

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

LCB File No. R094-00

June 20, 2000

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

AUTHORITY: §§1, 2, 5, 8 and 12-15, NRS 612.220; §3, NRS 612.185, 612.195 and 612.220; §4, NRS 612.220 and 612.375; §§6 and 7, NRS 612.220 and 612.260; §9, NRS 612.190 and 612.220; §10, NRS 612.220 and 612.455; §11, NRS 612.220 and 612.550.

Section 1. Chapter 612 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“Severable and distinct portion of the organizaion, trade or business” means a separate division, location or organization of an employing unit that can be identified as an employing unit within the principal entity. The term does not include merely a portion or percentage of the organization, trade or business as a whole, or merely a portion or percentage of employees of the principal entity.*

Sec. 3. *“Week” means a period of 7 consecutive calendar days ending at midnight Saturday.*

Sec. 4. *An unemployed person may receive benefits without complying with the requirement of NRS 612.375 to register for work if the person is:*

- 1. Partially unemployed as defined by NAC 612.090; or*
- 2. Temporarily laid off from his regular employment but is guaranteed reemployment within:*

(a) *Four weeks; or*

(b) *A longer period if the administrator extends the 4-week period upon a showing of good cause.*

Sec. 5. NAC 612.010 is hereby amended to read as follows:

612.010 As used in this chapter, unless the context otherwise requires ~~§~~

~~1. The], the~~ words and terms defined in ~~[chapter 612 of NRS]~~ *NRS 612.016 to 612.200, inclusive, and sections 2 and 3 of this regulation* have the meanings ascribed to them in ~~[that chapter.~~

~~2. “Partially unemployed person” means a person who, during a particular week:~~

~~(a) Earned less than his weekly benefit amount;~~

~~(b) Was employed by and had earnings from his regular employer; and~~

~~(c) Worked less than his normal full-time hours for a regular employer because of a lack of full-time work.~~

~~3. “Week” means a period of 7 consecutive calendar days ending at midnight Saturday.]~~

those sections.

Sec. 6. NAC 612.020 is hereby amended to read as follows:

612.020 1. Each employing unit must establish, maintain and preserve, for at least 4 years from the date of entry, true and accurate records with respect to each person who performs services for the employing unit. The records must show:

(a) For each payroll period:

(1) Beginning and ending dates.

(2) Total wages payable and the date on which the wages are paid.

(b) For each person:

- (1) His name.
- (2) His social security number.
- (3) His rate of pay.
- (4) The date of hire, rehire or return to work after temporary layoff.
- (5) The date and reason for separation from employment.
- (6) The state in which services are performed.
- (7) The dates worked and the total amount of wages earned in each payroll period and the date on which the wages are paid with separate entries for:

(I) Money wages.

(II) Cash value of other remuneration, including meals and lodging, indicating the number of meals and number of days of lodging furnished the person.

(III) Special payments by cash or other remuneration for services performed identified as bonuses, prizes or similar awards, indicating the nature of the payments.

~~(IV) The amounts of tips declared.~~

~~———— (V) The amounts of money distributed to him by the employer from money collected from customers by the employer as a gratuity, tip or service charge.]~~

2. Each employing unit which considers that it is not an employer subject to the law or that it is engaged in exempt employment must keep and maintain the records required of employing units under this section for at least 4 years after the period to which the records relate.

3. Each employer subject to the law shall keep and maintain the records required under this section for at least 4 years after the date the contributions to which they relate become due, or the date the contributions are paid, whichever is later.

Sec. 7. NAC 612.050 is hereby amended to read as follows:

612.050 1. Each employer shall obtain the social security account number of each worker employed by him in employment subject to chapter 612 of NRS.

2. The employer shall report the worker's social security account number in making any report required by the employment security division with respect to a worker.

~~{3.— If an employer has in his employ a worker engaged in employment who does not have an account number, the employer shall request the worker to show him a receipt issued by an office of the Social Security Board acknowledging that the worker has filed an application for an account number. The receipt must be retained by the worker. In making any report required by the employment security division with respect to the worker, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt.~~

~~—4.— If a worker fails to report to the employer his correct social security account number or fails to show the employer a receipt issued by an office of the Social Security Board acknowledging that he has filed an application for an account number, the employer shall inform the worker that Regulation 106 of the Bureau of Internal Revenue, Treasury Department, under the Federal Insurance Contributions Act provides that:~~

