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DEPARTMENT OF PERSONNEL
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MEMO PERD #07-08

January 28, 2008

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

FROM: Todd Rich, Director *T.R.*
Department of Personnel

SUBJECT: NOTICE OF WORKSHOP - Amendments to NAC 284

The regulation changes included with this memorandum are being proposed for adoption. In order to review the proposed changes in the regulations and solicit comments from interested persons, a workshop will be held at 9:00 a.m. on February 13, 2008 at the Legislative Building, 401 S. Carson Street, Room 2134 in Carson City, Nevada and by video conference at the Grant Sawyer Building, 555 East Washington Avenue, Suite 4406 in Las Vegas, Nevada. An informational note precedes the regulations, which explains the nature and purpose of the proposed change to the regulations.

Please circulate or post the enclosed *Notice of Workshop to Solicit Comments on Proposed Regulations* along with the text of the proposed regulations, or otherwise notify your employees.

TR:vk

Enclosures



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NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED CHANGES TO NAC 284

The Department of Personnel, 209 East Musser Street, Carson City, Nevada, telephone number (775) 684-0119, is proposing the amendment of regulations pertaining to Chapter 284 of Nevada Administrative Code. A workshop has been set for 9:00 A.M. on February 13, 2008 at the Legislative Building, 401 S. Carson Street, Room 2134, in Carson City, Nevada. A video conference link will also be available at the Grant Sawyer Building, 555 East Washington Avenue, Suite 4406 in Las Vegas, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

<u>Regulation Leadline:</u>	<u>NAC #</u>
Notice and hearing	NAC 284.656
Date of receipt of grievance	NAC 284.680
When resolution of grievance becomes binding	NAC 284.697

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the Department of Personnel offices at 209 E. Musser Street, Room 300, Carson City, Nevada, telephone number (775) 684-0119, or 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-2900. A reasonable fee for copying may be charged.

This Notice of Workshop to Solicit Comments on Proposed Regulation 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 East Musser Street
Nevada State Library and Archives, 100 Stewart St.
Legislative Building, 401 S. Carson Street
ALL STATE AGENCIES
ALL NEVADA COUNTY PUBLIC LIBRARIES

LAS VEGAS
Grant Sawyer State Office Building
555 East Washington Avenue



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 Department of Personnel, in writing, at 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204 or call Honey Garibaldi at (775) 684-0119, no later than five working days before the meeting.

Date: January 28, 2008

REGULATIONS PROPOSED FOR PERMANENT ADOPTION

Sec. 1. NAC 284.656 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation change proposed by the Department of Personnel provides clarification as to acceptable proof of delivery or tracking information relating to notices of hearing for disciplinary actions.

NAC 284.656 Notice and hearing. (NRS 284.065, 284.155, 284.383, 284.385, 284.390)

1. Except as otherwise provided in subsection 2, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure must be followed unless waived in writing by the employee:

(a) The employee must be given at least 10 working days' written notice of the proposed action. The notice must be on the form provided by the Department of Personnel and may be given in person, ~~or~~ by mail, **or by other carrier that provides proof of delivery or tracking information**. If ~~[it is mailed]~~ **not delivered in person**, the notice must be ~~[mailed]~~ **sent** to the employee's last known address ~~[by registered or certified mail, return receipt]~~ **with proof of delivery or tracking information** requested. ~~[The date stamped on the receipt by the postal service is the date of delivery. If the notice is returned without a return receipt signed by the employee,]~~ **If date of delivery cannot be determined from information provided by the carrier**, the employee's date of receipt shall be deemed to be the third day after the date of the mailing **or shipping**.

(b) The notice must:

- (1) Specify the proposed date on which the action is effective.
- (2) Inform the employee that a hearing has been scheduled on his behalf and specify the date, time and place of the hearing.
- (3) Specify the charges, the reasons for them and the cause of action contained in NAC 284.650 on which the proposed action is based.

(c) The hearing must be scheduled to take place no earlier than 7 working days after the written notice of the proposed action is delivered or deemed received pursuant to paragraph (a). The hearing may not be scheduled on a day which is not a regular working day for the employee.

(d) If the appointing authority or his designated representative and the employee agree, the date of the hearing may be changed.

