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# Worker's Compensation

## Worker's Compensation; industrial insurance—industrial compensation insurance coverage

NEV. REV. STAT. §§ 616.260, 616.520 (amended).

AB 164 (Jeffrey); 1989 STAT. Ch. 276 (*Effective October 1, 1989*);

AB 916 (Committee on Commerce); 1989 STAT. Ch. 325 (*Effective June 13, 1989*).

Existing law requires that injured<sup>1</sup> employees<sup>2</sup> be compensated for industrial injuries under the Nevada Industrial Insurance Act.<sup>3</sup> Employees who are working in Nevada on a temporary basis are excluded from coverage.<sup>4</sup> Chapter 325 narrows this exception and requires that employers provide Nevada industrial insurance coverage for out-of-state workers employed temporarily in Nevada by certain contractors.<sup>5</sup>

Chapter 276 permissively exempts an employer from premium payments for Nevada employees who do not currently perform any

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1. See NEV. REV. STAT. § 616.110 1 (1988) (definition of injury).

2. See *id.* § 616.055 (1988) (definition of employee).

3. *Id.* §§ 616.010-.680 (1988).

4. *Id.* § 616.260 1 (1988) (amended by 1989 Nev. Stat. ch. 325, sec. 1, at \_\_\_).

5. 1989 Nev. Stat. ch. 325, sec. 1, at \_\_\_ (amending NEV. REV. STAT. § 616.260).

Contractors with projects valued at \$250,000 or more must provide Nevada coverage. *Id.* See NEV. REV. STAT. § 624.020 2 (1987) (definition of contractor). See also *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 504-05 (1939) (a state has the power to apply its own industrial compensation statute when the injury occurs within state boundaries); *Alaska Packers Ass'n v. Industrial Accident Comm'n*, 294 U.S. 532, 549-50 (1935) (a state has a legitimate interest in providing aid to those injured within its borders). Chapter 276 would have narrowed the exclusion to temporary workers on lesser valued construction projects. 1989 Nev. Stat. ch. 276, sec. 1, at \_\_\_ (amended by 1989 Nev. Stat. ch. 325, sec. 1, at \_\_\_). The change would have had the effect of removing temporary workers who were not employed in the construction industry from the exclusion and newly requiring that they be covered under the Nevada Industrial Insurance Act. *Id.* Chapter 325 amends Chapter 276 with the result that the exclusion will continue to apply to all temporary workers other than those who work on construction projects valued at or above \$250,000. 1989 Nev. Stat. ch. 325, sec. 1, at \_\_\_ (amending NEV. REV. STAT. § 616.260). Chapter 276 would have required the employer of exempt workers to provide advance proof of the out-of-state coverage. *Id.* ch. 276, sec. 1, at \_\_\_ (amended by 1989 Nev. Stat. ch. 325, sec. 1, at \_\_\_). Chapter 325 amends Chapter 276 and does not include such a requirement. *Id.* ch. 325, sec. 1, at \_\_\_ (amending NEV. REV. STAT. § 616.260).

work inside the State of Nevada when the employer is required to provide industrial insurance coverage under another state's law.<sup>6</sup> The requirement that there be coverage under another state's law may assist in making certain that industrial injury compensation is available to the injured worker in at least one state.<sup>7</sup> Chapter 276 additionally requires that a claim for compensation for an industrial injury must be filed under the law of the state of occurrence.<sup>8</sup> In amending Chapter 276, Chapter 325 further states that recovery under the state of occurrence's law constitutes the employee's exclusive remedy.<sup>9</sup> Chapter 276 further provides that the payment of benefits under the law of the state of occurrence constitutes an exception to the more general Nevada law which states that Nevada industrial insurance is an injured employee's exclusive remedy.<sup>10</sup>

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6. 1989 Nev. Stat. ch. 276, sec. 1, at \_\_\_ (amended by 1989 Nev. Stat. ch. 325, sec. 1, at \_\_\_). The exemption does not proscribe the purchase of Nevada coverage as well. See 154 Op. Att'y Gen. 367 (Mar. 15, 1956) (employers must pay Nevada industrial insurance premiums for non-exempt temporary workers).

7. See A. LARSON, *THE LAW OF WORKMEN'S COMPENSATION* § 87.20 (1989) (the fact that an injury occurs within a state's borders does not always determine whether that state's statute is applicable).

8. 1989 Nev. Stat. ch. 276, sec. 1, at \_\_\_ (amended by 1989 Nev. Stat. ch. 325, sec. 1, at \_\_\_).

9. *Id.* ch. 325, sec. 1, at \_\_\_ (amending NEV. REV. STAT. § 616.260). Although Chapter 325 appears to bar a Nevada claim by a worker who is injured outside of Nevada under the circumstances described in Chapter 325, it may not constitute a bar to claims in other states. See *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 284-86 (1980) (Court held that one state's remedy is not totally exclusive and cannot preclude recovery under another state's statute). See generally LARSON, *supra* note 7, §§ 84.00-23 (discussing conflicts in the applicability of various state statutes regarding benefits for the industrially disabled).

10. 1989 Nev. Stat. ch. 276, sec. 2, at \_\_\_ (amending NEV. REV. STAT. § 616.520 1).