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Noreen M. Evans

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FOOTNOTES

1. 1979 Nev. Stats. ch. 162 (hereinafter "Ch. 162") §1 ¶ 2 (adding to NRS Ch. 451).
2. L.A. Daily Journal, June 20, 1979, at 1, col. 3 (states with some brain death legislation include California, Idaho, Illinois, New Mexico, and Oregon).
3. Ch. 162 §1 ¶1 (adding to NRS Ch. 451).
4. Id.
5. See Foreman v. Ver Brugghen, 81 Nev. 86, 87, 398 P.2d 993, 994 (1965); Lockhart v. Maclean, 77 Nev. 210, 215-16, 361 P.2d 670, 673 (1961) (locality rule used to determine standard of reasonable medical care).
6. Thomas v. Anderson, 96 Cal.App.2d 371, 376, 215 P.2d 478, 481-82 (1950) (death occurs when heart stops beating and respiration ends).
7. See L.A. Daily Journal, June 20, 1979, at 1, col. 3 See also Cuthrie, Brain Death and Criminal Liability, 15 CRIM. L.BULL. 40 (Jan-Feb. 1979) (background on medical advances and problems regarding criminal law).
8. See L.A. Daily Journal, June 20, 1979, at 1, col. 3 (problems arise when removal of life support system is seen as the cause of death). See Generally Cuthrie, Brain Death and Criminal Liability, supra, note 7.
9. Id.
10. Id.

WORKER'S COMPENSATION; SELF-INSURANCE, HEARINGS AND COMPENSATION

Adds to NRS Chapters 616, 617, 232

Amends NRS 232.213, 232.215, 443.165, 616.135, 616.185, 616.218, 616.220, 616.222, 616.226, 616.230, 616.235, 616.240, 616.245, 616.2533, 616.305, 616.320, 616.342, 616.380, 616.390, 616.395, 616.400, 616.405, 616.427, 616.490, 616.500, 616.505, 616.530, 616.535, 616.542, 616.550, 616.560, 616.565, 616.583, 616.605, 616.615, 617.310, 617.330, 617.350, 617.360, 617.390, 617.410, 617.430, 617.460

Repeals NRS 617.465, 617.466, 617.467, 617.468, 617.469

AB 84 (Committee on Labor and Management); STATS 1979, Ch 533

(Those sections of Chapter 533 allowing employers to self insure became effective January 1, 1980.¹ The remainder were effective July 1, 1979.)

SB 384 (Committee on Commerce and Labor); STATS 1979 Ch 403

Chapter 533 adds to the Industrial Insurance Act (NRS Chapter 616) and the Occupational Diseases Act (NRS Chapter 617) to allow employers to self-insure against industrial accidents. Chapter 533 further changes the claims adjudication process by removing this function from the Nevada Industrial Commission (NIC) and transferring it to a newly created hearings division in the department of administration. Chapter 403 changes the procedure for closing a case before all benefits to which the claimant may be entitled have been paid.

Self-Insurance

Previously, employers could insure their workers compensation liability only through the NIC;² NIC Regulation 31 allowed a limited type of self-insurance. Beginning January 1, 1980, qualified employers may self-insure independent of the NIC regulations, but subject to regulations promulgated by the Nevada Insurance Commissioner. Rather than pay premiums to NIC, self-insured employers are responsible for funding and administering their own workers compensation losses.³ Self-insured employers are, as are non-self-insured employers, relieved from tort liability for personal injuries arising out of industrial accidents.⁴ Self-insured employers must administer their own claims and pay benefits pursuant to the Industrial Insurance Act and the Occupational Diseases Act.⁵ Claims are to be handled pursuant to the Industrial Insurance Act and the regulations of the commissioner of insurance (hereinafter "insurance commissioner").⁶ For example, the self-insured employer must accept or deny responsibility for compensation within thirty days of receiving notice of an injury⁷ and an employee who is dissatisfied with a decision of a self-insured employer may request a hearing before a hearing officer.⁸ Disputed claims are to be adjudicated through the hearings division of the department of administration pursuant to the hearing procedures of the Industrial Insurance Act and the Administrative Procedure Act (NRS Chapter 233B).⁹

