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Assembly Bill No. 607—Committee on Ways and Means

CHAPTER.....

AN ACT relating to unemployment compensation; authorizing federally recognized Indian tribes to elect to become liable for payments by way of reimbursement in lieu of contributions to comply with federal law; increasing the daily compensation for service for members of the Nevada employment security council; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 612 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *“Indian tribe” has the meaning ascribed to it in 26 U.S.C. § 3306(u), as amended.*

Sec. 3. 1. *“Employment” includes service performed in the employ of an Indian tribe, or of any political subdivision thereof, or of any subsidiary or business enterprise wholly owned by an Indian tribe alone or in conjunction with one or more other Indian tribes or political subdivisions thereof, which is excluded from the definition of “employment” by the provisions of 26 U.S.C. § 3306(c)(7), as amended, except service:*

(a) As an elected official;

(b) As a council member or a member of the judiciary of a tribe or a political subdivision thereof;

(c) In employment serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(d) In a position which, pursuant to tribal law, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week; or

(e) By an inmate of a custodial or penal institution.

2. *“Employment” does not include service performed:*

(a) In a facility conducted for the purpose of carrying out a program of rehabilitation for persons whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for persons who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by a person receiving such rehabilitation or remunerative work; or

(b) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by a person receiving such work relief or work training.

Sec. 4. NRS 612.015 is hereby amended to read as follows:

612.015 As used in this chapter, unless the context clearly requires otherwise, the words and terms defined in NRS 612.016 to 612.200, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 612.055 is hereby amended to read as follows:
612.055 "Employer" means:

1. Any employing unit which for any calendar quarter has paid or is liable to pay wages of \$225 or more, and which employs during ~~{such}~~ *that* period one or more persons in an employment subject to this chapter.

2. Any person or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of ~~{such}~~ *the* acquisition was an employer subject to this chapter.

3. Any person or employing unit which acquired the organization, trade or business, or substantially all of the assets thereof, of another employing unit if the employment record of ~~{such}~~ *the* person or employing unit subsequent to ~~{such}~~ *the* acquisition, together with the employment record of the acquired unit, ~~{prior to such}~~ *before the* acquisition, both within the same calendar quarter, would be sufficient to constitute such *an* employing unit as an employer subject to this chapter under subsection 1.

4. Any employing unit not an employer by reason of any other subsection of this section, for which within either the current or preceding year service in employment is or was performed with respect to which such *an* employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

5. Any employing unit which, having become an employer under subsection 1, 2 or 3, has not, under NRS 612.555 to 612.580, inclusive, ceased to be an employer subject to this chapter.

6. For the effective period of its election pursuant to NRS 612.565 ~~to 612.580, inclusive,~~ *, 612.570 and 612.580*, any other employing unit which has elected to become fully subject to this chapter.

7. In the case of domestic service in a private home, local college club or local chapter of a college fraternity or sorority, with respect to any calendar year, any person or employing unit who during any calendar quarter in the current calendar year or the preceding calendar year paid cash wages of \$1,000 or more for such service.

8. In the case of agricultural labor, with respect to any calendar year, any person or employing unit who:

(a) During any calendar quarter in the current calendar year or the preceding calendar year paid cash wages of \$20,000 or more for agricultural labor; or

(b) On at least 20 days during the current calendar year or preceding calendar year, each day being in a different calendar week, employed at least 10 persons in agricultural labor for some portion of the day, whether or not:

(1) The weeks were consecutive; or

(2) The persons were employed at the same moment of time.

For purposes of this subsection agricultural labor does not include the wages earned by or the employment of any employee performing domestic service.

9. This state, or any political subdivision thereof, or any instrumentality of this state or its political subdivision which is owned by

this state or one or more of its political subdivisions alone or in conjunction with one or more other states or political subdivisions thereof.

10. An Indian tribe, or any political subdivision thereof, or any subsidiary or business enterprise wholly owned by an Indian tribe alone or in conjunction with one or more other Indian tribes or political subdivisions thereof.

