

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

LCB File No. R199-05

Effective February 23, 2006

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

AUTHORITY: §§1-5, 11, 13 and 14, NRS 612.220; §6, NRS 612.195 and 612.220; §7, NRS 612.185 and 612.220; §§8 and 12, NRS 612.220 and 612.375; §§9 and 10, NRS 612.220 and 612.455.

A REGULATION relating to unemployment compensation; providing procedures concerning advisory opinions and declaratory orders issued by the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation; revising provisions governing benefits, claims for benefits and interstate claimants; and providing other matters properly relating thereto.

Section 1. Chapter 612 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *1. Except as otherwise provided in subsection 3, a person may request that the Administrator issue an advisory opinion concerning the applicability of a statute, regulation or decision of the Administrator.*

2. A request for an advisory opinion must be in writing and set forth:

- (a) The name and address of the person requesting the advisory opinion;*
- (b) A clear and concise statement of the specific question for which the advisory opinion is being sought; and*
- (c) A statement of the facts that support the advisory opinion being sought.*

3. A person may not request an advisory opinion concerning a question or matter that is an issue in a pending administrative, civil or criminal proceeding in which the person is a party.

4. The Administrator will review a request for an advisory opinion and issue a response within 30 days after receiving the request.

5. An advisory opinion issued by the Administrator will be limited to the facts and circumstances set forth in the request.

6. An advisory opinion issued by the Administrator is not binding:

(a) Upon the Division;

(b) Upon an Appeal Tribunal for the purposes of a review of a determination made by the Division;

(c) Upon the Board of Review; or

(d) For the purposes of judicial review.

Sec. 3. *The Administrator will not render an oral advisory opinion to a request for an advisory opinion. An oral response, including, without limitation, a response given over the telephone, by a member of the staff of the Division is not a decision or an official advisory opinion of the Administrator.*

Sec. 4. *1. Except as otherwise provided in subsection 3, a person may file a petition with the Administrator requesting that he issue a declaratory order concerning the applicability of a statute, regulation or decision of the Administrator.*

2. A petition for a declaratory order must include:

(a) The name and address of the petitioner;

(b) The reason for requesting the declaratory order;

- (c) A statement of the facts that support the petition for a declaratory order; and*
 - (d) A clear and concise statement of the question or matter to be decided by the Administrator.*
- 3. A person may not file a petition for a declaratory order concerning:*
- (a) A question or matter that is an issue in a pending administrative, civil or criminal proceeding in which the person is a party; or*
 - (b) The benefit rights of a claimant, an employer's liability with respect to contributions, or a determination of substantially common ownership, management or control between two or more business entities.*
- 4. The Administrator may refuse to review a petition that requests the issuance of a declaratory order if:*
- (a) The original petition is not accompanied by two copies of the petition; or*
 - (b) The petition does not contain the information required by subsection 2.*
- 5. The Administrator may:*
- (a) Conduct a hearing to determine issues of fact or to hear arguments relating to a petition for a declaratory order and may enter reasonable orders that govern the conduct of the hearing.*
 - (b) Request that the petitioner provide additional information or arguments relating to the petition.*
 - (c) Issue a declaratory order based on the contents of the petition and any material submitted with the petition.*
 - (d) Consider relevant decisions that have been issued by the Administrator or any other entity which apply or interpret the statute, regulation or decision in question.*

(e) Consider any other information he determines is relevant to the question or matter to be decided by the Administrator.

(f) Enter any reasonable order to assist his review of the petition.

6. The Administrator will maintain a record of the declaratory order that is indexed by subject matter and will mail a copy of the declaratory order to the petitioner within 60 days after:

(a) The petition is filed;

(b) A hearing is conducted concerning the petition; or

(c) Any additional information or written argument is received by the Administrator,

↪ whichever occurs later.

Sec. 5. *1. Any person who wishes to petition for the adoption, filing, amendment or repeal of a regulation of the Administrator must file with the Administrator the original and two copies of the petition.*

2. A petition for the adoption, filing, amendment or repeal of a regulation must include:

(a) The name and address of the petitioner;

(b) A clear and concise statement, including, if applicable, the proposed language, of the regulation to be adopted, filed, amended or repealed;

(c) The reason for petitioning for the adoption, filing, amendment or repeal of the regulation; and

(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.

