

NEVADA WORKERS' COMPENSATION CHRONICLE



Department of Business & Industry (B&I)

Division of Industrial Relations (DIR)

A Publication of the Workers' Compensation Section (WCS)

Fall Edition (Sept. – Nov. 2011)

This newsletter is not intended to provide legal advice to the reader. Legal opinions or interpretations of statutes and regulations referenced should be sought from legal professionals.

Nevada Workers' Compensation Educational Conference



(Photo by Abe Geller) Michael Ryan (l), an attorney with Black and LoBellow, makes his point to fellow panelists, Mercer Berens (m), Department of Administration Hearing Officer, and Erica Tosh (r), an attorney with Workers' Comp Lawyers of Nevada. Their panel, "Workers' Comp Supreme Court Cases," kicked off the first-ever Nevada Workers' Compensation Educational Conference which was held at the Rio Hotel, August 11-12, in Las Vegas. This year's conference was presented by DIR/WCS in cooperation with the non-profit International Workers Compensation Foundation. Roughly 300 workers' comp stakeholders attended a dozen panel sessions covering a variety of legal, medical and regulatory workers' compensation topics. *

WCShelp Address

Officially Back in Business

Since December 2008, visitors to the WCS main Web page might have noticed that when they clicked on the animated envelope to send a WCShelp question, they were sending it directly to my e-mail box (mbrooks). This change was made because a switch to a new server prevented using Microsoft Outlook to alternate access to multiple e-mail accounts. After working out a Web mail system with my education counterpart in Carson City, Dock Williams, the good news is that the old WCShelp@business.nv.gov is once again the e-mail address-link provided on our main page and on our written material as the first step in sending your Nevada workers' comp questions to WCS.

The not-so-good news is that the WCShelp address was supposed to be disabled and divert all e-mails directly to my e-mail in-box. That did not happen in all cases. So I was dismayed to discover recently a couple dozen unanswered e-mails from injured workers and other stakeholders over the past 18 months or so. I have answered all queries sent to WCShelp this year, and I apologize for this mix up.

This IT glitch presents a good opportunity to examine what you can expect when you send Dock or me WCShelp e-mail. If you do not receive a response within 48 hours (though I strive for a 24-hour turnaround), send me a "Hey, what's going on?" follow-up e-mail directly to mbrooks@business.nv.gov and note the date and time of your (Continued on page 3)

[Second Annual Educational Conference is on for 2012—click here for important one-question survey](#)

Maximum Compensation Guidelines Posted

The State's Maximum Average Monthly Wage memo for fiscal year 2012, effective **July 1, 2011**, has been posted on the WCS website. The FY 2012 maximum monthly disability compensation is **\$3,434.38**, a slight decrease from last year's figure. <http://dirweb.state.nv.us/WCS/maxcomp.pdf>

The memo is located in the left-hand column under "Important Changes" - Maximum Compensation Guidelines - FY12. It provides an amendment to the computation of the state's maximum Average Monthly Wage for workers' compensation purposes. *

Mileage Reimbursement Change for 2011

Effective **July 1, 2011**, standard mileage for transportation incurred while using a private vehicle for official state business increased from 51 cents per mile to **55.5**



cents per mile. Per [NAC 616C.150](#): Under appropriate conditions, reimbursement for the cost of transportation for an injured employee must be computed at a rate equal to the mileage allowance for state employees. To minimize any underpayments of mileage reimbursements, all adjusters should note this change. <http://dirweb.state.nv.us/wcs/mileage.pdf> *

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- ① WC Educational Conference Success
 - ① Max Comp Down Slightly
 - ① Mileage Reimbursement Increase
 - ① WCShelp E-mail Address Fixed
 - ② Confusion Corner: Claim Reopening
 - ② Fraud Watch: Premium Fraud
 - ③ Fall Training: Sept. - Nov. 2011
 - ③ Hails, Farewells & Promotions
 - ③ State Holiday Office Closures
 - ④ Reporting Reminders
 - ④ Form Focus—D-16, D-17 & D-18
 - ④ WCS Contact Information

CONFUSION CORNER

Claim Reopening Rights Often Misunderstood

Nevada is one of the few states that allows lifetime reopening of a closed workers' compensation claim. Not surprisingly, of the dozens of WCS Help questions e-mailed to us monthly, without fail, a handful will ask about claim reopening. The Nevada Attorney for Injured Workers website has a helpful claim reopening primer which is abridged as follows:

To reopen your claim, you need to submit a written request to the insurer or self-insured employer asking that your claim be reopened for medical treatment. It is best to include your name, social security number, date of injury, employer at the time of injury, and your current address and phone number. If you can include the number of the claim to be reopened, that will help expedite the process.

