

ASSEMBLY BILL NO. 229—COMMITTEE
ON COMMERCE AND LABOR

MARCH 5, 2015

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing workers' compensation. (BDR 53-754)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to workers' compensation; revising the period during which certain injured employees must file a claim for compensation with an insurer; revising provisions relating to the adoption by reference of standards for evaluating permanent impairment; providing that compensation is not payable if an injury is proximately caused by an employee's use of a prohibited substance; providing that the results of any test to determine whether an injured employee used alcohol or a controlled or prohibited substance must be made available to an insurer or employer upon request; authorizing an insurer to deny compensation for temporary total disability and vocational rehabilitation services under certain circumstances; revising procedures relating to the stay of a decision of an appeals officer; revising provisions relating to the time period and requirements for reopening a closed claim; revising provisions relating to the payment of benefits for a temporary total disability or vocation rehabilitation services following the reopening of a claim; revising provisions relating to certain payments to an injured employee of lump-sum compensation; and providing other matters properly relating thereto.



Legislative Counsel's Digest:

This bill revises various provisions of the Nevada Industrial Insurance Act (Chapters 616A-616D of NRS), which provide for the payment of compensation to employees who are injured or disabled as a result of an occupational injury or disease.

Existing provisions of the Act provide that an employee is not entitled to accrue or be paid certain benefits while the employee is in jail or otherwise "incarcerated." (NRS 616C.475, 616C.500, 616C.590) For the purpose of these provisions, **section 1** of this bill revises the definition of that term to include confinement during a period of weekend incarceration or house arrest.

Section 2 of this bill revises from 90 days to 30 days the period in which certain injured employees must file a claim for compensation with an insurer.

Section 3 of this bill provides for the adoption of the sixth edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* and provides that the Division of Industrial Relations of the Department of Business and Industry shall adopt regulations incorporating the most recent edition of the *Guides* within 18 months after the publication of the edition.

Existing law provides that compensation is not payable if an injured employee's injury is proximately caused by the employee's use of a controlled substance. (NRS 616C.230) **Section 4** of this bill expands this provision to include prohibited substances. Additionally, **section 4** requires that the results of any test for the use of alcohol or a controlled or prohibited substance by an injured employee be provided to the insurer or employer upon request.

Section 5 of this bill authorizes an insurer to deny compensation for temporary total disability benefits and vocational rehabilitation services if an injured employee is discharged from his or her employment as a result of misconduct or if an injured employee voluntarily resigns as a result of misconduct.

Existing law requires an insurer who has closed a claim before all benefits to which the claimant may be entitled have been paid to provide certain notice to the claimant. (NRS 616C.235) **Section 6** of this bill allows an insurer, at its own discretion, to authorize continued medication or services be provided to a claimant after such a claim has been closed.

Under existing law, the decision of an appeals officer is not stayed by an appeal from the decision unless a stay is granted by the appeals officer or district court. (NRS 616C.375) **Section 7** of this bill provides that such a decision is automatically stayed by the submission of a request for a stay and that the stay remains in effect until the appeals officer or district court rules on the request and sets certain deadlines for ruling on such a request.

Existing law provides certain requirements for reopening a claim which include certain time limitations for filing an application to reopen a claim. (NRS 616C.390) **Section 8** of this bill revises the time limitations for filing an application to reopen a claim. Existing law also provides that an injured employee whose claim is reopened is not eligible for temporary total disability benefits if the employee is retired or voluntarily left the workforce. (NRS 616C.390) **Section 8** adds to this provision that such an employee is not eligible for these benefits if he or she was terminated for misconduct or if a physician determined that the employee was capable of engaging in temporary, modified employment and such employment was made available by the employer.

Existing law requires an insurer to reopen a claim to consider payment for a permanent partial disability under certain conditions. (NRS 616C.392) **Section 9** of this bill requires an employee requesting such a reopening of his or her claim to complete certain requirements within 1 year after the date the claim was closed.

Section 10 of this bill provides for recovery by an insurer of the amount of any lump sum paid to an injured employee for vocational rehabilitation services when



an injured employee is determined, subsequent to the payment of the lump sum, to be permanently and totally disabled.

Section 11 of this bill revises provisions concerning the gross wages and employment benefits which must be provided pursuant to an offer of temporary, light-duty employment.

