

**ADOPTED EMERGENCY REGULATION OF THE
DEPARTMENT OF EMPLOYMENT, TRAINING AND
REHABILITATION'S EMPLOYMENT SECURITY DIVISION**

LCB FILE NO. E004-20A

**The following document is an emergency regulation submitted
by the agency on 06/30/2020**

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FOR EMERGENCY
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Effective Date: June 29,
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Classification:

☐ Proposed

☐ Adopted By Agency

☒ Emergency

Brief description of action The Nevada Department of Employment, Training & Rehabilitation's Employment Security Division (ESD), through ESD's Administrator Kimberly Gaa, is submitting proposed regulatory changes to Nevada Administrative Code (NAC) 612.120 and NAC 612.265, relating to unemployment insurance benefits (hereafter "benefits"). The proposed changes to NAC 612.120 and NAC 612.265 could affect the charging of employing units contributions and the treatment of employing units' reimbursables during the Governor declared coronavirus 2019 (hereafter "COVID-19" or "pandemic") emergency. The Governor issued a Declaration of Emergency on March 12, 2020 in response to COVID-19.

The change to NAC 612.120 would allow ESD's Administrator to relieve an employing unit from the charging of benefits to its experience record if:

1. The benefits are due to an illness in the workplace tied to a pandemic;
2. The benefits are due to direction from a public health official or a government official to close operations due to a pandemic; or
3. the claimant for the benefits had good cause to leave work due to a pandemic.

The change to NAC 612.265 would allow ESD's Administrator to reduce an employer's reimbursement in lieu of contributions by up to 50% of the amount owed if:

1. The benefits are due to an illness in the workplace tied to a pandemic; or
2. The benefits are due to direction from a public health official or a government official to close operations due to a pandemic; or
3. the claimant had good cause to leave work due to a pandemic.

Legislative Counsel Bureau's legal review has already been completed for the ESD's proposed regulatory changes.

Authority citation other than 233B NRS 612.220. "The special provision of: (a) Chapter 612 of NRS for the distribution of regulations by ... the Employment Security Division of the Department of Employment, Training and Rehabilitation ... prevail over the general provisions of this chapter [Ch. 233B of NRS]." NRS 233B.039(3). According to NRS 612.220, the ESD Administrator "1. Shall administer this chapter [Ch. 612 of NRS]. ... 3. Has power and authority to adopt, amend or rescind such rules and regulations ...as the Administrator deems necessary or suitable to that end." NRS 612.220(1)&(3).

Notice Date

Date of Adoption by Agency

Hearing Date



June 26, 2020

**Statement of Emergency pursuant to NRS 233B.0613 to implement
Temporary regulatory changes (120 days)**

On behalf of the Nevada Department of Employment, Training and Rehabilitation's (DETR) Employment Security Division (ESD), and as ESD's Administrator, I submit this Statement of Emergency pursuant to NRS 233B.0613. This pertains to proposed regulatory changes to Nevada Administrative Code (NAC) 612.120 and NAC 612.265, relating to unemployment insurance benefits (hereafter "benefits"). The proposed changes to NAC 612.120 and NAC 612.265 would give the ESD Administrator flexibility during the Coronavirus 2019 (hereafter "COVID-19") pandemic to provide relief to employers' or employing units' contributions or reimbursement in lieu of contributions obligations during the Governor declared COVID-19 emergency.

The Governor issued a Declaration of Emergency on March 12, 2020 in response to COVID-19. The change to NAC 612.120 would allow ESD's Administrator to relieve an employing unit from the charging of benefits to its experience record if:

1. The benefits are due to an illness in the workplace tied to a pandemic;
2. The benefits are due to direction from a public health official or a government official to close operations due to a pandemic; or
3. the claimant for the benefits had good cause to leave work due to a pandemic.

The change to NAC 612.265 would allow ESD's Administrator to reduce an employer's reimbursement in lieu of contributions by up to 50% of the amount owed if:

1. The benefits are due to an illness in the workplace tied to a pandemic; or
2. The benefits are due to direction from a public health official or a government official to close operations due to a pandemic; or
3. the claimant had good cause to leave work due to a pandemic.

