

VERBATIM TRANSCRIPTION

OF

the

NEVADA NATIONAL GUARD UNEMPLOYMENT COMPENSATION  
WORKSHOP OF THE DEPARTMENT OF EMPLOYMENT,  
TRAINING AND REHABILITATION

held on

March 12, 2015

Prepared by

Transcription by Kelly Mason  
Aegis Rapidtext

**STATE OF NEVADA**  
**Nevada Employment Security Division**

**NEVADA NATIONAL GUARD UNEMPLOYMENT COMPENSATION WORKSHOP  
OF THE DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION**

Thursday, March 12, 2015; 10:00 A.M.

<b>Place of Meeting:</b>	<b><u>Live Meeting:</u></b>	<b><u>Video Conference To:</u></b>
	DETR – SAO Auditorium	DETR - Stan Jones Bldg, Conf. Rm. C
	500 East Third Street	2800 E. St. Louis Avenue
	Carson City, Nevada, 89713	Las Vegas, Nevada 89104

**Department of Employment, Training and Rehabilitation (DETR) Staff**

**Present in Carson City**

Renee Olson, Employment Security Division (ESD) Administrator  
Jeff Frischmann Acting Deputy Administrator, Unemployment Insurance (UI), ESD/DETR  
David Schmidt, Bureau of Research & Analysis, DETR  
Scott Kennedy, Chief of UISS  
Christina Guzman, ESD/DETR  
Joyce Golden, Administrative Office, ESD/DETR  
Mikki Reed, ESD/DETR

**Department of Employment, Training and Rehabilitation (DETR) Staff**

**Present in Las Vegas**

Art Martinez, ESD/DETR

**Members of the Public, Media and Other Agencies**

**Present in Carson City**

David Bradley, Bradley Electrics

**Members of the Public, Media and Other Agencies**

**Present in Las Vegas**

None

**DETR - Nevada Employment Security Division  
March 12, 2015 Meeting  
Verbatim Transcript**

*Note: If a portion of the recording could not be transcribed due to the quality of the recording or because the words could not be distinguished, this has been indicated as follows: "(Incomprehensible)".*

OLSON: All right. It's 10:00. We might as well get started. Okay. I'd like to call this meeting to order. My name is Renee Olson, and I serve as the administrator for the Employment Security Division. Sitting to my right is Mr. Dave Schmidt. He's an economist for our Research and Analysis Bureau, and he's going to make a few comments in our workshop.

So I just wanted to just quickly say that this isn't our normal hearing rooms, but we're improvising today, because session is going and they're using all the rooms over there. So usually we try to have our meetings over there, I don't see anybody in the south, but if there is, and here in the north we have somebody here attending the workshop, we're just going to do the best we can to improvise with the room and get people in front of microphones to make comments.

So with that, let's begin by inviting public comment. There will be another opportunity at the end of the workshop to provide public comment, as well. So if there's anybody in Las Vegas that would like to provide public comment. Art, do you have anybody down there?

MARTINEZ: There are no public comments at this time.

OLSON: Okay. Thank you. Then we'll move to Carson City, and if you'd like to make public comment you can do so. Start by identifying yourself, who you represent, and if you have any written testimony, please provide that to staff. And so are you...

BRADLEY: So I think I maybe the only one here, and don't believe I need to stand unless someone wants me to here.

OLSON: No.

BRADLEY: My name is David Bradley, and I'm a small business owner.

OLSON: Okay. You're being recorded so go ahead.

BRADLEY: Okay. I anticipated that. I saw the advertisement in the newspaper about comment on taking a look at -- so anyway, Dave Bradley with Bradley Electrical Plumbing and Heating. I'm a verified veteran-owned small business. I'm on the side of veterans. I believe that they need to segue back in. That

might not be what this is about exactly. It might just be the unemployment that they may or may not be entitled to, due to the fact of whether or not they work straight 90 days or whatever the legalese are.

So when I saw this I thought I wanted to come and meet some of the people with DETR to do some reconnaissance on my own, who is also an advocate of what we're trying to do here, so that I can put a face to some of the names. Small business owner. I can't even crack a million bucks yet, but I'm looking for veterans to hire. I'm with it. What I think of is that workshops are good if there's action taken or if it's followed up with some sort of action, and that not taking action is also an action. It's choosing not to do anything about it.

So the part that I looked at in this in reading the verbiage was that they want to solicit comment on a proposed temporary regulation. And I think that's a frame of mind that we should probably try to focus on a long-term thing. And that if we're always in the reactive mode that is exactly what the outcome of that action will be. It will be more of on a reaction mode.

