

**NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED PERMANENT REGULATIONS**

The Division of Human Resource Management, 100 N. Stewart Street, Suite 200, Carson City, Nevada, telephone number (775) 684-0148, is proposing the permanent adoption and amendment of regulations pertaining to Chapter 284 of Nevada Administrative Code. A workshop has been set for 9:00 a.m. on Friday, June 15, 2018, at the Legislative Counsel Bureau, 401 S. Carson Street, Room 2135, Carson City, Nevada and by video conference at the Grant Sawyer Building, 555 E. Washington Avenue, Room 4412E, Las Vegas, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following topics that may be addressed in the proposed regulations:

<u>NAC #</u>	<u>Regulation Leadline</u>
284.576	Catastrophic leave: Use and administration; appeal of denial.
284.468	Standards for performance of work.
284.718	Confidential records.
284.726	Access to confidential records.
284.374	Active lists: Removal and reactivation of names; no requirement or refusal to consider certain persons.
284.058	“Eligible person” defined.
284.108	“Trial period” defined.
284.444	Application of probationary period.
NEW	Restoration of permanent employee who voluntarily transfers and either fails to complete trial period in the new position or voluntarily chooses to revert to his or her prior position.
284.360	Certification and provision of certain lists by Division; certification of eligible persons on ranked or unranked lists or waiver of lists.
284.172	Rate of pay: Effect of promotion.
284.204	Adjustment of steps within same grade: Conditions for approval; request; effective date; revocation.
284.437	Underfilling of positions.

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the Division of Human Resource Management at 100 N. Stewart Street, Suite 200, Carson City, Nevada, telephone number (775) 684-0148, or 555 E. Washington Avenue, Suite 1400, Las Vegas,

Nevada, telephone number (702) 486-0034. A reasonable fee for copying may be charged. The agency's Small Business Impact Statement is attached.

This Notice of Workshop to Solicit Comments on Proposed Permanent Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

CARSON CITY

Blasdel Building, 209 E. Musser Street
NV State Library and Archives, 100 N. Stewart Street
Legislative Counsel Bureau (LCB), 401 S. Carson Street

LAS VEGAS

Grant Sawyer State Office Building,
555 E. Washington Avenue

LCB website: www.leg.state.nv.us

Division of Human Resource Management

website: www.hr.nv.gov

Nevada Public Notice website: www.notice.nv.gov

In addition, this Notice of Workshop to Solicit Comments on Proposed Permanent Regulations has been sent to:

ALL STATE AGENCIES

ALL NEVADA COUNTY PUBLIC LIBRARIES

NOTE: We are pleased to make reasonable accommodations for individuals with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Division of Human Resource Management, in writing, at 100 N. Stewart Street, Suite 200, Carson City, Nevada 89701-4204 or call Nora Johnson at (775) 684-0135, no later than five working days before the meeting.

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613, in part, to make it unlawful for an employer to discharge, discipline, or discriminate against in any manner or deny promotion, or threaten such action, any employee who has requested accommodations, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against them at the employee’s workplace.

This amendment, proposed by the Division of Human Resource Management, requires the approval of catastrophic leave to an employee who is eligible for catastrophic leave and is not the alleged perpetrator, who has been employed for at least 90 calendar days, and who is a victim of domestic violence. The regulation also requires the approval of catastrophic leave to an employee who is eligible for catastrophic leave and has been employed for 90 calendar days when his or her family or household member who meets the definition of “immediate family” pursuant to NAC 284.562 is a victim of domestic violence. Approval of catastrophic leave would be conditioned upon the employee otherwise meeting the requirements for catastrophic leave, and an appointing authority may require that an employee submit substantiating information proving that the immediate family member requires the employee’s attendance. The maximum allowable amount of leave is 160 hours in a 12-month period, including any combination of applicable leave types (e.g., annual, sick, compensatory time, leave without pay). The 12-month period begins at the time the domestic violence occurs.

The removal of subsections 8 and 9 will ease the administrative burden placed upon agencies to submit reports related to catastrophic leave. The donation and use of catastrophic leave is recorded in the payroll system. Additionally, the hourly rate of employees that have received and donated leave is also recorded in the payroll system. This change will no longer require agencies to report on the nature of the disability nor the agency’s catastrophic leave bank.

