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STATE OF NEVADA

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MEMO PERD #29-09

June 8, 2009

TO: Nevada County Libraries
State Library and Archives

FROM: Teresa J. Thienhaus, Director
Department of Personnel

SUBJECT: NOTICE OF WORKSHOP – NAC 284 Regulation Changes

A handwritten signature in cursive script, reading "Teresa J. Thienhaus".

The regulation changes included with this memorandum are being proposed for permanent 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 June 25, 2009 at the Department of Personnel, Blasdel Building, Room 100, 209 E. Musser Street, Carson City, Nevada and by video conference at the Department of Personnel, Grant Sawyer Building, Suite 1400, Testing Room, 555 E. Washington Avenue, Las Vegas, Nevada. An informational note explaining the nature and purpose of the proposed change precedes each regulation.

Please circulate or post the enclosed *Notice of Workshop to Solicit Comments on Proposed Regulations* along with the text of the proposed regulations. We are asking libraries to post this information to inform the public of the workshop.

TT:vk

Enclosures



DEPARTMENT OF PERSONNEL
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NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED REGULATIONS

The Department of Personnel, 209 East Musser Street, Carson City, Nevada, telephone number (775) 684-0135, is proposing the permanent adoption, repeal, or amendment of regulations pertaining to Chapter 284 of Nevada Administrative Code. A workshop has been set for 9:00 A.M. on June 25, 2009 at the Department of Personnel, Blasdel Building, 209 E. Musser Street, Room 100, Carson City, Nevada and by video conference at the Department of Personnel, Grant Sawyer Building, Suite 1400, Testing Room, 555 E. Washington Avenue, 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>
Adoption by reference of federal law, regulations and manual regarding persons with disabilities	NAC 284.120
“Continuing treatment” defined	NAC 284.5232
“Eligible employee” defined	NAC 284.5233
“Family and medical leave” defined	NAC 284.5234
“Immediate family” defined	NAC 284.5235
“Serious health condition” defined	NAC 284.5239
Leave of Absence without pay	NAC 284.578
Family and medical leave: Maximum amount in 12-month period; eligibility; use	NAC 284.5811
Administrative leave with pay	NAC 284.589
Unauthorized and unreported absences	NAC 284.594
Warnings and written reprimands	NAC 284.638
Notice of disciplinary action	NAC 284.656
Hearings related to disciplinary action	New section
Submission of grievance to next appropriate level	NAC 284.682
Confidential records	NAC 284.718
Access to confidential records	NAC 284.726
Administration of screening tests	NAC 284.882
Request for employee to submit to screening test: Interpretation of ground; completion of required form	NAC 284.888
Return to work of employee who have tested positive for alcohol and/or drugs while on duty	New section

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) 684-0135, 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
NV State Library and Archives, 100 N. Stewart St.

LAS VEGAS

Grant Sawyer State Office Building
555 East Washington Avenue

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 Department of Personnel, in writing, at 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204 or call Mary Kaye Spencer at (775) 684-0135, no later than five working days before the meeting.

Date: June 8, 2009

REGULATIONS PROPOSED FOR PERMANENT ADOPTION

Section 1. NAC 284.120 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by Department of Personnel, adopts the ADA Amendments Act of 2008 to the list of federal law, regulations and manual adopted by reference and referred to regarding persons with disabilities. Effective January 1, 2009, the ADA Amendments Act of 2008 amended the Americans with Disabilities Act of 1990. This amendment will bring the Nevada Administrative Code into compliance with federal law.

NAC 284.120 Adoption by reference of federal law, regulations and manual regarding persons with disabilities. (NRS 284.065)

1. For the purposes of determining the meaning of “essential functions of a position,” “person with a disability,” “qualified person with a disability” and “reasonable accommodation,” the Department of Personnel hereby adopts by reference and will refer to:

(a) The Americans with Disabilities Act of 1990 (Public Law 101-336).

(b) ~~[The provisions of 29 C.F.R. Part 1630.]~~ ***The ADA Amendments Act of 2008 (Public Law 110-325).***

(c) ~~[The *Technical Assistance Manual* for the Americans with Disabilities Act.]~~ ***The provisions of 29 C.F.R. Part 1630.***

(d) ***The Technical Assistance Manual for the Americans with Disabilities Act.***

2. A copy of the materials adopted by reference pursuant to this section may be obtained at no charge from the United States Equal Employment Opportunity Commission Publications Information Center, P.O. Box 12549, Cincinnati, Ohio 45212-0549, telephone (800) 669-3362 or TDD (800) 800-3302.

