

NEVADA WORKERS' COMPENSATION CHRONICLE—SUPPLEMENT

Department of Business & Industry (B&I)

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Division of Industrial Relations (DIR)

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This newsletter is not intended to provide legal advice to the reader. Legal opinions or interpretations of statutes and regulations referenced should be sought from legal professionals.

2013 Legislative Changes NRS CHAPTERS 616A-616D, and 617

NRS 616A.035

SB 100, Section 46, Effective January 1, 2014

NRS 616A.035 is hereby amended to read as follows:

616A.035 1. "Accident benefits" means medical, surgical, hospital or other treatments, nursing, medicine, medical and surgical supplies, crutches and apparatuses, including prosthetic devices.

2. The term includes:

(a) Medical benefits as defined by NRS 617.130;

(b) Preventive treatment administered as a precaution to an employee who is exposed to a contagious disease while providing medical services, including emergency medical care, in the course and scope of his or her employment;

(c) Preventive treatment administered as a precaution to a police officer, a salaried or volunteer firefighter or an arson investigator who:

(1) Was exposed to a contagious disease:

(I) Upon battery by an offender; or

(II) While performing the duties of a police officer, firefighter or arson investigator, if the exposure is documented by the creation and maintenance of a report concerning the exposure pursuant to subsection 1 of NRS 616C.052; or

(2) Tests positive for exposure to tuberculosis or another contagious disease under the circumstances described in subsection 2 or 3 of NRS 616C.052; and

(d) Preventive treatment for hepatitis administered as a precaution to a police officer, full-time salaried firefighter, arson investigator or emergency medical attendant employed in this State.

3. The term does not include:

(a) Exercise equipment, a hot tub or a spa for an employee's home;

(b) Membership in an athletic or health club;

(c) Except as otherwise provided in NRS 616C.245, a motor vehicle; or

(d) The costs of operating a motor vehicle provided pursuant to NRS 616C.245, fees related to the operation or licensing of the motor vehicle or insurance for the motor vehicle.

4. As used in this section:

(a) "Battery" includes, without limitation, the intentional propelling or placing, or the causing to be propelled or

placed, of any human excrement or bodily fluid upon the person of an employee.

(b) "Emergency medical attendant" means a person licensed as an attendant or certified as an emergency medical technician, [intermediate] *advanced* emergency medical technician or [advanced emergency medical technician] *paramedic* pursuant to chapter 450B of NRS, whose primary duties of employment are the provision of emergency medical services.

(c) "Hepatitis" includes hepatitis A, hepatitis B, hepatitis C and any additional diseases or conditions that are associated with or result from hepatitis A, hepatitis B or hepatitis C.

(d) "Preventive treatment" includes, without limitation:

(1) Tests to determine if an employee has contracted hepatitis or any other contagious disease to which the employee was exposed; and

(2) If an employee tests positive for exposure to tuberculosis under the circumstances described in NRS 616C.052, such medication and chest X rays as are recommended by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

NRS 616A.205

AB 488, Section 135, Effective July 1, 2013

NRS 616A.205 is hereby amended to read as follows:

616A.205 Volunteer workers at a facility for inpatients of the Division of [Mental Health and Developmental Services] *Public and Behavioral Health* of the Department of Health and Human Services, while acting under the direction or authorization of the supervisor of volunteer services of such a facility, shall be deemed, for the purpose of chapters 616A to 616D, inclusive, of NRS, employees of the facility, receiving a wage of \$350 per month, and are entitled to the benefits of those chapters upon compliance therewith by the facility.

NRS 616A.455

SB 463, Section 188, Effective January 1, 2015 if approved by 2014 vote

NRS 616A.455 is hereby amended to read as follows:

616A.455 1. Except as otherwise provided in subsection 3, the Nevada Attorney for Injured Workers shall, when appointed by an appeals officer or the Administrator, represent without charge a claimant before the appeals officer, Administrator, district court, *Court of Appeals* or Supreme Court. In addition, the Nevada Attorney for Injured Workers may give advice regarding a claimant's rights before a hearing officer and the procedure for enforcing those rights.

2. When representing a claimant, the Nevada Attorney for Injured Workers shall:

(a) Advise the claimant and present the claimant's case to the appeals officer or Administrator; and

(b) Present in the district court or *[Supreme Court] the appellate court of competent jurisdiction* an appeal from the decision of the appeals officer or Administrator if, in the opinion of the Nevada Attorney for Injured Workers, the appeal is merited.