Existing law provides for the development of a plan for a program of vocational rehabilitation for certain injured employees, which may include on-the-job training. Under existing law, the insurer is required to pay a percentage of the wages of an employee who is receiving such training. (NRS 616C.555, 616C.570) **Section 12** of this bill provides, instead, for the payment of benefits for temporary partial disability to such an employee.

Section 13 of this bill revises provisions relating to an injured employee's entitlement, after the lump-sum payment of a claim, to vocational rehabilitation services or benefits for a temporary total disability.

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

Section 1. NRS 616A.250 is hereby amended to read as follows:

616A.250 ~~["Incarcerated"]~~

1. Except as otherwise provided in subsection 2, "incarcerated" means confined in:

~~[(1)]~~ (a) Any local detention facility, county jail, state prison, reformatory or other correctional facility as a result of a conviction or a plea of guilty, guilty but mentally ill or nolo contendere in a criminal proceeding; or

~~[(2)]~~ (b) Any institution or facility for persons with mental illness as a result of a plea of not guilty by reason of insanity in a criminal proceeding,

↪ in this State, another state or a foreign country.

2. For the purposes of NRS 616C.475, 616C.500 and 616C.590, a person is also "incarcerated" while confined during a period of weekend incarceration or house arrest.

Sec. 2. NRS 616C.020 is hereby amended to read as follows:

616C.020 1. Except as otherwise provided in subsection 2, an injured employee, or a person acting on behalf of the employee, shall file a claim for compensation with the insurer within ~~[90]~~ 30 days after an accident if:

(a) The employee has sought medical treatment for an injury arising out of and in the course of his or her employment; or

(b) The employee was off work as a result of an injury arising out of and in the course of his or her employment.

2. In the event of the death of the injured employee resulting from the injury, a dependent of the employee, or a person acting on behalf of the employee, shall file a claim for compensation with the insurer within 1 year after the death of the injured employee.



3. The claim for compensation must be filed on a form prescribed by the Administrator.

Sec. 3. NRS 616C.110 is hereby amended to read as follows:

616C.110 1. For the purposes of NRS 616B.557, 616B.578, 616B.587, 616C.490 and 617.459 ~~[-not]:~~:

(a) *Not* later than August 1, ~~[2003,]~~ **2015**, the Division shall adopt regulations incorporating the American Medical Association's Guides to the Evaluation of Permanent Impairment, ~~[Fifth]~~ **Sixth** Edition, by reference. The regulations:

~~[(a) Must provide that the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition, must be applied to all examinations; and~~

~~—(b)]~~ **(1) Must become effective on October 1, 2015; and**

(2) Must be applied to all examinations for a permanent partial disability that are conducted on or after October 1, 2015, regardless of the date of the injury, until regulations incorporating any subsequent edition by reference have become effective pursuant to paragraph (b).

(b) Beginning with the publication of the edition immediately subsequent to the Sixth Edition, and continuing for each subsequent edition thereafter, the Division shall adopt regulations incorporating the most recent edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment, or its successor publication, by reference. The regulations:

(1) Must become effective not later than 18 months after the most recent edition is published by the American Medical Association; and

(2) Must be applied to all examinations for a permanent partial disability that are conducted on or after the effective date of the regulations, regardless of the date of injury ~~[-]~~, until regulations incorporating the next edition by reference have become effective pursuant to this paragraph.

2. After adopting the regulations required pursuant to subsection 1, the Division may amend those regulations as it deems necessary, except that the amendments to those regulations:

(a) Must be consistent with the ~~[Fifth Edition]~~ **edition** of the American Medical Association's Guides to the Evaluation of Permanent Impairment ~~[-]~~ **most recently adopted by the Division;**

(b) Must not incorporate any contradictory matter from any other edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment; and

(c) Must not consider any factors other than the degree of physical impairment of the whole person in calculating the entitlement to compensation.



3. If the ~~{Fifth Edition}~~ *edition* of the American Medical Association's Guides to the Evaluation of Permanent Impairment *most recently adopted by the Division* contains more than one method of determining the rating of an impairment, the Administrator shall designate by regulation the method from that edition which must be used to rate an impairment pursuant to NRS 616C.490.