(Added to NAC by Dep't of Personnel, eff. 7-6-92; A 10-27-97; R082-00, 8-2-2000)

Sec. 2. NAC 284.5232 is hereby repealed:

Explanation of Proposed Change: This section was previously repealed temporarily and is now recommended for permanent repeal. Proposed by the Department of Personnel, this amendment deletes a definition of “continuing treatment” which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581.

NAC 284.5232 “Continuing treatment” defined. (NRS 284.065, 284.155, 284.345)
[“Continuing treatment” means:

1. ~~Two or more treatments received from a provider of health care if the treatment normally requires a visit to the office of the provider of health care or a nurse or physician assistant who is under the direct supervision of the provider of health care;~~
 2. ~~Two or more treatments received from a provider of health care services, such as a physical therapist, under the orders of, or referred by, a provider of health care;~~
 3. ~~At least one treatment received from a provider of health care which results in a regimen of continuing treatment under the supervision of a provider of health care;~~
 4. ~~The continuing supervision of, but not necessarily active treatment by, a provider of health care because of a long term or permanent condition for which treatment may not be effective; or~~
 5. ~~Any combination of treatments described in subsections 1 to 4, inclusive.]~~
- (Added to NAC by Dep’t of Personnel, eff. 3-23-94; A 11-16-95)

Sec. 3. NAC 284.5233 is hereby repealed:

Explanation of Proposed Change: This section was previously repealed temporarily and is now recommended for permanent repeal. Proposed by the Department of Personnel, this amendment deletes a definition of “eligible employee” which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581. Additionally, “eligible employee” is used in a different context in other sections of the Nevada Administrative Code, and such a definition may be confusing.

NAC 284.5233 “Eligible employee” defined. (NRS 284.065, 284.155, 284.345)
[Eligible employee” means an employee who is eligible for family and medical leave.]
(Added to NAC by Dep’t of Personnel, eff. 3-23-94; A by R082-00, 8-2-2000)

Sec. 4. NAC 284.5234 is hereby repealed:

Explanation of Proposed Change: This section was previously repealed temporarily and is now recommended for permanent repeal. This amendment deletes a definition of “family and medical leave” which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581.

NAC 284.5234 “Family and medical leave” defined. (NRS 284.065, 284.155, 284.345)

~~["Family and medical leave" means any paid leave or leave of absence without pay which is granted to an eligible employee:~~

~~1. For the birth of a child of the employee and the care of that child if the leave is taken during the 12 months immediately following the date of the birth of that child;~~

~~2. For the placement of a child through adoption or foster care with the employee if the leave is taken during the 12 months immediately following the date of placement of that child;~~

~~3. To care for his spouse, child or parent who has a serious health condition; or~~

~~4. Because of a serious health condition of the employee which makes him unable to perform one or more of the essential functions of his position.]~~

~~(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95)~~

Sec. 5. NAC 284.5235 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It adds “next of kin” to the definition of immediate family in cases where an employee is approved to care for a covered servicemember under the Family and Medical Leave Act.

NAC 284.5235 “Immediate family” defined. (NRS 284.065, 284.155, 284.345)

“Immediate family” means:

1. The employee’s parents, spouse, children, regardless of age, brothers, sisters, grandparents, great-grandparents, uncles, aunts, nephews, grandchildren, nieces, great-grandchildren and stepparents; and

2. If they are living in the employee’s household, the employee’s father-in-law, mother-in-law, son-in-law, daughter-in-law, grandfather-in-law, grandmother-in-law, great-grandfather-in-law, great-grandmother-in-law, uncle-in-law, aunt-in-law, brother-in-law, sister-in-law, grandson-in-law, granddaughter-in-law, nephew-in-law, niece-in-law, great-grandson-in-law and great-granddaughter-in-law.

3. *Next of kin as provided for by the Family and Medical Leave Act when an employee is approved for family and medical leave to care for a covered servicemember.*

(Added to NAC by Dep't of Personnel, eff. 3-23-94)

Sec. 6. NAC 284.5239 is hereby repealed:

Explanation of Proposed Change: This section was previously repealed temporarily and is now recommended for permanent repeal. This amendment deletes a definition of “serious health condition” which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581.

