Mar 2010	127,292	106,405
Apr 2010	202,381	143,044
May 2010	91,572	128,101
Jun 2010	107,354	122,781
Total	\$1,935,070	\$1,807,877
Average	\$ 161,256	\$ 150,656

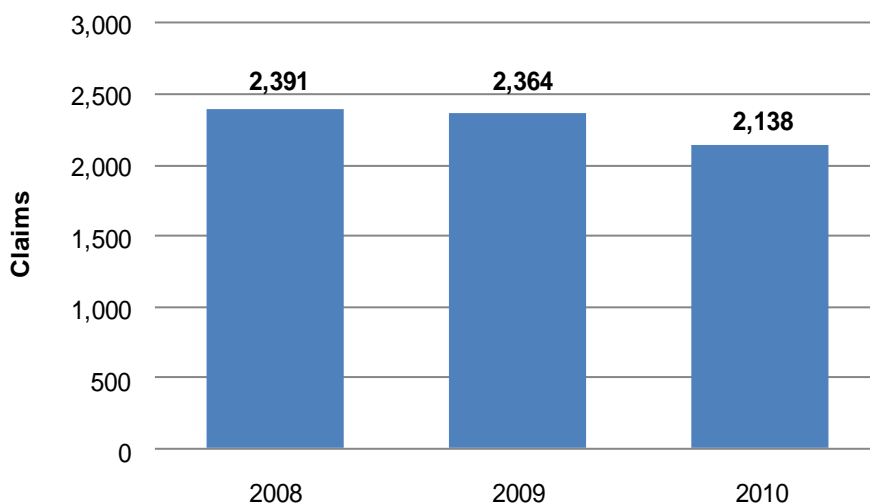
Source: Labor Commissioner's bank statements.

Types and Number of Claims Received

The Office receives two types of claims from claimants. The first type is referred to as a wage and hour claim. Wage and hour claims include allegations where employers fail to pay the correct rate, do not pay overtime, or make improper deductions from claimants' paychecks. Wage and hour claims are investigated by the Office. See Appendix A for more information on the Office's process to resolve wage and hour claims. The second type of claim is called a prevailing wage claim. These claims allege the claimant was not paid the correct prevailing wage on a public works project. The public body overseeing the project investigates the claim. See Appendix B for more information on the process for resolving prevailing wage claims. Exhibit 3 shows the number of wage and hour claims received by the Office for fiscal years 2008 through 2010.

Labor Commissioner Wage and Hour Claims Processed

Exhibit 3



Source: Labor Commissioner's wage and hour information system.

The number of prevailing wage claims was unavailable because they are not tracked separately in the Office's information system.

Scope and Objectives

This audit is part of the ongoing program of the Legislative Auditor as authorized by the Legislative Commission, and was made pursuant to the provisions of NRS 218G.010 to 218G.350. The

Legislative Auditor conducts audits as part of the Legislature's oversight responsibility for public programs. The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions.

This audit included a review of wage claims in fiscal year 2010, and prior fiscal years for procedures concerning contractors with multiple substantiated claims. The objectives of our audit were to determine if the Office of Labor Commissioner has:

- effective controls to safeguard the receipt and disbursement of claim monies,
- sufficient controls in place to ensure the timely resolution of wage claims, and
- sufficient and reliable information for management and external parties.

Inadequate Controls Over the Collection and Disbursement of Cash for Unpaid Wages

The Office's procedures for safeguarding cash held in trust for claimants are inadequate and cause inefficiencies in the processing of payments. Specifically, many control weaknesses compromise the integrity of the Office's information system (system) used to record the collection and disbursement of cash held in an outside bank account. In addition, the use of the system and controls over cash management require additional staff time and slow the processing of checks to claimants. Furthermore, the Office does not perform standard procedures such as reconciliations between its system and bank statements, and transfer funds to the State Treasurers' Unclaimed Property Program timely.

Payment Process Lacks Controls and Causes Inefficiencies

The Office's process for remitting money to claimants does not adequately safeguard cash held in trust and causes inefficiencies. Because the Office's longstanding practice is to deposit employer payments and then issue checks to claimants, it developed an information system to record receipts and disbursements, as well as track information about its claim investigations. Although we did not encounter instances of fraud in the transactions we tested, inadequate cash controls increase the risk that fraud could occur and go undetected. In addition, the process requires more time by staff to process payments than is needed. The Office should adopt the practice of other states and send checks received from employers directly to claimants.

Information System Not Adequately Secured

The information system used to record the collection and disbursement of cash held in an outside bank account is not adequately secured. The system serves as the checkbook for the

Office's outside bank account. Money collected by the Office from employers for unpaid wages and penalties and deposited into the bank account is recorded in the system. The Office then uses this system to write checks from the account and record the disbursements. In fiscal year 2010, deposits into the account were about \$1.9 million and disbursements were about \$1.8 million. The balance in the bank account was about \$440,000 at June 30, 2010.

Although the system has an important role in the Office's current process, the system has significant control weaknesses, including:

- Access Controls: System passwords are constructed the same for each employee, a slight modification of the user name. User names and passwords are shared by staff. Because the Office does not know how to edit users, new employees were given the user name and password of a former employee.
- Edit Logs: The system does not automatically track which employee creates or modifies a record. Employees select from a drop-down list the name of the employee that is performing the transaction. Modifications to records can occur and there is no record they took place. This includes deleting records. Although the system sequentially numbers claims as they are entered, we identified 326 gaps in the sequential numbers. The system does not report these edits.
- Edit Controls: Information in the system can be modified at any time. For example, with staff assistance we were able to modify payee information in the system after a check was written. Without edit controls, payment or deposit information can be changed at any time.