~~—(a) Each worker shall report to every employer for whom he is engaged in employment, his social security number and his name exactly as shown on the account number card issued to him by the Social Security Board.~~

~~—(b) Each worker who has not secured an account number shall file an application for a social security account number on Form SS-5 of the Treasury Department, Bureau of Internal Revenue. The application must be filed on or before the seventh day after the date on which the worker~~

~~first performs employment for wages, except that the application must be filed on or before the date the worker leaves the employ of his employer if that date precedes the seventh day.~~

~~—(c) If, within 14 days after the date on which the worker first performs employment for wages for the employer, or on the day on which he leaves the employ of the employer, whichever is earlier, the worker does not have a social security account number, and has not shown the employer a receipt issued to the worker by an office of the Social Security Board acknowledging that he has filed an application for an account number, the worker shall furnish the employer an application on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex and color, and a statement as to whether the worker had previously filed an application on Form SS-5, and if so, the date and place of the filing. Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of his obligation to make an application on Form SS-5, as required in paragraph (b).~~

~~—5.—The employer shall inform the worker, in instances in which the information is pertinent, that in accordance with Regulation 106 of the Bureau of Internal Revenue, Treasury Department:~~

~~—(a) Copies of Form SS-5, application for a social security account number, may be secured at any field office of the Social Security Board, a public employment office which takes claims for unemployment compensation, the local post office, or from any Collector of Internal Revenue and must be filed with the Social Security Board field office or the public employment office nearest the worker's place of employment.~~

~~—(b) Any worker who has lost his social security account number card may secure a duplicate card by applying at the field office of the Social Security Board nearest the worker's place of employment.~~

~~—(c) Any worker may have his account number changed at any time by applying to a field office of the Social Security Board and showing good reason for a change. Any worker whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, must report the change or correction to a field office of the Social Security Board. Copies of Form OAAN-7003, Employee's Request for Change in Records, for making the reports may be obtained from any field office of the Social Security Board or the central office of the employment security agency or a local employment office.~~

~~—(d) Any worker who has more than one social security account number shall report all numbers to the field office of the Social Security Board nearest the worker's place of employment or to a local employment office.~~

~~—6. If the worker fails to comply with the requirements of subsection 4, the employer shall execute a Form SS-5, application for a social security account number, or statement, signed by the employer setting forth as fully and as clearly as practicable the worker's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, the worker's sex and color, and a statement as to whether an application for an account number has previously been filed by the worker and, if so, the date and place of the filing. This statement or the executed Form SS-5 signed by the employer, must be attached to any report required by the employment security division with respect to the worker.]~~

Sec. 8. NAC 612.060 is hereby amended to read as follows:

612.060 At such time as the administrator determines that **[wages]** :

1. *Wages* payable to an employee for personal services have not been paid to the employee by reason of the financial inability of the employer to pay the wages due ~~[1]~~; *and*

2. *The employee has filed a valid claim with the labor commissioner of the State of Nevada or has filed a valid claim in a bankruptcy proceeding concerning the employer,*

FLUSH the amount of the wages ~~[are]~~ *is* considered paid for the purposes of chapter 612 of NRS as of the regular date established for the payment of the wages.

Sec. 9. NAC 612.070 is hereby amended to read as follows:

612.070 ~~[1.—If meals, lodging or any other payment in kind, considered as payment for services performed by a person, is in addition to or in lieu of, rather than a deduction from, money wages, the administrator will determine or approve the cash value of the meals and lodging or other payment in kind in individual cases to compute contributions due.~~

~~—2.—If a cash value for the meals and lodging furnished a person is agreed upon in any agreement with a labor union or a contract of hire, the amount agreed upon is, if more than the rates prescribed in this section, the value of the meals and lodging.~~

~~—3.—Unless a rate for meals and lodging is determined by the administrator, meals and lodging furnished in addition to money wages shall be deemed to have not less than the following values:~~

— Full meals and lodging, weekly.....	\$60.00
— Meals per week.....	30.00
— Meals per day	4.50
— Meals per meal	1.50
— Lodging per month.....	120.00
— Lodging per week.....	30.00

~~—Lodging per day 5.00]~~

The cash value of meals, lodging or any other remuneration payable in any medium other than cash pursuant to NRS 612.190 shall be deemed to be the retail fair market value of the remuneration as determined by the administrator.