NAC 284.576 Catastrophic leave: Use and administration; appeal of denial. (NRS 284.065, 284.155, 284.3621, 284.3626)

1. An account for catastrophic leave may be established for an employee when he or she or a member of his or her immediate family experiences a catastrophe and the employee has used all of his or her accrued leave.

2. Pursuant to subsection 1, an appointing authority shall approve catastrophic leave, upon request, to an employee who is eligible to receive catastrophic leave pursuant to NRS 284.362 to 284.3629, inclusive, and NAC 284.575, and is a victim of an act which constitutes domestic violence or whose family member who meets the definition of immediate family member pursuant to NAC 284.562 is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator if:

(a) The employee has been employed in public service for at least 90 days; and

(b) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence occurred.

↪ The appointing authority may require substantiating evidence that the immediate family member requires the employee’s attendance before the approval of catastrophic leave.

~~2.~~ 3. An employee who is affected by a catastrophe and has used or is about to use all of his or her leave may request, on the appropriate form, the transfer of leave to an account for catastrophic leave for his or her personal use after the balance of all of his or her leave has been used. Such a request must be accompanied by a statement from a physician on a form provided by

the Committee on Catastrophic Leave created pursuant to NRS 284.3627 which substantiates the necessity of the leave.

~~[3.]~~ 4. When a member of the immediate family of an employee is affected by a catastrophe, the appointing authority of the employee may require substantiating evidence that the member of the immediate family requires the employee's attendance before approving the transfer of leave to an account for catastrophic leave for use by the employee. Such evidence may include a statement by an attending physician regarding the status of the catastrophe.

~~[4.]~~ 5. The appointing authority shall approve or deny a request for catastrophic leave, taking into consideration the nature of the catastrophe and the expected duration of the leave. The decision of the appointing authority may be appealed to the Committee on Catastrophic Leave pursuant to NRS 284.3629.

~~[5.]~~ 6. An employee who wishes to donate hours to an account for catastrophic leave for use by another employee who has been approved to receive the donated hours shall notify his or her appointing authority on the appropriate form of his or her intent to donate the leave. The appointing authority of the employee donating the leave shall submit a copy of the form to the appointing authority of the employee receiving the leave. The appointing authority of the recipient shall use the notice to effect a transfer of leave from the account of the donor to the account of the recipient when the recipient needs to use those hours. If more than one notice of intent to donate leave is received by the recipient's appointing authority on behalf of the recipient, the notices must be maintained in chronological order and used, one at a time as needed, according to the date in which they were received.

~~[6.]~~ 7. A donor and his or her appointing authority must be notified on the appropriate form when the donated leave specifically designated for use by another employee has been used or if the amount of leave donated is in excess of the amount approved for use by the recipient. Except as otherwise provided in this subsection, excess leave must be restored to the account of the donor within 30 working days after the last day on which the recipient was eligible to receive catastrophic leave. If the donor is separated from state service before the excess leave is restored pursuant to this subsection, the excess leave must be transferred to the account for catastrophic leave of the appointing authority of the donor when the donation of leave was made.

~~[7. The appointing authority shall provide the following information on a calendar year basis or as requested by the Administrator:~~

~~(a) Each employee under its authority, identified by a number assigned in accordance with subsection 8, donating or using catastrophic leave, his or her grade and rate of pay and the number of hours and dollar value of the leave donated, excluding any excess leave restored to the account of a donor, pursuant to subsection 6, or used by the employee; and~~

~~(b) The period and nature of the disability for each employee using catastrophic leave.~~

~~8. The appointing authority shall assign numbers to employees for the purposes of subsection 7 in a sequential order and in such a manner that ensures the confidentiality of the identity of those employees.]~~

~~[9.]~~ 8. Hours donated to an account for catastrophic leave must be donated in increments of 8 hours.

~~[10.]~~ 9. As used in this section, "immediate family" has the meaning ascribed to it in NAC 284.562.