NAC 284.5239 “Serious health condition” defined. (NRS 284.065, 284.155, 284.345)

~~1. “Serious health condition” means an illness, an injury or a physical or mental condition which involves:~~

~~(a) Inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or~~

~~(b) Continuing treatment by or under the supervision of a provider of health care for one or more periods of:~~

~~(1) Incapacity of more than 3 consecutive calendar days, and any subsequent treatment or period of incapacity related to the same condition that also involves continuing treatment.~~

~~(2) Incapacity because of pregnancy or for prenatal care.~~

~~(3) Incapacity because of a chronic serious health condition, or treatment for such incapacity. A chronic serious health condition is one that continues over an extended period of time, requires periodic visits for treatment by or under the direct supervision of a health care provider, and which may cause episodic periods of incapacity.~~

~~(4) Incapacity which is permanent or long term because of a condition for which treatment may not be effective, but for which the person is under the continuing supervision of a health care provider.~~

~~(5) Absence to receive multiple treatments by or under the direction of a health care provider for restorative surgery after an accident or other injury.~~

~~(6) Absence to receive multiple treatments by or under the direction of a health care provider for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment.~~

~~2. The term “serious health condition” does not include:~~

~~(a) Cosmetic treatments which do not require inpatient care and which do not result in medical complications; or~~

~~(b) Minor conditions such as the common cold, flu or an ear ache which do not result in medical complications.~~

~~3. As used in this section, “incapacity” means the inability to work, attend school or perform other regular daily activities because of a serious health condition, including any treatment or recovery period.]~~

(Added to NAC by Dep’t of Personnel, eff. 3-23-94; A 11-16-95)

Sec. 7. NAC 284.578 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It adds compensatory time to the list of leave that must be exhausted before using leave without pay for family and medical leave. New federal regulations now allow compensatory time to be used for family and medical leave. Additional language has been added to the original text of the temporary regulation to clarify that the employee must use all leave that he is eligible to use based on the nature of the absence before he can receive leave without pay.

NAC 284.578 Leave of absence without pay. (NRS 284.065, 284.155, 284.345)

1. Except as otherwise provided in NRS 284.360, an appointing authority may grant a leave of absence without pay to an employee for not more than 1 year for any satisfactory reason.
2. The Commission may grant leaves of absence without pay in excess of 1 year for purposes deemed beneficial to the public service.
3. An appointing authority may require an employee on leave of absence without pay to submit every 2 weeks a statement of his intent to return to work.
4. If the reason for granting the leave no longer exists, the appointing authority may revoke the leave after notifying the employee in writing and allowing, so far as is practicable, not less than 5 working days after the date of notification for the employee to return to work.
5. An employee shall request leave without pay at least 30 days in advance of when the need for the leave is foreseeable, if practicable.
6. An employee may not use leave without pay in lieu of sick leave or annual leave without approval of the appointing authority.
7. An employee who is using leave pursuant to the Family and Medical Leave Act may not use leave without pay until he has exhausted his accrued sick leave, **compensatory time**, annual leave and catastrophic leave **that he is eligible to use based on the nature of the absence** as required by NAC 284.5811.

[Personnel Div., Rule VII § E subsecs. 1-4, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 3-23-94; 10-27-97; A by Personnel Comm'n by R145-05, 12-29-2005)

Sec. 8. NAC 284.5811 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It adds provisions that make the regulation consistent with new federal Family and Medical Leave Act (FMLA) regulations. It allows for the use of 26 weeks in a single 12-month period to care for a covered service member, incorporates the use of compensatory time for use with the FMLA, and expands the type of documentation accepted for qualifying FMLA events. Additional language has been added to the original text of the temporary regulation to clarify that the employee must use all leave that he is eligible to use based on the nature of the absence before he can receive leave without pay.

NAC 284.5811 Family and medical leave: Maximum amount in 12-month period; eligibility; use. (NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626)

1. *Except as provided for in subsection 2, [An]an* employee who is entitled to take leave pursuant to the Family and Medical Leave Act is limited to a total of 12 weeks of such leave during a rolling 12-month period. The rolling 12 -month period is measured backward from the date an employee uses any leave pursuant to the Family and Medical Leave Act.

