

LCB File No. E001-99

**ADOPTED EMERGENCY REGULATION OF THE
DIVISION OF INDUSTRIAL RELATIONS**

(Effective June 30, 1999)

In the Matter of Amendment and Adoption
of Regulations Pertaining to:

Modified Program for Offenders in
Prison Industry or Work Program in
Chapter 616B of the Nevada Administrative Code

DIR NO: 99-5 (emergency)

LCB No: E001-99

STATEMENT OF EMERGENCY

The Administrator of the Division of Industrial Relations (“Division”), Department of Business and Industry, hereby presents this Statement of Emergency to the Governor of the State of Nevada for endorsement. The Statement of Emergency is made pursuant to NRS 233B.0613 and is presented with the original copy of the Emergency Regulation, DIR 99-5. Said proposed emergency regulation concerns amendments to Chapters 616A and 616B of the Nevada Administrative Code (“NAC”), relating to the Modified Program for Offenders in the Prison Industry or Work Program. The Administrator has determined that an emergency exists for the adoption of these regulations, it appearing that:

I. Senate Bill 495 was approved by the Governor on May 29, 1999. Section 8, which amends NRS 616B.185, modified program of industrial insurance for offenders in prison industry or work program, becomes effective on July 1, 1999. NRS 616B.185, as recently amended, provides:

1. Any offender confined at the state prison, while engaged in work in a prison industry or work program, whether the program is operated by an institution of the department of prisons, by contract with a public entity or by a private employer, is entitled to coverage under the modified program of industrial insurance established by regulations adopted by the division ~~[of Industrial Relations]~~ if the director of the department of prisons complies with the provisions of the regulations and coverage is approved by the system or a private carrier.

2. An offender is limited to the rights and remedies established by the provisions of the modified program of industrial insurance established by the regulations adopted by the division. The offender is not entitled to any rights and remedies established by he provisions of chapters 616A to 617, inclusive, of NRS.

3. The division shall, in cooperation with the department of prisons and the risk management division of the department of administration, adopt regulations setting forth a modified program of industrial insurance to provide offenders with industrial insurance against personal injuries arising out of and in the course of their work in a prison industry or work program.

In order to afford the department of prisons with the protections of Chapter 616B of the Nevada Revised Statutes and limit the rights and remedies of offenders, regulations for a modified program of industrial insurance are needed.

II. The proposed regulations needed to comply with changes made by Section 8 of Senate Bill 495, amending NRS 616B.185, changed responsibility for the adoption of regulations regarding the prison industry or work program from the manager of the State Industrial Insurance System (SIIS, now known as Employers Insurance Company of Nevada) to the administrator of the Division of Industrial Relations (DIR).

SIIS originally adopted regulations in 1990 regarding the modified program for offenders in prison industry programs; those regulations expire by limitation on July 1, 1999. In 1997, pursuant to NRS 616B.186, DIR adopted regulations for the modified program for offenders in local work programs directed by administrators of county or city jails or other local detention facilities; these regulations were patterned after the regulations adopted by SIIS. The proposed emergency regulations for prison industry or work programs are patterned after the DIR local work program regulations.

III. The Division is required by NRS 616B.185(3), in cooperation with the department of prisons and the risk management division of the department of administration, to adopt regulations setting forth a modified program of industrial insurance to provide offenders with industrial insurance against personal injuries arising out of and in the course of their work in a prison industry or work program. SIIS also cooperated with the department of prisons and risk management when it adopted the original prison industry or work program regulations. The proposed emergency regulations are substantially the same as the ones which are expiring by limitation; DIR has made some changes to the proposed emergency regulations and its local work program regulations to conform with various legislative changes made after SIIS adopted its regulations. Representatives of both agencies have reviewed the proposed regulations and have not expressed any objections.

