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

LCB FILE NO. E009-20P

The following document is a proposed emergency regulation submitted by the agency on 10/23/2020

EMPLOYMENT SECURITY DIVISION

DETR
Nevada Department of Employment, Training and Rehabilitation

STEVE SISOLAK
Governor

ELISA CAFFERATA
Director

JEFFREY FRISCHMANN
Acting Administrator

October 16, 2020

Statement of Emergency pursuant to Section 3 of Senate Bill No. 3 of the 32nd Special Session of the Nevada Legislature, chapter 7, Statutes of Nevada 2020, 32nd Special Session, at page 81 (NRS 612.242) 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 Section 3 of Senate Bill No. 3 of the 32nd Special Session of the Nevada Legislature, chapter 7, Statutes of Nevada 2020, 32nd Special Session, at page 81 (NRS 612.242). This pertains to proposed regulatory changes to Nevada Administrative Code (NAC) Chapter 612, relating to unemployment insurance benefits (hereafter "benefits"). The proposed changes to NAC Chapter 612 would give the ESD Administrator the ability to process unemployment insurance claims in a more expeditious manner during the Coronavirus 2019 (hereafter "COVID-19") pandemic to provide relief to Nevada Citizens affected by the COVID-19 pandemic.

Section 1. Upon the effective date of this regulation and based upon the declaration of emergency by the Governor regarding COVID-19, the Administrator, shall waive all unresolved issues related to the next to last employer if the claim was filed on or after March 12, 2020 and before the expiration of the Governor's Emergency Declaration Regarding COVID-19.

Section 2. Upon the effective date of this regulation and based upon the declaration of emergency by the Governor regarding COVID-19, the Administrator, may

a) waive all unresolved issues involving deductible income relating to severance pay, sick leave pay, vacation pay, or wages in lieu of notice along with any associated overpayments related to the deductible income issues employer if the claim was filed on or after March 12, 2020 and before the expiration of the Governor's Emergency Declaration Regarding COVID-19.

b) waive any requirement to reimburse the Division for an overpayment related to deductible income issues if the claim was filed on or after March 12, 2020 and before the expiration of the Governor's Emergency Declaration Regarding COVID-19.

Section 3. Upon the effective date of this regulation and based upon the declaration of emergency by the Governor regarding COVID-19, the Administrator shall find the following justifications related to COVID-19 constitute "good cause" for the purposes of NRS 612.390

1. The employer cannot offer suitable means by which the person may work remotely and a medical professional has recommended that the person not return to work because the person falls into one of the categories deemed high risk for contracting COVID-19 by the Centers for Disease Control and Prevention.
2. The person is sick or in isolation as a direct result of COVID-19.

3. There is an unreasonable risk of exposure to COVID-19 at the place of employment of the person and the person falls into one of the categories deemed high risk for contracting COVID-19 by the Centers for Disease Control and Prevention.
4. The person is staying home to care for a family member who is suffering from COVID-19 or subject to a prescribed period of quarantine by a medical professional.
5. The person is caring for a child who is unable to attend school or a childcare facility because of COVID-19.
6. The person is 65 years of age or older
7. The person is under any other circumstance that the Administrator determines, when considering the totality of the person's circumstances, constitutes good cause.

Section 4. The Administrator may upon the written informed consent of the claimant provide records of the division to assist the claimant in obtaining COVID-19 pandemic assistance.

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 initial unemployment claims exceeding 1.000,000 as of October 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 than 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 16th day of October, 2020.

Elisa P. Cafferata, Director
Department of Employment Training and Rehabilitation

Jeffrey Frischmann, Administrator
Employment Security Division

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

Dated this 21 day of October, 2020.

Steve Sisolak, Governor
State of Nevada

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

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 Section 3 of Senate Bill No. 3 of the 32nd Special Session of the Nevada Legislature, chapter 7, Statutes of Nevada 2020, 32nd Special Session, at page 81 (NRS 612.242).

REGULATIONS relating to unemployment compensation; .

Digest:

The proposed regulatory changes to Nevada Administrative Code (NAC) Chapter 612 would allow the Department of Employment, Training & Rehabilitation's (DETR) Employment Security Division's (ESD) Administrator to waive all adjudication issues relating to the next to last employer, if the separation from the last employer was related to COVID-19, waive all deductible income issues for the length of COVID-19 emergency period, and creates a standard by which good cause may be found by the Administrator for failing to return to employment, if the claimant can show an enumerated reason related to COIVD-19. These regulations will speed up claim processing and help alleviate the backlog of claims created by the COVID-19 pandemic.

