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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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MEMORANDUM
HR#07-20

January 28, 2020

TO: DHRM Listserv Recipients
Nevada County Libraries
State Library and Archives

FROM: Peter Long, Administrator *Peter Long*
Division of Human Resource Management

SUBJECT: NOTICE OF PUBLIC HEARING – Amendment of Regulations that Pertain to
NAC 284

The regulation changes included with this memorandum are being proposed for adoption at the March 6, 2020, meeting of the Personnel Commission. This meeting will be held at 9:00 a.m. at the Legislative Counsel Bureau, Room 3137, 401 S. Carson Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 4412, 555 E. Washington Avenue, Las Vegas, Nevada.

Please circulate and post the attached Notice of Hearing along with the text of the proposed regulations.

PL:dws

Attachments

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Amendment
of Regulations of the
Personnel Commission

The Personnel Commission will hold a public hearing at 9:00 a.m. on March 6, 2020, at the Legislative Counsel Bureau, Room 3137, 401 S. Carson Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 4412, 555 E. Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations will not result in an increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.

| <u>LCB File:</u> | <u>Section:</u> | <u>NAC:</u> | <u>Leadline or Description</u> |
|-------------------------|------------------------|--------------------|--|
| R018-19 | Sec. 1 | 284.498 | Training of supervisory and managerial employees. |
| | Sec. 2 | 284.726 | Access to confidential records. |
| R068-19 | Sec. 1 | 284.442 | Length of probationary period. |
| | Sec. 2 | 284.444 | Application of probationary period. |
| | Sec. 3 | 284.448 | Time not counted toward completion of probationary period. |
| | Sec. 4 | 284.450 | Adjustment of probationary period. |
| R069-19 | Sec. 1 | 284.892 | Duties of employee who is referred to employee assistance program. |
| | Sec. 2 | 284.893 | Return to work of employee who tests positive for alcohol or controlled substance while on duty. |
| R124-19 | Sec.1 | 284.726 | Access to confidential records. |

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to the Department of Administration, Division of Human Resource Management, 209 East Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Michelle Garton. Written submissions must be received by the Division of Human Resource Management on or before

March 6, 2020. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted and amended will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted and amended will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada, and 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption and amendment of any regulation, the agency, if requested to do so by an interested person, either before adoption and amendment, or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and amendment, and incorporate therein its reason for overruling the consideration urged against its adoption and amendment.

This notice of hearing has been posted at the following locations:

Carson City

Blasdel Building, 209 East Musser Street
Nevada State Library & Archives Building, 100 North Stewart Street
Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Grant Sawyer Building, 555 East Washington Avenue

Websites

Legislative Counsel Bureau website: www.leg.state.nv.us
Nevada Public Notice website: <http://notice.nv.gov>
Division of Human Resource Management website: www.hr.nv.gov

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R018-19

Section 1: NAC 284.498 Training of supervisory and managerial employees.

This amendment, proposed by the Division of Human Resource Management, will include training classes for supervisory and managerial employees regarding the Americans with Disabilities Act (ADA), the ADA Amendments Act, developing essential functions of positions, and the Family and Medical Leave Act. Also included in the amendment is the addition of a component regarding sexual harassment and discrimination to the equal employment opportunity course.

Section 2: NAC 284.726 Access to confidential records.

This amendment, proposed by the Division of Human Resource Management, will ease the sharing of information related to sexual harassment and discrimination investigations between agencies. Included in this new subsection are the individuals to which such information is limited.

Paragraph (a) of the new subsection 8 is amended to clarify that in order for an employee access to any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387, he or she must have filed an appeal of the disciplinary action as prescribed by NRS 284.390.

**REVISED PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R018-19

December 16, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 284.065, 284.155 and 284.343; §2, NRS 284.065, 284.155, 284.335, 284.4068 and 284.407.

