

Legislative and Case Law Update 2019

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2019 Legislative Summary

1,102 Bills Considered (545 Assembly; 557 Senate)

636 Bills Signed By Governor; 3 Vetoed

55 Resolutions Introduced (50 Passed or Adopted)

Important Issues Addressed

Official State Fruit- Pomegranate (BDR 81)

Official State Element- NEON (AB 182)

Protect Gov't. and Tribal Employees in Gov't. Shutdown (AB 393)

Transportation Workers' Cooperatives (AB 402)

Crime to Microchip Another Person (AB 226)

More Important Issues

Abandoned & Unclaimed Property to Zoning

Marijuana (Too many bills to list)

Prescriptions (AB 239)

Advanced Practice Registered Nurses (SB 134)

Pay Raise for State Employees (AB 542)

Study of working conditions at licensed brothels (ACR 6)

2019 Legislative Session Produced Many Memorable Events.

2019 Donkeys vs. Elephants Biennial Basketball Game
(Elephants 28, Donkeys 27)

2nd Biennial Kickball Game (Legislators & Staff vs.
Lobbyists: Lobbyists victorious

And finally, the Assembly vs. Senate Softball game:
Assembly won, but failed to note the score

Also Addressed Was Workers' Compensation

What the 2019 Legislature Actually Did

DIR Assessments Survivors' Benefits COLA PTD Benefits COLA
Insurer's Panel of Providers DIR Panel of Physicians & Chiropractors
Stress Claims Average Monthly Wage (AMW) PPD Ratings
Vocational Rehabilitation
Firefighter's Cancer as Occupational Disease

ACTUALLY DID...

AB 370 creates a Cost of Living Allowance (COLA) of 2.3% per year for survivors' death benefits starting January 1, 2020.

Sec. 3.5, subsection 1 adds a provision that any widow, widower, surviving child or surviving dependent parent receiving death benefits resulting from an industrial injury or occupational disease is entitled to an annual increase of 2.3% starting January 1, 2020 and each January 1 thereafter; and subsection 3 requires the insurers pay any annual increase for industrial injuries or occupational disease claims occurring on or after July 1, 2019, without being reimbursed from the Fund for Workers' Compensation and Safety.

Sec. 5 adds note requiring compounding of 2.3%, 3 times for survivors' death benefits "caused by an industrial injury or disablement from an occupational disease that occurred before 1/1/89."

Sec. 6 adds note requiring compounding of 2.3%, 2 times for survivors' death benefits caused by an industrial injury or disablement from an occupational disease that occurred on or after 1/1/89 and before 1/1/94.

SB 377 creates a COLA of 2.3% per year for permanent total disability benefits starting January 1, 2020.

Section 3 amends NRS 616C.473 adds subsection 2 for 2.3% annual increase starting on January 1, 2020 and each January 1 thereafter for claims occurring before January 1, 2004.

Sec 2.8 amends NRS 616C.420 (average monthly wage) by adding subsection 2 requiring the calculation be based on a 12 week history of wages; wages for 1 year or the full period of employment if 12 weeks not representative; wages for 1 year if the claimant is a member of a labor organization; if information concerning payroll is not available, wages may be averaged for the available period, but not less than 4 weeks; if payroll information for 4 weeks is not available, then wages are projected using rate of pay on date of injury and projected work schedule; if wages earned are based on piecework and wage history for at least 4 weeks is not available, then wages earned must be equal to the average wages earned by other employees doing the same work; if none of these methods cannot be applied reasonably and fairly then the AMW must be calculated at 100% of: the sum as defined by regulations under this section or projected at the hourly wage on the date of injury and the projected work schedule. "Wages earned" includes concurrent wages.

SB 381 creates requirements for insurer provider panel and DIR provider panel, posted on DIR website; and Claimant can request a PPD rating provider at any time.

Sec. 2 adds a new provision to chapter 616C setting requirement for the adequacy of an insurer's provider panel. Essentially requires 12 providers in each of 19 practice areas. If the insurer's panel does not comply, then the Claimant may select from DIR's provider panel. A provider can only be removed from an insurer's panel for "good cause," defined as: death or disability, license suspended or revoked, convicted of a felony or crime under chapter 616D, or removed from DIR's panel. However, a Claimant may continue to treat with a provider who is no longer on an insurer's panel if not removed for "good cause."

Sec. 8 requires DIR to update its panel of providers annually on or before July 1 and maintain the name, title or degree, legal name of the practice, street address of every provider's office(s), telephone number of each office, every discipline and specialization, and every condition or body part the provider will treat. DIR can only remove a provider from its panel for "good cause" as per Sec. 2. Requires an insurer to grant or deny a change of provider within 10 days, and change is deemed granted, unless denied. Authorizes Hearing or Appeals Officers to order a change of treating provider and may now order more than one provider.

Sec. 26 amends NRS 616C.490 by authorizing an injured employee or the representative to have DIR assign a PPD rating physician or chiropractor "at any time, without limitation." Administrator upon receipt of the request "shall immediately select" the rater.

