

Minutes of Nevada Employment Security Division  
Public Workshop of  
The Department of Employment, Training and Rehabilitation  
April 9, 2008, 10:00 a.m.  
Grant Sawyer Building,  
555 E. Washington Ave, Room 4412  
Las Vegas, Nevada 89101

Jones: Good morning. Thank you everyone who has chosen to spend part of their morning with us. We appreciate your participation. My name is Cindy Jones and I serve as the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation. We have opened this public workshop today to discuss proposed legislation for the upcoming legislative session that the Division is contemplating submitting. As a little bit of background, the purpose of the Employment Security Division is to administer a variety of employment and training programs including the Unemployment Insurance Program. Through the Unemployment Insurance Program, the Division ensures benefits are paid to those who are eligible for benefits who are unemployed through no fault of their own, and to administer a fair and equitable tax system on the behalf of Nevada employers and workers. The Division is contemplating two major areas to focus on for legislative changes this upcoming session. One is to review the experience rating system that determines the tax burden to Nevada employers to see if any amendments need to be made or should be made to ensure that it continues to be a fair and equitable distribution of costs for the Unemployment Insurance Trust Fund. The area that we are focusing on is strengthening our fraud prevention provisions in Chapter 612 of Nevada Administrative Code which governs the administration of unemployment insurance. And that too, is to protect the interests of the Trust Fund and to ensure those who collect benefits illegally do reimburse the Trust Fund as they should. We're going to take the Agenda a little bit out of order as published due to the scheduling constraints of some of our participants. First we're going to focus on the experience rating system for the Unemployment Insurance Trust Fund and I'm going to turn the microphone over here to Joan Richards from our Contributions Section to give you an overview of the as is status of the Trust Fund experience rating system and one of the ideas that's floating about on how we might make it a better system. Thank you.

Richards: Good morning. My name is Joan Richards and I am the Management Analyst with the Employment Security Division presenting for Donna Clark who unfortunately could not be here today. We are here to receive public comment on Nevada's experience rating system for unemployment insurance contributions. The current structure for experience rating has been in place for approximately 70 years. And with the changing business models, the Division deemed it would be prudent to review Nevada's rate system to ensure continued equitable distribution of unemployment insurance benefit costs to the Trust Fund contributors.

First I would like to provide a high level overview of the unemployment system and experience rating. The objectives of an experience rating system are to build into the system an equitable distribution of costs of the program among the employers, to encourage employers to stabilize their workforces and it encourages employers to participate in the unemployment insurance programs since charges to their accounts will directly influence their taxes. The unemployment insurance program is a joint federal state partnership. The experience rating system is a federal conformity requirement as a condition for allowing the employer to receive an additional credit against their Federal Unemployment Tax Act, or FUTA. The U.S. Secretary of Labor must approve any experience rating system that a state adopts. All employers must be rated over the same time period using the same factors. These factors must bear a direct relationship to the employer's unemployment risk. The result is that employers with the same experience should pay at the same tax rate.

Nevada's experience rating system is based upon the reserve ratio methodology. The purpose of this method is to put both large and small employers on an equal footing without regard to industry type. The reserve ratio is developed by totaling all contributions paid over the life of an employer's account, and subtracting all of benefits charged to the employer, with the result then divided by the average taxable payroll for the last three completed calendar years. Nevada has 18 tax rates and ranges of reserve ratios are assigned to each tax rate. These tax rates range from a quarter of a percent to 5.4%. New employers pay at the new employer rate of 2.95% for approximately three and a half to four years, until eligible for an experience rating. Since Nevada has a federally approved experience rating system, the employers in the State are allowed to offset their federal unemployment tax.

The Division is considering providing a voluntary election by employers with common ownership, management or control for a combined rating. This would allow related businesses to combine their experience rating into a joint account. There would not be an adjustment to the method of measuring the experience or in the computation of the rates currently in effect. By offering a voluntary election, businesses would be able to choose the option that best suits their business model. Businesses that have common ownership, management or control that have established separate legal business entities would be allowed to be treated as a single employer for the purposes of experience rating for unemployment insurance taxes. The Division seeks your input on this concept and I would be happy to answer any questions. Thank you.

