

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

IN THE MATTER OF THE ADOPTION OF PERMANENT REGULATION RELATING TO INDUSTRIAL INSURANCE; ELIMINATING ADOPTION BY REGULATION OF THE FACTORS TO BE APPLIED IN COMPUTING A LUMP SUM PAYMENT FOR AN AWARD FOR A PERMANENT PARTIAL DISABILITY; REPEALING PROVISIONS SUPERSEDED BY LEGISLATION ENACTED DURING THE 2017 LEGISLATIVE SESSION; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066
LCB FILE NO. R127-17**

INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 616C.502 and the repeal of NAC 616C.498.

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

The Division of Industrial Relations (“Division”), Workers’ Compensation Section’s proposed amendments to NAC 616C.502 and repeal of NAC 616C.498 are necessary to comply with NRS 616C.495, as amended by Section 9 of Assembly Bill 458, Chapter 216, Statutes of Nevada 2017, at page 1167. This regulation deletes the actuarial annuity table for the calculation of lump sum permanent partial disability (“LS PPD”) payments which the Division will recalculate and post effective July 1 of each year in accordance with the requirements of NRS 616C.495(5), as amended. NAC 616C.498 has been supplanted by the amendment to NRS 616C.495(1), as amended.

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

Copies of the proposed regulation, notices of workshop and notices of intent to act upon a regulation were sent by U.S. mail and e-mail to over 2,500 persons who were known to have an interest in the subject of Chapters 616A through 616D, inclusive, and 617 of the NAC, as well as any persons who had specifically requested such notice. These documents were also made available at the websites of the State of Nevada and the Department of Business and Industry, Division of Industrial Relations, Workers’ Compensation Section’s website (<http://dir.nv.gov/WCS/Hearings>), mailed to all county libraries in Nevada and posted at the following locations:

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

Department of Business and Industry
3300 W. Sahara Ave., #425
Las Vegas, NV 89102

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

Workers' Compensation Section
Division of Industrial Relations
400 W. King Street, #201
Carson City, NV 89703

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

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

A Workshop was held via videoconference on December 1, 2017, at 9:00 a.m. at the Legislative Building, 401 S. Carson Street, Room 3137, Carson City, Nevada; and Grant Sawyer Building, 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada.

On or about September 20, 2018, the Administrator of the Department of Business and Industry, Division of Industrial Relations (Administrator), issued a Notice of Intent to Act on Proposed Regulations. Public hearings were held on October 24, 2018, at 9:00 a.m. at the Nevada Business Center, Division of Industrial Relations, Employee Training Room, 3360 W. Sahara Ave., 1st Floor, Las Vegas, Nevada and Division of Industrial Relations, Safety Consultation and Training Section, 4600 Kietzke Lane, Building E, Reno, Nevada.

A copy of this summary of the public response to the proposed regulations may be obtained from Donald C. Smith, Esq. at the Division of Industrial Relations, Legal Department, 3360 W. Sahara Avenue, #250, Las Vegas, Nevada 89102, 702-486-9070, or e-mail to donaldcsmith@business.nv.gov.

3. The number of persons who:

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

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

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

At the **December 1, 2017, Workshop**, which was held at two sites via videoconference, in Las Vegas 12 attended and in Carson City 7 attended, with testimony received from four (4) attendees. A summary of the testimony at this public hearing follows:

Craig Coziahr, Pro Group Management, Inc., 575 S. Saliman Road, Carson City, NV 89701; Telephone 775-887-2480; E-mail: craigcoziahr@pgrmnv.com. Mr. Coziahr testified that a small amendment be added to NAC 616C.502 to be sure that the use of the PPD Actuarial Annuity Table be based on the date of the injured employee's industrial injury.