So temporary to me should probably be changed to what would be a permanent fix. And although our business plans or these models are all in pencil and we're kind of erasing [sic] as we go and writing in new things, because we feel those euphoric ideas at the beginning just don't pertain to what we're at today, I believe that the DETR is trying to do a good job. I believe that there's a need for some change in the unemployment and how things are structured.

Being an employer, I became privy to that. The office usually handles things for me, but when things cross your desk that just don't make sense, it's good to raise your hand and ask more questions, or if you run out of questions, like I do sometimes, I ask the people I'm talking with to ask me some questions so that maybe that will help me understand. And that's the temporary part, I think, would be something not to hang my hat on, but is something that I think we should all be looking at this, ma'am. We're looking for security and for long-lasting relationships, I think. And thank you for your time.

OLSON: Okay. Thank you. We welcome you to participate, and we welcome participation in these meetings and our hearings. So thank you for being here today. One of the things that you'll hear as we move along a little bit is some information about that temporary nature of the regulation, and we'll address that a little bit for you as we move through. So we appreciate your comments and we...

BRADLEY: Thanks.

OLSON: ...invite you to participate. And just to let you know as a small business owner, we have an annual meeting where we have -- there's three meetings

actually. There's the Employment Security Council meeting, where they look at what the next year's average tax rate might be for employers, and they discuss the impacts of that, and they provide me a recommendation as the administrator.

BRADLEY: Are those on a calendar? What you're getting ready to tell me, is that a calendar-type thing? How do I get that?

OLSON: Yes, and those are announced in the same way that we announced this...

BRADLEY: Newspaper article?

OLSON: Mm-hmm. It's in the newspaper. It's on our website. And you can get on our mailing list...

BRADLEY: Thank you.

OLSON: ...for being notified of those hearings. And then we move from there through a workshop similar to this. It's more involved because there's more information in that workshop, and then we go to a hearing where we adopt an average tax rate. And that is something, I think, businesses should be very involved in and know about. And so you're welcome to attend those meetings, as well. And that tax setting process occurs once a year. So thank you for your comments. I'm going to move through the agenda and then I think what you'll hear coming up addresses some of your concerns.

So this workshop is being conducted in compliance with Nevada Revised Statute Section 233B.0608 to solicit public comment on a proposed temporary amendment to the regulation, clarifying the eligibility of full-time active duty National Guard members to be able to receive unemployment insurance benefits per Nevada Administrative Code 612.115.

Ms. Golden, for the record, was proper notice for this meeting given in accordance with Nevada Revised Statute 233.061?

GOLDEN: Joyce Golden, Administrative Assistant to the administrator. Yes, it was.

OLSON: Thank you. And Agenda Item 4; were there any written comments submitted in response to this posting?

GOLDEN: Joyce Golden again. We have received no comment as of today.

OLSON: Okay. Thank you. So with Agenda Item 5, we'll start the workshop to consider the proposed regulation. This regulation provides the requirements under which full-time active duty members of the Nevada National Guard and Nevada Air National Guard are considered eligible to receive unemployment

insurance benefits. Specifically, the regulation amends the definition of employment to include National Guard members with 90 days or more of continuous service.

It further clarifies that these individuals may receive benefits under the following conditions; that they are paid under Title 32 of the federal rules, which govern how the military pay their active duty personnel; that they are released from military service under federal employment compensation for ex-service members and eligibility separation reasons, and these individuals are otherwise entitled to receive UI benefits per UI regulations.

And to supplement my comments here, we are following a process of a temporary regulation during this period. And so that everybody understands, during a legislative session, departments and divisions are not allowed to set permanent regulations, because during this time there are statutory considerations being made by the legislature. So in conjunction with this temporary regulation, to make sure that we have the ability for these folks to claim unemployment insurance benefits, we are also putting forth through the legislature, a statutory change to make this permanent in law.

So we didn't just look at the temporary nature of this. We're also pursuing a permanent change in statute to rectify this situation. But we have to follow both courses at this time, and primarily because the bill that makes the permanent change in our statute is still working its way through the legislature. So we're trying to make sure that these protections for ex-service members are put in place in both situations so that we don't end up without one or the other and not have anything in place.

So after this temporary period, should the legislation not go through, we would then move forward in the next year to make it a permanent regulation. So it's a process thing that we have to follow and there are some technicalities in there about why we follow it that way. So our intent is to make this either a permanent regulation, eventually, under which we'd have additional hearings or a permanent change in the statutory requirements. And the statutory changes mirror what we've got here in regulation.