(Added to NAC by Dep't of Personnel, eff. 10-18-89; A 8-14-90; 3-23-94; R146-01, 1-18-2002; A by Personnel Comm'n by R145-05, 12-29-2005; R136-12, 10-4-2013)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, revises the terms previously used to define “job elements,” to include the new terms to be used in the revised process to complete reports on performance of State of Nevada classified employees.

NAC 284.468 Standards for performance of work. (NRS 284.065, 284.155, 284.335)

1. A standard for the performance of work is a written statement prepared on a form prescribed by the Division of Human Resource Management of the results or behavior, or both, expected of an employee when the job elements of the employee’s position are satisfactorily performed under existing working conditions. Standards are required for all classified positions.

2. The appointing authority is responsible for ensuring that each position has standards and that each employee is evaluated using those standards. The supervisor has responsibility for establishing the initial standards, but the employee must be given the opportunity to provide comments when the standards for his or her position are revised.

3. The appointing authority has final approval of the standards for a position.

4. Standards must be reviewed annually and amended when appropriate.

5. Each employee must be provided with a copy of the standards for his or her position.

6. As used in this section, “job elements” means the ~~[principal assignments, job tasks, goals, objectives, responsibilities or related factors, or any combination thereof.]~~ *quality of work, quantity of work, work habits, relationships with people, taking action independently, meeting work commitments, and analyzing situations and materials. This term also includes supervising the work of others and personnel management practices when assigned.*

(Added to NAC by Dep’t of Personnel, eff. 10-26-84; A 8-28-85; A by Personnel Comm’n by R038-03 & R068-03, 10-30-2003)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, clarifies that information either held by the Division or an agency is not public record and will not be released unless specifically allowed in NAC 284.726.

Additionally, this amendment adds grievance, except in certain circumstances, health and workers’ compensation related documents to the list of items in an employee’s record of employment that are considered confidential.

NAC 284.718 Confidential records. (NRS 284.065, 284.155, 284.355, 284.407)

1. The following types of information, which are maintained by the Division of Human Resource Management or ~~[the personnel office of]~~ an agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished ~~[to the Division of Human Resource Management]~~ on the condition that the source remain confidential;

(b) Any document which is used ~~[by the Division of Human Resource Management or an agency]~~ in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any document which is used by the Division of Human Resource Management or an agency in the process of interviewing an applicant, including, without limitation, a document

containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by an employee assistance program offered by the State of Nevada;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person's application or relating to his or her status as an eligible person; and

(j) Information in the ~~file or~~ record of employment of a current or former employee which relates to the employee's:

(1) Performance;

(2) Conduct, including any disciplinary actions taken against the employee;

(3) Usage or balance of his or her annual leave and sick leave;

(4) Employee grievances and related documents, unless the grievance is heard by the Employee-Management Committee;

(5) Health, medical condition or disability of an employee or a member of his or her immediate family;

(6) Workers' compensation claims and related documents;

~~(4)~~ (7) Race, ethnic identity or affiliation, sex, genetic information, disability or date of birth;

~~(5)~~ (8) Home telephone number; or

~~(6)~~ (9) Social security number.

2. If the employee has requested that his or her personal mailing address be listed as confidential, the employee's ~~file~~ *record of employment* must be so designated and list his or her business address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

(a) The employee dies; or

(b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his or her immediate family are confidential.

5. 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~~ are confidential.

6. Any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct are confidential.

7. 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 are confidential.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 7-21-89; 7-6-92; 11-12-93; R058-01, 9-6-2001; A by Personnel Comm'n by R068-03, 10-30-

2003; R182-03, 1-27-2004; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009; R055-10, 6-30-2010; R137-12 & R045-13, 10-23-2013)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, broadens access to confidential records among State agencies. As the State of Nevada is one employer under State and federal employment laws, this will allow ease in sharing information, including but not limited to, information related to health and disability information, leave balances, and performance. Agencies will still be able to limit access to this information using security protocols built into the human resource management data systems. Because a variety of information that may or may not be considered as the employee “file,” the terminology of the information is being changed to “record of employment.” This information could include employee grievances and related documentation, health information and/or workers’ compensation information, as is being proposed in an amendment to NAC 284.718.

