

NEVADA

1. Citation for the state's workers' compensation statute

Nevada Industrial Insurance Act, Nev. Rev. Stat. Chapters 616A-616D, and the Nevada Occupational Diseases Act, Nev. Rev. Stat. Chapter 617 (2015)

SCOPE OF COMPENSABILITY

2. Who are covered "employees" for purposes of workers' compensation?

Every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and including, but not exclusively:

- A. Aliens and minors
- B. All elected and appointed paid public officers
- C. Members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay
- D. Musicians providing music for hire, including house bands
- E. Volunteer health practitioners, as defined in NRS 415A.180, who are providing health or veterinary services pursuant to 415A. NRS 415A.180 defines a "Volunteer health practitioner" as a provider of health or veterinary services whether or not the practitioner receives compensation for those services.

Nev. Rev. Stat. § 616A.105. Exclusions from the definition are found at Nev. Rev. Stat. § 616A.110.

Also included in the definition of "employee" are the following:

- A. Lessees engaged in mining or operating a reduction plant. Nev. Rev. Stat. § 616A.115.
- B. Participants in programs of job training/to obtain training for employment administered by the welfare division of the department of human resources. Nev. Rev. Stat. §§ 616A.120 and 616A.125.
- C. Volunteer workers in programs for public service; private, incorporated, nonprofit organizations which provide services to the general community; or for private organizations as part of public programs. Nev. Rev. Stat. §§ 616A.130 and 616A.135.
- D. Members of Nevada Wing of Civil Air Patrol. Nev. Rev. Stat. § 616A.140.
- E. Volunteer firefighters. Nev. Rev. Stat. § 616A.145.
- F. Paid firefighters performing voluntary off-duty services as firefighter. Nev. Rev. Stat. § 616A.150.
- G. Persons rendering voluntary ambulance services. Nev. Rev. Stat. § 616A.155.
- H. Volunteer members of search and rescue organizations under direct supervision of the county sheriff. Nev. Rev. Stat. § 616A.157.

- I. Volunteer peace officers and persons authorized to issue certain citations. Nev. Rev. Stat. § 616A.160.
- J. Trustees of school districts. Nev. Rev. Stat. § 616A.165.
- K. Junior traffic patrols. Nev. Rev. Stat. § 616A.170.
- L. Persons vending or delivering newspaper or magazines. Nev. Rev. Stat. § 616A.175.
- M. Members of county advisory boards to manage wildlife. Nev. Rev. Stat. § 616A.180
- N. Members of Nevada Legislature. Nev. Rev. Stat. § 616A.185.
- O. Certain members of state, county and local departments, boards, commissions, agencies or bureaus; adjunct professors of Nevada System of Higher Education; members of Board of Regents. Nev. Rev. Stat. § 616A.190.
- P. Persons ordered by court to perform community service. Nev. Rev. Stat. § 616A.195.
- Q. Volunteer workers at facilities for inpatients of Division of Public and Behavioral Health of the Department of Health and Human Services. Nev. Rev. Stat. § 616A.205.
- R. Volunteer health practitioners who provide health or veterinary services. Nev. Rev. Stat. § 616A.207.
- S. Subcontractors, independent contractors, and the employees of either. Nev. Rev. Stat. § 616A.210.
- T. Apprentices and trainees. Nev. Rev. Stat. § 616A.215.
- U. Real estate licensees. Nev. Rev. Stat. § 616A.220.
- V. Persons participating in federally approved training programs. Nev. Rev. Stat. § 616A.225.

3. Identify and describe any “statutory employer” provision.

“Employer” means:

- A. The state, and each county, city, school district, and all public and quasi-public corporations therein without regard to the number of persons employed
- B. Every person, firm, voluntary association and private corporation, including any public service corporation, which has in service any person under a contract of hire
- C. The legal representative of any deceased employer
- D. The Nevada Rural Housing Authority
- E. An owner or principal contractor who establishes and administers a consolidated insurance program

Nev. Rev. Stat. § 616A.230.

Nevada is uniquely different from other states in that independent contractors and subcontractors are included in the definition of employees. *Cardenas Vda De Aragon v. Taylor Steel Co.*, 462 P.3d 654 (Nev. 1969). This statutory definition was broadened by the Nevada Supreme Court when it found that a company is a statutory employed under

the NIIA if the company “has in service any person under a contract of hire.” The scope of this “statutory employer” definition is broadened for principal contractors. Therefore, under the NIIA, a principal contractor must generally ensure that the employees of their subcontractors and independent contractors receive workers' compensation coverage. *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 1218 148 P.3d 684, 687 (2006).

4. What types of injuries are covered and what is the standard of proof for each:

A. “Injury” and “personal injury” claims.

“Injury” and “personal injury” are defined as a sudden and tangible happening of a traumatic nature, producing an immediate or prompt result which is established by medical evidence, including injuries to prosthetic devices. Nev. Rev. Stat. § 616A.265(1). The exposure of an employee to a contagious disease while providing medical services, including emergency medical care, in the course and scope of his or her employment shall be deemed to be an injury by accident sustained by the employee arising out of and in the course of his or her employment. *Id.* at (2). The exposure to a contagious disease of a police officer or a salaried or volunteer firefighter who was exposed to the contagious disease upon battery by an offender, or while performing the duties of a police officer or firefighter, shall be deemed to be an injury by accident arising out and in the course of his or her employment if the exposure is documented by the creation and maintenance of a report concerning the exposure. *Id.* The term “battery” includes, without limitation, the intentional propelling or placing, or causing to be propelled or placed, of any human excrement or bodily fluid upon the person of an employee. Nev. Rev. Stat. § 616A.035(4).

The employee must prove, by a preponderance of the evidence that his or her injury arose out of and in the course of employment. Nev. Rev. Stat. § 616C.150(1). There is a rebuttable presumption that the injury did not arise out of and in the course of employment if the employee’s notice of injury is filed after termination of employment. Nev. Rev. Stat. § 616C.150(2).

Injury or disease caused by stress may be compensable if the employee proves, by clear and convincing medical or psychiatric evidence, that the employee has a mental injury caused by extreme stress in time of danger, primarily caused by an event arising out of the course and scope of his or her employment, and not caused by layoff, termination, or disciplinary action. Nev. Rev. Stat. § 616C.180(3). Any ailment, disorder, or death shall not arise out of or during the course of employment if it is deemed to be caused by any gradual mental stimulus. Nev. Rev. Stat. § 616C.180(2).

B. Occupational disease (including respiratory and repetitive use).

Occupational diseases are covered by Chapter 617, the Nevada Occupational Diseases Act. Nev. Rev. Stat. § 617.010.

Covered “employees” are defined differently under NRS §§ 617.070, 617.091, 617.100 and 617.105 than Chapters 616A-616D. A “covered employee” is an employee or an employee’s dependent who is disabled or deceased because of an occupational disease, arising out of and in the course of employment in the State of Nevada, and thus, entitled to compensation. Nev. Rev. Stat. § 617.430(1).

In cases of tenosynovitis, prepatellar bursitis, and infection or inflammation of the skin, employees are not entitled to compensation unless for 90 days preceding the contraction of the disease, the employee has been a Nevada resident, or employed by a self-insured employer, a member of an association of a self-insured public or private employer, or an employer insured by a private carrier that provides coverage for occupational diseases. Nev. Rev. Stat. § 617.430(2).

An occupational disease shall be deemed to arise out of and in the course of the employment if there is a direct causal connection between the conditions under which the work is performed and the occupational disease, it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, it can be fairly traced to the employment as the proximate cause, and it does not come from a hazard to which workers would have been equally exposed outside of the employment. Nev. Rev. Stat. § 617.440(1). The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Nev. Rev. Stat. § 617.440(2). The disease need not have been foreseen, but the contraction must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a natural consequence. Nev. Rev. Stat. § 617.440(3).

In cases of disability resulting from radium poisoning or exposure to radioactive properties or substances, or to roentgen rays (X-rays) or ionizing radiation, the poisoning or illness resulting in disability must have been contracted in the State of Nevada. Nev. Rev. Stat. § 617.440(4). The claimant must show, by a preponderance of the evidence, that the disease arose out of and in the course of employment. Nev. Rev. Stat. 617.358(1); *Manwill v. Clark County*, 162 P.3d 876, 879 (Nev. 2007). However, NRS 617.457(1) waives this requirement for claimants who are disabled by heart disease after having continuously worked as full-time firefighters for two or more years, by conclusively presuming that the heart disease arose out of and in the course of employment.

A degenerative joint disease aggravated by overuse of hands in the performance of job as

a disease qualified as an occupational disease arising out of and in the course of employment. *Desert Inn Casino & Hotel v. Moran*, 792 P.2d 400, 402 (Nev. 1990).

Some diseases, such as cancer, lung disease, and heart disease, developed by firefighters, police officers, and other persons employed in occupations related to fire, are conclusively presumed to have arisen out of and in the course of employment. Nev. Rev. Stat. §§ 617.453, 617.455, and 617.457. There are also statutes that apply to specific occupational diseases, such as silicosis, diseases related to asbestos, and diseases of respiratory tract resulting from exposure to dusts. Nev. Rev. Stat. §§ 617.460 and 617.470.

The claimant has the burden of proving that the disability is not a result of the natural progression of a pre-existing disease. *Grover C. Dils Med. Ctr. v. Menditto*, 112 P.3d 1093, 1099 (Nev. 2005).

Nev. Rev. Stat. § 617.450 lists specific occupational diseases, along with a description of the processes in which such diseases are contracted.

5. What, if any, injuries or claims are excluded?

Coronary thrombosis, coronary occlusion, or any other ailment or disorder of the heart, and any death or disability ensuing therefrom are excluded. Nev. Rev. Stat. § 616A.265(2)(a). For stress claims, any ailment or disorder caused by any gradual mental stimulus, and any death or disability ensuing therefrom are excluded. Nev. Rev. Stat. § 616C.180(2). Diseases claimed to be caused by environmental tobacco smoke present in the workplace are not covered when the smoke is not uniquely incidental to the character of the business, such as in a casino. *Palmer v. Del Webb's High Sierra*, 838 P.2d 435, 436 (Nev. 1992).

6. What psychiatric claims or treatments are compensable?

Injury or disease that is caused by stress shall be deemed not to be an injury or disease arising out of and in the course of employment only if the employee proves by clear and convincing medical or psychiatric evidence that the employee has a mental injury caused by extreme stress in time of danger, the primary cause of the injury was an event that arose out of and during the course of his or her employment, and the stress was not caused by his or her layoff, termination, or any disciplinary action taken against him or her. Nev. Rev. Stat. § 616C.180(3).