A claim may be reopened if it meets certain requirements. It is your burden to provide the necessary medical evidence which justifies having the claim reopened for further treatment. So, to show that your claim should be reopened, you must provide medical evidence showing that: 1) the primary cause of the change in your condition is the original work injury; 2) as shown by objective medical evidence; your condition has changed since your claim was closed and 3) you need further treatment to help improve your condition.

Therefore, you should enclose, with your request, a letter from your doctor containing the following information:

- a. Your condition has changed since claim closure.
- b. You need treatment.
- c. A description of the treatment.
- d. That there is a direct relationship between your worsened condition at the time you ask for reopening and your original injury.
- e. Your work injury is the primary cause for your need to reopen your claim.



FRAUD WATCH

Premium Fraud: Now Clearly Defined



Senate Bill 58 that was passed during the 76th (2011) Nevada legislative session and signed by Gov. Brian Sandoval takes effect on October 1, 2011. This bill amends NRS 616D, and provides for the punishment of an **employer who knowingly misrepresents or conceals a material fact relating to a person's eligibility for industrial insurance benefits** ("**employer who knowingly makes ...**"); granting certain immunities to persons who disclose information relating to such an employer; directs the Administrator of the Division of Industrial Relations of the Department of Business and Industry (DIR) and the Fraud Control Unit for Industrial Insurance of the Office of the Attorney General (WCFU) to establish procedures concerning the reporting, notification of prosecution and sharing of information regarding such an employer; authorizing the Attorney General to prosecute criminal and civil actions relating to such an employer; providing that certain books, records and payrolls must be open to inspection under certain circumstances; providing that such an employer is liable for certain costs of investigation and prosecution; requiring a provider of healthcare to make certain healthcare records available for inspection during the investigation of such an employer; making various other changes relating to an employer who knowingly makes a false statement or misrepresentation or concealment of material fact regarding the eligibility of a person claiming industrial insurance benefits and providing penalties.

That's a mouthful, so what does it mean?

Section 1 makes it a misdemeanor for an **employer to knowingly make ...** if the amount is less than \$250. If the amount of benefits obtained or attempted to be obtained is greater than \$250, it is a category D felony. In the old law, it was a gross misdemeanor, with no distinction in the amount of benefit obtained or attempted.

Section 2 provides immunities to persons who, without malice, disclose information relating to an **employer who knowingly makes** In the old law immunities for such individuals were more limited.

Section 3 was amended to add, "As they relate to the amount of payroll upon which a premium is based."

Section 4 amends to include **employers that knowingly make ...** among the other previously listed violations that information is to be shared between DIR and WCFU.

Section 5 this amendment adds to existing violations **employers that knowingly make ...** holding employers liable for certain cost of investigation and prosecution of a person who committed any of the listed violations.

Section 6 includes **employers that knowingly make ...** to the existing list of violations that WCFU can require to provide books, records and payrolls of an employer pertinent to the investigation to be open to inspection by an investigator for the Attorney General to enable WCFU to investigate and prosecute such violations.

Section 7 and 8 amendments include **employers that knowingly make ...** to the existing sections making ... as unprofessional conduct or grounds for disciplinary action or denial, suspension or revocation of certain

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f. Any specified time period you are not to work at your job (the one you were injured doing or the one you were retrained to do).

You must pay the cost of the original medical examination to substantiate the reopening of your claim. If the claim is accepted, you may be reimbursed for the medical exam.

You should receive a response within 30 days from the date your request and the doctor's report are received. These

documents are reviewed by the insurer. You will be notified in writing after a determination is made as to whether your application for reopening is approved or disapproved.

If the reopening is approved, your claim will be opened retroactive to the date your application for reopening was received. However, you may be allowed the cost of emergency treatment, prior to your application date, if there is sufficient evidence to (Continued on page 4)

(WCSHelp, cont. from page 1)

original e-mail or call my direct line at **702-486-9102** and ask about your inquiry. I can understand that most e-mailers prefer to put their query in writing for accuracy and convenience; I prefer to respond that way too – as I'll often send along information attachments. Even if you call, I'll still send you an answer in writing.

Either way, your queries deserve a quick and comprehensive response. One WCSHelp writer expressed understandable frustration with getting no response and chalked it up to government indifference. I cannot speak for the entire State work force, but the WCS Education Unit takes its public service obligations very seriously and asks stakeholders to let us know if any technological hurdles are getting in the way of their getting the information they need.

Michael J. Brooks

Manager, Education, Research and Analysis Unit

Direct comments or suggestions about this newsletter to: *Mike Brooks, Editor*, or *Terry Simi, Assistant Editor*, (702) 486-9019 or: mbrooks@business.nv.gov

Subsequent Injury Account Saves Employers Money

 The Subsequent Injury Accounts encourage employers to hire workers with a permanent physical impairment. The costs of any qualified subsequent injury are paid from the appropriate subsequent injury account [NRS 616B.557-590](http://NRS.616B.557-590). For more information contact Jacque Everhart at 702 486-9089 or everhart@business.nv.gov

(Fraud Watch, cont. from page 2)

professional licenses, certificates, registrations or permits by certain professional licensing boards.

