

**LCB File No. E007-09**

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

**(Effective for 120 days from December 7, 2009)**

AUTHORITY: §§1 and 2, NRS 612.220 and 612.550.

A REGULATION relating to unemployment compensation; prescribing the schedule of contribution rates for eligible employers for calendar year 2010; and providing other matters properly relating thereto.

**Section 1.** NAC 612.270 is hereby amended to read as follows:

612.270 The Administrator establishes the following schedule of contribution rates for

eligible employers for calendar year ~~2009;~~ **2010:**

1. Class 1: A rate of 0.25 percent is assigned to each employer whose reserve ratio is ~~6.9~~ **5.2** percent or more;
2. Class 2: A rate of 0.55 percent is assigned to each employer whose reserve ratio is at least ~~5.5~~ **3.8** percent but less than ~~6.9~~ **5.2** percent;
3. Class 3: A rate of 0.85 percent is assigned to each employer whose reserve ratio is at least ~~4.1~~ **2.4** percent but less than ~~5.5~~ **3.8** percent;
4. Class 4: A rate of 1.15 percent is assigned to each employer whose reserve ratio is at least ~~2.7~~ **1.0** percent but less than ~~4.1~~ **2.4** percent;
5. Class 5: A rate of 1.45 percent is assigned to each employer whose reserve ratio is at least ~~1.3~~ **-0.4** percent but less than ~~2.7~~ **1.0** percent;
6. Class 6: A rate of 1.75 percent is assigned to each employer whose reserve ratio is at least ~~0.1~~ **-1.8** percent but less than ~~1.3~~ **-0.4** percent;

7. Class 7: A rate of 2.05 percent is assigned to each employer whose reserve ratio is at least ~~[-1.5]~~ -3.2 percent but less than ~~[-0.1]~~ -1.8 percent;
8. Class 8: A rate of 2.35 percent is assigned to each employer whose reserve ratio is at least ~~[-2.9]~~ -4.6 percent but less than ~~[-1.5]~~ -3.2 percent;
9. Class 9: A rate of 2.65 percent is assigned to each employer whose reserve ratio is at least ~~[-4.3]~~ -6.0 percent but less than ~~[-2.9]~~ -4.6 percent;
10. Class 10: A rate of 2.95 percent is assigned to each employer whose reserve ratio is at least ~~[-5.7]~~ -7.4 percent but less than ~~[-4.3]~~ -6.0 percent;
11. Class 11: A rate of 3.25 percent is assigned to each employer whose reserve ratio is at least ~~[-7.1]~~ -8.8 percent but less than ~~[-5.7]~~ -7.4 percent;
12. Class 12: A rate of 3.55 percent is assigned to each employer whose reserve ratio is at least ~~[-8.5]~~ -10.2 percent but less than ~~[-7.1]~~ -8.8 percent;
13. Class 13: A rate of 3.85 percent is assigned to each employer whose reserve ratio is at least ~~[-9.9]~~ -11.6 percent but less than ~~[-8.5]~~ -10.2 percent;
14. Class 14: A rate of 4.15 percent is assigned to each employer whose reserve ratio is at least ~~[-11.3]~~ -13.0 percent but less than ~~[-9.9]~~ -11.6 percent;
15. Class 15: A rate of 4.45 percent is assigned to each employer whose reserve ratio is at least ~~[-12.7]~~ -14.4 percent but less than ~~[-11.3]~~ -13.0 percent;
16. Class 16: A rate of 4.75 percent is assigned to each employer whose reserve ratio is at least ~~[-14.1]~~ -15.8 percent but less than ~~[-12.7]~~ -14.4 percent;
17. Class 17: A rate of 5.05 percent is assigned to each employer whose reserve ratio is at least ~~[-15.5]~~ -17.2 percent but less than ~~[-14.1]~~ -15.8 percent; and

18. Class 18: A rate of 5.4 percent is assigned to each employer whose reserve ratio is less than ~~[-15.5]~~ -17.2 percent.

**Sec. 2.** This regulation becomes effective upon approval of the Governor and upon filing with the Secretary of State and expires 120 days after its effective date.

**Statement of Emergency.**

The Administrator of the Employment Security Division is charged with the responsibility of establishing an annual tax rate schedule for unemployment compensation contribution rates for experienced rated employers in the state in accordance with Nevada Revised Statute 612.550. The regulatory process cannot begin until September 30 of each year and must be completed in time to mail the new rates to employers prior to their enactment on January 1 of the following year. This leaves 80-85 days to complete the regulatory process. Passage of SB367 during the 2007 legislative session increased the regulatory process by 30 days which further impacted the rate development time frame. The Division requested early review and approval of the regulation by the Legislative Commission's Subcommittee to Review Regulations on November 24, 2009. The committee declined to take action on the regulation suggesting the Division request the Governor enact and emergency regulation. The Division must have the tax rate regulations in place on January 1<sup>st</sup> of each year to be in conformance with federal law. It is critical to establish and disseminate these rates to employers across the state to avoid interruptions to the Unemployment Insurance processes and to ensure the continued payment of benefits to unemployed workers. Pursuant to NRS 233B.0613. I declare that an emergency exists and request the Governor of the State of Nevada to endorse this Statement of Emergency so that the adoption of the 2010 rates for unemployment insurance can occur in a timely manner.

