

LCB File No. R199-05

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

(This draft replaces the one posted 11/29/05)

**NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Adoption of A Regulation of the
Employment Security Division of the
Department of Employment, Training and Rehabilitation**

The Employment Security Division of the Department of Employment, Training and Rehabilitation will hold a public hearing at 10:00 A.M., on Tuesday, January 24, 2006, at:

Live Meeting: Legislative Building
401 S. Carson Street, Room 2135
Carson City, NV 89701

Video Conference: Grant Sawyer Building
555 East Washington Avenue, Room 4412
Las Vegas, NV 89101

The purpose of the hearing is to receive comments from all interested persons regarding the adoption of several regulations that pertain to Chapter 612 of the Nevada Administrative Code.

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

1. Statement of need and purpose

The majority of the regulations are required to align the Nevada Administrative Codes with the modifications made to Chapter 612 of the Nevada Revised Statutes with the enactment of Assembly Bill 502 and Senate Bill 111. Also included are required regulations as prescribed by Chapter 233B of the Nevada Revised Statutes.

Additionally, regulations are being proposed to clarify existing regulations and to revise or repeal processes that have been rendered archaic by the transition to a remote unemployment insurance claim filing processes.

2. Substance of the proposed regulation

Assembly Bill 502 established both mandatory and prohibited transfers of experience records in an effort to combat the practice of "SUTA Dumping" or rate manipulation, where employers are able to escape their earned experience record. The regulations provide definitions and outline procedures that either require or prohibit the transfer of experience records between business

entities. Also provided are regulations relating to common ownership, management or control between businesses.

Assembly Bill 502 also modified the time frame for an employer to file a protest to a notice of unemployment insurance claim from 10 days to 11 days. The regulation also extends the time for any interested party to file an appeal to a determination issued by the Division from 10 days to 11 days.

Senate Bill 111 clarified the intent of existing law to insure that employers provide the Division with all information needed to issue a determination of eligibility for unemployment benefits when a claim is filed.

New regulations are proposed concerning the filing and disposition of petitions for declaratory orders and advisory opinions concerning the applicability of statutes, regulations or decisions of the Administrator. There is also a new regulation concerning the filing of a petition for the adoption, filing, amendment or repeal of a regulation.

Additional changes include amendments to Section 612.016, which defines a “week” for purposes of receipt of benefits. Section 612.090 and 612.094 codify existing interpretation and practices to make them less ambiguous. Removal and modification of language in Sections 612.100 and 612.110 eliminates processes rendered obsolete by the transformation to remote claim filing and defines processes established by transition to remote claims. The changes to language in Section 612.120 clarify expectations of the Division relating to the passage of Senate Bill 111 in the 2005 Nevada Legislature, as well as clarifying a modification made to NRS 612.551 in 1998. Repealing Section 612.180 removes a process established in 1955 that is viewed as irrelevant to current needs. Finally, the modification of language in Section 612.190 recognizes the impact of the Workforce Investment Act, while the language in 612.510 acknowledges the name change of the organization providing consultation and input for a number of programs administered by the Employment Security Division.

3. Estimated economic effect

The economic effect on the unemployment insurance trust fund resulting from the adoption of regulations related to SUTA Dumping Prevention Act of 2004 and Senate Bill 502 is unknown. The remaining regulations are expected to have no economic impact.

(A) Effect on business

There are no adverse effects on business, either immediate or long-term for any of the regulations. The long-term beneficial effect will be to eliminate the ability of business entities to manipulate or dump their experience rate resulting in tax avoidance. Such tax avoidance schemes burden the remainder of the employers with the costs of the program.

The regulations do not create a direct or significant economic effect upon small businesses or upon the formation or operation of such businesses.

(B) Effect on the public

There are no immediate adverse or beneficial effects on the public. The long-term benefits of the regulations associated with transfer of experience record will help ensure that equity is maintained among the employers that contribute to the unemployment insurance fund.