Process for Remitting Money to Claimants Is Inefficient

The Office's process for remitting money to claimants is inefficient and delays the delivery of money to claimants by 2 to 3 weeks. Most of the inefficiencies are a result of the Office's longstanding practice of depositing money received from employers into its outside bank account and then writing checks from the account to disburse the money to claimants. Other inefficiencies come from the system itself. During the audit, we noted the following inefficiencies in the Office's current process that could be

eliminated if the Office remitted checks received from employers directly to claimants:

- Delay in remitting checks: Payments to claimants are delayed for 2 to 3 weeks because of the time the Office takes to deposit employer payments and then issue checks. Employer payments received on wage claims are sometimes not deposited for several days. The Office then waits 15 days before issuing checks to claimants to help ensure the employer's check did not bounce.
- Slow system processing: We observed that when processing a batch of five claim payments, it took the system on average 7 minutes to process the information for each check. The employee entering the information could not perform other actions in the system until the current check information was processed. In discussions with agency staff, they indicated this time was representative of the time it takes the system to process each claim receipt and disbursement. In fiscal year 2010, about 1,300 checks were written using this system.
- Investigator review of payment: The Office uses checks that require dual signature authority. This requires two employees to review the claim file and sign the check. In the Las Vegas office, checks are printed daily and the Chief Investigator and another investigator are responsible for reviewing claim files before signing checks. Although these are appropriate controls under the current process, they would not be needed if the Office remitted employers' checks directly to claimants.
- Reconciliation of outside bank account: The Labor Commissioner indicated it takes an employee in the Las Vegas office 40% of his time to reconcile the Office's outside bank account and perform other financial activities. Since this employee also investigates claims, this reduces the time available to perform that important task. The reconciliation would not be necessary once the bank account is closed.
- Bank deposits: Both offices take cash receipts to the bank for deposit in the outside bank account. In the Las Vegas office, deposits are made on a daily basis. Deposits are made less frequently in the Carson City office, but nevertheless making trips to the bank to deposit checks would be largely eliminated if the Office remitted employer checks directly to claimants.

- Safeguarding of check stock and signature stamps: Both offices maintain check stock and signature stamps that require additional procedures to safeguard. The procedures could be eliminated by changing the existing process.

Other States Remit Payments Directly to Claimants

We surveyed agencies in Arizona, Utah, and Washington that perform claim investigations. All three states send checks received from employers directly to claimants. This eliminates the need to deposit the funds into their accounts and process their own checks to distribute the funds to the claimants. Employers write checks in the name of the claimant and forward them to the state agencies for disbursement. If the check is not cashed for any reason, the funds are transferred to their state's unclaimed property account.

The Nevada Office of Labor Commissioner currently follows this same process in some cases. Specifically, when it investigates an employer and determines unpaid wages are due to numerous employees, the Office will distribute employer checks directly to claimants. According to management, this process is used when an employer owes unpaid wages to 30 or more employees because of the large amount of time it takes the Office's system to process cash receipts and disbursements.

Because of the inefficiencies noted above, more time is required by staff to process cash receipts and disbursements than is needed. The additional time required to perform these functions results in less time available to resolve claims. The Office should discontinue use of the outside bank account and instead remit checks from employers directly to claimants. When employer checks cannot be remitted directly to claimants, the Office should utilize the state's accounting system to process and record the receipt and disbursement of monies for unpaid wage claims.

Additional Cash Control Weaknesses

Additional cash control weaknesses at the Labor Commissioner's office resulted in claimant payments being delayed. For several claimants, over \$4,000 has been delayed over 3.5 years, and was still in the Office's account as of our audit. Because receipts and disbursements recorded in the Office's system are not properly

reconciled to the bank statements, many of the errors noted went undetected. In addition, the Office lacks policies and procedures on the receipt and deposit of money. Control weaknesses included:

- Key Reconciliation Not Performed: The Office does not perform a key reconciliation to ensure receipts and disbursements recorded in the Office's system (books) are reconciled to the bank statements.
- Deposits Not Always Made Timely: For 10 of the 25 (40%) Carson City office transactions randomly selected, the Office did not deposit the employer payments timely. Staff explained the payments from employers were placed in the safe instead of depositing them upon receipt, and the checks were forgotten in the safe. The 10 checks, which totaled about \$3,000 were held on average about 3.5 months before they were deposited.
- Proper Restrictive Endorsements Not Used: The Office does not use proper restrictive endorsements on checks and does not apply restrictive endorsements timely. The endorsement stamps used by both offices do not indicate "For Deposit Only". In addition, the Las Vegas office does not restrictively endorse checks immediately upon receipt. The employee responsible for opening the mail does not restrictively endorse the check. The restrictive endorsement is not applied to checks until the deposit is prepared by another employee.

Without proper controls over cash, there is increased risk payments to claimants will be delayed and cash will be mishandled or stolen. For example, during our testing, we observed two instances (out of 35 transactions tested) where money totaling several thousand dollars went unnoticed for long periods of time in the Labor Commissioner's safe or outside bank account.

- For one claim, the Office received 35 checks issued to claimants totaling almost \$9,000. This claim was an audit performed by the Office and included 35 claimants. The checks were stored in the Office's safe. Claimants were mailed their checks upon receipt of a signed letter and photocopy of an ID. However, many claimants did not return the required documents. As a result, over \$3,000 in payroll checks remained unnoticed for 10 months in the

Office's safe. Once the checks were noticed the Office had to request new checks from the employer.

- For another claim, the Office received payment for 6 claimants totaling about \$4,600. The money was deposited in the Office's account in June 2007, but was still not remitted to claimants over 3.5 years later when we performed the audit. When questioned about the claim, the Office realized claimant notifications had not been sent and promptly sent these notifications.

In addition, we found numerous errors for 15 of 20 claim balances tested from the Office's system. The balances represented amounts due to claimants. We judgmentally sampled the largest balances that were open for at least one year as of the date we extracted data from the information system. Exhibit 4 shows the type and amount of these input errors in the sample of 20 claim balances tested.

**System Input Errors
By Type and Amount**

Exhibit 4

Error Type	Amount
1. Deposits recorded twice	\$33,037
2. Deposits not recorded	\$26,438
3. Unclaimed property transfers were not posted to their corresponding claims	\$23,921
4. Claimant payments recorded twice	\$20,510
5. Miscellaneous input errors	\$ 8,254
6. Claimant payments not recorded in the database	\$ 5,103
7. Employers' bounced check amounts not properly recorded in the system	\$ 3,308
8. Deposits deleted when bank notified Office of bounced checks	\$ 1,900

Source: Auditor analysis of claim files and Office's information system.

The size and frequency of errors in the accounts increase the risk that claimants will be paid incorrect amounts.

Transfer of Funds to Unclaimed Property Not Timely

The Office did not always transfer funds timely to the State Treasurer's Unclaimed Property Program. Further, practices for transferring funds were not consistent between the two offices. Timely transfers are necessary to safeguard cash received on behalf of claimants.

For 16 of 35 fiscal year 2010 unclaimed property transfers randomly selected, the Office did not transfer the funds timely to Unclaimed Property. The amount transferred untimely in our sample was less than \$1,000. Generally, the Carson City office transferred funds once they had been deposited in the account for one year. However, the practice in the Las Vegas office was to hold funds until the fiscal year after the funds had been part of the account for one year. Because of the inconsistent practices, all seven of the Las Vegas transfers that were not timely occurred over two years after the money was deposited in the account.