Sec. 4. NRS 616C.230 is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(a) Caused by the employee's willful intention to injure himself or herself.

(b) Caused by the employee's willful intention to injure another.

(c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his or her injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

(d) Proximately caused by the employee's use of a controlled *or prohibited* substance. If the employee had any amount of a controlled *or prohibited* 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 the employee's name or that the employee was not using in accordance with the provisions of chapter 453A of NRS, the controlled *or prohibited* substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS 50.310, 50.315 or 50.320 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled *or prohibited* substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled *or prohibited* substance ~~{, the}~~:

(1) *The* laboratory that conducts the testing must be licensed pursuant to the provisions of chapter 652 of NRS ~~{, and}~~ *and*

(2) *The results of the examination and testing must be made available to the insurer or employer upon request.*

3. No compensation is payable for the death, disability or treatment of an employee if the employee's death is caused by, or insofar as the employee's disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to



1 follow any competent and reasonable surgical treatment or medical
2 aid.

3 4. If any employee persists in an unsanitary or injurious
4 practice that imperils or retards his or her recovery, or refuses to
5 submit to such medical or surgical treatment as is necessary to
6 promote his or her recovery, the employee's compensation may be
7 reduced or suspended.

8 5. An injured employee's compensation ~~[, other than accident~~
9 ~~benefits,]~~ must be suspended if ~~[~~

10 ~~—(a) A]~~ a physician or chiropractor determines that the employee
11 is unable to undergo treatment, testing or examination for the
12 industrial injury solely because of a condition or injury that did not
13 arise out of and in the course of employment ~~[;]~~ and

14 ~~[(b)] :~~

15 (a) It is within the ability of the employee to correct the
16 nonindustrial condition or injury ~~[;]~~ *or*

17 (b) *If the condition or injury is a nonindustrial illness, the*
18 *condition or injury interferes with the ability of the physician or*
19 *chiropractor to treat, test or examine the employee.*

20 ➡ The compensation must be suspended until the injured employee
21 is able to resume treatment, testing or examination for the industrial
22 injury. The insurer may elect to pay for the treatment of the
23 nonindustrial condition or injury.

24 6. *For the purposes of this section, "prohibited substance"*
25 *has the meaning ascribed to it in NRS 484C.080.*

26 **Sec. 5.** NRS 616C.232 is hereby amended to read as follows:

27 616C.232 1. If an injured employee is discharged from his or
28 her employment as a result of misconduct, an insurer may deny
29 compensation for temporary total disability *and vocational*
30 *rehabilitation services* to the injured employee because of that
31 discharge for misconduct only if the insurer proves by a
32 preponderance of the evidence that:

33 (a) The injured employee was discharged from his or her
34 employment solely for the employee's misconduct and not for any
35 reason relating to the employee's claim for compensation; and

36 (b) It is the injured employee's discharge from his or her
37 employment for misconduct, and not the injury, that is the sole
38 cause for the injured employee's inability to return to work with the
39 preinjury employer.

40 2. ~~[Aa)]~~ *If an injured employee voluntarily resigns from his or*
41 *her employment as a result of misconduct, an* insurer ~~[waives its~~
42 ~~rights under subsection 1 if the insurer does not make a~~
43 ~~determination to]~~ *may* deny ~~[or suspend]~~ compensation *for*
44 *temporary total disability and vocational rehabilitation services* to
45 the injured employee . ~~[within 70 days after the date on which the~~



~~insurer learns that the injured employee has been discharged for misconduct.]~~

3. An insurer may not deny any compensation pursuant to this section except for compensation for temporary total disability *and vocational rehabilitation services* pursuant to ~~[subsection 1.]~~ *subsections 1 and 2.*

4. Discharge *or voluntary resignation* from employment for reasons other than gross misconduct does not limit an injured employee's entitlement to receive benefits for temporary total disability.

Sec. 6. NRS 616C.235 is hereby amended to read as follows:

616C.235 1. Except as otherwise provided in subsections 2, 3 and 4:

(a) When the insurer determines that a claim should 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 by first-class mail addressed to the last known address of the claimant and, if the insurer has been notified that the claimant is represented by an attorney, to the attorney for the claimant by first-class mail addressed to the last known address of the attorney. The notice must include, on a separate page, a statement describing the effects of closing a claim pursuant to this section and a statement that if the claimant does not agree with the determination, the claimant has a right to request a resolution of the dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive, including, without limitation, a statement which prominently displays the limit on the time that the claimant has to request a resolution of the dispute as set forth in NRS 616C.315. A suitable form for requesting a resolution of the dispute must be enclosed with the notice. The closure of a claim pursuant to this subsection is not effective unless notice is given as required by this subsection.