2. *An employee who is entitled to take leave to care for a covered servicemember may be approved for up to a total of 26 weeks of leave during a single 12-month period as provided for in the Family and Medical Leave Act.*

[2-] 3. To calculate eligibility for leave pursuant to the Family and Medical Leave Act, each hour that an employee is in paid status in the 12-month period immediately preceding the leave must be considered as time worked.

[3-] 4. Except as otherwise provided in subsection [4] 5, an employee who meets the requirements for eligibility for and who is taking leave pursuant to the Family and Medical Leave Act must exhaust his accrued sick leave, *accrued compensatory time*, accrued annual leave and catastrophic leave *that he is eligible to use based on the nature of the absence* before he may use leave without pay. Any accrued sick leave, *accrued compensatory time*, accrued annual leave, catastrophic leave and holiday pay to which the employee is entitled pursuant to NAC 284.255 runs concurrently with the leave granted pursuant to the Family and Medical Leave Act if the employee is otherwise eligible for that sick leave, *accrued compensatory time*, annual leave, catastrophic leave or holiday pay.

[4-] 5. If an employee is absent from work as the result of a work-related injury or illness and he meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:

(a) Any amount of time that the employee is absent from work during that period will be

designated as leave pursuant to the Family and Medical Leave Act; and

(b) The employee may elect to use paid leave or leave without pay for the portion of time that he is not being compensated for the work-related injury or illness.

[5-] 6. An appointing authority may require an employee to provide medical documentation *or other appropriate documentation* to support his need for leave pursuant to the Family and Medical Leave Act [~~due to a serious health condition of the employee or of a spouse, parent or child of the employee~~].

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95; R082-00, 8-2-2000; A by Personnel Comm'n by R096-03, 10-30-2003; R145-05, 12-29-2005)

Sec. 9. NAC 284.589 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment clarifies that an employee may receive a total of 8 hours to prepare for all hearings related to a suspension, demotion or termination and a total of 8 hours to prepare for all hearings related to an involuntary transfer and not 8 hours to prepare for each hearing related to an event. A review of the history related to this issue shows that this was the original intent of the regulation.

NAC 284.589 Administrative leave with pay. (NRS 284.065, 284.155, 284.345)

1. An appointing authority may grant administrative leave with pay to an employee:
 - (a) To relieve the employee of his duties during the active investigation of a suspected criminal violation or the investigation of alleged wrongdoing;
 - (b) For up to 30 days when the appointing authority initiates the leave to obtain the results of an examination concerning the ability of the employee to perform the essential functions of his position;
 - (c) For up to 30 days to remove the employee from the workplace when he has committed or threatened to commit an act of violence;
 - (d) For up to 2 hours to donate blood; or
 - (e) To relieve the employee of his duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065.
2. The appointing authority, upon approval of the Risk Management Division of the Department of Administration, may extend administrative leave with pay granted to an employee for a purpose set forth in paragraph (b) or (c) of subsection 1.
3. Except as otherwise provided in subsection 4, an appointing authority or the Department of Personnel may grant administrative leave with pay to an employee for any of the following purposes:
 - (a) His participation in, or attendance at, activities which are directly or indirectly related to the employee's job or his employment with the State but which do not require him to participate or attend in his official capacity as a state employee.
 - (b) Closure of the employee's office or work site caused by a natural disaster or other similar adverse condition when the employee is scheduled and expected to be at work. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.
 - (c) His appearance as an aggrieved employee or a witness at a hearing of the Committee.
 - (d) His appearance as an appellant or a witness at a hearing conducted pursuant to NRS 284.390 by a hearing officer of the Department of Personnel.
 - (e) His appearance to provide testimony at a meeting of the Commission.
4. An appointing authority or the Department of Personnel shall grant administrative leave with pay to an employee for a purpose set forth in paragraph (c), (d) or (e) of subsection 3 if:
 - (a) The employee requests the administrative leave for a period of time that is reasonably needed for him to testify at the hearing or meeting;
 - (b) The employee requests the administrative leave at least 2 weeks before the leave is needed, unless such notice is impractical; and
 - (c) The absence of the employee will not cause an undue hardship to the operations of his appointing authority or adversely impact the provision of services to clients or to the public.
5. An appointing authority shall grant administrative leave with pay to an employee for any of the following purposes:

(a) The initial appointment and one follow-up appointment if the employee receives counseling through an employee assistance program.