7. What are the applicable statutes of limitations?

There are specific notice requirements pursuant to Nev. Rev. Stat. § 616C.015, discussed below. These notice requirements act as jurisdictional or time-related defenses.

Claims for compensation on account of silicosis, a disease related to asbestos, or occupational diseases of respiratory tract resulting from dusts exposure, are forever barred unless application is made to the insurer within 1 year after the date of disability or death and within 1 year after the claimant knew or should have known of the relationship between the disease and the employment. Nev. Rev. Stat. § 617.460(2).

Recovery is barred if the claimant fails to file a notice of an occupational disease or a claim for compensation and if such failure is not excused by the insurer. Nev. Rev. Stat. § 617.346.

8. What are the reporting and notice requirements for those alleging an injury?

Whenever any accident occurs to any employee, the employee shall forthwith report the accident and the injury resulting therefrom to his or her employer. Nev. Rev. Stat. § 616C.010(1). An employee or, in the event of the employee's death, one of the employee's dependents, shall provide written notice to the employer as soon as practicable, but within 7 days after the accident, or awareness of an incurred occupational disease. Nev. Rev. Stat. § 616C.015(1); § 617.342. The notice must be on a duplicate signed form, prescribed by the Administrator, explain the procedure for filing a claim, and allow-a brief description of the accident. Nev. Rev. Stat. § 616C.015(2).

An injured employee, or a person acting on his or her behalf, shall file a claim for compensation with the insurer within 90 days after an accident, or awareness of an incurred occupational disease, if the employee has sought medical treatment for an injury arising out of and in the course of his or her employment, or the employee was off work as a result of an injury arising out of and in the course of his or her employment. Nev. Rev. Stat. § 616C.020(1); § 617.344(1). In the event of the death of the injured employee resulting from the injury, a person acting on the employee's behalf shall file a claim for compensation with the insurer within 1 year after the death of the injured employee. Nev. Rev. Stat. § 616C.020(2); § 617.344(2). The claim for compensation must be filed on a form prescribed by the Administrator. Nev. Rev. Stat. § 616C.020(3). The application must be accompanied by proof of death; proof of relationship proving the claimants are entitled to compensation; certificates of the attending physician, if any; and other proof as required by the regulations. *Id.*

9. Describe available defenses based on employee conduct:

A. Self-inflicted injury.

Compensation is not payable for an injury caused by the employee's willful intention to injure himself or herself. Nev. Rev. Stat. § 616C.230(1). No compensation is payable for occupational diseases when disability or death is wholly or in part caused by the willful misconduct or self-exposure of the employee. Nev. Rev. Stat. § 617.400(2).

Compensation may be reduced or suspended if an employee persists in an injurious

practice that imperils his or her recovery, or refuses to submit to medical or surgical treatment that is necessary to promote his or her recovery, or if the employee is unable to undergo such treatment because of a correctable, non-industrial condition. Nev. Rev. Stat. § 616C.230(4). An injured employee's compensation must be suspended if a physician or chiropractor determines that the employee is unable to undergo treatment or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of employment, and it is within the ability of the employee to correct the nonindustrial condition or injury. *Id.* at (5). The compensation must be suspended until the injured employee is able to resume treatment or examination for the industrial injury. *Id.* The insurer may elect to pay for the treatment of the nonindustrial condition or injury. *Id.*

However, compensation is payable in the case of suicide by an insured if the claimant is able to demonstrate the employee suffered an industrial injury, the industrial injury caused some psychological condition severe enough to override the employee's rational judgment, and the psychological condition caused the employee to commit suicide. *Vredenburg v. Sedgwick CMS, et al*, 188 P.3d 1084, 1089-90 (Nev. 2008). If a sufficient "chain of causation" can be established, the suicide will not be considered "willful" under the willful self-injury exclusion of NRS § 616C.230(1). *Id.*

B. Willful misconduct, "horseplay," etc.

Compensation is not payable for an injury caused by the employee's willful intention to injure himself or another. Nev. Rev. Stat. § 616C.230(1). No compensation is payable for occupational diseases when disability or death is wholly or in part caused by the willful misconduct of the employee. Nev. Rev. Stat. § 617.400.

Compensation is not payable while an employee is in a state of intoxication, unless the employee can prove, by clear and convincing evidence, that the intoxication was not the cause of the injury. Nev. Rev. Stat. § 616C.230(1)(c). For purposes of this statute, the employee is intoxicated if the level of alcohol in the employee's bloodstream meets or exceeds the limits in subsection 1 of Nev. Rev. Stat. § 484C.110.

Compensation is not payable for an injury proximately caused by the employee's use of a controlled substance. Nev. Rev. Stat. § 616C.230(1)(d). If the employee had any amount of a controlled substance in his or her system at the time of his or her injury, for which the employee did not have a current and lawful prescription issued in his or her name, the controlled substance must be presumed to be the proximate cause unless rebutted by evidence to the contrary. *Id.* A claimant can rebut this presumption if the claimant is able to establish by a preponderance of the evidence that the controlled substance found in the claimant's system was not the proximate cause of the claimant's injuries. *See*

Desert Valley Construction v. Hurley, 96 P.3d 739, 741 (Nev. 2004); *Construction Industry Workers' Compensation Group v. Chalue*, 74 P.3d 595, 597 (Nev. 2003).

C. Employee's refusal to submit to physical exam.

If an employee is properly directed to submit to a physical examination and the employee refuses to permit the treating physician or chiropractor to make an examination and to render medical attention as may be required immediately, no compensation may be paid for the injury claimed to result from the accident. Nev. Rev. Stat. § 616C.075. However, the employee can receive treatment through prayer in accordance with the tenets and practice of a recognized church. Nev. Rev. Stat. § 616C.120.

D. Failure to Follow Medical Advice.

No compensation is payable for the death, disability, or treatment of an employee if the employee's death is caused or aggravated by an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid. Nev. Rev. Stat. § 616C.230(3). Further, if any employee persists in an unsanitary or injurious practice that imperils or retards his or her recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his or her recovery, the employee's compensation may be reduced or suspended. Nev. Rev. Stat. § 616A.230(4)

10. What, if any, penalties or remedies are available in claims involving fraud?

A person who engages in fraudulent practices, by act or omission, to obtain any benefit or authorization to provide benefits shall be punished: (a) for a category D felony if the amount of the charge or the value of the accident benefits obtained or sought to be obtained was \$650 or more, and, in addition, the court shall order the person to pay restitution; or (b) for a misdemeanor if the amount of the charge or the value of the accident benefits obtained or sought to be obtained was less than \$650, and the offender must be sentenced to restore any accident benefits so obtained, if it can be done, or tender payment for rent or labor. Nev. Rev. Stat. § 616D.370(2).

If an insurer determines an employee knowingly misrepresented or concealed a material fact to obtain any benefit or payment, the insurer may deduct from any benefits or payments due to the employee, the amount obtained by the employee because of the misrepresentation or concealment of a material fact. Nev. Rev. Stat. § 616C.225(1). The employee shall reimburse the insurer for all benefits or payments received because of the willful misrepresentation or concealment of a material fact. *Id.*

A person who, by any act or omission, signs, submits, or causes to be signed or submitted, a knowingly false invoice for payment for accident benefits provided to an employee is guilty of a gross misdemeanor. Nev. Rev. Stat. § 616D.380(2). Any healthcare provider who has been convicted of fraudulent practice may not, for 5 years after the date of the first conviction, or at any time after a second or subsequent conviction,

receive or accept a payment for accident benefits allegedly provided to an injured employee. Nev. Rev. Stat. § 616D.420(1). If that statute is, in turn, violated, the health care provider will be guilty of a gross misdemeanor. Nev. Rev. Stat. § 616D.420(2). An insurer may withhold any payment due a health care provider upon receipt of reliable evidence that the provider knowingly made a false statement or representation or knowingly concealed a material fact to obtain the payment. Nev. Rev. Stat. § 616D.440(1). The insurer may without such a payment without first notifying the healthcare provider of its intention to do so. *Id.* The insurer shall, within 5 days after withholding such a payment, send notice of the withholding to the healthcare provider by certified mail or electronic transmission. *Id.* at (2).

A person who receives a payment or benefit to which he or she is not entitled by reason of fraud is liable in a civil action commenced by the attorney general for: (a) an amount equal to three times the amount unlawfully obtained, (b) not less than \$5,000 for each act of deception, (c) an amount equal to three times the total amount of the reasonable expenses incurred by the state in enforcing this section, and (d) payment of interest on the amount of the excess payment. Nev. Rev. Stat. § 616D.430(1). Criminal action need not be first commenced before civil liability attaches. *Id.* at (2).

Similarly, an employer who knowingly makes a false statement or representation or knowingly conceals a material fact regarding the eligibility of a person, shall be punished as a misdemeanor if the amount of payment obtained or attempted to obtain was less than \$250, and as a Class D felony if the amount was greater than \$250. Nev. Rev. Stat. § 616D.415.

11. Is there any defense for an employer for falsification of employment records regarding medical history?

Yes. No compensation may be awarded on account of disability or death from a disease suffered by an employee who, at the time of entering into the employment from which the disease is claimed to have resulted, knowingly and falsely represented himself or herself as not having previously suffered from the disease. Nev. Rev. Stat. § 617.400. No compensation for disability or death due to silicosis or a disease related to asbestos in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration, and nature of previous employment in answer to inquiry made by the employer. Nev. Rev. Stat. § 617.460(3).

However, an employee who willfully makes false representations concerning his or her medical history on an employment application may not be denied benefits when an industrial injury exacerbates the concealed, preexisting condition. *Goldstine v. Jensen Pre-Cast*, 729 P.2d 1355, 1356 (Nev. 1986).

12. Are injuries during recreational and other non-work activities paid for or supported by the employer compensable?

Sometimes. Any injury sustained by an employee while engaging in an athletic or social event sponsored by his or her employer shall be deemed not to have arisen out of or in the course of employment, unless the employee received remuneration for participation in the event. Nev. Rev. Stat. § 616A.265(1). *See also Dixon v. State Indus. Insur. Sys.*, 899 P.2d 571, 573 (Nev. 1995) (A recreational activity can only be characterized as within the course of employment if it is a regular incident of employment; thus, an employee injured on a bicycle provided by an employer for the employee's express purpose of getting exercise on breaks is not precluded from recovering under act.)

