

Chapter 612 of NAC

LCB File No. T020-04

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

CANCELLATION OF NOTICE OF PUBLIC HEARING AND INTENT TO ADOPT A TEMPORARY REGULATION

To Establish a Temporary Regulation on the Reporting of Wages by Limited-Liability Companies, Limited-Liability Partnerships and Limited-Liability Limited Partnerships

NRS 233B.0603 LCB File T020-04

The public hearing to receive comments from all interested parties regarding the adoption of a proposed temporary regulation scheduled at the Public Utilities Commission Carson and Las Vegas facilities at 10:00 a.m. on January 7, 2005 has been **CANCELLED**. The proposed temporary regulation would require that remuneration paid for services rendered by members and managers of Limited-Liability Companies and partners of Limited-Liability Partnerships or Limited-Liability Limited Partnerships be reportable to the Unemployment Compensation Program and subject to contributions (tax).

At the regulation workshop held on December 20, 2004, several issues requiring additional research were raised. An additional public meeting and workshop to discuss the proposed temporary regulation will be scheduled at a later date.

This notice has been posted at the following locations:

Nevada State Library, 100 Stewart Street, Carson City, NV 89701
Legislative Building, 401 South Carson Street, Carson City, NV 89701
Public Utility Commission, 1150 E. William Street, Carson City, NV 89701
Public Utility Commission, 101 Convention Center Drive, Suite 250, Las Vegas, NV 89709
Grant Sawyer State Building, 555 E. Washington Ave., Las Vegas, NV 89101
Legislative Web Site
Department of Employment, Training and Rehabilitation Web Site
All County Libraries in Nevada
Employment Security Division, State Administrative Office, 500 East Third Street, Carson City, NV 89713
Employment Security Division Southern Administrative Office, 101 Convention Center Dr. Suite 925, Las Vegas, NV 89109
Unemployment Insurance Contributions, 1320 South Curry Street, Carson City, NV 89703
Reno Field Audit Office, 1325 Corporate Blvd, Suite B, Reno, NV 89502
Las Vegas Field Audit Office, 3405 S. Maryland Parkway, Las Vegas, NV 89109
Reno Appeals Office, 1325 Corporate Blvd, Suite C, Reno, NV 89502
Las Vegas Appeals Office, 1820 E. Sahara, Suite 301, Las Vegas, NV 89104
Reno Casual Labor Office, 420 Galletti Way, Sparks, NV 89431
Las Vegas Casual Labor Office, 1001 North A Street, Las Vegas, NV 89106
Nevada JobConnect-Carson City, 1929 North Carson Street, Carson City, NV 89701

Nevada JobConnect-Elko, 172 Sixth Street, Elko, NV 89801
Nevada JobConnect-Ely, 480 Campton Street, Ely, NV 89301
Nevada JobConnect-Fallon, 121 Industrial Way, Fallon, NV 89406
Nevada JobConnect-Henderson, 119 Water Street, Henderson, NV 89015
Nevada JobConnect-Las Vegas, 3405 South Maryland Parkway, Las Vegas, NV 89109
Nevada JobConnect-North Las Vegas, 2827 Las Vegas Boulevard North, Las Vegas, NV 89030
Nevada JobConnect-Reno Town Mall, 4001 South Virginia Street, Suite H-1, Reno NV 89502
Nevada JobConnect-Sparks, 1675 E. Prater Way, Suite 103, Sparks, NV 89431
Nevada JobConnect-Winnemucca, 475 Haskell St., Suite 1, Winnemucca, NV 89445

LCB File No. T020-04

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

NEVADA ADMINISTRATIVE CODE 612 – TEMPORARY REGULATION

EXPLANATION –matter in *italics* is new.

AUTHORITY: §§ 1 AND 2, NRS 612.220 and NRS 612.060

Chapter 612 of the Nevada Administrative Code is hereby amended by adding thereto a new section to read as follows:

Section 1. *Limited-Liability Companies, Limited-Liability Partnerships and Limited-Liability Limited Partnerships are Employing Units as defined by NRS 612.060. Each member, manager, partner, limited partner or managing partner of a Limited-Liability Company, Limited-Liability Partnership or Limited-Liability Limited Partnership who receives wages, as defined by NRS 612.190, for services rendered to or on behalf of a Limited-Liability Company, Limited-Liability Partnership or Limited-Liability Limited Partnership is considered an employee of that Employing Unit under NRS Chapter 612. Said Employing Unit is liable for the filing of reports and the payment of contributions of any such employee.*

Section 2. *Funds distributed to members as a return on investment and not as compensation for services, are not considered wages and need not be reported.*

Section 3. *This regulation becomes effective April 1, 2005.*

Small Business Impact Statement

Requirement of Limited-Liability Companies, Limited-Liability Partnerships and Limited-Liability Limited Partnerships to Report Remuneration Paid to Members, Managers or Partners for Unemployment Compensation Program.

