

**SUMMARY OF THE WORKSHOP TO SOLICIT COMMENTS ON THE PROPOSED
REGULATIONS OF THE STATE DEPARTMENT OF PERSONNEL**

December 20, 2010

CARSON CITY, NEVADA
And via Video Conferencing in
LAS VEGAS, NEVADA

Attendees in Carson City:

Shelley Blotter, Division Administrator, Department of Personnel
Mark Evans, Supervisory Personnel Analyst, Department of Personnel
Kimberley King, Personnel Officer III, Department of Transportation
Denise Woo-Seymour, Personnel Analyst II, Department of Personnel
Carrie Hughes, Personnel Analyst, Department of Personnel
Hazel Brandon, Personnel Officer I, Department of Motor Vehicles
Salli Hebert, Personnel Analyst II, Department of Cultural Affairs
Norma Mallett, Personnel Officer III, Department of Health & Human Services-MHDS
Valerie Kneefel, Executive Assistant, Department of Personnel
Bob Leedom, Administrative Coordinator, Gaming Control Board
Alys Dobel, Personnel Officer, DMV

Attendees in Las Vegas:

Brian Boughter, Personnel Officer, Department of Corrections
J. C. Scarborough, Director-Administrative Operations, College of Southern Nevada
Willette Gerald, Personnel Officer, Department of Motor Vehicle
Robert Burd, Personnel Analyst, Department of Personnel
Larry Hamilton, Chief Human Resources Officer, UNLV

Shelley Blotter: opened the meeting at 1:30 p.m. and welcomed everyone. She asked everyone in attendance to sign the sign in sheet and stated the purpose of the workshop was to solicit comments from affected parties with regard to a newly proposed temporary regulation. These regulations will be considered for adoption by the Personnel Commission at their February 18, 2011 meeting.

If the regulations are adopted, they will go into effect when filed with the Secretary of State which unless requested for review by the Legislative Commission will be approximately 35 days after their adoption by the Personnel Commission. They will remain in effect until November 1, 2011 or they may be adopted as permanent regulations anytime after July 1, 2011.

Mark Evans, Supervisory Personnel Analyst, Nevada State Personnel will be providing a brief overview of the proposed changes. Any comments received will be summarized for the Personnel Commission and provided to them prior to their meeting for consideration.

Mark Evans: He reviewed Items A through C, which made changes to NAC 284.470, 284.478 and 284.678 regarding reviews and grievances related to performance evaluations. He explained the changes as a group.

284.470 is being amended to indicate that the reviewing officer's recommendations regarding a performance evaluation are advisory and the final decision on the performance evaluation rests with the appointing authority. In the past, there has been some confusion over who has ultimate authority over the performance evaluation, and this change makes the regulations consistent with NRS 284.340 which states that reports on performance are a "duty" of the appointing authority. Changing the reviewing officer's role to advisory makes it consistent with the role of pre-disciplinary hearing officers. The change also allows the appointing authority ten days to render a decision. While this potentially could result in it taking longer to resolve the issue, in most cases time should be saved because steps could be bypassed and the agency would have already done much of the work required to respond to the grievance.

284.478 is being changed to reflect that a grievance concerning a performance appraisal is about the appraisal itself and not about the decision of the reviewing officer. This makes the regulation consistent with the changes to 284.470.

Finally, 284.678 is also being amended to reflect the changes to 284.470 and add a new provision. 284.678 currently stipulates that individuals who have been involved in the writing or review of a performance evaluation can be bypassed in the grievance process and the grievance submitted at the next appropriate level. With the new changes, this could result in grievances regarding performance evaluations going directly to the Employee-Management Committee without an agency response. We are adding language that will require all grievances regarding performance evaluations to go to the agency director. This will allow the agency a final opportunity to resolve the grievance or uphold the evaluation. It will also give the agency an opportunity to clarify its response to the employee and the agency.

Shelley Blotter: Read into record written comments on the regulation changes.

The first comment was from Kris Ross from the Department of Wildlife. She said "the discussions/documentation that either the reviewing officer or appointing authority have with employee [should be shared] with the immediate supervisor (i.e. the one who did the evaluation)".

The second comment was from Karen Belleni, Personnel Officer from DETR. She said "The only recommendation I would make is that the regulations read *Appointing Authority/designee* because often times the Appointing Authority is unavailable due to business travel."

The third comment was from Tom Donaldson, representing the Nevada Corrections Association and the Nevada Department of Public Safety Association.

