



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1989 | Issue 1

Article 134

1-1-1989

Public Entities, Officers, and Employees; Department of Industrial Relations, Division of Occupational Safety and Health-*compilation, maintenance, and release of records*

The University of the Pacific, McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>



Part of the [Legislation Commons](#)

Recommended Citation

The University of the Pacific, McGeorge School of Law, *Public Entities, Officers, and Employees; Department of Industrial Relations, Division of Occupational Safety and Health-*compilation, maintenance, and release of records**, 1989 U. PAC. L. REV. (2019).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1989/iss1/134>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

**Public Entities, Officers, and Employees; Department of Industrial Relations, Division of Occupational Safety and Health—
compilation, maintenance, and release of records**

NEV. REV. STAT. § 618.367 (repealed); § 618.____ (new); §§ 232.600, 618.325, 618.365, 618.370, 618.425, 618.435, 618.545, 618.555, 618.705 (amended).

AB 63 (Jeffrey); 1989 STAT. Ch. 212

Prior law did not require the state to maintain records of complaints made by employees¹ or their representatives regarding workplace safety violations or dangers.² Chapter 212 requires the Division of Occupational Safety and Health (Division)³ of the Department of Industrial Relations to keep records of all written and oral complaints received from employees or their representatives.⁴

Chapter 212 also requires the Division to keep a log, separate from the complaint records, containing any complaint filed by an employee or employee representative that reports the existence of either imminent danger in the workplace or a violation of a health or safety standard⁵ that threatens physical harm.⁶ The log must state the action taken by the Division in response to the complaint.⁷ In addition, the log must indicate each regulatory inspection of an employer⁸ made by the Division,⁹ and any citations to an employer issued by the

1. See NEV. REV. STAT. § 618.085 (1987) (definition of employee).

2. *Id.* §§ 618.365-455 (1987) (scope and operation of the Division of Occupational Health and Safety of the Department of Industrial Relations (Division)).

3. See *id.* §§ 618.175, .235, .285 (1987) (provisions describing function, administration, and duties of Division).

4. 1989 Nev. Stat. ch. 212, sec. 2, at 467 (enacting NEV. REV. STAT. § 618.____ 2). The record must summarize each complaint, list the evidence given in support, show the date that the employer was notified, and describe the Division action taken in response. *Id.* See *id.* ch. 212, sec. 6, at 469 (amending NEV. REV. STAT. § 618.370) (definition of employee representative).

5. See generally NEV. REV. STAT. §§ 618.295-.305 (1987) (adoption and sources of standards).

6. 1989 Nev. Stat. ch. 212, sec. 2, at 467 (enacting NEV. REV. STAT. § 618.____ 2).

7. *Id.* at 467 (enacting NEV. REV. STAT. § 618.____ 2(b)(1)-(3)) (requiring notations in logbook which indicate whether the Division made a special investigation, and the findings of that investigation). See NEV. REV. STAT. § 618.425 3 (1987) (amended by Nev. Stat. ch. 212, sec. 3, at 468) (providing for special investigations).

8. See NEV. REV. STAT. § 618.095 (1987) (defining employer).

9. 1989 Nev. Stat. ch. 212, sec. 2, at 467 (enacting NEV. REV. STAT. § 618.____ 2 (d)). See NEV. REV. STAT. § 618.325 2(a)-(b) (Division administrator or representative may enter a place of employment at a reasonable time to inspect conditions and equipment, and to question any employer or employee). See also 1989 Nev. Stat. ch. 212, sec. 4, at 469 (amending NEV. REV. STAT. § 618.325) (requiring regulatory inspections, whether random or regularly scheduled,

Division.¹⁰ Finally, the log must show the reasons for the citation, any penalty¹¹ levied by the Division upon the employer, and the reasons for imposing that penalty.¹²

Prior law gave employers access to all records possessed by the Division concerning that employer.¹³ Chapter 212 allows public inspection of all Division records covering complaints of impending danger or health-threatening violations of safety standards.¹⁴ The Division must provide copies of these records upon public request.¹⁵

Chapter 212 prohibits the Division from disclosing the names of employees who have filed complaints or made statements regarding their employer during an investigation.¹⁶ The Division may not disclose any information regarding a current investigation, aside from the fact that it is in progress.¹⁷

Chapter 212 allows representatives of present and former employees to gain access to employer records showing employee exposure to physical dangers or toxic substances.¹⁸

Under existing law, employees and their representatives can request an investigation of an employer for violations of workplace safety standards.¹⁹ Chapter 212 extends this right to health care providers and governmental employees who are responsible for ensuring public

to be unannounced). *But see* Att'y Gen. Op. 79-2 (1979) (finding Nevada Revised Statute section 618.325 2 unconstitutional because it authorizes inspections of non-public areas without search warrant).

10. 1989 Nev. Stat. ch. 212, sec. 2, at 467 (enacting NEV. REV. STAT. § 618.____ 2).

11. *See* NEV. REV. STAT. §§ 618.625-.715 (1987) (provisions relating to assessment of penalties for violations of health or safety standards).

