

APPEALS HANDBOOK

NEVADA UNEMPLOYMENT
COMPENSATION PROGRAM



STATE OF NEVADA
DEPARTMENT OF EMPLOYMENT, TRAINING & REHABILITATION
EMPLOYMENT SECURITY DIVISION

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APPEALS HANDBOOK

NEVADA UNEMPLOYMENT COMPENSATION PROGRAM



OFFICE OF APPEALS

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The statements in this handbook are for general information
and do not have the effect of law or regulation.

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OFFICE OF APPEALS

INTRODUCTION

The following information is provided as a courtesy to claimants and employers for Unemployment Insurance Benefits in Nevada. Nevada statutory and case law, as well as applicable federal law, requires that each claimant or employer case be judged on its own merits. Information supplied herein is meant to be general and is supplied for informational purposes only. Your case will be judged on the specific facts developed regarding your claim for benefits, or employer account. While some statutory law is included, the commentary set forth below is not the law. The law is set forth in Nevada Revised Statutes and published cases decided by the Nevada Supreme Court. Statutes and case law change frequently. In order to be completely informed regarding the merits of your case you should review all current statutory and case law. The Employment Security Division, ESD (hereinafter referred to as the “Division”), does not warrant that the information set forth below is current. Nor may these comments be cited by you as authority to support your case. All cases will be decided upon the facts and current law.



What are my rights if I disagree with a decision denying benefits?

You have the right to appeal within 11 days after the date of mailing of the notice of denial of your claim (Nevada Revised Statute (NRS) 612.495). The appeal must be in writing and signed by you, or your duly authorized agent, and should include your full name, address and Social Security number. The appeal is deemed to be filed on the date of hand delivery, the postmark on your letter, or the date it was faxed. If the 11th day falls on a weekend or holiday, you may file your appeal on the following business day. After the appeal has been filed, you must continue to file a weekly claim for unemployment benefits while the appeal is pending in order to later receive payments if the appeal is decided in your favor (Nevada Administrative Code (NAC) 612.110).

You may be able to appeal even after the 11-day deadline has passed. The Division can extend the 11-day deadline “for good cause shown” as pursuant to NRS 612.495. You should request the extension in writing as soon as possible with an explanation and documentation of why you could not file your appeal within 11 days. For example, if you were in the hospital, or had a compelling reason to be out-of-town and as a result did not receive the written notice until after the 11 days had expired,

you might have good cause for a late filing. If you are waiting on documentation, you should file your appeal immediately and explain you will be submitting additional evidence later.



What happens after an appeal is filed?

After an appeal is filed by either the claimant OR ANOTHER PARTY, an impartial Appeals Referee employed by the Division will conduct a hearing. The claimant must continue to file weekly claims for unemployment benefits while the appeal is pending in order to receive payments if the appeal is decided in their favor.

The Appeals Office may reschedule the hearing when requested by a party showing compelling reasons for delay (NAC 612.232). You should request the postponement as far in advance as possible by calling the Appeals Office, stating the reasons you need the postponement. The Appeals Office has the discretion to grant, or deny the request.

A written notice of hearing will be sent to each party at least 7 days before the date of the hearing (NAC 612.225). The notice will inform each party that he or she is entitled to be represented by counsel, to request the issuance of subpoenas, and to produce witnesses at the hearing (NAC 612.225). The notice must also include: (a) the time, place and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular sections of the statutes and regulations involved; and (d) a short and plain statement of the matters asserted (NRS 223B.121(2)).

You can be represented at the hearing by an attorney, union representative, or other representative of your choice. You should contact your representative as far in advance of the hearing as possible. If you do not know an attorney, you may contact the Lawyer Referral Service of the Nevada State Bar at 1-800-789-5747. If you cannot afford an attorney, you may wish to contact your local office of Nevada Legal Services, Inc. (Contact information is located on the last page of this handbook). To reach the Appeals Office, you may call 702-486-7933 or 1-866-626-0629 (toll free).

You should gather, organize and submit to the Appeals Office all documents which you want to introduce as evidence at least 48 hours prior to the hearing. You will also be allowed to present any new relevant evidence during the hearing. You should research the law which applies to the issues in your case. You should prepare to question witnesses and discuss documents which you expect the employer to introduce at the hearing.

You should make arrangements for all witnesses who support your claim to participate in the hearing and go over their expected testimony with them. Subpoenas will be issued only upon a showing of necessity by the party requesting issuance of the subpoena at the hearing (NAC 612.225). If the Appeals Referee decides that a subpoena is appropriate, the Appeals Referee may continue the hearing in order that the witness can be compelled to participate.



Why is an unemployment insurance appeal hearing important to me?

The appeals process is designed to provide a fair and impartial hearing to further examine a claim for unemployment insurance benefits. The information in this handbook explains the hearing process and the steps you can take to make certain your appeal is as complete as possible. Claimants may appeal decisions if their benefits have been denied, or if they must repay any benefits they received. An employer may appeal decisions made by the Division if benefits are being paid to an employee who has quit, or was fired for misconduct, refused work, or if some penalty has been assessed against them. As a matter of law, the claims division has the legal right to appeal any Appeals Referee or Board of Review decision.



Hearing Date

The most important thing is that you participate in the hearing, whether you are appearing in person or by telephone. The *Notice of Hearing* letter gives you the method, date, time, and place of the hearing. Make certain to read the notice instructions carefully and if an interpreter is needed, contact the Appeals Office immediately.