Section 9 includes **employers that knowingly make ...** to the existing list of violations that WCFU can require of persons to furnish information which would assist in those prosecutions.

Sections 10 -25 includes **employers that knowingly make ...** to the existing list of violations.

In conclusion, the definition **employers that knowingly make ...** has been added to all of the existing applicable NRS, in so doing the Legislature has more clearly defined premium fraud and given DIR and WCFU the ability to more fully prosecute premium fraud.

Anyone suspecting this type of fraud or any fraud associated with workers' compensation should contact the Attorney General's fraud hotline at **1-800-266-8688**. Other information about detecting workers' compensation fraud is also available on our Website: <http://ag.state.nv.us/org/bcj/spd/wcfu/wcfu.html>

Russell Smith, Director, Workers' Compensation Fraud Unit

Holiday Office Closures:

- Labor Day**
Monday, September 5, 2011
- Nevada Day**
Friday, October 28, 2011
- Veterans Day**
Friday, Nov. 11, 2011
- Thanksgiving**
Thursday, November 24, 2011
- Family Day**
Friday, November 25, 2011

Hails, Farewells & Promotions

Good news. This time, there are no farewells to report. And we welcome new staff in Carson City and Henderson.

Jana Hermann recently joined WCS as the new Uninsured Claims Coordinator. Jana's career in the workers' compensation industry began in 1979 when she was first employed by the State of Nevada Industrial Commission. Jana has worked for both insurers and TPAs; therefore, she brings a lot of diversity to WCS. She has extensive knowledge with the applicable laws and regulations, which will be an added bonus to our agency.



Katherine Godwin, RN, BSN joined WCS as the workers' comp nurse heading the Medical Unit in Henderson. She has



lived in the Las Vegas area since December, 1993 and is new to working for the State of Nevada but has worked in workers' compensation in both Colorado and Nevada. In addition to workers' compensation, Katherine has been involved with Medicare, Medicaid and private insurers. She has worked in various capacities both as a staff nurse and supervisor/manager. She has experience in utilization review, peer review, case management, and rehabilitation. Katherine enjoys an environment with diverse challenges including a myriad of opportunities for continued learning. She also enjoys outdoor activities whenever possible. She loves the mountains as well as the beach and swims regularly. She is an avid reader and animal lover and can often be seen at local schools cheering on her children in volleyball and swimming. (Continued on page 4)

Fall 2011 TRAINING SESSIONS

The **WCS Orientation** is a comprehensive overview of workers' compensation in Nevada. **Specified Forums** offer specified advanced topics. All training sessions are free and open to the public.

SOUTHERN NEVADA

Division of Industrial Relations
1301 North Green Valley Pkwy.,
Ste. 200, Henderson, NV 89074

WCS Orientation

Thursday, October 13, 2011

WCS Specified Forum

Legislative Changes

September 14 & 15, 2011

Employee

Wednesday, November 9, 2011

For reservations, please contact:

✉ tsimi@business.nv.gov

NORTHERN NEVADA

The Carson City / Reno sessions are tentatively scheduled at Western Nevada Community College in Carson City.

WCS Orientation

Thursday, November 10, 2011

WCS Specified Forum

Legislative Overview

September 15, 2011

For reservations, please contact:

✉ tmills@business.nv.gov

WCS Mission Statement

The purpose of the Workers' Compensation Section (WCS) is to impartially serve the interests of Nevada employers and employees by providing assistance, information, and a fair and consistent regulatory structure focused on:

-  Ensuring the timely and accurate delivery of workers' compensation benefits.
-  Ensuring employer compliance with the mandatory coverage provisions.

REPORTING REMINDER**•Insurer Information Form:**

Insurers and TPAs must notify WCS of any changes such as name, address, phone and fax numbers. Insurers must also notify us of TPA changes. Insurers should use this form to keep this important information current with WCS.

•Permanent Total (PT) Disability Claim Reports (NRS 616C.453) The 2011 Form and Instructions were distributed via e-mail in July and were due to WCS on **AUGUST 8, 2011.**

•Third-Party Administrator (TPA) Claims Handled Data forms have been sent to TPAs by certified mail—responses due by September 30.

•FY11 Workers' Compensation Claims Activity Report forms and instructions will be sent in late September/early October. Insurers will have 45 days to complete the report from the date we distribute the forms and instructions via e-mail.