Effective April 1, 2005

Back Ground

The Nevada Revised Statutes (NRS) 86 created "Limited-Liability Companies" in 1991 and NRS 87 provided for the establishment of "Limited-Liability Partnership" in 1995. NRS 88 provided for the establishment of "Limited-Liability Limited Partnerships" during the 2003 legislative session. Neither the member/manager of a Limited-Liability Company nor the partner of a Limited-Liability Partnership and Limited-Liability Limited Partnership can be held liable for the debts and liabilities of the business or named on any legal documents. The business is the actual legal entity and, therefore, considered the "employing unit" for unemployment compensation insurance. As a result, the Division has determined that remuneration paid for services rendered by the members and managers of Limited-Liability Companies and partners of Limited-Liability Partnerships and Limited-Liability Limited Partnerships be reportable to the Unemployment Compensation Program and subject to contributions (tax).

This impact statement applies to small businesses as defined in NRS 233B.0382 as a "business conducted for profit which employs fewer than 150 full-time or part-time employees."

DESCRIPTION OF HOW COMMENT WAS SOLICITED FROM AFFECTED SMALL BUSINESSES.

A public meeting was held December 3, 2004 at 9:30 a.m. to allow for comments from the general public and small businesses on the proposed temporary regulation to be effective April 1, 2005. The workshop was held at the Department of Employment, Training and Rehabilitation, 500 E. Third Street, Auditorium, Carson City, Nevada. The public meeting was also videoconferenced to:

Nevada JobConnect-Las Vegas
3405 S. Maryland Parkway-Conference Room
Las Vegas, Nevada 89109

Nevada JobConnect-Reno Town Mall
4001 South Virginia Street, Suite H-1
Reno, Nevada 89502

Nevada JobConnect-Elko
172 Sixth Street
Elko, NV 89801

Notice of the workshop was mailed November 22, 2004, to all individuals on the Employment Security Division mailing list. Notice was posted at the principal office of the Employment Security Division in Carson City, Nevada, as well as numerous offices of the Employment Security Division

throughout the state. In addition, the notice was submitted to the Nevada State Library, and all county libraries in the state, and on the web site of the Department of Employment, Training and Rehabilitation.

Copies of the minutes from the public meeting may be obtained from the Employment Security Division, 500 East Third Street, Carson City, Nevada 89713, or call Joyce Golden at (775) 684-3909 after December 3, 2004. Written responses to the questions received from the public meeting will be available at the December 20, 2004 workshop or may be viewed at web site of the Department of Employment, Training and Rehabilitation at <http://detr.state.nv.us> on or after December 16, 2004.

ESTIMATED ECONOMIC EFFECT OF THE PROPOSED REGULATION ON NEVADA SMALL BUSINESSES

Beneficial Effects

The implementation of this temporary regulation provides the reassurance of a fair and consistent application of NRS Chapter 612 to all business entities within Nevada. The wages reported for unemployment compensation would be allowable in determining unemployment insurance benefits.

Adverse effects

Limited-Liability Companies, Limited-Liability Partnerships and Limited-Liability Limited Partnerships that pay remuneration for services rendered by members, managers or partners would be required to report and pay contributions for unemployment compensation on those individuals. The taxable wage base for year 2005 is \$22,900. The unemployment contributions based on the average tax rate of 1.38% for experience rated employers would be \$316.02 per employee. A new employer would be subject to the unemployment compensation rate of 2.95% for at least three years and would pay contributions up to \$675.55 per employee for year 2005.

Direct effect

Presently there are limited-liability entities that are registered and reporting their members, managers or partners for unemployment compensation. However, the number of limited-liability entities not registered for unemployment compensation that pay remuneration for services rendered to members, managers or partners is not known. Therefore, a direct effect cannot be estimated.

Indirect effect

The limited-liability business entities that become subject to the Unemployment Compensation Plan will have their wages subject to the modified business tax, administered by the Department of Taxation.

Methods Considered in the Reduction of the Impact of the Proposed Regulations to Small Businesses

After meeting with various representatives of small business employers, the Division modified Section 2 of the proposed regulation. Originally, the proposed regulation required that the distribution of profits to limited-liability entities be in proportion to each owner's percentage of ownership. However, it was noted that in today's business structures, that definition was too narrow of a basis for reflecting the way a return on investment is calculated.

While comments were received requesting more specificity in the definition of wages, the Division believes that additional language would only create a more complex regulation. Earnings received from passive investments do not constitute wages. Services must be provided and remuneration received on those services to constitute wages.

Estimated Cost for Enforcement

There is no additional cost for enforcement of this regulation. Funds for the administration of the unemployment compensation program are provided by the U.S. Department of Labor.

Anticipated Revenue Increase and Use

The proposed regulation is not creating a new fee or increasing an existing fee. Rather, it is requiring that remuneration paid for services rendered by members and managers of Limited-Liability Companies and partners of Limited-Liability Partners and Limited-Liability Limited Partnerships be reported for unemployment compensation purposes and contributions paid. The contributions received may only be used to pay for unemployment compensation benefit payments.

Duplication or More Stringent Standards of Federal, State or Local Governments

This temporary regulation does not duplicate or overlap any other regulation of federal, state or local governments. The provisions are not more stringent than are considered necessary to ensure fair and consistent reporting of wages and contributions pursuant to NRS 612 by employing units within the State of Nevada.