Sec. 6. NRS 612.065 is hereby amended to read as follows:

612.065 Subject to the provisions of NRS 612.070 to 612.145, inclusive, *and section 3 of this act*, “employment” means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

Sec. 7. NRS 612.305 is hereby amended to read as follows:

612.305 1. The Nevada employment security council, consisting of nine members appointed by the governor, is hereby created to assure an impartial development of administrative policies within the division.

2. The governor shall appoint members who represent an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations, and members who are representatives of the general public.

3. The governor shall appoint three of the nine members of the employment security council to serve as a board of review. The board must be comprised of:

- (a) One member who is a representative of labor;
- (b) One member who is a representative of employers; and
- (c) One member who is a representative of the general public.

4. The governor may remove any member of the employment security council or board of review for cause.

5. Members of the employment security council are entitled to receive ~~15601~~ \$80 per day for each day of actual service on the employment security council or board of review.

6. Regular meetings of the employment security council may be held twice in each calendar year. Special meetings, not to exceed six in number during any calendar year, may be held at the call of the chairman.

7. The administrator is an ex officio member of the employment security council and is its secretary. The secretary is not entitled to compensation for his services on the employment security council, but he is entitled to be reimbursed for his necessary traveling and other expenses.

Sec. 8. NRS 612.553 is hereby amended to read as follows:

612.553 1. For the purposes of this section:

(a) *“Indian tribe” includes any entity described in subsection 10 of NRS 612.055.*

(b) “Nonprofit organization” means any entity described in subsection 1 of NRS 612.121.

~~1001~~ (c) “Political subdivision” means any entity described in subsection 9 of NRS 612.055.

2. Any nonprofit organization, ~~for any~~ political subdivision *or Indian tribe* which is subject to this chapter:

(a) Shall pay contributions to the unemployment compensation fund in the manner provided in NRS 612.535 to 612.550, inclusive, unless it elects,

in accordance with this section, to pay into the unemployment compensation fund, in lieu of contributions, as reimbursement an amount equivalent to the amount of regular unemployment compensation benefits and one-half of the extended benefits paid to claimants that is attributable to wages paid, except that after December 31, 1978, a political subdivision, *and after December 21, 2000, an Indian tribe*, shall reimburse an amount equal to the regular unemployment compensation benefits and all of the extended benefits. *An Indian tribe may elect to become liable for payments by way of reimbursement in lieu of contributions for the tribe as a whole, or for any political subdivision, subsidiary, wholly owned business, or any combination thereof.* The amount of benefits payable by each employer who elects to make payments by way of reimbursement in lieu of contributions must be an amount which bears the same ratio to the total benefits paid to a person as the total base-period wages paid to that person by the employer bear to the total base-period wages paid to that person by all of his base-period employers. Two or more employers who have become liable for payments by way of reimbursement in lieu of contributions may file a joint application, in accordance with regulations of the administrator, for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers.

~~(b) *May elect to become liable for payments by way of reimbursement in lieu of contributions, for a period of not less than 1 taxable year beginning with January 1, 1972, provided it files with the administrator a written notice of such election within the 30 day period immediately following such date. Such organization remains liable for payments by way of reimbursement in lieu of contributions until it files with the administrator a written notice terminating its election not later than 30 days before the beginning of the taxable year for which such termination is first effective.*~~

~~—(c)~~ May elect to become liable for payments by way of reimbursement in lieu of contributions for a period of not less than 4 consecutive calendar quarters beginning with the first day of the calendar quarter on which it became subject to this chapter by filing a written notice with the administrator not later than 30 days immediately following the date of the determination that it is subject to this chapter. The organization remains liable for payments by way of reimbursement in lieu of contributions until it files with the administrator a written notice terminating its election not later than 30 days before the beginning of the taxable year for which the termination is first effective.

3. Any nonprofit organization, ~~for any~~ political subdivision *or Indian tribe* which is paying contributions as provided in NRS 612.535 to 612.550, inclusive, may change to a reimbursement-in-lieu-of-contributions basis by filing with the administrator not later than 30 days before the beginning of any taxable year a written notice of its election to become liable for payments by way of reimbursements in lieu of contributions. The election is not terminable by the organization for that and the next taxable year.

