



NEVADA WORKERS' COMPENSATION CHRONICLE

Department of Business & Industry
A Publication of the Workers' Compensation Section

Division of Industrial Relations Spring Edition
(March 2020 - May 2020)

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.

Missing Claim Files Delay Claim Reopening



Nevada is a state that has lifetime reopening rights for certain workers' compensation claims. Nevada Revised Statutes (NRS) 616C.390 describes the process and circumstances in which an injured employee may request their claim be reopened for further medical treatment and possible benefits.

The WCS often receives inquiries and requests for assistance from injured employees or attorneys representing them concerning issues they are experiencing when attempting to reopen a claim. NRS 616C.390 requires the injured employee to request the reopening of a claim in writing. The first hurdle they may face is determining where and to whom the request should be sent. Even if the injured employee has retained documentation regarding the claim and the original claims administrator, the physical file may no longer be housed with the original insurer or TPA. The original insurer or TPA may not be in the same location or even still be operating in Nevada. Often the claim has been closed for years and may even have been sent to an off-site storage location. In many cases, the biggest challenge centers around locating the physical claim file.

The issue becomes more challenging when the employer has changed insurers or TPAs and the physical claim file was not transferred to the new insurer or TPA. The failure to properly transfer the claim file often leaves the whereabouts of the claim file unknown; this may lead to unnecessary litigation, administrative fines and/or benefit penalties and, understandably, complaints from injured employees.

To help address these situations, WCS adopted Nevada Administrative Code (NAC) 616B.014, (effective 9/9/2016) which sets out the duties of the involved parties when claims are being transferred from one TPA/insurer to another TPA/insurer. These requirements must be followed by the sending and receiving parties when claims are transferred. Failure to adhere to these requirements may lead to administrative action up to and including fines against any violating party. Additionally, the receiving party may find that reviewing the files upon receipt may be helpful. This ensures that missing claim documents and other information can be identified and requested, and the request documented, before they are "lost."

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Mileage Reimbursement Change for 2020



RATE CHANGE

Effective January 1, 2020

Per NAC 616C.150, reimbursement for the cost of transportation for an injured employee, under appropriate conditions, must be computed at a rate equal to the mileage allowance for State employees.

Effective January 1, 2020, the standard mileage reimbursement rate for transportation costs incurred while using a private vehicle while traveling on official State business has decreased from 58 cents per mile to 57.5 cents per mile.

Please advise all adjusters as soon as possible to minimize any payment errors.

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SAVE THE DATE
WORKERS' COMPENSATION EDUCATIONAL CONFERENCE

The State of Nevada Workers' Compensation Section will host the 10TH annual
WORKERS' COMPENSATION EDUCATIONAL CONFERENCE

Thursday, September 24, 2020 and
Friday, September 25, 2020
Las Vegas, Nevada

More details about workshops, speakers and how to register will be coming soon.

Missing Claim Files Delay Claim Reopening

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[NAC 616B.014](#) [Transfer of file of claim; duties of insurer or third-party administrator who transfers or receives file.](#) ([NRS 616A.400](#), [616B.021](#))

Moreover, the Administrator of the Division of Industrial Relations and the Commissioner of the Division of Insurance jointly regulate workers' compensation insurers and TPAs and require that claims offices and locations of records be reported and kept current with these agencies. These requirements are set forth in various statutes and regulations. Insurers and TPAs maintain this information in the CARDS web portal for compliance with the Division of Industrial Relations using the "Insurer Information Form" and the "Third Party Administrator Information Form." For more information about submitting this information in CARDS, visit our Insurer/TPA Reporting Information page on our website at http://dir.nv.gov/WCS/Insurer-TPA_Reporting/.

As always, if you need assistance with these and other matters concerning Nevada Workers' Compensation, please contact 702-486-9080 or 775-684-7270 or email: WCSHelp@business.nv.gov.



Nevada Occupational Safety and Health Administration (NVOSHA) Whistleblower Law

Nevada Revised Statute (NRS) 618.445 is the Nevada Occupational Safety and Health Administration's whistleblower law. NRS 618.445 covers employees who believe they have been retaliated against by their employer for engaging in activities related to workplace safety and health.

What activities are protected under NRS 618.445?