The timely transfer of funds to Unclaimed Property is required by law and will help safeguard funds. NRS 607.170 requires money that has been part of the Commissioner's bank account for one year to be transferred to Unclaimed Property. Unclaimed Property requires this transfer to take place on or before the first day of November each year. By not transferring money timely to the Unclaimed Property Program, there is increased risk cash will be mishandled or stolen. In addition, this delays the time needed for the money to get to the person it belongs to. The untimely transfers were partially caused by the Office not having written policies and procedures to track the aging of funds deposited into its bank account and to establish when those funds should be transferred to Unclaimed Property.

Recommendations

1. Discontinue use of the outside bank account and instead remit checks received from employers directly to claimants.
2. Utilize the state's accounting system to process and record the receipt and disbursement of monies for unpaid wage claims when checks cannot be directly passed to claimants.
3. Ensure all money received is deposited timely and periodically reconcile the outside bank account to the

Office's records of amounts owed to claimants, until the account is closed.

4. Develop controls to ensure restrictive endorsement stamps include the proper wording and endorsements are done timely.
5. Develop policies and procedures to track the aging of account funds and establish when funds should be transferred to Unclaimed Property.

Wage Claim Resolution Process Can Be Improved

The Office resolved many claims timely, but its process can be improved further. Specifically, the Office took timely action to resolve prevailing wage claims we tested. Timely action was also taken by the Office to initiate wage and hour claims. However, on wage and hour claims where the employer objected, the Office's actions taken to resolve the claim were not always timely. Some claims remained open for several months or even years without documentation the Office took action. Delays increase the likelihood documentation will not be available to resolve the dispute, and can cause financial hardship to workers and their families. We also found penalties assessed employers and paid to claimants were not always calculated accurately or consistently. Finally, the Office has not reported to the Controller's office over \$1.7 million in debts owed by employers to the Office on behalf of claimants so collection can be pursued and then remitted to claimants.

Disputed Claims Not Resolved Timely

For most of the wage and hour claims filed, the employer did not object and therefore remitted money to the Office, which then forwarded the money to the claimant. However, for claims where the employer filed an objection to the claim, the Las Vegas office often did not take timely action to resolve the claim. Specifically, in 29 claims randomly selected from the Las Vegas office, employers objected to 10 of the claims. For 50% of these claims, the actions taken were very untimely as noted below:

- The investigator took over 2 years to make a determination after receiving the employer's objection.
- The investigator took almost 9 months to make a determination. In addition, once the employer informally objected to the first determination, a second determination was not issued until over 7 months later.

- The investigator took 76 days to make a determination after receiving the employer's objection. In addition, once the employer objected to the determination, a hearing was not scheduled for almost another year.
- In two other cases, the investigator took over 8 months and over 5 months to make a determination.

In all five cases, once the Office made a final decision the employers made timely payments to resolve the claims. The average payment to the claimants in these five cases was almost \$1,800.

We also reviewed 30 claims received in fiscal year 2010 at the Las Vegas office that remained open at fiscal year-end according to the Office's information system. Fourteen of these claims were actually closed, but the system had not been updated to reflect the closure. For the remaining 16 claims, an average of 266 days had passed (as of the date of our review) since the last documented action by the Office. Four of the claims had no documentation of additional action taken after the employer was notified that an employee filed a claim with the Office.

Several factors contributed to the delays noted above. In discussions with staff in the Las Vegas office, they indicated their focus is to first resolve those claims that are not challenged by the employer so more claims can be processed. As a result, claims with objections are put aside until staff feel they have time to work on them. In addition, a common practice in the Las Vegas office is to send documentation back and forth between the employer and claimant, instead of having both parties bring their documentation to a meeting, and then making a determination.

In contrast to Las Vegas, the Carson City office has an effective process for investigating wage and hour claims and performed investigations more timely. Specifically, the investigator in the Carson City office will schedule a meeting with both the employer and claimant if the employer objects to the claim. Both sides are required to bring documentation to support their positions. After this meeting, the investigator makes a determination. The Labor

Commissioner agreed the Carson City office's process is preferable.

Wage claim investigations help workers financially unable to employ legal counsel. Therefore, delays in processing wage and hour claims can have negative effects. Delays increase the likelihood documentation will not be available to resolve the dispute, and can cause financial hardship to claimants and their families. Finally, delays increase the likelihood the Office will be unable to locate claimants to deliver the recovered wages.

Penalties Not Assessed Correctly or Consistently

Wage claim penalties were not always assessed correctly or consistently by the Office. The incorrect or inconsistent assessment of penalties is not equitable to employers and to claimants who receive the penalties. The Office should develop a systematic and fair process to ensure that penalties are assessed equitably and the public is adequately protected.

Statute provides for a penalty to be assessed against an employer (and paid to the claimant) if the claimant is not paid timely. The penalty is to be calculated at the claimant's rate of pay from the day the claimant resigned, quit, or was discharged until paid or for 30 days, whichever is less. The Office's informal process is to assess an increasing percentage of the full amount of the penalty depending on what stage in the process that the claim is resolved. However, the Office does not have written policies and procedures on the assessment of penalties. Consequently, we noted inconsistencies in how staff interpreted or applied the informal policy. In our review of a random sample of claims, the following problems were noted:

- **Incorrect Assessment**: For 7 of 24 (29%) wage claims, the calculation of the penalty assessed to the employer was not correct. Specifically, the penalty was not calculated using the correct number of days as outlined in statute. For example, investigators sometimes calculated the penalties due using the rate of pay at the full 30 days when 30 days had not transpired between the termination of the claimant and the Office's due date for payment of the wages. In most cases, the penalty assessed was more than statute and the Office's informal policy. For these

seven claims, the average error in the penalty assessed was about \$270.

- **Inconsistent Assessment:** For 12 of 24 (50%) wage claims, the penalties assessed were not consistent with the Office's informal policy. For all 12 claims, the amount assessed was less than the informal policy guidelines. The average difference between what was assessed and the informal policy was about \$640. The differences included some claims where the employer paid less than the required penalty, but the Office accepted the lesser payment without documenting why this amount was accepted or supervisory approval.

Better Controls Needed to Oversee Claim Investigations

The delays in resolving wage and hour claims and assessing penalties consistently were caused by control weaknesses in two areas. First, the Office does not have adequate written policies and procedures on the process for resolving wage and hour claims. This led to significant delays in resolving some claims. Policies and procedures were also lacking on the assessment of penalties which led to differences between penalties assessed by investigators. The second control weakness was a lack of information being available to supervisors to efficiently and effectively oversee the claim investigations. This lack of management information is discussed further in the next chapter.