So now very quickly I'd like to introduce to Dave Schmidt. He's going to talk to you about how the determination for the impact to small businesses was made and what that impact is.

SCHMIDT:

This is Dave Schmidt, for the record, economist with DETR's Research and Analysis Bureau. Under NRS 233B.0608, for any temporary regulation the Department has to look at whether the proposed regulation would impose a direct and significant economic burden on a small business and whether the proposed regulation would directly restrict the formation, operation or expansion of a small business.

Because this regulation is dealing with the eligibility of National Guard members for unemployment benefits, it does not have any direct or significant burden on a small business, and there's nothing in the regulation that would impose any additional fees or impose any restrictions on the formation, operation or expansion of any small businesses. Therefore, we believe that there is no negative impact to small businesses in Nevada, as a result of this regulation.

OLSON: Thank you.

BRADLEY: Can people chime in at any time?

OLSON: In just one moment. Okay. So, actually, right now. We're going to open the meeting again to public comment. So we invite your public comment at this time. And put name for the record and all that again.

BRADLEY: I will. I'm just looking for other hands up, because maybe someone else has something to say, like Joyce. Dave Bradley again. Is your company from Nevada, your research company?

SCHMIDT: The Research and Analysis Bureau -- Dave Schmidt again for the record. Research and Analysis Bureau is a part of DETR, so we're a part of the State.

BRADLEY: Is a part of DETR so you're part of the State...

SCHMIDT: Yes.

BRADLEY: ...but you're located here in Nevada, correct?

SCHMIDT: Yes.

BRADLEY: And then what was the matrix that you used in your analysis of unemployed veterans or the Army and Air National Guard coming out? What was the matrix you used, like how many would be returning mothers or fathers that may be at home with a child or, like, how did you come to that conclusion? Maybe some more meat to help me understand your processing.

SCHMIDT: Dave Schmidt, again, for the record. In this case, the regulation that we're looking at is just the subset of National Guard members who have been employed for 90 days and are really, essentially acting in a capacity similar to full-time military personnel. There's a couple of different programs for funding unemployment benefits for people. There's the regular unemployment program, which is what Nevada employers pay in to and from which benefits to their former employees are paid out. There's also the UCFE program, which is a dedicated program funded by the federal government for

unemployment benefits for employees who worked at departments like the Interior Department of Agriculture or something like that. And then there's the UCX program, which is a pot of money that funds unemployment benefits for former military members.

So in this case, because the regulation is dealing with whether people who had worked for the National Guard would be eligible for unemployment benefits or not, all of the costs for that, which is what I'm mostly concerned with is, in this case, because the question is will the regulation, which is increasing the potential eligibility for people who are former military, will that put any burden onto small businesses in Nevada.

So it's less a specific look at who those individuals are, but rather if those individuals have more eligibility for unemployment benefits than they would otherwise have, will that roll over and affect small businesses in Nevada in any sort of negative way. And so it's the sources and directions of the funding that really drives the analysis that we did here.

OLSON: Renee Olson, for the record. I'll just add to that a little bit. The basis for how these military folks were paid is from federal sources. Their wages came from federal pay. And so they qualify under the federal program for unemployment insurance in that the money that would be paid out in benefits to them is the federal program. So, therefore, because it's not impacting the state's trust fund -- employer's fund the state's trust fund -- and so because there's no impact to the state's trust fund, it doesn't impact the employers.

Later their experience rating maybe impacted if it did hit the state trust fund or if there was a significant dollar impact to the trust fund because of that, would there be any later impact to the taxes, tax rate, that kind of thing. So because the state's trust fund to which employers pay is not impacted by this then there would be no impact to the small businesses.

BRADLEY: Thanks for helping to clarify that. One maybe odd question is that have we been impacted in the past from this? Have we had National and Air Guard personnel that have gone out -- this is a question because we've had an aha moment here of, well, maybe we need to do something about it. Is this predicated on what the past has brought us today?

OLSON: Renee Olson, again, for the record. The way I look it and the way I understand it is that our statute right now absolutely precludes the National Guard from receiving unemployment insurance benefits. But what's happened over the years and how they've -- I don't know if this is a nice way to say it, utilize these service members in active duty has changed in recent years, especially with the conflict in Iraq and Afghanistan. And so these people have been in service longer than they normally would have and they've been in

service under the federal pay guidelines. They're not paid by the state government in this regard.