(b) His attendance at a health fair which has been authorized by the Board of the Public Employees' Benefits Program.

(c) His participation in an official capacity as a member of a committee or board created by statute on which he serves as a representative of state employees. Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board.

(d) Up to **a total of** 8 hours for preparation for **all** hearings regarding his suspension, demotion or dismissal as provided in subsection 1 of NAC 284.656.

(e) Up to **a total of** 8 hours for preparation for **all** hearings regarding his involuntary transfer.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 4-20-90; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 9-13-91; 12-26-91; 11-12-93; 3-23-94; 11-16-95; 10-27-97; R042-99, 9-27-99; R058-01, 9-6-2001; A by Personnel Comm'n by R038-03, 10-30-2003; R183-03, 1-27-2004; R145-05, 12-29-2005; R141-07, 1-30-2008)

Sec. 10. NAC 284.594 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It clarifies that an employee who has an unauthorized or unreported absence may be subject to disciplinary action under NAC 284.646 and subject to a deduction of pay for the absence. It also clarifies that an unauthorized absence may be considered to be absence without leave and subject to a deduction of pay for the absence.

NAC 284.594 Unauthorized and unreported absences. (NRS 284.065, 284.155, 284.175, 284.345)

1. An unauthorized and unreported absence must be considered an absence without leave and a deduction of pay must be made for the absence.
2. An *unauthorized or* unreported absence may be considered an absence without leave, and a deduction of pay may be made for the absence.
3. An employee who has an unauthorized or unreported absence may be subject to disciplinary action pursuant to *NAC 284.646 or* NAC 284.650.
4. A deduction from the pay of an exempt classified employee or exempt unclassified employee must be made in increments of a full workday.

[Personnel Div., Rule VII § G, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 1-26-87; 11-16-95; R147-01, 1-22-2002; A by Personnel Comm'n by R145-05, 12-29-2005)

Sec. 11. NAC 284.638 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies the method in which an employee should be informed if their performance is not acceptable.

NAC 284.638 Warnings and written reprimands. (NRS 284.065, 284.255, 284.383)

1. If an employee's performance falls below standard [~~or if an employee's conduct comes under one of the causes for action listed in NAC 284.650~~], the supervisor shall inform the employee promptly and specifically of the deficiencies *by issuing an oral warning at least 10 working days prior to the meeting at which the supervisor issues the employee's report on performance. During these 10 working days the employee shall be afforded the opportunity to meet with his supervisor at least once to discuss performance expectations.*

2. *If an employee's conduct comes under one of the causes for disciplinary action listed in NAC 284.650, the supervisor shall promptly inform the employee. If the employee's behavior warrants disciplinary action, the supervisor may issue an oral or written warning.* If appropriate and justified, following a discussion of the matter, a reasonable period of time for improvement or correction may be allowed before initiating disciplinary action.

3. In situations where an oral *or written* warning does not cause a correction of the condition or where a more severe initial action is warranted, a written reprimand prepared on a form prescribed by the Department of Personnel must be sent to the employee and a

copy placed in the employee's personnel folder which is filed with the Department of Personnel.

[Personnel Div., Rule XII § A, eff. 8-11-73; + Rule XV part § A, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 10-18-89; 11-16-95)

Sec. 12. NAC 284.656 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment changes NAC 284.656 to focus primarily on giving an employee notice of a disciplinary action and adds additional procedural detail. For clarity purposes, information on the pre-disciplinary hearing has been moved to a new section.

NAC 284.656 Notice of disciplinary action [~~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.

(~~b~~) *The form should* [~~and may~~] be given in person [~~or~~] *but may be delivered* by mail. If it is mailed, the notice must be mailed to the employee's last known address by registered or certified mail, return receipt 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, the employee's date of receipt shall be deemed to be the third day after the date of the mailing.

[~~(b)~~] (c) The notice must:

(1) Specify the proposed date on which the action is effective.

(2) Inform the employee that a *pre-disciplinary* 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 284.646 or* 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)~~] (~~d~~) The notice of the proposed action must be signed by the appointing authority or his designated representative *before it is given to the employee* .