Amounts Unpaid by Employers Not Reported

In fiscal year 2010, the Office did not report to the State Controller over \$1.7 million in debts owed by employers to the Office on behalf of claimants, as required by law. Amounts owed have not been reported for several years. If debts are not reported by the Office, the Controller will not be able to pursue actions to collect monies owed to claimants.

On claims where the Office issues a final order on a claim but the employer does not pay, the Office files a Summary Judgment with the applicable court. The process of filing the Summary Judgment makes the wages and penalties owed debts to the State and becomes a lien upon all real and personal property owned by the debtor. In fiscal year 2010, the Las Vegas office filed a Summary Judgment 156 times, for a total amount of \$1.7 million. However,

these judgments were not forwarded to the State Controller. Information from the Carson City office was not readily available.

During the 2009 Legislative Session, Assembly Bill 87 was passed which modified key provisions of NRS 353C related to the Controller's debt collection program. The bill provides the Controller additional authority to perform actions to collect the debt. These actions include offsetting the amounts owed against amounts payable to the employer by another state agency or appointing a private debt collector to pursue collection. In addition, the bill requires all agencies that do not have specific statutory authority or a waiver for debt collection to submit accounts receivable listings to the State Controller. The Controller has requested agencies report outstanding accounts receivable at the end of each quarter. Furthermore, agencies that report accounts receivable are required to coordinate all debt collection efforts through the State Controller.

If timely action is not taken to report accounts receivable, the risk increases that the Controller will not be able to collect monies owed claimants. Although the Legislature gave the Controller additional authority to help collect debts, this authority cannot be used if debts are not reported by the Labor Commissioner. Management indicated it recently met with personnel from the State Controller's Office to begin reporting these debts so additional collection efforts can be pursued.

Recommendations

6. Develop policies and procedures setting forth the guidelines for resolving wage claims, including timeframes for completing various tasks and supervisory responsibilities to ensure the timeframes are met.
7. Develop policies and procedures on the assessment of penalties, including supervisory approvals needed when the amount assessed is different than policy guidelines.
8. Report to the State Controller's Office debts owed by employers to the State on behalf of claimants.

Management Information Not Sufficient or Reliable

The Office does not have sufficient or reliable information necessary to effectively oversee wage and hour claim investigations and to report important information to external parties. As a result, management and supervisors do not have necessary information to help ensure claims are resolved timely; to report contractors that have multiple violations of labor laws to the State Contractors' Board; and to provide information about claim trends to decision-makers and the public.

Reliable Information Needed to Monitor Claim Investigations

Management and supervisors need reliable information about the status of wage and hour claims to help ensure investigators resolve claims timely. This helps ensure claimants can receive any unpaid wages due to them as soon as possible to minimize financial hardship. As noted earlier, the Office did not resolve some wage and hour claims timely in fiscal year 2010. These problems were caused in part because the Office's system provides limited management information and some of it is unreliable. The information needed to ensure claims are resolved timely can be tracked using the Office's basic spreadsheet software.

The Office's information system does not provide sufficient and reliable information necessary to track and monitor wage claim investigations. Examples of the inadequacies of the current information system include:

- Few management reports are produced by the system: The system can be queried to show some basic information such as the number of wage and hour claims and the number of claims by status (open, under investigation, fully collected). However, the system does not report how long claims have been open and how long it took to resolve closed claims. Since the system does not generate such reports, the Las Vegas office manually

compiles a separate report each month on the number of claims closed by investigator, but this report is not reliable. We randomly selected 20 claims from the Las Vegas office's fiscal year 2010 reports. For all 20 claims tested, the number of days the claims were reported as open was not accurate. The average error was 64 days.

- Performance information is not readily available: To report in the Executive Budget the fiscal year 2008 performance measure of claims investigated within 60 days, the Office had to review each of the almost 2,800 claim files opened to calculate the number of days.
- Some information in the system is not reliable: Although the system has a field to record the closed date for a claim, the Office does not use the field to document when claims are closed. For 35 of 40 claims we tested, the "date closed" field was blank or did not match the closed date written in the claim file or notes made in the system. The average difference between the system closed date and the actual date was 164 days.
- Penalties and wages collected are not tracked separately by the system: The system does not segregate wages and penalties collected, but instead lumps all payment information together into one amount.

Sufficient Information Not Collected For External Parties

Sufficient information is not collected and reported to external parties by the Office. Specifically, contractors with multiple violations of labor laws were not reported to the State Contractors' Board (Board). In addition, statistical data related to the State's labor trends was not reported to the Governor or Legislature. Both actions are required by law. According to management, the Office is unable to modify its information system to capture the required information. However, we believe the information can be collected using the Office's spreadsheet software.

Problem Contractors Not Reported to Contractors' Board

NRS 607.165 requires the Office to notify the State Contractors' Board and provide copies of its final written decisions when three substantiated claims have been made against a contractor in a 2-year period. However, the Office indicated it has not notified the Board of those contractors with multiple claims, in part because the Office's information system is not capable of easily identifying such contractors. Based on multiple queries of the system data

for the past five years and review of claim files, we identified 13 contractors with 3 or more substantiated claims in a 2-year period.

We also found the Office only assessed administrative fines on 3 of the 13 contractors. NRS 607.160 authorizes the Office to assess administrative fines against employers. However, the Office has rarely levied fines against employers and does not have written guidelines for deciding when to assess fines. Exhibit 5 shows the number and cumulative amount of fines assessed over the past five fiscal years.

**Labor Commissioner
Administrative Fines by Fiscal Year**

Exhibit 5

Fiscal Year	Number of Fines	Total Amount	Average
2006	25	\$23,813	\$ 953
2007	21	\$15,727	\$ 749
2008	11	\$ 7,813	\$ 710
2009	17	\$23,754	\$1,397
2010	16	\$12,821	\$ 801
Totals	90	\$83,928	

Source: State Accounting System.

When contractors that violate labor laws repeatedly are not reported to the State Contractors' Board or fined, there is greater risk their actions will be repeated and additional workers affected. The State Contractors' Board has the ability to revoke contractor licenses, impose fines, and raise bond or cash deposit requirements.

The Labor Commissioner indicated the penalties levied under NRS 608.040 and paid to claimants are sufficient in almost all cases. However, when contractors that violate labor laws repeatedly are not fined or reported to the State Contractors' Board for disciplinary action, assessing fines may be warranted. This may help reduce the risk their actions will be repeated and additional workers affected. The Office needs to establish written guidelines for deciding when to assess fines.

