

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

LCB FILE NO. E004-21A

**The following document is an emergency regulation submitted
by the agency on 02/17/2021**

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

EXPLANATION-Matter in *italics* is new; matter in **[brackets]** 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 modify provisions regarding extended benefits so that an additional 7 weeks of benefits may be paid out during a high unemployment period before the 14th week. This regulatory change also extends the deadline for payment of employer contributions and waives interest and penalties regarding those contribution payments. These regulations will allow the Employment Security Division to payout extended benefits for a longer period of time and provide employers with temporary relief from charges effecting their businesses.

Section 1. *NRS 612.377 is hereby amended as to read as follows:*

1. “Extended benefit period” means a period which begins with the third week after a week for which there is a Nevada “on” indicator and ends with the third week after the first week for which there is a Nevada “off” indicator or the 13th consecutive week after it began, except that no extended benefit period may begin by reason of a Nevada “on” indicator before the 14th week following the end of a prior extended benefit period which was in effect for Nevada unless provided for in subsection 11.
2. There is a “Nevada ‘on’ indicator” for a week if the Administrator determines, in accordance with the regulations of the Secretary of Labor, that:
 - (a) For the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in Nevada (not seasonally adjusted) under NRS 612.377 to 612.3786, inclusive:

(1) Equaled or exceeded 120 percent of the average of those rates for the corresponding 13-week period ending in each of the preceding 2 calendar years and equaled or exceeded 5 percent; or

(2) Equaled or exceeded 6 percent; or

(b) For weeks of unemployment beginning on or after March 18, 2020, and ending on or before the week ending 4 weeks before the last week for which full federal sharing is authorized by section 4105(a) of Public Law No. 116-127, or which occur during a period of time specified by the Governor in a proclamation issued pursuant to subsection 4 of NRS 612.378, the average rate of total seasonally adjusted unemployment in Nevada, as determined by the Secretary of Labor, for the period consisting of the most recent 3 months for which data for all states are published before the close of such week:

(1) Equaled or exceeded 6.5 percent; and

(2) Equaled or exceeded 110 percent of the average rate for the corresponding 3-month period ending in either of the 2 preceding calendar years.

3. There is a "Nevada 'off' indicator" for a week if the Administrator determines, in accordance with the regulations of the Secretary of Labor, that for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in Nevada (not seasonally adjusted):

(a) Was less than 120 percent of the average of those rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; or

(b) Was less than 5 percent.

4. "Rate of insured unemployment," for purposes of subsections 2 and 3, means the percentage derived by dividing the average weekly number of persons filing claims in this State for the weeks of unemployment for the most recent period of 13 consecutive weeks, as determined by the Administrator on the basis of the Administrator's reports to the Secretary

of Labor using the average monthly employment covered under this chapter as determined by the Administrator and recorded in the records of the Division for the first four of the most recent six completed calendar quarters ending before the end of the 13-week period.

5. "Regular benefits" means benefits payable to a person under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. §§ 8501 et seq.) other than extended benefits.

6. "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. §§ 8501 et seq.) payable to a person under the provisions of NRS 612.377 to 612.3786, inclusive, for the weeks of unemployment in the person's eligibility period.

7. "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law. Any person who is entitled to both additional and extended benefits for the same week must be given the choice of electing which type of benefit to claim regardless of whether his or her rights to additional and extended benefits arise under the law of the same state or different states.

8. "Eligibility period" of a person means the period consisting of the weeks in the person's benefit year under this chapter which begin in an extended benefit period and, if that benefit year ends within the extended benefit period, any weeks thereafter which begin in that period.

9. "Exhaustee" means a person who, with respect to any week of unemployment in the person's eligibility period:

(a) Has received, before that week, all of the regular, seasonal or nonseasonal benefits that were available to him or her under this chapter or any other state law (including augmented weekly benefits for dependents and benefits payable to federal civilian employees and ex-servicemen or ex-servicewomen under 5 U.S.C. §§ 8501 et seq.) in the person's current benefit year which includes that week, except that, for the purposes of this paragraph, a person shall be deemed to have received all of the regular benefits that were available to him or her, although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in that benefit year, the person may subsequently be determined to be entitled to added regular benefits; or

(b) His or her benefit year having expired before that week, has no, or insufficient, wages on the basis of which the person could establish a new benefit year which would include that week, and has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, 45 U.S.C. §§ 351 et seq., the Trade Expansion Act of 1962, 19 U.S.C. §§ 1801 et seq., the Automotive Products Trade Act of 1965, 19 U.S.C. §§ 2001 et seq. and such other federal laws as are specified in regulations issued by the Secretary of Labor, and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada. If the person is seeking such benefits and the appropriate agency finally determines that the person is not entitled to benefits under that law the person is considered an exhaustee.