(~~e~~) 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)~~] (~~f~~) If the employee does not understand the reasons for the proposed action or the procedures *related to disciplinary actions, including his rights to notice, hearing, and*

appeal, 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. 13. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, adds a new section containing language that was previously included in NAC 284.656 regarding the pre-disciplinary hearing. It also adds brief information about the employee's rights to appeal a suspension, demotion or termination to a Department of Personnel hearings officer. This will help eliminate confusion about the various hearings involved in this process.

NEW. Hearings related to disciplinary action.

1. Pursuant to NAC 284.656, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, a pre-disciplinary hearing must be scheduled on his behalf unless waived in writing by the employee.

(a) 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. The appointing authority shall render the final decision.

(b) 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 (b) of NAC 284.656.

(c) 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 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 administrative leave with pay as provided in NAC 284.589 to prepare for the hearings regarding his suspension, demotion or dismissal.

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

(g) 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.

(h) 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.

(i) 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.

(j) In situations where an employee is immediately suspended or dismissed pursuant to NAC 284.656, the hearing must be scheduled as soon as practicable after the immediate suspension or dismissal.

2. Pursuant to NRS 284.390, within 10 working days after the effective date of his dismissal, demotion or suspension an employee who has been dismissed, demoted or suspended may request a hearing before the hearings officer of the Department. This request must be in writing and addressed to the Department or may be submitted on the form provided by the Department.

Sec. 14. NAC 284.682 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies that a grievant may only bypass a level or levels if the employee and appointing authority mutually agree or if the Department of Personnel determines that the submission at such a level would be a useless act.

NAC 284.682 Submission of grievance to next appropriate level. (NRS 284.065, 284.155, 284.384)

1. If the *employee and appointing authority agree that the* correction of the matter under appeal is beyond the control of a level of supervision contemplated in this procedure or if the Department of Personnel determines that the submission of the grievance to the supervisor would be a useless act, the aggrieved employee may appeal directly to the next appropriate level.

2. Except as otherwise provided in NAC 284.692, an employee has 10 working days to refer his grievance to the next level after:

(a) He receives notification of the action; or

(b) The passage of 10 working days after his grievance is deemed to have been received, whichever occurs first, at each step in the procedure.

[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; A by Personnel Comm'n by R065-98, 7-24-98; R023-05, 10-31-2005)

Sec. 15. NAC 284.718 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It recognizes that there can exist a clear connection between an employee's leave balances and his medical history as it relates to protections provided by the Family Medical Leave Act and the Americans with Disabilities Act. Classifying leave balances as confidential employee information will insure that State employees applying for other jobs within State service are not eliminated from consideration through potentially discriminatory practices resulting from the release of leave usage information.

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

1. The following types of information, which are maintained by the Department of Personnel 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 Department of Personnel on the condition that the source remain confidential;

(b) Any document which is used by the Department of Personnel 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 Department of Personnel 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 the Employee Assistance Program;

(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 status as an eligible person; and

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

(1) Performance;

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

(3) Race, ethnic identity or affiliation, sex, disability or date of birth;

(4) Home telephone number; [Ø]

(5) ***Annual leave and sick leave usage and balances; or***

(6) Social security number.

2. If the employee has requested that his personal mailing address be listed as confidential, his file must be so designated and list his 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 immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation conducted by the Department of Personnel relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority 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)

Sec. 16. NAC 284.726 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It recognizes that there can exist a clear connection between an employee's leave balances and his medical history as it relates to protections provided by the Family Medical Leave Act and the Americans with Disabilities Act. This amendment balances the employee's right to confidentiality with the employer's record keeping requirements.

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

1. Except as otherwise provided in this subsection, 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 designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph 2 of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in subsection 3, access to an employee's file 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 employment file.
- (c) The appointing authority or a designated representative of the agency by which the employee is employed.
- (d) The Director or his designated representative.
- (e) An appointing authority, or his designated representative, who is considering the employee for employment in his agency.
- (f) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (g) 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) Persons who are involved in processing records for the transaction of business within and between state agencies.
- (i) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

3. Information concerning the health, medical condition or disability of an employee or a member of his immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection [6] 7, access to such information is limited to the employee, his current supervisor, and the appointing authority or his designated representative.

4. *Except as otherwise provided in subsection 7, access to annual leave and sick leave usage and balances is limited to the employee, his current supervisor, and the appointing authority or his designated representative.*

5. Except as otherwise provided by specific statute, records maintained by the Employee Assistance Program must not be released without written permission signed by the employee to whom the records pertain.