(b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim.

(c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing officer may be served by first-class mail.

2. If, during the first 12 months after a claim is opened, the medical benefits required to be paid for a claim are less than \$300, the insurer may close the claim at any time after the insurer sends, by first-class mail addressed to the last known address of the claimant, written notice that includes a statement which prominently displays that:

(a) The claim is being closed pursuant to this subsection;



* A B 2 2 9 *

(b) The injured employee may appeal the closure of the claim pursuant to the provisions of NRS 616C.305 and 616C.315 to 616C.385, inclusive; and

(c) If the injured employee does not appeal the closure of the claim or appeals the closure of the claim but is not successful, the claim cannot be reopened.

3. In addition to the notice described in subsection 2, an insurer shall send to each claimant who receives less than \$300 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed pursuant to subsection 2. The written notice provided pursuant to this subsection does not create any right to appeal the contents of that notice. The written notice must be:

(a) Sent by first-class mail addressed to the last known address of the claimant; and

(b) A document that is separate from any other document or form that is used by the insurer.

4. The closure of a claim pursuant to subsection 2 is not effective unless notice is given as required by subsections 2 and 3.

5. In addition to the requirements of this section, an insurer shall include in the written notice described in subsection 2:

(a) If an evaluation for a permanent partial disability has been scheduled pursuant to NRS 616C.490, a statement to that effect; or

(b) If an evaluation for a permanent partial disability will not be scheduled pursuant to NRS 616C.490, a statement explaining that the reason is because the insurer has determined there is no possibility of a permanent impairment of any kind.

6. An insurer may, at its sole discretion, authorize continued medication or services be provided to a claimant after a claim has been closed. A refusal of an insurer to authorize continued medication or services pursuant to this subsection may not be appealed.

Sec. 7. NRS 616C.375 is hereby amended to read as follows:

616C.375 If an insurer, employer or claimant, or the representative of an insurer, employer or claimant, appeals the decision of an appeals officer, that decision is not stayed unless a *request for a stay is ~~granted by~~ submitted to* the appeals officer or the district court. *The decision of the appeals officer is stayed until the appeals officer or district court issues an order granting or denying the request for a stay. The appeals officer or district court shall issue an order granting or denying the request for a stay within 30 days after the date on which the ~~decision was rendered.~~ request was submitted. If a request for a stay is denied, the parties shall comply with the decision of the appeals officer within 10 days after the issuance of the order denying the request for a stay.*



Sec. 8. NRS 616C.390 is hereby amended to read as follows:
616C.390 Except as otherwise provided in NRS 616C.392:

1. *An application to reopen the claim may be submitted to an insurer:*

(a) *Within 1 year after the closure of the claim if the claimant received a permanent partial disability rating of 5 percent or less;*

(b) *Within 3 years after the closure of the claim if the claimant received a permanent partial disability rating greater than 5 percent but less than 10 percent; or*

(c) *Within 5 years after the closure of the claim if the claimant received a permanent partial disability rating of 10 percent or more.*

2. If an application to reopen a claim ~~[to increase or rearrange compensation]~~ is made in writing ~~[more than 1 year after the date on which the claim was closed,]~~ *in accordance with the provisions of subsection 1,* the insurer shall reopen the claim if:

(a) A change of circumstances warrants an increase ~~[or rearrangement]~~ of compensation ; ~~[during the life of the claimant;]~~

(b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and

(c) 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.

~~[2-]~~ 3. After a claim has been closed, the insurer, upon receiving an application *in accordance with the provisions of subsection 1,* and for good cause shown, may authorize the reopening of the claim for medical investigation only. The application must be accompanied by a written request for treatment from the physician or chiropractor treating the claimant, certifying that the treatment is indicated by a change in circumstances and is related to the industrial injury sustained by the claimant.