In order to qualify for self-insurance,¹⁰ the employer must establish to the insurance commissioner's satisfaction that it has sufficient administrative and financial resources to make adequate compensation to claimants.¹¹ Qualified employers must be certified by the insurance commissioner in order to self-insure.¹² The insurance commissioner is empowered to insure the employer's continued financial and administrative ability to remain self-insured,¹³ and has the authority to adopt regulations to do so.¹⁴ The insurance commissioner may audit the self-insured employer's reserves on incurred claims;¹⁵ the self-insured employer must file annual audited financial statements and claim reports.¹⁶

If an employer qualifies for self-insurance, it must post a deposit with the insurance commissioner, the purpose of which is to secure the payment of benefits.¹⁷ The deposit does not affect the employer's responsibility for payment of claims.¹⁸ The amount of deposit must be at least \$100,000 or 105% of the expected annual incurred losses, determined by past and prospective loss experience, catastrophes, and trends.¹⁹ The amount of the deposit can be increased or decreased by the insurance commissioner in accordance with NRS Chapter 681B of the Insurance Code (Assets and Liabilities) and the insurance commissioner's regulations for loss reserves.²⁰

The insurance commissioner may use the employer's deposit to pay benefits if the employer 1) becomes insolvent, 2) claims bankruptcy, 3) makes a general or special assignment for creditors, or 4) fails to pay compensation.²¹ The insurance commissioner may also require excess insurance or reinsurance to provide against catastrophic losses.²²

An employer's self-insurance certificate may be terminated voluntarily by the employer, or by the insurance commissioner if the deposit is insufficient and the employer fails to increase it as ordered.²³ It may also be terminated by the insurance commissioner if the employer induces a claimant not to report an accident or refuses to pay compensation that is due;²⁴ fails to comply with regulations²⁵ of the insurance commissioner;²⁶ or becomes insolvent or bankrupt, makes a general or special assignment for creditors, or fails to pay compensation as ordered.²⁷ If the employer petitions for judicial review of the termination of its self-insurance certificate, the termination will not become effective until final judgment is rendered.²⁸ If the self-insurance certificate is terminated, the employer's security remains on deposit for thirty-six months to secure the employer's outstanding and

contingent liabilities.²⁹ After thirty-six months the insurance commissioner may accept, in lieu of the employer's security, a policy of paid-up insurance.³⁰ Upon termination of self-insurance the employer must elect to accept or reject insurance through the NIC.³¹ Additionally, the employer may be fined up to \$500 for the violations listed above.³² The employer has the opportunity to correct the deficiencies before being penalized.³³ The self-insured employer may contest any insurance department decision and request a hearing with the insurance commissioner,³⁴ as well as petition for judicial review of the insurance commissioner's decision.³⁵

Self-insured employers are subject to specific fees and assessments. They are required to pay into a subsequent injury fund established by the insurance commissioner.³⁶ In addition, self-insured employers may be assessed to provide for claims against any insolvent self-insured employer.³⁷ Self-insured employers are also assessed up to 2-1/2% of their expected annual claims expenditures to pay for the administration of the self-insurance program, including expenses of auditing and verifying reserves³⁸ and financing the hearing officers' and industrial attorney's costs.³⁹

Hearings

The hearings function has been transferred from the NIC to the department of administration.⁴⁰ Although the NIC retains responsibility for administering benefits,⁴¹ its decisions are subject to review by a hearing officer.⁴² Any person subject to the jurisdiction of the hearing officer may request a hearing.⁴³ Hearing officers may cause depositions to be taken of witnesses,⁴⁴ issue subpoenas,⁴⁵ compel claimants to undergo a medical examination,⁴⁶ and petition the district court to compel obedience to their orders through contempt proceedings.⁴⁷ Transcripts of their hearings may be entered into evidence.⁴⁸