A REGULATION relating to state employees; revising provisions relating to the training of supervisory and managerial personnel; revising provisions relating to access to certain confidential personnel records; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Personnel Commission to adopt regulations to carry out the provisions relating to the State Personnel System. (NRS 284.065) Existing law additionally requires the Commission to adopt a code of regulations for the classified service of this State. (NRS 284.155)

Existing law requires the Commission to adopt regulations for training certain employees in the state service. (NRS 284.343) Existing regulations require an employee who has been appointed to a supervisory position or managerial position to attend training classes in the following areas: (1) equal employment opportunity; (2) interviewing and hiring; (3) alcohol and drug testing; (4) progressive disciplinary procedures; and (5) handling grievances. (NAC 284.498) **Section 1** of this regulation requires an employee who has been appointed to a supervisory position or managerial position to also attend training classes in the following areas: (1) unlawful discrimination and sexual harassment; and (2) certain federal acts and the development of essential functions of positions.

Existing regulations provide that any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management of the Department of Administration relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential. (NAC 284.718) **Section 2** of this regulation authorizes certain persons to access such information.

Existing law provides that an employee who has been dismissed, demoted or suspended may request in writing a hearing before the hearing officer of the Commission within 10 working days after the effective date of the employee’s dismissal, demotion or suspension. Upon verification that such a request for a hearing has been made, the appointing authority of the employee shall produce and allow the employee or his or her representative to inspect or receive

a copy of any document concerning the internal administrative investigation of the employee. (NRS 284.390) **Section 2** amends existing regulations to comply with existing law.

Section 1. NAC 284.498 is hereby amended to read as follows:

284.498 1. Except as otherwise provided in this section:

(a) Within 6 months after an agency initially appoints an employee to a supervisory position or managerial position, the employee shall attend a training class concerning work performance standards and the evaluation of the performance of employees.

(b) Within 12 months after an agency appoints an employee to a supervisory position or managerial position, the employee shall attend at least one training class which has been approved by the Division of Human Resource Management in each of the following areas:

(1) *The following:*

(I) Equal employment opportunity; and

(II) Unlawful discrimination and sexual harassment;

(2) Interviewing and hiring;

(3) Alcohol and drug testing;

(4) Progressive disciplinary procedures; ~~and~~

(5) Handling grievances ~~+~~; *and*

(6) The following:

(I) Title I of the American with Disabilities Act of 1990, 42 U.S.C. §§ 12111-12117;

(II) The ADA Amendments Act of 2008, Public Law 110-325;

(III) The development of essential functions of positions that are described to each candidate and considered by the appointing authority pursuant to NAC 284.441; and

(IV) The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq.

2. Every 3 years, a supervisor or managerial employee shall complete training which is approved by the Division of Human Resource Management in each of the topic areas described in subsection 1.

3. The appointing authority, at its discretion, may accept, in lieu of the training required by subsection 1, supervisory or managerial training classes in each of the topic areas described in subsection 1 which are approved by the Division of Human Resource Management and taken by the employee during the 3 years immediately preceding the employee's appointment.

4. In addition to the training otherwise required by this section, the Division of Human Resource Management or an appointing authority may require a supervisor or managerial employee to retake any part or all of the training required by this section, or to participate in any additional training or other classes deemed necessary by the Division of Human Resource Management or appointing authority.

5. As used in this section:

(a) "Managerial position" means a position which is held by an employee who:

- (1) Formally evaluates supervisors;
- (2) Is involved in the hiring and firing of subordinate staff;
- (3) Determines organizational structure within a component of the organization; and
- (4) Develops, monitors and implements policies to accomplish long-range goals.

(b) "Supervisory position" means a position which is held by an employee who:

- (1) Formally evaluates staff;
- (2) Is involved in the hiring and firing of subordinate staff; and
- (3) Establishes policies which affect the performance or behavior of subordinate staff.

Sec. 2. NAC 284.726 is hereby amended to read as follows:

284.726 1. Except as otherwise provided in this subsection and subsections 2 and ~~10~~ **11**, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph (2) of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in subsection ~~10~~ **11** and NRS 284.4068, access to information concerning the results of an applicant's screening test which indicate the presence of a controlled substance is limited to an appointing authority or his or her designated representative and the Administrator or his or her designated representative.

