

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

LCB File No. R166-97

IN THE MATTER OF THE ADOPTION OF
REGULATIONS PERTAINING TO CHARGES
TO AN EMPLOYER FOR FAILURE TO PROVIDE,
SECURE OR MAINTAIN MANDATORY
WORKERS' COMPENSATION COVERAGE

DIR No. 98-9
LCB File No. R166-97

PROPOSED REGULATIONS

Regarding the adoption of regulations pertaining to charges for failure to provide, secure or maintain mandatory workers' compensation coverage.

AUTHORITY: NRS 616A.400; NRS 616B.633; NRS 616D.200;

Section 1 Chapter 616 of NAC is hereby amended by adding thereto the provisions set forth in sections 2 through 6, inclusive, of this regulation.

Sec. 2 *Definition for the purpose of these regulations:
"Charge" means a monetary obligation assessed to an employer.*

Sec. 3. NAC 616D.340 is hereby amended to read as follows:

NAC 616D.340 Penalty charged for failure of employer to provide and secure compensation.

1. If the [manager] administrator determines that an employer within the provisions of NRS 616B.633 has failed to provide and secure compensation, he [shall] may, pursuant to NRS 616D.200, charge the employer an amount equal [to three times the premiums that the employer should have paid to the system for the period that the employer did business in this state without providing and securing the compensation, but not to exceed 6 years.] to the sum of:

(a) *The premiums that would otherwise have been owed to the system pursuant to the terms of Chapters 616A to 616D, inclusive, of NRS for the period that the employer was doing business in this state without providing, securing or maintaining that compensation, but not to exceed 6 years;*

(b) *The actual cost incurred by the system in opening the policy, but not to exceed 10 percent of the premiums owed by the employer; and*

(c) *Interest at a rate determined pursuant to NRS 17.130 computed from the time that the premiums should have been paid up to the date of payment.*

2. After the [manager] administrator notifies the employer of his determination that the

employer

failed to provide and secure the compensation[.]:

(a) [t]The employer shall provide *written* information to the [manager] *administrator within ten (10) working days* that verifies the amount of pay earned by his employees during the period that the employer was doing business in this state without providing and securing compensation.

(b) If the employer fails or is unable to provide such information, he shall calculate and provide to the [manager] *administrator* an estimate of the pay earned by his employees for that period, using the wages actually received or deemed to be received, pursuant to the applicable provisions of chapters 616A to 617, inclusive, of NRS, by his employees.

Sec. 4. NAC 616D.350 is hereby amended to read as follows:

NAC 616D.350 Penalty charged for failure to maintain compensation.

1. If the [manager] *administrator* determines that an employer within the provisions of NRS 616B.633 provided and secured compensation but failed to maintain the compensation, he [shall] *may*, pursuant to

NRS 616D.200, charge the employer an amount equal [to three times the premiums that the employer should have paid to the system for the period that the employer did business in this state without providing and securing the compensation, but not to exceed 6 years.] *to the sum of:*

(a) *The premiums that would otherwise have been owed to the system pursuant to the terms of Chapters 616A to 616D, inclusive, of NRS for the period that the employer was doing business in this state without providing, securing or maintaining that compensation, but not to exceed 6 years;*

(b) *The actual cost incurred by the system in opening the policy, but not to exceed 10 percent of the premiums owed by the employer; and*

(c) *Interest at a rate determined pursuant to NRS 17.130 computed from the time that the premiums should have been paid up to the date of payment..*

2. After the [manager] *administrator* notifies the employer of his determination that the employer failed to maintain the compensation[.]:

(a) [t]The employer shall provide *written* information to the [manager] *administrator within ten (10) working days* that verifies the amount of pay earned by his employees during the period that the employer was doing business in this state without maintaining the compensation.

(b) If the employer fails or is unable to provide such information, the [manager] *administrator* will estimate the payroll of the employer for that period based on reports of payroll previously submitted by the employer to the system and on the wages deemed to be received by the employer's employees pursuant to the applicable provisions of chapters 616A to 617, inclusive, of NRS.

Sec. 5. NAC 616D.360 is hereby amended to read as follows:

NAC 616D.360 Verification of amount charged to employer as penalty.

The amount of any charge imposed by the [manager] *administrator* pursuant to NAC 616D.340 or 616D.350 is subject to verification by auditors of the [system] *insurer or the Industrial Insurance Regulation Section.*

Sec. 6. NAC 616D.370 is hereby amended to read as follows:

NAC 616D.370 Modification of amount charged to employer as penalty.

At any hearing held pursuant to subsection 2 of NRS 616D.220, on appeal from a determination of the [manager] *administrator* made pursuant to NRS 616D.200 the [manager] *administrator* may modify the amount charged the employer if it is shown by a preponderance of the evidence that the:

1. Failure to provide and secure or maintain compensation was caused by an error on the part of the insurer; or
2. Employer was exempt from the requirement to provide and secure or maintain compensation.