10. "State law" means the unemployment insurance law of any state, approved by the Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954.

11. During periods of time so authorized by the United States Department of Labor, an extended benefit period or high unemployment period may begin prior to the 14th week following the end of a prior extended benefit period.

Section 2. *NRS 612.553 is hereby modified as follows:*

1. For the purposes of this section:

- (a) "Indian tribe" includes any entity described in subsection 10 of NRS 612.055.
- (b) "Nonprofit organization" means any entity described in subsection 1 of NRS 612.121.
- (c) "Political subdivision" means any entity described in subsection 9 of NRS 612.055.

2. Any nonprofit organization, political subdivision or Indian tribe which is subject to this chapter:

(a) Shall pay contributions to the Unemployment Compensation Fund in the manner provided in NRS 612.535 to 612.550, inclusive, unless it elects, in accordance with this section, to pay into the Unemployment Compensation Fund, in lieu of contributions, as reimbursement an amount equivalent to the amount of regular unemployment compensation benefits and one-half of the extended benefits paid to claimants that is attributable to wages paid, except that after December 31, 1978, a political subdivision, and after December 21, 2000, an Indian tribe, shall reimburse an amount equal to the regular unemployment compensation benefits and all of the extended benefits. An Indian tribe may elect to become liable for payments by way of reimbursement in lieu of contributions for the tribe as a whole, or for any political subdivision, subsidiary, wholly owned business, or any combination thereof. The amount of benefits payable by each employer who elects to make payments by way of reimbursement in lieu of contributions must be an amount which bears the same ratio to the total benefits paid to a person as the total base-period wages paid to that person by the employer bear to the total base-period wages paid to that person by all of the person's base-period employers. Two or more employers who have become liable for payments by way of reimbursement in lieu of contributions may file a joint application, in accordance with regulations of the Administrator, for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers.

(b) May elect to become liable for payments by way of reimbursement in lieu of contributions for a period of not less than 4 consecutive calendar quarters beginning with the first day of the calendar quarter on which it became subject to this chapter by filing a written notice with the Administrator not later than 30 days immediately following the date of the determination that it is subject to this chapter. The organization remains liable for payments by way of reimbursement in lieu of contributions until it files with the Administrator a written notice terminating its election not later than 30 days before the beginning of the taxable year for which the termination is first effective.

3. Any nonprofit organization, political subdivision or Indian tribe which is paying contributions as provided in NRS 612.535 to 612.550, inclusive, may change to a reimbursement-in-lieu-of-contributions basis by filing with the Administrator not later than 30 days before the beginning of any taxable year a written notice of its election to become liable for payments by way of reimbursements in lieu of contributions. The election is not terminable by the organization for that and the next taxable year.

4. The Administrator may for a good cause extend the period in which a notice of election or a notice of termination must be filed and may permit an election to be retroactive, but not any earlier than with respect to benefits paid after December 31, 1970, for a nonprofit organization, December 31, 1976, for a political entity, or December 21, 2000, for an Indian tribe.

5. The Administrator shall notify each nonprofit organization, political subdivision and Indian tribe of any determination which the Administrator may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. The Administrator's determination is subject to reconsideration, petitions for hearing and judicial review in accordance with the provisions of this chapter.

6. The amount of reimbursement in lieu of contributions due from each employing unit which elects to make reimbursement in lieu of contributions must be determined by the Administrator as soon as practicable after the end of each calendar quarter or at the end of any

other period as determined by the Administrator. The Administrator shall bill each employing unit which makes reimbursement in lieu of contributions for an amount determined pursuant to paragraph (a) of subsection 2. Amounts due under this subsection must be paid not later than ~~[30]~~ 120 days after a bill is mailed to the last known address of the employing unit. The amount due specified in any bill from the Administrator is conclusive and binding on the employing unit, unless not later than 15 days after the bill was mailed to its last known address, the employing unit files an application for redetermination. A redetermination made under this subsection is subject to petition for hearing and judicial review in accordance with the provisions of this chapter. Payments made by any nonprofit organization, political subdivision or Indian tribe under the provisions of this section must not be deducted, in whole or in part, from the wages of any person employed by that organization.

7. The Administrator shall:

(a) Suspend the election of an Indian tribe to become liable for payments by way of reimbursement in lieu of contributions if the tribe fails to make payment, together with interest and penalties, if any, within 90 days after the tribe receives a bill from the Administrator.