Jason D. Mills, Esq., Neeman & Mills PLLC, 1201 S. Maryland Pkwy., Las Vegas, Nevada 89104; Telephone: 702-822-4444; E-mail: info@neemanmills.com; Representing the Nevada Justice Association: Mr. Mills testified that the language as drafted is correct in that it applies by withdrawing the majority of NAC 616C.502 and leaving only the language that the PPP Actuarial Annuity Table use the age of the person at the time they make the lump-sum election and then apply the specific factor to calculate the present value. The suggestion that NAC 616C.502 be amended so that the PPD lump-sum benefit is tied to a date of injury is not supported by the 2017 amendment of NRS 616C.495.

Jesse A. Wadhams, Esq., Fennemore Craig, P.C., 300 E. Second Street, #1510, Reno, Nevada 89501; Telephone: 775-786-5000; E-mail: jawadhams@fclaw.com; Representing the American Insurance Association, the National Association of Mutual Insurance Companies and Property Casualty Insurance Insurers of America: Mr. Wadhams concurred with the testimony offered by Jason Mills, Esq.

Paul J. Enos, Cornerstone Consulting Partners, P.O. Box 19762, Reno, Nevada 89511; E-mail: pje@nevadatrucking.com; Representing the Nevada Self Insurers Association: Mr. Enos concurred with the testimony offered by Mr. Coziahr.

Written comments were received before the December 8, 2017 deadline, following the December 1, 2017 public workshop regarding the adoption of these regulations. A summary of the written comments follows:

November 1, 2017 letter from American Insurance Association, National Association of Mutual Insurance Companies and Property Casualty Insurers Association of America. This letter requested that the Division of Industrial Relations clarify that the new Actuarial Annuity Table- and all future updates- only applies prospectively to eligible claims where the injured worker has yet to receive a lump-sum PPD award. It requests that the updated Table only apply to new awards calculated after the Table becomes active on July 1 and that this clarification applies to each subsequent update.

September 28, 2017 a Proposed Amendment for LCB File No. R043-17 was received from Craig Coziahr, Pro Group Management, Inc., 575 S. Saliman Road, Carson City, NV 89701; Telephone 775-887-2480; E-mail: craigcoziahr@pgrmnv.com. This written proposed amendment in the first sentence of NAC 616C.502 added the words "actuarial annuity" before the word "table"; revised "table" to "table(s)"; and added the phrase, "pursuant to NRS 616C.425" at the end of that sentence.

At the **October 24, 2018, Hearing**, which was held at two sites via videoconference, in Las Vegas 3 attended and in Reno 3 attended, with no testimony being offered.

No written comments were received by the November 7, 2018 deadline, following the October 24, 2018 public hearing regarding the adoption of these regulations.

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

To determine whether the amendment of NAC 616C.502 is likely to have an impact on affected businesses, the Division considered the purpose and scope of the potential amendments in comparison to NRS 616C.495 as amended by the 2017 Legislature in AB 458, Sec. 9, effective July 1, 2017. Based on this review, the Division determined that this regulation implementing the statutory change will have no financial impact on any affected businesses. Because there will be no impact on businesses, no comments were solicited by the Division.

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

Testimony and a written comment suggested that NAC 616C.502 should be amended to require that Actuarial Annuity Table in effect on the date of the injured employee's industrial injury be used to calculate his or her elected lump-sum PPD benefit. The Division believes this proposed amendment is contrary to the language of NRS 616C.495, which requires that the lump sum payable must be "equal to the present value of the compensation awarded...". Quite simply, present value should be calculated at the time the payment is to be made and not based on any other date.

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

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

(a) Both adverse and beneficial effects.

The Division anticipates no adverse or beneficial effects, either direct or indirect, on businesses it regulates or on the public as the result of the adoption of this regulation. The adverse effects, if any, will be solely to workers' compensation insurers and the beneficial effects, if any, will be solely to injured employees who elect to receive a permanent partial disability award in a lump sum.

(b) Both immediate and long-term effects.

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

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

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

9. A description of any regulations of other state or government agencies, which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or

overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

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

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

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

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

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

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

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

Dated this ____ day of December, 2018.

By: _____
Donald C. Smith, Esq., Division Counsel
Department of Business and Industry
Division of Industrial Relations
3360 W. Sahara Ave., #250
Las Vegas, NV 89102