3. If the Nevada Attorney for Injured Workers determines, in accordance with the guidelines adopted pursuant to subsection 4, that a claim is frivolous or lacks merit, he or she may refuse to represent a claimant.

4. The Nevada Attorney for Injured Workers shall establish the policies to be followed in determining whether a claim is frivolous or lacks merit.

NRS 616C.065

SB 463, Section 189, Effective January 1, 2015 if approved by 2014 vote

NRS 616C.065 is hereby amended to read as follows:

616C.065 1. Except as otherwise provided in NRS 616C.136, within 30 days after the insurer has been notified of an industrial accident, every insurer shall:

(a) Accept a claim for compensation, notify the claimant or the person acting on behalf of the claimant that the claim has been accepted and commence payment of the claim; or

(b) Deny the claim and notify the claimant or the person acting on behalf of the claimant and the Administrator that the claim has been denied.

2. If an insurer is ordered by the Administrator, a hearing officer, an appeals officer, a district court, *the Court of Appeals* or the Supreme Court of Nevada to make a new determination,

including, without limitation, a new determination regarding the acceptance or denial of a claim for compensation, the insurer shall make the new determination within 30 days after the date on which the insurer has been ordered to do so.

3. Payments made by an insurer pursuant to this section are not an admission of liability for the claim or any portion of the claim.

4. Except as otherwise provided in this subsection, if an insurer unreasonably delays or refuses to pay the claim within 30 days after the insurer has been notified of an industrial accident, the insurer shall pay upon order of the Administrator an additional amount equal to three times the amount specified in the order as refused or unreasonably delayed. This payment is for the benefit of the claimant and must be paid to the claimant with the compensation assessed pursuant to chapters 616A to 617, inclusive, of NRS. The provisions of this section do not apply to the payment of a bill for accident benefits that is governed by the provisions of NRS 616C.136.

5. The insurer shall notify the claimant or the person acting on behalf of the claimant that a claim has been accepted or denied pursuant to subsection 1 or 2 by:

(a) Mailing its written determination to the claimant or the person acting on behalf of the claimant; and

(b) If the claim has been denied, in whole or in part, obtaining a certificate of mailing.

6. The failure of the insurer to obtain a certificate of mailing as required by paragraph (b) of subsection 5 shall be deemed to be a failure of the insurer to mail the written determination of the denial of a claim as required by this section.

7. The failure of the insurer to indicate the acceptance or denial of a claim for a part of the body or condition does not constitute a denial or acceptance thereof.

8. Upon request, the insurer shall provide a copy of the certificate of mailing, if any, to the claimant or the person acting on behalf of the claimant.

9. For the purposes of this section, the insurer shall mail the written determination to:

(a) The mailing address of the claimant or the person acting on behalf of the claimant that is provided on the

form prescribed by the Administrator for filing the claim; or

(b) Another mailing address if the claimant or the person acting on behalf of the claimant provides to the insurer written notice of another mailing address.

10. As used in this section, "certificate of mailing" means a receipt that provides evidence of the date on which the insurer presented its written determination to the United States Postal Service for mailing.

NRS 616C.115

AB 170, Section 38, Effective July 1, 2013

NRS 616C.115 is hereby amended to read as follows:

616C.115 1. Except as otherwise provided in subsection 2, a physician or advanced *[practitioner of nursing] practice registered nurse* shall prescribe for an injured employee a generic drug in lieu of a drug with a brand name if the generic drug is biologically equivalent and has the same active ingredient or ingredients of the same strength, quantity and form of dosage as the drug with a brand name.

2. A physician or advanced *[practitioner of nursing] practice registered nurse* is not required to comply with the provisions of subsection 1 if:

(a) The physician or advanced *[practitioner of nursing] practice registered nurse* determines that the generic drug would not be beneficial to the health of the injured employee; or

(b) The generic drug is higher in cost than the drug with a brand name.

NRS 616C.325

AB 90, Section 1, Effective October 1, 2013

NRS 616C.325 is hereby amended to read as follows:

616C.325 1. It is unlawful for any person to represent an employee before a hearing officer, or in any negotiations, settlements, hearings or other meetings with an insurer concerning the employee's claim or possible claim, unless the person is:

(a) Employed *[full-time]* by the employee's labor organization *[;]* *and is not an independent contractor*;

(b) Admitted to practice law in

this State;

(c) Employed full-time by and under the supervision of an attorney admitted to practice law in this State; or

(d) Appearing without compensation on behalf of the employee.