Limitations of Current Information System

Statistical Data Not Reported

The Office has not prepared a report of its activities for external parties, including information on claims it investigates. NRS 607.080 requires the Labor Commissioner to prepare a biennial report for the Governor and Legislature that includes statistical information relating to the Office's statutory objectives. Without such information, decision-makers might not have the information they need to make informed decisions regarding labor-related trends. For example, a subcommittee was created by the Legislature in 2009 to study the misclassification of employees as independent contractors. The subcommittee indicated information regarding the nature of claim investigations and penalties assessed would be very important to help them with their task. However, the Office was not able to provide the requested information.

According to management, the current system was implemented in 2007. This system was developed by a former employee and has not been maintained by the Office. According to the Labor Commissioner, the Office has not had personnel with the technical expertise to make changes to the system since the former employee left the Office. However, we found the Office can use existing software to track and monitor claim investigations and report performance information. For example, the Las Vegas office uses spreadsheets to monitor the number of claims closed by investigator each month. Similar spreadsheets could be prepared to monitor the timeliness of open wage and hour claims, track contractors with multiple violations for reporting to the State Contractors' Board, and report information to decision-makers and the public.

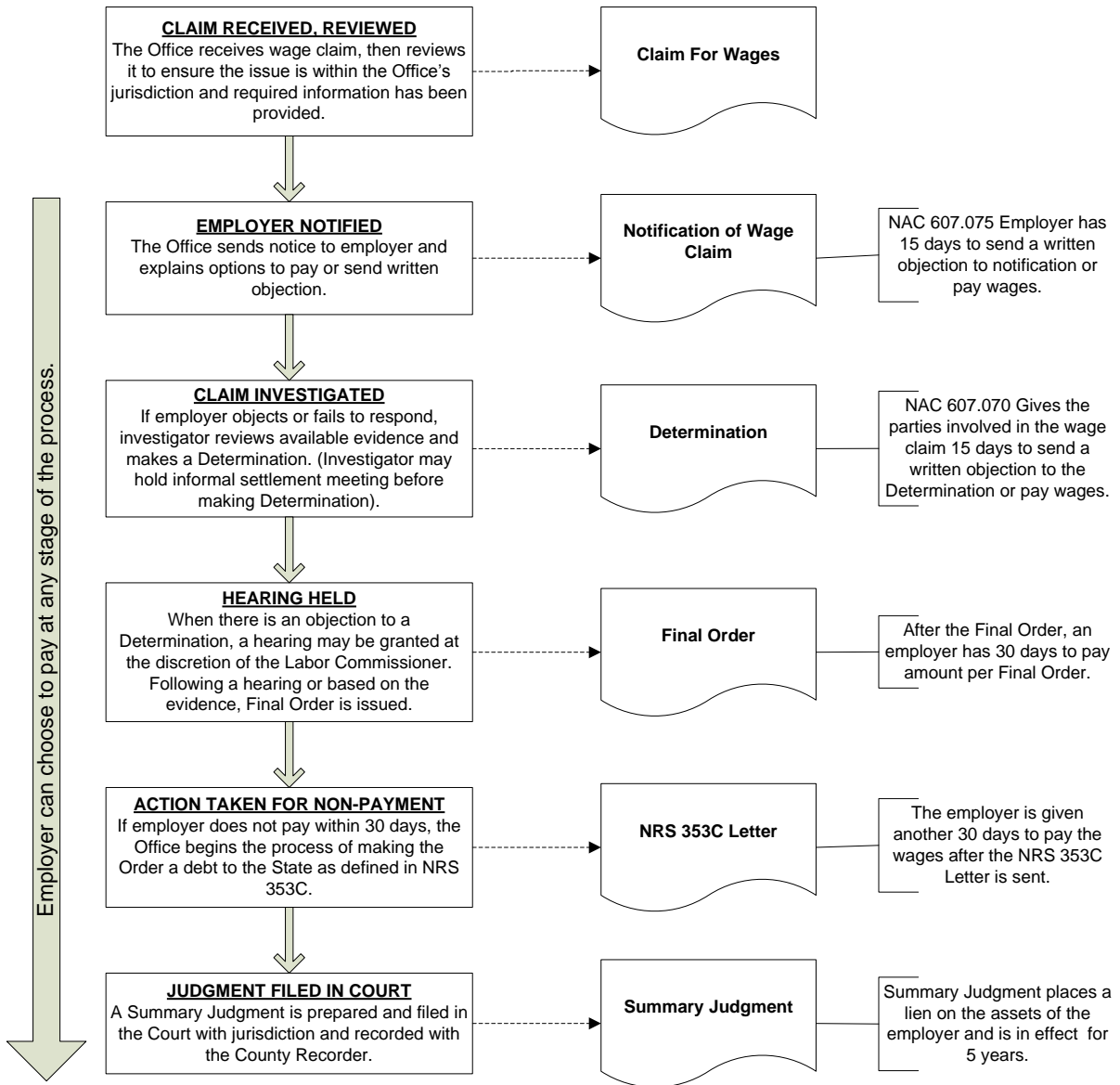
Recommendations

9. Identify and track information, using existing software, for use by supervisors to help ensure the timely resolution of wage and hour claims.
10. Notify the State Contractors' Board when contractors have three or more substantiated claims in a 2-year period, as required by law.

11. Establish written guidelines for deciding when administrative fines should be levied against employers who violate labor-related laws.
12. Periodically provide data, at least biennially, to the Governor and Legislature that relates to the Office's statutory objectives, and make it available to the public on its website.