3. The Administrator may refuse to act upon a petition for the adoption, filing, amendment or repeal of a regulation if:

(a) The original petition is not accompanied by two copies of the petition; or

(b) The petition does not contain the information required by subsection 2.

4. The Administrator will notify the petitioner in writing of his decision with regard to the petition within 30 days after the petition is filed.

Sec. 6. NAC 612.016 is hereby amended to read as follows:

612.016 “Week” means a period of 7 consecutive calendar days *beginning at 12:01 a.m. Sunday and* ending at midnight Saturday ~~[-]~~ *in the Pacific time zone.*

Sec. 7. NAC 612.090 is hereby amended to read as follows:

612.090 1. *Except as otherwise provided in this section:*

(a) A person is totally unemployed in any week during which he performs no services with respect to which remuneration is payable to him.

~~[(2)]~~ *(b)* A person is part-totally unemployed in any week of less than full-time work if the remuneration payable to him with respect to that week is less than his weekly benefit amount.

~~[(3)]~~ *(c)* A person is partially unemployed in any week in which he has:

~~[(a)]~~ *(1)* Performed services for his regular employer;

~~[(b)]~~ *(2)* Not been separated from employment with his regular employer;

~~[(c)]~~ *(3)* Earned less than his weekly benefit amount; or

~~[(d)]~~ *(4)* Worked less than his customary full-time hours for his regular employer because of lack of full-time work.

2. A person who is on a mutually agreed leave of absence from work with a right to return to his employment in a specified or nonspecified period and who will be reinstated at his previous or higher salary and with substantially equal benefits and seniority is not considered unemployed for the purpose of the receipt of benefits.

3. A person working solely for commission is not considered totally, part-totally or partially unemployed in any week during which he works 30 or more hours.

Sec. 8. NAC 612.094 is hereby amended to read as follows:

612.094 An unemployed person may receive benefits without complying with the requirement of NRS 612.375 to register for work if the person is:

1. Partially unemployed as defined by NAC 612.090; or
2. Temporarily laid off from his regular employment but is guaranteed reemployment, *or has secured full-time employment that will begin*, within:

- (a) Four weeks; or
- (b) A longer period if the Administrator extends the 4-week period upon a showing of good cause.

Sec. 9. NAC 612.100 is hereby amended to read as follows:

612.100 1. An initial claim is a certification of unemployment and notice of intent to claim benefits, if unemployment continues. This claim is the first claim filed in a series of claims.

Initial claims are of three types:

- (a) New claim;
 - (b) Additional claim; and
 - (c) Reopened claim.
2. A new claim is an application for a determination of eligibility and benefits, benefit amount and duration of benefits which certifies to the beginning date of a first period of unemployment in a benefit year or the continuance of a period of unemployment into a new benefit year.

3. An additional claim is a claim filed during the benefit year when a break of 1 week or more has occurred in the series of claims with intervening employment.

4. A reopened claim is a claim filed during the benefit year when a break of 1 week or more has occurred in the series of claims for some reason other than employment.

5. A certification to a week of unemployment for which benefits are claimed is a continued claim.

~~[6. —A claimant is in active claim status until he fails to file a continued claim for 4 consecutive weeks.]~~

Sec. 10. NAC 612.110 is hereby amended to read as follows:

612.110 1. The effective date of an initial claim is:

(a) Sunday of the week in which the claim is filed, if the claimant has an active application for work on file or completes an application during the week which includes the effective date of the initial claim;

(b) Sunday of the week in which an application for employment is completed if the application is completed subsequent to the date of the filing; *or*

(c) Sunday of the week in which an application for employment was completed if the date is before the date the claim was filed and the person can show good cause for not having previously filed an initial claim. In no case may a claim be predated more than 2 weeks preceding the week in which the claim is actually filed. ~~†~~

~~—(d) Sunday of the week in which the Division received written notice of intention to file, if the effective date is not more than 28 days before Sunday of the week in which the claim is actually filed; or~~