In order to efficiently and effectively handle appeals, hearings will frequently be held by telephone. Additionally, telephone hearings are provided for parties who live beyond reasonable commuting distance to the Appeals Office. If you would like to change the assigned hearing method, you must contact the Appeals Office and provide the necessity for the change. If you cannot attend the hearing on the scheduled date, immediately call the Appeals Office. If you can demonstrate a compelling reason for not being able to attend your hearing, the hearing can be postponed. In certain



situations, you may be required to submit documentation to substantiate your request for a postponement.

You will have the opportunity to review your appeal file (packet) once your appeal hearing has been scheduled. To view the appeal packet, go to the Unemployment Insurance website <http://ui.nv.gov>, login to your account, and select the Appeal Information option. A link for the *Marked Appeal Packet* will be displayed for you to view the appeal packet. If you are an out of state employer, the appeal file will be sent to you with the *Notice of Hearing* letter. If you do not have access to the website and are participating in person, it is recommended that you arrive prior to the hearing date/time to review the appeal packet.

The referee has several hearings scheduled each day and cannot delay the schedule if you arrive late, or fail to respond to the telephone call. If you are the appellant (the party who filed the appeal) and you do not appear, the hearing will be dismissed. If the employer has appealed your benefit eligibility, it is in your best interest to participate in the hearing. Please note that if the benefit eligibility is reversed, you may be liable to repay all the benefits previously received.



Withdrawals

Anyone who has filed an appeal can withdraw the appeal by advising the Appeals Referee in writing that a withdrawal is desired. The Appeals Referee may refuse withdrawal requests if they believe the appellant has been pressured.



The Hearing

The hearing is similar to a court hearing and provides the chance for both parties to explain the specific circumstances that led to the separation of employment. Most often, the claimant and the former employer are present at the hearing at the same time.

Although most people represent themselves at the hearing, anyone can have an attorney, union representative, or other individual represent them, including a family member or friend, at their own cost. The appeal procedure within the Division is designed to allow people to present their appeal without the aid of an attorney.

However, if a party wishes to have an attorney or a representative assist them during the administrative process, contact the agencies listed on the last page of this handbook. The Division does not represent, or warrant, that any of the agencies listed will take your case, and does not make any representation regarding the type or quality of legal services which may be provided.



Documentation

At least 3 working days prior to the hearing: Submit any additional evidence you intend to provide to both the Appeals Office and the opposing party. Both parties should research the law and review all information available from the Division that pertains to the issues in the case. Make a checklist of facts that need to be covered during the hearing. Both parties will also have the opportunity to cross-examine witnesses and review documents that may be introduced at the hearing.

Hearsay is admissible as evidence. Hearsay may include written statements, reports made to investigators, and other documents. Hearsay may also include verbal testimony by a sworn witness about things that the witness was told about the incident, or situations leading to the separation from employment. The referee is authorized by law to determine what weight hearsay evidence will be given.

If you are the employer, have someone with direct knowledge of the case participate in the hearing. The person representing and testifying for your business should be the supervisor of someone who saw and heard what happened to cause the separation. If you are a claimant, have a witness to key events participate in the hearing. Character witnesses are not necessary. The referee will stop repetitive testimony, so it is not necessary to have a lot of witnesses merely to give the same testimony. Go over the witnesses' expected testimony with them before the hearing.



Witnesses & Subpoenas

Both parties are solely responsible for arranging for any witnesses to be present at the hearing. If a witness refuses to appear, during the hearing a request can be made to the referee to issue a subpoena. For a subpoena to be issued it must be established that the witnesses' testimony is necessary for the hearing, and that the person has refused to appear voluntarily.

Select witnesses with firsthand knowledge: a person who saw, heard, or participated in the event. A witness with firsthand information is considered more reliable than a person who heard about the event from someone else.



Will there be a record?

The entire proceeding will be recorded by the referee. No other recording is permitted. Transcripts are not made available unless ordered by the District Court. However, parties involved in the hearing may have access to the record if there is further appeal. This record cannot be used for any other litigation.



The Day of Hearing

If the appealing party fails to appear at the time set for the hearing, or if the appealing party fails to be available by phone, the Appeals Referee may dismiss the appeal (NRS.233B.121(5)). You should call immediately once you know that you cannot attend the hearing, or are delayed, and explain the reason why you cannot attend, or have been delayed. The Appeals Referee has the option of granting an extension, or dismissing your appeal. If the Appeals Referee dismisses your appeal, you may request it be reopened (NAC 612.232) and if denied, appeal the dismissal to the Board of Review and ask for a remand, explaining the reasons for your failure to appear.

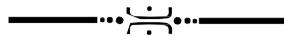
At the start of the hearing, the Appeals Referee will present a concise explanation of the issues to be covered and the procedures to be followed. The scope of the hearing generally will be restricted to issues identified in the notice of hearing. If new issues arise, the Appeals Referee may offer you a new notice and the opportunity to request a continuance with respect to other issues or ask that you waive a new notice (NAC 612.225).