NAC 284.726 Access to confidential records. (NRS 284.065, 284.155, 284.335, 284.4066, 284.4068, 284.407)

1. Except as otherwise provided in this subsection and subsection 2, 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 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 ~~the~~ *an* appointing authority or his or her designated representative and the Administrator or his or her designated representative.

3. ~~Except as otherwise provided in subsections 4 and 5, access~~ *Access* to an employee’s ~~file~~ *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 ~~file~~.

(c) ~~The~~ *An* appointing authority or *his or her* designated representative ~~of the agency by which the employee is employed~~.

(d) ~~The Administrator or a designated representative.~~

~~(e) An appointing authority, or a designated representative, who is considering the employee for employment in the agency.~~

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

~~(g) (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.

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

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

~~[4.—Information concerning the health, medical condition or disability of an employee or a member of his or her immediate family must be kept separate from the employee’s file in a locked~~

~~cabinet. Except as otherwise provided in subsection 10, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.~~

~~—5. Except as otherwise provided in subsection 10, access to information concerning the employee's usage or balance of annual leave and sick leave is limited to the employee, the employee's immediate supervisor and the employee's appointing authority or the designated representative of the appointing authority.]~~

~~[6.]~~ 4. Except as otherwise provided in subsection ~~[10]~~ 8, 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.

~~[7.]~~ 5. Except as otherwise provided in subsection ~~[10]~~ 8, 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.

~~[8.]~~ 6. 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.]~~ 7. Upon request, the Division of Human Resource Management will provide the personal mailing address of any employee on file with the Division of Human Resource Management to the State Controller's Office and the Internal Revenue Service.

~~[10.]~~ 8. 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 or a court.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 9-30-88; 7-21-89; 8-14-90; 7-6-92; 3-23-94; R042-99, 9-27-99; R082-00, 8-2-2000; R058-01, 9-6-2001; R147-01, 1-22-2002; A by Personnel Comm'n by R068-03, 10-30-2003; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009, R059-10, 10-15-2010; R137-12 & R045-13, 10-23-2013; R044-15; 12-21-2015)

<p>Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, clarifies that the 12-month period to refuse to consider an eligible person who has been subject to discipline includes decisions by a hearing officer, or decisions by the court on a judicial review, or a decision by the Supreme Court of Nevada.</p>
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NAC 284.374 Active lists: Removal and reactivation of names; no requirement or refusal to consider certain persons. (NRS 284.065, 284.155, 284.250, 284.295)

1. The names of eligible persons will be removed from the active lists for any of the following causes:

(a) Appointment after certification to fill a full-time permanent position in the class for which the examination was given.

(b) Expiration of the term of eligibility.

(c) Separation of a person who is eligible for promotion from the state service.

(d) Failure by an eligible person to respond within the required time to an inquiry of availability.

(e) A statement by the eligible person that he or she is not willing to accept any type of appointment from the eligible list.

(f) Any of the causes listed in NRS 284.240 pursuant to which the Administrator may refuse to examine or certify an eligible person or, if the employee has been laid off, reemployment pursuant to subsection 7 of NAC 284.630.

2. An appointing authority need not consider an eligible person more than one time from a recruitment. Consideration of an applicant for other than full-time permanent positions must not be counted for the purposes of this subsection.

3. An appointing authority need not consider an otherwise eligible person who cannot perform the essential functions of the position with or without reasonable accommodation.

4. An appointing authority may refuse to consider an eligible person who has been subject to a suspension, demotion or termination as a result of an upheld or uncontested disciplinary action in the preceding 12 months. The 12-month period begins on the effective date of the uncontested action or, if it is contested, on the date the hearing officer *or any reviewing court of this State* issues a final decision upholding a suspension, demotion or termination. If an employee is removed from consideration pursuant to this subsection, the appointing authority must notify the employee of that fact in writing before interviewing the next candidate or making its selection. The employee has 3 working days after being notified that he or she has been removed from consideration pursuant to this subsection to notify the appointing authority of any discrepancy in the information in his or her personnel file which led to the removal of the employee from consideration. The appointing authority may not make its selection:

(a) If the employee does not notify the appointing authority of a discrepancy, until after the end of the period pursuant to which the employee may notify the appointing authority of a discrepancy; or

(b) If the employee notifies the appointing authority of a discrepancy, until after the appointing authority determines whether the removal of the employee from consideration pursuant to this subsection was appropriate.