On March 12, 2020, the Governor of the State of Nevada issued a Declaration of Emergency to facilitate the State of Nevada's response to the COVID-19 pandemic. On March 13, 2020, President of the United States Donald J. Trump declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"). A public health emergency exists throughout the State of Nevada as a result of the COVID-19 outbreak. The financial impact on Nevadans has been significant and severe with unemployment claims approaching 500,000 as of May of 2020. NRS 414.070(7) provides that, given the COVID-19 emergency, the Governor may exercise powers and duties as are necessary to promote and secure the safety and protection of the civilian population. Pursuant to NRS 233B.0613, I declare that an emergency exists and request the Governor of the State of Nevada to endorse this Statement of Emergency so the amendments to the regulations above may take effect immediately.

Dated this 26th day of June, 2020.



Heather Korbolic, Director
Department of Employment Training and Rehabilitation

I hereby endorse the Statement of Emergency prepared by the Administrator of the Employment Security Division, Department of Employment, Training and Rehabilitation.

Dated this 29th day of June, 2020.



Steve Sisolak, Governor
State of Nevada

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

June 26, 2020

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

Filing of Emergency Administrative Regulations

AUTHORITY: NRS 612.220 and NRS 233B. 0613

REGULATIONS relating to unemployment compensation; charging contributions and the treatment of reimbursables.

Legislative Counsel's Digest:

Existing law requires employers to pay contributions or reimbursement in lieu of contributions with respect to wages for employment into the Unemployment Compensation Fund. *See* NRS 612.535 through 612.553. Nevada Administrative Code (NAC) 612.120 and 612.265 address such contributions or reimbursement in lieu of contributions. The proposed temporary changes to NAC 612.120 and NAC 612.265, during the coronavirus disease 2019 (hereafter "COVID-19" or "pandemic") emergency, are expected to have an immediate beneficial economic effect on employers and employing units in Nevada directly impacted financially by COVID-19 due to an illness in the workplace tied to the pandemic, direction by a governmental official to close operations until the pandemic declared emergency is lifted, or the claimant for benefits had good cause to leave work due to the pandemic. NRS 612.730 provides an assurance or safeguard regarding proper disclosures by affected employers or employing units.

The proposed regulatory changes to NAC 612.120 and NAC 612.265 would allow the Department of Employment, Training & Rehabilitation's (DETR) Employment Security Division's (ESD) Administrator to relieve an employing unit or employer from the charging of benefits to its experience record or to reduce the reimbursement in lieu of contributions by up to 50% if: 1. The benefits are due to an illness in the workplace tied to the pandemic; 2. The benefits are due to direction from a public health official or a government official to close operations due to the pandemic; or 3. The claimant for the benefits had good cause to leave work due to the pandemic.

Section 1. Nevada Administrative Code (NAC) 612.120, entitled "Employing units: Notification of claims, determinations and rulings; reports of relevant facts; protest of payment of benefits; relief from charging of benefits. (NRS 612.220, 612.475, 612.551)," is hereby amended to read as follows:

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 11 days after the date of the notice, submit to the Division all relevant facts that affect the claimant's rights to benefits,

including all relevant facts which disclose that the claimant separated from employment voluntarily and without good cause, or was discharged for misconduct in connection with his or her employment.

2. The last or next to last employing unit may protest the payment of benefits if the protest is filed within 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 facts in a timely manner indicating that the claimant quit voluntarily without good cause, or was discharged for misconduct in connection with his or her 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 from the charging of benefits to its experience rating record if the claimant is found to have quit employment with the employing unit solely to accept other employment.

5. Any employing unit that paid wages to the claimant in the base period of the 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 11 days, submit all relevant facts disclosing whether the claimant was discharged for a crime committed in connection with his or her employment. The Division will issue a decision setting forth whether the wages will be denied in the determination of the payment of benefits.

6. Any notice of determination or ruling will contain a statement setting forth the right of appeal.

7. The notice of first claim filed which is 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.

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.

9. The notice of first claim filed which is 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 or her authorized agent constitutes proper notice to the base period employer.

10. As used in this section, "all relevant facts" includes, without limitation, dates of employment, type of work performed, specific reason given for separation from employment,

the final incident to cause the separation from employment and prior disciplinary warnings of a similar nature given, if any.

11. For the period of _____ to _____, upon a declaration of emergency by the Governor, the Administrator may provide the last or next to last employing unit with relief from the charging of benefits to its experience record if:

- a. The benefits are due to an illness in the workplace tied to a pandemic;
- b. The benefits are due to direction from a public health official or a government official to close operations due to a pandemic; or
- c. The claimant had good cause to leave work due to a pandemic.

