

AGENDA ITEM IX.A – Proposed Regulation Revisions – *For Possible Action*

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original regulation; (2) variations of *green bold underlining* is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original regulation; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original regulation proposed to be retained in this amendment.

IX.A: Proposed amendment/clarification of regulations **NAC 612.120, 612.290, 612.470, and 612.660 – *For Possible Action*** to amend/clarify by adding **electronically transmitted** to the stated regulations.

NAC 612.120 Employing units: Notification of claims, determinations and rulings; reports of relevant facts; protest of payment of benefits; relief from charging of benefits. (NRS 612.220, 612.475, 612.551)

1. The last or next to last employing unit that receives a notice of the first claim filed by a claimant following separation from employment must, within 11 days after the date of the notice, submit to the Division all relevant facts that affect the claimant's rights to benefits, including all relevant facts which disclose that the claimant separated from employment voluntarily and without good cause, or was discharged for misconduct in connection with his or her employment.
2. The last or next to last employing unit may protest the payment of benefits if the protest is filed within 11 days after the date of the notice of filing the claim. If the employing unit has filed a report of all relevant facts in a timely manner that might adversely affect the claimant's rights to benefits, the report is considered as a protest to the payment of benefits.
3. The last or next to last employing unit that has filed a response in a timely manner will be notified in writing of the determination as to the claimant's rights to benefits. If the last or next to last employing unit has contributed 75 percent of the claimant's base period earnings and has submitted all relevant facts in a timely manner indicating that the claimant quit voluntarily without good cause, or was discharged for misconduct in connection with his or her employment, the employer will be notified in writing of the Division's ruling as to the cause of termination of the claimant's employment and whether the experience rating record of the employer is chargeable with benefits paid the claimant.
4. The last or next to last employing unit is entitled to relief from the charging of benefits to its experience rating record if the claimant is found to have quit employment with the employing unit solely to accept other employment.
5. Any employing unit that paid wages to the claimant in the base period of the claim will be notified of the first claim filed which results in a determination that the claimant is an insured worker. The base period employer so notified must, within 11 days, submit all relevant facts disclosing whether the claimant was discharged for a crime committed in connection with his or her employment. The Division will issue a decision setting forth whether the wages will be denied in the determination of the payment of benefits.
6. Any notice of determination or ruling will contain a statement setting forth the right of appeal.
7. The notice of first claim filed which is mailed *or electronically transmitted* to the last or next to last employing unit must be addressed to:
 - (a) The employing unit's place of business where the claimant was most recently employed;
 - (b) The business office of the employing unit where the records of the claimant's employment are maintained; or
 - (c) The business office of an authorized agent of the employing unit if the employing unit has filed with the Administrator an approved authorization designating the agent to represent the employing unit.
8. Any notice properly addressed to the last known address of the employing unit or its authorized agent constitutes proper notification to the employing unit of the first claim filed.
9. The notice of first claim filed which is mailed *or electronically transmitted* to a base period employer who is not the last or next to last employer of the claimant must be addressed to:
 - (a) The employing unit's place of business where the claimant was most recently employed;
 - (b) The business office of the employing unit where the records of the claimant's employment are maintained;
 - (c) The address or addresses as requested by the employer and agreed to by the Administrator; or
 - (d) The business office of an authorized agent of the employing unit if the employing unit has filed with the Administrator an approved authorization designating the agent to represent the employing unit.

→Any notice properly addressed to the last known address of the employer or his or her authorized agent constitutes proper notice to the base period employer.

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10. As used in this section, “all relevant facts” includes, without limitation, dates of employment, type of work performed, specific reason given for separation from employment, the final incident to cause the separation from employment and prior disciplinary warnings of a similar nature given, if any.

[Employment Security Department, No. 45 §§ I & II, eff. 12-16-70] — (NAC A 6-3-85; A by Employment Security Division, 7-5-94; R199-05 & R201-05, 2-23-2006)

NAC 612.290 Transfers of experience record: Effects of and restriction on completion; protest and appeal of determination of Division. (NRS 612.220, 612.250, 612.550, 612.732)

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 or her but will be classed as a new employer with respect to any employment after the date of the completed transfer.

2. 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.