~~[3-]~~ 4. If a claimant applies for a claim to be reopened pursuant to subsection 1 or ~~[2]~~ 3 and a final determination denying the reopening is issued, the claimant shall not reapply to reopen the claim until at least 1 year after the date on which the final determination is issued.

~~[4-]~~ 5. Except as otherwise provided in subsection ~~[5-]~~ 6, 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:

(a) The application is supported by medical evidence demonstrating an objective change in the medical condition of the claimant; and



(b) 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.

~~[5.]~~ 6. 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) The claimant ~~[was not off work]~~ *did not receive benefits for a temporary total disability* as a result of the injury; and

(b) The claimant did not receive benefits for a permanent partial disability.

➤ If an application to reopen a claim to increase or rearrange compensation is made pursuant to this subsection, the insurer shall reopen the claim if the requirements set forth in paragraphs (a), (b) and (c) of subsection ~~[H]~~ 2 are met.

~~[6.]~~ 7. If an employee's claim is reopened pursuant to this section, the employee is not entitled to vocational rehabilitation services or benefits for a temporary total disability if ~~[, before]~~ :

(a) *Before* the claim was reopened, the employee:

~~[(a)]~~ (1) Retired; ~~for~~

~~[(b)]~~ (2) Otherwise voluntarily removed himself or herself from the workforce ~~;~~

~~➤ for reasons unrelated to the injury for which the claim was originally made.] ; or~~

(3) *Was terminated for misconduct for reasons unrelated to the injury for which the claim was made; or*

(b) *The insurer or employer demonstrates that, before the claim was reopened, a physician determined that the employee was capable of engaging in temporary, modified employment and temporary, modified employment was available with the employer.*

~~[7.]~~ 8. One year after the date on which the claim was closed, an insurer may dispose of the file of a claim authorized to be reopened pursuant to subsection ~~[5.]~~ 6, unless an application to reopen the claim has been filed pursuant to that subsection.

~~[8.]~~ 9. An increase ~~[or rearrangement]~~ of compensation is not effective before an application for reopening a claim is made unless good cause is shown. The insurer shall, upon good cause shown, allow the cost of emergency treatment the necessity for which has been certified by a physician or a chiropractor.

~~[9.]~~ 10. A claim that closes pursuant to subsection 2 of NRS 616C.235 and is not appealed or is unsuccessfully appealed pursuant to the provisions of NRS 616C.305 and 616C.315 to 616C.385, inclusive, may not be reopened pursuant to this section.

~~[10.]~~ 11. The provisions of this section apply to any claim for which an application to reopen the claim or to increase ~~for rearrange~~ compensation is made pursuant to this section, regardless of the date of the injury or accident to the claimant. If a claim is



reopened pursuant to this section, the amount of any compensation or benefits provided must be determined in accordance with the provisions of NRS 616C.425.

Sec. 9. NRS 616C.392 is hereby amended to read as follows:

616C.392 1. An insurer shall reopen a claim to consider the payment of compensation for a permanent partial disability if:

(a) ~~[The claim was closed and]~~ *Within 1 year after the date on which the claim was closed, it is determined that* the claimant was not scheduled for an evaluation of the injury in accordance with NRS 616C.490;

(b) ~~[The]~~ *Within 1 year after the date on which the claim was closed, the* claimant demonstrates by a preponderance of the evidence that ~~[, at the time that the case was closed,]~~ the claimant was, because of the injury, qualified to be scheduled for an evaluation for a permanent partial disability; and

(c) The insurer has violated a provision of NRS 616D.120 with regard to the claim.

2. The demonstration required pursuant to paragraph (b) of subsection 1 must be made with documentation that existed at the time that the case was closed.

3. Notwithstanding any specific statutory provision to the contrary, the consideration of whether a claimant is entitled to payment of compensation for a permanent partial disability for a claim that is reopened pursuant to this section must be made in accordance with the provisions of the applicable statutory and regulatory provisions that existed on the date on which the claim was closed, including, without limitation, using the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted by the Division pursuant to NRS 616C.110 that was applicable on the date the claim was closed.

Sec. 10. NRS 616C.440 is hereby amended to read as follows:

616C.440 1. Except as otherwise provided in this section and NRS 616C.175, every employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by accident arising out of and in the course of employment, or his or her dependents as defined in chapters 616A to 616D, inclusive, of NRS, is entitled to receive the following compensation for permanent total disability:

(a) In cases of total disability adjudged to be permanent, compensation per month of 66 2/3 percent of the average monthly wage.

