



# State of Nevada

## Division of Industrial Relations

### BENEFIT PENALTIES

(or How I Learned to  
Love NRS 616D.120)

August 23, 2018

**Workers'**  
**Compensation Section**

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# PRESENTERS

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# OVERVIEW OF PRESENTATION

- THE HISTORY OF BENEFIT PENALTIES.
- WHO, WHAT, WHEN, WHERE AND HOW.
- HOW MUCH CAN AN INJURED EMPLOYEE GET?

# WHAT IS A BENEFIT PENALTY?

- It is an award in favor of an injured employee
- From a specified group of workers' compensation entities
- For specific reasons delineated by statute

# HISTORY OF BENEFIT PENALTIES

- In Rush v. Nev. Indus. Comm'n., 94 Nev. 403, 580 P.2d 952 (1978), the Nevada Supreme Court held that an injured employee could pursue a common law tort action for negligent delay in authorizing medical treatment against the N.I.C. The state agency did not have statutory immunity like the employer.
- Northern Nev. Ass'n of Injured Workers v. SIIS, 107 Nev. 108, 807 P.2d 728 (1991), affirmed Rush and held that sovereign immunity was not a complete bar to negligence and bad faith claims.

# HISTORY OF BENEFIT PENALTIES (Continued)

- In Falline v. GNLV Corp., 107 Nev. 1004, 823 P.2d 888 (1991), the Nevada Supreme Court held that an injured employee could pursue an action for negligent or bad faith delay in paying benefits against a self-insured employer.

# HISTORY OF BENEFIT PENALTIES (Continued)

- The 1995 Legislature in AB 61 amended NRS 616.647 adopting benefit penalties and making it the exclusive remedy for specific wrongful acts in workers' compensation. The benefit penalty was in an amount equal to 50% of the compensation due or \$10,000, whichever is less.

# HISTORY OF BENEFIT PENALTIES (Continued)

- The 1995 Legislature in SB 458 added a new provision in Sec. 5, which stated:
- *"1. No cause of action may be brought or maintained against an insurer or a third-party administrator who violates any provision of this chapter or chapter 617 of NRS.*
- *2. The administrative fines provided for in NRS 616.294 and 616.647 [616D.120] are the exclusive remedies for any violation of this chapter or chapter 617 of NRS committed by an insurer or a third-party administrator." NRS 616D.030.*
- NOTE: See also Madera v. SIIIS, 114 Nev. 253, 956 P.2d 117 (1998).

# HISTORY OF BENEFIT PENALTIES (Continued)

- The 1999 Legislature in SB 37 and SB 133 amended NRS 616D.120 (formerly NRS 616.647) increasing the benefit penalty to not less than \$5,000 and not greater than \$25,000, based upon the amount of compensation found due; physical harm suffered by the claimant; and if the number of fines and benefit penalties previously imposed was 3 or more within 5 years, then consider the economic hard suffered by the injured employee.

# HISTORY OF BENEFIT PENALTIES (Continued)

- The 2005 Legislature in AB 254 amended NRS 616D.120 increasing the benefit penalty to not less than \$5,000 and not greater than \$37,500.
- The 2007 Legislature in AB496 amended the statute authorizing a “mini” benefit penalty of \$3,000 if the violation is for a late payment under \$500 or which is not more than 14 days late.

# HISTORY OF BENEFIT PENALTIES (Continued)

- The 2009 Legislature in SB 195 amended NRS 616D.120 increasing the benefit penalty to not less than \$5,000 and not greater than \$50,000 and added a violation for “engaging in a pattern of untimely payment to injured employees.”
- The 2011 Legislature in AB464 last amended the benefit penalty statute.

# WHO CAN DO WHAT?

- A benefit penalty is awarded and must be paid to a claimant.
- A benefit penalty may be payable to claimant's estate if claimant is deceased.
- A "person" may contest the Administrator's decision to impose or refuse to impose BP. NRS 616D.140.

# WHO CAN DO WHAT? (Continued)

- A benefit penalty may be recovered in a civil action brought by the Administrator on behalf of the claimant. NRS 616D.140(5).