He said "I would suggest that the term "report on performance" be used consistently rather than using "evaluation" or "performance evaluation". Also, regarding the proposed change to NAC 284.678(4), rather than adding subsection (c), I would suggest deleting subsections (a) and (b) and simply stating, "A grievance filed pursuant to subsection 3 must be filed with the highest administrator in the department for a response before being submitted to the Employee-Management Committee." That appears to be consistent with the Department's explanation of the proposed change. Finally, to eliminate further confusion, I would propose changing the deadline for filing a grievance regarding a contested report on performance from ten (10) working days to twenty (20) working days, which, of course, is the filing deadline for all other grievances."

Kimberley King: Human Resource Manager, Department of Transportation stated that the recommended 20 day deadline for filing a grievance regarding a contested report on performance would not work for their Department.

Mark Evans: Indicated that the current regulation allows for 20 days because the employee has 10 days to look at the evaluation and the reviewing officer has 10 days to review it. The change adds an additional 10 days, but the agency could manage this time.

Shelley Blotter: Asked if there were any comments from the South.

Brian Boughter: From the Department of Corrections asked for clarification on the four step process and wanted to know if the grievance process was going to be adjusted at all to allow for the changes to the performance evaluation review process.

Mark Evans: Answered that the regulations currently allow for anyone who is involved in either writing the evaluation or serving as the reviewing officer to be bypassed in the grievance process if they are the person who would normally receive the grievance. This regulation change doesn't change that, but it does require that there is always a response from the Agency Director.

Brian Boughter: What would the standard process be for performance evaluation grievances? Would it normally start at a step three or does it depend on who did the initial review? Does the employee have the ability to move it immediately to a step three?

Mark Evans: Yes a lot of times we are seeing evaluation grievances go directly to step three. In larger size agencies they may start at a level two depending on who served as the reviewing officer.

Shelley Blotter: Went through the NAC's one more time and asked for any comments. Seeing none she closed the meeting.

REGULATION CHANGES PROPOSED FOR TEMPORARY ADOPTION

Explanation of Proposed Change: This regulation change, proposed by the Department of Personnel, adds language stating that the appointing authority has the final decision regarding reviews of contested reports on performance. This change will eliminate confusion over who has final authority for the content of performance evaluations and will make the regulation consistent with NRS 284.340, which states that reports on performance are the responsibility of the appointing authority.

The reviewing officer will make recommendations on whether to uphold or modify the performance evaluation and the appointing authority will have 10 working days to render a final decision on the recommendations. New language states that a grievance about an evaluation relates to the content of the performance evaluation and not the decision of the reviewing officer. Additionally, the change also requires grievances regarding performance evaluations to be submitted to the highest administrator of the department before being filed with the Employee-Management Committee.

NAC 284.470 is hereby amended to read as follows:

NAC 284.470 Preparation, filing, contents, discussion and distribution of reports; power

and duties of employees; review; adjustment of grievances. (NRS 284.065, 284.155, 284.340, 284.384)

1. A person shall not complete a report on performance unless he has completed the training provided or approved by the Director concerning the preparation of a report on performance.
2. A report on performance must be prepared on the form prescribed by the Department of Personnel.
3. A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee. If a report on performance is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard.
4. If any information that would have affected the rating of performance of an employee during a period of evaluation becomes available after the date on which the report on performance of the employee is filed for that period, the information may be included in the report on performance for the current period of evaluation and taken into consideration in determining the rating of performance for the current period of evaluation.
5. When a report on performance is given which reports the overall rating of performance of an employee as substandard:
 - (a) The report must contain a written notice that such reports affect both merit pay increases and the employee's eligibility for longevity pay; and
 - (b) An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard or disciplinary action is taken against the employee.
6. Except as otherwise provided in subsection 7, the preparation of each report on performance must include a discussion between the employee and his immediate supervisor. Within 10 working days after the discussion takes place:
 - (a) The employee must complete and sign the appropriate section on the report on performance and return the report to his supervisor for forwarding to the reviewing officer or appointing authority.
 - (b) If the employee [disagrees with] ***contests the content of*** the report on performance and requests a review, he must respond to the report in writing, identify the specific points of disagreement, if such specificity is provided, and return the response to his supervisor.
 - (c) The reviewing officer shall respond [to the employee] in writing on a form prescribed by the Department of Personnel within 10 working days after the supervisor receives the request ***and the employee shall receive a copy. If the reviewing officer is not the appointing authority, he or she shall submit the form with recommendations to uphold or modify the evaluation to the appointing authority. The appointing authority shall review the reviewing officer's recommendations regarding the contested evaluation and shall render a final decision to the employee within 10 working days after receiving the recommendation. The appointing authority has final decision-making authority in the review process.***
7. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 6 because of an extended absence, the immediate supervisor of the employee shall cause the report to be mailed to the employee. Within 10 working days after the date on which the employee receives the report:
 - (a) The employee must complete and sign the appropriate section on the report on performance and mail the report to his supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee [disagrees with] ***contests the content of*** the report on performance and requests a review, he must respond to the report in writing, identify any specific point of disagreement, if the report provides such specificity, and mail his response to his supervisor.