The Appeals Referee has the power to judge the “credibility” of the witnesses. The Appeals Referee may, for example, by examining prior statements or conduct, make a judgment as to whether a witness is telling the truth. If you and your employer contradict each other, however there is no reason to believe one of you over the other, an Appeals Referee may decide the case based upon who has the “burden of proof” at the hearing. If you claim you had good cause to quit your job, the burden is on you to prove it by the greater weight of the evidence. If the employer has alleged that you are guilty of misconduct, on the other hand, the employer has the burden to prove it by the

greater weight of the evidence. However, in misconduct cases, once the employer has presented its case, the burden may shift to you to prove that the employer's evidence is not true. If possible, it is important to provide documents, or other witnesses to back up your version of events.

The Appeals Referee has the responsibility to bring out evidence by examining witnesses in a logical and orderly fashion. The Appeals Referee will also allow each of the parties, or their authorized agents, the opportunity to examine their own witnesses and to cross-examine opposing witnesses. The Appeals Referee may exclude undue repetition of testimony and avoid the unnecessary interruption, or recall of witnesses. The hearing is designed so that parties need not be represented by attorneys; however, the parties are allowed to have an attorney represent them if they so choose. Your own testimony is often the strongest evidence which you can provide. Exhibits will be marked and identified.

The Appeals Referee is authorized to develop all issues regarding eligibility for benefits and may accept evidence without regard to statutory and common law evidentiary rules. This includes hearsay evidence, which the Appeals Referee is authorized to receive and to consider in reaching a decision. Additionally, the referee must include in the record and consider as evidence all records of the Administrator that are material to the issues (NRS 612.500). The Appeals Referee may exclude disorderly, or disruptive persons from the hearing and may adjourn the hearing if the disruptive or disorderly person refuses, or fails to stop the objectionable activity (NAC 612.228).



The Referee's Decision and Appeal to the Board of Review

After the hearing, the Appeals Referee issues a written decision, which will include findings of fact and conclusions of law, separately stated. Findings of fact and decisions will be based upon the evidence presented to the referee (NRS 233B.125). The decision must inform each party of the right of appeal to the Board of Review (NAC 612.235). The Board of Review consists of three members appointed by the Governor: a representative of labor; a representative of employers; and a representative of the general public (NRS 612.305).

You must file your appeal within 11 days after the Appeal Referee's decision is mailed to you. If the 11th day falls on a weekend or holiday, you may file your appeal on the following business day. The Appeal Referee's written decision will notify you



of the number of days you have to file your appeal. The appeal is deemed to be filed on the date it is hand-delivered, postmarked, or faxed to the Appeals Office.

The Board of Review can accept an appeal filed after the 11-day deadline if good cause can be shown for the late appeal (NAC 612.510).

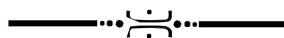
To appeal, you must write a letter or document signed by you or your duly authorized agent that includes your full name, address, and Social Security number. Your appeal should include your reason(s) for appealing, explaining why you disagree with the Referee’s decision, or your basis for appealing to the Board of Review.

The Board of Review is not required to review each appeal. The Board of Review may refuse to review a decision of the Appeals Referee if the Appeals Referee affirmed the determination of the claims office. If the Board of Review refuses to review a decision, it shall notify the parties of their right to judicial review (NRS 612.525 and NAC 612.242).

The Board of Review may restrict the parties to the submission of written arguments, or may require the parties to present oral arguments. If the Board of Review requires oral arguments, notice must be sent to each party at least 7 days before the date set for review, and the notice must specify the right to be represented by counsel. The Board of Review may postpone and continue the review on giving notice to all parties (NAC 612.242).

The evidence, which the Board of Review considers in reviewing cases is limited to the evidence submitted to the Appeals Referee, except that the Board of Review may remand (send back) a case to the Appeals Referee to take any additional evidence. If the case is remanded, the Board of Review may order the Appeals Referee to render a new decision, or may have the new evidence forwarded to the Board of Review for its own decision (NRS 612.515 and NAC 612.242).

Any two members of the Board of Review may decide a case. If one member is absent, and the vote of the two remaining results in a tie, the case will be held over for consideration by the full Board of Review. If one member is disqualified and the remaining two disagree, the case must be decided by the public member. If the public member is disqualified, the Board of Review will seek a temporary replacement (NAC 612.245).



The Board of Review's decision and Appeal to Court

A decision of the Board of Review becomes final 11 days after the date of mailing of the Board's decision (NRS 612.525). After the decision has become final, you have another 11 days to Petition for Judicial Review in the District Court in the county in which the work giving rise to the claim was performed. If you worked in more than one county, you may file the petition in any of the counties in which the work was performed (NRS 612.530). Unlike appeals to the Appeals Office or the Board of Review, there is no legal provision for the court to permit extensions of the 11-day requirement. Under Nevada law, you must file your Petition for Judicial Review in the correct court within the time allowed by law. If you fail to comply with the law by failing to file your petition in the correct court, failing to name your employer as a party, or failing to file within the time allowed by law, your petition must be dismissed since the court will lack subject matter jurisdiction of your case. An appeal to the court may be presented by you on your own. However, it may be wise to seek the services of an attorney when appealing, since you are strictly required to comply with the court's rules regarding the presentation of your appeal.



LIST OF POTENTIAL APPEALED ISSUES

Misconduct NRS 612.385

Discharge for Misconduct: A person is ineligible for benefits for the week in which he or she has filed a claim for benefits, if he or she was discharged from his or her last or next to last employment for misconduct connected with his or her work and remains ineligible until he or she earns remuneration in covered employment equal to or exceeding his or her weekly benefit amount in each of not more than 15 weeks thereafter as determined by the administrator in each case according to the seriousness of the misconduct.



