



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

**MEMO PERD #61/09**  
**November 4, 2009**

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

A handwritten signature in cursive script that reads "Teresa J. Thienhaus".

SUBJECT: NOTICE OF WORKSHOP - Amendments to NAC 284

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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 1:00 p.m. on December 1, 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, Room 1412, 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, or otherwise notify your employees.

TJT:vk

Enclosures

**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 1:00 p.m. on December 1, 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, Room 1412, 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>
Unpaid furlough leave	LCB R080-09
Preparation, filing, contents, discussion and distribution of reports; power and duties of employees; review; adjustments of grievances	NAC 284.470
Responsibilities of Administrative Services Section of Department of Personnel	NAC 284.506
Annual leave: Service in provisional, special disabled, emergency or temporary status; seasonal employees	NAC 284.541
Civil leave with reduced pay when performing certain service in time or war or emergency	NAC 284.588
Submission, form and contents of grievance; informal discussions	NAC 284.678
Assignment of hearing officer	New section
Scope	NAC 284.774
Request for hearing and other communications	NAC 284.778
Continuances	NAC 284.786
Request for employee to submit to screening test: Interpretation of grounds; completion of required form.	NAC 284.888
Treatment of application 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 and/or drugs while on duty	LCB R066-09

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.  
Legislative Building, 401 South Carson Street  
Capitol Building, 101 North Carson Street

LAS VEGAS

Grant Sawyer State Office Building  
555 East Washington Avenue

ALL STATE AGENCIES

ALL NEVADA COUNTY PUBLIC LIBRARIES

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*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.*

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Date: November 4, 2009

## REGULATION CHANGES PROPOSED FOR PERMANENT ADOPTION

### Section 1. Section 1 of LCB file No. R080-09 is hereby amended to read as follows:

**Explanation of Proposed Regulation:** Senate Bill 433 of the 2009 Legislative Session requires most State classified employees to take 96 hours of unpaid furlough leave in each of the next two fiscal years and for other than classified employees, 1 days of unpaid furlough leave a month during each of the next two fiscal years. The purpose of this regulation is to address concerns expressed by the Legislative Commission when they approved the permanent regulation. It is requested that this regulation expire as of June 30, 2011 unless the Legislature extends the effective date of the furlough. In such a case, this regulation will only be in effect for the period of time in which the Legislature requires furloughs to exist.

### Section 1 of LCB File No. R080-09 (NRS 284.065, 284.155, 284.383, 284.385, and 284.390)

1. Except as otherwise provided in Senate Bill No. 433, chapter 391, Statutes of Nevada 2009, at page 2147, a :

*(a) Full-time employee that is other than a classified employee shall take 1 day of furlough leave per month. Part-time employees that are other than classified employees must prorate their time in accordance with section 3 of Senate Bill 433 of the 2009 Legislative Session.*

*(b) ~~full-time~~ Full-time* classified employee shall take 8 hours of furlough leave each month and a part-time classified employee shall take a number of hours of furlough leave per month that is equivalent to the portion of an 8-hour day that his scheduled workweek or biweekly schedule bears to a full-time workweek or biweekly schedule unless:

~~(a)~~ (1) The employee's appointing authority files a plan with the Director and the Director of the Department of Administration or their designated representatives or, in the case of employees of the Nevada System of Higher Education, with the chief financial officer of the applicable institution for the employee to take furlough leave pursuant to an alternate schedule ~~because of workload demands~~; and

~~(b)~~ (2) The plan is approved in advance by the Director and the Director of the Department of Administration or their designated representatives or by the chief financial officer of the institution, as applicable.

2. Each appointing authority shall establish a policy that defines the minimum increment of furlough leave required to be taken at any one time by a classified employee of the appointing authority. The policy may provide different increments for employees in different divisions, locations or work groups based on business necessity. The appointing authority shall disseminate the policy to each employee under its authority who is required to take furlough leave.

3. To the extent practicable, an employee who is required to take furlough leave and his or her supervisor shall jointly determine in advance a schedule pursuant to which the employee will take furlough leave. If, because of business necessity, such a schedule cannot be mutually agreed upon, a supervisor may direct an employee to take furlough leave on a specific day or at a specific time, or both.

4. Movement of an employee from one position to another position must not alter the amount of furlough leave required to be taken by the employee.

5. The amount of furlough leave that an employee is required to take must not be offset by any savings realized as a result of a vacancy delay in filling the position.

6. An employee who is initially appointed to state service after July 1, 2009, may only be required to take the number of hours or days of furlough leave that is required to be taken during the remainder of the fiscal year after his appointment. If such an employee is appointed on a day other than the first of a month, the employee may not be required to commence taking furlough leave until the immediately succeeding month.

7. An employee may not:

(a) Take more than 8 hours of furlough leave in a workweek.

(b) Receive overtime pay, compensatory time, pay for standby status, added regular time for work as a part-time employee or callback pay in the same pay period in which the employee takes furlough leave, unless approved in advance by the Director and the Director of the Department of Administration or their designated representatives or, in the case of employees of the Nevada System of Higher Education, by the chief financial officer of the applicable institution.