•(OD-8) Occupational Disease Claim Report(s) (NRS 617.357) is an ongoing reporting requirement. Certain occupational diseases of the heart, lungs, diseases that are infectious or relate to cancer are required to be reported as outlined in NRS 617.357.

•Proof of Coverage (POC): Private carriers must also report information to NCCI within 15 days of the effective date of the issuance, renewal, cancellation, nonrenewal, reinstatement or reissuance of a policy of workers' compensation insurance.

Information on reporting requirements and forms can be found on our Web site at <http://dirweb.state.nv.us/wcs/wcs.htm> under "Insurer Information" or you can contact the WCS Research and Analysis unit at (702) 486-9080. *

WCS EDUCATION COMMITTEE

Mike Brooks, Chair, WCS
Suhair (Susan) Sayegh, WCS
Dock Williams, WCS
Christi Mosher, Genex
Kelly Spina, Employers
Gary Watson, NAIW
Cindi Rivera, Certified Vocational Srvc.
Yvette Bouldin, York Claims Service

**HOW TO CONTACT WCS**

Department of Business and Industry
Division of Industrial Relations
Workers' Compensation Section
SOUTHERN NEVADA
(702) 486-9080 / Fax: (702) 990-0364
NORTHERN NEVADA
(775) 684-7270 / Fax: (775) 687-6305
<http://dirweb.state.nv.us/WCS/wcs.htm>
WCSHelp@business.nv.gov

(Claim Reopening, cont. from page 2)

substantiate that the treatment was necessary and done on an emergency basis. Otherwise, costs of treatment between claim closure and reopening are not reimbursed, not paid.

You and your employer will be notified of the right to appeal the decision regarding the approval or disapproval of your reopening request. If your reopening request is denied, you immediately appeal that determination to the hearing officer. You are given 70 days; however do not wait until the last few days to appeal.

Please note the following exceptions:

If you are trying to reopen your claim within one year of claim closure, you need to show the above points by clear and convincing evidence.

If you did not receive a permanent partial disability award or were not off work due to your original injury, you must request reopening within a year of claim closure.

If you have voluntarily removed yourself from the workforce before you reopened your claim, you are not entitled to temporary total disability compensation or vocational rehabilitation services.

For more information, use the NAIW Web link: <http://naiw.nv.gov/Reopening/index.html> *

(Hails & Promotions, cont. from page 3)

Jim Estrada recently earned a promotion from being a compliance auditor to heading the insurer-TPA compliance unit in Henderson. Before coming to DIR/WCS in June 2009, he worked in the Nevada Department of Employment, Training and Rehabilitation as an unemployment claims examiner. Prior to that he had more than 10 years of experience in the workers' compensation field in California, as a claims examiner, field investigator, hearing representative and self-employed private investigator. Jim enjoys the abundance of hiking and outdoor activities that southern Nevada offers. He is also an active proponent of animal rights.



Tricia Barchus joined the Carson City, DIR/WCS Office in July as a Management Analyst I, taking over for Jacque Steele who retired from the Carson City Fines and Penalties Coordinator position in May. Tricia was formerly with the Nevada Division of Insurance, where she spent 11 years in the Producer Licensing Section and two years in the Corporate & Financial Affairs Section. She spends the majority of her free time chauffeuring two teenagers, birding or making jewelry. *

FORM FOCUS: D-16, D-17 & D-18**Options for Uninsured Employees**

Nevada law ensures that all Nevada employees who are eligible for workers' compensation coverage and benefits per NRS 616 & 617 receive such protection, regardless of employer compliance or non-compliance with coverage requirements.

A situation involving the injured worker of an uninsured employer presents that injured worker with choices his covered counterpart does not have. Form D-16, D-17 and D-18 present and document the available options and decisions made by the injured employee.

[Form D-16, Notice of Election for Compensation under the Uninsured Employer Statutes](#), offers two options; the first of which involves the other two forms:

Option 1: File an uninsured employer claim using the [D-17 form](#) and, in addition, complete the [D-18, Assignment to Division for Workers' Compensation Benefits](#) – this form is an additional signed acknowledgment of the accident or occupational disease contraction; attests that the employer did not provide workers' compensation coverage to the employee on the date of injury; specifies election to receive compensation from the Uninsured Employers' Claim Account; assigns subrogation rights to the Division per **NRS 616C.215** and also signs over litigation and collection rights to the Division as well.

Option 2: This option notifies the injured employee of the right to arrange for the employer to pay for benefits arising from the injury or occupational disease. This option acknowledges that there will be no Division involvement or other claim administrator involvement and, finally, the injured employee assumes sole responsibility for handling his or her medical costs and compensation benefits.

The D-16 also alerts the injured worker to the right to take legal action against the uninsured employer. However, once an injured worker selects option #2, that worker makes an irrevocable selection which cannot be changed at a later time! *