3. Except as otherwise provided in subsection ~~10~~ **11**, access to an employee's record of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

- (a) The employee.
- (b) The employee's representative when a signed authorization from the employee is presented or is in his or her record of employment.
- (c) An appointing authority or his or her designated representative.
- (d) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (e) The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.

(f) Persons who are involved in processing records for the transaction of business within and between state agencies.

(g) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

4. The portion of an employee's record of employment that concerns the health, medical condition or disability of the employee or a member of his or her immediate family must be kept in a locked cabinet, separate from any other portion of the employee's record of employment.

5. Except as otherwise provided in subsection ~~H0~~ **11**, access to any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct is limited to:

- (a) The employee.
- (b) The Administrator or a designated representative of the Administrator.
- (c) The appointing authority or a designated representative of the agency with which the employee is employed.
- (d) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (e) The Governor or a designated representative of the Governor.

6. ***Except as otherwise provided in subsection 11, access to any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority is limited to:***

- (a) An appointing authority.***
- (b) A designated representative of the agency with which the employee is employed.***
- (c) Persons who are authorized pursuant to any state or federal law or an order of a court.***

(d) The Governor or a designated representative of the Governor.

7. Except as otherwise provided in subsection ~~10.1~~ **11**, access to any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct is limited to:

- (a) The employee.
- (b) The appointing authority or a designated representative of the agency ~~by~~ **with** which the employee is employed.
- (c) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (d) The Governor or a designated representative of the Governor.

~~7.1~~ **8.** Except as otherwise provided in subsection ~~10.1~~ **11**, access to any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387 is limited to:

(a) The employee who is the subject of the internal administrative investigation ~~+~~ **and who requests a hearing pursuant to NRS 284.390.**

(b) The appointing authority or a designated representative of the agency by which the employee who is the subject of the internal administrative investigation is employed.

(c) Persons who are authorized pursuant to any state or federal law or an order of a court.

(d) The Governor or a designated representative of the Governor.

~~8.1~~ **9.** Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

~~9.1~~ **10.** Upon request, the Division of Human Resource Management will provide the home address of any employee maintained by the Division of Human Resource Management in the

employee's record of employment to the Division of Welfare and Supportive Services of the Department of Health and Human Services, the Department of Employment, Training and Rehabilitation and the Internal Revenue Service.

~~10.~~ *11.* The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission, the United States Equal Employment Opportunity Commission or a court.

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R068-19

Section 1: NAC 284.442 Length of probationary period.

This amendment, proposed by the Legislative Counsel Bureau, will update the language to include the term ‘trial period’ in relation to the duration of time required to be served depending on the grade of the job class of the position.

Section 2: NAC 284.444 Application of probationary period.

This amendment, proposed by the Division of Human Resource Management, will allow an appointing authority to waive a trial period in writing for a permanent employee who voluntarily transfers. In addition, the regulation has been reorganized for ease of administration.

Section 3: NAC 284.448 Time not counted toward completion of probationary period.

This amendment, proposed by the Division of Human Resource Management, incorporates ‘trial period’ into the regulation to clarify that the types of leave, status or service that do not count towards the completion of a probationary period also apply to the period required to be served by an employee who is promoted or, if required, voluntarily transfers.

Section 4: NAC 284.450 Adjustment of probationary period.

This amendment, proposed by the Division of Human Resource Management, incorporates ‘trial period’ into the provisions regarding adjustments to probationary periods so that they will also apply to the period required to be served by an employee is who is promoted or, if required, voluntarily transfers.

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R068-19

January 15, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1 and 4, NRS 284.065, 284.155 and 284.290; §2, NRS 284.065, 284.155, 284.290 and 284.300; §3, NRS 281.145, 284.065, 284.155, 284.290 and 284.345.

