Workers' Compensation

SUBSEQUENT INJURY ACCOUNTS

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

THE PURPOSE OF THE SUBSEQUENT INJURY ACCOUNT(S):

The primary purpose of the Subsequent Injury Account(s) is to encourage employers to hire workers who have suffered a permanent physical impairment. The impairment can be congenital or caused by a previous accident, illness or work-related injury/occupational disease. The costs of the subsequent injury are paid from a designated "subsequent injury account" which is supported by assessments received from workers' compensation insurers rather than having the current insurer pay the entire cost of a qualifying claim.

THE CURRENT STRUCTURE OF THE SUBSEQUENT INJURY ACCOUNTS:

There are currently three separate subsequent injury accounts. Both the Self-insured Employers Account and the Associations of Self-insured Public or Private Employers Account has their own review board. They each have five board members who are appointed by the Governor. The Administrator of the Division of Industrial Relations (DIR) administers the account for private carriers.

TYPE OF CLAIM ELIGIBLE FOR PAYMENT:

Self-Insured Employer - NRS 616B.557 and NRS 616B.560
Associations of Self-Insured Public or Private Employers - NRS 616B.578 and NRS 616B.581
Private Carriers - NRS 616B.587 and NRS 616B.590

Before any claim is accepted under the appropriate subsequent injury account, specific criteria must be satisfied. These are the same for all three accounts. They are as follows:

- The compensation due the injured employee for the subsequent injury must be substantially greater by reason of the combined effects of the pre-existing impairment and the subsequent injury than from the subsequent injury alone.
- If the subsequent injury resulted in death and it is determined that the death would not have occurred except for the pre-existing impairment, the compensation due must be charged to the appropriate Subsequent Injury Account in accordance with adopted regulations.
- The injured employee must have a pre-existing physical impairment of 6% or more if evaluated according to the American Medical Association Guides to the Evaluation of Permanent Impairment.
- The employer, association or private carrier must establish by written records that the employer had knowledge of the pre-existing impairment at the time of hire or that the employee was retained in employment after the employer acquired such knowledge.
- The employer, association or private carrier must notify the Administrator of a possible claim against the Subsequent Injury Account within 100 weeks of the subsequent injury or death for claims with a date of injury, prior to 10/30/05 under subsections **NRSB.557, .578** and **.587** only. **Subsections NRS 616B.560, .581 and .590 still require notice.**

Note: Insurers may also obtain relief from the appropriate subsequent injury account if the employee knowingly or willfully made a false representation as to his/her physical condition at the time of hire. The employer must have relied on the false representation as a substantial basis for employment and there must be a causal connection between the false representation and the subsequent injury. Notification of the administrator must be no later than 60 days after the date of the subsequent injury or the date the employer learns of the employee's false representation, whichever is later.

SUBMITTING A CLAIM FOR SUBSEQUENT INJURY (ALL ACCOUNTS):

Self-Insured Employer – NAC 616B.7702
Associations of Self-Insured Public or Private Employers – NAC 616B.7773
Private Carriers – NAC 616B.760

A claim must be submitted, in writing, to the Administrator for review and, in the case of a self-insured employer or association of self-insured employers, evaluation by the Board. The claim must include all information necessary to establish that the claim should be paid from the appropriate Subsequent Injury Account, a completed copy of Form D-37, Insurer's Subsequent Injury Checklist and the information required therein. Additionally, the file must be organized in the manner prescribed in part 5 of the Form D-37 and secured in a binder or file folder. This form may be obtained via the Workers' Compensation Section website at http://dir.nv.gov/WCS/Home/.

DETERMINATIONS (ALL ACCOUNTS):

Self-Insured Employer – NAC 616B.7704
Associations of Self-Insured Public or Private Employers – NAC 616B.7777
Private Carriers – NAC 616B.766

In the case of a self-insured employer or association of self-insured employers, the Administrator will submit to the appropriate Board his recommendation concerning the acceptance or denial of the claim and the expenses related to the claim within 45 days after a complete claim is received. The appropriate Board will render a determination within 75 days of the recommendation (120 days total).

In the case of a private carrier, the Administrator will examine a claim and render a determination within 120 days after a completed claim is received.

DISAGREEING WITH THE DETERMINATION (ALL ACCOUNTS):

Self-Insured Employer – NRS 616B.557 and NAC 616B.7706

- If the board denies a claim or any of the expenses related to the claim, the self-insured employer who submitted the claim may request a hearing before the board by filing a written request with the board's legal counsel within 30 days after the board's attorney notifies the self-insured employer of the decision of the board.
- The board will conduct the hearing within 45 days after the request for a hearing is filed, unless the board grants a continuance.
- If the self-insured employer still disagrees with the board's decision, an appeal must be filed with the District Court.

Associations of Self-Insured Public or Private Employers – NRS 616B.578, NAC 616B.7779 and NAC 616B.7783

- If the association disagrees with all or part of the administrator's recommendation, a request for hearing before the board must be served to the board's legal counsel not later than ten days after the date the recommendation was served to the association. The board will conduct the hearing not later than 35 days after the date that the request for hearing was served.
- If the association disagrees with the board's decision, an appeal must be filed with the District Court.

Private Carriers – NRS 616B.587 and NAC 616B.766

- If a private carrier disagrees with the determination of the administrator, an appeal must be made in writing and sent directly to the Appeal Officer at the Department of Administration within 30 days after the date of the administrator's determination.
- If the private carrier disagrees with the Appeal Officer's decision, an appeal must be filed with the District Court.

If you have further questions regarding the operation of the subsequent injury accounts, you may contact Jolene Pirnie at (702) 486-9095 or jpirnie@dir.nv.gov.