4. The administrator may for a good cause extend the period in which a notice of election or a notice of termination must be filed and may permit

an election to be retroactive, but not any earlier than with respect to benefits paid after December 31, 1970, for a nonprofit organization, ~~for~~ December 31, 1976, for a political entity ~~or~~, *or December 21, 2000, for an Indian tribe.*

5. The administrator shall notify each nonprofit organization, ~~and each~~ political subdivision *and Indian tribe* of any determination which he may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. His determination is subject to reconsideration, petitions for hearing and judicial review in accordance with the provisions of this chapter.

6. The amount of reimbursement in lieu of contributions due from each employing unit which elects to make reimbursement in lieu of contributions ~~shall~~ *must* be determined by the administrator as soon as practicable after the end of each calendar quarter or at the end of any other period as determined by the administrator. The administrator shall bill each employing unit which makes reimbursement in lieu of contributions for an amount determined pursuant to paragraph (a) of subsection 2. Amounts due under this subsection must be paid not later than 30 days after a bill is mailed to the last known address of the employing unit. If payment is not made on or before the date due and payable, the whole or any part thereafter remaining unpaid bears interest at the rate of one-half percent per month or fraction thereof, from and after the due date until payment is received by the administrator. The amount of payments due, ~~hereunder,~~ but not paid, may be collected by the administrator, together with interest and penalties, if any, in the same manner and subject to the same conditions as contributions due from other employers. The amount due specified in any bill from the administrator is conclusive and binding on the employing unit, unless not later than 15 days after the bill was mailed to its last known address, the employing unit files an application for redetermination. A redetermination made under this subsection is subject to petition for hearing and judicial review in accordance with the provisions of this chapter. Payments made by any nonprofit organization, *political subdivision or Indian tribe* under the provisions of this section must not be deducted, in whole or in part, from the wages of any person employed by that organization.

7. *The administrator shall:*

(a) Suspend the election of an Indian tribe to become liable for payments by way of reimbursement in lieu of contributions if the tribe fails to make payment, together with interest and penalties, if any, within 90 days after the tribe receives a bill from the administrator.

(b) Require an Indian tribe whose election to become liable for payments by way of reimbursement in lieu of contributions is suspended pursuant to subsection 1 to pay contributions as set forth in NRS 612.535 to 612.550, inclusive, for the following taxable year unless the administrator receives its payment in full before he computes the contribution rates for that year.

(c) Reinstate the election of an Indian tribe to become liable for payments by way of reimbursement in lieu of contributions that is suspended pursuant to subsection 1 if the tribe:

(1) Has paid all contributions pursuant to NRS 612.535 to 612.550, inclusive, including interest and penalties, for not less than 1 year; and

(2) Has no unpaid balance owing to the administrator for any contribution, payment in lieu of contributions, penalty or interest.

8. Benefits are payable on the basis of employment to which this section applies, in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other employment subject to this chapter.

~~8-1~~ 9. In determining contribution rates assigned to employers under this chapter, the payrolls of employing units liable for payments in lieu of contributions must not be included in computing the contribution rates to be assigned to employers under this chapter. The reimbursement in lieu of contributions paid by or due from such employing units must be included in the total assets of the fund in the same manner as contributions paid by other employers.

~~9-1~~ 10. The provisions of NRS 612.550 do not apply to employers who elect reimbursement in lieu of contributions.

~~10-1~~ 11. Except as inconsistent with the provisions of this section, the provisions of this chapter and regulations of the administrator apply to any matter arising pursuant to this section.

Sec. 9. The amendatory provisions of sections 1 to 6, inclusive, and 8 of this act apply retroactively to December 21, 2000.

Sec. 10. 1. This section, sections 1 to 6, inclusive, 8 and 9 of this act become effective upon passage and approval.

2. Section 7 of this act becomes effective on July 1, 2001.