Sec. 10. NAC 612.110 is hereby amended to read as follows:

612.110 1. The effective date of an initial claim ~~[filed at a local employment office within commuting distance of the claimant's residence]~~ is:

(a) Sunday of the week in which the claim is filed, if the claimant has an active application for work on file or completes an application during the week which includes the effective date of the initial claim;

(b) Sunday of the week in which an application for employment is completed if the application is completed subsequent to the date of the filing; ~~[or]~~

(c) Sunday of the week in which an application for employment was completed if the date is before the date the claim was filed and the person can show good cause for not having previously filed an initial claim. In no case may a claim be predated more than 2 weeks preceding the week in which the claim is actually filed ~~[-~~

~~—2.— The effective date of an initial claim filed with an authorized itinerant agent is Sunday of the week in which the claim is taken except that, if a person has given notice of an intention to file a claim and apply for work, the effective date is Sunday of the week in which the notice of intent was filed, if the work application and claim are actually completed not later than the day on which the itinerant service is next conducted to the area of the person's residence. In no case may a claim be predated more than 28 days preceding Sunday of the week in which the claim is actually filed.~~

~~—3.— The effective date of an initial claim filed at a local employment office when the local office or an authorized itinerant agent is not within commuting distance of the claimant’s residence is Sunday of the week in which the claim is actually filed, except that:~~

~~—(a) The effective date is];~~

(d) Sunday of the week in which the division received written notice of intention to file, if the effective date is not more than 28 days before Sunday of the week in which the claim is actually filed; or

~~[(b) The effective date is]~~

(e) Sunday of the week in which the claimant first suffered unemployment, if the date is within 28 days of the actual filing date and the claimant can show that it was impossible to have filed his claim and registered for work sooner at his nearest public employment office.

~~[4.—Continued claims]~~

2. *A continued claim* must be filed in accordance with instructions of the administrator or his authorized representative and the following:

(a) ~~[Continued claims]~~ *A continued claim* must be filed at the place and time specified by the division’s representatives except that, if a person can show good cause for failure to file in accordance with instructions, a claim may be accepted at some other time than that assigned.

(b) ~~[One continued claim may be filed by mail in the case of a claimant who has gone to work following a week of unemployment and consequently is unable to appear personally at the local office.~~

~~—(c) Continued claims by mail may be accepted from claimants who, for good and logical reasons, cannot personally appear in the local office to file a claim and who have obtained prior permission to file claims by mail.~~

~~—(d) All continued claims must be filed on forms prescribed by the division.~~

~~—(e)]~~ A continued claim will not be accepted if the claimant does not have an active application for employment on file with the employment service during all or a part of the week with respect to which the claim was filed.

~~[(f) Continued claims for partial benefits must be filed in person unless otherwise directed by a representative of the division.~~

~~—5.—Appeals]~~

3. *A claimant may appeal a denial of his claim. The appeal* must be in writing and signed by the ~~[appellant]~~ *claimant* or by ~~[the appellant's]~~ *a* duly authorized agent ~~[. Claimants who appeal]~~ *of the claimant. A claimant who appeals* must continue to file a weekly claim for unemployment benefits in the manner specified by the division during the period of disqualification in order to receive payments if the appeal is decided in ~~[their favor.]~~ *favor of the claimant.*

Sec. 11. NAC 612.265 is hereby amended to read as follows:

612.265 ~~[Reimbursement for benefit payments made to former employees of employers who elect]~~

1. *If an employer elects* to reimburse the fund in lieu of contributions ~~[must be charged to that employer. Those reimbursements must be made on the basis of a dollar of reimbursement for each dollar paid in benefits]~~ *to the fund, the employer shall reimburse the division if the division pays benefits to a claimant who is a former employee of the employer. The amount of reimbursement must be equal to the total amount of benefits the division paid to the claimant based on the proportion of the claimant's base period wages paid by that employer.*

2. If the division overpays benefits to a claimant, the division will not credit the amount of the overpayment to the account of an employer who is required to reimburse the fund pursuant to subsection 1 until the division recovers the amount of the overpayment from the claimant.

Sec. 12. NAC 612.280 is hereby amended to read as follows:

612.280 1. The experience record of an employer will be transferred to a successor as of the effective date of a change in business organization or legal entity if:

(a) The employing unit as a successor acquires the entire, or a severable and distinct portion of the organization, trade or business, or substantially all of the assets relating to an employer subject to the law, if the mutual acquiescence of the predecessor and the successor to transfer is properly executed and filed with the employment security division within 1 year after the date of the issuance by the division of official notice of eligibility to transfer.