NVOSHA's whistleblower statute is limited to activities related to workplace safety and health. This includes filing a complaint with NVOSHA or another agency that addresses workplace safety and health, participating in an NVOSHA inspection, reporting workplace safety and/or health concerns to management, refusing to perform an unsafe work task, and reporting a workplace illness or injury. **NVOSHA has seen an increase in complaints involving reporting a workplace illness or injury.**

What is retaliation?

Retaliation is akin to revenge. Retaliation is when an employer takes an adverse action against an employee because the employee engaged in (or is perceived to have engaged in) an activity related to workplace safety and health. Examples of an adverse action include termination, lay off, demotion, reduced hours, suspension, written discipline, reassignment, or harassment.

What remedies can I seek?

Remedies provided for under the whistleblower statute include reinstatement, lost wages and work benefits. Work benefits is not further defined in the law, but would include items such as retirement or health insurance benefits. The most common remedy recouped is lost wages.

How do I file a complaint?

Employees or former employees may file a complaint online by visiting whistleblowers.gov, by visiting a local NVOSHA office, or by calling the NVOSHA Whistleblower complaint line (toll free) at 1-877-671-0003.

Kids' Chance of Nevada Give Back Program

EMPLOYERS, who is a National Sponsor and a sponsor of Kids' Chance of Nevada, worked with 375 of its appointed agents across the country on its inaugural matching holiday giveback program and raised \$108,300 that will go to Kids' Chance local chapters throughout most of the United States.

"We're so grateful for our agents stepping up to help us provide a gift to an organization close to our heart," said Ray Wise, EMPLOYERS SVP, and Chief Sales Officer. "Our agents across the nation were so happy to be a part of this program. This donation from EMPLOYERS and our appointed agents will continually help ease the burden of families whose loved ones were seriously hurt, or died, at work."

The match-back program ran from October 17th, 2019 to February 29th, 2020 and for every 3 new small business accounts the appointed agents bound, EMPLOYERS matched with a \$100 donation to the local Kids' Chance chapter in the agency's name. Kids' Chance's vision is to provide children affected by a parent's work-related injury or death an opportunity to pursue their educational dreams without financial burden. For EMPLOYERS, it was a no-brainer to get involved with the organization, and become a proud national sponsor.

"We try to get people back to work and to restore them to their pre-accident condition to the best of our ability," said Jim Werbeckes, EMPLOYERS Vice President of Government and Regulatory Affairs and Kids' Chance of Nevada Board member. "Some folks won't get back and some folks, their parents passed away. As we go forward, we're going to be more involved in other states we do business in and try to expand Kids' Chance footprint in those states."

If you know of a student this program could help, please contact Kids Chance of Nevada at info@kidschanceofnevada.org or call (702) 381-3850.



Basic Orientation Offers CLE Credits

The Nevada Board of Continuing Legal Education has accredited the WCS Basic Orientation training for two general CLE credits. Nevada attorneys and judges who attend the Basic Orientation should note that credits for the two-hour training are general credits only and do not count for CLE ethics or substance abuse credit. To obtain the credit, interested Basic Orientation attendees need to complete a certification form provided at the training which requires listing their Bar number. WCS staff will send the completed form to the Nevada Board of Continuing Legal Education for processing. Currently, the Basic Orientation is tentatively slated to be offered in 2020 on March 26th and October 15th. Anyone interested in workers' compensation training should sign up on the WCS email list for the latest class notifications, and schedule changes:

https://hal.nv.gov/form/DIRnvgov/EMAIL_ENROLLMENT_REQUEST

FREQUENTLY ASKED QUESTIONS (FAQs)

COLAs for Permanent Total Disability (PTD) and Survivors' Benefits Claims

Why should insurers submit claims that qualify for the annual COLA to DIR for verification?

Insurers may request reimbursement from the DIR for the additional cost associated with the COLA increase for certain claims. Before DIR will authorize reimbursement, it must be established that the COLA has been calculated correctly. Since the COLA is a percentage increase (2.3%) above the monthly benefit rate, DIR must confirm that the insurer calculated the monthly benefit rate (66 2/3% of the Average Monthly Wage) correctly to begin with. The verification process is to ensure that the monthly benefit rate before applying the COLA is accurate. The sooner the claim is verified by DIR, the more likely it is that the injured worker or their dependents will receive the correct monthly amount and the insurer will ultimately be able to be appropriately reimbursed the additional cost associated with the COLA by DIR.