(b) If there is a previous disability, as the loss of one eye, one hand, one foot or any other previous permanent 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, but 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. The total amount of the allowable deduction includes, without limitation, compensation for a permanent partial disability that was deducted from:

(1) Any compensation the employee received for a temporary total disability; or

(2) Any other compensation received by the employee.

(c) If the character of the injury is such as to render the employee so physically helpless as to require the service of a constant attendant, an additional allowance may be made so long as such requirements continue, but the allowance may not be made while the employee is receiving benefits for care in a hospital or facility for intermediate care pursuant to the provisions of NRS 616C.265.

2. Except as otherwise provided in NRS 616B.028 and 616B.029, an injured employee or his or her dependents are not entitled to accrue or be paid any benefits for a permanent total disability during the time the injured employee is incarcerated. The injured employee or his or her dependents are entitled to receive those benefits when the injured employee is released from incarceration if the injured employee is certified as permanently totally disabled by a physician or chiropractor.

3. An employee is entitled to receive compensation for a permanent total disability only so long as the permanent total disability continues to exist. The insurer has the burden of proving that the permanent total disability no longer exists.

4. If an employee who has received compensation in a lump sum for a permanent partial disability pursuant to NRS 616C.495 is subsequently determined to be permanently and totally disabled, the insurer of the employee's employer shall recover pursuant to this subsection the actual amount of the lump sum paid to the employee for the permanent partial disability. The insurer shall not recover from the employee, whether by deductions or single payment, or a combination of both, more than the actual amount of the lump sum paid to the employee. To recover the actual amount of the lump sum, the insurer shall:

(a) Unless the employee submits a request described in paragraph (b), 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



1 amount of the lump sum paid to the employee for the permanent
2 partial disability is recovered; or

3 (b) Upon the request of the employee, accept in a single
4 payment from the employee an amount that is equal to the actual
5 amount of the lump sum paid to the employee for the permanent
6 partial disability, less the actual amount of all deductions made to
7 date by the insurer from the employee for repayment of the lump
8 sum.

9 *5. Except as otherwise provided in this subsection, if an*
10 *employee who has received compensation in a lump sum for*
11 *vocational rehabilitation services pursuant to NRS 616C.595 is*
12 *subsequently determined to be permanently and totally disabled,*
13 *the insurer of the employee's employer shall recover pursuant to*
14 *this section the actual amount of the lump sum paid to the*
15 *employee for the vocational and rehabilitation services.*
16 *The insurer shall not recover from the employee any amount*
17 *which the employee demonstrates he or she expended or attempted*
18 *to spend to obtain vocational rehabilitation services. The insurer*
19 *shall not recover from the employee, whether by deductions or*
20 *single payment, or a combination of both, more than the actual*
21 *amount of the lump sum paid to the employee. To recover the*
22 *actual amount of the lump sum, the insurer shall:*

23 *(a) Unless the employee submits a request described in*
24 *paragraph (b), deduct from the compensation for the permanent*
25 *total disability an amount that is not more than 10 percent of the*
26 *rate of compensation for a permanent total disability until*
27 *the actual amount of the lump sum paid to the employee for the*
28 *vocational rehabilitation services is recovered; or*

29 *(b) Upon the request of the employee, accept in a single*
30 *payment from the employee an amount that is equal to the actual*
31 *amount of the lump sum paid to the employee for the vocational*
32 *rehabilitation services, less the actual amount of all deductions*
33 *made to date by the insurer from the employee for repayment of*
34 *the lump sum.*

35 **Sec. 11.** NRS 616C.475 is hereby amended to read as follows:

36 616C.475 1. Except as otherwise provided in this section,
37 NRS 616C.175 and 616C.390, every employee in the employ of an
38 employer, within the provisions of chapters 616A to 616D,
39 inclusive, of NRS, who is injured by accident arising out of and in
40 the course of employment, or his or her dependents, is entitled to
41 receive for the period of temporary total disability, 66 2/3 percent of
42 the average monthly wage.

