

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

LCB File No. R149-10

Effective January 1, 2011

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

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

A REGULATION relating to unemployment compensation; prescribing the contribution rate schedule for calendar year 2011; 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 ~~2010;~~ *2011*:

1. Class 1: A rate of 0.25 percent is assigned to each employer whose reserve ratio is ~~5.2~~ *8.5* percent or more;
2. Class 2: A rate of 0.55 percent is assigned to each employer whose reserve ratio is at least ~~3.8~~ *6.9* percent but less than ~~5.2~~ *8.5* percent;
3. Class 3: A rate of 0.85 percent is assigned to each employer whose reserve ratio is at least ~~2.4~~ *5.3* percent but less than ~~3.8~~ *6.9* percent;
4. Class 4: A rate of 1.15 percent is assigned to each employer whose reserve ratio is at least ~~1.0~~ *3.7* percent but less than ~~2.4~~ *5.3* percent;
5. Class 5: A rate of 1.45 percent is assigned to each employer whose reserve ratio is at least ~~0.4~~ *2.1* percent but less than ~~1.0~~ *3.7* percent;

6. Class 6: A rate of 1.75 percent is assigned to each employer whose reserve ratio is at least ~~[-1.8]~~ 0.5 percent but less than ~~[-0.4]~~ 2.1 percent;
7. Class 7: A rate of 2.05 percent is assigned to each employer whose reserve ratio is at least ~~[-3.2]~~ -1.1 percent but less than ~~[-1.8]~~ 0.5 percent;
8. Class 8: A rate of 2.35 percent is assigned to each employer whose reserve ratio is at least ~~[-4.6]~~ -2.7 percent but less than ~~[-3.2]~~ -1.1 percent;
9. Class 9: A rate of 2.65 percent is assigned to each employer whose reserve ratio is at least ~~[-6.0]~~ -4.3 percent but less than ~~[-4.6]~~ -2.7 percent;
10. Class 10: A rate of 2.95 percent is assigned to each employer whose reserve ratio is at least ~~[-7.4]~~ -5.9 percent but less than ~~[-6.0]~~ -4.3 percent;
11. Class 11: A rate of 3.25 percent is assigned to each employer whose reserve ratio is at least ~~[-8.8]~~ -7.5 percent but less than ~~[-7.4]~~ -5.9 percent;
12. Class 12: A rate of 3.55 percent is assigned to each employer whose reserve ratio is at least ~~[-10.2]~~ -9.1 percent but less than ~~[-8.8]~~ -7.5 percent;
13. Class 13: A rate of 3.85 percent is assigned to each employer whose reserve ratio is at least ~~[-11.6]~~ -10.7 percent but less than ~~[-10.2]~~ -9.1 percent;
14. Class 14: A rate of 4.15 percent is assigned to each employer whose reserve ratio is at least ~~[-13.0]~~ -12.3 percent but less than ~~[-11.6]~~ -10.7 percent;
15. Class 15: A rate of 4.45 percent is assigned to each employer whose reserve ratio is at least ~~[-14.4]~~ -13.9 percent but less than ~~[-13.0]~~ -12.3 percent;
16. Class 16: A rate of 4.75 percent is assigned to each employer whose reserve ratio is at least ~~[-15.8]~~ -15.5 percent but less than ~~[-14.4]~~ -13.9 percent;

17. Class 17: A rate of 5.05 percent is assigned to each employer whose reserve ratio is at least ~~[-17.2]~~ -17.1 percent but less than ~~[-15.8]~~ -15.5 percent; and

18. Class 18: A rate of 5.4 percent is assigned to each employer whose reserve ratio is less than ~~[-17.2]~~ -17.1 percent.

Sec. 2. This regulation becomes effective on January 1, 2011.

**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 R 149-10**

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

- **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 Meetings/Workshops

In compliance with NRS 233B.061 and NRS 612.305, two meetings of the Employment Security Council were held to solicit public comment. The first meeting was held on August 3, 2010 and the second on October 5, 2010. Both meetings were held at the Legislative Building, 401 S. Carson Street, Room 2135, Carson City, Nevada. The meetings were also video-conferenced to the Grant Sawyer Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada. Both meetings were broadcast on the Internet at www.leg.state.nv.us.