A REGULATION relating to the State Personnel System; revising provisions relating to the probationary period or trial period for employees in the State Personnel System; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires an employee in the State Personnel System to complete a fixed probationary period before receiving the status of a permanent employee. (NRS 284.290) Existing regulations prescribe: (1) the length of this probationary period; and (2) the manner in which requirements concerning this probationary period apply to employees. (NAC 284.442, 284.444) Existing regulations require a permanent employee to serve a trial period if the employee has been promoted to or voluntarily transfers to a vacant position. (NAC 284.108, 284.444) **Section 1** of this regulation specifies the duration of the trial period based on classes. **Section 2** of this regulation authorizes the appointing authority to waive the trial period required for a permanent employee who voluntarily transfers within the same class or from one class to another comparable class. **Section 2** requires this waiver to be in writing and provides that if such a waiver is granted, the employee is entitled to the status of appointment held at the time he or she transferred. **Section 2** also makes a non-substantive change to the order of the provisions relating to the application of a probationary period.

Existing regulations specify the manner in which certain types of leave, status or service count toward the completion of any probationary period for an employee in the State Personnel System. (NAC 284.448) **Section 3** of this regulation clarifies the manner in which such leave, status or service count toward the completion of a trial period for an employee in the State Personnel System.

Existing regulations prescribe criteria for the adjustment of a probationary period if a probationary employee: (1) has not, during his or her prescribed probationary period, worked the required number of months established for the probationary period; or (2) changes from working full-time to part-time or the reverse. (NAC 284.450) **Section 4** of this regulation applies the same rules to a permanent employee serving a trial period.

Section 1. NAC 284.442 is hereby amended to read as follows:

284.442 All classes at grade 20 or higher must be assigned a 1-year (full-time equivalent) probationary period ~~or~~ *or trial period*. All classes lower than grade 20 will be assigned a 6-month (full-time equivalent) probationary period ~~or~~ *or trial period*.

Sec. 2. NAC 284.444 is hereby amended to read as follows:

284.444 1. A probationary employee who transfers:

- (a) Within the same class must serve the remaining portion of the probationary period.
- (b) From one class to another class must serve a new probationary period.

2. A permanent employee must serve a trial period if he or she voluntarily transfers:

- (a) Within the same class; or
- (b) From one class to another class and such classes are comparable classes ~~or~~,

↪ unless the trial period is waived in writing by the appointing authority. If the appointing authority waives the trial period, the employee is entitled to the status of appointment held at the time he or she transferred.

3. ~~{An employee who transfers from the unclassified or nonclassified service to the classified service must serve}~~ *Promotion to a vacant position requires* a new probationary period ~~{. Except for those unclassified employees who transfer pursuant to subsection 2 of NAC 284.398, the status of a permanent employee may not be attained until the satisfactory completion of the probationary period.}~~ *or trial period. A promotion that results from a reclassification is governed by NAC 284.134 and 284.138.*

4. *Except as otherwise provided in subsection 11:*

- (a) *No probationary period will be required if a permanent employee is demoted.*
- (b) *A new probationary period will be required if a probationary employee is demoted.*

5. An employee who is reinstated must serve a new probationary period unless it is waived in writing by the appointing authority. If an appointing authority waives the probationary period, the status of the appointment of the employee is permanent.

~~15.1~~ 6. A probationary employee who is reappointed must serve a new probationary period.

~~16.1~~ 7. A permanent employee who is reappointed to a class:

(a) At a higher grade level must serve a trial period unless it is waived *in writing* by the appointing authority.

(b) At the same grade level or a lower grade level is not required to serve a trial period.

~~17.1~~ 8. An employee who is laid off, but who is reemployed within 1 year, must serve a new probationary period if reemployed in a different class or in a different department than that from which he or she was laid off, and the employee is subject to the provisions of subsection 8 of NAC 284.630.

~~18.1~~ 9. A person with a permanent disability arising from a work-related injury or occupational disease who is reemployed in a different class or option than his or her regular position must serve a new probationary period as required by NAC 284.6018.

~~19.1~~ 10. A person who is on a military leave of absence pursuant to NRS 284.359 is entitled to return to the status of appointment held at the time he or she commenced the military leave of absence. If the employee did not complete the probationary period, he or she will only be required to complete the remaining portion thereof. Upon successful completion of the probationary period, permanent status must be granted to the employee as of the date on which permanent status would have been granted if the employee had not taken a military leave of absence.