5. An appointing authority shall refuse to consider an eligible person whose appointment to a position will violate NRS 281.210, NAC 284.375 or a policy approved by the Commission pursuant to NAC 284.375.

6. An eligible person whose name has been removed from an active list may request that his or her name be reactivated by stating his or her reasons for the request. If the Division of Human Resource Management determines that the reasons are justified, and the person's term of eligibility has not otherwise expired, his or her name may be reactivated.

[Personnel Div., Rule V § E, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89; 12-26-91; 7-1-94; 8-16-96, eff. 10-1-96; A by Personnel Comm'n by R069-02, 8-14-2002; R182-03, 1-27-2004; R143-05 & R144-05, 12-29-2005; R023-13, 10-23-2013; R036-17, 12-19-2017)

Explanation of Proposed Change: This amendment, proposed by the Legislative Counsel Bureau, will include lists that do not require competition into the types of lists for which an individual could be considered an “eligible person.”

NAC 284.058 “Eligible person” defined. (NRS 284.065) “Eligible person” means any person who ~~[applies, is eligible, competes and successfully passes all phases of an examination and is placed on an appropriate eligible list.]~~ *meets the required minimum qualifications and:*

1. Applies, successfully passes all phases of an examination, when required, and is placed on the appropriate eligible list; or

2. Is eligible to be placed on a list pursuant to subparagraphs (a), (b), (c) or (d) of subsection 1 of NAC 284.358.

[Personnel Div., Rule I § D subsec. 12, eff. 8-11-73]

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, expands the definition of “trial status” to include the 6-month or 1-year period an employee who voluntarily transfers must serve.

NAC 284.108 “Trial period” defined. (NRS 284.065) “Trial period” means the 6-month or 1-year probationary period served by a permanent employee who has been promoted *or voluntarily transfers* to a vacant position.

(Added to NAC by Dep’t of Personnel, eff. 10-26-84; A 8-1-91; 12-26-91)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will require a permanent employee who voluntarily transfers to serve a trial period.

NAC 284.444 Application of probationary period. (NRS 284.065, 284.155, 284.290, 284.300)

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 who voluntarily transfers to the same class or a comparable class must serve a trial period.

~~[2.]~~ *3.* 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.

~~[3.]~~ *4.* 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.

~~[4.]~~ *5.* A probationary employee who is reappointed must serve a new probationary period.

~~[5.]~~ *6.* A permanent employee who is reappointed to a class:

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

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

~~6.~~ **7.** 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.

~~7.~~ **8.** 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.

~~8.~~ **9.** 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.

~~9.~~ **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.

~~10.~~ **11.** Except as otherwise provided in subsection ~~11.~~ **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.

~~11.~~ **12.** 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.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 7-21-89; 8-1-91; 12-26-91; 3-1-96; A by Personnel Comm'n by R142-05 & R143-05, 12-29-2005; R141-07, 1-30-2008; R102-15, 12-21-2015, eff. 1-1-2016)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will lay out the options for an employee if he or she voluntarily transfers to a position and either fails to complete the trial period in the position or voluntarily chooses to revert to the position from which they transferred.

If a permanent employee voluntarily transfers and fails to complete the trial period in the new position, or chooses to revert, he or she must be restored to the position from which the employee transferred if such position is vacant, or to the same class that is vacant, to a comparable class that is vacant and which the employee meets the minimum qualifications, or be placed on a reemployment list.

An agency from which an employee transfers must be given at least 30 calendar days notice when an employee fails to complete the trial period at the new agency, or voluntarily chooses to revert to the previous agency. Subsection 2 includes steps an appointing authority must take when an

employee is restored pursuant to this regulation. Subsection 3 includes steps an employee and an agency must take when an employee voluntarily chooses to revert pursuant to this regulation.

NEW Restoration of permanent employee who voluntarily transfers and either fails to complete trial period in the new position or voluntarily chooses to revert to his or her prior position.