—It is unlawful for any person who is not admitted to practice law in this State to represent the employee before an appeals officer.

2. It is unlawful for any person to represent an employer at hearings of contested cases unless that person is:

(a) Employed full-time by the employer or a trade association to which the employer belongs that is not formed solely to provide representation at hearings of contested cases;

(b) An employer's representative licensed pursuant to subsection 3 who is not licensed as a third-party administrator;

(c) Admitted to practice law in this State; or

(d) A licensed third-party administrator.

3. The Director of the Department of Administration shall adopt regulations which include the:

(a) Requirements for licensure of employers' representatives, including:

(1) The registration of each representative; and

(2) The filing of a copy of each written agreement for the compensation of a representative;

(b) Procedure for such licensure; and

(c) Causes for revocation of such a license, including any applicable action listed in NRS 616D.120 or a violation of this section.

4. Any person who is employed by or contracts with an employer to represent the employer at hearings regarding contested claims is an agent of the employer. If the employer's representative violates any provision of this chapter or chapter 616A, 616B, 616D or 617 of NRS, the employer is liable for any penalty assessed because of that violation.

5. An employer shall not make the compensation of any person representing the employer contingent in any manner upon the outcome of any contested claim.

6. The Director of the Department of Administration shall collect in advance and deposit with the State

Treasurer for credit to the State General Fund the following fees for licensure as an employer's representative:

(a) Application and licensure \$78

(b) Triennial renewal of each license 78

NRS 617.135

SB 208, Section 1, Effective October 1, 2013

NRS 617.135 is hereby amended to read as follows:

617.135 "Police officer" includes:

1. A sheriff, deputy sheriff, officer of a metropolitan police department or city police officer;

2. A chief, inspector, supervisor, commercial officer or trooper of the Nevada Highway Patrol Division of the Department of Public Safety;

3. A chief, investigator or agent of the Investigation Division of the Department of Public Safety;

4. A chief, supervisor, investigator or training officer of the Training Division of the Department of Public Safety;

5. A chief or investigator of an office of the Department of Public Safety that conducts internal investigations of employees of the Department of Public Safety or investigates other issues relating to the professional responsibility of those employees;

6. A chief or investigator of the Department of Public Safety whose duties include, without limitation:

(a) The execution, administration or enforcement of the provisions of chapter 179A of NRS; and

(b) The provision of technology support services to the Director and the divisions of the Department of Public Safety;

7. An officer or investigator of the Section for the Control of Emissions From Vehicles and the Enforcement of Matters Related to the Use of Special Fuel of the Department of Motor Vehicles;

8. An investigator of the Division of Compliance Enforcement of the Department of Motor Vehicles;

9. A member of the police department of the Nevada System of Higher Education;

10. A:

(a) Uniformed employee of; or

(b) Forensic specialist employed by,
— the Department of Corrections whose position requires regular and frequent contact with the offenders imprisoned and subjects the employee to recall in emergencies;

11. A parole and probation officer of the Division of Parole and Probation of the Department of Public Safety;

12. A forensic specialist or correctional officer employed by the Division of Mental Health and Developmental Services of the Department of Health and Human Services at facilities for mentally disordered offenders;

13. The State Fire Marshal and his or her assistant and deputies;

14. A game warden of the Department of Wildlife who has the powers of a peace officer pursuant to NRS 289.280; **[and]**

15. A ranger or employee of the Division of State Parks of the State Department of Conservation and Natural Resources who has the powers of a peace officer pursuant to NRS 289.260 **[.] ; and**

16. A bailiff or a deputy marshal of the district court or justice court whose duties require him or her to carry a weapon and to make arrests.

NRS 617.357

AB 11, Section 2, Effective May 24, 2013

NRS 617.357 is hereby amended to read as follows:

617.357 1. Each insurer shall submit to the Administrator a written report concerning each claim for compensation *in which the claimant is a firefighter, police officer, arson investigator or emergency medical attendant* that is filed with the insurer **[for an occupational disease of the heart or lungs or any occupational disease that is infectious or relates to cancer.] pursuant to NRS 617.453, 617.455, 617.457, 617.481, 617.485 or 617.487.** The written report must be submitted to the Administrator within 30 days after the insurer accepts or denies the claim pursuant to NRS 617.356 and must include:

(a) A statement specifying the nature of the claim;

(b) A statement indicating whether the insurer accepted or denied

the claim and the reasons for the acceptance or denial;

(c) A statement indicating the estimated medical costs for the claim; and

(d) Any other information required by the Administrator.