~~{10. Promotion to a vacant position requires a new probationary or trial period. Promotions which result from reclassification are governed by NAC 284.134 and 284.138.~~

~~—11. Except as otherwise provided in subsection 12:~~

~~—(a) No probationary period will be required if a permanent employee is demoted.~~

~~—(b) A new probationary period will be required if a probationary employee is demoted.~~

~~—12.} **11.** An employee who is restored to his or her former position or class pursuant to NAC 284.462 following a promotional appointment must serve the portion of the trial period which was remaining at the time of the promotion. No probationary period is required if, pursuant to subparagraph (1) of paragraph (c) of subsection 2 of NAC 284.462, an employee is placed in a position in a class equal to or lower than the class held by the employee immediately before the promotion.~~

12. An employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period. Except for those unclassified employees who transfer pursuant to subsection 2 of NAC 284.398, the status of a permanent employee may not be attained until the satisfactory completion of the probationary period.

Sec. 3. NAC 284.448 is hereby amended to read as follows:

284.448 The following types of leave or temporary status do not count toward the completion of any probationary period ~~{~~ *or trial period:*

1. Authorized military leave for active service, as set forth in subsection ~~{9} 10~~ of NAC 284.444.

2. Authorized military leave for training beyond the 15 paid working days authorized by NRS 281.145 during a 12-month period, as prescribed in NAC 284.5875.

3. Except as otherwise provided in NAC 284.580, any leave without pay and catastrophic leave, combined, in excess of 240 hours or, in the case of an exempt classified employee, 30 working days, in a year if the regular work schedule of the employee is 80 hours or less biweekly. If the regular work schedule of an employee is more than 80 hours biweekly, the employee must be allotted additional leave without pay and catastrophic leave in proportion to the number of hours his or her regular work schedule exceeds 80 hours biweekly. As used in this subsection, “year” means a period equal to 12 months of full-time equivalent service measured backward from the employee’s pay progression date.

4. Time which is served in a temporary position pursuant to NAC 284.414.

5. Any hours worked which exceed 40 in a week.

Sec. 4. NAC 284.450 is hereby amended to read as follows:

284.450 1. Except as otherwise provided in NAC 284.448, if a probationary employee *or a permanent employee serving a trial period* has not, during his or her prescribed probationary period ~~or~~ *or trial period*, worked the required number of months (full-time equivalent) which are established for the probationary period *or trial period* for the class, his or her probationary period *or trial period* must be extended until he or she has worked the required number of months.

2. An employee who changes from working full-time to part-time or the reverse will have his or her probationary period *or trial period* adjusted to equal the required number of months of service which are applicable to the probationary period *or trial period* of the class.

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R069-19

Section 1: NAC 284.892 Duties of employee who is referred to employee assistance program.

This amendment, proposed by the Division of Human Resource Management, will allow for an employee assistance program (EAP) provider to provide an agency with the documentation required as part of a mandatory referral due to a positive result on an alcohol and/or drug screening test. The amendment also allows that an employee may be subject to disciplinary action only if it is determined by the appointing authority that the failure to submit the required documentation was the fault of the employee.

Section 2: NAC 284.893 Return to work of employee who tests positive for alcohol or controlled substance while on duty.

This amendment, proposed by the Division of Human Resource Management, will allow for an EAP to provide documentation verifying that an employee is able to return to work and perform the essential functions of the position.

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R069-19

November 25, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-2, NRS 284.065, 284.155 and 284.407.