1. A permanent classified employee who voluntarily transfers and either fails to complete his or her trial period in the position to which he or she transferred to or voluntarily chooses to revert must, in the following order, be:

(a) Appointed to the position from which the employee transferred, if vacant;

(b) Appointed to a position in the agency from which the employee voluntarily transfers which is vacant, and which is in the same class as the position held by the employee immediately before the transfer;

(c) Appointed to a position in the agency from which the employee voluntarily transfers which is vacant, and which is in a comparable class as the position held by the employee immediately before the transfer and for which the employee meets the minimum qualifications;

(d) Appointed to a class lower than the class of the position held by the employee immediately before the transfer and for which the employee meets the minimum qualifications; or

(e) Placed on the reemployment list for other classes at or below the position held prior to the transfer for which the employee meets the minimum qualifications.

2. If an employee fails to complete the trial period and is restored to his or her former position or otherwise placed pursuant to subsection 1, the appointing authority which takes such action must give written notice to the agency from which the employee transferred at least 30 calendar days before the effective date of the action. The agency which is taking the action is liable for the payment of the employee during this 30-day period unless the agency receiving the employee agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if notice of the action has been provided to the employee and filed with the Division of Human Resource Management on or before the last day of his or her trial period, even though the action takes place after the last day of the trial period.

3. If an employee voluntarily chooses to revert to his or her prior position, he or she must notify his or her current agency. The agency must then give written notice to the agency from which the employee transferred at least 30 calendar days before the effective date of the action. The agency which is taking the action is liable for the payment of the employee during this 30-day period unless the agency receiving the employee agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if notice of the action has been provided to the employee and filed with the Division of Human Resource Management on or before the last day of his or her trial period, even though the action takes place after the last day of the trial period.

Explanation of Change: This amendment will allow the Administrator of the Division of Human Resource Management to make a determination to certify a list of eligible applicants who are not ranked, or to waive the list, in addition to the three options included in subsection 6 of the regulation.

NAC 284.360 Certification and provision of certain lists by Division; certification of eligible persons on ranked or unranked lists or waiver of lists. (NRS 284.065, 284.155, 284.250)

1. Upon receipt of the appropriate form from an appointing authority for a list of eligible candidates in a specific class, the Division of Human Resource Management must verify the availability of a reemployment list for that class. If a reemployment list is available, the Division of Human Resource Management must certify and provide the reemployment list to the appointing authority. Eligible persons who appear on reemployment lists are ranked in order of seniority. Except as otherwise provided in subsection 2 of NAC 284.6017, placement on a reemployment list must be determined using the criteria governing the determination of seniority for layoff pursuant to NAC 284.632.

2. If there is no reemployment list available, the Division of Human Resource Management must certify and provide to the appointing authority any available lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327.

3. If there are no available lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327, the Division of Human Resource Management must certify and provide to the appointing authority any available transfer lists of employees who are entitled to transfer to a position pursuant to NRS 284.3775.

4. If no list described in subsection 1 or 2 is available, the Division of Human Resource Management must, upon request of the appointing authority and in accordance with subsections 5 and 6, certify the names of eligible persons on ranked or unranked lists described in paragraphs (d) to (h), inclusive, of subsection 1 of NAC 284.358, or waive the list.

5. The names of eligible persons on ranked lists must appear in the order of the total rating which they earned in the examination, including preferences for veterans and residents.

6. The Division of Human Resource Management may certify a list of eligible applicants who are not ranked, or may waive the list, for:

(a) A class that is grade 20 or below;

(b) A class designated in the classification plan as entry level; ~~(c)~~

(c) A class designated in the classification plan as a class for which applicants for promotion are not normally available ~~(d)~~; or

(d) A class determined to be appropriate by the Administrator of the Division of Human Resource Management.