How should insurers pay the increase required by the COLA if the monthly benefit is currently paid by an annuity?

PTD and Survivors' benefits claims that are paid by annuities are subject to the annual increase required by NRS 616C.473 (PTD) and NRS 616C.508 (Survivors). Insurers are responsible for ensuring the additional amount associated with the increase is paid timely to the injured worker or survivors. This may be accomplished by an additional payment each month directly from the insurer or the insurer may purchase a separate annuity to cover the cost associated with the COLA.

Are COLAs that are paid by separate annuities eligible for reimbursement?

Yes, if the COLA is eligible pursuant to NRS 616C.508(3) or NRS 232.680(4)(g) (as amended by SB 377), then it is reimbursable, regardless of the method of payment. The insurer, however, must provide proof to DIR that the COLA payments were made to the claimant by the annuity company just as they would if they were to make the payments themselves directly to the claimant when requesting reimbursement.

Do PTD or Survivors' benefits claims with stipulated settlements (legal agreements specifying dollar amounts and/or the timing of payments to be made) qualify for the COLA?

Yes, all PTD and Survivors' benefits claims qualify for the COLA pursuant to NRS 616C.473 and NRS 616C.508.

If PTD or Survivors' benefits are ordered to be paid bi-weekly instead of monthly, how should the COLA formula be applied?

The COLA should be calculated and applied to each bi-weekly payment to ensure the 2.3% annual increase is attained

Is there an additional, separate payment due to survivors related to the "catch-up" calculation?

No. The "catch-up" calculation is not a payment. There is no pre-January 1 2020 payment associated with the "catch-up." It is strictly a calculation that must be made prior to applying the 2.3% increase (COLA) to the January 2020 monthly payment. Example: a Survivors' Benefit claim with a date of injury before 1/1/1989 and subject to the 2.3% catch up compounded 3 times would look like this: Monthly Rate: \$1000 Monthly Rate after catch-up calculation: \$1070.60 Monthly Rate after catch-up calculation and applying 2.3% COLA in Jan 2020: \$1095.22 December 2019 Monthly Payment: \$1000 January 2020 Monthly Payment: \$1095.22 Reimbursable Amount: \$1095.22 - \$1070.60 = \$24.62/month (Cost attributable to the COLA only)

Are the 'catch-up' calculations required for both PTD and Survivors' benefits claims?

No, the "catch-up" calculations only apply to certain Survivors' benefits claims pursuant to Secs. 5 and 6 of AB 370

Should the COLA be calculated based on the PTD or Survivors' benefit monthly rate he or she is actually paid each month after offsets are applied?

No. The COLA should be calculated based on the claimant's monthly rate: • Prior to applying offsets (PPD or subrogation), and • After applying any other legislatively mandated increases.

Am I allowed to increase the 10% PPD offset on those claims on which we are currently recovering PPD lump sum settlements (PPD offsets)?

We are not aware of any statutory or regulatory prohibition precluding an insurer from increasing the ten percent (10%) PPD offset up to 10% of the new increased monthly rate when the COLA is calculated and paid.

How does COLA effect my assessment?

Expenses related to COLA payments should be included as part of reported claims expenditures and are included in the calculation of the assessment for each insurer. Beginning in 2021, there will be a separate assessment to all insurers for COLAs authorized under AB370 and SB377 of the 2019 Legislative Session. Also beginning in 2021, insurers will be eligible for reimbursement of certain COLA payments made pursuant to AB370 and SB377

REPORTING REMINDERS

Reporting requirements in Nevada can be confusing with multiple state agencies having regulatory authority over the workers’ compensation system. This edition of “Reporting Reminders” identifies the “Who? What? Where? When? and How?” of the most common reports required of insurers and TPAs.