43 2. Except as otherwise provided in NRS 616B.028 and
44 616B.029, an injured employee or his or her dependents are not
45 entitled to accrue or be paid any benefits for a temporary total



1 disability during the time the injured employee is incarcerated. The
2 injured employee or his or her dependents are entitled to receive
3 such benefits when the injured employee is released from
4 incarceration if the injured employee is certified as temporarily
5 totally disabled by a physician or chiropractor.

6 3. If a claim for the period of temporary total disability is
7 allowed, the first payment pursuant to this section must be issued by
8 the insurer within 14 working days after receipt of the initial
9 certification of disability and regularly thereafter.

10 4. Any increase in compensation and benefits effected by the
11 amendment of subsection 1 is not retroactive.

12 5. Payments for a temporary total disability must cease when:

13 (a) A physician or chiropractor determines that the employee is
14 physically capable of ~~[any gainful]~~ *returning to* employment ~~[for~~
15 ~~which the employee is suited, after giving consideration to the~~
16 ~~employee's education, training and experience;]~~ *in the employee's*
17 *preinjury occupation;*

18 (b) The employer offers the employee ~~[light-duty employment~~
19 ~~or]~~ employment that is modified *, temporarily or permanently,*
20 according to the limitations or restrictions imposed by a physician or
21 chiropractor pursuant to subsection 7; or

22 (c) Except as otherwise provided in NRS 616B.028 and
23 616B.029, the employee is incarcerated.

24 6. Each insurer may, with each check that it issues to an injured
25 employee for a temporary total disability, include a form approved
26 by the Division for the injured employee to request continued
27 compensation for the temporary total disability.

28 7. A certification of disability issued by a physician or
29 chiropractor must:

30 (a) Include the period of disability and a description of any
31 physical limitations or restrictions imposed upon ~~[the work of]~~ the
32 employee;

33 (b) Specify whether the limitations or restrictions are permanent
34 or temporary; and

35 (c) Be signed by the treating physician or chiropractor
36 authorized pursuant to NRS 616B.527 or appropriately chosen
37 pursuant to subsection 3 or 4 of NRS 616C.090.

38 8. If the certification of disability specifies that the physical
39 limitations or restrictions are temporary, the employer of the
40 employee at the time of the employee's accident may offer
41 temporary, light-duty employment to the employee. *An offer of*
42 *temporary, light-duty employment pursuant to this subsection may*
43 *be effective as soon as the next scheduled work shift.* If the
44 employer makes such an offer, the employer shall confirm the offer
45 in writing within 10 days after making the offer. The making,



1 acceptance or rejection of an offer of temporary, light-duty
2 employment pursuant to this subsection does not affect the
3 eligibility of the employee to receive vocational rehabilitation
4 services, including compensation, and does not exempt the
5 employer from complying with NRS 616C.545 to 616C.575,
6 inclusive, and 616C.590 or the regulations adopted by the Division
7 governing vocational rehabilitation services. Any offer of
8 temporary, light-duty employment made by the employer must
9 specify a position that:

10 (a) Is substantially similar to the employee's position at the time
11 of his or her injury in relation to the location of the employment and
12 the ~~hours~~ *shift schedule* the employee is required to work. ~~It~~

13 (b) Provides a gross wage that is:

14 (1) If the position is in the same classification of employment
15 ~~It~~ *and the physical limitations or restrictions specified are within*
16 *the physical requirements of the employee's employment*, equal to
17 the gross wage the employee was earning at the time of his or her
18 injury; or

19 (2) If the position is not in the same classification of
20 employment, substantially similar to the gross wage ~~the~~ *payable to*
21 *an employee* ~~[was earning at the time of his or her injury; and]~~
22 *within the same classification of employment. If the gross wage*
23 *earned is less than the employee would be entitled to receive for a*
24 *temporary total disability, the employee is entitled to receive*
25 *benefits for a temporary partial disability pursuant to*
26 *NRS 616C.500.*

27 (c) Has the same employment benefits as the position of the
28 employee at the time of his or her injury ~~It~~ *, subject to any*
29 *minimum requirements established by an independent provider of*
30 *benefits.*

31 **Sec. 12.** NRS 616C.570 is hereby amended to read as follows:

32 616C.570 1. A plan for a program of vocational rehabilitation
33 developed pursuant to NRS 616C.555 may include a program for
34 on-the-job training, if the training is suitable for the injured
35 employee.