(c) The reviewing officer shall respond [to the employee] in writing on a form prescribed by the Department of Personnel within 10 working days after the supervisor receives the request ***and the employee shall receive a copy. If the reviewing officer is not the appointing authority, he or she shall submit the form with recommendations to uphold or modify the evaluation to the appointing authority. The appointing authority shall review the reviewing officer's recommendations regarding the contested evaluation and shall render a final decision to the employee within 10 working days after receiving the recommendation. The appointing authority has final decision-making authority in the review process.*** For the purposes of this paragraph, a report on performance or request for review is deemed to have been received on the third day after the date on which the report or request is postmarked.

8. A copy of each report on performance and, if applicable, any written response to such a report, must be provided to the employee and filed with the Department of Personnel.

9. If any written comments are added to a report on performance after a copy of the report has been provided to the employee pursuant to subsection 8:

(a) A copy of the revised report which includes the written comments must be provided to the employee; and

(b) The employee may respond, in writing, to the additional comments in the revised report not later than 10 working days after he receives a copy of the revised report and submit the response to the Department of Personnel for inclusion in his file of employment.

10. An employee and his appointing authority may agree in writing to extend one or more of the periods prescribed in subsection 6 or 7.

11. If a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

[Personnel Div., Rule IX § A, eff. 8-11-73; A 12-28-75]—(NAC A by Dep't of Personnel, 10-26-84; 9-17-87; 10-18-89; 11-16-95; R031-98, 4-17-98; A by Personnel Comm'n by R065-98, 7-24-98; A by Dep't of Personnel by R197-99, 1-26-2000; R147-01, 1-22-2002; A by Personnel Comm'n by R069-02, 8-14-2002; R096-03, 10-30-2003; R144-05, 12-29-2005; R174-08, 9-29-2008)

NAC 284.478 is hereby amended to read as follows:

NAC 284.478 Appeal of [decision of reviewing officer] a contested report on performance. (NRS 284.065, 284.155, 284.384) Upon the completion of the review process, [A] a permanent employee may appeal [a decision of a reviewing officer pursuant to NAC 284.470] a *contested performance evaluation*** through the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.**

[Personnel Div., Rule IX § D, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-18-89; R197-99, 1-26-2000)

NAC 284.678 is hereby amended to read as follows:

NAC 284.678 Submission, form and contents of grievance; informal discussions. (NRS 284.065, 284.155, 284.384)

1. Except as otherwise provided in subsections 3 and 4 and NAC 284.692, an employee who feels aggrieved and wishes to file a formal grievance must submit his grievance in writing to his immediate supervisor on the official form, or in a letter if the official form is not available, within 20 working days after the date of the origin of the grievance or the date the employee learns of the problem. The parties should make every effort to resolve the grievance through informal discussions within these 20 working days.

2. If the employee submits a letter, it must include:

- (a) His name;
- (b) His most recent date of hire;
- (c) His position;
- (d) His department, division and section;
- (e) His mailing address;
- (f) His business telephone number;
- (g) A statement that he is filing a formal grievance;
- (h) The date, time and place of the event or the date the employee learns of the event leading to the grievance;
- (i) A concise statement of his grievance;
- (j) A detailed description of his grievance, including the names of other persons involved in the event, if any;
- (k) A proposed solution of his grievance;
- (l) His signature; and
- (m) The date he signed the statement.

3. Except as otherwise provided in NAC 284.692, if a grievance relates to [a decision of a reviewing officer about] a *contested* performance evaluation, an employee must file a grievance that identifies the specific points of disagreement, if such specificity is provided, not later than 10 working days after the date the employee receives [the] *a* decision [of the reviewing officer] *regarding the review from the appointing authority*. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of a reviewing officer to respond to a request for a review within the time required by NAC 284.470, an employee must file a grievance not later than 10 working days after the date on which the time for such a response expired.

4. A grievance filed pursuant to subsection 3 must be filed with:

- (a) The person who is at the next appropriate level of the grievance process; or
- (b) If the person who is at the next appropriate level of the grievance process is the reviewing officer or other person who prepared or reviewed the performance evaluation, the person who is at the next appropriate level of the grievance process [who did not prepare or review the performance evaluation].

(c) Grievances regarding performance evaluations must be filed with the highest administrator in the department for a response before being submitted to the Employee-Management Committee.

[Personnel Div., Rule XV § A part subsec. 1, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 10-18-89; 3-23-94; R197-99, 1-26-2000; A by Personnel Comm'n by R023-05, 10-31-2005; R191-09, 4-20-10)