# WHO ARE BENEFIT PENALTIES IMPOSED AGAINST?

- Insurer
- Organization for managed care
- Health care provider
- Third-party administrator
- Employer or
- Employee leasing company (Added 2009)
- NRS 616D.120(1)

# WHAT ACTS CAN RESULT IN A BENEFIT PENALTY

- 1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has:
  - (a) Induced a claimant to fail to report an accidental injury or occupational disease;

# WHAT ACTS CAN RESULT IN A BENEFIT PENALTY

- 1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has:
  - (b) Without justification, persuaded a claimant to:
    - (1) Settle for an amount which is less than reasonable;
    - (2) Settle for an amount which is less than reasonable while a hearing or an appeal is pending; or
    - (3) Accept less than the compensation found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to [chapters 616A](#) to [617](#), inclusive, of NRS;

# WHAT ACTS CAN RESULT IN A BENEFIT PENALTY

- 1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has:
  - (c) Refused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to [chapters 616A to 616D](#), inclusive, or chapter [617](#) of NRS, if the refusal or delay occurs:
    - (1) Later than 10 days after the date of the settlement agreement or stipulation;
    - (2) Later than 30 days after the date of the decision of a court, hearing officer, appeals officer or the Division, unless a stay has been granted; or
    - (3) Later than 10 days after a stay of the decision of a court, hearing officer, appeals officer or the Division has been lifted;
- NOTE: See also NAC 616D.305 and NAC 616D.315

# WHAT ACTS CAN RESULT IN A BENEFIT PENALTY

- 1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has:
  - (d) Refused to process a claim for compensation pursuant to [chapters 616A](#) to [616D](#), inclusive, or chapter [617](#) of NRS;

# WHAT ACTS CAN RESULT IN A BENEFIT PENALTY

- 1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has:
  - (e) Made it necessary for a claimant to initiate proceedings pursuant to [chapters 616A to 616D](#), inclusive, or chapter [617](#) of NRS for compensation or other relief found to be due the claimant by a hearing officer, appeals officer, court of competent jurisdiction, written settlement agreement, written stipulation or the Division when carrying out its duties pursuant to [chapters 616A to 616D](#), inclusive, or chapter [617](#) of NRS;

# WHAT ACTS CAN RESULT IN A BENEFIT PENALTY

- 1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has:
  - (h) Engaged in a pattern of untimely payments to injured employees;
- NOTE: See also NAC 616D.413

# WHAT ACTS CAN RESULT IN A BENEFIT PENALTY

- 1. Except as otherwise provided in this section, if the Administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, employer or employee leasing company has:
  - (i) Intentionally failed to comply with any provision of, or regulation adopted pursuant to, this chapter or [chapter 616A](#), [616B](#), [616C](#) or [617](#) of NRS,
- NOTE: See also NAC 616D.405

# WHEN SHOULD A BENEFIT PENALTY COMPLAINT BE FILED?

- After the time the act should have occurred.
- When the determination is final, i.e., no longer on appeal.
- Within 2 years of the date of the act. NRS 11.190(4)(b). Moraga v. Employers Ins. Co. of Nev., Ct. of Apps., Case No. 66090, Order of Affirmance filed June 16, 2016.

# WHEN SHOULD A BENEFIT PENALTY COMPLAINT BE FILED?

- “...The provisions of this section do not authorize the Administrator to modify or negate in any manner a determination or any portion of a determination made by a hearing officer, appeals officer or court of competent jurisdiction or a provision contained in a written settlement agreement or written stipulation.” NRS 616D.120(2)(a).

# HOW TO FILE A BENEFIT PENALTY COMPLAINT

- Use the Complaint Form on the WCS website.
- Northern  
<http://dir.nv.gov/uploadedFiles/dirnvgov/content/WCS/InjuredWorkersDocs/Northern%20Complaint%20Form.pdf>
- Southern:  
<http://dir.nv.gov/uploadedFiles/dirnvgov/content/WCS/InjuredWorkersDocs/Southern%20Complaint%20Form.pdf>
- Identify the specific provision(s) of NRS 616D.120(1) alleged to have been violated AND attach copies of any and all documents which tend to support or prove, in whole or in part, the alleged violation.

# HOW SHOULD THE TARGET OF THE INVESTIGATION RESPOND?

- When forwarded a copy of the Complaint Form, the targeted entity should respond, respond, respond.
- The response should attach copies of any and all documents which tend to support or prove, in whole or in part, that the alleged violation(s) did not occur.
- If no response is received, consider NRS 47.250(3). It sets forth the disputable presumption that “evidence willfully suppressed would be adverse if produced.”

# BURNING QUESTIONS?

- “Enquiring minds want to know.”
- OR “Ask now or forever hold your peace.”