Misconduct General Definition

Misconduct occurs when an employee deliberately and unjustifiably violates, or disregards, his or her employer's reasonable policy, or standard. Misconduct can also be found when an employee 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 the employer. Disqualifying misconduct must contain an element of wrongfulness.



Common Misconduct Issues

Absence from work, or being late for work

An employee has the duty to report for work and remain at work in accordance with the reasonable requirements of the employer. If an employee is going to be absent from work, it is his or her responsibility to give proper notice in time to permit the employer to make such arrangements as are necessary to replace the employee. Not all absences are foreseeable, but if an employee knows he or she is due at work and cannot report, say for illness, it is the employee's responsibility to inform the employer as soon as possible. The reasonable policies of the employer are considered in determining what adequate notice is.



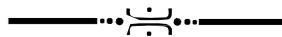
Refused permission

It is reasonable for employers to require advance permission to be absent when the absence can be anticipated, for instance, in requests for vacations. However, a prudent worker will not take time off when his or her request is refused. If an employee is denied permission but is absent anyway, the necessity for the absence and the employer's reasons for not granting permission will be weighed. The discharge will be considered misconduct if the employee is absent for a capricious reason, or if the employee fails to provide a legitimate excuse, such as failing to provide a doctor's statement in the case of illness, or if the employee was absent due to intoxication. If an employee deliberately gives a false reason to obtain time off, and the employee knew it would not have been approved if the employer knew the true reason for absence, a discharge for dishonesty in these circumstances is for misconduct.



Incarceration

Off duty misconduct which prevents an employee from fulfilling his or her duties to the employer is misconduct for the purpose of denying benefits. Misconduct can also be found if the off-duty behavior reflects adversely on the employer. An employee who is incarcerated and will miss work as a result thereof should timely notify the employer. In certain circumstances, timely notification to the employer may exclude a finding of misconduct.



Failure to Maintain Licenses

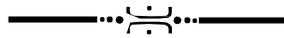
Individuals who need certification, licenses, or permits to work in their occupation, such as truck drivers, health care workers, foreign workers, school teachers, etc., have a responsibility to maintain their licenses, certifications, and/or permits. Failure to do so may be considered misconduct, depending on the circumstances as determined by the trier of fact.





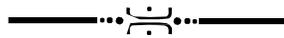
Tardiness

One of the basic expectations in the work relationship is for employees to report to work when scheduled. Many employers enact progressive disciplinary procedures to punish tardy employees. The reasons for an employee being tardy will be considered if an employee is discharged for that reason. Nevertheless, substantial tardiness due to oversleeping, failure to ensure transportation, or failure to ensure childcare, for example, may constitute misconduct. Additionally, if an employee is delayed or will be reporting late for work for any reason, that employee must contact the employer as soon as reasonably possible and notify the employer that he or she will be late. Failure to give prompt notice may be considered disqualifying misconduct.



Duty to Employer

An employee owes a duty to support and serve the employer's interests and not to engage in acts, or make statements, that show disregard of the employer's interests. Making inappropriate disparaging remarks that have the potential of harming the employer, the supervisor, the product, or the service, may constitute misconduct. Mere griping, or normal complaints directed through proper channels, such as the chain of command or through a grievance procedure, are not misconduct unless it reaches the point of interfering with the work.



Safety Violations

A violation of safety rules is usually misconduct unless it is unknown to the workers, or rules that have not been previously enforced. The extent of the hazard created by the violation is important in determining misconduct.



Insubordination

Insubordination is a single or continuing refusal to obey a direct or implied order, reasonable in nature, and given with proper authority. Insubordination may include an act by the employee, which exceeds the authority granted to the employee by his or her employer. Insubordination also includes statements or remarks under circumstances that damage or tend to damage the employer's interests. Finally,



insubordination includes vulgar, profane, insulting, obscene, or offensive language directed at the employer or supervisor. If the language is provoked and is an isolated incident, it may not be misconduct.



Dishonesty

Engaging in dishonest acts or statements, or aiding another person to engage in such acts, which injures or tends to injure the employer's interests, is misconduct. Misconduct also covers an employee who willfully fails to report to the employer the dishonest acts or statements of a co-worker which causes substantial harm to the employer. Other acts of dishonesty include:

1. Theft and embezzlement.
2. Misappropriation of funds.
3. False statements on such items as work applications, time cards, travel expense claims, or investigative reports.
4. False reasons for absences.
5. Malicious false statements about other individuals.



Use of Drugs or Alcohol

It is misconduct if the employee is under the influence of any unlawful drug, including alcohol, at the time he or she reports to work, or returns to work following a lunch or rest period. Being under the influence can be determined by the smell of alcohol and/or unusual behavior, such as slurred speech, profuse sweating, and unsteadiness. In Nevada, there is no tolerance for unlawful drug usage in the workplace. An employee may also be found guilty of disqualifying misconduct for off duty use of drugs if the employer has a drug free policy. Thus, even if the employee is not "under the influence", the employee may be found guilty of misconduct for having detectable quantities of drugs in his or her system. A positive reading on a drug test is usually considered misconduct. Reasons for testing include, but are not limited to:

1. Pre-employment testing;
2. Reasonable suspicion that the employee is under the influence;
3. A policy of random testing or;
4. Post-accident testing.