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

4. Estimated cost

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

5. Overlap or duplication

None of the proposed regulations overlap or duplicate any regulations of other state or local government agencies.

6. Federal regulations

The regulations associated with the SUTA Dumping provisions enacted in Assembly Bill 502 are a result of the SUTA Dumping Prevention Act, PL108-295, unanimously passed by congress and signed into law by the President in August 2004. States were required to change their statutes to be consistent with federal law.

The amendment to the regulations from 10 day to 11 days on the timelines for the tax, adjudication and appeals processes are indirectly a result of a United States Department of Labor requirement that determinations of eligibility be issued within 21 days of the date the question of eligibility is discovered. The Nevada Rules of Civil Procedure changed their interpretation of the counting of the 10-day time limit, which would have jeopardized the Employment Security Division's ability to comply with this federal requirement.

The remaining amendments and the repealed regulation are not directly due to any federal law or regulation that requires the changes.

7. Summary of provisions more stringent than the federal regulations

Not applicable.

8. New or increased fee

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

Persons wishing to comment on the proposed action of the Employment Security Division may appear at the scheduled public hearing or may address comments, 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 by the Employment Security Division on or before January 24, 2006. 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 to immediately act upon any written submissions.

A copy of this notice and the regulations to be adopted 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 adopted will be available at the Department of Employment, Training and Rehabilitation, Employment Security Division, 500 East Third Street, Carson City, Nevada 89713, all the administrative offices in Las Vegas, all Job-Connect offices throughout the state, the Reno and Las Vegas field audit offices and appeals offices, and at all of the main county libraries, 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://www.leg.state.nv.us> and <http://detr.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request, telephone (775) 684-3909. A reasonable fee may be charged for copies if it is deemed necessary. This does not apply to a public body subject to the Open Meeting Law. Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption or incorporate therein its reason for overruling the consideration urged against its adoption.

We are pleased to make reasonable accommodations for members of the public who require special accommodations or assistance at the hearing. If special arrangements are necessary, please notify the Employment Security Division in writing at 500 East Third Street, Carson City, Nevada 89713, or call Joyce Golden at (775) 684-3909 (for deaf and hearing impaired dial 711 or call 1-800-326-6868 for Relay Nevada), or send a fax to (775) 684-3910 on or before January 24, 2006.

This notice of the public hearing and a copy of the proposed regulation have been posted at the following locations:

Nevada State Library, 100 Stewart Street, Carson City, NV 89701
Legislative Building, 401 South Carson Street, Carson City, NV 89701
Grant Sawyer State Building, 555 E. Washington Ave., Las Vegas, NV 89101
Legislative Counsel Bureau Web Site
Department of Employment, Training and Rehabilitation Web Site
All County Libraries in Nevada
Employment Security Division, State Administrative Office, 500 East Third Street, Carson City, NV 89710
Employment Security Division Southern Administrative Office, 101 Convention Center Dr., Suite 925, Las Vegas, NV 89109
Unemployment Insurance Contributions, 1320 South Curry Street, Carson City, NV 89710
Reno Field Audit Office, 1325 Corporate Blvd, Suite B, Reno, NV 89502
Las Vegas Field Audit Office, 3405 S. Maryland Parkway, Las Vegas, NV 89109
Reno Appeals Office, 1325 Corporate Blvd, Suite C, Reno, NV 89502
Las Vegas Appeals Office, 1820 E Sahara, Suite 301, Las Vegas, NV 89104
Reno Casual Labor Office, 420 Galletti Way, Sparks, NV 89431
Las Vegas Casual Labor Office, 1001 North A Street, Las Vegas, NV 89106

