

**ADOPTED REGULATION OF THE ADMINISTRATOR OF THE  
EMPLOYMENT SECURITY DIVISION OF THE DEPARTMENT  
OF EMPLOYMENT, TRAINING AND REHABILITATION**

**LCB File No. R201-05**

Effective February 23, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-4, NRS 612.220.

A REGULATION relating to unemployment compensation; revising provisions governing claims for benefits, elections by employers to cover workers in several states and interstate claimants; and providing other matters properly relating thereto.

**Section 1.** NAC 612.120 is hereby amended to read as follows:

612.120 1. The last or next to last employing unit that receives a notice of the first claim filed by a claimant following separation from employment must, within ~~[10]~~ *11* days after the date of the notice, submit to the Employment Security Division ~~[any]~~ *all relevant* facts that affect the claimant's rights to benefits, including ~~[any]~~ *all relevant* facts which disclose that the claimant separated from his employment voluntarily and without good cause, or was discharged for misconduct in connection with his employment.

2. The last or next to last employing unit may protest the payment of benefits if the protest is filed within ~~[10]~~ *11* days after the date of the notice of filing the claim. If the employing unit has filed a report of *all relevant* facts in a timely manner that might adversely affect the claimant's rights to benefits, the report is considered as a protest to the payment of benefits.

3. The last or next to last employing unit that has filed a response in a timely manner will be notified in writing of the determination as to the claimant's rights to benefits. If the last or next to

last employing unit has contributed 75 percent of the claimant's base period earnings and has submitted ~~[information]~~ *all relevant facts* in a timely manner indicating that the claimant quit voluntarily without good cause, or was discharged for misconduct in connection with his employment, the employer will be notified in writing of the Division's ruling as to the cause of termination of the claimant's employment and whether the experience rating record of the employer is chargeable with benefits paid the claimant.

4. Any employing unit that paid wages to the claimant in the base period of his claim will be notified of the first claim filed which results in a determination that the claimant is an insured worker. The base period employer so notified must, within ~~[10]~~ *11* days, submit ~~[any]~~ *all relevant* facts disclosing whether the claimant was discharged for a crime committed in connection with his employment. The Division will issue a decision setting forth whether the wages will be denied in the determination of the payment of benefits.

5. Any notice of determination or ruling will contain a statement setting forth the right of appeal.

6. The notice of first claim filed mailed to the last or next to last employing unit must be addressed to:

- (a) The employing unit's place of business where the claimant was most recently employed;
- (b) The business office of the employing unit where the records of the claimant's employment are maintained; or
- (c) The business office of an authorized agent of the employing unit if the employing unit has filed with the Administrator an approved authorization designating the agent to represent the employing unit.

7. Any notice properly addressed to the last known address of the employing unit or its authorized agent constitutes proper notification to the employing unit of the first claim filed.

8. The notice of first claim filed mailed to a base period employer who is not the last or next to last employer of the claimant must be addressed to:

- (a) The employing unit's place of business where the claimant was most recently employed;
- (b) The business office of the employing unit where the records of the claimant's employment are maintained;
- (c) The address or addresses as requested by the employer and agreed to by the Administrator; or
- (d) The business office of an authorized agent of the employing unit if the employing unit has filed with the Administrator an approved authorization designating the agent to represent the employing unit.

↪ Any notice properly addressed to the last known address of the employer or his authorized agent constitutes proper notice to the base period employer.

*9. As used in this section, "all relevant facts" includes, without limitation, dates of employment, type of work performed, specific reason given for separation from employment, the final incident to cause the separation from employment and prior disciplinary warnings of a similar nature given, if any.*

**Sec. 2.** NAC 612.232 is hereby amended to read as follows:

612.232 1. The examiner may postpone or continue the hearing on his own motion or when requested by a party showing compelling reasons for the continuance or postponement.

2. If a party fails to appear at the time set for the hearing, the examiner may, on his own motion, or on good cause shown by the party who failed to appear, reschedule the hearing. The

decision to reschedule the hearing must be made within ~~10~~ 11 days after the issuance of the decision on the claim. If a hearing is rescheduled, any prior decision issued by the examiner is vacated.

**Sec. 3.** NAC 612.460 is hereby amended to read as follows:

612.460 1. Any employing unit may file an election to cover under the law of a single participating jurisdiction, all of the services performed for him by any person who customarily works for him in more than one participating jurisdiction.