Jones: Thank you, Joan. Here is the point where we've invited you all here today to seek your comments and your input on what you think about Nevada's experience rating system, where areas might be improved, and/or your input or concerns about adopting a system whereby joint rating would be allowed under the

statutory provision. Now, when we're proposing legislation, it's probably not a large chunk of language that would just give us permission to do the joint rating. The detailed work will come during the regulatory process on how that is implemented. And that would certainly be more complicated. What we would seek for statutory changes, is just the permission to have an experience rating system where we could do combined rating for related entities. And then we'd have to work a lot of the details out during the regulatory process. So I invite public comment at this time here in Las Vegas, if anyone would like to step up and make comments. Come on up. And please state your name for the record and who you're affiliated with. Press that little microphone button in front of you so we're recorded. Thank you, so much.

Shah: Hi. My name is Manan Shah and I'm with TALX Corporation. Based on our client groupings, I think that there would be a good equitable distribution of costs and benefits related to the experience rates of commonly controlled entities, if Nevada decides to implement a voluntary joint account initiative. Some of the issues that I think our clients will face will be within the regulatory period when it's discussed on some of the particulars, such as how the length of duration of the joint accounts, when it can be elected, when it can be foregone. Other states that have this type of voluntary joint account system either have a one year duration, two year duration, three year duration. Another thing that is of quite importance is who can be included. I know we've talked about commonly controlled entities, but what about new employers. For instance, we have a lot of employers in the gaming industry that set up new businesses for new gaming facilities. And that's just a function of gaming law requirements and licensing requirements and such. Would it be possible to include, even though it's a new separate legal entity, would it be possible to include those in the voluntary joint account as well. Because a lot of states do not have that provision currently built into their statute because they haven't established their own experience. But to equitably distribute the cost among the commonly controlled entities, one particular gaming client, their state unemployment rates should be equalized for all of the entities within their commonly controlled structure, including the new employer, because the rates, the benefit charge, everything that goes into the experience rating calculation should be similar.

Jones: All right. Thank you, Mr. Shah. We have similar concerns. These are all areas that we've identified that will have to be worked out during the regulatory process, assuming we are granted statutory authority to implement such a system. Some of these questions, we'll have to work with the Department of Labor to determine if, for instance, on the new employer issue, if they could be included in the experience rating under a commonly managed ownership and control group rating system. If it would be permissible for such to be included without that entity being experience rated first. We're working with DOL. We're asking these questions. We don't have answers yet. But yeah, before we can get into the hows, we have to see if it's prudent to get the permission to go there to start with.

We have to get that permission statutorily anyways to have the permissible language in there to enter into this sort of structure for our experience rating system. So thank you for your comments. Would anyone else like to make comments at this time in Las Vegas?

Ostrowsky: I have a question.

Jones: Sure.

Ostrowsky: For the record, Bob Ostrowsky, representing Nevada Resort Association. I just had a question procedurally. Did you say you need to get U.S. Department of Labor approval before you pass state legislation, or do you submit that after?

Jones: We get permission beforehand. They have to perform what's called a Conformity Review of any proposed legislation so that nothing gets implemented that is contrary to federal law. So, as part of our normal process for any proposed legislation, the Division puts through regarding the Department of Labor funded programs, we ask for their review up front.

Ostrowsky: Then I would assume, under those circumstances, that because they've approved this in other states, it's likely that they would approve it, assuming we didn't go too far afield from what the other states are doing.

Jones: Right. When it comes to the changes in the statutory provisions, I'm not really concerned. But when we get into the regulatory provisions on determining some of those more detailed questions on the new employers, whether they have to have the new employer rate or if they would have to be experience rated before they could be included in the group rating, we haven't found other states that have done that yet. So that's still a question mark for us. The states all have different rating systems and different nuances, so we have to see if the nuances as collectively Nevada would like to adopt, is in conformity with the federal laws and regulations.

Ostrowsky: Yeah, well you have the Resort Association's support. We'd support an effort to create a voluntary process where an employer could make that decision. Again, we think the devil's in the details as you suggest here. We'd be happy to work with the Division here and at the Legislature to try and resolve those issues favorably. Thank you.

Jones: Thank you, very much, Mr. Ostrowsky. Would anyone else here in Las Vegas care to make comment on this portion? Okay. How about in Northern Nevada. Flo, do we have any participants in Northern Nevada? Flo, come up to the microphone. Thank you.

