LCB File No. R094-00

PROPOSED REGULATION OF THE EMPLOYMENT SECURITY DIVISION OF THE DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION

NOTICE OF INTENT TO ACT UPON REGULATIONS and NOTICE OF WORKSHOP

TO SOLICIT COMMENTS ON PROPOSED REGULATIONS

and

PUBLIC HEARING

for

AMENDMENT OR REPEAL OF REGULATIONS OF THE EMPLOYMENT SECURITY DIVISION OF THE DEPARTMENT, OF EMPLOYMENT, TRAINING AND REHABILITATION

Workshop Notice: The Employment Security Division of the Department of Employment, Training and Rehabilitation (775) 684-3909, is proposing the amendment or repeal certain regulations pertaining to Chapter 612 of the Nevada Administrative Code (Unemployment Compensation). A workshop has been scheduled for **Monday, July 10, 2000, 1:30 p.m.** at the Department of Transportation, 1263 South Stewart Street, Room 314, Carson City, Nevada, and videoconferenced to the Department of Transportation Training Room, 123 East Washington Street, Las Vegas, Nevada, and to1951 Idaho Street, Elko, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

Amend	
1. NAC 612.010	Definitions
2. NAC 612.020	Required records
3. NAC 612.050	Identification of workers
4. NAC 612.060	Wages paid
5. NAC 612.070	Value of payment other than cash
6. NAC 612.110	Filing of initial claim; appeal
7. NAC 612.140	Partial unemployment; Predetermination; forms for claims,
	eligibility during total unemployment.
8. NAC 612.265	Reimbursement of fund in lieu of contributions by former
	employer.
9. NAC 612.280	Transfer of experience record: Conditions; type of transfer.
10. NAC 612.290	Transfer of experience record: Completion; notification; denial.
11. NAC 612.570	Claim for benefits.
<u>Repeal</u>	
1. NAC 612.015	"Eligibility period" interpreted.

2. NAC 612.095	Conditions of eligibility: Participation in services to assist in
	reemployment.
3. NAC 612.150	Partial unemployment: Filing of claims; records of employer.
4. NAC 612.300	Employment security fund.

A copy of all materials relating to the proposed regulations is included with this announcement. Additional copies may be obtained at the workshop or by contacting the Employment Security Division at 500 East Third Street, Carson City, Nevada, (775) 684-3909.

Hearing Notice: The Employment Security Division of the Department of Employment, Training and Rehabilitation will hold a public hearing on **Wednesday**, **August 2**, **2000**, **1:30 p.m.** at the Department of Transportation, 1263 South Stewart Street, Room 314, Carson City, Nevada, and videoconferenced to the Department of Transportation Training Room, 123 East Washington Street, Las Vegas, Nevada, 310 Galletti Way, Sparks, Nevada, and to1951 Idaho Street, Elko, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the amendment and repeal of certain regulations pertaining to Chapter 612 of the Nevada Administrative Code (Unemployment Compensation).

The following information is provided pursuant to the requirements of NRS 233B.0603

- 1. The need for and purpose of the proposed amendments. In compliance with NRS 233B.050(1e), the employment security division has reviewed the regulations contained in Chapter 612 of the Nevada Administrative Code pertaining to Unemployment Compensation, and is recommending amendment or repeal of certain regulations to clarify or remove obsolete or redundant requirements.
- 2. Either the terms or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects involved. Copies of proposed amendments, with a brief explanation of each are attached.
- 3. The estimated economic effect of the regulations on the business which it is to regulate and on the public.
 - (a) There are no estimated adverse effects on business or the public. It is anticipated that these actions will simplify compliance.
 - **(b)** Both immediate and long-term effect is intended to provide clarification and removal of irrelevant and obsolete requirements.
- 4. The estimated cost to the agency for enforcement of the proposed regulations. There is no estimated cost to the employment security division related to these proposals.
- 5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposals do not overlap or duplicate any regulations of other state, local, or federal agencies.

federal law.	tion is required b	-	•	

The proposals are not required by federal law.

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

The proposals are not more stringent than any federal regulations that regulate the same activity.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposals do not establish a new fee or increase an existing fee.