Appendix A

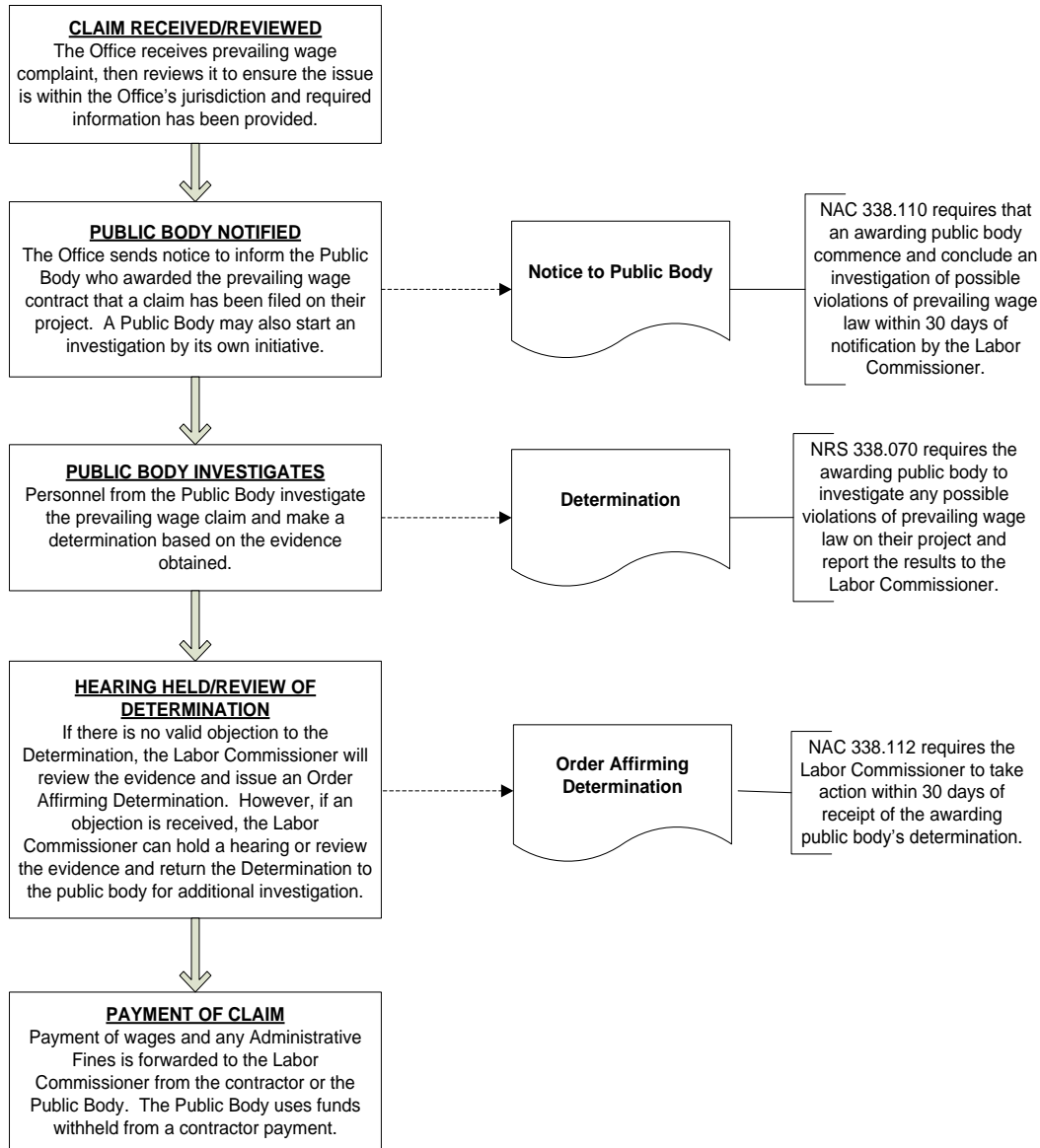
Wage and Hour Claim Resolution Process



NOTE: If claim is substantiated, employer remits check to Office, which then writes check to employee.

Appendix B

Prevailing Wage Claim Resolution Process



NOTE: Prevailing wages owed are forwarded to the Labor Commissioner for payment to claimants. In most cases, employer remits check payable to the Office, which then writes check(s) to claimant(s).

Appendix C

Audit Methodology

To gain an understanding of the Office of Labor Commissioner (Office), we interviewed staff and reviewed statutes and regulations. We also reviewed financial information, prior audit reports, budgets, legislative committee minutes, and other information describing the activities of the Office. Furthermore, we documented and assessed the Office's internal controls related to its outside bank account, prevailing wage and wage and hour claim processes, and management information system.

To determine if the Labor Commissioner has effective controls to safeguard the receipt and disbursement of claim monies, we randomly selected 20 deposits from the Office's fiscal year 2010 bank statements and traced them to the Office's cash receipt logs, employers' payments documented in claim files, and the Office's deposit slips. Additionally, we randomly selected 50 payments from the Office's fiscal year 2010 bank statements and traced them to employers' payments and the final judgment amounts documented in claim files.

To verify the Office had adequate controls over its transfer of funds to the State Treasurer's Unclaimed Property Program, we randomly selected 35 fiscal year 2010 transfer amounts and reviewed the corresponding wage claim files to determine if the amounts agreed to employer payments and deposit amounts. Additionally, using the Office's information system, we judgmentally selected 20 claims with balances older than one year and reconciled them to the payment documentation in the wage claim file or Unclaimed Property transfer report. For our judgmental sample, we selected the 10 claims with the highest positive and negative balances. Finally, we surveyed three other states with processes similar to the Labor Commissioner to document how they handle wage claim payments.

To determine if the Office has sufficient controls in place to ensure the timely resolution of wage claims, we randomly selected 50 claims, which included both wage and hour and prevailing wage claims. For prevailing wage claims, we verified the time for the awarding body to investigate the claim complied with regulation. In addition, we analyzed the time between receipt of the awarding body's determination and the Office's Order Affirming Determination, and from employer payment to notification and payment of claimant. For wage and hour claims, we reviewed documentation in the claim files to determine the timeliness of investigators' actions between receipt of claim and final judgment or payment of claim. Additionally, we judgmentally selected 35 wage and hour claims received in fiscal year 2010 that remained open at fiscal year-end according to the Office's information system. We analyzed the timeliness of investigator actions between receipt of claim and final judgment or payment of claim.

To verify wage and hour claim penalties were assessed correctly and consistently, we randomly selected 24 wage and hour claims paid to claimants in fiscal year 2010. We verified penalty calculations agreed with statutory provisions. In addition, we reviewed penalties for consistency and compliance with the Office's informal policy.

To determine whether the Office had sufficient and reliable information for management and external parties, we randomly selected 40 fiscal year 2010 wage and hour claims and verified selected information including claim type, status, date opened, and date closed recorded in the Office's information system agreed to documentation in the claim files. In addition, we randomly selected 20 claims reported closed in fiscal year 2010 on the Las Vegas office's management report. For these claims, we verified system information such as the claim date opened, closed, number of days open, and amount of back wages and penalties collected agreed to documentation in the claim files. In addition, we queried the Office's information system and identified contractors with multiple claims from January 2005 through October 12, 2010 (the date we extracted data from the system). For these contractors, we determined whether the claims were separate substantiated claims. Additionally, we determined

whether the Office prepared biennial reports containing statistical data for the Governor and Legislature as required by law. Finally, we surveyed four states and identified what management information they collected.

Our audit work was conducted from July 2010 to February 2011. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In accordance with NRS 218G.230, we furnished a copy of our preliminary report to the Labor Commissioner. On March 15, 2011, we met with agency officials to discuss the results of the audit and requested a written response to the preliminary report. That response is contained in Appendix D, which begins on page 28.