(b) Require an Indian tribe whose election to become liable for payments by way of reimbursement in lieu of contributions is suspended pursuant to subsection 1 to pay contributions as set forth in NRS 612.535 to 612.550, inclusive, for the following taxable year unless the Administrator receives its payment in full before the Administrator computes the contribution rates for that year.

(c) Reinstate the election of an Indian tribe to become liable for payments by way of reimbursement in lieu of contributions that is suspended pursuant to subsection 1 if the tribe:

- (1) Has paid all contributions pursuant to NRS 612.535 to 612.550, inclusive, including interest and penalties, for not less than 1 year; and
- (2) Has no unpaid balance owing to the Administrator for any contribution, payment in lieu of contributions, penalty or interest.

8. Benefits are payable on the basis of employment to which this section applies, in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other employment subject to this chapter.

9. In determining contribution rates assigned to employers under this chapter, the payrolls of employing units liable for payments in lieu of contributions must not be included in computing the contribution rates to be assigned to employers under this chapter. The reimbursement in lieu of contributions paid by or due from such employing units must be included in the total assets of the fund in the same manner as contributions paid by other employers.

10. The provisions of NRS 612.550 do not apply to employers who elect reimbursement in lieu of contributions.

11. Except as inconsistent with the provisions of this section, the provisions of this chapter and regulations of the Administrator apply to any matter arising pursuant to this section.

(Added to NRS by 1971, 1353; A 1973, 1366; 1977, 840; 1993, 1836; 2001, 1460)

Section 3. *NRS 612.620 is amended as follows*

1. When any contribution as provided in this chapter remains unpaid on the date on which it becomes due, as prescribed by the Administrator, it bears interest at the rate of 1 percent for each month or portion of a month thereafter until such payment, plus accrued interest, is received by the Administrator.

2. Interest accrued under this section may **[not]** be waived~~**[under any circumstances]**~~.

3. Interest collected pursuant to this section must be paid into the Employment Security Fund.

[Part 14:129:1937; A 1939, 115; 1941, 412; 1945, 299; 1949, 257; 1951, 351; 1955, 698]

— (NRS A 1993, 1845; 1999, 1713) 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).




February 16, 2021

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 attached proposed changes to NAC Chapter 612 would give the ESD Administrator the ability to pay seven additional weeks of extended benefits to Nevadans more quickly and provide employers with much needed temporary relief from employer charges relating to unemployment claims.

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 1,500,000 as of December 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.

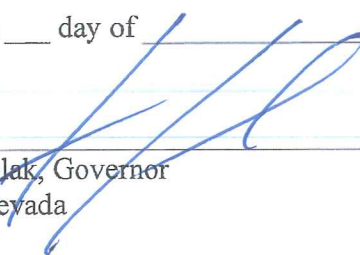
Dated this 16th day of February, 2021.


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


Lynda Parven, 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 ____ day of _____, 2021.



Steve Sisolak, Governor
State of Nevada

INFORMATIONAL STATEMENT OF ADOPTED REGULATIONS
AS REQUIRED BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB FILE NO.
February 8, 2021

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 regulatory changes to Nevada Administrative Code (NAC) Chapter 612 would modify provisions regarding extended benefits so that an additional 7 weeks of benefits may be paid out during a high unemployment period before the 14th week. This regulatory change also extends the deadline for payment of employer contributions and waives interest and penalties regarding those contribution payments. These regulations will allow the Employment Security Division to payout extended benefits for a longer period of time and provide employers with temporary relief from charges effecting their businesses.

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: Extended Benefits

No known adverse impacts to businesses

#2 and #3: Employer Charging Relief

No known adverse impacts

Beneficial:

#1: Extended Benefits

The proposed regulatory changes allow Nevada citizens financial relief from State Extended Benefits more quickly which will put more money into the economy to be spent at Nevada Businesses for goods and services

#2 and #3: Employer Charging Relief

The proposed regulatory changes will allow Nevada Businesses to delay payments of unemployment taxes and pay no interest or penalties during the period of delay

b. Both immediate and long-term effects.

Same as above.

Public:

a. Both adverse and beneficial effects; and

Adverse:

#1: Extended Benefits

No known adverse impacts to public

#2 and #3: Employer Charging Relief

No known adverse impacts

Beneficial:

#1: Extended Benefits

The proposed regulatory changes allow Nevada citizens financial relief from State Extended Benefits more quickly which will put more money into the economy to be spent at Nevada Businesses for goods and services

#2 and #3: Employer Charging Relief

The proposed regulatory changes will allow Nevada Businesses to delay payments of unemployment taxes and pay no interest or penalties during the period of delay

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.