Work Performance

An individual's failure to perform work properly, or neglect of duty, is misconduct if he or she intentionally, knowingly, or deliberately fails to perform, or performs in a grossly negligent manner, or repeatedly performs negligently after prior warnings or reprimands and in substantial disregard of the employer's interests. It is not misconduct when the failure of performance is due to inability, or if the action is ordinary negligence in isolated instances, or is a good faith error in judgment, or discretion.



Violation of Employer Rules

It is misconduct if an employee violates a rule, if the rule is reasonable and the individual knew or should have known the rule, and the violation substantially injures or tends to injure the employer's interests. The violation may be misconduct, even if it involved a minor matter, if the claimant had been given prior warnings for violation of that rule, or other rules. While the final incident is of primary consideration in determining misconduct, a series of incidents, while not misconduct taken individually, may establish a pattern of behavior detrimental to the employer's interests and become misconduct. It may not be misconduct if: (1) the rule is either not enforced, or enforced selectively, (2) the violation is condoned, or (3) the employer fails to follow his own policy of progressive discipline. Even if an employer has a progressive discipline policy, a single act, such as willful dishonesty, may be considered sufficient to support termination and constitute misconduct.



Relations with Coworkers

An employer has a right to expect that his employees will not conduct themselves toward each other in a manner that will interfere unduly with the efficient operation of business. Incompatibility between workers will sometimes occur, but if it manifests itself in overt acts that could impair the efficiency of operations, the acts could be considered misconduct.





Abusive Language

Abusive Language is normally not acceptable between employees, or between employees and supervisors. At some work sites, mildly abusive language is accepted as standard behavior, unless it involves a belligerent or derisive manner toward specific persons. (See “Insubordination”).



Altercation

Fighting connected with work is almost always misconduct, unless it can be shown that the claimant acted in self-defense and that it was the other party that attempted the first blow, or assault. An employee may not invoke self-defense as an excuse for fighting if the employee had a reasonable alternative.



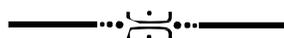
Sexual Harassment

It is misconduct for an employee, male or female, to harass another employee by: (1) Making an unwelcome sexual advance, or a request for sexual favors, or other speech or physical conduct of a sexual nature, (2) making the submission to, or the rejection of, such conduct the basis for employment decisions, or (3) creating an intimidating, offensive, or hostile working environment by such conduct.



Union Activities

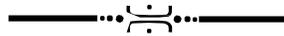
Generally, union activity does not breach a worker’s obligation to the employer and is not considered misconduct. Membership in a union, agitation for unionization off company time, or support of a union, is not misconduct. Neither joining a union while employed, nor refusing to join a union while employed, is considered misconduct if either act results in termination. However, when the union activities violate a known and reasonable company rule, such as unauthorized solicitation of membership, or collection of dues on company time or premises, a discharge for that reason is usually misconduct.



Gross Misconduct

NRS 612.383

Discharge for crimes in connection with employment: Notwithstanding any other provisions of this chapter, an individual who has been discharged for commission of assault, arson in any degree, sabotage, grand larceny, embezzlement or wanton destruction of property in connection with work shall be denied benefits based on wages earned from the employer concerned, provided that such assault, arson in any degree, sabotage, grand larceny, embezzlement or wanton destruction of property is admitted in writing or under oath or in a hearing of record by the person or has resulted in a conviction in a court of competent jurisdiction.



Voluntary Quit

NRS 612.380

Leaving last or next to last employment without good cause or to seek other employment. 1. Except as otherwise provided in subsection 2 [approved training], a person is ineligible for benefits for the week in which he has voluntarily left the last or next to last employment:

(a) Without good cause, if so found by the administrator, and until he earns remuneration in covered employment equal to or exceeding the weekly benefit amount in each of 10 weeks-

(b) To seek other employment and for all subsequent weeks- until he secures other employment or until he earns remuneration in covered employment equal to or exceeding the weekly benefit amount in each of 10 weeks- if so found by the administrator.



General Definition

Good cause for leaving work can be established if there is a compelling reason to quit, and there are no other reasonable alternatives but to quit. The person may quit for either personal or work-related reasons. An acceptable personal reason may be circumstances that might happen in a person's personal life, or at his or her place of employment, that would compel any reasonable person to leave, even though he or she may be firmly attached to the employer and would prefer to remain.





Quitting for Reasons not Work Connected

Health Reasons

If health is given as a reason for leaving, the claimant will generally be required to provide a doctor's statement confirming the claimant's need to quit. A medical practitioner's advice to consider finding other work, or another occupation, may not be specific enough to establish good cause. However, there may be instances where an individual can make the judgment to quit when the cause and effect relationship between the condition and the work is clear, and where the individual has a chronic condition or has recently received expert advice.



Family's Health

Quitting to provide care for an injured or ailing family member may be considered good cause if it is the only realistic solution to the situation. It generally requires medical statements affirming that the individual needs intensive assistance and proof that alternatives were considered, but rejected for good reasons. Quitting to provide care for others may raise questions of one's availability for work.



