

**ADOPTED REGULATION OF THE ADMINISTRATOR OF THE
DIVISION OF INDUSTRIAL RELATIONS OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R059-15

Effective December 21, 2016

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

AUTHORITY: §1, NRS 616A.400 and 616C.495, as amended by section 3 of Senate Bill No. 232, chapter 240, Statutes of Nevada 2015, at page 1141.

A REGULATION relating to industrial insurance; revising provisions concerning compensation of an injured employee who incurs a permanent partial disability; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows an injured employee who incurs a permanent partial disability to elect to receive compensation for that injury in a lump sum. A claimant injured on or after July 1, 1981, and before July 1, 1995, who incurs a disability that: (1) does not exceed 30 percent may elect to receive his or her compensation in a lump sum; and (2) exceeds 30 percent may elect to receive his or her compensation in a lump sum equal to the present value of an award for a disability of 30 percent. The Administrator of the Division of Industrial Relations of the Department of Business and Industry is required to adopt regulations for determining the eligibility of such an employee who is injured on or after July 1, 1995, to receive all or a portion of his or her compensation in a lump sum. (NRS 616C.495, as amended by section 3 of Senate Bill No. 232, chapter 240, Statutes of Nevada 2015, at page 1141) Existing regulations allow such an employee who incurs a partial disability that: (1) does not exceed 25 percent to elect to receive compensation in a lump sum; and (2) exceeds 25 percent to elect to receive a portion of his or her compensation in a lump sum equal to the present value of an award for a disability of 25 percent. (NAC 616C.498) This regulation allows such an employee who is injured on or after July 1, 2015, but before January 1, 2016, who incurs a partial disability that exceeds 25 percent to elect to receive a portion of his or her compensation in a lump sum up to the present value of an award for a disability of 30 percent if the insurer offers to provide compensation in a lump sum of that amount. This regulation also allows such an employee injured on or after January 1, 2016, who incurs a partial disability that: (1) does not exceed 30 percent to elect to receive compensation in a lump sum; and (2) exceeds 30 percent to elect to receive a portion of his or her compensation in a lump sum equal to the present value of an award for a disability of 30 percent.

Section 1. NAC 616C.498 is hereby amended to read as follows:

616C.498 **1.** An employee injured on or after July 1, 1995, *but before January 1, 2016*, who incurs a permanent partial disability that:

~~11.~~ (a) Does not exceed 25 percent may elect to receive compensation in a lump sum.

~~12.~~ (b) Exceeds 25 percent may ~~elect~~ :

(1) Elect to receive compensation in a lump sum equal to the present value of an award for a disability of 25 percent. If the injured employee elects to receive compensation in a lump sum pursuant to this ~~subsection.~~ subparagraph, the insurer shall pay in installments to the injured employee that portion of the injured employee's disability in excess of 25 percent.

(2) To the extent that the insurer has offered to provide compensation in a lump sum up to the present value of an award for a disability of 30 percent, elect to receive compensation in a lump sum up to the present value of an award for a disability of 30 percent. If the injured employee elects to receive compensation in a lump sum pursuant to this subparagraph, the insurer shall pay in installments to the injured employee that portion of the injured employee's disability in excess of 30 percent.

2. *An employee injured on or after January 1, 2016, who incurs a permanent partial disability that:*

(a) Does not exceed 30 percent may elect to receive compensation in a lump sum.

(b) Exceeds 30 percent may elect to receive compensation in a lump sum equal to the present value of an award for a disability of 30 percent. If the injured employee elects to receive compensation in a lump sum pursuant to this paragraph, the insurer shall pay in installments to the injured employee that portion of the injured employee's disability in excess of 30 percent.

**STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS**

**IN THE MATTER OF THE ADOPTION OF
PERMANENT REGULATION RELATING TO
INDUSTRIAL INSURANCE; REVISING PROVISIONS
CONCERNING COMPENSATION OF AN INJURED
EMPLOYEE WHO INCURS A PERMANENT
PARTIAL DISABILITY; AND PROVIDING OTHER
MATTERS PROPERLY RELATING THERETO.**

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066
LCB FILE NO. R059-15**

AMENDED INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 616C.498

1. A clear and concise explanation of the need for the adopted regulation.

The Division of Industrial Relations, Workers' Compensation Section's proposed amendments to NAC 616C.498 are necessary to comply with NRS 616C.495, as amended by Section 3 of Senate Bill 232, Chapter 240, Statutes of Nevada 2015, at page 1141. This regulation allows an employee injured on or after January 1, 2016, who incurs a permanent partial disability that: (1) does not exceed 30 percent to elect to receive the compensation in a lump sum; and (2) exceeds 30 percent to elect to receive a portion of his or her compensation in a lump sum equal to the present value of an award for a disability of 30 percent. This regulation also allows an insurer to offer an employee injured on or after July 1, 1995 and before January 1, 2016, who incurs a permanent partial disability that: (1) does not exceed 25 percent to elect to receive the compensation in a lump sum; and (2) authorizes the insurer to offer a lump sum PPD up to 30 percent equal to the present value.

2. A description of how public comment was solicited, a summary of public responses, and an explanation of how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, notices of workshop and notices of intent to act upon a regulation were sent by U.S. mail and e-mail to over 2,500 persons who were known to have an interest in the subject of Chapters 616A through 616D, inclusive, and 617 of the NAC, as well as any persons who had specifically requested such notice. These documents were also made

available at the websites of the State of Nevada and the Department of Business and Industry, Division of Industrial Relations, Workers' Compensation Section's website (www.dirweb.state.nv.us/WCS/wcs.htm later changed to <http://dir.nv.gov/WCS/home>), mailed to all county libraries in Nevada and posted at the following locations:

Division of Industrial Relations
400 W. King Street, #400
Carson City, NV 89703

Department of Business and Industry
555 E. Washington Ave., #4900
Las Vegas, NV 89101

Workers' Compensation Section
Division of Industrial Relations
1301 N. Green Valley Pkwy., #200
Henderson, NV 89074

Workers' Compensation Section
Division of Industrial Relations
400 W. King Street, #210
Carson City, NV 89703

Grant Sawyer Building
555 E. Washington Ave.,
Las Vegas, NV 89101

Bradley Building
2501 E. Sahara Ave.
Las Vegas, NV 89104

Nevada State Library, Archives and Public Records
100 Stewart Street
Carson City, NV 89701

A Workshop was held via videoconference on October 6, 2015, at 9:00 a.m. at the Legislative Building, 401 S. Carson Street, Room 2135, Carson City, Nevada; and Grant Sawyer Building, 555 E. Washington Avenue, Room 4412, Las Vegas, Nevada.

On or about December 7, 2015, the Administrator of the Department of Business and Industry, Division of Industrial Relations (Administrator), issued a Notice of Intent to Act on Proposed Regulations. Public hearings were held on January 8, 2016, at 10:00 a.m. at Occupational Safety and Health Administration, 1301 N. Green Valley Parkway, 1st Floor Training Room, Henderson, Nevada and Occupational Safety and Health Administration, 4600 Kietzke Lane, Building E, #144/Training Room, Reno, Nevada.

On or about October 10, 2016, the Administrator of the Department of Business and Industry, Division of Industrial Relations (Administrator), issued a Notice of Intent to Act on Proposed Regulations. Public hearings were held on November 16, 2016, at 2:00 p.m. at Occupational Safety and Health Administration, 1301 N. Green Valley Parkway, 1st Floor Training Room, Henderson, Nevada and Workers' Compensation Section, 400 W. King Street, 4th Floor Videoconference Room, Carson City, Nevada.

A copy of this summary of the public response to the proposed regulations may be obtained from Donald C. Smith, Esq. at the Division of Industrial Relations, Legal Department, 1301 N. Green Valley Pkwy., #200, Henderson, NV 89074, 702-486-9070, or e-mail to donaldcsmith@business.nv.gov.

3. The number of persons who:

- (a) Attended each hearing;**
- (b) Testified at each hearing; and**
- (c) Submitted to the agency written comments.**

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information, if provided to the agency conducting the hearing:

- (a) Name;**
- (b) Telephone number;**
- (c) Business address;**
- (d) Business telephone number;**
- (e) Electronic mail address; and**
- (f) Name of entity or organization represented.**

At the **October 6, 2015, Workshop**, which was held at two sites via videoconference, in Las Vegas 13 attended and in Carson City 10 attended, with testimony received from one (1) attendee. A summary of the testimony at this public hearing follows:

Donald E. Jayne, CPCU, Jayne & Associates, Inc., P.O. Box 250, Gardnerville, NV 89410; Telephone: 775-265-7114; E-mail: donaldjayne@charter.net. Mr. Jayne asked a question whether the Division would consider expanding the regulations to allow an insurer to offer a lump sum permanent partial disability award from 26% to 30% for every claim regardless of the date of injury.