(c) Be required to take more furlough leave than the amount of furlough leave required by the provisions of Senate Bill No. 433, chapter 391, Statutes of Nevada 2009 at page 2147.

8. If an employee who leaves state service has taken more than the equivalent of 8 hours of furlough leave per month at the time of his separation from state service, the employee will not be reimbursed for the additional furlough leave taken.

9. Any furlough leave that an employee takes must be considered time worked for the purpose of calculating the employee's eligibility to take leave under the federal Family and Medical Leave Act. Any furlough leave that is taken during the time in which an employee takes leave that qualifies under the Family and Medical Leave Act will not be counted against the amount of leave for which an employee is entitled to take under the Family and Medical Leave Act.

10. As used in this section, "furlough leave" means the unpaid leave required to be taken pursuant to the provisions of Senate Bill No. 433, chapter 391, Statutes of Nevada 2009 at page 2147.

**Sec. 2. NAC 284.470 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel, clarifies language regarding substandard ratings. The current language implies that if disciplinary action is taken, then the 90-day evaluations do not need to continue even if the employee's performance does not improve. In reality when disciplinary action is taken without a subsequent substandard rating, the employee becomes eligible to receive merit increases and longevity pay.

**NAC 284.470 Preparation, filing, contents, discussion and distribution of reports; power and duties of employees; review; adjustment of grievances. (NRS 284.065, 284.155, 284.340, 284.384)**

1. A person shall not complete a report on performance unless he has completed the training provided or approved by the Director concerning the preparation of a report on performance.

2. A report on performance must be prepared on the form prescribed by the Department of Personnel.

3. A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee. If a report on performance is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard.

4. If any information that would have affected the rating of performance of an employee during a period of evaluation becomes available after the date on which the report on performance of the employee is filed for that period, the information may be included in the report on performance for the current period of evaluation and taken into consideration in determining the rating of performance for the current period of evaluation.

5. When a report on performance is given which reports the overall rating of performance of an employee as substandard:

(a) The report must contain a written notice that such reports affect both merit pay increases and the employee's eligibility for longevity pay; and

(b) An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard [~~or disciplinary action is taken against the employee~~]. ***Disciplinary action may also be taken if the employee's performance fails to improve.***

6. Except as otherwise provided in subsection 7, the preparation of each report on performance must include a discussion between the employee and his immediate supervisor. Within 10 working days after the discussion takes place:

(a) The employee must complete and sign the appropriate section on the report on performance and return the report to his supervisor for forwarding to the reviewing officer or appointing authority.

(b) If the employee disagrees with the report on performance and requests a review, he must respond to the report in writing, identify the specific points of disagreement, if such specificity is provided, and return the response to his supervisor. The reviewing officer shall respond to the employee in writing on a form prescribed by the Department of Personnel within 10 working days after the supervisor receives the request.

7. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 6 because of an extended absence, the immediate supervisor of the employee shall cause the report to be mailed to the employee. Within 10 working days after the date on which the employee receives the report:

(a) The employee must complete and sign the appropriate section on the report on performance and mail the report to his supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee disagrees with the report on performance and requests a review, he must respond to the report in writing, identify any specific point of disagreement, if the report provides such specificity, and mail his response to his supervisor. The reviewing officer shall respond to the employee in writing on a form prescribed by the Department of Personnel within 10 working days after the supervisor receives the request for review from the employee. For the purposes of this paragraph, a report on performance or request for review is deemed to have been received on the third day after the date on which the report or request is postmarked.

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

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

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

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

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

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

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

**Sec. 3. 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~~] the 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)

**Sec. 4. NAC 284.588 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel, clarifies that the intent of this regulation was to provide differential pay to Reserve or National Guard members who are called to active duty versus employees who chose to leave State service to pursue a career in the Armed Forces. This regulation was adopted following September 11, 2001 and is intended to reduce the financial hardship an employee would experience as a result of their military pay being less than what they would have earned as a State employee.

**NAC 284.588 Civil leave with reduced pay when performing certain service in time of war or emergency. (NRS 284.065, 284.155, 284.175, 284.345)** An employee in the public service who performs active military service in the [~~Armed Forces of the United States~~] *United States Army Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Air Force Reserve, or the Nevada National Guard* or any other category of persons designated by the President of the United States or the Governor of this State, including, without limitation, the Commissioned Corps of the Public Health Service, in time of war or emergency, is entitled to civil leave with reduced pay pursuant to this section for the period of such service. The pay that such an employee is entitled to receive pursuant to this section is the difference between the pay he would have otherwise received as a state employee and his pay for active military service. If his pay for active military service is greater than the pay he would have otherwise received as a state employee, the employee will not receive any additional pay pursuant to this section while he is in active military service.