Nevada JobConnect-Carson City, 1929 North Carson Street, Carson City, NV 89701
Nevada JobConnect-Elko, 172 Sixth Street, Elko, NV 89801
Nevada JobConnect-Ely, 480 Campton Street, Ely, NV 89301
Nevada JobConnect-Fallon, 121 Industrial Way, Fallon, NV 89406
Nevada JobConnect-Henderson, 119 Water Street, Henderson, NV 89015
Nevada JobConnect-Las Vegas, 3405 South Maryland Parkway, Las Vegas, NV 89109
Nevada JobConnect-North Las Vegas, 2827 Las Vegas Boulevard North, Las Vegas, NV 89030
Nevada JobConnect-Reno Town Mall, 4001 South Virginia Street, Suite H-1, Reno, NV 89502
Nevada JobConnect-Sparks, 1675 E. Prater Way, Suite 103 Sparks, NV 89431
Nevada JobConnect-Winnemucca, 475 Haskell St., Suite 1, Winnemucca, NV 89445

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

NEVADA ADMINISTRATIVE CODE 612

EXPLANATION –matter in *italics* is new.

Chapter 612 of NAC is hereby amended by adding thereto the provisions set forth ____ to ____, inclusive, of this regulation:

New Section *Advisory opinion: Request for issuance; action by Administrator. (NRS 233B.120; NRS 612.220)*

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 of the Administrator is not binding upon the Division or the review of a Division determination by an Appeal Tribunal, the Board of Review or on judicial review.*

New Section *Advisory opinion: Oral response to request. (NRS 233B.120, NRS 612.220)* *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 Administrator is not a decision or an official advisory opinion of the Administrator.*

New Section. *Petition for declaratory order: Filing; contents; action by Administrator. (NRS 233B.120, NRS 612.220)*

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. No declaratory order may be issued 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.

(b) Benefit rights of a claimant, contributions liability of an employer or determination of common ownership, management or control.

4. The Administrator may refuse to review a petition that requests the issuance of a declaratory order if the original petition is not accompanied by two copies of the petition as required by this section or 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.

New Section *Petition for adoption, filing, amendment or repeal of regulation: Filing; contents; action by Administrator. (NRS 233B.100, NRS 612.220)*

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.

Chapter 612 of NAC is hereby amended as follows:

NAC 612.016 “Week” defined. ([NRS 612.195](#), [612.220](#)) “Week” means a period of 7 consecutive calendar days *beginning 12:01 AM Sunday and* ending at midnight Saturday *in the Pacific Time Zone.*

NAC 612.090 Determination of period of unemployment. ([NRS 612.185](#), [612.220](#))

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

2. 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. A person is partially unemployed in any week in which he has:

(a) Performed services for his regular employer;

(b) Not been separated from employment with his regular employer;

(c) Earned less than his weekly benefit amount; or

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

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

5. A person working solely for commission is not considered wholly or partially unemployed if he has worked a period of 30 or more hours during the week.

NAC 612.094 Eligibility for person partially unemployed or temporarily laid off. ([NRS 612.220](#), [612.375](#)) 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 work* within:

(a) Four weeks; or

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

NAC 612.100 Types of claims. ([NRS 612.220](#), [612.455](#))

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.]~~

NAC 612.110 Filing of initial claim; appeals. ([NRS 612.220](#), [612.455](#), [612.495](#))

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;

(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 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 a week's unemployment during the subsequent calendar week as defined in NAC 612.016 is 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, the Board of Review or on 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. Should identifying information used through inter-local agreement with other government agencies fail to adequately establish identity, claimants may be required to complete a sworn affidavit of identity in the presence of a notary public to protect the integrity of their unemployment insurance claim and their identity.

NAC 612.120 Employing units: Notification of claims. (NRS 612.220, 612.475)

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 of charging of benefits to the experience rating record if the claimant is found to have quit employment with this employing unit solely to accept other employment pursuant to NRS 612.551.3.

~~[4]~~ 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 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 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.

NAC 612.190 Training approved by Administrator. ([NRS 612.220](#), [612.375](#))

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 Post Secondary Education or 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]~~ *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.*

NAC 612.510 "Interstate Benefit Payment Plan" defined. ([NRS 612.220](#), [612.295](#), [612.750](#))

"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.

Chapter 612 of NAC is hereby repealed as follows:

~~[NAC 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.]~~