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Univeristy of the Pacific, McGeorge School of Law

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Employment Practices; unemployment compensation

N.R.S. §§612.315, 612.320, 612.353, 612.415 (repealed); §§612.—, 612.— (new); §§612.245, 612.250, 612.260, 612.375, 612.3774, 612.380, 612.390, 612.434, 612.475, 612.480, 612.495, 612.550 (amended).

AB 292 (Banner); STATS 1981, Ch 379 (§§612.— and 612.550 are effective January 1, 1982)

AB 295 (Robinson); STATS 1981, Ch 206

AB 313 (Banner); STATS 1981, Ch 208

AB 370 (Banner); STATS 1981, Ch 337

Chapters 206, 208, 337, and 379 make a number of changes in the law governing unemployment insurance affecting various administrative determination and appeal procedures, benefit eligibility, and extended benefits.

Administrative Procedures

Under existing law, the Executive Director of the Employment Security Department is responsible for determining whether an employing unit¹ constitutes an employer² and whether the services performed constitute employment.³ The Executive Director is also responsible for establishing employer contribution rates based upon the percentage of benefits charged against base period employers and wages reported during the base period.⁴ In making these determinations, prior law required the Executive Director to hold hearings and make findings of fact.⁵ Chapter 206 specifically eliminates the requirement for hearings and findings of fact and permits the Executive Director to make administrative determinations regarding employing units, services performed, and contribution rates after notice and opportunity for the employing unit to submit facts.⁶

Appeals from administrative determinations under prior law, could be taken directly to district court.⁷ Chapter 206 requires that appeals be processed in the same manner prescribed for appeals of benefit determinations.⁸ Thus, an appeal of an administrative determination ini-

1. See N.R.S. §612.060 (definition of employing unit).

2. See *id.* §§612.055 (definition of employer), 612.245 1.

3. See *id.* §§612.060-612.145, 612.245 1.

4. See *id.* §612.250 1.

5. See STATUTES OF NEVADA 1955, c. 317, §1, at 518.

6. See N.R.S. §§612.245, 612.250.

7. See STATUTES OF NEVADA 1955, c. 317, §1, at 519 (amending N.R.S. §§612.245, 612.250).

8. See N.R.S. §612.245 2. See generally §§612.495-612.530.

tially must be filed with an appeal tribunal appointed by the Board of Review of the Employment Security Department.⁹ Review of the determination of the appeal tribunal, by the Board of Review, is allowed as a matter of right if the decision reverses or modifies the executive director's determination; in all other cases, review is at the discretion of the Board of Review.¹⁰ A party may commence an action in district court only after the Board of Review has reached a decision.¹¹

Additionally, the Employment Security Department, prior to the enactment of Chapter 206, notified the claimant's most recent employing unit that the first unemployment compensation claim had been filed.¹² The notice provided an opportunity for the employer to submit any facts which may affect the individual's rights to benefits or protest the payment of benefits.¹³ Under provisions of Chapter 206, the last *two* units must be notified of a claim filed by the unemployed claimant.¹⁴ In addition, the notice may contain the claimant's reason for separation from the employing unit affected.¹⁵

Finally, the Employment Security Department also must notify the employer of the right to contest the charging of benefits to the employer's account¹⁶ when the employer has paid seventy-five percent or more of the claimant's wages during the base period.¹⁷ Benefits may not be charged against the employer's record for experience rating if, within ten days after notice, the employer provides evidence that the claimant left the employment voluntarily without good cause or was discharged for misconduct.¹⁸ In addition, the employer may appeal the ruling determining the cause of the claimant's termination to an appeal tribunal, the Board of Review, and finally, to the appropriate district court.¹⁹

Benefit Eligibility and Computation

Under existing law, an unemployed person is eligible for weekly benefits only if the claimant (1) has registered for work at and reported to

9. *See id.* §§612.490, 612.495.

10. *See id.* §612.515. *But see* §612.480. Certain administrative determinations could be reopened any time within one year on the grounds of nondisclosure or misrepresentation of material fact, error, or mistake; Chapter 206 specifies, however, that these determinations may not be reopened if an appeal tribunal has rendered a decision on the determination.

11. *See* N.R.S. §612.530 1.

12. *See* STATUTES OF NEVADA 1975, c. 564, §3, at 1001 (amending N.R.S. §612.475).

13. *See id.*

14. *See* N.R.S. §§612.475 1, 612.495 2.

15. *See id.* §612.475 2.

16. *See id.* §612.— 1.

17. *See id.* §612.025 1 (definition of base period).

18. *See id.* §612.— 2.

19. *See id.* §612.— 3. *See also id.* §§612.490-612.530.

an employment security department office,²⁰ (2) has made a claim for benefits,²¹ (3) is able to and available for work,²² and (4) has, within the base period, been paid wages from employers.²³

A claimant's eligibility for benefits, however, may be affected by the manner in which the employer-employee relationship terminates.²⁴ Existing law provides that a claimant is ineligible for benefits for the week such person *voluntarily* leaves the last or next to last employment.²⁵ Chapter 379 additionally provides that a person who voluntarily terminates to seek better employment is ineligible for benefits for all subsequent weeks until better employment is secured or until remuneration is earned in covered employment equal to or exceeding the weekly benefit amount in each of ten weeks.²⁶ The legislature appears to agree with the view that the voluntary separation of an employee to accept a higher wage when present working conditions are acceptable is not sufficiently good cause to justify an increase in the contribution rate of an employer under the Unemployment Compensation Act of Nevada.²⁷

In addition, persons voluntarily discontinuing work to marry, to accompany their spouse, or to join their spouse at a place impractical to commute to their employment were disqualified from receiving unemployment compensation benefits under prior law.²⁸ Chapter 379 deletes this provision, thus apparently extending eligibility under these circumstances.²⁹

Under prior law relating to benefit computation, wages earned before January 1, 1978 from uncovered services³⁰ could serve as the basis for benefit payments if the benefits were covered by the federal government under the Unemployment Compensation Amendments of 1976.³¹ Chapter 206 now provides that benefit payments must be based on covered services.³²

20. *See id.* §612.375 1.