13. Are injuries by co-employees compensable?

When an employee is injured on the job as a result of the negligence of a fellow employee, his remedy is compensation under the Nevada Industrial Insurance Act. *Leslie v. J.A. Tiberti Construction Co.*, 664 P.2d 963, 964 (Nev. 1983), overruled on other grounds by *Tucker v. Action Equipment and Scaffold Co., Inc.*, 951 P.2d 1027 (Nev. 1997). The Court has held that when a co-employee commits an intentional act, rather than an accident, the claim does not fall exclusively within the worker's compensation statutes. *Fanders v. Riverside Resort & Casino, Inc.*, 245 P.3d 1159, 1164 (Nev. 2010). It has been held that an employee's death did arise out of the employment, where he was assaulted in the course of his employment by an insane fellow employee. *Cummings v. United Resort Hotels, Inc.*, 449 P.2d 245, 248 (Nev. 1969). Where a fellow employee assaulted another employee solely to gratify his feeling of anger or hatred; however, the injury resulted from the voluntary act of the assailant, and cannot be said to arise either directly out of the employment, or as an incident of it, and is not compensable under the Nevada Industrial Insurance Act. *Id.*

14. Are acts by third parties unrelated to work but committed on the premises, compensable (e.g. "irate paramour" claims)?

Coverage for such acts depends on whether the act is the result of the employment. Where an employee is assaulted and injury is inflicted upon him or her through animosity and ill-will arising from some cause wholly disconnected from the employer's business or the employment, the employee cannot recover compensation simply because he or she is assaulted when he or she is in the discharge of his or her duties. *McCull v. Scherer*, 315 P.2d 807, 809 (Nev. 1957). If the employee's injury resulted from being placed in a position of danger by reason of his employment, rather than being the result of enmity, grudge, or other personal relationship, then the injury is compensable under workers' compensation. *Id.*

In *Wood v. Safeway*, the Nevada Supreme Court adopted the rule that the sexual assault or harassment of an employee in the workplace "falls within the NIIA if the nature of the employment contributed to or otherwise increased the risk of assault beyond that of the

general public.” *Wood v. Safeway*, 736, 121 P.3d 1026, 1034 (Nev. 2005). “That same assault is not within the NIIA, however, when ‘the animosity of the dispute which culminates in the assault is imported into the place of employment from the injured employee’s private or domestic life ... at least where the animosity is not exacerbated by the employment.’” *Id.*

BENEFITS

15. What criterion is used for calculating the average weekly wage?

Nevada calculates wage using the average monthly wage. Nev. Rev. Stat. § 616A.065. The average monthly wage means the lesser of the monthly wage actually received or deemed to have been received by the employee on the date of the accident or injury to the employee, or 150% of the state average weekly wage as most recently computed by the Employment Security Division of the Department of Employment, Training, and Rehabilitation during the fiscal year preceding the date of the injury or accident, multiplied by 4.33. Nev. Rev. Stat. § 616A.065. The method for determining the average monthly wage is multiplying the average daily wage of an employee during a period of earnings by 30.44. Nev. Admin. Code § 616C.432(2).

The average daily wage is the gross earnings divided by days in period of earnings. *Id.* at (1). The earnings of the injured employee on the date on which the accident occurs or the date on which an injured employee is no longer able to work will be used to calculate the average monthly wage. Nev. Admin. Code § 616C.441(1). If the employee changes job duties, either permanently or temporarily, the rate of pay and hours of employment must be calculated only using his or her primary job at the time of the accident. Nev. Admin. Code § 444.

A history of earnings for a period of 12 weeks must be used to calculate an average monthly wage. Nev. Admin. Code § 616C.435(1). Yet if a 12-week period of earnings is not representative of the claimant’s average monthly wage, earnings over a period of 1 year or the full period of employment, if it is less than 1 year, may be used. Nev. Admin. Code § 616C.435(2). Earnings over 1 year or the full period of employment, if it is less than 1 year, must be used if the average monthly wage would be increased. *Id.* If information concerning payroll is not available for a period of 12 weeks, wages may be averaged for the available period, but not for a period of less than 4 weeks. Nev. Admin. Code § 616C.435(4). If information concerning payroll is unavailable for a period of at least 4 weeks, average earnings must be projected using the rate of pay on the date of the accident or illness and the employee’s projected working schedule. Nev. Admin. Code § 616C.435(5). If the earnings are based on piecework and a history of earnings is unavailable for a period of at least 4 weeks, the wage must be determined as being equal to the average earnings of other employees doing the same work. Nev. Admin. Code § 616C.435(6). If these methods cannot be applied reasonably and fairly, an average monthly wage must be calculated by the insurer at 100 percent of (a) the sum which

reasonably represents the average monthly wage of the employee at the time the injury or illness occurs; or (b) the hourly wage on the day the injury or illness occurs, calculated by using the projected working schedule. Nev. Admin. Code § 616C.435(7). “Earnings” means earnings received from the employment in which the injury occurs and in any concurrent employment. Nev. Admin Code § 616C.435(9).

In order to become eligible for temporary total disability benefits, the employee must be incapacitated by the occupational disease for at least 5 cumulative days within a 20-day period earning full wage. Nev. Rev. Stat. § 617.420. If the incapacity extends for 5 or more days within a 20-day period, the compensation must then be computed from the date of disability. *Id.* Regarding temporary total disability benefits, wages are calculated for occupational disease claims from the point the employee is unable to continue working. *Howard v. City of Las Vegas*, 120 P.3d 410, 411 (Nev. 2005). The benefits for permanent partial disability are calculated differently. *Clark County v. Bean*, 482 P.3d 1207, 1211 (Nev. 2020).

16. How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?

For the period of temporary total disability, benefits are calculated at 66 2/3 percent of the average monthly wage. Nev. Rev. Stat. § 616C.475. For a temporary partial disability, the claimant is entitled to the difference between the wage earned after the injury and the compensation which the injured person would be entitled to receive if temporarily totally disabled when the wage is less than the compensation, but for a period not to exceed 24 months during the period of disability. Nev. Rev. Stat. § 616C.500. Compensation is computed from the date of the accident or injury. Nev. Rev. Stat. § 616C.425. Medical benefits paid under Chapter 617 must be paid from the date of application for payment of medical benefits. Nev. Rev. Stat. § 617.420.

17. How long does the employer/insurer have to begin temporary benefits from the date disability begins?

Within 30 days after the insurer has been notified of an industrial accident, every insurer shall: (a) accept a claim for compensation, notify the claimant, and commence payment of the claim, or (b) deny the claim and notify the claimant and Administrator that the claim has been denied. Nev. Rev. Stat. § 616C.065(1). If the insurer unreasonably delays or refuses payment within 30 days after the insurer has been notified of the industrial accident, the Administrator can order payment of three times the amount refused or delayed, to the benefit of the claimant. Nev. Rev. Stat. § 616C.065(4). For a temporary total disability, the first payment must be issued by the insurer within 14 working days after receipt of the initial certification of disability and regularly thereafter. Nev. Rev. Stat. § 616C.475(3).

18. What is the “waiting” or “retroactive” period for temporary benefits (e.g. must be out ____ days before recovering benefits for the first ____ days)?

Compensation benefits must not be paid for an injury or disability which does not incapacitate the employee for at least 5 consecutive days, or 5 cumulative days within a 20-day period, from earning full wages. Nev. Rev. Stat. § 616C.400(1). If the incapacity extends for 5 or more consecutive days, or 5 cumulative days within a 20-day period, compensation must then be computed from the date of the injury. *Id.* The prescribed period does not apply to accident benefits if the injured employee is otherwise entitled to those benefits. Nev. Rev. Stat. §§ 616C.400; 617.420.

19. What is the standard/procedure for terminating temporary benefits?

If a claim is to be closed before all benefits to which the claimant may be entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant with a statement describing the effects of closing a claim; a statement that if the claimant does not agree with the determination, the claimant has a right to request a resolution; a statement that displays the limit on the time that the claimant has to request a resolution of the dispute; and a suitable form for requesting a resolution of the dispute. Nev. Rev. Stat. § 616C.235(1). If the insurer does not receive a request for the resolution of the dispute, it may close the claim. *Id.* If during the first 12 months after a claim is opened, the medical benefits required to be paid for a claim are less than \$800 then the insurer may close the claim at any time, after sending the required notice. Nev. Rev. Stat. § 616C.235(2). The notice must state that the claim cannot be reopened if the employee does not appeal the closure, or if the appeal is unsuccessful. *Id.* The insurer must also send the employee or claimant who receives less than \$800 in medical benefits within 6 months after the claim is opened, circumstances under which the claim may be closed by first-class mail. Nev. Rev. Stat. § 616C.235(3).

Payments for a temporary total disability must cease when: (a) a physician or chiropractor determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee's education, training and experience; (b) the employer offers the employee light-duty employment or employment that is modified according to the limitations imposed by a physician or chiropractor; or (c) employee is incarcerated (modified industrial insurance program for offenders in prison industry or work program, per Nev. Rev. Stat. §§ 616B.028 and 616B.029. Nev. Rev. Stat. § 616C.475(5).

20. Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?

If there is a previous disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury. Nev. Rev. Stat. § 616C.440(1). Such a deduction for a previous award for permanent partial disability must be made in a reasonable manner and must not be more than the total amount which was paid for the previous award for permanent partial

disability. *Id.* The total amount of the allowable deductions includes, without limitation, compensation for a permanent partial disability that was deducted from any compensation the employee received for a temporary total disability, or any other compensation received by the employee.

There is no Nevada statute, regulation, or case that specifically addresses this issue in practice; however, the temporary total disability paid is usually not deducted from the permanent partial disability compensation. If an employee who has received compensation in a lump sum for a permanent partial disability is subsequently injured by an accident arising out of and in the course of employment and is entitled to receive compensation for a temporary total disability, the compensation for the subsequent injury may not be reduced because of the receipt of the lump-sum payment if the subsequent injury is distinct from the previous one. Nev. Rev. Stat. § 616C.480. If an employee who received compensation in a lump sum for a permanent partial disability is subsequently determined to be permanently and totally disabled, the insurer shall recover the actual amount of the lump sum paid to the employee for the permanent partial disability. The insurer shall: (a) deduct from the compensation for the permanent total disability an amount that is not more than 10 percent of the rate of compensation for a permanent total disability until the actual amount of the lump sum paid to the employee for the permanent partial disability is recovered; or (b) upon the request of the employee, accept in a single payment from the employee an amount that is equal to the actual amount of the lump sum paid to the employee for the permanent partial disability, less the actual amount of all deductions made to date by the insurer from the employee for repayment of the lump sum. Nev. Rev. Stat. § 616C.440.

If there is a previous disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury. Nev. Rev. Stat. § 616C.490(9). Nevada Revised Statute § 616C.490(9) requires re-computation of the previous injury's percentage of disability. *Public Agency Comp. Trust v. Blake*, 265 P.3d 694, 698 (Nev. 2011). Since Nevada Administrative Code § 616C.490(4) is in direct conflict with the statute, NAC § 616C.490(4) is invalid.