2. An election may be filed with respect to a person with any participating jurisdiction in which:

- (a) Any part of the person's services are performed;
- (b) The person has his residence; or
- (c) The employing unit maintains a place of business to which the person's services bear a reasonable relation.

↪ The agency of the elected jurisdiction shall initially approve or disapprove the election.

3. If an agency approves the election, it shall forward a copy of its approval to the agency of each other participating jurisdiction specified under whose law the person in question might, in the absence of the election, be covered. Each interested agency shall approve or disapprove the election as promptly as practicable and notify the agency of the elected jurisdiction accordingly.

4. If its law so requires, any interested agency may, before taking action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

5. If the agency of the elected jurisdiction or the agency of any interested jurisdiction disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

6. An election takes effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election which is approved takes effect as to any interested agency only if it is approved by the agency.

7. If any election is approved only in part or is disapproved by some of the agencies, the electing employing unit may withdraw its election within ~~10~~ **11** days after being notified of the action.

**Sec. 4.** NAC 612.580 is hereby amended to read as follows:

612.580 1. An agent state must, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question ~~any~~ **all relevant** facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

2. The agent state's responsibility and authority in connection with the determination of interstate claims is limited to the investigation and reporting of **all** relevant facts. The agent state may not refuse to take an interstate claim.

3. The agent state must afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims when requested by the liable state. With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant is made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

*4. As used in this section, “all relevant facts” includes, without limitation, dates of employment, type of work performed, specific reason given for separation from employment, the final incident to cause the separation from employment and prior disciplinary warnings of a similar nature given, if any.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R201-05**

The Administrator of the Employment Security Division of the Department of Business and Industry adopted regulations assigned LCB File No. R201-05 which pertain to chapter 612 of the Nevada Administrative Code on January 24, 2006.

**Notice date:** 11/29/05  
**Hearing date:** 1/24/2006

**Date of adoption by agency:** 1/24/2006  
**Filing date:** 2/23/2006

**INFORMATIONAL STATEMENT**

**DESCRIPTION OF HOW PUBLIC COMMENT WAS SOLICITED**

**Public Workshops**

The Employment Security Division held a public meeting and workshop on December 14, 2005, at the Grant Sawyer Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada, and December 15, 2005, at the Legislative Building, 401 S. Carson Street, Room 2135, Carson City, Nevada in compliance with NRS 233B.061. Both workshops were held to consider proposed amendments and additions to the regulations contained in Nevada Administrative Code Chapter 612. Notice of the meetings was mailed on November 29, 2005, to all individuals on the Employment Security Division mailing list. Notice was posted at the principle office of the Employment Security Division in Carson City, as well as numerous offices of the Employment Security Division throughout the state. Additionally, the notice along a with a copy of the proposed regulations were submitted to the Legislative Counsel Bureau, the Nevada State Library, and all county libraries in the state, and was posted on the Web sites of the Department of Employment, Training and Rehabilitation and the Legislative Counsel Bureau.

A total of eight persons attended the public meeting and workshop in Las Vegas, Nevada, on December 14, 2005, including seven staff members of the Department of Employment, Training and Rehabilitation and the Division's legal counsel. Two staff members testified at the workshop regarding new, amended and repealed regulations. No members of the public or interested parties attended or testified at the meeting. No written comments were received.

A total of six persons attended the public meeting and workshop in Carson City, Nevada, on December 15, 2005, including five staff members of the Department of Employment, Training and Rehabilitation and the Division's legal counsel. Two staff members and the Division's legal counsel testified at the workshop regarding new, amended and repealed regulations. No members of the public or interested parties attended or testified at the meeting. No written comments were received. No written comments were received, however, one verbal comment was received expressing concern over the definition of week not including the word "benefit" since the definition is in reference to claims and not a workweek.

### **Public Hearing**

In compliance with NRS 233B.0603, a public hearing was held on January 24, 2006, at the Legislative Building, 401 S. Carson Street, Room 2135, Carson City, Nevada. The hearing was also video conferenced to the Grant Sawyer Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada. A copy of the Notice of Intent to Adopt a Regulation was submitted to the Legislative Counsel Bureau and the Nevada State Library on December 22, 2005, providing at least 30 days notice of the Employment Security Division's intention to adopt the regulations. The notice included a copy of the proposed regulations and contained a statement of the need and purpose of the regulations. It further specified a time and location for a public hearing, at which interested individuals would be given the opportunity to present their views, or to submit any oral or written evidence. Notice of the public hearing was mailed on December 23, 2005, to all individuals on the Employment Security Division mailing list. Notice was posted at the principal office of the Employment Security Division in Carson City, as well as numerous offices of the Employment Security Division throughout the state. Additionally, the notice was submitted to all county libraries in the state, posted on the Department of Employment, Training and Rehabilitation web site, and published in three newspapers.