36 2. Before an injured employee may participate in a program for
37 on-the-job training, the insurer and the employer *providing the*
38 *training* must execute a written agreement which contains *the cost,*
39 *the schedule and* an explanation of the ~~[training and a schedule for~~
40 ~~that]~~ training.

41 3. ~~[Except as otherwise provided in subsection 4, the]~~ *The*
42 insurer may pay ~~[not more than 50 percent of the wages of]~~
43 *temporary partial disability benefits to* an injured employee who is
44 participating in a program for on-the-job training. ~~[An insurer~~
45 ~~contributing toward the wages of an injured employee shall pay the~~



~~employee within 10 days after the employee submits documentation of his or her payroll to the insurer. The insurer shall not contribute to the wages of the injured employee for more than the period authorized for the particular employee pursuant to subsection 3 of NRS 616C.555 or 616C.560.~~

~~4. The insurer shall, within 30 days after receipt of a request for payment, reimburse the training employer for the wages paid by the training employer to the injured employee pursuant to this section if:~~

~~(a) After the successful completion of the training, the training employer continues to employ the injured employee for at least 90 days in a position which requires the training so obtained; or~~

~~(b) The injured employee:~~

~~(1) Within 30 days after his or her successful completion of the training, obtains employment which requires the skills obtained by him or her as a direct result of the training provided by the training employer; and~~

~~(2) Retains that or similar employment for at least 6 months after the completion of the training.]~~

Sec. 13. NRS 616C.595 is hereby amended to read as follows:

616C.595 1. If an injured employee is eligible for vocational rehabilitation services pursuant to NRS 616C.590, the insurer and the injured employee may, at any time during the employee's eligibility for such services, execute a written agreement providing for the payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services. An insurer's refusal to execute such an agreement may not be appealed.

2. If the insurer and the injured employee execute an agreement pursuant to subsection 1, 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 under the injured employee's claim. Except as otherwise required by federal law, an injured employee shall not receive vocational rehabilitation services from any state agency after the injured employee accepts payment of compensation in a lump sum pursuant to this section.

3. Before executing an agreement pursuant to subsection 1, an insurer shall:

(a) Order an assessment of and counseling concerning the vocational skills of the injured employee, unless the provisions of subsection 3 of NRS 616C.580 are applicable;

(b) Consult with the employer of the injured employee; and

(c) Provide a written notice to the injured employee that contains the following statements:



(1) That the injured employee is urged to seek assistance and advice from the Nevada Attorney for Injured Workers or to consult with a private attorney before signing the agreement.

(2) That the injured employee may rescind the agreement within 20 days after the injured employee signs it.

(3) That the 20-day period pursuant to subparagraph (2) may not be waived.

(4) That acceptance by the injured employee of payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services extinguishes the right of the injured employee to receive such services.

4. Except as otherwise provided in NRS 616C.580, any payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services must not be less than 40 percent of the maximum amount of vocational rehabilitation maintenance due to the injured employee pursuant to NRS 616C.555.

5. No payment of compensation in a lump sum may be made pursuant to this section until the 20-day period provided for the rescission of the agreement has expired.

6. If, after execution of a written agreement pursuant to subsection 1, a claim is reopened pursuant to NRS 616C.390 and a physician has determined that the injured employee is capable of engaging in temporary, modified employment, the injured employee is not entitled to benefits for a temporary total disability unless:

(a) The injured employee provides the insurer with documentation which:

(1) Substantiates that the injured employee has been retrained in an occupation;

(2) Sets forth the physical requirements of the occupation; and

(3) Provides that the physician's determination that the injured employee is capable of engaging in temporary, modified employment does not authorize the injured employee to return to the occupation for which the injured employee was retrained; or

(b) The injured employee provides the insurer with documentation which:

(1) Substantiates that the injured employee returned to gainful employment;

(2) Sets forth the physical requirements of the new employment; and

(3) Provides that the physician's determination that the injured employee is capable of engaging in temporary, modified employment does not authorize the injured employee to return to work in the new employment.



1 **Sec. 14.** This act becomes effective upon passage and approval
2 for the purposes of adopting regulations and performing any other
3 preparatory administrative tasks that are necessary to carry out this
4 act, and on October 1, 2015, for all other purposes.