If, within 30 days after a payment is made to an injured employee, the insurer determines that it has overpaid the injured employee as a result of a clerical error in its calculation of the amount of payment, or as a result of using improper or incorrect information to determine the injured employee's eligibility for payment or to calculate the amount of payment, the insurer may deduct the amount of the overpayment from future benefits related to that claim to which the injured employee is entitled. Nev. Rev. Stat. § 616C.155(2). The insurer must notify the injured employee in writing of its

determination and inform the injured employee of the injured employee's right to contest the deduction. *Id.* If the injured employee fails to contest the deduction, or does so and upon final resolution of the contested deduction it is determined that such an overpayment was made, the insurer may deduct the amount of the overpayment from future benefits related to that claim. *Id.*

21. What disfigurement benefits are available and how are they calculated?

Disfigurement, to the extent it is considered a physical impairment, will be compensable. *Maxwell v. State Indus. Ins. System*, 849 P.2d 267, 329 (Nev. 1993) (upholding physical impairment rating for facial disfigurement). If the disfigurement prevents an employee from obtaining employment, the condition is compensable. *Crosby v. Nevada Indus. Comm'n*, 308 P.2d 60, 64 (Nev. 1957). Physical impairments are calculated as discussed below.

22. How are permanent partial disability benefits calculated, including the minimum and maximum rates?

A. How many weeks are available for scheduled members/parts, and the standard for recovery?

There is no set time, as the rating physicians and chiropractors determine the percentage of disability in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, 5th edition, as adopted by Nev. Rev. Stat. § 616C.110 and Nev. Admin. Code § 616C.002. No factors other than the degree of physical impairment of the whole person may be considered in calculating the entitlement to compensation for a permanent partial disability. Nev. Rev. Stat. § 616C.110(2). In the case of claimants with work-related spinal injuries, physicians rating such claimants may consider the claimant's ability to perform activities of daily living. *Nev. Atty. for Injured Workers v. Nev. Self-Insurers Ass'n*, 225 P.3d 1265, 1266 (Nev. 2010).

B. Number of weeks for "whole person" and standard for recovery.

There is no set time, as the rating physicians and chiropractors determine the percentage of disability in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, 5th edition, as adopted by Nev. Rev. Stat. § 616C.110 and Nev. Admin. Code § 616C.002.

Each 1 percent of impairment of the whole man must be compensated by a monthly payment of: (a) 0.5 percent of the claimant's average monthly wage for injuries sustained before July 1, 1981; (b) 0.6 percent of the claimant's average monthly wage for injuries sustained on or after July 1, 1981, and before June 18, 1993; (c) 0.54 percent of the claimant's average monthly wage for injuries sustained on or after June 18, 1993, and before January 1, 2000; and (d) 0.6 percent of the claimant's average monthly wage for injuries sustained on or after January 1, 2000. Nev. Rev. Stat. § 616C.490(8). Claimants

are not entitled to double payments for death and continued payments for a permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal. Nev. Rev. Stat. § 616C.490(14). Compensation must commence on the date of the injury or the day following the termination of temporary disability compensation, if any, whichever is later, and must continue on a monthly basis for 5 years or until the claimant is 70 years of age, whichever is later. Nev. Rev. Stat. § 616C.490(8).

23. Are there any requirements/benefits for vocational rehabilitation, and what is the standard for recovery?

An employee is eligible for vocational rehabilitation services or the continuation of such services if: (a) the physician or chiropractor approves the return of the injured employee to work but imposes permanent restrictions that prevent the injured employee from returning to the position that the employee held at time of injury; (b) the employer does not offer employment that the employee is eligible for considering the restrictions imposed, the gross wage is equal to or greater than 80% of the gross wage that the employee was earning at the time of his injury, and has the same employment benefits as the position of the employee at the time of his or her injury; and (c) the injured employee is unable to return to gainful employment with any other employer at a gross wage that is equal to or greater than 80 percent of the gross wage that the employee was earning at the time of his or her injury. Nev. Rev. Stat. § 616C.590(1).

If there is a question as to whether the restrictions imposed upon the injured employee are permanent, the employee may receive vocational rehabilitation services until a final determination concerning the duration of the restrictions is made. *Id.* at (3). Vocational rehabilitation services must cease as soon as the injured employee is no longer eligible for the services in subsection 1. *Id.* at (4). An injured employee is not entitled to vocational rehabilitation services solely because the position that the employee held at the time of his or her injury is no longer available. *Id.* at (5). The employee or his or her dependents are not entitled to accrue or be paid any money for vocational rehabilitation if the employee is incarcerated or if the employee refuses the vocational rehabilitation services. Nev. Rev. Stat. §§ 616C.590(6)-(7).

If benefits for a temporary total disability will be paid to an injured employee for more than 90 days, the insurer or the injured employee may request a vocational rehabilitation counselor to prepare a written assessment of the injured employee's ability or potential to return to the position the employee held at the time that he or she was injured or any other gainful employment. Nev. Rev. Stat. § 616C.550(1). The vocational rehabilitation counselor shall prepare the written assessment not more than 30 days after receiving a request for a written assessment. *Id.*

The assessment must contain a determination as to the employee's eligibility for vocational rehabilitation services. Nev. Rev. Stat. § 616C.550(3). If the insurer, with the assistance of the counselor, determines that the employee is eligible, a plan for a program of vocational rehabilitation must be completed in accordance with Nev. Rev. Stat. § 616C.555. *Id.*

If the counselor determines the employee has existing marketable skills, the plan must consist of job placement assistance only, but for not more than six (6) months after the date on which the employee was notified that the employee is eligible only for job placement assistance because the employee was physically capable of returning to work or had existing marketable skills. Nev. Rev. Stat. § 616C.555(2). If it is determined that the employee has no existing marketable skills, the plan must consist of a program which trains or educates the employee and provides job placement assistance. *Id.* at (3). The maximum length of time for such a program is between 9 and 18 months, depending on the extent of the permanent partial disability. *Id.* If the initial program is unsuccessful, the insurer may authorize a second program upon good cause shown and a third program with the approval of the employer. Nev. Rev. Stat. § 616C.555(9)-(10). A program for vocational rehabilitation may be extended without condition or limitation, by the insurer at the insurer's sole discretion, or by order of a Hearing Officer or Appeals Officer. Nev. Rev. Stat. § 616C.560.

An injured employee may be eligible to receive lump sum payment for vocational rehabilitation in lieu of services if the insurer and the injured employee execute a written agreement providing for the payment of compensation in a lump sum in lieu of vocational rehabilitation services. Nev. Rev. Stat. § 616C.595(1). An insurer's refusal to execute such agreement may not be appealed. *Id.* If the insurer and the injured employee execute an agreement, the acceptance of the payment of compensation in a lump sum by the injured employee extinguishes the right of the injured employee to receive vocational rehabilitation services. Any payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services must not be less than 55 percent of the maximum amount of vocational rehabilitation maintenance due to the injured employee. Nev. Rev. Stat. § 616C.595(4).

However, the Nevada Supreme Court found that it is proper to deny vocational rehabilitation services when the intended beneficiary did not have proof of eligibility to work in the United States, as such conduct would be in violation of the Immigration Reform and Control Act. *Tarango v. State Industrial Insurance System*, 25 P.3d 175, 183 (2001).

24. How are permanent total disability benefits calculated, including the minimum and maximum rates?

In cases of total disability adjudged to be permanent, an injured employee is entitled to receive compensation per month of 66 2/3 percent of the average monthly wage. Nev. Rev. Stat. § 616C.440(1). If there is a previous disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury. *Id.* Such a deduction for a previous award for permanent partial disability must be made in a reasonable manner and must not be more than the total amount which was paid for the previous award for permanent partial disability. *Id.* The total amount of the allowable deductions includes, without limitation, compensation for a permanent partial disability that was deducted from any compensation the employee received for a temporary total disability, or any other compensation received by the employee. *Id.* An employee is entitled to receive compensation for a permanent total disability only so long as the permanent total disability continues to exist. Nev. Rev. Stat. § 616C.440(3). The insurer has the burden of proving that the permanent total disability no longer exists. *Id.*

25. How are death benefits calculated, including the minimum and maximum rates?

A. Funeral expenses.

If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, burial expenses are payable in an amount not to exceed \$10,000, plus the cost of transporting the remains of the deceased employee. Nev. Rev. Stat. § 616C.505(1). When the remains of the deceased employee and the accompanying person are to be transported to a mortuary or mortuaries, the charge of transportation must be borne by the insurer. *Id.* In the event of the death of any dependent specified in this section before the expiration of the time during which compensation is payable to the dependent, funeral expenses are payable in an amount not to exceed \$10,000. *Id.* at (10).

B. Dependency claims.

To the surviving spouse of the deceased employee, 66 2/3 percent of the average monthly wage is payable until death of the surviving spouse. Nev. Rev. Stat. § 616C.505(2). If there is a surviving spouse and any surviving children of the deceased employee who are not the children of the surviving spouse, 50 percent of the death benefit is payable until the death of surviving spouse, and each child is entitled to a proportionate share of 50 percent of the death benefit. *Id.* at (3). If the surviving spouse dies, each surviving child of the deceased employee must equally share the compensation paid to the surviving spouse until the youngest child reaches the age of 18 years, and if the children have a guardian, the compensation may be paid to the guardian. *Id.* at (4).

If there are any surviving children of the deceased employee under the age of 18 years, but no surviving spouse, then each child is entitled to his or her proportionate share of $66 \frac{2}{3}$ percent of the average monthly wage for the support of the child. *Id.* at (5).

If there is no surviving spouse or child under the age of 18 years, the compensation must go to a parent dependent upon the deceased employee at the time of the injury at $33 \frac{1}{3}$ percent of the average monthly wage; to both parents if they were dependent upon the deceased employee at the time of the injury at $66 \frac{2}{3}$ percent; or to each sibling until he or she reaches the age of 18 years old if they were dependent upon the deceased employee at the time of the injury at his or her proportionate share of $66 \frac{2}{3}$ percent of the average monthly wage. *Id.* at (6) The aggregate compensation must not exceed $66 \frac{2}{3}$ percent of the average monthly wage. *Id.* at (7).

For partial dependents, the monthly compensation must be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the employee to the partial dependents bears to the average monthly wage of the employee at the time of the injury. Nev. Rev. Stat. § 616C.505(8). Compensation to partial dependents may not exceed 100 months. *Id.*

26. What are the criteria for establishing a “second injury” fund recovery?

In Nevada, the “second injury” fund is known as the “subsequent injury account.” Insurers, such as self-insured employers, associations of self-insured employers, and private carriers, must submit an application to the subsequent injury account. Compensation is charged to the subsequent injury account when an employee has a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him or her to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone, the compensation due must be charged to the subsequent injury account. If the subsequent injury of such an employee results in his or her death and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the compensation due must be charged to the subsequent injury account. There are separate subsequent injury accounts for self-insured employers, associations of self-insured public or private employers, and private carriers. Nev. Rev. Stat. §§ 616B.545-616B.560 (self-insured employer), §§ 616B.563-616B.581 (associations of self-insured public or private employers), and §§ 616B.584-616B.590 (private carriers).