Department of Business & Industry (B&I)
Division of Industrial Relations/Workers’ Compensation Section (WCS)
wcsra@business.nv.gov - (702) 486-9080
http://dir.nv.gov/WCS/Insurer-TPA_Reporting/

Purpose	Report/Form Title	Frequency/Method	Who Reports?
Update Contacts/TPA Relationships	Insurer Information Form	Annually upon request & within 30 days of changes/CARDS Portal	All Insurers (Active and Decertified)
Update Contacts	TPA Information Form	Annually upon request & within 30 days of changes/CARDS Portal	All Third-Party Administrators (TPAs)
Claims Reporting (NRS 616B.018)	D-38 Claims Indexing	Within 30 days of acceptance or denial of reportable claim and within 30 days of reporting triggers/ CARDS Portal or FTP (paper forms are not accepted)	All Insurers (Active and Decertified)
Occupational Disease Claims (NRS 617.357)	OD-8 Form Occupational Disease Claim Report	Within 30 days of acceptance or denial of reportable claim & within 30 days of reporting triggers/Email, Fax or USPS	All Insurers (Active and Decertified)
	Occupational Disease Claim – Statement of Inactivity	Annually within 5 business days of end of calendar year/Email, Fax or USPS	All Insurers (Active) that had no reportable claims in the prior calendar year.
Claims Reporting	Fiscal Year (FY) Claims Activity Report	Annually upon request for fiscal year (7/1 - 6/30)/Email	All Insurers (Active and Decertified)
	FY Statement of Inactivity	Annually upon request for fiscal year (7/1 - 6/30)/Email	All Insurers (Active) that had no claims activity during the prior fiscal year.
Policy Data (NRS 616B.461 & NAC 616B.100-148)	Proof Of Coverage (POC)	Within 15 days of issuance of new policy, cancellation, nonrenewal, reinstatement or other policy transactions/electronically to NCCI (WCPOLS)	Private Insurers actively writing Nevada workers’ comp policies

Department of Business & Industry (B&I) – Fiscal Unit
(Division of Industrial Relations)
Bi-fiscalunit@business.nv.gov - (775) 684-7077
<http://dir.nv.gov/home/Assessments/>

Purpose	Report Title	Frequency/Method	Who Reports?
Assessments: Workers’ Compensation and Safety Fund	Summary of Claims Expenditures	Biannually/Email or USPS	Self-Insured Employers and Associations of Self-Insured Employers (Active and Decertified)
	Summary of Premium Earned and Claims Expenditures	Biannually/Email or USPS	Private Insurers

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WCS MISSION STATEMENT

The purpose of the Workers’ Compensation Section is to impartially serve the interests of Nevada employers and employees by providing assistance, information, and a fair and consistent regulatory structure focused on:

- Ensuring the timely and accurate delivery of workers' compensation benefits.
- Ensuring employer compliance with the mandatory coverage provisions.

REPORTING REMINDERS

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Department of Business & Industry (B&I)

Division of Insurance

Self-Insured Workers' Compensation

schoma@doi.nv.gov - (775) 687-0700/Toll Free (888) 872-3234

<http://doi.nv.gov/Self-Insured/>

Purpose	Report/Form Title	Frequency/Method	Who Reports?
Annual Claims Reporting: NAC 616B.460	Annual Claims Information Report	Annually by 9/30 - Separate form for Active or Inactive Employers/Email	Self-Insured Employers
	Certification of Claims Administration	Annually by 9/30 – to be included with the Annual Claims Information Report/Email	TPAs and Self-Insured Employers self-administering claims
Financial Statements: NRS 616B.336	Audited Financials	Annually within 120 days after the end of the employer's fiscal year	Self-Insured Employers (Active)
TPA Changes: NAC 616B.448(3)	Change in Claims Administrator	Notification prior to effective date of change	Self-Insured Employers (Active and Inactive)
Insolvency Assessment: NRS 616B.309, NAC 616B.478	Insolvency Assessment	Annually by 9/30	Self-Insured Employers (Active)
Excess Insurance: NRS 616B.300(5), NAC 616B424(4),	Evidence of Excess Insurance	Before expiration of current policy	Self-Insured Employers (Active)
	Complete copy of policy of excess insurance	Within 60 days of effective date of policy	Self-Insured Employers (Active)
Annuity Reporting: NAC 616B.471	List of Annuities Purchased	Annually by 9/30	Self-Insured Employers (Active and Inactive)
	Copy of Agreements	Within 10 days within agreement effective date	Self-Insured Employers (Active and Inactive)