A REGULATION relating to state personnel; revising provisions concerning employees who test positive for the presence of alcohol or a controlled substance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, with certain exceptions, an employee who consumes or is under the influence of alcohol or drugs while on duty or possesses a controlled substance while on duty is subject to disciplinary action by an appointing authority. Except in certain circumstances, existing law requires a state agency to refer to an employee assistance program an employee who: (1) tests positive for the first time in a screening test; and (2) has committed no other acts for which the employee is subject to termination during the course of conduct giving rise to the screening test. (NRS 284.4062) Existing regulations require an employee who is referred to an employee assistance program to provide certain evidence and recommendations to the appointing authority and provides that an employee who fails to provide such evidence is subject to disciplinary action. (NAC 284.892) **Section 1** of this regulation authorizes an employee assistance program to provide the required evidence and recommendations to the appointing authority instead of the employee. **Section 1** further provides that an employee is only subject to disciplinary action for failure to provide the required evidence if the appointing authority determines that the failure to provide the required evidence is the fault of the employee. Existing regulations require an employee who is subject to disciplinary action but is not terminated to provide to the appointing authority certain documentation from a counselor which verifies that the employee is able to return to work. (NAC 284.893) **Section 2** of this regulation authorizes an employee assistance program to provide this documentation instead of the employee.

Section 1. NAC 284.892 is hereby amended to read as follows:

284.892 1. If an employee is referred to an employee assistance program as a result of a positive result on a screening test or pursuant to NAC 284.653, ~~he~~ *the employee* or ~~she~~ *the*

employee assistance program to which the employee was referred shall provide to the appointing authority:

(a) Evidence of ~~his or her~~ *the employee's* consultation with a counselor employed by ~~an~~ *the* employee assistance program; and

(b) Any recommendation of the counselor with respect to ~~his or her~~ *the employee's* rehabilitation,

↳ within 5 working days after the date of the initial consultation.

2. The employee *or the employee assistance program to which the employee was referred* shall provide to the appointing authority on a monthly basis all recommendations of the counselor with respect to ~~his or her~~ *the employee's* rehabilitation.

3. The employee *or the employee assistance program to which the employee was referred* shall provide to the appointing authority evidence of ~~his or her~~ *the employee's* completion of any rehabilitation program recommended by the counselor within 5 working days after completing the program.

4. An employee ~~who fails to provide evidence~~ *is subject to disciplinary action if:*

(a) *Evidence* of ~~his or her~~ *the employee's* consultation with a counselor or successful completion of a rehabilitation program is ~~subject to disciplinary action.~~ *not provided to the appointing authority in accordance with this section; and*

(b) *The appointing authority determines that the failure to provide the evidence is the fault of the employee.*

Sec. 2. NAC 284.893 is hereby amended to read as follows:

284.893 1. The appointing authority of an employee who tests positive for the presence of alcohol or a controlled substance while on duty and who, as a result, is subject to disciplinary

action pursuant to NAC 284.646 or 284.650 but is not terminated shall, before allowing the employee to return to work, require ~~the~~ :

(a) *The employee or the employee assistance program to which the employee was referred* to ~~the~~

~~—(a) Provide~~ *provide* to the appointing authority documentation from a counselor who is licensed or certified pursuant to chapter 641C of NRS or another health care provider who has training or experience in counseling persons with an alcohol or other substance use disorder which verifies that the employee is able to return to duty and perform the essential functions of his or her job.

(b) ~~Submit~~ *The employee to submit* to a screening test.

2. The employee is responsible for the cost of any:

(a) Counseling services the employee receives to verify that the employee is able to return to duty and perform the essential functions of his or her job and any documentation of those services; and

(b) Screening test,

↪ required pursuant to subsection 1.

3. An employee who fails or refuses to submit to a screening test required pursuant to subsection 1 is subject to disciplinary action, including, without limitation, termination, at the discretion of the employee's appointing authority.

EXPLANATION OF PROPOSED CHANGES
LCB File No. R124-19

Section 1: NAC 284.726 Access to confidential records.

This amendment, proposed by the Division of Human Resource Management, will require an appointing authority or designated representative to release to the Division of Human Resource Management any confidential records requested in the course of a sexual harassment or discrimination investigation.

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R124-19

January 16, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §1, NRS 284.065, 284.155, 284.335, 284.4066, 284.4068 and 284.407.

