

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

LCB File No. R163-05

Effective November 17, 2005

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

AUTHORITY: §§1-3, section 2 of chapter 350, Statutes of Nevada 2005, at page 1316.

A REGULATION relating to industrial insurance; establishing the method for the equitable distribution of the money withdrawn each year from the Uninsured Employers' Claim Account for the purpose of making annual payments to certain persons for a permanent total disability; requiring an insurer to provide certain information in connection with those payments; and providing other matters properly relating thereto.

Section 1. Chapter 616C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *The Administrator will make an annual payment to each claimant or dependent who is entitled as of July 1 to receive such a payment for a permanent total disability pursuant to chapter 350, Statutes of Nevada 2005, at page 1316. The amount of the payment to each claimant or dependent is equal to two-fifths of the amount the Administrator withdraws from the Uninsured Employers' Claim Account for this purpose divided by the total number of claimants and dependents entitled to be paid and:*

(a) If the claimant or dependent receives compensation of less than \$1,000 per month, an additional amount that is equal to two-fifths of the amount the Administrator withdraws from the Uninsured Employers' Claim Account divided by the total number of claimants and dependents entitled to be paid pursuant to this paragraph; or

(b) If the claimant or dependent receives compensation of \$1,000 per month or more, but less than \$1,500 per month, an additional amount that is equal to one-fifth of the amount the Administrator withdraws from the Uninsured Employers' Claim Account divided by the total number of claimants and dependents entitled to be paid pursuant to this paragraph.

2. As used in this section:

(a) "Claimant" means a person who is entitled to receive compensation pursuant to chapters 616A to 617, inclusive, of NRS for a permanent total disability and is not entitled to an annual increase in that compensation pursuant to NRS 616C.473.

(b) "Compensation" means compensation a claimant or dependent is entitled to receive pursuant to chapters 616A to 617, inclusive, of NRS for a permanent total disability.

(c) "Dependent" means a dependent of a claimant.

Sec. 3. 1. *An insurer shall provide any information required by the Administrator to carry out the provisions of section 2 of this regulation and section 2 of chapter 350, Statutes of Nevada 2005, at page 1316.*

2. An insurer who violates subsection 1 is subject to administrative action pursuant to NRS 616D.120.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R163-05**

The Division of Industrial Relations of the Department of Business and Industry adopted regulations assigned LCB File No. R163-05 which pertain to chapter 616C of the Nevada Administrative Code on November 4, 2005.

Notice date: 6/30/2005
Hearing date: 8/1/2005

Date of adoption by agency: 11/4/2005
Filing date: 11/17/2005

INFORMATIONAL STATEMENT

1. A description of how comments were solicited from the public and affected businesses, a summary of responses from the public and affected businesses and an explanation of how other interested persons may obtain a copy of the summary.

Section 2 of Assembly Bill 186 (AB 186) requires the Division of Industrial Relations (“Division”) to assess each workers’ compensation insurer an amount to be deposited in the Uninsured Employers’ Claim Account and adopt regulations establishing a method for the equitable distribution of the income realized from the investment of the assets in the account. The method established should provide for the largest proportional share of the money to be paid to claimants and dependents that receive the lowest amount of compensation for the permanent total disability pursuant to chapters 616A to 617 of the NRS. AB 186 requires an annual payment to claimants and the dependents of claimants based on the method of equitable distribution set forth by the regulation must be made by December 31, 2005 and October 1 in subsequent years.

Accordingly, the Division held a workshop and public hearing on August 1, 2005 on the draft regulation to calculate and disburse this annual payment. In conjunction with providing notice to the public and interested parties of the workshop and public hearing, the Division prepared the Small Business Impact Statement required by NRS 233B. The Division submitted the draft regulation and Small Business Impact Statement to the Legislative Counsel Bureau pursuant to NRS 233B.

A summary of the responses from the public and affected businesses is included in #2 of this Informational Statement and may be obtained by contacting the Division of Industrial Relations’ Workers’ Compensation Section at the following locations:

Workers’ Compensation Section
1301 N. Green Valley Pkwy., #200
Henderson, NV 89074
Telephone: (702) 486-9080

Workers’ Compensation Section
400 W. King St., #400
Carson City, NV 89703
Telephone: (775) 684-7270

2. The number of persons who attended the workshop, testified at each workshop, and submitted written statements to the agency.