Dated this 7<sup>th</sup> day of December 2009

\_\_\_\_\_  
/s/  
Cynthia Jones, Administrator  
Employment Security Division

I hereby endorse the Statement of Emergency prepared by the Administrator of the Employment Security Division, Department of Employment, Training and Rehabilitation.

Dated this 7<sup>th</sup> day of December, 2009.

\_\_\_\_\_  
/s/  
Jim Gibbons, Governor  
State of Nevada

## INFORMATIONAL STATEMENT

State of Nevada  
Department of Employment, Training and Rehabilitation  
Employment Security Division

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066  
LCB FILE R127-09

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 612.270.

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

**Employment Security Council (ESC) Workshop/Meeting**

In compliance with NRS 233B.061 and NRS 612.305, a regular meeting of the Employment Security Council was held on October 6, 2009, at the Legislative Building, 401 S. Carson Street, Room 3137, Carson City, Nevada, to consider the unemployment contribution rate schedule to be adopted for calendar year 2010. The meeting was also video conferenced to the Grant Sawyer Building, 555 East Washington Avenue, Room 4412E, Las Vegas, Nevada. Notice of the meeting was mailed on September 15, 2009, to all individuals on the Employment Security Division mailing list. Notice was posted at the principle Employment Security Division office in Carson City, as well as Employment Security Division field offices throughout the state. In addition, the notice was submitted to the Legislative Counsel Bureau, the Nevada State Library, and all main county libraries in the state, and was posted on the web sites of the Department of Employment, Training and Rehabilitation and the Legislative Counsel Bureau. The meeting was also noticed in three newspapers, the Reno Gazette journal, Nevada Appeal and the Las Vegas Review Journal.

- 2. The number of persons who:**
  - (a) Attended the workshop: 47**
  - (b) Testified at the workshop: 9**
  - (c) Submitted to the agency written comments: 3**

A total of 47 persons attended the workshop, including nine members of the Employment Security Council and nineteen staff members.

Three Department of Employment, Training and Rehabilitation staff members testified at the workshop regarding economic conditions, the state of the Unemployment Insurance Trust Fund, and the proposed contribution rate schedule.

Three written comments were received from the public prior to the workshop. Nine individuals testified at the workshop. The verbal and written comments were very similar, indicating that based on the current economic environment, an increase in the Unemployment Insurance

employer tax would be detrimental to business in Nevada at this time. Several of the participants indicated that they would be willing to endure a tax increase when the economy and business in Nevada was on an upswing.

The Employment Security Council voted unanimously to retain the existing contribution rate schedule, which provides for an average employer tax rate of 1.33 percent of taxable wages for calendar year 2010. The council consisted of three members representing labor, three members representing the general public and three members representing employers.

### **Small Business Workshop**

In compliance with NRS 233B.0608 and NRS 233B.0609, the Department Of Employment, Training and Rehabilitation assessed whether the proposed regulation amendment would impose a significant economic burden upon small business. The Employment Security Council did not recommend an increase in the average tax rate for Nevada businesses. As a result, the agency assessed, and then issued a small impact business statement which indicated that no small business impact had been created. Although no impact was determined, the Employment Security Division went on to conduct a small business workshop to assist small business owners with any questions about next year's tax rate or the current financial stability of the trust fund. The small business workshop was conducted on October 12, 2009 at room 2135 of the Legislative Council Bureau. The workshop was also video conferenced to room 4412E of the Grant Sawyer Building in Las Vegas. Notice of the workshop was mailed on September 23, 2009 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 in numerous offices of the Employment Security Division throughout the state. In addition the notice was submitted to the Legislative Counsel Bureau, the Nevada State Library, and all county libraries in the state, the Public Utilities Commission offices in Carson City and Las Vegas and on the web sites of the Department of Employment Training and Rehabilitation, the Legislative Counsel Bureau and the Public Utilities Commission.

#### **The number of persons who:**

- (a) Attended the workshop: 10**
- (b) Testified at the workshop: 3**
- (c) Submitted to the agency written comments: 0**

Cynthia A. Jones, Administrator of the Employment Security Division of the Department of Employment, Training, and Rehabilitation, presided and was accompanied by nine staff members and the Division's legal counsel. Three staff members of the Department of Employment, Training, and Rehabilitation testified at the workshop. No written or verbal comments were received. Only one member of the press attended this workshop.