(b) The receiver, trustee, executor, administrator or other representatives, under designation or order of a court, succeeds to the assets of a predecessor employer to carry on pending liquidation or reorganization.

2. The transfer of an experience record of a severable and distinct portion of an organization, trade or business will be completed if the ~~complete reports of payrolls and contributions paid, covering the entire employment history of the predecessor as a separate unit evidencing severability, are filed with~~ *successor employer notifies* the division *in writing of the acquisition* within 1 year after the date of issuance by the division of official notice of eligibility to transfer.

3. In a partial transfer ~~:~~

~~— (a) Benefit charges must be transferred to the experience record of the separated unit based on wages reported by the separated unit used in the computation of eligible claims for benefits.],~~
the successor employer shall provide the amount of taxable wages reported by the separated unit for the previous 3 calendar years. The division ~~[may]~~ *will* allocate benefit charges *and contributions paid* to the separated unit in the same proportion that total taxable payrolls attributable to the separated unit bear to the total taxable payrolls attributable to the operations retained by the transferring employer during the same period.

~~[(b) The eligibility of the separated unit for the purposes of experience rating must be determined on the basis of the entire employment history of the separated unit.~~

~~— Sec. 13. — NAC 612.290 is hereby amended to read as follows:~~

~~— 612.290 — 1. — When a total transfer of an experience record has been completed:~~

~~— (a) Payrolls, contributions paid and benefit charges must be transferred to and be a part of the experience record of the successor. Benefits paid, based on the payrolls of the predecessor, must then be charged to the experience record of the successor. If a claimant for unemployment benefits has been paid wages for the base period by the predecessor employer, the wages shall be deemed to have been paid by the successor employer.~~

~~— (b) The predecessor, as a transferring employer, may not retain the rate previously determined for him but will be classed as a new employer with respect to any employment after the date of the completed transfer.~~

~~— 2. — [When a transfer of an experience record has not been completed, the experience record and rate must be retained by the predecessor if the experience record retained by the predecessor may only be used if he should resume employment under the same identity within 8 consecutive~~

~~calendar quarters immediately following the calendar quarter in which he last reported wages as a subject employer.~~

~~—3.]~~ The contribution rate for a successor who qualifies for the transfer of an experience record for the period beginning with the date of the transfer and ending with the next effective date of contribution rates is:

(a) The contribution rate applicable to the transferring employer with respect to the period immediately preceding the date of the transfer, if:

- (1) The acquiring employer was not, before the transfer, a subject employer; and
- (2) Only one transferring employer, or only transferring employers having identical rates, are involved;

(b) A new rate, computed on the experience of the transferring employer or , *in the case of a partial transfer*, the experience attributable to the part of the business transferred, combined with the experience of the acquiring employer as of the regular computation date for the rate period in which the transfer occurs; or

(c) The rate of contribution for a newly subject employer. A computation for a contribution rate must be made in all transfers involving a severable and distinct portion of an organization, trade or business.

~~[4.]~~ 3. No transfer of an experience record and rate will be completed if it appears to the satisfaction of the administrator that a change in business organization was effected solely and primarily to obtain a more favorable contribution rate.

~~[5.]~~ 4. A protest to the determination of the division with respect to transfers must be filed not later than 15 days from the date the notice of the determination is mailed.

~~6.~~ 5. No transfer of an experience record is considered unless proper notice of any change in the organization, trade or business is filed with the division within ~~1-year~~ 90 days immediately following the effective date of the change. *The administrator, at his discretion, may waive this time limit for good cause.*

Sec. 14. NAC 612.570 is hereby amended to read as follows:

612.570 ~~[Claims for benefits must be filed by interstate claimants on uniform interstate claim forms and]~~ *An interstate claimant must file:*

1. *A claim for benefits* in accordance with procedures developed pursuant to the Interstate Benefit Payment Plan ~~[. Initial claims must be filed]~~; *and*
2. *An initial claim* in accordance with the regulations of the agent state for intrastate claims in local employment offices, or at an itinerant point, or by mail.

Sec. 15. NAC 612.015, 612.095, 612.140, 612.150 and 612.300 are hereby repealed.

TEXT OF REPEALED SECTIONS

612.015 “Eligibility period” interpreted.

1. The administrator of the employment security division interprets “eligibility period,” as that term is used in NRS 612.392, to mean:

- (a) “Benefit year,” as defined in NRS 612.030; and
- (b) “Eligibility period,” as defined in subsection 8 of NRS 612.377.