AB 492 amends NRS 616C.180 for compensability of stress claims.

Sec. 2 amends NRS 616C.180 by amending (4) that an injury or disease caused by stress for a first responder and proves by clear and convincing medical or psychiatric evidence that: (a) employee has a mental injury caused by extreme stress due to directly witnessing death or the aftermath of death as a result of a violent event, or an injury involving grievous bodily harm that “shocks the conscience” and that the primary cause was an event witnessed during the course of employment.

Adding (5) that stress for an employee of the state or any of its agencies or political subdivisions proves by clear and convincing medical or psychiatric evidence that: (a) employee has a mental injury caused by extreme stress in responding to a mass casualty incident; and (b) the primary cause of the injury was responding to the mass casualty incident during the course of employment.

Adding (8) defines "directly witness" as seeing or hearing for oneself; "first responder" as firefighter, police officer, emergency dispatcher, EMT or paramedic; and "mass casualty incident" is an incident designated as a mass casualty incident by one or more governmental agencies.

AB 492 also amends NRS 616C.420, average monthly wage. (Also amended in AB 377, Sec 2.8)

Section 3.5 amends NRS 616C.420, addressing “concurrent wages.”

In new (2), to include concurrent wages if the wages are earned from employers who are insured for workers' compensation or government disability benefits by a private carrier, plan of self-insurance, workers' compensation insurance system of any other state or federal workers' compensation or disability benefit plan.

In new (3), concurrent wages include, without limitation, (a) active or reserve duty in the armed forces, merchant marine or national guard; (b) employment by the federal government, state, county, municipal or local government of any state or territory of the United States; or (c) a private employer.

In new (4), defines “concurrent wages” as the sum of wages earned or deemed to have been earned at each place of employment for two or more employers during the one year period preceding the date of injury or the onset of the occupational disease, whether measured by an hourly rate, salary, piecework, commissions, gratuities, bonuses, per diem, value of meals, value of housing or other employment benefit that can be fairly measured to a monetary value expressed in an average monthly wage.

AB 455 Kids' Chance Bill, amends confidentiality provisions of DIR records

Amends NRS 616B.012 (confidentiality provision) by adding a new subsection 9 which authorizes Administrator or DIR to: (a) disclose nonproprietary information relating to an uninsured employer or proof of industrial insurance; or (b) notifying an injured employee or surviving spouse or dependent of benefits to which they may be entitled in addition to the NIIA or NODA benefits, but only if: (1) the notification is solely for informing of the availability of benefits; and (2) contents of the notification is limited to information offered by nonprofit entities.

AB 128 amends vocational rehabilitation benefits.

Sec. 1 amends NRS 616C.555(3) increasing maximum vocational rehabilitation program limit of 9 months for 0% PPD; 12 months for 1% up to 6 % PPD; and up to 24 months for 6% PPD or more; and in (10) eliminates prohibition on a claimant's right to appeal an authorization of a third or latter program.

Sec. 2 amends NRS 616C.560 removes all restrictions on insurer's granting extensions to voc rehab programs and adds that an extension may be granted by an order of a Hearing or Appeals Officer.

Sec. 3 amends NRS 616C.595 by striking the 40% limitation on lump sum voc rehab programs and increases to 55%.

SB 215 amends NRS 617.453, the firefighter occupational cancer benefits

Sec 1 amends NRS 617.453, the professional or volunteer firefighter OD cancer statute, by: maintaining the service requirement of 5 years or more for cancer to develop or manifest; adds arson investigators and an instructor or training officer for the provision of training concerning fire or hazardous materials; amended subsection 1(b) to require exposure during employment to a known carcinogen or a substance reasonably anticipated to be a human carcinogen and the carcinogen or substance is reasonably associated with the disabling cancer.

Subsection 2 covers professional or volunteer firefighters, investigator, instructor or training officer and an extensive list of additional substances known to be carcinogens associated with specific disabling cancers.

SB 215 Continued

Subsection 3 states that the list in (2) does not create an exclusive list and does not preclude any person from proving other exposures and cancers.

Subsection 5 is a new provision that disabling cancer is “rebuttably presumed” to have arisen out of and in the course of employment if diagnosed during employment.

Subsection 6 if firefighter, investigator, instructor or training officer retired prior to July 1, 2019 or volunteer firefighter, regardless of date of retirement, disabling cancer is rebuttably presumed to have arisen out of and in the course of employment if diagnosed within a period not to exceed 60 months which is calculated at 3 months times the full number of years actually worked in the qualifying capacity from the last date the employee actually worked.

SB 215 Continued

Subsection 7 if firefighter, investigator, instructor or training officer (does not include volunteer firefighter) retired on or after July 1, 2019, disabling cancer is rebuttably presumed to have arisen out of and in the course of employment: if the person ceases employment before completing 20 years, then the cancer must be diagnosed within a period equal to the number of years worked; or if the person ceases employment after completing 20 years, then at any time during the person's life.

Subsection 9 the rebuttable presumption created in (5), (6) or (7) must control the awarding of benefits unless evidence to rebut the presumption is presented.