No written comments were received following the October 6, 2015 public workshop.

At the **January 8, 2016, Hearing**, which was held at two sites via videoconference, in Henderson 26 attended and in Reno 10 attended, with testimony received from four (4) attendees. A summary of the testimony at this public hearing follows:

Jason D. Mills, Esq., Neeman & Mills PLLC, 1201 S. Maryland Pkwy., Las Vegas, Nevada 89104; Telephone: 702-822-4444; E-mail: info@neemanmills.com; Representing the Nevada Justice Association:

Regarding R059-15, with regard to the Senate bill which passed this last legislative session. The issue that we are concerned with is the period, January 1, 1995 until December 31, 2015 where it remains 25%. We believe that there should be a regulation that says should the insurers and the injured worker and/or their representative be in agreement for that 20 year period to allow for the lump sum to be taken as a 30% then it should be done so. In light of the fact that the legislature clearly changed to a lump sum of 30% for all of those prior periods after January 1, 2016 and forward, we concur with the change that the Department of Industrial Relations has made with regard to making it essentially mandatory 30% lump sum.

Jim Werbeckes, Vice President, Government and Regulatory Affairs, Employers Insurance Group, 10375 Professional Circle, Reno, Nevada 89512; Telephone: 775-327-2458; E-mail: jwerbeckes@employers.com:

We have the same concerns that Jason Mills just brought forward. I think that you are creating a sub-class of injured workers that would only be allowed to collect up to 25% lump sum if they were injured between July 1, 1995 and December 31, 2015. Under NRS 616C.495(1)(d), it clearly states that the Director has the discretion to set whatever percentage lump sum they want after, I believe it was July 1, 1995. I would suggest that the Department, and I do have an amendment here for NAC 616C.498, which takes up to 25%, puts them to 30% so any injured worker who was injured from or after July 1, 1995 to present would be entitled to a 30% lump sum should they wish to do so.

Don Jayne, Jayne & Associates, Inc., P.O. Box 250, Gardnerville, Nevada 89410; Telephone: 775-265-7114; E-mail: donaldjayne@charter.net; Representing the Nevada Self-Insured Association:

The Self-Insured Association always intended, but didn't see the clear language that came out statutorily that if the parties wished they could agree to the 30% and go ahead and move to the 30% from the current 25% level. We have seen the amendment Mr. Werbeckes proposes and it looks to be a reasonable amendment. We, also, drafted up an amendment, as well, which focuses more on the mutual agreement of the parties coming together and agreeing to pay up to 30% lump sum before the installments would start. The intent is certainly the same and we would love to work with the Agency if this is something the Agency believes it could do regulatory to make some clarifying language in here regarding 30% payments to PPD award recipients from the past.

Craig Coziahr, Pro Group Management, Inc., 575 S. Saliman Road, Carson City, NV 89701; Telephone 775-887-2480; E-mail: craigcoziahr@pgmnv.com. Representing the Transportation, Retail, Auto, Builders and Agriculture Self-insured Groups:

I just wanted to clarify that I don't represent NSI in this matter. Just those five. I just want to say, "Ditto."

Written comments were received before the January 15, 2016 deadline, following the January 8, 2016 public hearing regarding the adoption of these regulations. A summary of the written comments follows:

January 12, 2015 letter from Jim Werbeckes, Vice President, Government and Regulatory Affairs, Employers Holdings, Inc., 10375 Professional Circle, Reno, Nevada 89521; Telephone: 775-327-2458; E-mail: jwerbeckes@employers.com. The intent of the legislature in SB 232, Section 3 was to increase the current lump sum permanent partial disability benefit from 25% to 30% for those injured workers with a date of injury on or before July 1, 1981 to present. The current regulation as drafted would create a class of injured workers with dates of injury between July 1, 1995 and December 31, 2015 who could only receive a 25% lump sum benefit, while those individuals with dates of injury from July 1, 1981 to July 1, 1995 or injured after January 1, 2016 could elect a 30% lump sum benefit. It is our recommendation that the Administrator should use the authority granted to him by NRS 616C.495(1)(d) and set the lump sum benefit to 30% for anyone injured on or after July 1, 1981.