### **Public Hearing**

In compliance with NRS 233B.0603, a public hearing was held on December 7, 2009, at the auditorium of the Department of Employment, Training and Rehabilitation, 500 E. Third Street, Carson City, Nevada. The hearing was also video conferenced to the Southern office of the Department of Employment, Training and Rehabilitation, 2800 E. St. Louis Avenue, Conference Room C, Las Vegas, Nevada. A copy of the proposed regulation and Notice of Intent to Adopt a

Regulation were submitted to the Legislative Counsel Bureau and the Nevada State Library on October 6, 2009, providing at least 30 days notice of the Employment Security Division's intention to adopt the regulation. The notice included a copy of the proposed regulation and contained a statement of the need and purpose of the regulation. It further specified a time and location for a public hearing, at which interested individuals would be given the opportunity to present their views, or submit any evidence to that effect. Notice was posted at the principal office of the Employment Security Division in Carson City, as well as numerous offices of the Employment Security Division throughout the state. Notice of the public hearing was mailed on November 6, 2009 to all individuals on the Employment Security Division mailing list, submitted to all main county libraries in the state and was posted on the web sites of the Department of Employment Training and Rehabilitation and the Legislative Counsel Bureau. The meeting was noticed in three newspapers. They were the Reno Gazette Journal, Nevada Appeal and the Las Vegas Review Journal.

There were no verbal or written comments received.

**The number of persons who:**

- (a) Attended the hearing: 5**
- (b) Testified at the hearing: 0**
- (c) Submitted to the agency written comments: 0**

A total of six people attended the public hearing. Cynthia A. Jones, Administrator of the Employment Security Division of the Department of Employment, Training, and Rehabilitation, presided over the hearing. Four staff members from the Department of Employment, Training and Rehabilitation attended the meeting along with one newspaper reporter. No staff members provided testimony during the hearing. No written comments were received.

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comment was solicited from affected businesses in the same manner as for the public, as indicated above. In addition a small business workshop was conducted to address any issues that small business owners might have.

Copies of the minutes from the Employment Security Council meeting/workshop, the small business workshop, the public hearing, as well as this summary, may be obtained from Joyce Golden, Employment Security Division, 500 East Third Street, Carson City, Nevada 89713, (775) 684-3909 and are also being made available on the Department's web site at [www.nvdetr.org](http://www.nvdetr.org).

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The regulation was adopted without change, as recommended by the Employment Security Council. The public expressed no opposition, either verbally or in written statements, to maintaining the average tax rate at its current level.

**5. The estimated economic effect of the adopted regulation on the businesses that it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) Both adverse and beneficial effects: and**
- (b) Both immediate and long-term effects.**

**Business**

(a) All Nevada employers who are required by the Nevada Unemployment Compensation Law to pay state unemployment compensation contributions, and are eligible for a rate under the experience rating system, are affected by the adopted regulation, which sets the employer contribution rates for calendar year 2010. The adopted contribution rate schedule benefits businesses as there was no increase of the average tax rate for 2010. The continuation of the average tax rate at 1.33% allows businesses to avoid higher Unemployment Insurance taxes at a time when they are experiencing decreased earnings due to the current economic recession. The anticipated adverse effects include having to raise Unemployment Insurance contributions in the future to rebuild the depleted trust fund. Participants acknowledged this issue at the workshop, but all testifiers indicated that they would rather experience a tax increase when the economy had improved.

(b) The immediate effect of the regulation is to continue payment of unemployment benefits with no increase to the average contribution rate paid by employers. The long-term effect is that Nevada will have to utilize Federal loans to pay Unemployment Insurance claims in late 2009 and continuing into 2010. Current projections estimate the trust fund deficit at approximately \$889 million for calendar year 2010.

**Public**

(a) There are no anticipated adverse effects on the public. It is anticipated that the adopted contribution rate schedule will benefit the public by not contributing to the economic hardship currently being experienced by Nevada businesses. Additional layoffs should not be necessary as a result of this regulation. In addition, continued payment of benefits to unemployed workers will enable them to purchase basic goods and services. Payment of benefits also serves as an economic stabilizer for the Nevada economy, particularly during the current economic downturn.

(b) The immediate effect on the public is to ensure payment of unemployment benefits to workers who are unemployed through no fault of their own. The long-term effect is continued payment of benefits, as this process is federally mandated.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

There is no additional cost to the agency for enforcement of this regulation.

**7. A description of any regulations of other state or government agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The proposed regulation does not overlap or duplicate regulations of other state or government agencies.

**8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

There are no federal regulations that regulate the same activity.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount of the agency expects to collect and the manner in which the money will be used.**

The regulation does not provide for a new fee or increase an existing fee.