7. Only an eligible person who has indicated the willingness to accept the location of the vacancy and the other conditions of employment may be certified.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A by Personnel Comm'n by R183-03, 1-27-2004; R024-05, 10-31-2005; R034-17, 12-19-17, eff. 1-1-2018)

<p>Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, allows an appointing authority to request an accelerated rate under NAC 284.204 for an employee that is receiving a promotion.</p>

NAC 284.172 Rate of pay: Effect of promotion. (NRS 284.065, 284.155, 284.175)

1. The following provisions govern the rate of pay which must be paid if an employee is promoted:

(a) The employee must be placed at the lowest step in the higher grade that meets one of the following requirements:

(1) If the employee moves one or two grades above his or her former grade, he or she must be placed at the same step in the new grade as the step held in his or her former grade.

(2) If the employee moves three or more grades above his or her former grade, the employee must be placed:

(I) At a step which is equivalent to an increase of two steps above the step held in his or her former grade; or

(II) At the lowest step of the new grade,

↳ whichever pay is higher and in accordance with the provisions of NAC 284.179.

(b) A special adjustment to an employee's pay for performing supervisory duties which is granted in accordance with paragraph (c) of subsection 2 of NAC 284.206 is the present level of pay for the purpose of calculating a promotional increase authorized by paragraph (a) only if the employee has received the special adjustment to his or her pay for more than 6 months of continuous full-time service.

(c) If an employee has been demoted, he or she may not, within 1 year after the demotion, receive a promotional increase in pay that is greater than the increase which he or she would have otherwise been entitled to receive had he or she not been demoted unless the Administrator approves the promotional increase.

(d) This subsection does not apply when an employee is reemployed or reappointed to his or her former grade within 1 year after holding that grade.

2. As used in this section, "present level of pay" means a rate of pay that is equal to the amount that is assigned to the step within the grade which is closest to, but does not exceed, the employee's pay after a special adjustment to pay pursuant to the provisions of NAC 284.206.

3. The provisions of sections 1 and 2 do not preclude an appointing authority's ability to request an accelerated salary in accordance with the requirements of NAC 284.204.

(Added to NAC by Personnel Comm'n by R133-12, eff. 10-4-2013; A by R064-14, 10-24-2014)

<p>Explanation of Change: This amendment, proposed by the Division of Human Resource Management, removes subparagraph (c) of subsection 1, which requires maintenance of an appropriate differential, not to exceed two steps, between the base rate of pay of a supervisor and the base rate of pay of an employee of that supervisor. The intent of this amendment is to maintain equity and consistency across State agencies.</p>
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NAC 284.204 Adjustment of steps within same grade: Conditions for approval; request; effective date; revocation. (NRS 284.065, 284.155, 284.175)

1. The Division of Human Resource Management may approve an adjustment of steps within the same grade to:

(a) Allow an appointing authority the flexibility to adjust the rate of pay for a position that will be filled by a person from a pool of eligible persons who are applying for the position on an open competitive basis in order to:

(1) Meet a difficult recruiting problem in which an effort to recruit a person for a position or class has failed to produce at least five eligible persons who are available to work, or the recruitment for the position or class has been deemed historically difficult. Such an adjustment of steps may be approved by the Division of Human Resource Management for a class for a period of 1 year.

(2) Employ a person whose education or experience is superior to those of another eligible person and who exceeds the minimum qualifications of the class. Any experience or education which is considered by the appointing authority pursuant to this subparagraph must be given a greater weight for those areas which are directly related to the position than general education and experience.

(b) Maintain an equitable relationship in the status of steps among the employees of the

appointing authority if a disparity exists. An adjustment will not be granted pursuant to this section if the disparity in steps is:

- (1) Among employees of different departments or agencies; or
- (2) A result of:
 - (I) The length of service of employees;
 - (II) An adjustment in pay which was attained in a former class; or
 - (III) An adjustment in pay for an employee who resides in a particular geographical

area.

~~[(c) Maintain an appropriate differential, not to exceed two steps, between the base rate of pay of a supervisor and the base rate of pay of an employee who is in the direct line of authority of the supervisor. An adjustment may be granted pursuant to this paragraph if, before the adjustment, the base rate of pay of the employee is the same or greater than the base rate of pay of the supervisor.]~~

2. Before granting an adjustment of steps pursuant to this section, the appointing authority must submit a request on a form prescribed by the Division of Human Resource Management to the Division of Human Resource Management which:

- (a) Specifies the qualifying conditions and justification for the request; and
- (b) Certifies that the appointing authority has, where applicable:
 - (1) Considered the requirements for the pay required to meet the need described in subparagraph (1) of paragraph (a) of subsection 1;
 - (2) Considered the qualifications of any other eligible person who is available for work for the purposes of subparagraph (2) of paragraph (a) of subsection 1;
 - (3) Ensured that the adjustment is feasible on the basis of its fiscal effects; and
 - (4) Prepared and maintained an accurate record of the consideration of the factors listed in this section.