Contributors to this report included:

Todd Peterson
Deputy Legislative Auditor

Richard Neil, CPA
Audit Supervisor

Eugene Allara, CPA
Deputy Legislative Auditor

Diana Giovannoni, CPA
Deputy Legislative Auditor

Appendix D

Response From the Office of Labor Commissioner

BRIAN SANDOVAL
Governor

TERRY JOHNSON
Director

MICHAEL TANCHEK
Labor Commissioner

STATE OF NEVADA



REPLY TO:

OFFICE OF THE LABOR COMMISSIONER
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LAS VEGAS, NEVADA 89101
PHONE (702) 486-2650
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Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER

<http://www.LaborCommissioner.com>

March 28, 2011

Paul Townsend
Legislative Counsel Bureau
401 S. Carson St.
Carson City, NV 89701

RE: Labor Commissioner's Response to Recommendations

Dear Mr. Townsend,

In response to your letter of March 10, 2011, I submit the following:

1. *Discontinue use of the outside bank account and instead remit checks received from the employers directly to claimants.*

The use of the outside bank account authorized through NRS 607.170(3) has presented a personal risk to the Labor Commissioner for over thirty years. While this recommendation provides an opportunity to mitigate that risk, it will take time to determine whether making this change would be practical and should be adopted in its entirety.

There are a number of potential problems with this approach that would have to be worked out. For example, when funds are received for a worker, the worker is notified and has ten days in which to either accept the offer or exercise their right to notice and an opportunity to a hearing. Direct mailing the check before the worker has made the decision would complicate this process. On the other hand, if the check is held until the worker makes the decision, we end up holding unendorsed, undeposited checks.

In some cases, primarily related to public works projects, we receive payments from third parties such as public bodies, prime contractors, and bonding companies. These entities do not always have access to the information needed to cut checks for individual workers. In these cases, it will remain necessary to maintain a trust account that would enable us to pay the workers directly. It might be possible to use the State's system for paying outside vendors to accomplish this in lieu of the outside bank account.

We can begin testing this process on a limited basis and use the experience to assess the effectiveness and efficiency of this solution in order to determine whether it would be feasible over the long run.

2

2. *Utilize the state's accounting system to process and record the receipt and disbursement of monies for unpaid wage claims when checks cannot be directly passed to claimants.*

Utilizing the State's accounting system to accomplish this will require the cooperation of and coordination between the Labor Commissioner, the Controller, and the Treasurer. In conjunction with the proposal outlined in section 1, above, we will begin discussions with the Controller to determine the operational requirements of instituting such a solution. We anticipate that there will be problems involved in trying to implement this approach and will need to work to together to determine whether practical solutions can be found to do so.

3. *Ensure all money received is deposited timely and periodically reconcile the outside bank account to the Office's records of amounts owed to claimants, until the account is closed.*

If we implement the direct mailing of checks to workers, money received by the Labor Commissioner will not necessarily be deposited. As part of the implementation plan for this new process, we will revise our internal processes for the deposit of money received that cannot be sent directly to the workers. At the same time, we will work on improving our current process for reconciling money owed to individual workers to the outside bank account.

4. *Develop controls to ensure restrictive endorsement stamps include the proper wording and endorsements are done timely.*

We have acquired and will begin using new endorsement stamps with the addition of the "For Deposit Only" language on the stamps for both offices.

5. *Develop policies and procedures to track the aging of account funds and establish when funds should be transferred to Unclaimed Property.*

This problem was the result of a misunderstanding concerning the timing of payments to Unclaimed Property in the Las Vegas office. We will ensure that the process used in the Carson City office is applied uniformly. The most likely solution to this problem will be to consolidate the transfers of all payments to Unclaimed Property in the Carson City office rather than having each office make the transfers independently.

6. *Develop policies and procedures setting forth guidelines for resolving wage claims, including timeframes for completing various tasks and supervisory responsibilities to ensure the timeframes are met.*

The policies and procedures for resolving wage claims will be reduced to a more systematic and comprehensive written format as a handbook for wage claim investigations. This will be based primarily on the approach taken in the Carson City office. The role of the Deputy Commissioner in the Las Vegas office has been restructured away from coaching and advising the senior staff members responsible for the administrative assistants and investigators. The position now has direct line authority based on a more traditional command-and-control model. In order to allow the Deputy Commissioner more time in which to exercise these new responsibilities, some of the caseload involving prevailing wage investigations in Clark County will be transferred to the Carson City office.

3

7. *Develop policies and procedures on the assessment of penalties, including supervisory approvals needed when the amount assessed is different than policy guidelines.*

Assessing penalties pursuant to NRS 608.040 is currently governed by unwritten guidelines that reflect how far the claim has progressed through the process and whether some sort of compromise is appropriate in resolving the claim. We will develop more systematic and comprehensive written guidelines that include identifying the circumstances where supervisory approval is appropriate as part of the handbook for wage claim investigations.

8. *Report to the State Controller's Office debts owed by employers to the State on behalf of claimants.*

The process for forwarding judgments for collecting debts owed by employers to the State on behalf of claimants has been reestablished.

9. *Identify and track information, using existing software, for use by supervisors to help ensure the timely resolution of wage and hour claims.*

While there are some weaknesses in our existing case management software that limit our case tracking abilities, we can use the system to develop spreadsheets that show where each claim is in the process. We can use that information to develop work-arounds that will enable us to identify those claims that are not moving through the process as quickly as they should.

10. *Notify the State Contractors' Board when contractors have three or more substantiated claims in a 2-year period, as required by law.*

The first steps in this process will be to determine what constitutes a substantiated claim, what constitutes a repeat offense and identify the contractors who fit those criteria. We will review our case management system and then develop guidelines and a process needed to identify those repeat offenders who should be reported to the Contractors' Board pursuant to NRS 607.165. Once that is established, the reporting process should be fairly easy to implement and will be incorporated into the written guidelines for wage claims described above.

11. *Establish written guidelines for deciding when administrative fines would be levied against employers who violate labor-related laws.*

A common misconception is that administrative fines are the only sanction available to the Labor Commissioner to penalize employers who violate labor-related laws. The fact that a dollar amount denominated as an "administrative fine" may not be levied against an employer does not mean that the employer is not being penalized for misconduct. The most significant sanction the Labor Commissioner uses against employers is the continuing wage penalty established in NRS 608.040.