The insurer may also recover compensation from the subsequent injury account if: (a) the employee knowingly made a false representation as to his physical condition at the time

he was hired by the employer; (b) the employer relied upon the false representation and this reliance formed a substantial basis of the employment; and (c) a causal connection existed between the false representation and the subsequent disability. Nev. Rev. Stat. §§ 616B.560; 616B.581; 616B.590.

27. What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?

An application to reopen a claim must be made in writing within 1 year after the date on which the claim was closed if: a change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant, the primary cause of the change of circumstances is the injury for which the claim was originally made, and the application is accompanied by the certificate of a physician or a chiropractor showing a change of circumstances which would warrant an increase or rearrangement of compensation. Nev. Rev. Stat. § 616C.390.

If an application to reopen a claim is made in writing within 1 year after the date on which the claim was closed, the insurer shall reopen the claim only if the application is supported by medical evidence demonstrating an objective change in the medical condition of the claimant, and there is clear and convincing evidence that the primary cause of the change of circumstances is the injury for which the claim was originally made. Nev. Rev. Stat. § 616C.390(4).

An application to reopen a claim must be made in writing within 1 year after the date on which the claim was closed if the claimant did not meet the minimum duration of incapacity as a result of the injury, and the claimant did not receive benefits for a permanent partial disability. *Id.* at (5).

28. What situation would place responsibility on the employer to pay an employee's attorney fees?

If a party petitions the district court for judicial review of a final decision of an Appeals Officer, the Administrator, or the Administrator's designee, and the petition is found by the district court to be frivolous or brought without reasonable grounds, the court may order costs and a reasonable attorney's fee to be paid by the petitioner. Nev. Rev. Stat. § 616C.385.

Where an employee seeks reinstatement of benefits and not monetary damages, an award of attorney's fees is not appropriate under Nev. Rev. Stat. § 18.010, providing for an award of attorney's fees to the prevailing party who has not recovered more than \$20,000. *State Indus. Ins. Sys. v. Snapp*, 680 P.2d 590, 592 (Nev. 1984).

EXCLUSIVITY/TORT IMMUNITY

29. Is the compensation remedy exclusive?

A. Scope of immunity.

In cases where employers are governed by the provisions of the Nevada Industrial Insurance Act for personal injuries by accident sustained by an employee arising out of and in the course of the employment, the employer or any insurer of the employer is relieved from other liability for recovery of damages or other compensation for those injuries unless otherwise provided. Nev. Rev. Stat. §§ 616A.020, 616B.612.

An injury occurs within the course of employment when there is a causal connection between the injury and the nature of the work or the workplace. *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1032 (2005). The types of risk that an employee may encounter are categorized as those that are solely employment related, those that are purely personal, and those that are neutral. *Rio All Suites Hotel & Casino v. Phillips*, 240 P.3d 2, 5 (Nev. 2010). Nevada has adopted the increased-risk test, in which an employee may recover from a neutral risk only if the employee is subjected to a risk greater than that to which the general public is exposed. *Id.* at 6. Once the employee is terminated, whether fired or quits, an injury that occurs while leaving is generally not sustained within the course of employment, except if the employee is subject to an inherent danger of the job site or remains on the employer's premises for some other duty incidental to termination and is therefore not within the exclusive provision of Worker's Compensation. *Fanders v. Riverside Resort & Casino, Inc.*, 245 P.3d 1159, 1162 (2010).

Absent an independent duty owed to a third party, employers and co-employees are insulated by the provisions of the Nevada Industrial Insurance Act not only from liability to employees, but also from liability by way of implied indemnity to a third party. *Kellen v. Second Judicial Dist. Court ex rel. County of Washoe*, 642 P.2d 600, 601 (Nev. 1982). As a matter of law, however, the Nevada Industrial Insurance Act does not void an express contract that requires an employer to indemnify a third-party for compensation the third-party has paid to the employer's employee for a work-related accident. *American Fed. Sav. Bank v. County of Washoe*, 802 P.2d 1270, 1276 (Nev. 1990).

In *Tucker v. Action Equipment & Scaffold Co.*, 951 P.2d 1027 (Nev. 1997), the Nevada Supreme Court created a distinction between cases involving injuries occurring in the context of building construction work versus cases involving injuries occurring in other work settings. Where someone working on a construction site is injured by the employee of a licensed building contractor who was working under a written construction contract, exclusive remedy would apply to bar the suit. The immunity extended to include the landowner who contracted for the construction work. *Harris v. Rio Hotel & Casino, Inc.*, 25 P.3d 206, 214 (Nev. 2001). In overarching construction-type projects involving several

contractors and subcontractors, the analysis centered on whether the contractors and their employees were working under a contractor's license. However, the Nevada Supreme Court has since withdrawn from the bright line distinction and overruled a construction versus non-construction analysis under *Tucker*. See *Richards v. Republic Silver State Disposal, Inc.*, 148 P.3d 684, 689 (Nev. 2006). Rather, the Court emphasized that immunity determinations must be resolved under Nev. Rev. Stat. § 616B.603. Immunity generally automatically applies to matters involving a project executed within the scope of a licensed contractor's license. All other matters must be further analyzed under NRS 616B.603 and the "normal work test" from *Meers v. Haughton Elevator*, 701 P.2d 1006, 1007 (Nev. 1985). Property owners who hire licensed principal contractors to complete construction projects are not immune, under provisions of the Nevada Industrial Insurance Act that extend employer immunity protections to property owners, from claims arising from risks occurring outside the scope of the licensed work. *Richards v. Republic Silver State Disposal, Inc.*, 148 P.3d 684, 691-92 (Nev. 2006).

A property owner is not immune from liability if the injured worker is engaged in "domestic service," which is exempt from the definition of an employee under Nev. Rev. Stat. § 616A.110 (4). Specifically, pest control services are considered part of home maintenance, like a housekeeper or maid, and fall within the definition of "domestic service" and a homeowner will not be immune as a statutory employer because it is an independent enterprise. *Seput v. Lacayo*, 134 P.3d 733, 736 (Nev. 2006).

B. Exceptions (intentional acts, contractual waiver, "dual capacity," etc.).

The Nevada Industrial Insurance Act system is the employee's exclusive remedy, even for accidents resulting from an employer's gross or wanton negligence, or recklessness. *Kennecott Copper Corp. v. Reyes*, 337 P.2d 624, 626 (Nev. 1959). Recovery by an employee for employer recklessness or gross negligence is exclusive under the State Industrial Insurance Act. *Id.* A common-law action may not be brought by an employee against an employer for personal injuries unless the employer acted with a deliberate intent to injure the employee. *King v. Penrod Drilling Co.*, 652 F.Supp. 1331, 1334 (D. Nev. 1987). When an employer commits an intentional tort upon an employee, the intentional act is not an accidental injury within the exclusive provisions of the compensation act. *Barjesteh v. Faye's Pub, Inc.*, 787 P.2d 405, 406 (Nev. 1990). Furthermore, a co-employee's intentional acts against another employee, is not within the NIIA's exclusivity provisions. *Fanders v. Riverside Resort & Casino, Inc.*, 245 P.3d 1159, 1164 (Nev. 2010).

Nevada has expressly refused to adopt the "dual capacity doctrine," thus refusing to permit a party to be sued for negligence just because it acted as both an employer and an owner. *Frith v. Harrah South Shore Corp.*, 552 P.2d 337, 341 (Nev. 1989).

A landowner is deemed a statutory employer, entitled to immunity under the Nevada Industrial Insurance Act, for injuries incurred by employees of its contractors or sub-contractors. *Harris v. Rio Hotel & Casino, Inc.*, 25 P.3d 206, 214 (Nev. 2001).

The obligation to pay compensation benefits and the right to receive them exists as a matter of statute independent of any right established by contract. *MGM Grand Hotel-Reno, Inc. v. Insley*, 728 P.2d 821, 824 (Nev. 1986). A contract of employment, which waived or modified the terms or liability created by the Nevada Industrial Insurance Act, would be void. *Id.*

30. Are there any penalties against the employer for unsafe working conditions?

An employer has the duty to furnish a workplace that is free from hazards that are likely to cause death or serious physical harm to his or her employees and maintain a healthy and safe place of employment. Nev. Rev. Stat. §§ 618.375 and 618.385. Furthermore, the employer must provide information to the employees regarding workplace safety in the form of posters, documentation, and/or videotapes. Nev. Rev. Stat. §§ 618.375-376. An employee, representative of an employee, or a government official whose duty it is to ensure safety, may notify the Administrator of any violation of Chapter 618, which they have reason to believe exists in the workplace. Nev. Rev. Stat. § 618.435(1). The employer or the employer's representative has the right to be present during the inspection. Nev. Rev. Stat. § 618.435(2). Any employee who reports a violation is protected from discharge or discrimination. Nev. Rev. Stat. § 618.445(1).

If an employer is found to be in violation of Chapter 618, the Administrator of the Division of Industrial Relations shall, with reasonable promptness, issue a citation to the employer. Nev. Rev. Stat. § 618.465(1). Each citation must be in writing and describe with particularity the nature of the violation, including a reference to the violated provision or chapter. *Id.* The citation must fix a reasonable time for the abatement of the violation. *Id.* An employer has 30 calendar days to contact the Division and contest the citation. Nev. Rev. Stat. § 618.475. Administrative fines owed must be paid to the Division. Nev. Rev. Stat. § 618.625. The administrative fines may not be greater than the monetary amount of the corresponding civil penalty. *Id.*

A serious violation exists in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use unless the employer did not and could not, with the exercise of reasonable diligence, know of the presence of the violation. Nev. Rev. Stat. § 618.625. Any employer who willfully or repeatedly violates any requirement of this chapter, may be assessed an administrative fine of a monetary amount authorized under NRS 618.625(2) for each

willful violation. Nev. Rev. Stat. § 618.635. Any employer who has received a citation for a serious violation of any requirement of this chapter must be assessed an administrative fine in a monetary amount authorized under NRS 618.645. An employer who fails to correct a violation for which a citation has been issued may be assessed an administrative fine in a monetary amount authorized under NRS 618.625(2) for each day the violation continues. Nev. Rev. Stat. § 618.655.