2. The administrator will deny extended benefits to a person who refuses to accept an offer of suitable work during the eligibility period, as defined in subsection 1, unless the person is subsequently employed for 4 weeks and earns at least four times the weekly amount of the extended benefit.

612.095 Conditions of eligibility: Participation in services to assist in reemployment.

1. An unemployed person who has been determined to be likely to exhaust regular benefits and to need services to assist in his reemployment, pursuant to a system of profiling established by the administrator in accordance with the provisions of 42 U.S.C. § 503, is eligible to receive benefits with respect to any week only if he participates in those services, unless the administrator determines that:

- (a) The person has completed his participation in those services; or
- (b) There is justifiable cause for the person's failure to participate in those services.

2. For the purposes of this section, "regular benefits" has the meaning ascribed to it in NRS 612.377.

612.140 Partial unemployment: Predetermination; forms for claims; eligibility during total unemployment.

1. Immediately after the termination of any pay period in which an employer has furnished any person in his employ less than the normal customary full-time weekly hours of work in any calendar week, the employer shall file with the administrative office of the employment security division an employer's request for a predetermination of the person's rights to unemployment benefits for partial unemployment on a form provided by the administrator, containing the name of the person, his social security account number, and any other information that may be required. This request must be filed not later than 30 days after the end of the calendar week.

2. Upon receipt of this form the division will promptly notify each person and the employer of the person's potential rights to partial benefits.

3. A claim for partial benefits may not be filed or determined without the written consent of the employee.

4. After an employer has been notified of the predetermination of the rights of any person in his employ, the employer, until otherwise notified, shall, immediately after the customary pay day for the pay period containing the ending day of each week which begins within the validity period of the predetermination and with respect to which the person's earnings fall below his weekly benefit amount because of lack of work in the week, furnish each eligible person with a copy of a form for claiming partial benefits provided by the administrator, setting forth the information required to file a claim for partial benefits, including the person's name and social security account number, the ending date of each week, the wages earned and a proper certification as to his having worked less than his normal customary full-time hours because of lack of work in the week.

5. A claimant who has been receiving benefits for partial unemployment may continue to file claims as if he were a partially unemployed worker for the first 4 consecutive weeks of total unemployment immediately following his period of partial unemployment as long as a continuing relationship exists with his regular employer.

612.150 Partial unemployment: Filing of claims; records of employer.

1. A claim for partial benefits filed by any person with the employment security division constitutes the person's notice of unemployment and registration for employment with respect to each week of partial unemployment covered by the claim. Except as provided in subsection 2, a

claim is not valid if it is filed more than 14 days after the person has been furnished by his employer with information as to his earnings in any week as provided in NAC 612.140.

2. If the administrator finds that the failure of any person to register and file a claim for partial unemployment benefits within the required time was due to failure on the part of the employer to comply with any of the provisions of this section or NAC 612.140 or to coercion or intimidation exercised by the employer to prevent the prompt filing of the claim, or to failure by the division to discharge its responsibilities promptly in connection with the partial unemployment, the administrator will extend the period during which the claim may be filed to a date which is not less than 1 week after the person received appropriate notice of his potential rights to benefits and his earnings during the period of partial unemployment. No claim will be accepted after 13 weeks subsequent to the end of the benefit year during which the week of unemployment occurred.

3. In addition to the requirements of NAC 612.020, each employer shall keep his payroll records in a form so that it is possible from an inspection to determine, with respect to each person in his employ, who may be eligible for partial benefits. The records must indicate:

- (a) Wages earned, by weeks;
- (b) Whether any week was in fact a week of less than full-time work; and
- (c) Time lost, if any, by each person due to his lack of ability or lack of availability for work.

4. A partially unemployed claimant who becomes totally unemployed for 4 consecutive weeks must immediately register for work in a public employment office. To be eligible to receive unemployment benefits following 4 consecutive weeks of total unemployment, the claimant must complete an application for employment during the fifth week of total unemployment if an active application for employment is not already on file for him, unless good

cause for not so doing can be shown. No week of unemployment will be paid if the active application for employment is not on file within 14 days after the end of the fourth consecutive week of total unemployment.

612.300 Employment security fund. Commencing with July 1, 1973, and on the first day of each quarter thereafter:

1. The administrator will determine the balance of money on hand in the employment security fund.
2. Any balance of money in excess of \$200,000 remaining in the employment security fund must be transferred to and deposited in the unemployment compensation fund.