Following a Spouse

If a person leaves work to follow a spouse, the reasons for the spouse leaving will be considered as the primary reason for the claimant to quit. A married couple must be considered as a unit. If there is good cause for either spouse to move, there is good cause for both. Where the reason is the employment of the spouse, there must be a firm and reasonably immediate starting date for the spouse's new job. A move to follow a spouse who has not found work, but thinks there are better opportunities elsewhere, would be disqualifying. While public policy favors keeping a family together, it does not favor couples leaving a location where there is work for a location where there is none.





Quit to Marry

Even if the attachment is such that marriage is to take place but has not already taken place, good cause for leaving does not exist. Marriage plans, as distinguished from a legal marriage that has already taken place, do not provide good cause.



Following a Companion

Nevada does not recognize common law marriages unless they were validly contracted in another state where they are legal. Even if the relationship is long standing, it is not recognized as legally binding and therefore, if a person quits to follow a companion, it will not be recognized as good cause. An exception to the rule may occur if there are minor children involved in the relationship, or if the claimant has entered into a domestic union with the other companion recognized by state or federal law.



Attending School

Quitting a job to attend school is not a compelling reason to render a claimant eligible for unemployment benefits.



Quitting for Reasons that are Work Connected

Exhaust Reasonable Recourse

A person must first make attempts to keep his or her job. Generally, a person must consult with supervisory personnel regarding the unacceptable work-related conditions and attempt to either resolve them, or make an adjustment with regard to the conditions, whether it involves the work assignments, or other employees. If the employer refuses to resolve the problem, or cannot resolve the problem, or make appropriate adjustments to the work conditions, then a person may have good cause to quit. A person may have good cause to quit if the employer requires the employee to perform an act that is either illegal or unsafe. However, when making such an

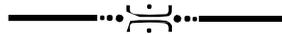


allegation, the employee will have the burden of proving the illegal or unsafe condition. Good cause will not be found for quitting simply because an employee subjectively believes a condition is unsafe or illegal.



Reduction in Pay

Good cause can be established if the employee is transferred arbitrarily with a substantial reduction in pay, or if the wage reduction is substantial and not accompanied by any reduction in hours, or change in duties.



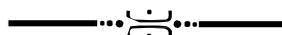
Part-time Work

When an individual leaves work because it is part-time work, he or she leaves without good cause. An individual who is working part-time is in a much better position than an individual who is totally unemployed. He or she has some income, he or she is in a position to obtain full-time work when openings occur, and he or she has available time to seek more desirable work elsewhere. Part-time work would not necessarily be disqualifying to persons who have established part-time work as their normal attachment to the labor market, for instance, the handicapped or elderly, who can only work part of a day.



Transportation

Transportation is the responsibility of the employee and unless transportation problems are of such severity that they cannot be solved with reasonable efforts, good cause for quitting does not exist. Normally, individuals are not expected to work beyond commuting distance of their homes, or move to another location to accept a transfer or other work. But if an employee's own work history, or customary practices in his or her occupation, reflect that working away from home is usual, then a location beyond commuting distance does not by itself provide good cause to quit, or refuse work.





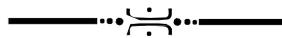
Changed Working Conditions

The employer has the managerial prerogative to set working conditions. An individual does not normally have good cause to quit if the new conditions do not meet his or her preferences. However, a substantial change that would make the job unsuitable might create good cause to quit.



Quit to Seek Other Work

A person has good cause to quit if he or she finds other work, but does not have good cause to quit merely to seek another job of a preferred type, or in a preferred location. There must be a firm and reasonably immediate starting date if good cause is to be found.



Unpleasant Coworkers

Good cause can be established when working conditions are intolerable because of fellow employees, but the conditions must be shown to be intolerable - for instance, excessive abusive language, coworker harassment, or assault. The common element in this type of situation is the requirement that the claimant make a reasonable effort to have the situation changed and the consequent refusal by the employer, or the inability of the employer, to change the behavior of the coworker.



Unsuitable Work

Employees are presumed to know the nature of the job they are accepting before they accept it. Once employment is accepted, an employee has a duty to continue to work at that job until other employment is secured, or the employee is placed in a position where he or she is compelled to quit. Quitting employment simply because an employee determines that the employment is not suitable is generally not viewed as a quit for good cause.





Threats at or Outside Work

Most employers can control coworkers who may be threatening while both parties are at work, but may not be able to protect the threatened employee outside of the workplace. At other times, a person may be harassed outside of work by, for instance, a stalking ex-spouse or companion. The claimant may be required to show proof of a request for police protection, but if that does not work, the claimant may have no other alternative but to move away from the harassment or threat. Under such circumstances, good cause may be shown.



Failure to Meet or Maintain Hiring Conditions

The employer has the burden of setting forth the exact and specific conditions of employment. Once the hiring agreement is set, the failure of the employer to meet that agreement, such as an inability to pay full wages, may give an employee good cause to quit. If an employer makes promises to a prospective employee and then fails to comply with those promises, the employee may have good cause to quit.



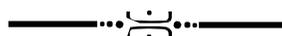
Quit for Self-employment

Generally speaking, individuals who quit for self-employment are not eligible because they are still employed. If the venture fails, and they return to the labor market, are looking for full-time work, and are willing to accept full-time work, they may be eligible.



Vacation Pay NRS 612.430

Receipt of pay for vacation on termination of employment: A claimant shall be disqualified for benefits for any week following termination of work, which could have been compensated by vacation pay had termination not occurred, if the claimant actually receives such compensation at the time of separation or on regular paydays immediately following termination.