Persons wishing to comment on the proposed actions of the Employment Security Division may appear at the scheduled public hearing or may address their comment, data, views, or arguments, in written form, to the Department of Employment, Training, and Rehabilitation, Employment Security Division, 500 East Third Street, Carson City, Nevada 89713. Written submissions must be received before August 7, 2000. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Employment Security Division may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be amended or repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulations to be amended or repealed will be available at the Employment Security Division of the Department of Employment, Training and Rehabilitation, 500 East Third Street, Carson City, Nevada (775) 684-3909, all agency offices listed below, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at http://sss.leg.state.nv.us.. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Subsection 2 of NRS 233B.064 provides: "Upon adoption of any regulation, the agency if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption."

This notice of workshop and hearing has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Nevada State Library, 100 Stewart Street, Carson City, NV 89701
Employment Security Division, State Administrative Office, 500 East Third Street, Carson City, NV 89713
Nevada Job Link/NLV Office, 2827 Las Vegas, Blvd North, Las Vegas, NV 89030
Nevada Job Link/Maryland Parkway Office, 3405 S. Maryland Parkway, Las Vegas, NV 89109
Henderson Office, 119 Water Street, Henderson, NV 89015
Nevada Job Link/TMCC Office, 4001 S. Virginia Street, Reno, NV 89502
Reno Industrial Office, 420 Galletti Way, Sparks, NV 89431

Sparks Office, 2010 Oddie Boulevard, Sparks, NV 89431
Nevada Job Link/Viewcrest Office, 3697 Kings Row, Reno 89503
ESD Carson City Office, 1929 N. Carson Street, Carson City, NV 89701
ESD Elko Office, 172 Sixth Street, Elko, NV 89801
ESD Ely Office, 480 Campton St., Ely, NV 89301
ESD Winnemucca Office, 475 W. Haskell, No. 1 89445
Fallon Industrial Office, 121 Industrial, Fallon, NV 89406
Las Vegas Industrial Office, 1001 North "A" Street, Las Vegas, NV 89106
Community Employment & Training Center, 902 West Owens Avenue, Las Vegas, NV 89106
Southern Nevada Adjudication Center, 1830 Sahara Ave., #305, Las Vegas, NB 89104
Northern Nevada Adjudication Center, 1370 S. Curry St., Carson City, NV 89703
Notices were mailed to the main libraries in counties where Employment Security Division Offices are not maintained.

.

Date: June 21, 2000

LCB File No. R094-00

PROPOSED REGULATION OF THE EMPLOYMENT SECURITY DIVISION OF THE DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION

NAC 612.010 is hereby amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- [1. The words and terms defined in chapter 612 of NRS have the meanings ascribed to them in that chapter.
 - 2. "Partially unemployed person" means a person who, during a particular week:
 - (a) Earned less than his weekly benefit amount;
 - (b) Was employed by and had earnings from his regular employer; and
- (c) Worked less than his normal full time hours for a regular employer because of a lack of full time work.
 - 3.] "Week" [means] is defined pursuant to 612.195 as a period of 7 consecutive calendar days ending at midnight Saturday.

NAC 612.020 is hereby amended to read as follows:

- 1. Each employing unit must establish, maintain and preserve, for at least 4 years from the date of entry, true and accurate records with respect to each person who performs services for the employing unit. The records must show:
 - (a) For each payroll period:
 - (1) Beginning and ending dates.
 - (2) Total wages payable and the date on which the wages are paid.
 - (b) For each person:
 - (1) His name.
 - (2) His social security number.
 - (3) His rate of pay.
 - (4) The date of hire, rehire or return to work after temporary layoff.
 - (5) The date and reason for separation from employment.
 - (6) The state in which services are performed.
- (7) The dates worked and the total amount of wages earned in each payroll period and the date on which the wages are paid with separate entries for:
 - (I) Money wages.
- (II) Cash value of other remuneration, including meals and lodging, indicating the number of meals and number of days of lodging furnished the person.
- (III) Special payments by cash or other remuneration for services performed identified as bonuses, prizes or similar awards, indicating the nature of the payments.
 - (IV) The amounts of tips declared.

- (V) The amounts of money distributed to him by the employer from money collected from customers by the employer as a gratuity, tip or service charge.]
- 2. Each employing unit which considers that it is not an employer subject to the law or that it is engaged in exempt employment must keep and maintain the records required of employing units under this section for at least 4 years after the period to which the records relate.
- 3. Each employer subject to the law shall keep and maintain the records required under this section for at least 4 years after the date the contributions to which they relate become due, or the date the contributions are paid, whichever is later.