Time limits are prescribed for the hearing process. For hearings before a hearing officer, the hearing date must be within thirty days of the request for a hearing,⁴⁹ and notice given to the parties fifteen days before the hearing.⁵⁰ The decision must be rendered within fifteen days of the hearing.⁵¹ The claimant then has sixty days to appeal the hearing officer's decision to the appeals officer.⁵²

For hearings before the appeals officer, the hearing must be held within sixty days of the request for hearing,⁵³ although it may be continued for up to forty-five days upon stipulation of the parties or for good cause.⁵⁴ The decision must be

rendered within thirty days of the hearing⁵⁵ (instead of the 120 days allowed previously),⁵⁶ but if a transcript is ordered, the decision must be rendered thirty days after the transcript is filed.⁵⁷ Unless a transcript is ordered, the final administrative decision must be rendered within 240 days of the initial request for hearing.

The appeals officer must hear any matter raised on its merits, including new evidence.⁵⁸ The rules of evidence applicable to contested cases under the Administrative Procedure Act apply to hearings before an appeals officer.⁵⁹ The appeals officer may affirm, modify, or reverse the hearing officer's decision;⁶⁰ the appeals officer's decision is the final and binding administrative decision.⁶¹

Other Changes

Chapter 403 and 533 also change certain benefit provisions, claim processing, and ratemaking procedures.

Claims

Previously, there was no time limit for the decision to accept or deny a compensation claim.⁶² Now the NIC or self-insured employer must make the decision within thirty days of receiving notice of the injury; the insurance commissioner may grant an extension of up to sixty days if the NIC or self-insured employer needs additional information to determine liability.⁶³ Further extensions may be granted as necessary, but the total period may not be extended to more than ninety days.⁶⁴

An injured employee is allowed to choose a physician from a panel appointed by the NIC and, if dissatisfied, may choose an alternate. The alternate choice must be made within forty-five days of the injury and any further change is subject to the approval of the NIC or the self-insured employer.⁶⁵

Contested cases

Chapter 403 permits a hearing to contest the NIC's decision to close a claim on which additional benefits may be due. If the NIC determines that a case should be closed before all benefits to which the claimant may be entitled have been paid, the NIC must send a written notice of its intention to close the claim to the last known address of the claimant.⁶⁶ The claimant may, within thirty days, request a

hearing before an appeals officer.⁶⁷ The case is then treated as a contested case for the purposes of appeal.⁶⁸ (Normal procedure is first to a hearing officer, then to an appeals officer.)⁶⁹ If no hearing is requested by the claimant, the NIC may close the case.⁷⁰

A question arises as to whether the NIC may continue to close the case and cut off payments even after receipt of a request for hearing. As defined by NRS 233B.032, a contested case is "a proceeding...in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing..." (emphasis added). Furthermore, due process may require an opportunity for a hearing prior to termination of benefits;⁷¹ therefore, the case probably could not be closed until after the appeals officer renders a decision.

Compensation

Chapter 533 deletes the provision that the NIC may advance up to one year of permanent partial disability benefits.⁷² However, a claimant who has in excess of a 12% disability may elect to receive up to 25% of the compensation due in a lump sum. Demonstration of financial need is not required.⁷³

Premium Rates

Increases and reductions in premium rates become effective thirty days after adoption by the NIC.⁷⁴ The revised rates must be filed with the insurance commissioner and written notice must be given to the employer.⁷⁵ The insurance commissioner must grant the employer a hearing, if requested, before the effective date of the rate change and the dispute must be resolved by the insurance commissioner in a manner not unjust to the employer or to the state insurance fund.⁷⁶ The NIC must make adjustments in the rates as ordered by the insurance commissioner.⁷⁷

Rehabilitation

To aid in getting injured workers back to work, the NIC may order counseling, training, and rehabilitation.⁷⁸ However, before ordering rehabilitation services, the NIC must consult with the injured worker and the treating physician to determine if

the proposed rehabilitation program is compatible with the worker's age, sex, and physical condition.⁷⁹ If the rehabilitation program will involve a change in vocation, the consultation must include the employer and a rehabilitation counselor.⁸⁰