Any employer who violates any requirement of Chapter 618 and causes the death of an employee shall be punished for a misdemeanor by a fine of not more than \$50,000 and/or by imprisonment in the county jail for not more than 6 months if the violation is a first offense, and for a gross misdemeanor by a fine of not more than \$100,000 and/or by imprisonment in the county jail for not more than 364 days if the violation is a second offense. Nev. Rev. Stat. § 618.685.

31. What is the penalty, if any, for an injured minor?

If any employee at the time of an injury is under the minimum age prescribed by law for the employment of a minor in the occupation in which he is engaged when injured, the employer is liable to the Division for a penalty of not less than \$300 nor more than \$2,000, to be collected in a civil action at law by the Division. Nev. Rev. Stat. § 616D.290. Even if a minor is employed unlawfully, he is still covered by workers' compensation. *Haertel ex rel. Borregard v. Sonshine Carpet Co.*, 730 P.2d 428, 429 (Nev. 1986).

32. What is the potential exposure for "bad faith" claims handling?

If the Administrator determines that an insurer, organization for managed care, healthcare provider, third-party administrator, or employer has engaged in certain acts of bad faith, the Administrator shall impose an administrative fine of \$1,500 for each initial violation, or a fine of \$15,000 for a second or subsequent violation. Nev. Rev. Stat. § 616D.120(1). If the Administrator determines that they have failed to comply with any provision of the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act, or any regulation adopted pursuant thereto, the Administrator may issue a notice of correction for some violations; impose an administrative fine for a subsequent violation for which a notice of correction was issued or any violation for which a notice of correction may not be issued; order a plan of corrective action to be submitted to the Administrator within 30 days after the date of the order. Nev. Rev. Stat. § 616D.120(2).

If the Administrator determines that certain kinds of bad faith have occurred, the Administrator shall order the offender to pay to the claimant, within 10 days of the Administrator's determination, a benefit penalty in an amount that is not less than \$5,000 and not greater than \$50,000, or of \$3,000 if the violation involves a late payment of compensation or other relief to a claimant in an amount which is less than \$500 or which is not more than 14 days late. Nev. Rev. Stat. § 616D.120(3). To determine the

amount of the benefit payment, the Administrator shall consider the degree of physical harm suffered by the injured employee or the dependents of the injured employee as a result of the violation. Nev. Rev. Stat. § 616D.120(4). The Commissioner may withdraw the certification of a self-insured employer, association of self-insured employers, or third-party administrator if, after a hearing, it is shown that the entity engaged in one of the enumerated acts of bad faith. Nev. Rev. Stat. § 616D.120(8). Additionally, the Administrator may assess an administrative penalty of up to twice the amount of any underpaid assessment against an insurer who violates any regulation concerning the reporting of claims expenditures used to calculate an assessment. Nev. Rev. Stat. § 616D.120(5).

If an insurer unreasonably delays or refuses to pay the claim within 30 days after the insurer has been notified of an industrial accident, the insurer shall pay upon order of the Administrator to the claimant an additional amount equal to three times the amount specified in the order as refused or unreasonably delayed. Nev. Rev. Stat. § 616C.065(4).

No independent cause of action may be brought or maintained against an insurer or a third-party administrator who violates any provision of Chapters 616A-616D, or 617. Nev. Rev. Stat. § 616D.030(1).

33. What is the exposure for terminating an employee who has been injured?

The unlawful discharge of an employee in retaliation for filing a workers' compensation claim does not preclude the court from providing a remedy for what it concludes to be tortious conduct. *Dillard Dep't Stores, Inc. v. Beckwith*, 989 P.2d 882, 885 (Nev. 1999).

THIRD PARTY ACTIONS

34. Can third parties be sued by the employee?

Yes. An employee who suffers an injury which is otherwise compensable under the Nevada Industrial Insurance Act under circumstances creating a legal liability in some person other than the employer or a person in the same employ may proceed against such third party in tort. Nev. Rev. Stat. § 616C.215(2). The amount of compensation the injured employee or his dependents are entitled to receive pursuant to the Nevada Industrial Insurance Act, including future compensation, must be reduced by the amount of the damages recovered. Nev. Rev. Stat. § 616C.215(2)(a).

35. Can co-employees be sued for work-related injuries?

When an employee is injured on the job as a result of the negligence of a fellow employee acting within the course of employment, his or her remedy is compensation under the Nevada Industrial Insurance Act. *Leslie v. J.A. Tiberti Construction Co.*, 664 P.2d 963, 964 (Nev. 1983). The co-employees' grant of immunity extends only to situations where, apart from the compensation act, the employer would be liable under the

doctrine of respondeat superior. *Molino v. Asher*, 618 P.2d 878, 879 (Nev. 1980). A co-employee's intentional acts against another employee, is not within the NIIA's exclusivity provisions. *Fanders v. Riverside Resort & Casino, Inc.*, 245 P.3d 1159, 1164 (Nev. 2010).

Where a fellow employee assaults another employee solely to gratify his feeling of anger or hatred, the injury results from the voluntary act of the assailant, and cannot be said to arise either directly out of the employment, or as an incident of it, and is not compensable under the Nevada Industrial Insurance Act. *Cummings v. United Resort Hotels, Inc.*, 449 P.2d 245, 248 (Nev. 1969). The specific intent of an agent to harm another of the principal's employees does not render the injury outside the coverage of the Nevada Industrial Insurance Act. *King v. Penrod Drilling Co.*, 652 F.Supp. 1331, 1335 (D. Nev. 1987).

36. Is subrogation available?

Yes. If the employee or his or her dependents receive industrial insurance compensation, the insurer has a right of action against the person liable for damages, including the employer's uninsured or underinsured vehicle coverage insurer, and is subrogated to the rights of the employee or of his or her dependents to recover. Nev. Rev. Stat. § 616C.215(2)(b). This statutory right of intervention is not, however, absolute. A workers' compensation insurer may intervene in an injured worker's litigation to protect its right to reimbursement only if it meets certain requirements, which include showing that the injured worker cannot adequately represent the insurer's interest in the subject matter of the litigation. *Am. Home Assurance Co. v. Dist. Ct.*, 147 P.3d 1120, 1232 (Nev. 2006). The insurer or Administrator would also have a lien upon the total proceeds of any recovery from some person other than the employer, whether the proceeds of such recovery are by way of judgment, settlement or otherwise. Nev. Rev. Stat. § 616C.215(5) and (6). The insurer and the Administrator are not subrogated to the rights of an injured employee or the employee's dependents under a policy of uninsured or underinsured vehicle coverage purchased by the employee. *Id.* at (3)(b).

MEDICALS

37. Is there a time limit for medical bills to be paid, and are penalties available for late payment?

Yes. An insurer must approve or deny a bill for accident benefits received from a healthcare provider within 45 calendar days after receipt of the bill. Nev. Rev. Stat. § 616C.136(1). If the insurer fails to pay within that period, the insurer must pay the healthcare provider interest equal to the prime rate at the largest bank in Nevada plus 6 percent until the bill is paid. *Id.* The payment of interest for late payment may only be waived if the payment was delayed by an act of God or by another cause beyond the control of the insurer. *Id.* at (6). If an insurer needs additional information whether to pay or deny a bill, then the insurer must notify the healthcare provider and provide the

provider with all the specific reasons for the delay within 20 calendar days of receiving the bill, and the healthcare provider must provide all of the requested information within 20 calendar days of receipt of the request. *Id.* at (2). If the healthcare provider fails to provide the insurer with the requested information, the healthcare provider will not be entitled to the payment of interest. *Id.* An insurer must not request a healthcare provider to resubmit information that the provider has previously provided to the insurer, unless there is a legitimate reason for the request and the purpose of the request is not to delay, harass, or discourage the filing of claims. *Id.* at (3).

The Administrator may require an insurer to provide evidence which demonstrates that the insurer has substantially complied with the requirements of this section, including, without limitation, payment within the time required of at least 95 percent of accident benefits. If the Administrator determines that an insurer is not in substantial compliance with the requirements of this section, the Administrator may require the insurer to pay an administrative fine in an amount determined by the Administrator. Nev. Rev. Stat. § 616C.136(5).

38. What, if any, mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level?

Appeals Officers, the Administrator, and the Administrator's designee, in conducting hearings or other proceedings, may issue subpoenas requiring the production of medical records, permit discovery by deposition or interrogatories, call and examine a witness under oath, and initiate and hold conferences for the settlement or simplification of issues. Nev. Rev. Stat. § 616D.050(1). Hearing Officers, in conducting hearings or other proceedings, may issue subpoenas requiring the production of books, accounts, papers, records and documents that are relevant to the dispute, permit discovery by deposition or interrogatories, and initiate and hold conferences for the settlement or simplification of issues. *Id.* at (2).

39. What is the rule on (a) Claimant's choice of a physician; (b) Employer's right to second opinion and/or Independent Medical Examination?

A. Claimant's choice of physician.

When an employer learns of an accident, the employer may direct the employee to submit to an examination by a physician or chiropractor in order to ascertain the character and the extent of the injury. Nev. Rev. Stat. § 616C.010(2). The employer shall furnish the names, addresses, and telephone numbers of two or more physicians or chiropractors who are qualified to conduct the examination if there are two or more physicians or chiropractors within 30 miles of the employee's place of employment. *Id.* If there are less than two physicians or chiropractors within 30 miles of the employee's place of employment, the employer shall only furnish the names, addresses, and telephone numbers of one or more physicians or chiropractors. *Id.* From the names furnished by the employer, the employee shall select one of those physicians or

chiropractors, but the employer shall not require the employee to select a particular physician or chiropractor from the names furnished by the employer. *Id.* at (3).

The Administrator shall establish a panel of physicians and chiropractors that have demonstrated special competence and interest in industrial health to treat injured employees under the Act. Nev. Rev. Stat. § 616C.090(1). Further medical care for an employee whose insurer has not entered into a contract with an organization for managed care may choose his treating physician or chiropractors from that panel of physicians and chiropractors. Nev. Rev. Stat. § 616C.090(2). If the injured employee is not satisfied with first physician or chiropractor he or she chooses, he or she may make an alternative choice of physician or chiropractor from the panel if the choice is made within ninety (90) days after his or her injury, subject to the approval of the insurer. *Id.* Any further change is subject to the approval of the insured, which must be granted or denied within 10 days after written request for such a change is received from the injured employee. *Id.*

No employee is required to accept the services of a physician or chiropractor provided by his or her employer and may seek professional medical services of his or her choice. Nev. Rev. Stat. § 616C.265(6). Expenses arising from such medical services must be paid by the employer who has elected to provide benefits for the employer's injured employees. *Id.*

B. Employee's right to a second opinion and/or Independent Medical Examination.

An injured employee may obtain an independent medical examination whenever a dispute arises from a determination issued by the insurer regarding the approval of care, the direction of a treatment plan, or the scope of the claim; however, the independent medical examination must be obtained within 30 days after an injured employee receives any report generated by a medical examination requested by the insurer or at any time by leave of a Hearing Officer or Appeals Officer after the denial of any therapy or treatment. Nev. Rev. Stat. § 616C.145. Additionally, at a medical examination either requested by the insurer, employer, Appeals Officer, or Hearing Officer, the employee is entitled to have a physician or chiropractor provided and paid for by the employee present at the examination. Nev. Rev. Stat. § 616C.140(4).