At the **November 16, 2016, Hearing**, which was held at two sites via videoconference, in Henderson 9 attended and in Carson City 3 attended, with testimony received from three (3) attendees. A summary of the testimony at this public hearing follows:

John Wiles, Esq., Alverson, Taylor, Mortenson & Sanders, 7401 W. Charleston Blvd., Las Vegas, NV 89117; Telephone: 702-384-7000; E-mail: jwiles@alversontaylor.com:

He agrees with the January 12, 2016 letter from Employers Insurance which identifies a gap based on the date the claim occurred. The gap is the 25% lump sum benefit that was the law and the 30% lump sum benefit that is now the law. There are a class of claimants who have not had the opportunity to receive that 5% benefit and he would propose that DIR consider the following.

Jason D. Mills, Esq., Neeman & Mills PLLC, 1201 S. Maryland Pkwy., Las Vegas, Nevada 89104; Telephone: 702-882-4440; E-mail: info@neemanmills.com:

He had the same concerns as Mr. Wiles. Does this regulation create a scenario where certainly for that 15 year period if the parties agree to it than they should be able to do a lump sum PPD at 30% and I just don't want to watch some hearing officer say well subsection (1)(b)(1) says 25% that's all you're going to be able to receive.

Donald C. Smith, Esq., Senior Division Counsel, Division of Industrial Relations, 1301 N. Green Valley Pkwy., #200, Henderson, Nevada 89074; Telephone: 702-486-9070; E-mail: donalddsmith@business.nv.gov:

He stated that subsection (1)(b)(2) which starts, "to the extent the insurer has offered to provide compensation in a lump sum up to the present value of an award for disability of 30 percent" fills that gap between the prior 25 percent offers and 30 percent offers, allowing the insurer the option of whether to offer up to an additional 5% in a lump sum.

Craig Coziahr, Pro Group Management, Inc., 575 S. Saliman Road, Carson City, NV 89701; Telephone 775-887-2480; E-mail: craigcoziahr@pgmnv.com; Representing the Transportation, Retail, Auto, Builders and Agriculture Self-insured Groups:

Thanked the Division for the proposed language, which is exactly what the intent of the amendment of the statute was supposed to do.

No written comments were received following the November 16, 2016 public hearing.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

To determine whether the amendment of NAC 616C.498 is likely to have an impact on small businesses, the Division considered the purpose and scope of the potential amendments in comparison to NRS 616C.495 as amended by the 2015 Legislature in SB 232, Sec. 3, effective January 1, 2016. Based on this review, the Division determined that this regulation will have no financial impact on insurers, self-insured employers, and employee leasing companies because they can choose whether or not they desire to offer a lump sum PPD payment up to 30% for claims incurred between July 1, 1995 and before January 1, 2016. This regulation merely reflects the amendment to NRS 616C.495(1)(a) and (c), increasing the maximum lump sum

permanent partial disability payment from 25% to 30% for claims incurred after July 1, 1995 but before January 1, 2016. Because there will be no impact on businesses, no comments were solicited by the Division.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulations without change.

A number of revisions were suggested at the January 8, 2016 hearings and written comments received thereafter, which have been incorporated into the proposed regulation by the Division.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

- (a) Both adverse and beneficial effects.

The Division anticipates no adverse or beneficial effects, either direct or indirect, on businesses it regulates or on the public as the result of the adoption of this regulation. The adverse effects, if any, will be solely to workers' compensation insurers and the beneficial effects, if any, will be solely to injured employees who have been awarded a permanent partial disability award greater than 25% up to 30%.

- (b) Both immediate and long-term effects.

The Division anticipates no immediate or long-term effects, either direct or indirect, on businesses it regulates or on the public as the result of the adoption of this regulation.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of these regulations.

9. A description of any regulations of other state or government agencies, which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulations duplicate.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The proposed regulations do not include any provisions which duplicate or are more stringent than existing federal, state or local standards.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

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

12. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

The Administrator reviewed the effect this regulation may have and has determined that the proposed regulations do not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business.