Subsection 10 a person who files a claim for disabling cancer under (7) after retirement is not entitled to receive any compensation for that disease other than medical benefits.

SB 493 addresses “Employee Misclassification.”

Adds new provision to chptr. 607 creating the Task Force on Employee Misclassification with members appointed by the Governor which shall meet at least twice each fiscal year.

Sec. 9 requires the Task Force to evaluate the policies and practices of the Labor Commissioner, DIR, ESD, Department of Taxation and Attorney General relating to employee misclassification; evaluate existing fines, penalties or other disciplinary action imposed by state agencies for employee misclassification; develop recommendations for practices, policies or proposed legislation; and submit a written report to LCB by July 1, 2020 and by July 1 of each subsequent year.

SB 493 Employee Misclassification

Cont'd

Sec. 11.7 amends NRS 616A.490, employer to post notice identifying industrial insurer, adding a requirement that the applicable definitions of "employee" and "independent contractor", as defined in chapters 616A to 616D, inclusive, of NRS are prominently set forth.

Secs. 12 and 13 amend NRS 616B.012 and 616B.015, respectively, to conform to Sec. 7 on confidentiality with the Labor Commissioner, DIR, ESD, Department of Taxation and the Attorney General.

DIR Regulatory Summary

Regulations Adopted by DIR and Approved by the Legislative Commission:

LCB File No. R127-17, approved 1/30/19, amended NAC 616C.502 striking lump-sum PPD factor table and repealed NAC 616C.498, which was supplanted by the 2017 amendment to NRS 616C.495(1).

Pending or To Be Addressed Regulations

Regulations required by AB 267, Sections 4 and 5 to implement the benefit penalty assessment and calculation set forth in NRS 617.455 and 617.457 (2017 Statutes of Nevada pp. 3892-3896).

Review NAC 616C.550, et seq., on vocational rehabilitation services, as a result of AB 128, amending NRS 616C.555, 616C.560 and 616C.595.

Review NAC 616C.420, et seq., on average monthly wage, as a result of SB 377, Sec. 2.8 and AB 492, Sec. 3.5 amendments of NRS 616C.420.

Pending or To Be Addressed Regulations

Review NAC 616A.460 DIR forms and notices as a result of SB 381, Sec. 5, amending NRS 616C.505 and SB 493, Sec. 11.7 amending NRS 616A.490.

Review assessment regulations as a result of AB 370, survivors' benefits COLA, and SB 377, permanent total disability benefit COLA.

Defining "grievous bodily harm of a nature that shocks the conscience" under AB 492, Sec. 2, amending NRS 616C.180.

Case Law Update

Baiguen v. Harrah's Las Vegas, LLC, 134 Nev. Adv. Op. 71, 426 P.3d 586 (Sept. 13, 2018). WC exclusive remedy case. Using Rio All Suite Hotel & Casino v. Phillips analysis (whether risk was: employment, personal or neutral), Court determines risk was mixed (personal and employment combining to produce the harm). Holding: Injury arising from an employer's failure to provide medical assistance to an employee suffering a stroke arose out of and in the course of the employment.

N. Lake Tahoe Fire Prot. Dist. v. Bd. Of Admin., 134 Nev. Adv. Op. 93, 431 P.3d 39 (Dec. 6, 2018). Subsequent injury account for associations. Confirms that NRS 616B.578 requires an applicant to prove by its contemporaneous written record that it had knowledge of a preexisting permanent physical impairment that would support a rating of 6% WPI or more. Holds that applicants must show knowledge of a qualifying permanent impairment which could be fairly and reasonably inferred from the written record.

Case Law Update Cont'd

City of Reno v. Yturbide, 135 Nev. Adv. Op. 14, 440 P.3d 32 (May 2, 2019). Apportionment of lump-sum PPD under earlier version on NRS 616C.495. City of Reno reduced 25% LS PPD offer to 18%, based on prior LS PPD awards totaling 7%. Holds that NRS 616C.495 and NAC 616C.498 (now repealed) do not authorize insurer to reduce 25% LS PPD award.

Watson v. Helmsman Mgmt. Services, Nevada Supreme Court Case No. 75211 (June 17, 2019 unpublished disposition). Illustrates why an insurer or TPA should respond to DIR inquiries and have counsel present at administrative hearings. Case can be cited for persuasive value only, not precedent.

Helpful Hints

Full copies of any legislative bill and its history can be obtained on-line at the Nevada Legislature website, under Session Info, 80th (2019) Session.

DIR has posted an unofficial compiled version of the NAC covering Chapters 616A through 617, inclusive, at http://dir.nv.gov/WCS/Nevada_Law.

Copies of DIR regulations can be viewed at Nevada Legislature's Nevada Law Library under the Nevada Register at <https://www.leg.state.nv.us/Register/>

QUESTIONS?

Don't Forget . . .

**Please fill out the Evaluation Online:
<http://dir.nv.gov/WCS/Training/>**

- **General Session- Workers' Compensation Section-Legislative Update**

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