IV. Under the Nevada Administrative Procedure Act, there is insufficient time to enact permanent regulations by the July 1, 1999 deadline. NRS 233B.061(2) requires an agency to notify "each person who has requested to be placed on a mailing list" and in a "manner reasonably calculated to provide" notice to the general public at least fifteen days before the scheduled workshop. An agency must give at least thirty days notice to the persons on the mailing list and the general public of its intention to adopt, amend or repeal any regulation. NRS 233B.060(1). NRS 233B.063(2) provides that the Legislative Counsel Bureau has thirty days to examine and revise the agency's proposed regulation. Within thirty-five days after the regulation is adopted, if there is no objection by the Legislative Commission, the Director of LCB files the adopted regulation with the Secretary of State. NRS 233B.067(4).

V. There is insufficient time to enact temporary regulations. NRS 233B.061(2) requires an agency to notify “each person who has requested to be placed on a mailing list” and in a “manner reasonably calculated to provide” notice to the general public at least fifteen days before the scheduled workshop. An agency must give at least thirty days notice to the persons on the mailing list and the general public of its intention to adopt, amend or repeal any regulation.
NRS 233B.060(1).

VI. The proposed regulations are similar to the current regulations enacted by SIIS for prison industry programs and the current regulations for local work programs; thus, the administrator has determined that:

- a) there will be no immediate, long-term, or adverse effect on business or the general public if the proposed regulations are adopted as emergency regulations;
- b) adoption of the proposed regulation as an emergency regulation will not result in any additional cost to DIR for enforcement;
- c) there are no other regulations of any state or governmental agency which overlap or duplicate the proposed regulations;
- d) adopting the proposed regulations as an emergency regulation will not impose or increase any fees.

Respectfully submitted on June _____, 1999, by:

ROGER BREMNER, Administrator
DIVISION OF INDUSTRIAL RELATIONS
Department of Business and Industry
400 West King Street, Suite 400
Carson City, Nevada 89703

Endorsed on June _____, 1999 by:

KENNY C. GUINN,
Governor of the State of Nevada

LCB File No. E001-99

**ADOPTED EMERGENCY REGULATION OF THE
DIVISION OF INDUSTRIAL RELATIONS
OF THE DEPARTMENT OF
BUSINESS AND INDUSTRY**

In the matter of the adoption of
regulations pertaining to

DIR 99-5T (emergency)

Modified Program for Offenders in Prison
Industry or Work Program in Chapter 616B
of the Nevada Administrative Code

LCB:E001-99

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Statutory Authority: SB 495 § 8 (NB: The State Industrial Insurance System originally adopted regulations on the Modified Program for Offenders in Prison Industry or Work Programs which will expire by limitation on July 1, 1999. DIR has been given responsibility for adopting regulations in this area and has made some changes in regulations being repealed by the system; the changes are similar to the DIR regulations for Modified program for Offenders in Local Work Programs).

MODIFIED PROGRAM FOR OFFENDERS INPRISON INDUSTRY PROGRAM

Section 1 NEW: (similar to NAC 616B.880 and 616B.922) effective 7/1/99

Scope.

The provisions of Sections 1 to 14 of this regulation, inclusive, 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 provided and secured coverage from an insurer under the modified program of industrial insurance. The program does not include:

- 1. Coverage for an injury which occurred before the offender was confined at a facility operated by the department of prisons.***
- 2. Any service or benefit for vocational rehabilitation.***

Section 2 NEW: (similar to NAC 616B.883 and B.924) effective 7/1/99

Applicability of statutes and other regulations.

Except as otherwise provided in Section 1 of this regulation, the provisions of chapters 616A to 617, inclusive, of NRS and chapters 616A to 617, inclusive, of NAC apply to any offender confined at a 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 Sections 1 to 14 of this regulation, inclusive.

Section 3 NEW: (similar to NAC 616B.886 and B.926) effective 7/1/99

“Wages” interpreted.

In the case of an offender confined at a 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, the term “wages”:

- 1. Includes only 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 or other goods or services provided by the department of prisons;*
 - (b) The value of good time earned towards reducing the prison sentence of the offender; or*
 - (c) Income from any source other than the prison industry program.*

Section 4 NEW: (similar to NAC 616B.889 and B.928) effective 7/1/99

Statement of rights and duties of offenders.