(e) The notice of the proposed action must be signed by the appointing authority or his designated representative. Upon its receipt, the employee must be asked to sign the notice. If he refuses to sign the notice, his refusal must be noted on the notice. The employee's signature is not an admission by him of any of the allegations set forth in the notice.

(f) The employee may examine, at any time after receiving the notice and before the hearing, all materials which are to be used by the person conducting the hearing. The employee is entitled to receive upon request a total of up to 8 hours of administrative leave with pay to prepare for the hearings regarding his suspension, demotion or dismissal.

(g) If the employee does not understand the reasons for the proposed action or the procedure, the employee may seek an explanation from the appointing authority or another person in the agency familiar with the procedure.

(h) The employee may respond both orally and in writing to the appointing authority or his designated representative at the hearing.

(i) The appointing authority or his designated representative shall conduct the hearing. The designated representative must be a person with authority to recommend a final decision to the appointing authority. He may not render the final decision.

(j) The employee must be:

- (1) Given a copy of the finding or recommendation, if any, resulting from the hearing; and

(2) Informed, in writing, of the appointing authority's decision regarding the proposed action on or before the effective date of the action.

(k) The employee may waive his right to a hearing in writing. If the employee waives his right to the hearing, he may not be dismissed, suspended, or demoted before the proposed effective date. The waiver does not waive the employee's right to an appeal after the action is taken.

(l) This process is an informal proceeding between the two parties, the appointing authority or his designated representative and the employee, who meet together to discuss the proposed action. Witnesses are not permitted to attend, but each party may be accompanied by a person of his choice.

2. The procedure specified in subsection 1 need not be followed before dismissing or suspending a permanent employee if the circumstances give the appointing authority a reasonable cause to believe that the retention of an employee on active duty poses a threat to life, limb or property or may be seriously detrimental to the interests of the State.

3. If the circumstances set forth in subsection 2 are present, the appointing authority may temporarily assign the employee to duties in which those circumstances do not exist or, if the temporary assignment is not feasible:

(a) Immediately place the employee on administrative leave with pay until the procedure set forth in subsection 1 has been followed; or

(b) Immediately suspend or dismiss the employee. In this case the appointing authority, his designated representative, or the employee's supervisor shall attempt to inform the employee before the action is taken of the charges against him and provide the employee with an opportunity to rebut the charges. The procedure set forth in subsection 1 must be followed as soon as practicable after the immediate suspension or dismissal.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 7-21-89; 8-1-91; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 11-12-93; 11-16-95; 11-16-95)

Sec 2. NAC 284.680 is hereby amended to read as follows:

<p>Explanation of Proposed Change: This regulation change proposed by the Department of Personnel augments the method of determining when a grievance is received at each step in the grievance process by the inclusion of grievances submitted via the State's on-line incident tracking system.</p>

NAC 284.680 Date of receipt of grievance. (NRS 284.065, 284.155, 284.384) For the purposes of NAC 284.682, 284.686 and 284.690, a grievance is deemed to have been received at each step in the grievance procedure:

1. On the date on which the employee or his chosen representative personally delivers the grievance, [Ø] transmits it by facsimile machine, *or submits it via the internet using the State's employee incident tracking system*; or

2. If the employee mails the grievance, 3 days after:

(a) The date on which the grievance was postmarked; or

(b) The date on the return receipt if sent by certified mail.

(Added to NAC by Personnel Comm'n by R065-98, eff. 7-24-98)

Sec. 3. NAC 284.697 is hereby amended as follows:

Explanation of Proposed Change: This regulation change is being proposed by the Department of Personnel to clarify the date a resolution of grievance rendered by the Committee becomes binding.

NAC 284.697 When resolution of grievance becomes binding. (NRS 284.065, 284.155, 284.384)

1. Except as otherwise provided in subsection 2, the resolution of a grievance is binding when:

(a) There is an agreement between the person filing the grievance and the appointing authority or the designated representative of the employing agency; or

(b) [~~The Committee renders a final decision.~~] ***The date the Committee renders a final written decision.***

2. The appointing authority or the designated representative of the employing agency shall submit each proposed resolution of a grievance which has a fiscal effect to the Budget Division of the Department of Administration for a determination of whether the resolution is feasible on the basis of its fiscal effects. The resolution is binding only if it is so found.

(Added to NAC by Dep't of Personnel, eff. 8-28-85; A by Personnel Comm'n by R030-02, 5-2-2002)