Section 1. *Upon the effective date of this regulation and based upon the declaration of emergency by the Governor regarding COVID-19, the Administrator, may waive all unresolved issues related to the next to last employer if the claim was filed on or after March 12, 2020 and before the expiration of the Governor's Emergency Declaration Regarding COVID-19 and the claimant indicated that the reason the claimant is filing for unemployment benefits is related to COVID-19.*

Section 2. *Upon the effective date of this regulation and based upon the declaration of emergency by the Governor regarding COVID-19, the Administrator, may*

a) waive all unresolved issues involving deductible income relating to severance pay, sick leave pay, vacation pay, or wages in lieu of notice along with any associated overpayments related to the deductible income issues, if the claim was filed on or after March 12, 2020 and before the expiration of the Governor's Emergency Declaration Regarding

COVID-19 and the claimant indicated that the reason the claimant is filing for unemployment benefits is related to COVID-19.

b) waive any requirement to reimburse the Division for an overpayment related to deductible income issues if the claim was filed on or after March 12, 2020 and before the expiration of the Governor's Emergency Declaration Regarding COVID-19 and the claimant indicated that the reason the claimant is filing for unemployment benefits is related to COVID-19 .

Section 3. *Upon the effective date of this regulation and based upon the declaration of emergency by the Governor regarding COVID-19, the Administrator shall find the following justifications related to COVID-19 constitute "good cause" for the purposes of NRS 612.390*

1. *The employer cannot offer suitable means by which the person may work remotely and a medical professional has recommended that the person not return to work because the person falls into one of the categories deemed high risk for contracting COVID-19 by the Centers for Disease Control and Prevention.*
2. *The person is sick or in isolation as a direct result of COVID-19.*
3. *There is an unreasonable risk of exposure to COVID-19 at the place of employment of the person and the person falls into one of the categories deemed high risk for contracting COVID-19 by the Centers for Disease Control and Prevention.*
4. *The person is staying home to care for a family member who is suffering from COVID-19 or subject to a prescribed period of quarantine by a medical professional.*
5. *The person is caring for a child who is unable to attend school or a childcare facility because of COVID-19.*
6. *The person is 65 years of age or older*
7. *The person is under any other circumstance that the Administrator determines, when considering the totality of the person's circumstances, constitutes good cause.*

Section 4. *A claimant may provide written, informed consent to the Division to provide records of the Division to one or more specified persons or entities to assist the claimant in* *obtaining COVID-19 pandemic assistance. Upon receipt of such consent from a claimant, the Administrator may provide records maintained by the Division which relate to the claimant to the persons or entities specified in the consent*

Section 5. *This regulation becomes effective upon filing with the Secretary of State pursuant to section 3 of Senate Bill No. 3 of the 32nd Special Session of the Nevada Legislature, chapter 7, Statutes of Nevada 2020, 32nd Special Session, at page 81 (NRS 612.242).*

INFORMATIONAL STATEMENT OF ADOPTED REGULATIONS
AS REQUIRED BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB FILE NO. R???-??
__________ __, 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 citizens of the State of Nevada. The proposed (120 days) emergency regulatory changes would allow the Department of Employment, Training & Rehabilitation's (DETR) Employment Security Division's (ESD) Administrator to clear all adjudication issues relating to the next to last employer, if the separation from the last employer was related to COVID-19, waive all deductible income issues for the length of COVID-19 emergency period, and creates a standard by which good cause may be found by the Administrator for failing to return to employment, if the claimant can show an enumerated reason related to COIVD-19. These regulations will speed up claim processing and help alleviate the backlog of claims created by the COVID-19 pandemic.

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:

#1: Waiving all deductible income issues and associated overpayments

By waiving such overpayments, the state loses the ability to recover those funds, and employers will pay a higher Unemployment Insurance (UI) contribution rate in the future to restore the UI trust fund. The long-term average recovery rate for non-fraud overpayments from 2010 to 2019 has been 16.4%. The 16.4% of $3 million is $492,000 that may have been likely to be collected without the waiver of such overpayments. Compared to the state taxable wage base of $34 billion, this would increase average the average contribution rate paid by employers by 0.0014 percentage points, too small a margin to affect the rate-setting process.

#2: Clearing all issues related to the next to last employer

This regulation will increase the costs incurred by the Unemployment Insurance program due to payment of benefits not due to claimants under existing law, estimated as at least $96 million by the Employment Security Division. In the long term, employers will pay higher benefit contribution rates on average to restore the UI trust fund. Compared to the state taxable wage base of $34 billion, this would increase the average contribution rate paid by employers by 0.28 percentage points. If repaid in a single year, this would require an increase in the average contribution rate on employers from the current 1.65% to 1.93%, a 17% increase. Additionally, with only the second and third quarters of 2020 having employer benefit charging waived, some employers will be charged for benefits from employees that were laid off by a different employer. This will adversely impact an employer's reserve ratio, possibly leading to higher unemployment insurance tax rate in the long run.