Department of Taxation

Insurance Tax Examiner

premiumtax@tax.state.nv.us - (775) 684-2130/Toll Free Call Center (866) 962-3707

https://tax.nv.gov/Forms/Insurance_Premium_Tax_Forms/

https://tax.nv.gov/FAQs/Insurance_Premium_Tax_FAQ%E2%80%99s/

Purpose	Report Title	Frequency/Method	Who Reports?
Premium Tax: Industrial Insurance (Workers' Compensation)	Quarterly Industrial Insurance Return	Quarterly/Email or USPS	Private Insurers writing workers' compensation insurance in Nevada that reported \$2000 or more premium tax for all lines of insurance combined in the prior year are required to file quarterly.
	Annual Reconciliation Industrial Insurance Return	Annually/Email or USPS (Include copy of "Summary of Calculations for Insurer's Estimated Annual Assessment" from Department of Business & Industry/Division of Industrial Relations)	All Private Insurers writing workers' compensation insurance in Nevada.

Robin Hoodie Project Update

Happy New Year! Thank you to everyone who donated to Robin Hoodie Drive. This time around, DIR collaborated with friends and family from the City Clerk's office, Adam Kutner's Law office and Toro Taxes to collect approximately 400 hoodies for Myrtle Tate students. Mr. McCollins, aka Santa, and the Nellis Fire Rescue team provided toys and goodies to special education students. In addition, Mr. Kutner's office donated 400 treat bags and every kindergartner and first grader received a toy from Santa. It was a special year filled with lots of generosity. The Tate Tigers were roaring with joy! Thank you to all, for your contributions and time. Together we made a difference!

Angelia Yllas Chief Compliance Audit Investigator Southern District Manager



Myrtle Tate Elementary students waiting their turn to speak to Santa



WCS employees and Myrtle Tate staff pose with Santa Claus



WCS employees and Myrtle Tate staff



Hoodies collected for the children of Myrtle Tate Elementary



Hails, Promotions and Farewells



Congratulations to **Alma Johnson**, formerly a Compliance/Audit Investigator in the Employer Compliance Unit, on her promotion to a Management Analyst II with the Department of Health and Human Services. Alma began her DIR career just 4 years ago in OSHA, and was promoted a short time later to WCS as an Administrative Assistant III. As an AAI, Alma played a key role during the transition and development of our new Web site and as the coordinator of our annual Workers' Compensation Educational Conference attended by hundreds of industry stakeholders each year. Ultimately, she was promoted to investigator in the Employer Compliance Unit. Alma worked diligently to ensure employer compliance and employee safety while conducting hundreds of investigations during her career. She will be greatly missed! Congratulations Alma!



Welcome **Karen Adams**, one of the two Administrative Assistants II, in the Las Vegas Workers' Compensation Medical Unit. Prior to coming to WCS, Karen worked in the Department of Public Safety (DPS) Parole and Probation. During her time there, she was selected to assist in opening a new satellite office where she spent her remaining time. Karen counts the experience as one of the most gratifying of her career knowing she helped the office run smoothly from day one. On her off time, she enjoys crafts, volunteering, gardening and hanging out with her pets. She has 3 rescue dogs and 3 rescue cats.

Welcome **Nicole Rush**, also an Administrative Assistant II in the Las Vegas Workers' Compensation Medical Unit. Prior to working for the State of Nevada, Nicole worked in administration for several years. Nicole moved from California 4 years ago. She loves spending time with her family and friends as well with her 2 dogs and 2 cats. Nicole is thrilled to start her new journey as an Administrative Assistant II with the Las Vegas WCS team.



Congratulations **Cynthia Hernandez**, who was promoted to Compliance Audit Investigator I in the Employer Compliance Unit's Southern office, effective February 10, 2020. Previously, she worked as an Administrative Assistant III for the Southern District Manager and the Chief Administrative Officer of the Workers' Compensation Section. Cynthia has also worked in the Medical Unit where she helped train medical providers and TPA's in how to use multiple resources, including the online Coverage Verification Service, to locate workers' compensation coverage for injured workers. She is looking forward to great experiences in her new position.

Self Insured Employers Subsequent Injury Board Opening

The Board for the Administration of the Subsequent Injury Account for Self-Insured Employers is still looking for a new member and currently has one opening.

In order to serve on the Self-Insured Employers Board, one must be employed by an entity who meets the self-insured criteria for workers' compensation set forth in NRS 616A.305.