The workshop was conducted at two sites via videoconference: the main site was at the Sawyer Building in Las Vegas; the other site was at the Legislative Building in Carson City. In Las Vegas, 16 people attended and 1 testified; in Carson City, 6 attended and 1 testified. The oral testimony is summarized as follows:

Don Jayne, Nevada Self Insured Association

- Mr. Jayne wanted to know if this regulation was going to be used as an ongoing regulation past this biennium.
- He also wanted to know what DIR intended to do with excess monies in each category beyond the \$1200 limit per individual recipient. He suggested that the Division take a look at possibilities before they exist or due to difficulties in prediction, this item could be addressed at a later time.
- Out of curiosity, Mr. Jayne questioned the reasons behind using the 2/5th, 1/5th and 2/5th instead of 40%, 20% and 40%. Mathematically it calculates the same, so it really makes no difference in the long run. Was this carry-over language from the onetime PT payment from the 2003 Legislature?

Michael Brooks, DIR/WCS/ER&A

- Mr. Brooks stated that the Division had looked at various contingencies and mathematically we do not anticipate excess monies in any category for at least 30-40 years.

Bob Ostrovsky, Employers Insurance Company of Nevada

- Mr. Ostrovsky requested the Division to develop a timetable to supply the information requested in order to comply with the “timely submission”. He suggested that 2 weeks was not enough time but 30 days may be more appropriate to gather all of the required information on the PT claimants that are eligible under AB 186.

Ruth Ryan, DIR/WCS/ER&A

- Ms. Ryan stated that for the December 31, 2005 payment, the Division had already gathered 90-95% of the required information. The Division would be asking for a reconciliation list from the carriers in the next month or so with a deadline of between 2 weeks and 30 days for insurers to respond. Every year after, notices would be sent out after July 1st with a 30-day turn-around in order to be ready for the October 1st deadline.

The hearing was conducted at two sites via videoconference: the main site was at the Sawyer Building in Las Vegas; the other site was at the Legislative Building in Carson City. In Las

Vegas, 16 people attended and 1 testified; in Carson City, 6 attended and 0 testified. The oral testimony is summarized as follows:

Bob Ostrovsky, Employers Insurance Company of Nevada

- Mr. Ostrovsky requested that the regulation define “timely” with language that allowed the insurer to have at least 30 days to respond to a request for data or other information pursuant to this regulation.

There were **0** written comments submitted by the August 16, 2005 deadline announced at the workshop and hearing.

3. If the regulations were adopted without changing any part of the proposed regulations, a summary of the reasons for adopting the regulations without changes.

The Division did not change the wording as suggested by the oral testimony during the workshop and hearing. The notion of “timely” is already specified in **NAC 616A.410** “Time to respond to request of Administrator for information,” which allows 30 days for a response from an employer, an insurer, a third-party administrator, an organization for managed care or a provider of health care to the Administrator of his designated agent.

4. The estimated economic effect of the adopted regulations on the businesses, which it is to regulate, and on the public.

The fund used for annual payments to eligible claimants is the income realized from the investment of assets in the Uninsured Employers’ Claim Account. AB 186 requires assessed insurers to charge a fee to each policyholder to cover the cost of the assessment. However, the Administrator’s assessment for insurers is suspended for fiscal years 2006 and 2007, resulting in no increased cost to insurers in the immediate future. After FY 2007, as the total assessed amount is distributed over many insurers and again over many more policyholders, the Division anticipates the adverse economic effect of the proposed regulations on insurers and their policyholders to be minimal. The Division anticipates no long-term adverse or beneficial effects on insurers or policyholders.

The Division anticipates neither adverse nor beneficial immediate or long-term economic effect on the public.

5. The estimated cost to the agency for enforcement of the adopted regulations.

The Division estimates that the costs of the collection of the assessment and disbursement of payments to claimants will be moderate. Extrapolations based on cost data for a similar, though smaller payment (SB 193, 2003 Legislature), yields a probable cost range of \$20,000 - \$40,000 for executing AB 186.

6. A description of any regulations of other state or government agencies, which the proposed regulations overlap or duplicate, and a statement explaining why the duplication

or overlapping is necessary. If the regulations overlap or duplicate a federal regulation, the name of the regulating federal agency.

The Division believes that the proposed regulations do not overlap or duplicate any existing state, federal or other government regulations.

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

There is no federal regulation that regulates the same activity.

8. If the regulations provide a new fee or increase in existing fees, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulations do not provide for ongoing new fees or an increase in existing fees.