



ANALYSIS OF NEVADA OSHA STATUTE, AB 190

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Near the end of its 2017 session, the Nevada legislature passed Assembly Bill 190. The new law increased the health and safety training requirements for some people working in the entertainment industry in Nevada. Specifically, the law requires people performing certain tasks in Nevada for more than 15 days to have either OSHA 10 or OSHA 30 General Industry certification, depending on their job.

You can click here to read the specific wording of Nevada’s law, as we did:

https://www.leg.state.nv.us/Session/79th2017/Bills/AB/AB190_EN.pdf . Sometimes the agency that will administer a new law releases regulations or other guidance to say how it will be interpreted and enforced. In an effort to gain clarity before the 2018 festival season, ESA prepared a series of detailed questions for the Nevada Occupational Health and Safety Administration’s Chief Administrative Officer, Jess Lankford.

On April 27, 2018, Mr. Lankford us sent his responses, which we found very useful. In an effort to help people working on touring shows and festivals that pass through Nevada, ESA is providing the following analysis of AB 190 based on the language of the statute as interpreted by the Nevada state official most directly in charge of enforcing it.

ANALYSIS OF NEVADA’S LAW

1. Generally, AB 190 applies only to ticketed “live entertainment” events, not private corporate events, trade shows, or conventions. We interpreted AB 190 to apply only to events that charged an admission fee were subject to the statute – in other words, workers on corporate events were not required to obtain OSHA 10 or 30 certification no matter how many hours they worked. Mr. Lankford confirmed that this is generally correct, but he reserved the right to enforce the training requirement for even private non-ticketed events that contain “a live entertainment aspect.” In order not to lose Mr. Lankford’s nuance, here is his full response on this subject:

“[I]n some rare cases the statute may be applied to locations where no entry fee was retained. For the purposes of regulatory enforcement my interpretation is not considering events such as corporate events, trade shows or conventions to be “live entertainment” events. It must be noted that each of these examples may contain a live entertainment aspect. Because of this potential each inspection, and the fact patterns of those specific inspections, must be weighed individually. “

We further note Nevada’s position that people whose work does fall within the statute will need OSHA General Industry certification, not Construction Industry certification. So if one’s work does put them within the scope of Nevada’s statute, it will be important to obtain the specific OSHA certification the state requires.

2. Definition of the “work” requiring OSHA 10 or 30. In Sec. 7 of AB 190, a “worker” is defined as a person whose primary occupation is to “perform work on a site, including, without limitation, the construction, installation, maintenance, operation, repair, or removal of ...” certain enumerated items related to the production of five types of entertainment. [Emphasis added.]

Sentences like that remind us why one should not use the term to be defined in its own definition. Fortunately, Mr. Lankford offered some guidance. He confirmed that “some non-technical employee assignments do not fall under the scope of the statute.” Specifically, “If an employee is the labor that completes the task enumerated in the statute then they are to have a 10 hour card. If any employee is assigning the tasks then that would require the 30 hour card.” This is an issue for which it may be necessary for either the worker, their employer, or their attorney may need to carefully read the statutory language.

3. Tours and festivals in Nevada that are open to the public less than 15 days are outside the statute. On this very important point for ESA members, Mr. Lankford was unequivocal: “*The committee specifically recognized that some events are traveling events and are likely to be in Nevada for less than 15 days. The committee agreed that the statute would not have any effect on these types of traveling*

shows and their traveling staff.”

4. The 15 day clock begins when the employee starts doing tasks listed in the statute. Throughout the statute, the clock is said to begin “15 days after the date a worker ... is hired.” Mr. Lankford interprets that to refer to the “day that the employee is hired and is working in a capacity identified in the statute.” Logically, the day that starts the clock is the day a worker begins performing tasks that are regulated by the statute.

5. The clock resets after each touring event ends. In a further indication that the statute is not intended to apply to touring shows or festivals, Mr. Lankford explained that the “15 day period is specific to the event and is not a cumulative total for all work within Nevada.”

6. The party responsible for compliance is the worker’s employer. When distinguishing employees versus independent contractors, Nevada follows the usual criteria of federal OSHA. If a worker is taking direction from the prime contractor on a site, then the prime contractor will be responsible for ensuring compliance of a worker whose tasks fall within the statute. But if a worker is truly an independent contractor, in charge of their own means and methods of work, then they or their independent contractor employer will have that responsibility.

COMMENT ABOUT SAFETY TRAINING GENERALLY

The Event Safety Alliance focuses on training and education to create safer entertainment events for workers and guests. Although Nevada’s statute does not require every worker on an event site to be OSHA certified, ESA strongly advocates that everyone dealing with equipment receive industry-specific training to use it safely. ESA’s online Event Safety Access Training (“ESAT”) covers much of what is taught in both the General Industry and Construction Industry versions of OSHA 10, focused on the situations most likely to arise for people working on live entertainment events. For more information about ESAT, including registration, click here: <https://eventsafetyalliance.org/event-safety-access-training-online/>.

LEGAL DISCLAIMER

ESA hopes this analysis helps you prepare to work in Nevada. But the information contained here is not legal advice to you – instead, it is intended to give you ESA’s best understanding of how AB 190 will work generally. For the law’s application to your particular circumstances, please consult your employer’s human resources professional or qualified legal counsel.

ABOUT THE EVENT SAFETY ALLIANCE