

STATE OF NEVADA
Subsequent Injury Account
for Self-insured Employers

**AGENDA INCLUDING NOTICE OF
WORKSHOP TO SOLICIT COMMENTS ON PROPOSED REGULATIONS**

The Board for the Administration of the Subsequent Injury Account for Self-insured Employers, will hold a public workshop on July 18, 2018, at 10:00 a.m., at the following locations:

Division of Industrial Relations
Department of Business and Industry
3360 W. Sahara Avenue, Suite 250
Executive Video Conference Room
Las Vegas, NV 89102

The workshop will also be video conferenced to the following locations:

Division of Industrial Relations
Department of Business and Industry
400 West King Street, Suite 400
Conference Room
Carson City, NV 89703

Nevada Occupational Safety and Health Administration
4600 Kietzke Lane, Building F, Suite 153
Nevada OSHA Conference Room
Reno, NV 89502

AGENDA

Notice: (1) Items on the Agenda may be taken out of order; (2) the Board may combine two or more Agenda items for consideration; and (3) the Board may remove an item from the Agenda or delay discussion relating to an item on the Agenda at any time.

1. Roll Call.
- ** 2. Public Comment. The opportunity for public comment is reserved for any matter listed below on the Agenda as well as any matter within the jurisdiction of the Board. No action on such an item may be taken by the Board unless and until the matter has been noticed as an action item. Comment from the public is limited to three minutes per person.
- * 3. Approval of Posting of Agenda. **For Possible Action.**
- * 4. Approval of Agenda. **For Possible Action.**

- * 5. Approval of Minutes for June 28, 2018. **For Possible Action**

- * 6. **WORKSHOP PERTAINING TO AMENDING REGULATIONS:** The Board is proposing to amend NAC 616B.770, *et seq.*, entitled "Subsequent Injury Account for Self-Insured Employers." The Board will take public comment and hear recommendations of the public pertaining to said regulations and take appropriate action pertaining to said regulations based upon the contents of the workshop and give directions to staff and Board legal counsel. The discussion will include, but not be limited to, the following topics:
 - Defining service of process; identification of persons to be served.
 - Written records of knowledge requirement found at NRS 616B.557(4).
 - Annuity purchases, whether and under what circumstances allowed.
 - Declaratory or advisory opinions from the Board, a new addition to the regulations.
 - Petitions to the Board to amend, repeal, modify or add regulations, a new addition to the regulations.
 - Process for securing extensions of time and continuances.
 - Methods of service of process including electronic means.
 - Commutation of benefits, reimbursements, and approvals.
 - Identification of AMA "Guides" to be applied under NRS 616B.557(3).
 - Lump sum buy outs, whether and under what circumstances permissible and under what circumstances would reimbursement then be allowed.
 - Procedures for the conduct of the hearing in contested cases.
 - Procedures for appealing to the Board and beyond, the disposition of an application for reimbursement.
 - Delineation and use of "written records."
 - Any other issue raised by the general public. **For Possible Action.**

- * 7. Adjournment of Workshop. **For Possible Action.**

- * 8. Action on the recommendation of the Administrator of the Division of Industrial Relations, for approval of the following supplemental request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers in the amount verified by the Administrator:
 - a. Bally's Hotel & Casino 4D726356319973B
For Possible Action.
 - b. City of Las Vegas 15F02G240097
For Possible Action.
 - c. UNLV 09515A588697
For Possible Action.

- * 9. Additional Items:
 - ** a. General Matters of Concern to Board Members Regarding Matters Not Appearing on the Agenda.
 - ** b. Old and New business.
 - * c. Schedule of next Meeting. The following dates have been scheduled in advance but are subject to change at any time: August 20, 2018, September 19, 2018, October 17, 2018, November 14, 2018, December 12, 2018. **For Possible Action.**
- 10. Public Comment. The opportunity for public comment is reserved for any matter within the jurisdiction of the Board. No action on such an item can be taken by the Board unless and until the matter has been agendaized as an action item. Comment from the public is limited to three minutes per person.
- * 11. Adjournment. **For Possible Action.**

Single-asterisk items are matters upon which the Board may take possible action.

