

**Nevada Equal Rights Commission  
ADVISORY OPINION 20-01**

This advisory opinion is written pursuant to Nevada Administrative Code (“NAC”) 233.250, based on a public request for an opinion regarding the definition of *wages* per NRS 613.330(1)(c).

Please be advised that the opinions expressed in this advisory opinion are in response to an *inquiry* and are not applicable to any specific facts, circumstances, or transaction. Accordingly, no reliance should be placed on this advisory opinion for any purpose other than that described herein.

Please be further advised that subsequent changes in statute(s), regulation(s), or judicial interpretations of the statutes, rules, or regulations upon which any opinion is based may be subject to change.

**Question Presented**

What constitutes all applicable lost wages when assessing “back pay” and “benefits?” Specifically, what is recoverable under the “back pay/benefits” remedy for assessing damages [but-for the discrimination]?

**Nevada Revised Statute**

NRS 613.330 states:

**NRS 613.333 Unlawful employment practices: Discrimination for lawful use of any product outside premises of employer which does not adversely affect job performance or safety of other employees.**

1. It is an unlawful employment practice for an employer to:
  - (a) Fail or refuse to hire a prospective employee; or
  - (b) Discharge or otherwise discriminate against any employee concerning the employee’s compensation, terms, conditions or privileges of employment, because the employee engages in the lawful use in this state of any product outside the premises of the employer during the employee’s nonworking hours, if that use does not adversely affect the employee’s ability to perform his or her job or the safety of other employees.
2. An employee who is discharged or otherwise discriminated against in violation of subsection 1 or a prospective employee who is denied employment because of a violation of subsection 1 may bring a civil action against the employer who violates the provisions of subsection 1 and obtain:
  - (a) Any wages and benefits lost as a result of the violation;
  - (b) An order of reinstatement without loss of position, seniority or benefits;
  - (c) An order directing the employer to offer employment to the prospective employee; and
  - (d) Damages equal to the amount of the lost wages and benefits.

3. The court shall award reasonable costs, including court costs and attorney's fees to the prevailing party in an action brought pursuant to this section.

4. The remedy provided for in this section is the exclusive remedy for an action brought pursuant to this section.

### **Short Answer**

Back pay is a remedy under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000e et seq. Courts have issued "front pay" compensation for future lost wages to an employee based on employment discrimination. Front pay compensation wages tend to be speculative and difficult to calculate.

For purposes of this advisory opinion, back pay wages will be explained and include: a base rate of pay, lost commission, tips, lost vacation pay, lost bonuses, lost retirement contributions *less* any money earned in mitigation which may include collection of unemployment benefits.

### **Analysis of the Issue**

#### **Compensation Discrimination Based on Sex**

According to the Equal Employment Opportunity Commission (EEOC), the law against **compensation discrimination** includes all payments made to or on behalf employees as remuneration for employment. Under this form of employment discrimination, all forms of compensation are covered, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits.

#### **2019 Legislative Session**

During the 2019 Legislative Session, Senate Bill 166 listed wages recoverable to those who suffered harm because of workplace discrimination based on sex.

As introduced, SB 166 granted authority to the Nevada Equal Rights Commission to seek compensatory damages which, upon submission of proof by the aggrieved party included "...compensation that would have been earned in the absence of discrimination for overtime, shift differential, commissions, tips, cost of living adjustments, merit increases or promotions, or for other fringe benefits, including, without limitation, vacation pay, pension or retirement benefits, stock options or bonus plans, contributions to a savings plan, profit sharing or benefits for medical or life insurance."

#### **Nevada Law**

Now revised and enacted into statute, NRS 233.170 (3)(b)(2-3) list wages ascertainable for employment discrimination and in cases of discrimination on the basis of sex to include:

... back pay, annual leave time, sick leave time or pay, other fringe benefits and seniority, overtime, shift differential, cost of living adjustments, and merit increases. The list is not exhaustive and meant to be inclusive of wages available but-for the discrimination.

**Conclusion**

Wages include back pay, annual leave time, sick leave time or pay, other fringe benefits and seniority, overtime, shift differential, cost of living adjustments, and merit increases. The list is not exhaustive and meant to be inclusive of wages available but-for the discrimination.



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CONNIE HARPER

Chairperson

Nevada Equal Rights Commission