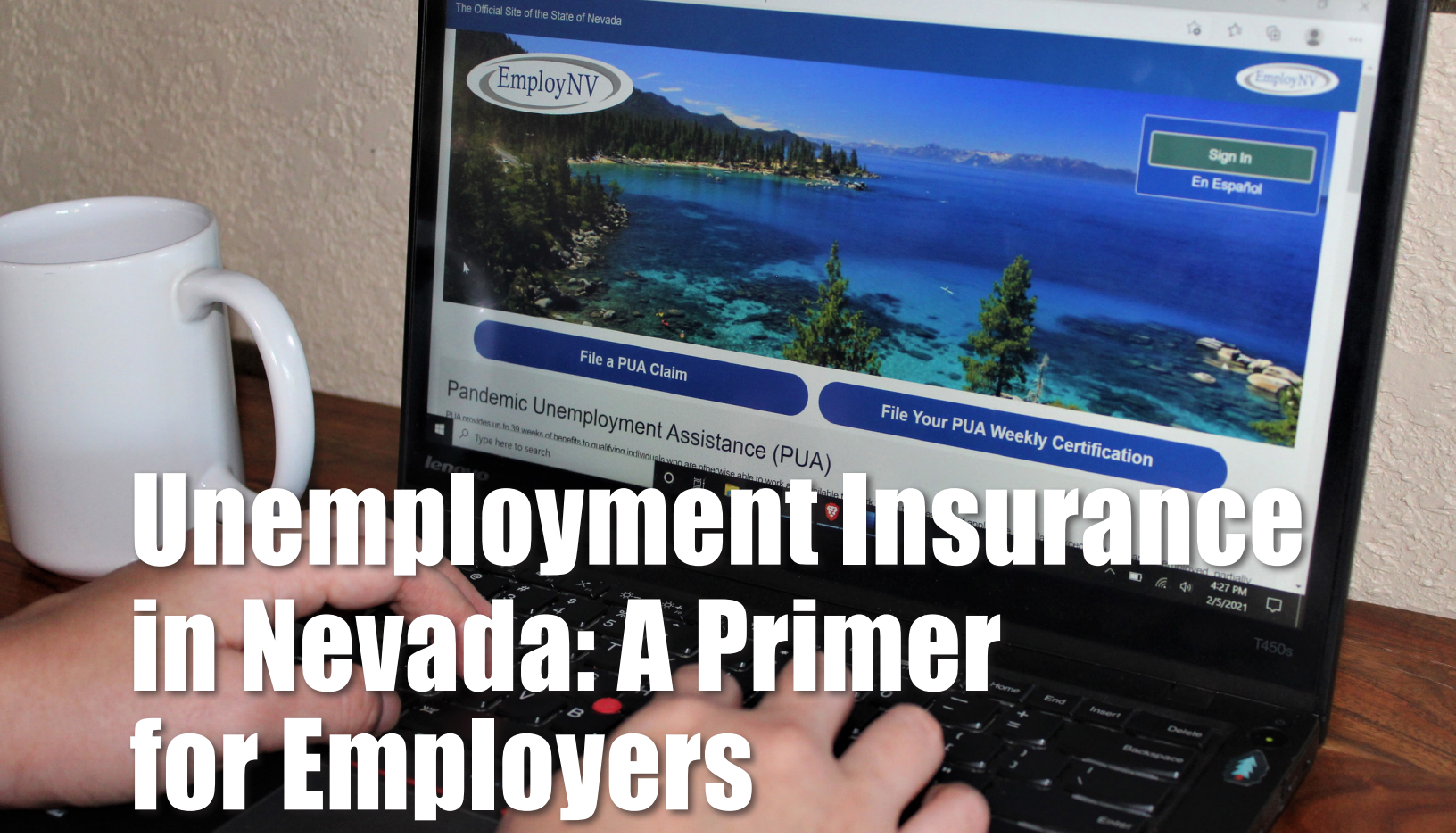

Unemployment Insurance in Nevada: A Primer for Employers

BY KELSEY STEGALL, ESQ., AND NEIL BAKER, ESQ.

In addition to "pandemic," "new normal," and "work from home," the usage of the term "unemployment" grew in everyone's vocabulary within the last year. A record number of people found themselves without jobs or with reduced hours due to the pandemic, and many people found themselves having to utilize unemployment benefits for the first time.

Meanwhile, employers are finding themselves having to respond to record numbers of unemployment insurance claims. Because many employers are still trying to navigate this foreign territory, this article provides a primer on unemployment insurance benefits in Nevada, including why an employer should respond to a notice of claim for benefits, what potential grounds exist for disputing the claim, and an overview of the appeals process.

Why Respond to a Notice of Claim for Benefits?

The integrity of the unemployment insurance program depends on employers' participation. Employers participate in the program in cooperation with the Employment Security Division, the arm of the Nevada Department of Employment, Training, and Rehabilitation charged with administering unemployment benefits under NRS Chapter 612 (the "Unemployment Statute"). To avoid erroneous payments of benefits, the Unemployment Statute creates an incentive for employers to provide the division with all facts necessary to evaluate the validity of a claim. Specifically, employers must provide all relevant facts regarding a claimant's separation from employment to avoid a potentially adverse impact on future tax rates.

The benefits paid to eligible unemployed workers under the Nevada unemployment insurance program are financed by a payroll tax on employers. In general, the tax rate governing an employer's contribution to the fund is determined by the employer's "reserve ratio." NRS 612.550(5). The reserve ratio is the ratio of the accumulated contributions paid into the fund by the employer, *less benefits charged to the employer's account*, over the annual average of total wages paid by the employer, subject to contributions for the three consecutive calendar years immediately preceding the computation date. NRS 612.550(1). Generally, the higher an employer's reserve ratio is, the lower its tax rate will be. NRS 612.550(5)–(6). An employer may therefore maximize its chances of obtaining a higher reserve ratio, and thus a lower tax rate, by taking all possible steps to ensure benefits are not charged to its account erroneously.