The department of prisons shall:

- 1. Adopt a written statement of the rights and duties of an offender pursuant to the provisions of Sections 1 to 14 of this regulation, inclusive. The statement must include the procedures and time limits which the offender must follow when he files for benefits.*
- 2. Give a copy of the statement to each offender confined at a facility operated by the department of prisons before his first assignment to work.*
- 3. Post a copy of the statement in a conspicuous place to which the offender has access, in the facility where the offender is incarcerated.*

Section 5 NEW: (similar to NAC 616B.892 and 616B.930) effective 7/1/99

Injuries for which compensation not allowed.

No compensation will be allowed pursuant to Sections 1 to 14 of this regulation, inclusive, for an injury that:

- 1. Results from an assault, whether or not the offender is the aggressor.*
- 2. Occurs as a result of a deliberate 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 had 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 unless rebutted by evidence to the contrary.*

Section 6 NEW: (similar to NAC 616B.895 and 616B.932) effective 7/1/99

Submission of notice of injury.

- 1. Except as otherwise provided in subsections 2 and 3, an offender or someone acting on his behalf shall submit the notice of injury as 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 its insurer within 15 days after he receives it. If an offender submits the notice of injury to the assistant director within the time provided by NRS 616C.015, the failure of the assistant director to file the notice with its insurer within 15 days does not bar a claim for compensation.*

4. *Incarceration is not an excuse for failure to submit a timely notice of injury.*

Section 7 NEW: (similar to NAC 616B.898 and 616B.934) effective 7/1/99

Periods for accrual and payment of compensation.

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

2. *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. *Compensation will be discontinued during any subsequent period of incarceration in:*

(a) A facility of the department of prisons; or

(b) Any other federal, state or local prison system.

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

Section 8 NEW: (similar to NAC 616B.901 and 616B.936) effective 7/1/99

Payment of lump-sum benefits.

An offender will not be paid 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:

1. *Of more than \$2,400, will be paid in monthly installments which do not exceed 10 percent of the total benefit in any month. The first installment will be paid within 30 days after the insurer receives written notice, from the offender or the assistant warden of the prison where the offender was incarcerated that the offender has been released.*

2. *Of \$2,400 or less will be paid in a single payment within 30 days after the insurer receives written notice, from the offender or the assistant warden of the prison where the offender was incarcerated that the offender has been released.*

Section 9 NEW: (similar to NAC 616B.904 and 616B.938) effective 7/1/99

Medical treatment of offenders.

1. *Except as otherwise provided in this section, the department of prisons has control over the medical treatment of any offender, including the right to select a treating, and consulting, and rating physicians or chiropractor, or both, and all any other health care professionals. An offender is not entitled to select a health care professional.*

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 an insurer schedules an evaluation to determine if 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.

Section 10 NEW: (similar to NAC 616B.907 and 616B.940) effective 7/1/99

Hearings.

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

2. Any 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 of 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.

Section 11 NEW: (similar to NAC 616B.910 and B.942) effective 7/1/99

Services of Nevada attorney for injured workers.

Offenders are 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.

Section 12 NEW: (similar to NAC 616B.913 and B.944) effective 7/1/99

Low wage is not ground to reopen claim.

The fact that an offender has earned a relatively low wage while incarcerated is not a ground for the reopening of a claim.

Section 13 NEW: (similar to NAC 616B.916 and B.946) effective 7/1/99

No right to reject coverage.

An offender confined at a facility operated by the department of prisons may not reject coverage if the director of the department of prisons has requested coverage under the modified program of industrial insurance.

Section 14 NEW: (similar to NAC 616B.919 and B.948) effective 7/1/99

Civil rights not restored.

Sections 1 to 14 of this regulation, inclusive, do not restore, in whole or in part, any of the civil rights of an offender.