Notice of the August 3, 2010 meeting along with a “Request for Comments from Small Businesses” was mailed on July 13, 2010. The notice of the October 5, 2010 meeting and the “Request for Comments from Small Businesses” was mailed on September 16, 2010. The notices were sent to all individuals on the Employment Security Division mailing list. Notices were posted at the principle offices of the Employment Security Division in Carson City and Las Vegas, as well as numerous offices of the Employment Security Division throughout the state. In addition, the notices were submitted to the Legislative Counsel Bureau, the Nevada State Library and Archives, all main county libraries in the state, and both posted on the web site of the Department of Employment, Training and Rehabilitation at www.nvdetr.org. The October 5, 2010 meeting was also posted on the web site for the Legislative Counsel Bureau at <http://leg.state.nv.us/Register>. Both meeting notices were published in three newspapers, the Reno Gazette Journal, Nevada Appeal, and the Las Vegas Review Journal.

- **The number of persons who:**
 - (a) **Attended the August 3, 2010 meeting: 38**
Attended the October 5, 2010 meeting: 41
 - (b) **Testified at the August 3, 2010 meeting: 2**
Testified at the October 5, 2010 meeting: 6
 - (c) **Submitted to the agency written comments for August 3, 2010: 1**
Submitted to the agency written comments for October 5, 2010: 2

At the August 3, 2010 meeting, three Department of Employment, Training and Rehabilitation staff members provided information regarding the status of the Unemployment Insurance trust fund and the impact of federal borrowing to supplement the state trust fund. Testimony was provided by two representatives from two different employer associations. One representative commented about paying interest on the trust fund loan and stated the agency should consider a slow process of rate increases to allow time for people to get back to work. The other representative indicated an increase to unemployment insurance tax is necessary, regardless if the increase is a single rate increase or a stepped program of gradual increases. The one written comment submitted was from a small business in Sparks, Nevada recommending no increase to the rate, in order to maintain and not increase employers' overhead costs.

At the meeting on October 5, 2010, presentations were provided by three Department of Employment, Training and Rehabilitation staff members to review, discuss, and solicit public comment on the proposed amendment of the regulation that will establish the Unemployment Insurance tax rate schedule for Nevada employers for the 2011 calendar year. Public testimony was provided by six representatives from various Nevada business groups. One Las Vegas group recommended the tax rate remain the same that any tax increase, however slight, is too much to ask of employers at this time. Two groups with members statewide, acknowledged a tax increase was necessary, but recommended only the lowest possible increase for 2011, to allow time for recovery and to see what other business actions come out of the next legislative session. Two Northern Nevada groups recommended a tax increase; one suggested an increase for 2011 and realized an increase may also be needed the following year. The other group recommended a tax increase as high as 3% was needed. The final testimony came from a statewide organization that recommended as they did last year, to increase the average tax rate to 2%. Additionally, two written comments were received. The first comment, from a small business in Carson City, Nevada was against any tax increase at this time. The second comment, from an employers association, recommended a rate increase large enough to stop the State from borrowing from the federal trust fund.

The Employment Security Council voted unanimously to recommend to the Administrator of the Employment Security Division an increase to the average unemployment insurance tax rate, from 1.33% to 2.0%, for experience rated employers.

Small Business Workshop

In accordance with NRS 233B.0608 and NRS 233B.0609, the Department of Employment, Training and Rehabilitation determined the impact of the proposed regulation amendment on small businesses and held a Small Business Workshop to solicit public comment.

The meeting was held on October 25, 2010 at the Legislative Building, 401 S. Carson Street, Room 2135, Carson City, Nevada. The meeting was also video conferenced to the Grant Sawyer Building, 555 East Washington Avenue, Room 4412E, Las Vegas, Nevada. The meeting was broadcast on the Internet.

The meeting notice was mailed on October 7, 2010. The notice was sent to all individuals on the Employment Security Division mailing list. The notice was posted at the principle offices of the Employment Security Division in Carson City and Las Vegas, as well as 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 Archives, 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 notice was published in three newspapers, the Reno Gazette Journal, Nevada Appeal, and the Las Vegas Review Journal.

- **The number of persons who:**
 - (a) **Attended the workshop: 13**
 - (b) **Testified at the workshop: 3**
 - (c) **Submitted to the agency written comments: 1**

Presentations at the meeting were made by two staff members from the Department of Employment, Training and Rehabilitation to provide information and solicit public comment on a proposed regulation. The proposed regulation establishes the unemployment tax rate schedule for Nevada employers for calendar year 2011, which increases the average annual unemployment insurance tax rate from 1.33% to 2.0%. Testimony was heard from two restaurants in Southern Nevada; both advocated for no increase. A representative from a statewide organization provided testimony of acceptance that an increase to the average tax rate was necessary, but described concern about the unknown outcomes of the next state legislative session. Written comments were submitted by one small business from Sparks, Nevada stating strong opposition to an increase to the unemployment insurance tax rate.