So this really is meant to address those folks who their status changes in how they're treated by the National Guard and how they're paid by the federal government. And because our statutes didn't clarify that opportunity for those folks to be called into active duty for so long, we felt like we should clarify this a little bit more in regulation so that those folks who are fully eligible under the federal program for unemployment insurance benefits are not improperly excluded because our statute didn't address it.

BRADLEY: Dave Bradley again. Thanks for helping me to understand that a little bit better. Is it your thoughts that we should be paying -- let me rephrase that. I think somebody coming to work for me that went to serve in the National Guard for 90 days and then came out should probably get his job back or probably -- and that's a whole nother thing. I get it. But is it your belief that they should be paid from coming back from a 90-day service? Is that -- or are you allowed to even talk about what your beliefs are here?

OLSON: I guess I would just say that, you know, if they've been -- it's 90 days or more. So you could have someone that was employed full-time for the National Guard under active duty for much longer than 90 days. And they don't -- that's their job. They don't have a job to return to. That was their employment. And so what they're looking at is if they're then released from that duty, because the military budgets are being cut and they're being laid off like another worker might be laid off in another private business, say, that during that time while they're transitioning from that employer to a new employer, they should be entitled to unemployment insurance benefits.

BRADLEY: So...

OLSON: That's what the program is supposed to do, is to support people while they're transitioning from a job that they've lost through no fault of their own and they're supposed to be actively seeking employment to retain those benefits. That's what it's for. So I believe they -- yes.

BRADLEY: I take that as an affirmation. Thank you for that. And Dave Bradley again. I think one of the questions that would pop up, they didn't work for me, but had full-time employment. Got called. Went out for 90 days. Came back and then just chose to go on unemployment. Does that come out of the previous quarter before the three-month thing? Is that a federal or a state thing then, and can you help me understand that?

OLSON: What I would say for sure is that any of these kind of questions you have that are specific, each person is looked -- their eligibility for unemployment insurance is looked at individually, for one thing. And so it always depends

on how they're separated from their employer. I would encourage you any time to call us and get this kind of information about individuals. We would look at each case individually. They would be separating from the military in sort of a lay-off situation or something. Do you have anything you could add there, Dave?

SCHMIDT: Yeah, I think -- Dave Schmidt for the record. I think the only thing that I would add is that in this particular case with what the regulation would do that is not currently the case is it would allow that period of employment by the National Guard to be counted as employment for the sake of calculating someone's unemployment benefits. So it would affect their eligibility to the extent that there are some wages there, whether it's 90 days or whether it's...

OLSON: A year.

SCHMIDT: ...10 years.

BRADLEY: So Dave Bradley one more time. It's clear that we're trying to do good things, and I think everybody here is. Knowing what I know now and that understanding some of this constitution that we're guided by, we were never to have really a militia full time, year round. So does that come into play with some of these talks that if it was originally by our framework or our framers that put our constitution together not to have a full-time militia, but to come and join and group up and do our thing, and then when we're done just return back. Does that in any way, shape, or form come into play with this matrix?

OLSON: I think what I'd say about that and to conclude my comments is that we don't make a determination in that regard, whether they should be or shouldn't be considered full-time militia or anything like that. I think what we recognize was a change in their status, their military status, and how the military has handled National Guard and deploying them full time in that regard. And so what we reacted to was a change in their status to be considered full-time military paid by the federal government.

When the statute was written, I believe -- I obviously wasn't there, it's been there forever. But I believe that, you know, the concept was is that they didn't want to have -- and I'll colloquially call it the weekend warriors who were, you know, doing their one weekend a month to be able to say, oh, now we're done and now we're going to go claim unemployment insurance. So I think that was the original intent. They wanted to prevent that kind of abuse of the unemployment insurance system, but at that time there was not the concept that these folks would be called into long-term active duty the way they have been in the recent conflict. So...

BRADLEY: Thank you for allowing me the questions and to sit in on this. Dave Bradley, and I conclude my comments.

OLSON: Thank you. Thank you for being here today and participating. Okay. So with that, if we don't have any further public comment. I don't see anybody in the south. I'd just like to thank everyone for participating in our regulatory process for considering this temporary regulation. The next step in the process is the hearing and adoption of the temporary regulation. And that public hearing for the intent to act upon a regulation is scheduled for April 28<sup>th</sup> at 10:00 a.m., and so you're welcome to return at that time and attend the hearing. And I believe it's in the same location.

UNKNOWN: Yes, it is.

OLSON: Okay. All right. And with that, I'll adjourn the meeting. Thank you.

**END OF RECORDING**