

**PROPOSED REGULATION OF THE ADMINISTRATOR OF THE
DIVISION OF INDUSTRIAL RELATIONS OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R072-99

July 30, 1999

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

AUTHORITY: §§ 2 to 15, NRS 616B.185.

Section 1. Chapter 616B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

Sec. 2. *The provisions of sections 2 to 15, inclusive, of this regulation apply only to an offender who is injured or killed in the course and scope of his employment in the prison industry program, and only if the director of the department of prisons obtained coverage from an insurer under the modified program of industrial insurance. The program does not include:*

1. Coverage for an injury that occurred before the offender was confined in an institution or facility operated by the department of prisons.

2. Any service or benefit for vocational rehabilitation.

Sec. 3. *Except as otherwise provided in section 2 of this regulation, the provisions of chapters 616A to 617, inclusive, of NRS and chapters 616A to 617, inclusive, of NAC apply to an offender confined in an institution or facility operated by the department of prisons and*

engaged in work in a prison industry program to the extent that those provisions do not conflict with the provisions of sections 2 to 15, inclusive, of this regulation.

Sec. 4. *For the purposes of an offender confined in an institution or facility operated by the department of prisons who is injured or killed in the course and scope of his employment in the prison industry program, “wages”:*

1. Means the money he earns in the prison industry program before any deductions are made from those earnings.

2. Does not include:

(a) The value of room and board, medical care and other goods and services provided by the department of prisons.

(b) The value of good time earned towards reducing the prison sentence of the offender.

(c) Income from any source other than the prison industry program.

Sec. 5. *The department of prisons shall:*

1. Adopt a written policy that establishes the rights and duties of an offender pursuant to the provisions of sections 2 to 15, inclusive, of this regulation. The policy must include the procedure for filing a claim for compensation.

2. Provide a copy of the policy to each offender confined in an institution or facility operated by the department of prisons before his first assignment to work.

3. Display a copy of the policy in a conspicuous place to which the offender has access in an institution or facility where the offender is incarcerated.

Sec. 6. *An offender is not entitled to receive compensation pursuant to the provisions of sections 2 to 15, inclusive, of this regulation for an injury that:*

1. Results from an assault, regardless of whether the offender is the aggressor.

2. Occurs as a result of an intentional violation of a work rule of the work program by the offender.

3. Is proximately caused by the offender's intoxication. If the employee was intoxicated at the time of the injury, intoxication must be presumed to be a proximate cause of the injury unless rebutted by evidence to the contrary.

4. Is proximately caused by the offender's use of a controlled substance. If the employee has any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name, the controlled substance must be presumed to be a proximate cause of the injury unless rebutted by evidence to the contrary.

Sec. 7. 1. *Except as otherwise provided in subsections 2 and 3, an offender or any person acting on his behalf shall submit the notice of injury in the manner provided in NRS 616C.015.*

2. The notice of injury must be submitted to the assistant director of industrial programs of the department of prisons.

3. The assistant director of industrial programs shall file the notice with the insurer providing coverage under the modified program of industrial insurance within 15 days after he receives the notice. If the offender or a person acting on his behalf submits the notice of injury to the assistant director within the time prescribed by NRS 616C.015, the failure of the assistant director to file the notice with the insurer within 15 days does not bar a claim for compensation.

4. Incarceration of the offender is not an excuse for failure to submit a notice of injury within the period prescribed by NRS 616C.015.

Sec. 8. 1. *An offender is not entitled to accrue or receive any compensation for temporary total disability, temporary partial disability, permanent partial disability or permanent total disability while he is incarcerated.*

2. *The payment of compensation begins upon the release of the offender from incarceration on:*

(a) Parole;

(b) Final discharge; or

(c) Discharge from custody by order of a court of competent jurisdiction.

3. *The payment of compensation must be discontinued during any subsequent period of incarceration in:*

(a) An institution or facility operated by the department of prisons;

(b) Any federal or state prison system; or

(c) A county jail, city jail or other local detention facility.

Sec. 9. *An offender is not entitled to receive a lump-sum settlement for an injury or disease while he is incarcerated. When the offender is released, any lump-sum benefit to which he is entitled that:*

1. *Is more than \$2,400, must be paid in monthly installments that do not exceed 10 percent of the total benefit in any month. The first installment must be paid within 30 days after the insurer receives written notice from the offender, the warden of the institution or the manager of the facility where the offender was incarcerated or a person designated by the warden or manager that the offender has been released.*

2. *Is \$2,400 or less, must be paid in a single payment within 30 days after the insurer receives written notice from the offender, the warden of the institution or manager of the*

facility where the offender was incarcerated or a person designated by the warden or manager that the offender has been released.

Sec. 10. 1. *Except as otherwise provided in this section, the department of prisons is responsible for the medical treatment of an offender, including the right to select a treating, consulting and rating physician or chiropractor, or both, and any other practitioner. An offender is not entitled to select a practitioner. As used in this subsection, “practitioner” has the meaning ascribed to it in NRS 439A.0195.*

2. The department of prisons is not required to disclose in advance to the offender the date, time or location of any medical service.

3. The insurer may schedule any appropriate medical test, consultation or treatment in addition to those scheduled by the department of prisons, but shall do so in accordance with the security procedures of the department of prisons.

4. If the insurer schedules an evaluation to determine whether an offender has suffered a permanent partial disability, it must use a rating physician or chiropractor designated by the administrator to determine the disability pursuant to NRS 616C.490 but it is not required to select the next physician or chiropractor according to the order in which their names appear on the list maintained by the administrator.

5. If medication is prescribed for an offender, it must be retained and dispensed by the department of prisons.

Sec. 11. 1. *An offender is not entitled to be present at a hearing before a hearing officer or an appeals officer.*

2. A hearing must be conducted by telephone unless the appeals officer or hearing officer determines, for good cause, that the hearing should be held at an institution operated by the

department of prisons. In such a case, the hearing must be arranged and conducted in accordance with the security procedures of the department of prisons.

Sec. 12. *An offender is entitled to the services of the Nevada attorney for injured workers, subject to the rules and procedures adopted by the department of prisons relating to contact with offenders.*

Sec. 13. *The fact that an offender has earned a relatively low wage during his incarceration is not a ground for the reopening of a claim.*

Sec. 14. *An offender who is confined in an institution or facility operated by the department of prisons may not reject coverage if the director of the department of prisons has obtained coverage under the modified program of industrial insurance.*

Sec. 15. *The provisions of sections 2 to 15, inclusive, of this regulation do not restore, in whole or in part, any of the civil rights of an offender.*