[Employment Security Dep't, No. 45 §§ I & II, eff. 12-16-70] — (NAC A 6-3-85; A by Employment Security Div., 7-5-94; R199-05 & R201-05, 2-23-2006)

Sec. 2. NAC 612.265, entitled "Reimbursement of Fund in lieu of contributions by former employer. (NRS 612.220, 612.550, 612.553)," is hereby amended to read as follows:

1. 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.

2. If the Division overpays benefits to a claimant, the Division will not credit the amount of the overpayment to the account of an employer who is required to reimburse the Fund pursuant to subsection 1 until the Division recovers the amount of the overpayment from the claimant.

3. For the period of _____ to _____, upon a declaration of emergency by the Governor, the Administrator may reduce the reimbursements in lieu of contributions that are due by up to 50% of the amount owed if:

- a. The benefits are due to an illness in the workplace tied to a pandemic;

- b. *The benefits are due to direction from a public health official or a government official to close operations due to a pandemic; or*
- c. *The claimant had good cause to leave work due to a pandemic.*

(Added to NAC by Employm't Security Dep't, eff. 6-3-85; A by Employm't Security Div. by R094-00, 10-18-2000)

Sec. 3. These regulations become effective on:

1. The date on which these amended regulations are filed by the Legislative Counsel with the Secretary of State; or
 2. The day on which LCB File No. ??? is filed by the Legislative Counsel with the Secretary of State,
- whichever occurs later.

INFORMATIONAL STATEMENT OF ADOPTED REGULATIONS
AS REQUIRED BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
June 26, 2020

The following informational statement is submitted for adopted amendments to Chapter 612 of the Nevada Administrative Code (NAC):

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

Due to the Coronavirus 2019 (hereafter "COVID-19" or "pandemic"), there has been a dramatic increase in unemployment in Nevada and related onerous or burdensome financial effects on employers or employing units who are required to pay contributions or make reimbursement in lieu of contributions with respect to wages for employment. The proposed (120 days) emergency regulatory changes would allow the Department of Employment, Training & Rehabilitation's (DETR) Employment Security Division's (ESD) Administrator some temporary flexibility in relieving an employing unit or employer from the contributions or reimbursement in lieu of contributions obligations. This money is related to wages for employment and is paid into the Unemployment Compensation Fund.

2. The estimated economic effect of the adopted regulatory changes on businesses which are regulated thereby and on the public. These must be stated separately, and each case must include:

Business:

a. Both adverse and beneficial effects; and

Adverse: ESD does not foresee any adverse economic impact on businesses.

Beneficial: ESD sees the temporary flexibility under the proposed regulatory changes potentially affording financial relief to businesses affected by COVID-19.

b. Both immediate and long-term effects.

Same as above.

Public:

a. Both adverse and beneficial effects; and

Adverse: ESD does not foresee any adverse economic impact on the public.

Beneficial: ESD does not foresee any economic benefit to the public, except to the extent that the temporary flexibility under the proposed regulatory changes

potentially affording financial relief to businesses affected by COVID-19 and thereby keeping employing businesses viable.

b. Both immediate and long-term effects.

Same as above.

3. The estimated cost to the agency for enforcement of the proposed regulations as amended.

There is not an additional cost to ESD for the enforcement or application of the proposed regulations as amended.

4. 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 federal government agency regulations which are duplicated or overlapped by the proposed regulatory changes. However, H.R. 748 Coronavirus Aid, Relief, and Economic Security Act (CARES Act) at Title II, entitled "Assistance For American Workers, Families, and Businesses" at Sec. 2103, provides:

The Secretary of Labor may issue clarifying guidance to allow States to interpret their State unemployment compensations laws in a manner that would provide maximum flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest pursuant to such State laws.

CARES Act, Sec. 2103. 20 C.F.R. § 602.1 addresses a Quality Control (QC) program for the Federal-State unemployment compensation (UC) system. Among other things, the QC program is designed to identify errors in revenue collections. Accordingly, guidance from the U.S. Department of Labor should be sought.

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

The provisions in the regulatory changes are not more stringent than the federal regulations.

- 6. If the regulations provide 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 regulatory changes do not provide new or increases in any existing fees.