Double-asterisk items are matters upon which the Board may take no action until the matter itself has been specifically included on an agenda as an item upon which action may be taken.

Any person with a disability as defined by the Americans with Disabilities Act who requires special assistance to participate in the meeting may contact, at least two days prior to the meeting, Jacque Everhart at the Division of Industrial Relations, 3360 West Sahara Avenue, Suite 250, Las Vegas, NV 89102, or by calling (702) 486-9089 to arrange for reasonable accommodations.

This Notice has been sent to all persons on the Board's meeting list and posted at the following locations:

Division of Industrial Relations, 3360 West Sahara Avenue, Suite 250, Las Vegas, Nevada, 89102

Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada, 89703

Division of Industrial Relations, Occupational Safety and Health Enforcement Section, 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada, 89502

Nevada Business Center, 3300 W. Sahara Avenue, Suite 425, Las Vegas, Nevada 89102

The Notice has also been posted at the following web site addresses:

State of Nevada, Department of Business and Industry, Industrial Relations (DIR),
Workers' Compensation Section website at <http://dir.nv.gov/WCS/Hearings/>

Nevada Public Notices at <https://notice.nv.gov/>

Legislative Counsel Bureau at <https://www.leg.state.nv.us/App/Notice/A/>

According to the provision of NRS 241.020(5), a copy of supporting (not privileged and confidential) material provided to the Board Members may be obtained upon request made to: Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., 575 Forest Street, Suite 200, Reno, Nevada, 89509, or by calling (775) 323-5700.

Copies of the supporting (not privileged and confidential) material may also be obtained upon request at the offices of the Division of Industrial Relations, Workers' Compensation Section located at 3360 W. Sahara Avenue, Suite 250, Las Vegas, Nevada 89102 or by calling (702) 486-9080.

Dated this 29th day of June, 2018.

By:



/s/ Charles R. Zeh, Esq.

Charles R. Zeh, Esq.
Counsel for the Board

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS

BOARD FOR THE ADMINISTRATION OF THE
SUBSEQUENT INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS

SMALL BUSINESS IMPACT STATEMENT
AS REQUIRED BY NRS 233B.0608 AND 223B.0609
(FINDING OF NO ADVERSE IMPACT)
LCB FILE No. R025-18

June 27, 2018

This Statement is submitted on behalf of the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers (Board). *See*, NRS 616B.548, for the creation of the Board. *See*, NRS 616B.554, for the creation of the Subsequent Injury Account. The Board is proposing to amend its regulatory scheme set forth in NAC 616B, regarding Self-Insured Employers.

Note: Small Business is defined as "a business conducted for profit which employs fewer than 150 full-time or part-time employees." (NRS 233B.0382).

1. Describe the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

ANSWER: No comment was solicited from affected small businesses because the Board determined that there will be no adverse impact from the proposed changes to the regulations upon small businesses. Solicitation of comment from small businesses is only mandated if the Board determines that the proposed changes to the regulations would impose a direct and significant economic burden upon a small business or would directly restrict the formation, operation or expansion of a small business. *See*, NRS 233B.0608(1) and (2).

As explained, below, the proposed changes will streamline, simplify and clarify the process by which claims are administered by the Board. After reasoned and serious consideration where the Board evaluated the purpose and scope of the proposed regulatory changes in conjunction with the existing regulations, the Board reached the conclusion that small businesses as well as all other employers who appear before the Board will benefit from the proposed regulatory changes.

2. The manner in which the analysis was conducted.

ANSWER: As noted in Answer 1, the Board has concluded that the proposed regulatory changes will not have a direct and significant economic burden upon a small business or would directly restrict the formation, operation or expansion of a small business. *See*, NRS

233B.0608(1) and (2). This conclusion was reached because the proposed amendments to the Board's Regulations will, *inter-alia*, add provisions for declaratory relief from the Board, and the opportunity for the public to propose the repeal, modification or addition of regulations governing the disposition of matters before the Board, clarify the process by which requests for continuances of hearing are to be processed, clarify the procedure for conducting hearings before the Board, provide for the disposition of annuities and the handling of commuted payments, address the standards for considering written records, address the question of retention in employment in light of recent Nevada Supreme Court decisions and clarify "permanent physical impairment."