NAC 612.050 is hereby amended to read as follows:

- 1. Each employer shall obtain the social security account number of each worker employed by him in employment subject to chapter 612 of NRS.
- 2. The employer shall report the worker's social security account number in making any report required by the employment security division with respect to a worker.
- [3. If an employer has in his employ a worker engaged in employment who does not have an account number, the employer shall request the worker to show him a receipt issued by an office of the Social Security Board acknowledging that the worker has filed an application for an account number. The receipt must be retained by the worker. In making any report required by the employment security division with respect to the worker, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt.
- 4. If a worker fails to report to the employer his correct social security account number or fails to show the employer a receipt issued by an office of the Social Security Board acknowledging that he has filed an application for an account number, the employer shall inform the worker that Regulation 106 of the Bureau of Internal Revenue, Treasury Department, under the Federal Insurance Contributions Act provides that:
- (a) Each worker shall report to every employer for whom he is engaged in employment, his social security number and his name exactly as shown on the account number card issued to him by the Social Security Board.
- (b) Each worker who has not secured an account number shall file an application for a social security account number on Form SS-5 of the Treasury Department, Bureau of Internal Revenue. The application must be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application must be filed on or before the date the worker leaves the employ of his employer if that date precedes the seventh day.
- (c) If, within 14 days after the date on which the worker first performs employment for wages for the employer, or on the day on which he leaves the employ of the employer, whichever is earlier, the worker does not have a social security account number, and has not shown the employer a receipt issued to the worker by an office of the Social Security Board acknowledging that he has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex and color,

and a statement as to whether the worker had previously filed an application on Form SS-5, and if so, the date and place of the filing. Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of his obligation to make an application on Form SS-5, as required in paragraph (b).

- 5. The employer shall inform the worker, in instances in which the information is pertinent, that in accordance with Regulation 106 of the Bureau of Internal Revenue, Treasury Department:
- (a) Copies of Form SS-5, application for a social security account number, may be secured at any field office of the Social Security Board, a public employment office which takes claims for unemployment compensation, the local post office, or from any Collector of Internal Revenue and must be filed with the Social Security Board field office or the public employment office nearest the worker's place of employment.
- (b) Any worker who has lost his social security account number card may secure a duplicate card by applying at the field office of the Social Security Board nearest the worker's place of employment.
- (c) Any worker may have his account number changed at any time by applying to a field office of the Social Security Board and showing good reason for a change. Any worker whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, must report the change or correction to a field office of the Social Security Board. Copies of Form OAAN-7003, Employee's Request for Change in Records, for making the reports may be obtained from any field office of the Social Security Board or the central office of the employment security agency or a local employment office.
- (d) Any worker who has more than one social security account number shall report all numbers to the field office of the Social Security Board nearest the worker's place of employment or to a local employment office.
- 6. If the worker fails to comply with the requirements of subsection 4, the employer shall execute a Form SS-5, application for a social security account number, or statement, signed by the employer setting forth as fully and as clearly as practicable the worker's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, the worker's sex and color, and a statement as to whether an application for an account number has previously been filed by the worker and, if so, the date and place of the filing. This statement or the executed Form SS-5 signed by the employer, must be attached to any report required by the employment security division with respect to the worker.]

NAC 612.060 is hereby amended to read as follows:

At such time as the administrator determines that wages payable to an employee for personal services have not been paid to the employee by reason of the financial inability of the employer to pay the wages due, *and the employee has filed a valid claim in bankruptcy or with the Labor Commissioner*, the amount of the wages are considered paid for the purposes of chapter 612 of NRS as of the regular date established for the payment of the wages.

NAC 612.070 is hereby amended to read as follows:

- [1. If meals, lodging or any other payment in kind, considered as payment for services performed by a person, is in addition to or in lieu of, rather than a deduction from, money wages, the administrator will determine or approve the cash value of the meals and lodging or other payment in kind in individual cases to compute contributions due.
- 2. If a cash value for the meals and lodging furnished a person is agreed upon in any agreement with a labor union or a contract of hire, the amount agreed upon is, if more than the rates prescribed in this section, the value of the meals and lodging.
- 3. Unless a rate for meals and lodging is determined by the administrator, meals and lodging furnished in addition to money wages shall be deemed to have not less than the following values:

Full meals and lodging, weekly	\$60.00
Meals per week	
Meals per day	4.50
Meals per meal	1.50
Lodging per month	120.00
Lodging per week	30.00
Lodging per day	5.00

The cash value of meals, lodging, or any other remuneration payable in any medium other than cash, as provided in NRS 612.190, shall be the retail fair market value as determined by the administrator.