2. If a claim specified in subsection 1 is appealed or affirmed, modified or reversed on appeal, or is closed or reopened, the insurer shall notify the Administrator of that fact in writing within 30 days after the claim is appealed, affirmed, modified, reversed, closed or reopened.

3. On or before February 1 of each year, the Administrator shall prepare and make available to the general public a written report concerning claims specified in subsection 1. The written report must include:

(a) The information submitted to the Administrator by an insurer pursuant to this section during the immediately preceding year; and

(b) Any other information concerning those claims required by the Administrator.

4. As used in this section, the term "police officer" includes a peace officer as that term is defined in subsection 3 of NRS 289.010.

NRS 617.485

SB 100, Section, 47, Effective January 1, 2014

NRS 617.485 is hereby amended to read as follows:

617.485 1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, if an employee has hepatitis, the disease is conclusively presumed to have arisen out of and in the course of his or her employment if the employee has been continuously employed for 5 years or more as a police officer, full-time salaried firefighter or emergency medical attendant in this State before the date of any temporary or permanent disability or death resulting from the hepatitis.

2. Compensation awarded to a police officer, firefighter or emergency medical attendant, or to the dependents of such a person, for hepatitis pursuant to this section must include:

(a) Full reimbursement for re-

lated expenses incurred for medical treatments, surgery and hospitalization; and

(b) The compensation provided in chapters 616A to 616D, inclusive, of NRS for the disability or death.

3. A police officer, salaried firefighter or emergency medical attendant shall:

(a) Submit to a blood test to screen for hepatitis C upon employment, upon the commencement of coverage and thereafter on an annual basis during his or her employment.

(b) Submit to a blood test to screen for hepatitis A and hepatitis B upon employment, upon the commencement of coverage and thereafter on an annual basis during his or her employment, except that a police officer, salaried firefighter or emergency medical attendant is not required to submit to a blood test to screen for hepatitis A and hepatitis B on an annual basis during his or her employment if he or she has been vaccinated for hepatitis A and hepatitis B upon employment or at other medically appropriate times during his or her employment. Each employer shall provide a police officer, salaried firefighter or emergency medical attendant with the opportunity to be vaccinated for hepatitis A and hepatitis B upon employment and at other medically appropriate times during his or her employment.

4. All blood tests required pursuant to this section and all vaccinations provided pursuant to this section must be paid for by the employer.

5. The provisions of this section:

(a) Except as otherwise provided in paragraph (b), do not apply to a police officer, firefighter or emergency medical attendant who is diagnosed with hepatitis upon employment.

(b) Apply to a police officer, firefighter or emergency medical attendant who is diagnosed with hepatitis upon employment if, during the employment or within 1 year after the last day of the employment, he or she is diagnosed with a different strain of hepatitis.

(c) Apply to a police officer, firefighter or emergency medical attendant who is diagnosed with hepatitis after the termination of the employment

if the diagnosis is made within 1 year after the last day of the employment.

6. A police officer, firefighter or emergency medical attendant who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a police officer, firefighter or emergency medical attendant,
 → may elect to receive the benefits provided pursuant to NRS 616C.440 for a permanent total disability.

7. As used in this section:

(a) "Emergency medical attendant" means a person licensed as an attendant or certified as an emergency medical technician, *[intermediate] advanced* emergency medical technician or *[advanced emergency medical technician] paramedic* pursuant to chapter 450B of NRS, whose primary duties of employment are the provision of emergency medical services.

(b) "Hepatitis" includes hepatitis A, hepatitis B, hepatitis C and any additional diseases or conditions that are associated with or result from hepatitis A, hepatitis B or hepatitis C.

(c) "Police officer" means a sheriff, deputy sheriff, officer of a metropolitan police department or city police officer.

NEW PROVISIONS

AB 206, Section 1, Effective May 21, 2013

Chapter 616A of NRS is hereby amended by adding thereto a new section to read as follows:

Volunteer members of a search and rescue organization that is under the direct supervision of a county sheriff, while acting under the direction of the sheriff or a designee of the sheriff:

1. In the conduct of any search and rescue operation; or

2. In training for such an operation,

→ shall be deemed, for the purposes of chapters 616A to 616D, inclusive, of NRS, to be employees of the county at the wage of \$2,000 per month, and are entitled to the benefits of those chapters.