40. What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?

The employee is entitled to receive such accident benefits "as may reasonably be required at the time of the injury and within 6 months thereafter." Nev. Rev. Stat. § 616C.245(1). The Division will consider the following as expenditures for claims: (a) a surgeon, assisting surgeon, anesthesiologist or consulting physician; (b) charges by a hospital; (c) treatment by a physician or chiropractor; (d) X-ray films, CAT scans,

myelograms, MRI, and other diagnostic test and procedures; (e) physical therapy; (f) prescribed drugs and medications, eyeglasses, dental work, prostheses, orthotic devices and corrective shoes by prescription; (g) travel to obtain medical care or supplies; (h) any other accident benefits; (i) compensation for a permanent total, temporary total, permanent partial or temporary partial disability; (j) costs of vocational rehabilitation services for an injured employee; (k) death benefits; and (l) burial expenses. Nev. Admin. Code § 616B.707(1).

The Division will not consider the following to be expenditures for claims: (a) amounts held in reserve for any anticipated expense in connection with a claim; (b) money paid for a temporary total or temporary partial disability in excess of the average monthly wage; (c) legal expenses, including court costs, attorney's fees, costs for depositions, investigations and hearings; (d) payment of an award of interest; (e) payment of claims in connection with the Uninsured Employers' Claim Account; (f) administrative expenses, including expenses incurred for copying records, reviewing physicians' reports, or services relating to the management of costs of medical care; and (g) costs incurred in a claim that is ultimately denied. Nev. Admin. Code § 616B.707(2).

41. Which prosthetic devices are covered, and for how long?

The Division adopted by reference the section of the most recent edition of "Relative Values for Physicians" relating to prosthetic procedures. Nev. Admin. Code § 616C.145; § 616C.147.

If compensation is paid to an employee for a mastectomy, the employee is also entitled to receive commensurate compensation for at least two prosthetic devices incident to the surgery. Nev. Rev. Stat. § 616C.185.

42. Are vehicle and/or home modifications covered as medical expenses?

An injured employee is entitled to receive a motor vehicle that is modified to allow the employee to operate the vehicle safely if as a result of an injury arising out of and in the course of his or her employment, the employee is quadriplegic, paraplegic, or has had a part of his or her body amputated; and the employee cannot be fitted with a prosthetic device which allows him or her to operate a motor vehicle safely. Nev. Rev. Stat. § 616C.245(2). The order of preference for such modification goes as follows: a motor vehicle owned by the employee, a used motor vehicle, and a new motor vehicle. Nev. Rev. Stat. § 616C.245(3). The insurer shall purchase or modify a motor vehicle as needed and at least every 10 years or 120,000 miles driven, whichever occurs first. Nev. Admin. Code § 616C.054(3).

43. Is there a medical fee guide or schedule, or other provisions for cost containment?

Yes. The Administrator establishes a schedule of reasonable fees and charges allowable for accident benefits provided to injured employees whose insurers have not contracted

with healthcare providers services pursuant to Nev. Rev. Stat. § 616B.527. Nev. Rev. Stat. § 616C.260(2). The Administrator shall review and revise the schedule on or before February 1 of each year. *Id.*

Healthcare providers shall use the procedure code numbers, unit values, and guidelines from the “Relative Values for Physicians,” to bill for services performed which are within the scope of their licenses. Nev. Admin. Code § 616C.145. The Division adopted by reference the most current list of eligible codes for surgical centers for ambulatory patients set forth in the “Centers for Medicare and Medicaid services, CMS Common Procedures Coding Systems.” Nev. Admin. Code § 616C.147. The insurer may not, in accepting responsibility for any charges, use fee schedules which unfairly discriminate among physicians and chiropractors. Nev. Rev. Stat. § 616C.055.

44. What, if any, provisions or requirements are there for “managed care”?

A self-insured employer, an association of self-insured public or private employers or a private carrier may enter into a contract with one or more organizations for managed care, as defined by Nev. Rev. Stat. § 616A.280, or with the healthcare providers to provide comprehensive medical and healthcare services to employees for injuries and diseases that are compensable pursuant to Nev. Rev. Stat., chapters 616A to 617. Nev. Rev. Stat. § 616B.527(1). They may also require their employees to obtain medical and healthcare services for their industrial injuries from those organizations or persons with whom they have contracted. *Id.* Except as otherwise provided in subsection 4 of NRS 616C.090, injured employees are required to obtain the approval of the self-insured employer, association, or private carrier before obtaining medical and healthcare services for his or her industrial injury from a provider who has not been previously approved by the self-insured employer, association, or carrier. *Id.*

PRACTICE/PROCEDURE

45. What is the procedure for contesting all or part of a claim?

A person aggrieved by a decision made by an organization for managed care which has contracted with an insurer must, within 14 days of the determination and before requesting a resolution of the dispute, appeal that determination in accordance with the procedure for resolving complaints established by the managed care organization. Nev. Rev. Stat. § 616C.305(1). The procedure must be informal and must include a review of the appeal by a qualified physician or chiropractor who did not make or otherwise participate in making the decision. Nev. Rev. Stat. § 616C.305(2). If a person appeals a final determination pursuant to a procedure for resolving complaints established by an organization for managed care and the dispute is not resolved 14 days after it is submitted, the person may request a resolution of the dispute pursuant to NRS 616C.345 to 616C.385, inclusive. Nev. Rev. Stat. § 616C.305(3).

A person who is aggrieved by a written determination of an insurer, or the failure of an insurer to respond within 30 days to a written request, may appeal from the determination or failure to respond by filing a request for a hearing before a Hearing Officer. Nev. Rev. Stat. § 616C.315(3). Such a request must be filed within 70 days after the date on which the notice of the insurer's determination was mailed by the insurer or the unanswered written request was mailed to the insurer, as applicable. *Id.* The failure of an insurer to respond to a written request for a determination within 30 days after receipt of such a request shall be deemed by the Hearing Officer to be a denial of a request. *Id.* An additional 90 days are afforded to an injured worker if he or she shows by a preponderance of the evidence that he or she was diagnosed with a terminal illness or informed of the death/terminal illness of a spouse, child, or parent. Nev. Rev. Stat. § 616C.315(4). Failure to file a request for a hearing may be excused if the person aggrieved shows by a preponderance of the evidence that he or she did not receive the notice of the determination and the forms necessary to request a hearing. Nev. Rev. Stat. § 616C.315(5). The parties to a contested claim may, if the claimant is represented by legal counsel, agree to forego a hearing before a Hearing Officer and submit the contested claim directly to an Appeals Officer. Nev. Rev. Stat. § 616C.315(7).

Within 5 days after receiving a request for a hearing, the Hearing Officer shall set the hearing for a date and time within 30 days after his or her receipt of the request at a place in Carson City, Nevada or Las Vegas, Nevada. Nev. Rev. Stat. § 616C.330(1). The Hearing Officer shall give notice by mail or by personal service to all interested parties at least 15 days before the hearing, and conduct hearings expeditiously and informally. *Id.* The notice must include a statement that the injured employee may be represented by a private attorney or seek assistance and advice from the Nevada Attorney for Injured Workers. Nev. Rev. Stat. § 616C.330(2). The Hearing Officer shall render his or her decision within 15 days after the hearing or when the Hearing Officer receives a copy of the report from the medical examination he or she requested. Nev. Rev. Stat. § 616C.330(8).

46. What is the method of claim adjudication

A. Administrative level.

Except with regard to an appeal of a decision of an organization for managed care, a person who is aggrieved by a written determination of an insurer or the failure of an insurer to respond within 30 days to a written request mailed to the insurer by the person who is aggrieved, may appeal from the determination or failure to respond by filing a request for a hearing before a Hearing Officer. Nev. Rev. Stat. § 616C.315(3). Such a request must be filed within 70 days after the date on which the notice of the insurer's determination was mailed by the insurer or the unanswered written request was mailed to the insurer, as applicable. *Id.* The parties to a contested claim may, if the claimant is represented by legal counsel, agree to forego a hearing before a Hearing Officer and submit the contested claim directly to an Appeals Officer. Nev. Rev. Stat. § 616C.315(7). Any claimant who is aggrieved by any final determination of the insurer or the insurer's

staff may appeal from the decision to a Hearing Officer. Nev. Admin. Code § 616C.270.

Any party aggrieved by a decision of the Hearing Officer relating to a claim for compensation may appeal from the decision by filing a notice of appeal with an Appeals Officer within 30 days after the date of the decision. Nev. Rev. Stat. § 616C.345(1). If a dispute is required to be submitted to a procedure for resolving complaints regarding a decision of an organization for managed care and a final determination was rendered pursuant to that procedure, or the dispute was not resolved pursuant to that procedure within 14 days after it was submitted, any party to the dispute may file a notice of appeal within 70 days after the date on which the final decision was mailed to the employee, or the unanswered request for resolution was submitted. Nev. Rev. Stat. § 616C.345(4). Failure to render a written determination within 30 days after receipt of such a request shall be deemed by the Appeals Officer to be a denial of the request. *Id.*

The hearing before the Appeals Officer to review the Hearing Officer's decision is an administrative proceeding governed by particular statutes, such as those relating to rules of evidence, the record of hearing, the reimbursement of employee's expenses and lost wages, and the stay of the Appeals Officer's decision. Nev. Rev. Stat. §§ 616C.350, 616C.355, 616C.360, 616C.365, 616C.375 and 616C.380. A written petition for a rehearing based on good cause or newly discovered evidence may be filed with the Appeals Officer within 15 days after the service of a notice of the final decision. Nev. Admin. Code § 616C.327.

B. Trial court.

No judicial proceedings for judicial review may be instituted unless a claim is filed within the time limits prescribed, and a final decision by an Appeals Officer has been rendered on the claim. Nev. Rev. Stat. § 616C.370(1). Judicial proceedings instituted for compensation are limited to review of the decision of the Appeals Officer. Nev. Rev. Stat. § 616C.370(2).