NAC 612.110 is hereby amended to read as follows:

- 1. The effective date of an initial claim [filed at a local employment office within commuting distance of the claimant's residence] 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.
- [2. The effective date of an initial claim filed with an authorized itinerant agent is Sunday of the week in which the claim is taken except that, if a person has given notice of an intention to file a claim and apply for work the effective date is Sunday of the week in which the notice of intent was filed, if the work application and claim are actually completed not later than the day on which the itinerant service is next conducted to the area of the person's residence. In no case may a claim be predated more than 28 days preceding Sunday of the week in which the claim is actually filed.

- 3. The effective date of an initial claim filed at a local employment office when the local office or an authorized itinerant agent is not within commuting distance of the claimant's residence is Sunday of the week in which the claim is actually filed, except that:]
- ([a] d) The effective date is 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
- ([b] e) The effective date is 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.
- [4] 2. Continued claims must be filed in accordance with instructions of the administrator or his authorized representative and the following:
- (a) Continued claims must be filed at the place and time 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) [One continued claim may be filed by mail in the case of a claimant who has gone to work the following week of unemployment and consequently is unable to appear personally at the local office.
- (c) Continued claims by mail may be accepted from claimants who, for good and logical reasons cannot personally appear in the local office to file a claim and who have obtained prior permission to file claims by mail.
 - (d) All continued claims must be filed on forms prescribed by the division.
- (e)] 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.
- [(f) Continued claims for partial benefits must be filed in person unless otherwise directed by a representative of the division.
- 5] 3. Appeals must be in writing and signed by the appellant or by the appellant's duly authorized agent. Claimants who appeal must continue to file a weekly claim for unemployment benefits in the manner specified by the division during the period of disqualification in order to receive payments if the appeal is decided in their favor.

NAC 612.140 is hereby amended to read as follows:

- [1. Immediately after the termination of any pay period in which an employer has furnished any person in his employ less than the normal customary full time weekly hours of work in any calendar week, the employer shall file with the administrative office of the employment security division an employer's request for a predetermination of the person's rights to unemployment benefits for partial unemployment on a form provided by the administrator, containing the name of the person, his social security account number, and any other information that may be required. This request must be filed not later than 30 days after the end of the calendar week.
- 2. Upon receipt of this form the division will promptly notify each person and the employer of the person's potential rights to partial benefits.

- 3. A claim for partial benefits may not be filed or determined without the written consent of the employee.
- 4. After an employer has been notified of the predetermination of the rights of any person in his employ, the employer, until otherwise notified, shall, immediately after the customary pay day for the pay period containing the ending day of each week which begins within the validity period of the predetermination and with respect to which the person's earnings fall below his weekly benefit amount because of lack of work in the week, furnish each eligible person with a copy of a form for claiming partial benefits provided by the administrator, setting forth the information required to file a claim for partial benefits, including the person's name and social security account number, the ending date of each week, the wages earned and a proper certification as to his having worked less than his normal customary full time hours because of lack of work in the week.
- 5. A claimant who has been receiving benefits for partial unemployment may continue to file claims as if he were a partially unemployed worker for the first 4 consecutive weeks of total unemployment immediately following his period of partial unemployment as long as a continuing relationship exists with his regular employer.]

Unemployed persons are eligible to receive benefits without complying with the requirement of NRS 612.375 to register for work under the following circumstances:

- 1. A person who is partially unemployed as defined by NAC 612.090; or
- 2. A person who is temporarily laid off from his regular employment but is guaranteed re-employment within four weeks unless said period is extended by the administrator for good cause shown.

NAC 612.265 is hereby amended to read as follows:

Reimbursement for benefit payments made to former employees of employers who elect to reimburse the fund in lieu of contributions must be charged to that employer. Those reimbursements must be made on the basis of a dollar of reimbursement for each dollar paid in benefits based on the proportion of the claimant's base period wages paid by that employer.

Overpayment of benefits shall not be credited to the employer's account for any reason until such overpayment is recovered from the claimant.