Wages in Lieu of Notice; Severance Pay

NRS 612.420

Receipt of wages in lieu of notice; severance pay: A person is disqualified for benefits for any week with respect to which he receives either wages in lieu of notice or severance pay.

Wages in Lieu of Notice

Wages in lieu of notice are disqualifying even if paid beyond the next payday after separation. The period of disqualification will begin with the separation date and will be based on the claimant's rate of pay. If there are other types of separation payments issued at the same time, payments will be applied consecutively.

Severance Pay

Severance pay is payment in recognition of past services, often based on years of past service. Severance pay is disqualifying regardless of when it is paid. The disqualification is based on the period of time for which the claimant is compensated, based on the claimant's rate of pay. The period of disqualification will begin with the separation date, not the week in which it is paid, unless there are other types of separation payments issued at the same time. If so, the payments will be applied consecutively.

Able and Available

NRS 612.375

To receive benefits, NRS 612.375 requires that you be both able to work and available for work. Being available for work means that you have the potential for and are willing to accept suitable employment. Being able to work means that you must be physically able to perform the job duties of the work sought at the time you file a claim, and you must have a realistic attachment to the labor market.



Able to Work

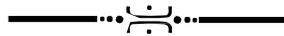
To determine whether you are able to work, the Division will consider such things as illness, injury, and any other medical condition that has been shown to affect your ability to perform your prior work.



Available for Work

Your Circumstances

The Division will generally require that you arrange your personal circumstance, for example, child care or transportation, so that you can immediately accept suitable work. The Division may find that self-imposed restrictions establish that you are unavailable for work. Having unreasonably high pay expectations, unwillingness to work all customary hours, or unwillingness to commute any distance within the local labor market area, may be determined as self-imposed restrictions which make you unavailable for work. You might also be found unavailable for work if you temporarily remove yourself from the labor market for such things as vacation, school attendance, incarceration, etc.



Willingness to Work

Once your circumstances have been identified, you must be willing to remove any controllable restrictions which affect your ability to work, or to accept work.



Fitting in the Labor Market

The specifics of the local market are considered - for instance, prevailing rates of pay, customary shifts and hours, commuting patterns, and availability of jobs in your customary occupation. If your restrictions substantially reduce your employment opportunities, and you are unwilling to adjust your circumstances, you may be found unavailable for work.





Common Availability Issues

School Attendance

Students in an academic program must demonstrate full-time availability to a substantial number of employers. Certain training programs, such as vocational training or unpaid training from an employer, if approved by law or the Administrator, are not disqualifying.



Distance to Work and Transportation

Persons are expected to travel within an area where there is a reasonable chance for obtaining work. Acceptable commuting distance may vary with occupation, or rates of pay. Usually, if a person does not have the means for getting to potential employers, he or she is considered unavailable for work.



Domestic Circumstances

You may be found unavailable for work due to domestic restrictions, such as care of family members. If you are providing care during the majority of the hours when work opportunities exist, you may be found unavailable for work. The Division will consider prevailing working conditions and your past work experience despite these restrictions.



Wages

You must be willing to accept employment at the prevailing wage rates in the area for your customary occupation and experience.





Union Status

If you are a union member in good standing, who customarily obtains work through the union, you may demonstrate availability for work by maintaining contact with the union hall. However, if you are a union member who does not customarily obtain work through a union hiring hall, then you must comply with the active search requirements applicable to non-union claimants.



Part-time Employment

A person who is employed part-time and making less than the established weekly benefit amount, may be eligible for partial benefits.



Leave of Absence

A mutually agreed upon leave of absence generally indicates a temporary withdrawal from the labor market. While on leave, a claimant is not considered available for work. After the leave of absence ends and the claimant is ready to return to work, if the employer cannot put the claimant back to work, the claimant may be eligible for benefits.



Light Duty

Persons who have been unable to work for medical reasons, then are released for light duty, are generally considered available for work upon release, even if the employer cannot put them back to work, or has no light duty jobs.



Suitable Work

NRS 612.390

Claimants for unemployment benefits may be disqualified if the Division finds that the claimant has failed, without good cause, either to apply for available, suitable work when so directed by the Division, or to accept suitable work when offered.



Was there a Bona Fide Offer or Referral of Work?

It must be established that there was a genuine offer of work for a specific job before a disqualification will occur. A bona fide offer usually includes a starting date, time to report, hours of work, and rate of pay. The offer must be conveyed to the claimant.



Was the Job Suitable?

Suitability is determined by considering the claimant's skills, training, experience, capabilities, and previous earnings. The Division will also consider if the wages, hours, or other conditions of the job are substantially less favorable than those prevailing for similar work in the area. It cannot be a condition of employment that the applicant must join a union, or resign or refrain from joining a union. If an employee accepts work, and then later quits because that employee believes the work to be unsuitable, benefits will generally be denied because the employee quit without good cause.



Did the Claimant have Good Cause to Refuse the Job?

There may be personal reasons for refusing work, such as illness or lack of child care or transportation. If the personal circumstances were within the employee's control, the employee must show that every reasonable effort was made to remove the restrictions before refusing work. Refusal of work raises the issue of availability.