Noreen M. Evans

FOOTNOTES

1. §§1-17, 18.4, 26.1, 27.15, 28, 30.5, 32-35, 36.5, 37, 38.5, 39, 40, 44, 49, 50, 51.5, 52-55, 56.5, 57.1, 57.4, 58.
2. See generally, NRS Chapters 616 and 617.
3. 1979 Nev. Stats. ch. 533 (hereinafter "Ch. 533") §§3 ¶ 2, 34, 49, 50, 55 (adding to NRS Ch. 616; amending NRS 616.400, 617.310, 617.410).
4. Id. §3 ¶ 2 (adding to NRS Ch. 616).
5. Id. §§3 ¶1, 49 ¶1, 56.5, 57.1 (adding to NRS Chs. 616, 617; amending NRS 617.430(2), 617.460).
6. Id. §§3 ¶ 3, 49 ¶ 3 (adding to NRS Chs. 616, 617).
7. Id. §38.5 (amending NRS 616.500(7)).
8. Id. §13 (adding to NRS Ch. 616). See also id. §39 (parties entitled to compensation must apply to the self-insured employer—NRS 616.505); §40 (except for self-insured employer, if judgment is fully satisfied by employer prior to payment by the NIC, NIC payment must be made to the employer—NRS 616.530(2)(c)); §44 (self-insured employer has a right of action against person liable to pay damages and is subrogated to the right of the employee to recover—NRS 616.560); §48 (self-insured employer must bear cost of transporting remains of deceased to mortuary—NRS 616.615); and §51.5 (statute of limitations for compensation claims applicable to self-insured employers—NRS 617.330).
9. Id. §§3 ¶ 3, 13 (adding to NRS Ch. 616).
10. Id. §4 ¶1, (adding to NRS Ch. 616).
11. In comparison, to be eligible for NIC's existing self-insurance program, the employer must 1) have been a corporation with a net worth of at least \$2,500,000 and a record of positive earnings over the preceding three years, 2) have developed in Nevada operations a workers compensation premium at manual rates of no less than \$100,000 per year for each of the preceding three years or

have paid NIC premiums on payrolls exceeding \$100,000 per year for each of the preceding three years, and 3) have had a record of effective loss control and accident prevention. See RULES AND REGULATIONS GOVERNING THE PRACTICE AND PROCEDURE BEFORE THE NEVADA INDUSTRIAL COMMISSION §31.200 (1978).

12. Ch. 533 §§2, 6 ¶1 (adding to NRS Ch. 616).
13. Id. §§4 ¶2, 5 ¶1 (adding to NRS Ch. 616).
14. Id. §§3 ¶3, 4 ¶2 (adding to NRS Ch. 616).
15. Id. §15 ¶2 (adding to NRS Ch. 616).
16. Id. §§10, 15 ¶1 (adding to NRS Ch. 616).
17. Id. §4 ¶2 (adding to NRS Ch. 616).
18. Id. §3 ¶4 (adding to NRS Ch. 616).
19. Id. §4 ¶2 (adding to NRS Ch. 616).
20. Id. §§3 ¶4, 4 ¶2 (adding to NRS Ch. 616).
21. Id. §5 ¶1 (adding to NRS Ch. 616).
22. Id. §4 ¶3 (adding to NRS Ch. 616).
23. Id. §§6 ¶2, 7 ¶1(a) (adding to NRS Ch. 616).
24. Id. §7 ¶1(b) (adding to NRS Ch. 616).
25. Id. §§3 ¶2, 4 ¶2 (adding to NRS Ch. 616).
26. Id. §7 ¶1(c) (adding to NRS Ch. 616).
27. Id. §7 ¶1(d) (adding to NRS Ch. 616).
28. Id. §8 ¶3 (adding to NRS Ch. 616).
29. Id. §9 ¶1 (adding to NRS Ch. 616).
30. Id. §9 ¶2 (adding to NRS Ch. 616).
31. Id. §7 ¶2 (adding to NRS Ch. 616). See also NRS 616.305 (as amended by Ch. 533 §28).
32. Ch. 533 §7 ¶1 (adding to NRS Ch. 616).
33. Id. §§7 ¶1(a), 8 ¶2, 3(c) (adding to NRS Ch. 616).
34. Id. §8 ¶2, 3 (adding to NRS Ch. 616).
35. Id. §§8 ¶3(c), 17 (adding to NRS Ch. 616).
36. Id. §36.5 (adding to NRS Ch. 616).
37. Id. §5 ¶1 (adding to NRS Ch. 616).
38. Id. §11 ¶3 (adding to NRS Ch. 616).
39. Id. §§12, 27.5, 57.4 (adding to NRS Ch. 616; amending NRS 616.2533(3), adding to NRS Ch. 232).
40. Id. §§25.4, 25.6, 57.5, (amending NRS 616.218, 616.220, 232.213).