Bedrosian: Hi. Flo Bedrosian. There's no one here but myself.

Jones: Okay, thank you. We also are having another workshop identical to this on Friday that is going to be based on Carson City and then videoconferenced to the North as well to try and engage more participants in this process. And we appreciate everybody coming and working with us up front on this. Hopefully we'll come to some mutually agreeable language as we go forth towards proposing a BDR. Thank you. Then we'll move on to the next section of the work that we are engaging in. Thank you for participating. Thank you.

Next I'd like to have Steve Zuelke discuss proposed changes to our Unemployment Insurance Compensation laws in regards to fraud prevention. Thank you.

Zuelke: Thank you, Cindy. Good morning. For the record, my name is Steve Zuelke. I manage the Benefit Program Integrity Unit for the Nevada Employment Security Division. A bill draft request prepared by the Employment Security Division seeks to continue unemployment insurance program improvements as recommended by the Legislative Counsel Bureau in their audit conducted in 2001, and by the Department of Administration Internal Audit Division. This legislation is specifically designed to enhance the integrity and sustained viability of the Unemployment Insurance Trust Fund by adding safeguards that protect the stability and appropriate use of that Fund. Concurrent with reductions in federal funding in recent years, there's been a national shift to provide economical service delivery using remote methods, such as the internet or telephone as the primary means of administering UI services. This environment has increased the potential for both claimant and fictitious employer's scheme fraud, including the problematic trend of identity theft. The Division seeks to improve fiscal integrity of the Unemployment Insurance Trust Fund in a number of ways.

Through amendment to NRS 612.445, the Division anticipates defining the act of filing an unemployment claim while incarcerated, or causing another person to do so on one's behalf, as misrepresentation of pertinent facts. Incarceration specifically eliminates the person's availability for work during the period of confinement. Through addition of a new section of law, NRS 612.446, the Division anticipates defining fraudulent activity and providing specific penalties for the commission of fraud. These specific penalties include the addition of a financial penalty in the amount of 50% of the benefits illegally obtained, in anticipation of federal legislation requiring a fiscal penalty for the commission of fraud.

In order to ensure fiscal integrity of the benefit program, and limit the potential for repeat fraudulent offenders, the Division seeks to prevent a person who has fraudulently claimed benefits from receiving further payments under unemployment insurance programs, until which point they have repaid all benefits illegally claimed, plus penalty and any accrued interest. The Division expects to

categorize fraudulent activity resulting in a loss to the Trust Fund of an amount in excess of \$250.00 as a felony. The Nevada Attorney General's Worker's Compensation Prosecution Unit recommends aligning existing statutes NRS 612.715 through NRS 612.725 with NRS 205.380, which constitutes obtaining money under false pretenses.

The Division would like to reduce the administrative burden to garnish wages for fraudulent overpayment and unpaid tax amounts due to the Division. This will be accomplished through the addition of several statutes to NRS 612 that mirror those utilized in collecting outstanding child support debt. The garnishment process as it exists is cumbersome and reduces the amount of revenues collected due to fees imposed under NRS 31, for the filing of a civil garnishment.

Finally, through amendment to NRS 612.615, the Division seeks to provide authority to utilize penalty and interest funding to enhance programs designed to ensure the integrity of the system. The continued reduction in federal support of the program has weakened the Division's ability to properly protect the Unemployment Insurance Trust Fund assets on behalf of Nevada employers.

It is a brief overview of the legislation that we are proposing for 2009. I'd be happy to answer any questions at this time..

Jones: Okay, thank you, Steve. Does anyone have any comments or input here in Las Vegas regarding our ideas for strengthening fraud prevention for the Unemployment Insurance Trust Fund? And I expect that we have none in Northern Nevada since no one's there besides Flo. Alright. Thank you. Any other public comments at this time? Anybody would like to add any additional input? Okay. Well, hearing none, I would like to thank everybody for their participation today. For those who are viewing this proceeding on the Internet, I would like to provide you an e-mail address that you can provide comment to if you so choose to. You can send e-mail comments to my Assistant, Joyce Golden. Her e-mail address is [jlgolden@nvdetr.org](mailto:jlgolden@nvdetr.org). That's [jlgolden@nvdetr.org](mailto:jlgolden@nvdetr.org). I thank you for your time and your participation.