




DEPARTMENT OF PERSONNEL
209 East Musser Street, Room 101
Carson City, Nevada 89701-4204
(775) 684-0150
<http://dop.nv.gov>

MEMO PERD #06-10

February 8, 2010

TO: Personnel Commission Members
Department Directors
Division Administrators
Agency Personnel Liaisons
Agency Personnel Representatives
Designees for Rules Distribution
Employee Representatives
Interested Parties

FROM: Teresa J. Thienhaus, Director 
Department of Personnel

SUBJECT: NOTICE OF PUBLIC HEARING - Amendments to NAC 284

The regulation changes included with this memorandum are being proposed for adoption at the March 12, 2010 Personnel Commission meeting. This meeting will be held at 9:00 a.m. at the Gaming Control Board, Conference Room, 1919 College Parkway, Carson City, and at the Grant Sawyer Building, Gaming Control Board, Room 2450, 555 East Washington Avenue, Las Vegas, via videoconferencing.

Please circulate or post the enclosed *Notice of Public Hearing* along with the text of the proposed regulations, or otherwise notify your employees.

TJT:sb

Enclosures

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

The Personnel Commission will hold a public hearing at 9:00 a.m., on March 12, 2010, at the Gaming Control Board, Conference Room, 1919 College Parkway, Carson City and in Las Vegas at the Grant Sawyer Building, Gaming Control Board, Room 2450, 555 East Washington Avenue via videoconferencing. 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.

Regulation Lead Line:

	<u>NAC #</u>
Responsibilities of Administrative Services Section of Department of Personnel	NAC 284.506
Submission, form and content of grievance; informal discussions	NAC 284.678
Request for employee to submit to screening test: Interpretation of grounds; completion of required form	NAC 284.888
Treatment of applicant who tests positive; treatment of employee who tests positive twice within 5-year period	NAC 284.894
Return to work of employees who have tested positive for alcohol or a controlled substance while on duty	LCB R066-09

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 Department of Personnel, 209 E. Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Department of Personnel on or before February 18, 2010. 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 amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at the

Department of Personnel, 209 E. Musser Street, Room 300, Carson City; 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 of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

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

CARSON CITY

Blasdel Building, 209 East Musser Street
Nevada State Library and Archives, 100 Stewart St.
Capitol Building, Main Floor
Legislative Building, 401 South Carson Street
Department of Personnel web site: www.dop.nv.gov
Main branch of Nevada County Public Libraries
Gaming Control Board, 1919 College Parkway

LAS VEGAS

Grant Sawyer State Office Building
555 East Washington Avenue

Additionally, this notice has been sent to all State agencies.

REGULATION CHANGES PROPOSED FOR PERMANENT ADOPTION

LCB File R189-09

NAC 284.506 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, removes the reference to the Administrative Services Section in relation to the Department's training responsibilities. Recently, the Office of Employee Development, which is responsible for training activities, was moved from the Department's Administrative Services Division to the Employee and Management Services Division.

NAC 284.506 Responsibilities of [~~Administrative Services Section of~~ Department of Personnel. (NRS 284.065, 284.155, 284.343) The responsibilities of the [~~Administrative Services Section of~~] Department of Personnel include:

1. Reviewing the training records of state agencies which have approved training to check for compliance with NRS 284.343 and NAC 284.482 to 284.522, inclusive.
2. Providing consultative services, when requested, to assist state agencies in assessing the needs for training, developing training plans [;] and establishing systems of records for training.
3. Providing training which applies throughout the State and specialized training which is based on the expertise and resources available.
4. Making recommendations for the improvement of an agency's training program when requested.
5. Reviewing requests for training and making the final approval or disapproval for training provided, paid for or coordinated by the Department of Personnel.

[Personnel Div., Rule X § G, eff. 1-18-82]—(NAC A by Dep't of Personnel, 10-26-84)

LCB File R191-09

NAC 284.678 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies that an employee filing a grievance concerning a performance review may bypass any steps where the respondent has already been involved in either writing or reviewing the rating.

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

1. Except as otherwise provided in [subsection] *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 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 decision of the reviewing officer. 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 [this] subsection 3 must be filed with:

- (a) The [appointing authority]; or
- ~~(b) If the appointing authority is the immediate supervisor of the employee or the reviewing officer, 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.

[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)

LCB File R193-09

NAC 284.888 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation change, proposed by the Office of Risk Management, adds workplace accidents to the list of reasons for testing employees for alcohol and drugs based on reasonable belief. Employees who are under the influence of alcohol or drugs on the job present a safety hazard to themselves and others and are in violation of State policy. Risk Management is also proposing lowering the definition of “substantial damage of property” because supervisors are having difficulty estimating the amount of damage involved with motor vehicle accidents and, as a result, are not testing employees who should be tested.

NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (NRS 284.065, 284.155, 284.407)

1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his duties safely and efficiently include, but are not limited to:

(a) The operation of a motor vehicle by the employee in any manner that causes bodily harm;

(b) Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;

(c) The odor of alcohol or other controlled substance on the breath of the employee;

(d) Observation of the employee consuming alcohol; [ø]

(e) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source[-]; *or*

(f) The occurrence of any accident while the employee is on the premises of the workplace for which the employee receives medical treatment.

2. Pursuant to subsection 2 of NRS 284.4065, “substantial damage to property” includes, but is not limited to:

(a) The operation of a motor vehicle in such a manner as to cause more than [~~\$2,500~~]**\$500** worth of property damage; or

(b) The operation of a motor vehicle in such a manner as to cause two property accidents within a 1-year period.

3. Before requiring an employee to submit to a screening test, a supervisor must complete a form provided by the Department of Personnel.

(Added to NAC by Dep’t of Personnel, eff. 12-26-91)

LCB File No. R194-09

NAC 284.894 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation allows for the removal from all relevant recruiting lists of an applicant who tests positive on a pre-employment drug screening test. Currently, the regulation states that the appointing authority must not consider the applicant for any position requiring pre-employment drug testing. This will insure that the employee will not be considered for any such position with the State.

NAC 284.894 Treatment of applicant who tests positive; treatment of employee who tests positive twice within 5-year period. (NRS 284.065, 284.155, 284.407)

1. An applicant who tests positive for the use of a controlled substance must not be considered by an appointing authority for employment in any position which requires such testing *and the applicant must be removed from all lists of eligible persons established from a recruitment that requires such testing* until:

- (a) One year [~~has passed from~~] *after* the time of the positive test; or
- (b) The applicant provides evidence that he has successfully completed a rehabilitation program for substance abuse.

2. An employee who tests positive for the use of a controlled substance or alcohol for the second time within a 5-year period is subject to disciplinary action by the appointing authority and may be terminated at the discretion of the appointing authority.

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A 7-1-94)

LCB File No. R195-09

Section 1 of LCB file No. R066-09 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Health and Human Services and recommended by the Department of Personnel, clarifies that the employee and not the employee's agency is responsible for the costs associated with the requirements of subsection 1 of this regulation to include counseling and documentation of that counseling.

Section 1 of LCB File No. R066-09 (NRS 284.065, 284.155, 284.407)

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 NAC 284.650 but is not terminated shall require the employee to:

(a) 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 substance abuse counseling, which verifies that the employee is able to return to duty and perform the essential functions of his or her job.

(b) Submit to a screening test.

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

(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.

(Added to NAC by Dep't of Personnel, eff. 10-27-09,)