3. If an adjustment of steps pursuant to this section is approved by the Division of Human Resource Management, the effective date of such an adjustment is the date on which a request that complies with subsection 2 is received by the Division of Human Resource Management or the personnel office of the department or agency at which the employee who is receiving the adjustment is employed. If a request for an adjustment of steps is delayed because an administrative or clerical error prevented the delivery of the request, the effective date must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment must not exceed 6 months from the date on which the Division of Human Resource Management receives the request.

4. An adjustment of steps which is made pursuant to subparagraph (1) of paragraph (a) of subsection 1 may be revoked when:

- (a) The recruiting problem which caused the adjustment was due to the geographical location of the position; and
- (b) The employee moves from one position to another position in either a different area within the department or agency in which the employee is currently employed or a different department or agency than the department or agency in which the employee is currently employed, and a similar recruiting problem does not exist in the new area, department or agency.

↳ The employee must be placed at the step he or she would have received if he or she had not received the adjustment.

(Added to NAC by Dep't of Personnel, eff. 8-14-90; A 7-1-94; R197-99, 1-26-2000; R147-01, 1-22-2002; R015-02, 5-2-2002; A by Personnel Comm'n by R134-12, 10-4-2013; R060-16, 6-28-2016)

Explanation of Change: This amendment, proposed by the Division of Human Resource Management, will allow the underfill of a position at any level in a series. An appointing authority may use his or her discretion to underfill a position at or below the journey level. However, an appointing authority must obtain the approval of the Division of Human Resource Management to underfill those positions above the journey level in the series. This changes the current process which only allows a position to be underfilled at or below the journey level.

NAC 284.437 Underfilling of positions. (NRS 284.065, 284.155, 284.305)

1. ~~Except as provided in subsection 4, before a]~~ A position may be underfilled ~~[, it must be approved in writing by the Division of Human Resource Management. The Division of Human Resource Management will only approve a position to be underfilled if there are less than five eligible ranks on the appropriate list who are available for appointment.]~~ *at or below the journey level at the discretion of an appointing authority.*

2. ~~Except as otherwise provided in subsection 4, if a position is approved to]~~ *A position may be underfilled [the] above the journey level upon the written approval of the* Division of Human Resource Management ~~[will begin a recruitment for the class of the position unless a recruitment within 12 months before the approval failed to produce sufficient applicants on the appropriate list.~~

~~—3. Except as otherwise provided in subsection 4, the position may not continue to be underfilled for more than 30 working days after five or more ranks of eligible persons on the appropriate list who are available for appointment are certified to the appointing authority.~~

~~—4. Subsections 1, 2 and 3 do not apply to the underfilling of a position:~~

~~—(a) If the position is authorized at or below the journey level and an employee fills that position in a class which is a training or intermediate level preparatory to promotion;~~

~~—(b) If an employee's position is reclassified pursuant to NAC 284.138; or~~

~~—(c) If an appointing authority has requested and received approval from the Division of Human Resource Management to underfill a position because money is not available and that fact has been certified by the Chief of the Budget Division or, in the case of an agency which is not funded from the General Fund or the Nevada System of Higher Education, by the administrator of that agency or System.] .~~

~~[5.]~~ **3.** An employee or former employee may not be selected through noncompetitive means to underfill a position allocated at grade 30 or higher if that position is allocated at a higher grade than the position the employee currently holds or, in the case of a former employee, the current grade of the position the person formerly held.

(Added to NAC by Dep't of Personnel, eff. 8-28-85; A by Personnel Comm'n by R183-03, 1-27-2004)



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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May 23, 2018

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

May 23, 2018

Date