#3: Expansion of good cause to refuse to return to work

This regulation would allow employees to refuse to return to work for reasons related to COVID-19 without losing their unemployment benefits. This regulation will likely make it harder for employers to fill positions in the short term, possibly impacting business operations. This regulation may cause employers to be charged for larger amounts of unemployment insurance benefits than would otherwise be expected. Traditionally, claimants return to work when an employer calls for their return. This regulation alters this relationship, as a claimant could refuse to return to work when called, possibly negatively impacting the employer's reserve ratio. This could lead to increases in the employer's unemployment insurance tax rate.

At present, the number of refusal-of-work issues is relatively low compared to the total number of unemployment claims, however total unemployment and the total number of unemployment claims remain significantly elevated. If this regulation changes the incentives for 2% of this population, this would double the number individuals who have current refusal of work issues.

Beneficial:

#1: Waiving all deductible income issues and associated overpayments

This regulation allows employers to provide severance benefits without jeopardizing unemployment benefits for former employees creating goodwill and potentially allowing employers to bring former employees back to work more easily.

#2: Waiving all issues related to the next to last employer

No clear beneficial effects to employers.

#3: Expansion of good cause to refuse to return to work

Provides benefits to employees at highest risk for COVID-19 which reduces the likelihood that high-risk individuals would return to work. This provides a slight benefit to employers by avoiding at-risk employees returning only to contract or spread COVID-19. Helps businesses overall by reducing the spread of COVID-19.

b. Both immediate and long-term effects.

#3: Expansion of good cause to refuse to return to work

Potential longer-term effects could include restructuring by employers to eliminate jobs that become harder to fill, or employers filling jobs with other individuals willing to return to work, eliminating the potential for a return to work in the position where an individual was previously unemployed. At the broader economic level, this regulation may cause a slight increase in turnover, an additional cost to employers (who may be charged more for employee UI benefits), increase the incentive for employers to mitigate the risk to employees of contracting COVID-19, increase the incentive for employers to employ automation in the workplace, and provide some individuals with a greater ability to provide in-home care for children or COVID-affected family members.

Further, any additional benefit charges which are incurred as a result of these regulations and not waived would remain on the affected employer's accounts for the life of the business and any successors, affecting future unemployment tax rates for that business in all future years.

Public:

a. Both adverse and beneficial effects; and

Adverse:

#1: Waiving all deductible income issues and associated overpayments

This regulation will increase the costs incurred by the Unemployment Insurance program due to payment of benefits not due to claimants under existing law, estimated to be at least $2.5-$3.0 million by the Employment Security Division. The ultimate impact will be less than the total dollar amount of said overpayments, as these are classified as non-fraudulent overpayments, which historically have a collection rate of 16.4% (2010-2019 total).

#2: Clearing all issues related to the next to last employer

This regulation will increase the costs incurred by the Unemployment Insurance program due to payment of benefits not due to claimants under existing law, estimated to be at least $96 million by the Employment Security Division.

#3: Expansion of good cause to refuse to return to work

This regulation would allow employees to refuse to return to work for reasons related to COVID-19 without losing their unemployment benefits. The number of individuals who would refuse to return to work is unknown at this time, and the economic impact cannot be quantified. This has both direct and indirect effects: by maintaining eligibility for unemployment benefits, there would be additional payment of unemployment benefits from the state trust fund and likely additional draws of federal unemployment benefit dollars into the state.

An additional possible adverse impact includes a claimant not having any employment protections should they refuse to return to work due to COVID-19. An employer may find new staff or eliminate the position entirely as it adjusts its operations. Without any protections, a claimant could have long spells of unemployment if their job is filled or eliminated while they are out of work.

Beneficial:

#1: Waiving all deductible income issues and associated overpayments

This regulation would allow claimants with deductible income issues to receive benefits immediately, without the potential for the creation of benefit overpayments.

#2: Clearing all issues related to the next to last employer

This regulation would waive issues related to next to last employers, allowing claimants with these issues to receive benefits immediately.

#3: Expansion of good cause to refuse to return to work.

This regulation would allow employees to refuse to return to work for reasons related to COVID-19 without losing their unemployment benefits. This regulation will help provide ongoing support for individuals directly affected by COVID-19, helping to maintain access to benefits and avoiding some short-term economic impacts for being unable to return to work.

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.**

While this regulation will require additional work to implement, that workload is anticipated to be less than the work required to individually adjudicate all affected claims. Therefore, there is expected to be a net savings in the cost of administration.

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.

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.