21. *See id.* §612.375 2.

22. *See id.* §612.375 3.

23. *See id.* §612.375 4.

24. *See id.* §612.380.

25. *See id.*

26. *Compare id. with* STATUTES OF NEVADA 1977, c. 431, §1, at 872.

27. *See* [1965] OP. ATT'Y GEN. NO. 288 (May 20, 1965).

28. *See* STATUTES OF NEVADA 1965, c. 75, §4, at 108 (amending N.R.S. §612.415).

29. *See* STATUTES OF NEVADA 1981, c. 379, §5, at — (repealing N.R.S. §612.415).

30. *See generally* N.R.S. §§612.095-612.110, 612.117-612.120, 612.125-612.140 (definitions of uncovered services).

31. *See* STATUTES OF NEVADA 1977, c. 429, §15, at 836 (amending N.R.S. §612.353). *See also* Unemployment Compensation Amendments of 1976, PUB. L. NO. 94-566, 90 Stat. 2667.

32. *See* STATUTES OF NEVADA 1981, c. 206, §8, at — (repealing N.R.S. §612.353).

Prior to the enactment of Chapter 379, wages paid immediately prior to the claimant's retirement were not included in calculating the total wages paid during the base period.³³ Chapter 379 creates exceptions for charging benefits against employers when the claimant receives any governmental or private pension, annuity, or similar periodic payment for retirement.³⁴ If contributions to the retirement plan were made entirely by the claimant or by the claimant and an employer who is neither a base period employer nor an employer whose account is chargeable with benefit payments, the claimant is entitled to the retirement payment and the entire unemployment benefit payment.³⁵ If at least one-half but less than the entire amount of the contributions to the retirement plan were made by the claimant, unemployment benefits must be reduced by half the proportionate weekly amount of the retirement payment.³⁶ When the claimant contributes less than one-half of the entire amount to the retirement plan, unemployment compensation must be reduced by the entire proportionate weekly amount of the retirement payment.³⁷

Extended Benefits

Congress created the Extended Benefits Program to supplement regular benefits during periods of high unemployment.³⁸ Under this program, the federal government and the states share equally the cost of paying additional weeks of compensation beyond the period provided by state law.³⁹ Chapter 337 requires disqualification from obtaining these extended benefits if the claimant fails (1) to accept an offer of suitable work⁴⁰ or to apply for any suitable work referred to the claimant by the Executive Director, (2) to engage actively in a systematic

33. See STATUTES OF NEVADA 1977, c. 452, §2.5, at 898 (amending N.R.S. §612.375 5).

34. Compare N.R.S. §612.375 5 with STATUTES OF NEVADA 1977, c. 452, §2.5, at 899.

35. See N.R.S. §612.375 5(a).

36. See *id.* §612.375 5(b).

37. See *id.* See also 56 A.L.R.3d 520 (In a number of cases, courts have applied or recognized the rule that receipt of pension payments is irrelevant to a claimant's right to unemployment compensation.); N.R.S. §612.375 6 (Chapter 379 also provides that the exceptions for charging benefits against employers will not apply when services performed by the claimant do not affect the retirement payment in any manner. The pension payments of the Social Security Act and the Railroad Retirement Act of 1974, however, are subject to the above listed exceptions for charging benefits. The provisions of Chapter 379 regarding these exceptions for charging benefits against employers operate retroactively to and including March 31, 1980.).

38. See PUB. L. No. 91-373, 84 Stat. 695 (1970).

39. See generally Employment Security Amendments of 1970, PUB. L. No. 91-373, 84 Stat. 695.

40. See N.R.S. §612.— (Chapter 337 defines suitable work as any work within the person's capabilities and for which the gross average weekly remuneration is greater than the sum of any supplemental unemployment benefits and the person's weekly extended benefit amount. However, the gross average weekly remuneration must not be less than the higher of the federal minimum wage or any applicable state of local minimum wage.).

and sustained effort to obtain work, or (3) to furnish tangible evidence that such efforts were made.⁴¹ Extended benefits may not be denied, however, for failure to apply for or accept suitable work if the position was not offered in writing and was not listed with the employment service, or the person furnishes satisfactory evidence that the prospects for obtaining work in the person's customary occupation in a reasonably short period are good.⁴²

Chapter 208 additionally disqualifies persons filing claims for extended benefits for any week in which the benefits are payable under an interstate benefit payment plan⁴³ and for any week in which an extended benefit period is not in effect.⁴⁴ A claimant, however, may receive extended benefits for the first two weeks of eligibility under an interstate benefit payment plan.⁴⁵

41. See N.R.S. §612.— 1(c).

42. See *id.* §612.— 4.

43. See generally N.R.S. §612.295; 9 A.L.R.2d 646 (An interstate benefit payment plan is utilized when employment is performed in several states which affects the right to unemployment benefits and the extent thereof, and also affects the incidence of the tax or contribution required of the employer.).

44. See *id.* §612.— 1.

45. See *id.* §612.— 2.