Common Suitable Work Issues

Domestic Circumstances

Some situations may establish good cause to refuse work, such as care of children, parents, other relatives, or responsibilities associated with illness or the death of relatives. The claimant must show that the restrictions prevented acceptance of work, and that the employee had no control over the circumstance. (Remember however, these situations raise the issue of availability).



Job Related Issues

If a person refuses a job or referral to a job, the Division will consider such items as the length of his or her unemployment, prior earnings and working conditions, his or her prospects for other employment, and the availability of work in his or her occupation.



Health or Safety Risk

Work that involves significant health or safety risks, including mental health, is not suitable work. To refuse with good cause, a claimant must establish that the work offered would be detrimental to his or her health. Medical statements may be required.



Customary Work

A claimant may refuse work because it is not his or her customary type of work. As unemployment lengthens, the claimant may be required to be available for more types of work.





Expected Wages

Work is not suitable if wages are substantially less than for similar work in the area. As unemployment lengthens, claimants are expected to consider accepting lower wages.



Highest Skills

A claimant may refuse work because the job does not use his or her highest skills. As unemployment lengthens, claimants are expected to accept work requiring less experience and training.



Prospect of More Desirable Work

A claimant may establish good cause if there is a reasonable prospect of returning to a previous job, if it is within a short period of time, or the prospect of a better job.



Academic Breaks; Paid Sabbaticals NRS 612.432 and 612.434

Generally, all employees of an educational institution or educational service will be ineligible for unemployment benefits during school vacations or holiday recesses and between academic terms or years if there is reasonable assurance of employment the following term or year. A paid sabbatical leave is also disqualifying.





Timeliness

NRS 612.475, 612.495 and 612.515

Any person or employer entitled to a notice of determination by the Division may file an appeal to the determination, but it must be filed within 11 days. Any person or employer entitled to a decision of an Appeals Referee may file an appeal, but it must be filed within 11 days. Any person entitled to a Board of Review decision may file an appeal to District Court, but it must be filed within 11 days after the decision of the Board of Review becomes final.



Overpayments

NRS 612.365

Overpayments can be caused by any of several factors, including simple Division error, failure of a claimant to provide accurate facts about his or her separation, an issue leading to a reversal by an Appeals Referee, Board of Review or Court, late information that causes the Division to reverse a determination, or changes to a monetary determination. Overpayments can be appealed like any other issue. Generally, to be relieved of an overpayment, the claimant must show that his or her income potential has been curtailed by circumstances, such as illness or injury, and that he or she will not be able to repay. Just showing a lack of fault, or that repayment will create a temporary financial hardship, will not generally be enough to get a waiver. If the overpayment is the result of misrepresentation, fraud, or willful nondisclosure on the part of the claimant, the overpayment will not be waived regardless of the claimant's ability to pay.



Labor Disputes

NRS 612.395

A claimant will be disqualified for unemployment benefits if his or her unemployment is due to a labor dispute in active progress where he or she was last employed, unless he or she can show that he or she is not participating in or financing or directly interested in the labor dispute, or does not belong to a grade and class of workers directly involved in the dispute. A striking worker can demonstrate his or her lack of involvement in the dispute by making an unqualified offer to return to work. "Lock

Outs” are generally considered to be labor disputes, and employees locked out during labor negotiations are generally not eligible to receive unemployment insurance benefits.



Misrepresentation

NRS 612.445

When the Division determines that a claimant has made a false statement or representation, knowing it to be false, or knowingly failed to disclose a material fact in order to obtain or increase benefits, the claimant will be required to repay the funds fraudulently obtained in cash and may be disqualified for up to 52 weeks, or until all benefits improperly received have been repaid in full.



Non-Disclosure

NRS 612.265 and 612.533

Only a party, claimant, or employer, is entitled to information provided to the Division for purposes of determining an unemployment claim, and only for the proper presentation of the claim. A claimant or an employing unit is not entitled to information from the records of the Division for any other purpose. Once the issue of eligibility is settled, the file is closed. Only under certain conditions, such as other issues being considered before other State and Federal agencies as specified in the law, can Division records be made available. Any findings of fact or law, judgments, determinations, conclusions, or orders pursuant to this chapter, are not admissible or binding in any subsequent or separate legal action or proceeding.



LEGAL REPRESENTATION

The appeal procedure within the Division is designed to allow people to present their appeal without the aid of an attorney. However, an attorney or other representative may assist you during the administrative process. Normally you would have to pay for an attorney yourself. However, some agencies provide legal assistance at low cost, or no cost, in specific cases to individuals who cannot afford an attorney. The Division does not represent nor warrant that said agencies will take your case, nor does the Division make any representation regarding the type or quality of legal services which may be provided. The following agency have requested that the Division list their names and numbers. There may be other agencies or offices, not listed here, which are willing to provide low cost, or no cost, legal services to you.

NEVADA LEGAL SERVICES

CLARK COUNTY: (702) 386-0404
WASHOE COUNTY: (775) 284-3491
TOLL FREE: (866) 432-0404

RURAL COUNTIES – NEVADA LEGAL SERVICES

CARSON CITY: (775) 883-0404
ELKO: (775) 753-5880
TOLL FREE: (800) 323-8666

Referrals to attorneys who charge for their services may be obtained through the Nevada State Bar Lawyer Referral and Information Service:

LAS VEGAS: (702) 382-0504
TOLL FREE: (800) 789-5747