A weakness in our existing case management software is the inability to accurately determine the amount of those penalties, however, we recently sampled some cases and determined that for every dollar of wages recovered, employers were, on average, assessed an equal amount in penalties. In some cases, adding an administrative fine on top of the penalties already assessed may be appropriate and we will develop guidelines as to those instances where an administrative fine should be added. Those guidelines would be included in the written policies discussed above in regards to timeliness, the assessment of the NRS 608.040, and Contractors' Board notifications.

4

12. Periodically provide data, at least biennially, to the Governor and Legislature that related to the Office's statutory objectives, and make it available to the public on its website.

As near as we can tell, the last time a biennial report of the type envisioned by the auditors was submitted to the Governor and the Legislature was in 1973. The Labor Commissioner has regularly submitted biennial reports, but it appears that those reports were used as part of the budgeting process. Once we are able to identify the process for submitting the reports as envisioned by the auditors, we will resume the practice.

I hope I have been able to answer your questions suitably. If you have any more questions or need additional information, please let me know and I will respond as expeditiously as possible.

Sincerely,



Michael Tanchek
Labor Commissioner

Cc: Terry Johnson, Director

Office of Labor Commissioner’s Response to Audit Recommendations

<u>Recommendations</u>	<u>Accepted</u>	<u>Rejected</u>
1. Discontinue use of the outside bank account and instead remit checks received from employers directly to claimants	<u>X</u>	<u> </u>
2. Utilize the state’s accounting system to process and record the receipt and disbursement of monies for unpaid wage claims when checks cannot be directly passed to claimants.....	<u>X</u>	<u> </u>
3. Ensure all money received is deposited timely and periodically reconcile the outside bank account to the Office’s records of amounts owed to claimants, until the account is closed.....	<u>X</u>	<u> </u>
4. Develop controls to ensure restrictive endorsement stamps include the proper wording and endorsements are done timely.....	<u>X</u>	<u> </u>
5. Develop policies and procedures to track the aging of account funds and establish when funds should be transferred to Unclaimed Property.....	<u>X</u>	<u> </u>
6. Develop policies and procedures setting forth guidelines for resolving wage claims, including timeframes for completing various tasks and supervisory responsibilities to ensure the timeframes are met	<u>X</u>	<u> </u>
7. Develop policies and procedures on the assessment of penalties, including supervisory approvals needed when the amount assessed is different than policy guidelines	<u>X</u>	<u> </u>
8. Report to the State Controller’s Office debts owed by employers to the State on behalf of claimants	<u>X</u>	<u> </u>
9. Identify and track information, using existing software, for use by supervisors to help ensure the timely resolution of wage and hour claims	<u>X</u>	<u> </u>
10. Notify the State Contractors’ Board when contractors have three or more substantiated claims in a 2-year period, as required by law.....	<u>X</u>	<u> </u>
11. Establish written guidelines for deciding when administrative fines should be levied against employers who violate labor-related laws	<u>X</u>	<u> </u>
12. Periodically provide data, at least biennially, to the Governor and Legislature that relates to the Office’s statutory objectives, and make it available to the public on its website.....	<u>X</u>	<u> </u>
TOTALS	<u><u>12</u></u>	<u><u>0</u></u>

Appendix E

Auditor's Comments on Agency Response

The Office of Labor Commissioner, in its response, has accepted all of our recommendations. However, the Office expressed concerns about some of the recommendations. The following identifies the recommendations where the Office has some concerns. We have provided our comments on the issues raised in the Office's response to assure the reader that we believe our recommendations, as stated in the report, are appropriate.

1. The Office indicated it will take time to determine whether Recommendation 1 to "Discontinue use of the bank account and instead remit checks received from the employers directly to claimants" would be practical and should be adopted in its entirety. The Office stated there are a number of potential problems and then cited examples. They also indicate they can begin testing this process on a limited basis and use the experience to assess the effectiveness and efficiency of this solution in order to determine whether it would be feasible over the long run. (see page 28)

Legislative Auditor's Comments

As stated in the report on page 5, the Office's procedures for safeguarding cash held in trust for claimants are inadequate and cause inefficiencies in the processing of payments. Specifically, many control weaknesses compromise the integrity of the Office's information system used to record the collection and disbursement of cash held in an outside bank account. Weaknesses included passwords shared by employees, a lack of edit logs to track which employee creates or modifies a record, and the ability to modify system information at anytime. These weaknesses increase the risk of fraud.

As stated in the report on pages 8 and 9, additional cash control weaknesses, such as the Office's inability to reconcile the receipts and disbursements recorded in its system to bank statements further increase the risk that payments to claimants will be delayed and cash will be mishandled or stolen. On pages 9 and 10, we noted many errors that occurred and went undetected due to the lack of proper reconciliations of the bank account. In fiscal year 2010, about \$1.9 million was deposited into the outside bank account. Finally, the use of the system and controls over cash management practices require additional staff time and slow the processing of checks to claimants by 2 to 3 weeks.

As stated in the report on page 8, we surveyed agencies in Arizona, Utah, and Washington that perform claim investigations. All three states send checks received from employers directly to claimants. This eliminates the need to deposit the funds into their accounts and process their own checks to distribute the funds to the claimants. Furthermore, the Office currently follows this same process in some cases. Specifically, when it investigates an employer and determines unpaid wages are due to 30 or more employees, the Office distributes checks directly to claimants.

Regarding the potential problems mentioned in the Office's response, we are available to meet with Office personnel to discuss potential solutions based on our understanding of the Office's operations and other states surveyed. We do not believe the problems mentioned in the Office's response should prevent the Office from implementing Recommendation 1. Furthermore, we

believe the benefits of this recommendation (getting money to claimants faster, eliminating many time-consuming tasks performed by staff, and reducing the risk of money being lost or stolen) far exceed the efforts which may be needed to overcome potential administrative challenges.

2. The Office indicated they anticipate there will be problems involved in trying to implement Recommendation 2 to “Utilize the state’s accounting system to process and record the receipt and disbursement of monies for unpaid wage claims when checks cannot be directly passed to claimants.” The Office indicated utilizing the state’s accounting system will require the cooperation of and coordination between the Labor Commissioner, the Controller, and the Treasurer. (see page 29)

Legislative Auditor’s Comments

As stated in the report on page 7, the Office wrote about 1,300 checks during fiscal year 2010. By remitting checks received from employers directly to claimants (Recommendation 1), the number of checks that the Office will have to write using the state’s accounting system will substantially decrease. Considering the large number of checks processed daily by the Controller and Treasurer, the number of checks that will be processed for the Labor Commissioner from implementing Recommendation 2 is inconsequential and would only require minimal coordination with the State Controller.