3. No transfer of an experience record and rate will be completed if the Administrator determines that an acquisition or change of all or part of a business organization was effected solely or primarily to obtain a more favorable contribution rate. In determining whether an acquisition was primarily for the purpose of obtaining a lower rate of contributions, the Administrator will use objective factors which may include, without limitation:

(a) The cost of acquiring the business;

(b) Whether the acquiring person continued the business enterprise of the acquired business;

(c) How long the business enterprise was continued; and

(d) Whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted before the acquisition.

4. A protest to the determination of the Division with respect to transfers must be filed not later than 15 days after the date the notice of the determination is mailed *or electronically transmitted*. An appeal may be filed within 11 days after the date a determination, based on the protest, is mailed *or electronically transmitted* by the Division.

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NAC 612.470 Effective period; notices and reports. (NRS 612.220, 612.295, 612.750)

1. An election approved under NAC 612.440 to 612.470, inclusive, becomes effective at the beginning of the calendar quarter in which the election was submitted, unless the election as approved specifies the beginning of a different calendar quarter.
2. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, the earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.
3. If the agency of the elected jurisdiction finds that the nature of the services customarily performed by the person for the electing unit have changed so that they are no longer customarily performed in more than one participating jurisdiction, the election may be terminated. This termination is effective as of the close of the calendar quarter in which notice of the finding is mailed *or electronically transmitted* to all parties affected.
4. Except as provided in subsection 3, each election approved remains in effect through the close of the calendar year in which it is submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.
5. If an election ceases to apply to any person under subsection 3 or 4, the electing unit shall notify the person affected accordingly.
6. The electing unit shall promptly notify each person affected by its approved election and furnish the elected agency a copy of the notice.
7. If a person covered by an election is separated from his or her employment, the electing unit shall again notify the person as to the jurisdiction under whose law his or her services have been covered. If, at the time of termination, the person is not located in the elected jurisdiction, the electing unit shall notify the person as to the procedure for filing claims for interstate benefits.
8. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, for example, if a person's services for the employer cease to be customarily performed in more than one participating jurisdiction or if a change in the work assigned to a person requires him or her to perform services in a new participating jurisdiction.

[Employment Security Dep't, No. 9 § 4, eff. 4-1-45]

NAC 612.660 Petition for modification of assessment: Procedure for hearings. (NRS 612.220, 612.670)

1. An employer who petitions for the modification of an assessment may present any proof, either oral or documentary, which he or she desires if the proof is pertinent to the issues. The Division may offer its notice of levy of assessment which is prima facie proof of the mailing of a notice, the amount of wages paid by the employer, default in payment, the amount of contribution payable and all forfeit and interest which may have accrued for the period covered by the assessment, and may offer any other proof pertinent to the issues.
2. Technical rules of evidence do not apply to any hearing or petition for the modification of an assessment. The Division has the right to cross-examine witnesses called by the petitioner. The petitioner has the right to cross-examine witnesses called by the Division.
3. The Division, at the conclusion of the evidence, may present argument in support of the claim, and the petitioner may thereafter present argument in support of the petition. The Division has the right to argue in rebuttal. No further argument is allowed.
4. The Division will supply, upon application, to any employer requesting a hearing, subpoenas under seal of the Division requiring the attendance of witnesses. Written stipulations as to the facts, signed by the employer or his or her representative and the representative of the Division, may be accepted and considered conclusive as to those facts by the Administrator. Fees and mileage for witnesses must be paid solely at the expense of the party calling the witness. If the employer so requests, the hearing must be reported and the cost of reporting borne by the employer.
5. When a hearing is requested, the matter must be heard and determined at the central office of the Division at Carson City, Nevada, unless, for the convenience of witnesses and others involved, the Administrator directs that the hearing be held at some other place.

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6. The Administrator will render a decision in writing within 30 days after the conclusion of a hearing or within 30 days after the submission of the matter to him or her if a hearing is not requested. Notice of the decision and a copy of the decision must be mailed ***or electronically transmitted*** to the employer at his or her last known address and to the sureties or bondsmen.

7. The amount determined to be due in accordance with the decision is payable to the Division within 20 days after the mailing ***or electronic transmission*** of the notice of the decision.