Upon receiving notice that a claim has been filed, an employer has 11 days from the date the notice was mailed to submit all known facts relevant to the determination of the claimant's rights, including facts that might disqualify the claimant from receiving benefits. NRS 612.475(3). If an employer files a timely report with facts that might adversely affect the claimant's right to benefits, the report is considered a protest to the payment of benefits. NAC 612.120(2).

Grounds for Protesting a Claim

The purpose of the Unemployment Statute is to provide "temporary assistance and economic security to individuals who become involuntarily unemployed." *State, Emp. Sec. v. Reliable Health Care*, 983 P.2d 414, 417 (Nev. 1999). But "the system is not designed to provide assistance to those persons who are deemed to have become voluntarily unemployed." *Clark County Sch. Dist. v. Bundley*, 148 P.3d 750, 755 (Nev. 2006). The statute provides that under certain conditions, an unemployed claimant will be disqualified from benefits. NRS 612.380–448. Therefore, employers seeking to protest a claim should familiarize themselves with the grounds for disqualification and provide any relevant facts to the division. Because a complete review of all the potential reasons for disqualification would exceed the scope of this primer, we will limit our review to two of the reasons that most commonly arise.

One commonly cited basis for disqualification is that the claimant voluntarily left employment "without good cause" or to seek other employment. NRS 612.380(1)(a). The division takes the position that a claimant had "good cause" to leave employment if the claimant had "no other reasonable alternatives but to quit."[1] The Nevada Supreme Court held that substantial evidence supported a decision to deny benefits where the claimant "stopped showing up for work after the employer changed the method of shift selection," with the result that the claimant "could no longer work during the shift he preferred." *See State, Emp. Sec. Dep't v. Weber*, 676 P.2d 1318, 1319–20 (Nev. 1984). The court also held a decision denying benefits was supported where the record showed the claimant left without a firm offer of employment and "simply wanted to live in California." *McCracken v. Fancy*, 639 P.2d 552, 553 (Nev. 1982).

Another commonly cited basis for disqualification is that the claimant was discharged for "misconduct connected with the person's work." NRS 612.385. "Disqualifying misconduct occurs when an employee deliberately and unjustifiably violates or disregards her employer's reasonable policy or standard, or otherwise acts in such a careless or negligent manner as to show a substantial disregard of the employer's interests or the employee's duties and obligations to her employer." *See Bundley*, 148 P.3d at 754–55. Employers should note that "ordinary negligence in isolated instances, or good faith errors in judgement or discretion, are excluded from the definition of misconduct" for purposes of NRS 612.385. *See Kolnik v. State, Emp. Sec. Dep't*, 908 P.2d 726, 739 (Nev. 1996). To be disqualifying, the misconduct must involve an "element of wrongfulness." *See Lellis v. Archie*, 516 P.2d 469, 471 (Nev. 1973). In the common scenario of a discharge for absenteeism, generally "an employee's absence will constitute misconduct for unemployment compensation purposes only if the circumstances indicate that the absence was taken in willful violation or disregard of a reasonable employment policy," or if the absence "lacked the appropriate accompanying notice." *Bundley*, 148 P.3d at 755. The employer bears the burden of proving disqualifying misconduct by a preponderance of the evidence. *See id.* at 756.

What to Expect When Protesting and Appealing a Claim

After an employer receives a notice of claim and submits its protest, the division will issue a written determination. If the employer believes that the division's determination is improper, the employer has the right to appeal. Common appeal issues include determining whether the employee is ineligible for benefits because the employee was discharged for misconduct, the employee voluntarily quit, or the employee is able and available to work but is choosing not to work. For example, if an employee is fired for misconduct by insubordination (which is where an employee engaged in a single or continual refusal to obey a reasonable order), but the employee convinces the division that the termination for insubordination was improper, meaning that the employee is entitled to benefits, then the employer must appeal the division's decision, otherwise the benefits will be charged to its account and its tax rate may suffer.

To effectively appeal, an employer needs to submit a letter addressed to the office that issued the determination within 11 days after the date of mailing shown on the determination. The letter should state the reason for appealing, and the name and social security number of the claimant. Notably, while the appeal is pending, the claimant must continue to file weekly claims for benefits.

Appeals are heard by an impartial tribunal, and a written notice of hearing is sent to each party at least seven days before the date of the hearing. The notice informs the parties that they are entitled to be represented by counsel, to request the issuance

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of subpoenas, and to produce witnesses at the hearing. In preparation for the hearing, the employer should gather, organize, and submit all documents to the Appeals Office that the employer wishes to be introduced as evidence at least 48 hours before the hearing. Hearings will frequently be held by telephone, but even so, these hearings can be comprehensive, where parties can question witnesses and present documents to the tribunal for consideration. Because these hearings are informal, hearsay is admissible as evidence. The division recommends the person representing and testifying for the business should be the supervisor of someone who saw and heard what happened to cause the separation.

Decisions from a tribunal may be appealed to the Board of Review. Further, the Board of Review's decisions are appealable to the district court.

With many employees returning to the workforce, it is important for employers to remain knowledgeable of the unemployment benefits insurance process in Nevada to effectively engage and represent their company's interests. Employers should therefore consult with counsel to ensure that they are compliant with this process.

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ENDNOTE:

1. *See* Appeals Handbook, Nevada Unemployment Compensation Program, *State of Nevada, Department of Employment, Training & Rehabilitation, Employment Security Division* (November 2018), https://ui.nv.gov/Handbooks/Appeals_Handbook.pdf.