To reach the Board's conclusion of no adverse impact, the Board drew upon the experience and expertise of the Board members, themselves. They are risk management persons, with broad and long-term experience in the assessment of workers' compensation claims. They are appointed to the Board by the Governor and have had considerable experience, also deciding claims as Board members. The Board considered recent case law when deciding whether to adopt changes to the regulatory scheme, reviewed in great detail, the existing regulatory scheme, and also considered how the existing regulatory scheme could be changed to more readily dispose of the cases which have come before the Board. The Board, then, after drafting the proposed regulatory changes, took a step back and assessed the impact of the process for resolving claims, if the proposed regulatory changes were enacted. The result of this analysis was the recognition that the proposed regulatory changes would clarify, simplify and add to the regulatory framework provisions that were lacking but were mandated to be in place. Because all of these revisions inure to the benefit of applicants for reimbursement before the Board, the Board does not anticipate that adopting these regulations will have any adverse, negative economic effect, either immediate or long term on small businesses.

No fees are being added by these draft regulations, though the Board is adding that applicants have the option at their cost, of employing a court reporter to report upon and to secure a transcript of the hearing before the Board. As this is an expense incurred at the applicant's election, it is neither a fee, nor a source of revenue for the Board. It simply gives the applicant one more option for assessing a record of the proceedings before the Board.

Finally, these findings and determinations were reached by consensus of the Board after a public hearing. Upon a motion made by Cecilia Meyer, seconded by Amy Wong, the Board voted to affirm the findings and conclusions set out herein. The motion was adopted by a vote of 3, in favor and 0, against the motion, with a quorum of the Board being present to conduct this Board business, as reflected in the minutes of the meeting of the Board held on June 27, 2018.

3. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:

- (A) Both adverse and beneficial effects; and**
- (B) Both direct and indirect effects.**

ANSWER: The Board, as explained, does not anticipate that adopting these regulations will have any adverse, economic effect, either immediate or long term, direct or indirect, on small businesses.

The Board believes the adoption of these regulations will have a beneficial impact on both the Board and small businesses for the reasons set out in response to questions 1 and 2, above.

4. Describe the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

ANSWER: Because there will be no adverse impact on small businesses, there are no methods needed to reduce the impact the Board could have considered.

5. The estimated cost to the agency for enforcement of the proposed regulation.

ANSWER: There is no additional cost to the Board for enforcement of these regulations.

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

ANSWER: The proposed regulatory changes do not provide for any new fee or increase any existing fee.

7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

ANSWER: The proposed regulatory changes do not include any provisions which duplicate or are more stringent than existing federal, state or local standards. The proposed regulatory changes amend existing regulations in compliance with existing Nevada law.

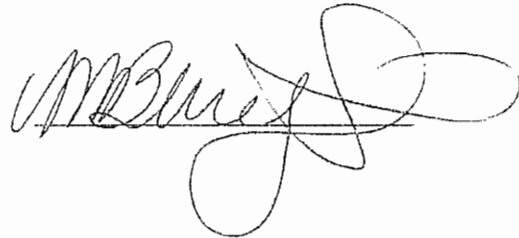
8. The reasons for the conclusions of the agency regarding the impact of a regulation on small businesses.

ANSWER: The Board complied with NRS 233B.0608 by considering the purpose and scope of the proposed and potential regulatory changes in conjunction with existing regulations and made a concerted effort to determine whether the proposed regulatory changes would impose a direct or significant economic burden upon small businesses, or directly restrict the formation, operation, or expansion of a small business. *See also*, the response to Question 2, above.

The Board determined that these proposed regulatory changes will have no adverse effect on small businesses and, to the contrary, will be beneficial to the Board and small businesses for the reasons explained in the response to questions 1 through 3, above.

I, Michele Berrington, Vice-Chairman of the Board for the Administration of the Subsequent Injury Account for Self-insured Employers, certify that, to the best of my knowledge or belief, the information contained in the statement was prepared properly and is accurate.

Dated this 29 day of June, 2018.

A handwritten signature in black ink, appearing to read "MBerrington", written over a horizontal line.

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