Relief from a decision of the Appeals Officer is clearly provided for under the Administrative Procedure Act, and the district court is given broad supervisory powers to ensure that all relevant evidence is considered by the Appeals Officer. Nev. Rev. Stat. § 233B.135. The district court may decide pure legal questions without deference to an agency determination. *State Indus. Sys. v. Khweiss*, 825 P.2d 218, 220 (Nev. 1992). An agency's conclusions of law, which are closely related to the agency's view of the facts, are entitled to deference and should not be disturbed if they are supported by substantial evidence. *Id.*

C. Appellate.

The function of the Supreme Court of Nevada in reviewing an administrative decision is

identical to that of the district court. *State Indus. Ins. Sys. v. Engel*, 971 P.2d 793, 795 (Nev. 1998). A reviewing court shall not substitute its judgment for that of an agency with regard to a question of fact. Questions of law, however, are reviewed de novo. *Id.*

47. What are the requirements for stipulations or settlements?

The insurer shall not make or allow any lump-sum settlements, except under the prescribed circumstances for lump-sum payments in lieu of vocational rehabilitation services, death benefits, permanent partial disability awards, remedies for incorrect average monthly wages, or payments pending appeals when the decision is not stayed. Nev. Rev. Stat. § 616C.410. Every injured employee, widow, widower or dependent, is entitled to receive from a qualified employee of the insurer a written explanation of the various alternatives implicit in lump-sum compensation or other settlement and the long-range effects of a determination made as to one or the other kind of settlement. Nev. Rev. Stat. § 616C.415. The claimant shall provide his or her selection in writing to the insurer. *Id.*

48. Are full and final settlements with closed medicals available?

Nevada statutory and case law has not specifically addressed this issue.

49. Must stipulations and/or settlements be approved by the state administrative body?

A certificate of authority is not required of an insurer with respect to the settlement of claims under its lawfully written policies. Nev. Rev. Stat. § 680A.070(1). The parties may stipulate to any fact at issue by written stipulation introduced in evidence as an exhibit or by oral statements shown upon the record, with the approval of the Commissioner. Nev. Admin. Code § 607.420.

RISK FINANCE FOR WORKERS' COMPENSATION

50. What insurance is required, and what is available (e.g., private carriers, state fund, assigned risk pool, etc.)?

Insurance is available through a self-insured employer, an association of self-insured public employers, an association of self-insured private employers, and a private carrier. Nev. Rev. Stat. § 616A.270.

51. What are the provisions/requirements for self-insurance?

A. For individual entities.

An employer may qualify as a self-insured employer by establishing to the satisfaction of the Commissioner that the employer has sufficient administrative and financial resources to make certain the prompt payment of all compensation under Chapters 616A-616D, or 617. Nev. Rev. Stat. § 616B.300(1). The employer has sufficient financial resources if at the time of initial qualification and until the employer has operated successfully as a qualified self-insured employer for 3 years, the employer has a net worth of more than \$2,500,000, or after 3 years of successful operation as a qualified self-insured employer,

the employer has net cash flows from operating activities plus net cash flows from financing activities of five times the average of claims paid for each of the last 3 years or \$7,500,000, whichever is less. Nev. Rev. Stat. § 616B.300(1). The employer must also deposit with the Commissioner a bond executed by the employer as principal, and by a corporation qualified under Nevada law as surety. The bond must be in an amount reasonably sufficient to ensure payment of compensation, but in no event may it be less than 105 percent of the employer's expected annual incurred cost of claims, or less than \$100,000. *Id.* at (2). In lieu of a bond the employer may deposit with the Commissioner a like amount of lawful money or other authorized security. *Id.* at (3). The Commissioner shall require the employer to submit evidence of excess insurance to protect against a catastrophic loss. *Id.* at (5).

B. For groups or "pools" of private entities.

A group of five or more employers may not act as an association of self-insured public employers unless the group is composed of employers engaged in the same or similar classifications of employment and has been issued a certificate to act as such an association by the Commissioner. Nev. Rev. Stat. § 616B.350(1). A group of five or more employers may not act as an association of self-insured private employers unless each member of the group is a member or associate member of a bona fide trade association, which is incorporated in this state and has been in existence for at least 5 years, and has been issued a certificate to act as such an association by the Commissioner. Nev. Rev. Stat. § 616B.350(2). The requirements for the application can be found in (4) and (5). Nev. Rev. Stat. § 616B.350.

52. **Are "illegal aliens" entitled to benefits of workers' compensation in light of The Immigration Reform and Control Act of 1986, which indicates that they cannot lawfully enter into an employment contract in the United States, although most state acts include them within the definition of "employee"?**

Yes. Nevada includes within the definition of employee every person in the service of the employer, whether lawfully or unlawfully employed, including, but not limited to, aliens. Nev. Rev. Stat. § 616A.105. However, although compensation can be paid to an injured undocumented worker pursuant to Nevada's workers' compensation scheme, formal vocational training must be denied if that training is solely because of the worker's immigration status. *Tarango v. State Indus. Ins. Sys.*, 25 P.3d 175, 177 (Nev. 2001).

53. **Are terrorist acts or injuries covered or excluded under workers' compensation law?**

There are no provisions in either the Nevada Revised Statutes or the Administrative Regulations dealing with coverage for terrorist acts in regard to workers' compensation. Furthermore, there is no Nevada case law dealing with this issue.

54. **Are there any state specific requirements which must be satisfied in light of the obligation of the parties to satisfy Medicare's interests pursuant to the Medicare Secondary Payer Act?**

If an injured worker receives benefits from Medicaid, there may be a subrogation right on the part of the State of Nevada to obtain reimbursement. Nev. Rev. Stat. § 422.293. However, there is not a specific requirement that must be satisfied regarding Medicare.

The effect of Medicare trusts and liens on workers' compensation settlements is governed by Federal law, specifically the Medicare Secondary Payer Program. 42 U.S.C. § 1395y(b)(2)(B). There are no Nevada cases demonstrating the interplay between the Medicare Secondary Payer Act and Nevada's workers' compensation law.

55. How are subrogation liens of Medicaid and health insurers treated under workers' compensation law?

The Federal Medicaid statute requires States to include in their plan for medical assistance provisions (1) that the individual will assign to the State any rights to payment for medical care from any third party and (2) that the individual will cooperate with the State in pursuing any third party who may be liable to pay for care and services available under the Medicaid plan. 42 U.S.C.A. § 1396k(a). The State is authorized to retain such amount as is necessary to reimburse it for medical assistance payments and to pay the remainder to the individual. 42 U.S.C.A. § 1396k(b).

Hospital liens, as provided for by Nev. Rev. Stat. § 108.590, are not valid against anyone coming under the provisions of Nev. Rev. Stat. chapters 616A to 616D, inclusive, or chapter 617. As a general matter, the State Department of Human Resources is subrogated to the rights of a Medicaid recipient to the extent of all medical costs paid on behalf of the Medicaid recipient. Nev. Rev. Stat. § 422.293.

56. What are the requirements for confidentiality and privacy of medical records under workers' compensation law and how are they affected by state and federal law (HIPAA)?

Any information obtained from any insurer, employer, or employee is confidential and may not be disclosed to public inspection in any manner which would reveal the person's identity. Nev. Rev. Stat. § 616B.012(1). HIPAA and 45 C.F.R. §164.512. provide an exception for workers' compensation claims to allow the collection of medical records by employers and insurers. 45 C.F.R. §164.512.

57. What are the provisions for "Independent Contractors"?

Subcontractors, independent contractors, and the employees of either are "employees." Nev. Rev. Stat. § 616A.210. A recent Nevada Supreme Court case interpreting "indirect employees" such as subcontractors or independent contractors is *Hays Home Delivery, Inc. v. Employers Ins. Co. of Nevada*, 31 P.3d 367, 371 (Nev. 2001). In *Hays*, the Nevada Supreme Court found entitlement to workers' compensation through a principal contractor despite a specific agreement rendering the claimant an independent contractor. *Id.* The Court applied the "normal work test" from *Meers v. Haughton Elevator*, 701 P.2d 1006 (Nev. 1985), which requires that the independent contractor is in

the same trade and that the independent contractor would have performed work that employees would normally complete. *Id.* at 370-71.

Despite this finding, Nevada has determined that a hirer of an independent contractor is not vicariously liable for the negligence of the employer of the independent contractor, and the injured independent contractor employee's exclusive remedy is Workers' Compensation, even if the independent contractor is insolvent and did not carry industrial insurance. *San Juan v. PSC Indus. Outsourcing*, 240 P.3d 1026, 1027 (Nev. 2010).

58. Are there any specific provisions for "Independent Contractors" pertaining to professional employment organizations/temporary service companies/leasing companies?

An employee leasing company must have a certificate of registration to operate. Nev. Rev. Stat. § 616B.673(1). A "client company" is a company which leases employees, for a fee, from an employee leasing company pursuant to a written or oral agreement. Nev. Rev. Stat. § 616B.670(2). An "employee leasing company" is a company which, pursuant to a written or oral agreement intended by the parties to create an ongoing relationship, places any of the regular, full-time employees of a client company on its payroll, and for a fee, leases them to the client company. *Id.* at (3). Nevada Revised Statute § 616B.692 governs the coverage for workers' compensation by employee leasing companies.

59. Are there any specific provisions for "Independent Contractors" pertaining to owner/operators of trucks or other vehicles for driving or delivery of people or property?

There are no specific provisions regarding owner/operators of trucks or other vehicles for driving or delivery of people or property. However, in *Hays Home Delivery, Inc. v. Employers Ins. Co. of Nevada*, 31 P.3d 367, 371 (Nev. 2001), the Court held that a truck owner/operator was an independent enterprise, separate and distinct from the corporation for whom he delivered, but because the owner/operator and the corporation were in the same trade of delivering merchandise from retailers to end customers, an employment relationship existed between them entitling the owner/operator to workers' compensation benefits from the corporation's carrier.

60. What are the "Best Practices" for defending workers' compensation claims and controlling workers' compensation benefits costs and losses?

Financial exposure to workers' compensation is an expensive and complex challenge for every business. The best means for reducing and eliminating that exposure is a strong and individualized "Best Practices" plan. It is important for an employer to carry workers' compensation insurance to avoid various penalties. An employer should maintain an available supply of Notice of Injury or Occupational Disease forms for employees. The employer should encourage the injured employee to complete an Employee's Claim for Compensation Report. The employer should schedule an appointment for the injured

employee to be examined by the employer's insured healthcare provider. The employer should pay attention to whether the injury was caused by drug and alcohol use or was the result of intentional conduct. Additionally, the employer should pay attention to filing deadlines and whether any intentional misrepresentations or omissions were made by the injured employee.

61. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to protect Medicare's interests when settling the right to medical treatment benefits under a claim?

No. If an injured worker receives benefits from Medicaid, there may be a subrogation right on the part of the State of Nevada to obtain reimbursement. Nev. Rev. Stat. § 422.293. However, there is not a specific requirement that must be satisfied regarding Medicare.