A REGULATION relating to state employees; revising provisions relating to the confidentiality of certain employee information; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing regulations: (1) provide that certain information concerning employees and applicants for employment is confidential; and (2) enumerate the persons that are entitled to have access to various categories of such information. (NAC 284.718, 284.726) Existing regulations require the Administrator of the Division of Human Resource Management of the Department of Administration or the appointing authority, or a designated representative, to authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Personnel Commission, the Committee on Catastrophic Leave, the Nevada Equal Rights Commission, the United States Equal Employment Opportunity Commission or a court. (NAC 284.726) This regulation additionally requires the appointing authority, or a designated representative, to authorize the release of any confidential records under his or her control which are requested by the Division for the purpose of conducting a sexual harassment or other discrimination investigation.

Section 1. NAC 284.726 is hereby amended to read as follows:

284.726 1. Except as otherwise provided in this subsection and subsections 2 and 10, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph (2) of paragraph (a) of

subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in subsection 10 and NRS 284.4068, access to information concerning the results of an applicant's screening test which indicate the presence of a controlled substance is limited to an appointing authority or his or her designated representative and the Administrator or his or her designated representative.

3. Except as otherwise provided in ~~subsection~~ *subsections* 10 ~~and~~ *11*, access to an employee's record of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

- (a) The employee.
- (b) The employee's representative when a signed authorization from the employee is presented or is in his or her record of employment.
- (c) An appointing authority or his or her designated representative.
- (d) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (e) The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.
- (f) Persons who are involved in processing records for the transaction of business within and between state agencies.
- (g) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

4. The portion of an employee's record of employment that concerns the health, medical condition or disability of the employee or a member of his or her immediate family must be kept in a locked cabinet, separate from any other portion of the employee's record of employment.

5. Except as otherwise provided in subsection 10, access to any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct is limited to:

- (a) The employee.
- (b) The Administrator or a designated representative of the Administrator.
- (c) The appointing authority or a designated representative of the agency with which the employee is employed.
- (d) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (e) The Governor or a designated representative of the Governor.

6. Except as otherwise provided in ~~subsection~~ *subsections* 10 ~~and~~ *11*, access to any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct is limited to:

- (a) The employee.
- (b) The appointing authority or a designated representative of the agency by which the employee is employed.
- (c) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (d) The Governor or a designated representative of the Governor.

7. Except as otherwise provided in ~~subsection~~ *subsections* 10 ~~and~~ *11*, access to any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387 is limited to:

- (a) The employee who is the subject of the internal administrative investigation.
- (b) The appointing authority or a designated representative of the agency by which the employee who is the subject of the internal administrative investigation is employed.
- (c) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (d) The Governor or a designated representative of the Governor.

8. Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

9. Upon request, the Division of Human Resource Management will provide the home address of any employee maintained by the Division of Human Resource Management in the employee's record of employment to the Division of Welfare and Supportive Services of the Department of Health and Human Services, the Department of Employment, Training and Rehabilitation and the Internal Revenue Service.

10. The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission, the United States Equal Employment Opportunity Commission or a court.

11. The appointing authority or a designated representative of the agency with which the employee is employed shall authorize the release of any confidential records under his or her control which are requested by the Division of Human Resource Management for the purpose of conducting a sexual harassment or other discrimination investigation.

Steve Sisolak
Governor



Laura Freed
Director

Peter Long
Administrator

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Regulation Small Business Impact Statement

Section 15 of Article 15 of the Nevada Constitution requires the Legislature to provide for a State merit system governing the employment of employees in the Executive Branch of State government and in 1969 the Legislature provided for such in NRS 284. Additionally, NRS 284.013 provides limitations to which employees of the Executive Branch are covered by NRS 284. NRS 284.065 authorizes the Personnel Commission to adopt regulations to carry out the provisions of this chapter.

Due to the limitations of the Nevada State Constitution and NRS 284, the Division of Human Resource Management staff has determined that the adoption of this proposed regulation does not affect small businesses, impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business. These regulations only impact employees moving into the nonclassified, classified, or unclassified service of the Executive Branch.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small business and that the information contained in this statement was prepared properly and is accurate.

Peter Long

Peter Long, Administrator

January 28, 2020

Date