41. Id. §25.6 (amending NRS 616.220).
42. Id. §25.6 (amending NRS 616.220(5)).
43. Id. §18 (adding to NRS Ch. 616).
44. Id. §26.5 (amending NRS 616.240).
45. Id. §26.7 (amending NRS 616.226).
46. Id. §41 (amending NRS 616.535).
47. Id. §26.2 (amending NRS 616.230).
48. Id. §26.8 (amending NRS 616.245(1)).
49. Id. §19 ¶1 (adding to NRS Ch. 616).
50. Id. §19 §2 (adding to NRS Ch. 616).
51. Id. §19 ¶3 (adding to NRS Ch. 616).
52. Id. §20 ¶1 (adding to NRS Ch. 616).
53. Id. §20 ¶2 (adding to NRS Ch. 616).
54. Id. §20 ¶3 (adding to NRS Ch. 616).
55. Id. §21 ¶4(b) (adding to NRS Ch. 616).
56. See 1977 Nev. Stats. Chs. 29 §62, at 84, and 170 §§8, 12, at 315 (NRS 616.542) (repealed by Ch. 533 §42).
57. Ch. 533 §21 ¶4 (adding to NRS Ch. 616).
58. Id. §21 ¶2 (adding to NRS Ch. 616).
59. Id. §21 ¶1 (adding to NRS Ch. 616).
60. Id. §21 ¶5 (adding to NRS Ch. 616).
61. Id. §42 (amending NRS 616.542(4)).
62. See 1977 Nev. Stats. ch. 29 §61, at 83 (NRS 616.220) and 1973 Nev. Stats. ch. 420 §17, at 604 (NRS 616.500). See generally, NRS Chapter 616.
63. Ch. 533 §§38, 38.5 (adding NRS 616.500(7), amending NRS 616.500(7)).
64. Id. §38 (adding NRS 616.500(7)).
65. Id. §§30, 30.5 (amending NRS 616.342).
66. 1979 Nev. Stats. ch. 403 (hereinafter "Ch. 403") §1 ¶1 (adding to NRS Ch. 616).
67. Id. §1 ¶1 (adding to NRS Ch. 616).
68. Id.
69. See Ch. 533 §§19, 20, 25.6 (adding to NRS Ch. 616, amending NRS 616.220(5), (6)).
70. Ch. 403 §1 ¶2 (adding to NRS Ch. 616).
71. Goldberg v. Kelly, 397 U.S. 254, 262-264 (1970).
72. Ch. 533 §47 (amending NRS 616.605).
73. Id.

74. Id. §31 (amending NRS 616.380(3)(b)). Cf., 1973 Nev. Stats. ch. 420 §5, at 600 (NRS 616.380(3)).
75. Ch. 533 §31 (amending NRS 616.380(3)(b)).
76. Id. §31 (amending NRS 616.380(3)(c)).
77. Id. Cf., 1973 Nev. Stats. ch. 420 §5, at 600 (NRS 616.380(3)).
78. Ch. 533 §26 (amending NRS 616.222(1)).
79. Id. §26 (amending NRS 616.222(2)).
80. Id.