~~[5.]~~ 6. Upon request, the Department of Personnel will provide the personal mailing address of any employee on file with the Department to the State Controller's Office and the Internal Revenue Service.

~~[6.]~~ 7. The Director or the appointing authority, or his designated representative, shall authorize the release of any confidential records under his control which are requested by the 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. If the Director or his designated representative determines that the release of any confidential record is not necessary for those purposes, the decision may be appealed.

[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)

Sec. 17. NAC 284.882 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It expands the options available to agencies for breath alcohol testing by including the designated subcontractor under the statewide drug testing contract. This procedure is consistent with other breath alcohol testing that is done for CDL positions in State government. Further if the agency suspects that the employee may be under the influence of more than one substance (i.e., alcohol and drugs), they can run both tests at one location rather than making two separate trips for comprehensive testing. Finally, this regulation change will better uphold the intent of NRS 284.4067 which states in part, testing to detect the general presence of alcohol or of a controlled substance, must be administered in such a manner as to protect the person tested from any unnecessary embarrassment. This change does not remove the ability to use NHP for breath alcohol testing or the ability to conduct a blood alcohol test where testing via breath is not feasible.

NAC 284.882 Administration of screening tests. (NRS 284.065, 284.155, 284.407) A screening test to detect the general presence of:

1. A controlled substance must comply with the standards and procedures established by the *United States* Department of Health and Human Services which are hereby adopted by reference. A copy of the standards and procedures is available, without charge, from the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace, ~~5600 Fishers Lane, Parklawn Building, 13A-54, Rockville, Maryland 20857~~.

2. Alcohol by testing a person's breath must be conducted ~~[by an operator certified in accordance with NAC 484.640]~~ using a breath-testing device certified in accordance with *the conforming products list of evidential breath measurement devices as outlined in the Federal Register for the National Highway Traffic Safety Administration*. ~~[NRS 484.3882 and NAC 484.660.]~~

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A 10-27-97; R082-00, 8-2-2000)

Sec. 18. NAC 284.888 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It is intended to bring this regulation in line with NRS 284.4062 as well as the State's position on having a drug and alcohol free workplace. NRS 284.4062 states that an employee who consumes or is under the influence of alcohol while on duty is subject to disciplinary action. This language will better uphold the intent of the law.

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 [~~and a decline in job performance that is not otherwise normally explainable~~];

(d) Observation of the employee consuming alcohol [~~and a resulting decline in job performance that is not otherwise normally explainable~~]; or

(e) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source.

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 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)

Sec. 19. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

Explanation of Proposed Change: This new section was previously approved as a temporary regulation and is now recommended for permanent adoption. Proposed by the Department of Transportation in concert with the Department of Personnel, it provides appointing authorities with an objective way to determine if it is appropriate for an employee to return to work after testing positive while on duty for drugs and/or alcohol. Currently, unless the employee is covered under a federally mandated program for drug testing or if the offense warranted termination, an employee who tests positive for drugs

and/or alcohol is returned to duty with no requirement to provide documentation that they are able to safely perform their job. This regulation would require the employee to provide a release to return to work from their Licensed Substance Abuse Treatment Provider or other approved health care provider stating that the employee is able to return to duty and to pass a return to duty drug and/or alcohol test. This will help ensure that employees do not return to work under the influence of drugs and/or alcohol. An employee who is using drugs and/or alcohol or has them in their system poses a safety risk to themselves, other employees and the public and could also make mistakes that can have far reaching effects. Employees working for the State of Nevada are providing a service to the citizens of Nevada; as such, we should ensure that an employee is substance free and able to perform the essential functions of their job before returning them to duty.

NEW. Return to work of employees who have tested positive for alcohol and/or drugs while on duty.

1. An employee who tests positive for drugs and/or alcohol while on duty, and whose offense does not result in termination pursuant to NAC 284.646 or NAC 284.650, may be required to:

(a) Provide his appointing authority with documentation from his Licensed Substance Abuse Treatment Provider or other approved health care provider with 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 job; and/or

(b) Submit to and pass a return to duty drug and/or alcohol test as determined by the appointing authority.

2. The employee is responsible for the cost of any return to duty testing.

3. An employee who fails to pass a return to duty test is subject to disciplinary action up to and including termination at the discretion of the appointing authority.