NAC 612.280 is hereby amended to read as follows:

- 1. The experience record of an employer will be transferred to a successor as of the effective date of a change in business organization or legal entity if:
- (a) The employing unit as a successor acquires the entire, or a severable and distinct portion of the organization, trade or business, or substantially all of the assets relating to an employer subject to the law, if the mutual acquiescence of the predecessor and the successor to transfer is properly executed and filed with the employment security division within 1 year after the date of the issuance by the division of official notice of eligibility to transfer.
- (b) The receiver, trustee, executor, administrator or other representatives, under designation or order of a court, succeeds to the assets of a predecessor employer to carry on pending liquidation or reorganization.

- 2. For purpose of subsection 1, a "severable and distinct portion of the organization, trade or business" means a separate division, location or organization of an employing unit which can be identified as such within the principal entity. It does not include merely a portion or percentage of the whole, nor a portion or percentage of employees.
- [2] 3. The transfer of an experience record of a severable and distinct portion of an organization, trade or business will be completed if the [complete reports of payrolls and contributions paid, covering the entire employment history of the predecessor as a separate unit evidencing severability, are filed] successor employer files documentation of the acquisition with the division within 1 year after the date of issuance by the division of official notice of eligibility to transfer.
 - [3] 4. In a partial transfer:
- [(a) [Benefit charges must be transferred to the experience record of the separated unit based on wages reported by the separated unit used in the computation of eligible claims for benefits.] The successor employer must provide the amount of taxable wages reported by the separated unit for the previous three calendar years. The division [may] shall allocate benefit charges and contributions paid to the separated unit in the same proportion that total taxable payrolls attributable to the separated unit bear to the total taxable payrolls attributable to the operations retained by the transferring employer during the same period.
- [(b) The eligibility of the separated unit for the purposes of experience rating must be determined on the basis of the entire employment history of the separated unit.]

NAC 612.290 is hereby amended to read as follows:

- 1. When a *total* transfer of an experience record has been completed:
- (a) Payrolls, contributions paid and benefit charges must be transferred to and be a part of the experience record of the successor. Benefits paid, based on the payrolls of the predecessor, must then be charged to the experience record of the successor. If a claimant for unemployment benefits has been paid wages for the base period by the predecessor employer, the wages shall be deemed to have been paid by the successor employer.
- (b) When a total transfer has been completed [The] the predecessor, as a transferring employer, may not retain the rate previously determined for him but will be classed as a new employer with respect to any employment after the date of the completed transfer.
- [2. When a transfer of an experience record has not been completed, the experience record and rate must be retained by the predecessor if the experience record retained by the predecessor may only be used if he should resume employment under the same identity within 8 consecutive calendar quarters immediately following the calendar quarter in which he last reported wages as a subject employer.]
- [3] 2. The contribution rate for a successor who qualifies for the transfer of an experience record for the period beginning with the date of the transfer and ending with the next effective date of contribution rates is:
- (a) The contribution rate applicable to the transferring employer with respect to the period immediately preceding the date of the transfer, if:
 - (1) The acquiring employer was not, before the transfer, a subject employer; and
- (2) Only one transferring employer, or only transferring employers having identical rates, are involved;

- (b) A new rate, computed on the experience of the transferring employer or, *in the case of a partial transfer*, the experience attributable to the part of the business transferred, combined with the experience of the acquiring employer as of the regular computation date for the rate period in which the transfer occurs; or
- (c) The rate of contribution for a newly subject employer. A computation for a contribution rate must be made in all transfers involving a severable and distinct portion of an organization, trade or business.
- 4. No transfer of an experience record and rate will be completed if it appears to the satisfaction of the administrator that a change in business organization was effected [solely and] primarily to obtain a more favorable contribution rate.
- 5. A protest to the determination of the division with respect to transfers must be filed not later than 15 days from the date the notice of the determination is mailed.
- 6. No transfer of an experience record is considered unless proper notice of any change in the organization, trade or business is filed with the division within [1 year] 90 days immediately following the effective date of the change. This time limit may be waived for good cause at the discretion of the administrator.

NAC 612.570 is hereby amended to read as follows:

Claims for benefits must be filed by interstate claimants [on uniform interstate claim forms and] in accordance with procedures developed pursuant to the Interstate Benefit Payment Plan. Initial claims must be filed in accordance with the regulations of the agent state for intrastate claims in local employment offices, or at an itinerant point, or by mail.

NAC 612.015 is hereby repealed.

NAC 612.095 is hereby repealed.

NAC 612.150 is hereby repealed.

NAC 612.300 is hereby repealed.