

LCB File No. R201-05

**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

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NEVADA ADMINISTRATIVE CODE 612

EXPLANATION –matter in *italics* is new.

Chapter 612 of NAC is hereby amended as follows:

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~~ **11** days after the date of the notice, submit to the Employment Security Division ~~any~~ **all relevant** facts that affect the claimant's rights to benefits, including ~~any~~ **all relevant** 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~~ **11** days after the date of the notice of filing the claim. If the employing unit has filed a report of **all relevant** 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 **all relevant** 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. 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~~ **11** days, submit ~~any~~ **all relevant** 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. Any notice of determination or ruling will contain a statement setting forth the right of appeal.

6. 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. 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. 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.

9. All relevant facts includes, but is not limited to: dates of employment, type of work performed, specific reason given for separation of employment, the final incident to cause the separation of employment, and prior disciplinary warnings of a similar nature given, if any.

NAC 612.232 Postponement, continuance or rescheduling of hearing. ([NRS 612.220](#), [612.500](#))

1. The examiner may postpone or continue the hearing on his own motion or when requested by a party showing compelling reasons for the continuance or postponement.

2. If a party fails to appear at the time set for the hearing, the examiner may, on his own motion, or on good cause shown by the party who failed to appear, reschedule the hearing. The decision to reschedule the hearing must be made within ~~10~~ **11** days after the issuance of the decision on the claim. If a hearing is rescheduled, any prior decision issued by the examiner is vacated.

NAC 612.460 Request for coverage; approval by Division. ([NRS 612.220](#), [612.295](#), [612.750](#))

1. Any employing unit may file an election to cover under the law of a single participating jurisdiction, all of the services performed for him by any person who customarily works for him in more than one participating jurisdiction.

2. An election may be filed with respect to a person with any participating jurisdiction in which:

- (a) Any part of the person's services are performed;
- (b) The person has his residence; or
- (c) The employing unit maintains a place of business to which the person's services bear a reasonable relation.

The agency of the elected jurisdiction shall initially approve or disapprove the election.

3. If an agency approves the election, it shall forward a copy of its approval to the agency of each other participating jurisdiction specified under whose law the person in question might, in the absence of the election, be covered. Each interested agency shall approve or disapprove the election as promptly as practicable and notify the agency of the elected jurisdiction accordingly.

4. If its law so requires, any interested agency may, before taking action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

5. If the agency of the elected jurisdiction or the agency of any interested jurisdiction disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

6. An election takes effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election which is approved takes effect as to any interested agency only if it is approved by the agency.

7. If any election is approved only in part or is disapproved by some of the agencies, the electing employing unit may withdraw its election within ~~10~~ **11** days after being notified of the action.

NAC 612.580 Determination of claims; appeals. ([NRS 612.220](#), [612.295](#), [612.750](#))

1. An agent state must, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question ~~any~~ **all relevant** facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

2. The agent state's responsibility and authority in connection with the determination of interstate claims is limited to the investigation and reporting of **all** relevant facts. The agent state may not refuse to take an interstate claim.

3. The agent state must afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims when requested by the liable state. With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant is made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.