12. 1989 Nev. Stat. ch. 212, sec. 2, at 467 (enacting NEV. REV. STAT. § 618.____ 2).

13. 1975 Nev. Stat. ch. 485, sec. 31, at 775 (repealed by 1989 Nev. Stat. ch. 212, sec. 13, at 473).

14. 1989 Nev. Stat. ch. 212, sec. 3, at 468 (enacting NEV. REV. STAT. § 618.____). The public may also inspect records which show how the Division responded to complaints, records of citations issued and penalties levied by Division, and records indicating the reasons for the citations and penalties. *Id.*

15. *Id.* sec. 3, at 468 (enacting NEV. REV. STAT. § 618.____ 3). The Division must allow for public inspection of logbooks during regular business hours. *Id.* sec. 2, at 467 (enacting NEV. REV. STAT. § 618.____ 2). *See also* NEV. REV. STAT. § 618.____ 2 (Division must retain all records and log entries for five years or more).

16. 1989 Nev. Stat. ch. 212, sec. 3, at 468 (enacting NEV. REV. STAT. § 618.____ 3).

17. *Id.*

18. *Id.* sec. 6, at 469 (amending NEV. REV. STAT. § 618.370 3) (definition of representative of employee or former employee); sec. 6, at 469 (amending NEV. REV. STAT. § 618.370 1) (records must be provided to the requesting party within 72 hours). The first six pages of the employer's records are provided free; each additional page must be paid for at the cost of reproduction. 1989 Nev. Stat. ch. 212, sec. 2, at 467 (enacting NEV. REV. STAT. § 618.370 2).

19. NEV. REV. STAT. § 618.425 1 (amended by 1989 Nev. Stat. ch. 212, sec. 7, at 470). The request must be initiated by giving notice of a violation of safety or health standards, or of an imminent danger in the workplace. *Id.*

safety.²⁰ If the Division found that a request for inspection was reasonable, prior law required a special investigation be made as soon as practicable.²¹ Chapter 212 provides that if the Division finds no indications of the violative or dangerous conditions reported, it must notify the complainant within fourteen days of receiving the complaint.²²

Existing law allows employees and their representatives to request an informal review of any refusal by the Division to issue a citation to an employer.²³ Chapter 212 extends the power to request an informal review to health care providers and governmental public safety employees.²⁴ Existing law permits an employee to accompany the Division inspector during the physical examination of the premises.²⁵ Chapter 212 prohibits more than one employee from joining the inspection,²⁶ and requires the employee be paid by the employer at the regular rate for time spent on the inspection.²⁷

Under prior law, the Division administrator could petition a district court to issue an emergency order²⁸ requiring an employer to remedy imminently dangerous or violative conditions in the workplace.²⁹ Chapter 212 authorizes the administrator to issue an emergency order without petitioning a court.³⁰ The emergency order may be contested by the employer.³¹ If the order is not contested within fifteen days after receipt by the employer, it becomes final and unreviewable by any court.³² Chapter 212 also provides for a fine of \$20,000 or six

20. 1989 Nev. Stat. ch. 212, sec. 7, at 470 (amending NEV. REV. STAT. § 618.425 1). The request may be made orally or in writing. *Id.*

21. NEV. REV. STAT. § 618.425 3 (1987) (amended by 1989 Nev. Stat. ch. 212, sec. 7, at 470).

22. 1989 Nev. Stat. ch. 212, sec. 7, at 470 (amending NEV. REV. STAT. § 618.425 3). If reasonable grounds show a violation or danger exists, an investigation must be made within fourteen days. *Id.* If there is a high risk of death or serious bodily injury from current workplace conditions, however, the investigation must commence immediately. *Id.* If the Division finds the complaint was made merely to inconvenience the employer, the Division need not investigate within these time limits. *Id.*

23. NEV. REV. STAT. § 618.435 1 (amended by 1989 Nev. Stat. ch. 212, sec. 8, at 471).

24. 1989 Nev. Stat. ch. 212, sec. 8, at 471 (amending NEV. REV. STAT. § 618.435 1).

25. NEV. REV. STAT. § 618.435 2 (amended by 1989 Nev. Stat. ch. 212, sec. 8, at 471).

26. 1989 Nev. Stat. ch. 212, sec. 8, at 471 (amending NEV. REV. STAT. § 618.435 2).

27. *Id.* at 471 (enacting NEV. REV. STAT. § 618.435 3) (compensation is due only if the employee would normally have been paid for working during time of inspection).

28. See NEV. REV. STAT. § 618.075 (1987) (definition of emergency order).

29. 1973 Nev. Stat. ch. 591, sec. 31, at 1014 (amended by Nev. Stat. ch. 212, sec. 9, at 471).

30. 1989 Nev. Stat. ch. 212, sec. 9, at 471 (amending NEV. REV. STAT. § 618.545 1).

31. *Id.* sec. 9, at 471 (amending NEV. REV. STAT. § 618.545 2). If an employer contests the order, and the Division refuses to amend or retract the order, the employer may petition the district court for relief. *Id.*

32. *Id.*