Public Hearing

In compliance with NRS 233B.0603, a public hearing was held on December 7, 2010, at the State Administrative Office of the Employment Security Division, 500 E. Third Street, Auditorium, Carson City, Nevada. The hearing was video conferenced to the Southern Administrative Office of the Employment Security Division, 2800 E. St Louis Avenue, Conference Room C, Las Vegas, Nevada.

A copy of the proposed regulation and Notice of Intent to Act Upon a Regulation were submitted to the Legislative Counsel Bureau and the Nevada State Library and Archives on November 5, 2010, providing at least 30 days notice of the Employment Security Division's intention to adopt the regulation. The notice 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 to submit any oral or written evidence. Notice of the public hearing and a copy of the proposed regulation were mailed on November 5, 2010, to all individuals on the Employment Security Division mailing list. The information was posted at the principal offices of the Employment Security Division in Carson City and Las Vegas, as well as numerous offices of the Employment Security Division throughout the state. In addition, the information was 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 notice and the proposed regulation were published in three newspapers, the Reno Gazette Journal, Nevada Appeal, and the Las Vegas Review Journal.

- **The number of persons who:**
 - (a) **Attended the hearing: 16**
 - (b) **Testified at the hearing: 1**
 - (c) **Submitted to the agency written comments: 1 email**

Cynthia A. Jones, Administrator of the Employment Security Division of the Department of Employment, Training, and Rehabilitation, presided over the hearing. After providing a review of the process followed to establish the Unemployment Insurance tax rate schedule for 2011, the Administrator requested public comment. A representative from the Las Vegas Chamber of Commerce testified that although not in support of a tax increase, was appreciative the rate increase was not as high as some had recommended. Additionally, one email, representing approximately 100 persons, was received in opposition of a tax rate increase.

Interested persons may obtain copies of this summary as well as minutes from any of the public meetings by contacting Joyce Golden, Employment Security Division, 500 East Third Street, Carson City, Nevada 89713, (775) 684-3909. Also, the documents will be available on the Department's web site at www.nvdetr.org.

- **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 at the public meetings held August 3, 2010, October 5, 2010, October 25, 2010, and the public hearing on December 7, 2010.

- **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 from the proposed regulation. The regulation was based on the recommendation of the Employment Security Council and input from the public, resulting in a determination that an increase to the average tax from 1.33% to 2.0% was necessary.

- **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 2011. A beneficial economic effect on businesses of a rate increase is that it will allow Nevada to reduce borrowing from the federal trust fund needed to cover payment of unemployment benefits. Additionally, it will minimize the increase of the FUTA tax employers must pay.

An adverse economic effect on businesses is that employers with a high employee turnover rate will be more likely to shift into a higher tax rate. It is projected that 7,842 or 23% of small businesses eligible for experience rating will have a rate increase.

b. The immediate effect of the regulation on businesses is that employers, who are eligible for experience rating and depending on their particular experience with unemployment, will be more likely to pay unemployment insurance tax at an increased rate. The increase to the average tax rate is expected to increase contributions by over \$136 million in calendar year 2011, reducing the current deficit spending and reducing the amount of interest accrued on outstanding loans.

The long-term goal is to regain solvency of the unemployment trust fund to pay future benefits. On September 30, 2010, the balance of loans covering the Unemployment Insurance Trust Fund was \$526 million. With the increased average tax rate, it is estimated the trust fund loan balance will be \$820.5 million on September 30, 2011. At that level, the fund would be approximately \$1 billion, 915 million under the minimum state solvency requirement as provided in NRS 612.550.

Public

a. There are no adverse effects on the public anticipated. The beneficial effect to the public is that the adopted contribution rate schedule will ensure continued payment of unemployment benefits to unemployed workers, which will enable them to purchase basic goods and services. Payment of benefits also serves as an economic stabilizer for the Nevada economy, particularly during periods of an 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 to regain solvency of the unemployment trust fund to ensure payment of such benefits in the future eliminating the need to borrow funds from the federal government.

- **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.

- **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.

- **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.

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

The adopted regulation increases the average unemployment insurance tax rate for experience rated employers from 1.33% to 2.0%. The increase is expected to add about \$136 million to the Unemployment Insurance Trust Fund in calendar year 2011, for payment of unemployment benefits. This increase will reduce current deficit spending and the amount of interest accrued on outstanding loans from the federal government.