A total of six persons attended the public hearing. Cynthia A. Jones, Administrator of the Employment Security Division of the Department of Employment, Training, and Rehabilitation, presided over the hearing. Five staff from the Department of Employment, Training and Rehabilitation and the Division's legal counsel attended the meeting. Two staff members provided testimony during the hearing. No members of the public or interested parties attended or testified at the meeting. No written comments were received.

Copies of the minutes from the public workshop and the public hearing, as well as this summary, may be obtained from Joyce Golden, Employment Security Division, 500 East Third Street, Carson City, Nevada 89713, telephone (775) 684-3909, and are also being made available on the Department's web site at <http://www.nvdetr.org>

### **DESCRIPTION OF HOW COMMENT WAS SOLICITED FROM AFFECTED BUSINESSES**

Comment was solicited from affected businesses in the same manner as for the public, as indicated above.

### **REASON FOR ADOPTION WITHOUT CHANGE**

The regulation was adopted without change. The division received one verbal comment, subsequent to the public workshops, regarding NAC 612.016. A suggestion was made to change the term in this section to "benefit week" rather than "week". Even though this chapter of administrative code applies only to unemployment insurance benefits, the commenter felt employers might be confused that this definition meant workweek. After careful consideration, the division has chosen not to accept this suggestion. To do so would be to define a term, being "benefit week," which is not used otherwise in these regulations. Leaving the defined term as "week" results in a consistent and harmonious reading of the regulations governing unemployment insurance as "week" is used throughout as it applies to benefit eligibility.



## **ESTIMATED ECONOMIC EFFECT**

### **Business which it is to regulate**

The economic effect on the unemployment insurance trust fund resulting from the adoption of regulations related to the SUTA Dumping Prevention Act of 2004 and changes in responses from employers on claims for unemployment compensation is unknown.

### **Beneficial effects**

The regulations provide for definitions and outline procedures that either require or prohibit the transfer of experience records between business entities. Additionally, some of the changes clarify existing regulations and revise or repeal processes that have been rendered archaic by the transition to a remote unemployment insurance claim filing process. Also included, are regulations prescribed by Chapter 233B of the Nevada Revised Statutes regarding advisory opinions and declaratory orders issued by the Administrator.

### **Adverse effects**

There are no anticipated adverse immediate or long-term effects on the businesses which the regulations are to regulate.

### **Immediate and long-term effects**

The immediate and long-term beneficial effect is the elimination of the ability of business entities to escape their earned experience record through the practice of “SUTA Dumping” or rate manipulation. Such tax avoidance schemes burden the remainder of the employers with the costs of the program.

## **Public**

### **Beneficial effects**

The regulations associated with the transfer of experience record will help ensure that equity is maintained among the employers that contribute to the unemployment insurance fund.

### **Adverse effects**

There are no anticipated adverse effects upon the public.

### **Immediate and long-term effects**

There are no immediate effects upon the public. The long-term effect is the assurance of a more equitable distribution of costs among employers by eliminating the ability of business entities to manipulate their experience records and avoid unemployment insurance taxes.

The regulations that require employers to provide all information needed to ensure a correct determination would reduce the amount of overpayments that are sometimes created and lessen the financial impact of benefit overpayment on the trust fund as a whole.

### **ESTIMATED COST TO ENFORCE THE REGULATION**

There are no additional costs involved in enforcing the proposed regulations. Funds are provided by the U.S. Department of Labor to administer the Unemployment Insurance Program.

### **REGULATIONS OF OTHER STATE OR GOVERNMENT AGENCIES**

The proposed regulations do not overlap or duplicate regulations of other state or government agencies.

### **FEDERAL REGULATIONS**

There are no federal regulations that regulate the same activity.

### **NEW FEE OR INCREASING AN EXISTING FEE**

The regulations do not provide for a new fee or increase an existing fee.