The members of the Board typically meet once per month to make determinations regarding claims for reimbursement from the Subsequent Injury Account according to criteria set forth out in the statutes and regulations and to discuss other Board-related issues.

Members are appointed by the Governor and hold a 2-year term commencing on July 1 of each odd-numbered year and serve without compensation. Anyone interested in applying for membership can find the application forms at [http:// gov.nv.gov/Board/ Application/](http://gov.nv.gov/Board/Application/). If appointed, the Governor will notify the applicant by mail of their appointment date and period.

Questions may be directed to the Boards and Commissions office at boards@gov.nv.gov.

2020 Training Sessions

Classes taught live in
SOUTHERN NEVADA
3360 West Sahara Avenue, Suite 250
Las Vegas, Nevada 89102
krissi.garcia@business.nv.gov
(702) 486-9105

Classes taught via video conference
in
NORTHERN NEVADA
400 West King Street, Suite 400
Carson City, Nevada 89703
(775) 684-7265

To view or register for classes:
<http://dir.nv.gov/WCS/Training/>

Basic Orientation
POSTPONED TBD



The following classes taught live in
SOUTHERN NEVADA
555 East Washington Avenue,
Las Vegas, Nevada 89101

via video conference in
NORTHERN NEVADA
401 South Carson Street
Carson City, Nevada 89701

Online viewing at
<https://www.leg.state.nv.us/App/Calendar/A/>

C-4 Process & Using CVS
POSTPONED TBD
Medical Billing
POSTPONED TBD

Delving into the D-35
5/13/2020 at 1:30 pm

Questions about Workers' Compensation?
Click Here!



WCSHelp@business.nv.gov

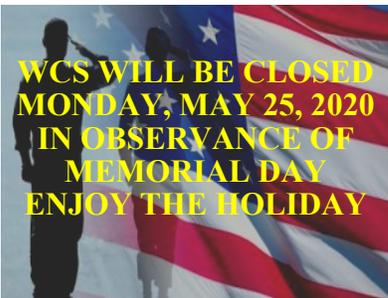
Hails, Farewells and Promotions

A big welcome to **Hayley Weedn**, the new Business Process Analyst with the Division of Industrial Relations, Workers' Compensation Section in the Las Vegas office. Hayley previously worked as a Compliance Investigator and Program Analyst for 4 years at the State of Oregon's Government Ethics Commission. She also holds a law degree and a certificate in public management. She's originally from Oklahoma and has lived in Texas, Washington and Oregon before moving to Nevada in August. Outside of work, she loves to spoil her Corgi, travel and explore the outdoors.



Best wishes to long time WCS employee **Red Blacic**. In December, Red accepted the position of Ombudsman with the Office For Consumer Health Assistance (OCHA), Nevada Department of Health and Human Services. OCHA assists consumers of healthcare and injured workers with understanding their rights and responsibilities under various health care plans and industrial insurance policies. Red's knowledge of workers' compensation and medical billing will enable her to educate and advocate for Nevada's injured workers and consumers of healthcare. Her DIR/WCS friends and colleagues wish her success in her new position. Outside of work, Red enjoys spending time with her husband, son and two cats. She is also the number one fan of the Las Vegas Raiders and the Las Vegas Golden Knights. Congratulations, Red!

Congratulations **Obdulia "Julie" Gaytan**, the new Administrative Assistant II in the Las Vegas Workers' Compensation Employer Compliance Unit, who replaced Joshua Swartzbaugh. Prior to her current position, she was the D-35/C4 Coordinator for the Medical Unit. Julie has worked with the State of Nevada since 2014 where she began as an Administrative Assistant Aid in the Division of Welfare. She also worked for the Division of Public Safety and Parole and Probation as an Administrative Assistant I. She is working on her Bachelor's Degree in Human Services. In her free time she enjoys spending time with her family and Shih Tzu/ Maltese pup watching movies and soccer.



Direct comments or suggestions about this newsletter to:

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rryan@business.nv.gov
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CONTACT WCS

Department of Business and Industry Division of Industrial Relations Workers' Compensation Section

SOUTHERN NEVADA
(702) 486-9080/Fax: (702) 486-8712

NORTHERN NEVADA
(775) 684-7270/Fax: (775) 687-6305

<http://dir.nv.gov/WCS/Home/>

WCSHelp@business.nv.gov