~~—(e) Sunday of the week in which the claimant first suffered unemployment, if the date is within 28 days of the actual filing date and the claimant can show that it was impossible to have filed his claim and registered for work sooner at his nearest public employment office.]~~

2. A continued claim must be filed in accordance with instructions of the Administrator or his authorized representative and *is subject to* the following:

(a) A continued claim must be filed ~~[at the place and time]~~ *in a manner* specified by the Division's representatives except that, if a person can show good cause for failure to file in accordance with instructions, a claim may be accepted. ~~[at some other time than that assigned.]~~

(b) A continued claim will not be accepted if the claimant does not have an active application for employment on file with the employment service during all or a part of the week with respect to which the claim was filed.

(c) Failure to file a continued claim to certify unemployment for a week during the subsequent week is a basis for rejecting a weekly claim for benefits.

3. A claimant may appeal a denial of his claim. The appeal must be in writing and signed by the claimant or by a duly authorized agent of the claimant. A claimant who appeals *to an Appeal Tribunal or the Board of Review or through judicial review* must continue to file a weekly claim for unemployment benefits in the manner specified by the Division during the period of *unemployment while under* disqualification in order to receive payments if the appeal is decided in favor of the claimant.

4. If identifying information used through an interlocal agreement with other governmental agencies fails adequately to establish the identity of a claimant, the claimant may be required to complete a sworn affidavit of identity in the presence of a notary public to protect the integrity of his claim for unemployment insurance and identity.

Sec. 11. 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 days after the date of the notice, submit to the ~~[Employment Security]~~ Division any facts that affect the claimant's rights to benefits, including any 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 days after the date of the notice of filing the claim. If the employing unit has filed a report of 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 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. *The last or next to last employing unit is entitled to relief from the charging of benefits to its experience rating record if the claimant is found to have quit employment with the employing unit solely to accept other employment.*

5. 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 days, submit any 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-}~~ 6. Any notice of determination or ruling will contain a statement setting forth the right of appeal.

~~{6-}~~ 7. The notice of first claim filed *which is* 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-}~~ 8. 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-}~~ 9. The notice of first claim filed *which is* 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.

Sec. 12. NAC 612.190 is hereby amended to read as follows:

612.190 1. The Administrator will approve training that:

(a) Is sponsored by or financed by the Secretary of Labor; or

(b) Does not exceed 6 months and is given specifically to provide the trainee with skills to become reemployed and there is a market for the required skills in the area of the trainee's residence.

➡ The training must be given by an institution or facility approved by and in good standing with the ~~[State of Nevada Department of Education or Bureau of Vocational Rehabilitation.]~~

Commission on Postsecondary Education or the Governor's Workforce Investment Board.

2. A trainee shall furnish proof of his acceptance by the training institution or facility . ~~[and each continued claim must be accompanied by a statement]~~ *The trainee shall provide statements* from the training institution or facility showing that the trainee is currently in training and that his progress is satisfactory to the training institution or facility ~~[.]~~ *as prescribed by the Administrator.*

Sec. 13. NAC 612.510 is hereby amended to read as follows:

612.510 “Interstate Benefit Payment Plan” means the Plan approved by the ~~Interstate Conference of Employment Security Agencies]~~ *National Association of State Workforce Agencies* under which benefits are payable to unemployed persons absent from the state in which benefit credits have been accumulated.

Sec. 14. NAC 612.180 is hereby repealed.

TEXT OF REPEALED SECTION

612.180 Separation from employment: Notification. (NRS 612.220, 612.455) If a person is separated from his employment for any reason, his employer shall deliver to the person separated from his employ, for either a permanent or an indefinite period or for an anticipated duration of 7 days or more, at the time of the separation, a notice to employees, on a form provided by the Administrator, which instructs each person to report promptly to the nearest public employment office. If delivery of this notice is impossible or impracticable, the employer shall mail it to the person’s last known address.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R199-05

The Administrator of the Employment Security Division of the Department of Business and Industry adopted regulations assigned LCB File No. R199-05 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.