(Added to NAC by Dep't of Personnel by R146-01, 1-18-2002, eff. 2-4-2002)

**Sec. 5. 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 3 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. A grievance filed pursuant to this subsection 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~~ **the** person who is at the next **appropriate** level of the grievance process. **The employee may bypass any individual who served as the rater, optional supervisory reviewer, or reviewing officer.**

[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)

**Sec. 6. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:**

**Explanation of Proposed Change:** This new section, proposed by the Department of Personnel, describes the method for the assignment of a hearing officer when an employee has filed an appeal of a dismissal, suspension, demotion, involuntary transfer, or a “Whistle Blower” complaint.

*New Section. Assignment of hearing officer.*

**1. Upon notice of request for appeal, the Director shall provide both parties with an identical selection list of hearing officers.**

**2. The parties shall return the selection list to the Department within 10 days, as specified on the selection list, with no more than two names stricken each.**

**(a) If both parties respond within the 10-day period, the Department shall appoint a hearing officer from those names not stricken from the selection list;**

**(b) If only one party responds within the 10-day period, the Department shall appoint a hearing officer from among those names not stricken from the selection list;**  
**or**

**(c) If neither party responds within the 10-day period, the Department shall appoint a hearing officer from among the names on the selection list.**

**3. If the selection process outlined above fails for any reason, including a recusal by the hearing officer, the Department shall repeat the process to select an alternate hearing officer, where practicable, or assign the first available hearing officer.**

**Sec. 7. NAC 284.774 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel, clarifies that the hearing officers may only adopt supplementary procedures to those established in regulation and by the Department of Personnel.

**NAC 284.774 Scope. (NRS 284.065, 284.155, 284.376, 284.390)**

1. NAC 284.774 to 284.818, inclusive, governs hearings *before the hearing officer* in all cases relating to dismissals, suspensions, demotions, ~~and~~ involuntary transfers, *and in accordance with NRS 281.641.* ~~[before the hearing officer.]~~

2. The hearing officer ~~[may modify or alter the hearings]~~ *shall use the* procedures established in NAC 284.774 to 284.818, inclusive, ~~[if experience and circumstances indicate such action and interested parties have proper notice of any procedural changes or are not prejudiced thereby.]~~ *and the procedures provided to the hearing officer by the Department of Personnel.*

3. Each hearing officer may ~~[from time to time]~~ adopt supplementary rules governing practice before him not inconsistent with ~~[NAC 284.774 to 284.818, inclusive.]~~ *those provided for in subsection 2 of this regulation. Such rules must be available in writing to all parties in advance of any hearing.*

[Personnel Div., Hearings Procedures § (C), eff. 11-28-65; A 6-9-74]—(NAC A by Dep't of Personnel, 10-26-84)

**Sec. 8. NAC 284.778 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel, addresses communications between parties in an appeal and the hearing officer.

**NAC 284.778 Request for hearing and other communications. (NRS 284.065, 284.155, 284.376, 284.390)**

1. A request for an appeal and other pertinent communications directed to the hearing officer must be addressed to the Director.

2. *Parties in an appeal hearing shall not communicate directly with the hearing officer regarding the merits of the case, except in the presence of, or with reasonable notice to, all of the other parties.*

3. *Unless otherwise agreed in writing by all parties, no offer or demand of settlement made by any party shall be disclosed to the hearing officer prior to the issuance of a decision.*

[Personnel Div., Hearings Procedures § (A) subsec. (1), eff. 11-28-65; A 6-9-74]—(NAC A by Dep't of Personnel, 10-26-84)

**Sec. 9. NAC 284.786 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel, clarifies the procedure for requesting a continuance and when it is appropriate for a continuance to occur.

**NAC 284.786 Continuances. (NRS 284.065, 284.155, 284.376, 284.390)** ~~Hearings may be continued beyond the period originally scheduled or recessed until a future date which is agreeable to the hearing officer and the parties if good cause is shown.]~~ *No continuance of a hearing shall be granted except for good cause.*

*1. At least 5 working days in advance of the hearing date, a written motion or stipulation for continuance may be filed with the hearing officer and copies sent to the opposing party and the Department of Personnel. Within two working days of receiving the requested continuance, the opposing party may contest the request for a continuance by filing a written motion with the hearing officer and provide a copy of the motion to the requesting party and the Department of Personnel. Whether contested or not, the hearing officer will determine if the hearing will proceed as scheduled.*

*2. On the day of the scheduled hearing, a continuance will only be allowed when:*  
*a. An emergency occurs and either the hearing officer, either party or his or her legal counsel, or a primary witness cannot attend the hearing;*

*b. The hearing exceeds the allotted time for the day; or*

*c. The hearing officer recesses the hearing until a future date.*

*3. When a hearing is continued to a future date, the hearing shall occur within 10 working days unless there is a conflict with the hearing officer's calendar.*

[Personnel Div., Hearings Procedures § (A) subsec. (9), eff. 11-28-65; A 6-9-74]—  
(NAC A by Dep't of Personnel, 10-26-84)

**Sec. 10. 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 typically underestimating the amount of damage involved with motor vehicle accidents and are failing to test 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) A workplace accident that results in the employee seeking 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)

**Sec. 11. 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 will be removed from all recruitment lists requiring pre-employment drug testing** until:

(a) One year has passed from 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)

**Sec. 12. 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 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 *counseling, documentation or* 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, )