



DEPARTMENT OF PERSONNEL
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MEMO PERD # 01/11
January 18, 2011

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, reading "Teresa J. Thienhaus".

SUBJECT: NOTICE OF PUBLIC HEARING - Amendments to NAC 284

The regulation changes included with this memorandum are being proposed for adoption at the February 18, 2011 Personnel Commission meeting. This meeting will be held at 9:00 a.m. at the Blasdel Building, 209 E. Musser Street, Room 100, Carson City with videoconferencing to Las Vegas at the Grant Sawyer Building, Room 1100, 555 East Washington Avenue.

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

TJT:dws

Enclosures

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

The Personnel Commission will hold a public hearing at 9:00 a.m., on February 18, 2011, at the Blasdel Building, 209 E. Musser Street, Room 100, Carson City and in Las Vegas at the Grant Sawyer Building, Room 1100, 555 East Washington Avenue via videoconferencing. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations will not result in an increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.

Regulation Lead Line:

NAC #

Permanent Adoption -

Filing of grievance with administrator of department; action by administrator NAC 284.690

Submission of grievance to Employee-Management Committee NAC 284.695

Temporary Adoption -

Preparation, filing, contents, discussion and distribution of reports; power and duties of employees; review; adjustment of grievances NAC 284.470

Appeal of decision of reviewing officer NAC 284.478

Submission, form and contents of grievance; informal discussions NAC 284.678

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Department of Personnel, 209 E. Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Department of Personnel on or before January 28, 2011. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at the Department of Personnel, 209 E. Musser Street, Room 300, Carson City; 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed

to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

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

CARSON CITY

Blasdel Building, 209 East Musser Street

Nevada State Library and Archives, 100 Stewart St.

Capitol Building, Main Floor

Department of Personnel web site: www.dop.nv.gov

Main branch of Nevada County Public Libraries

LAS VEGAS

Grant Sawyer State Office Building

555 East Washington Avenue

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

REGULATION CHANGES PROPOSED FOR PERMANENT ADOPTION

LCB File No. R118-10

Explanation of Proposed Change: Based on recommendations from the Employee-Management Committee (EMC), this change will help ensure that top administrators or their designee research and respond to employee grievances. Language in subsection 2 is being removed because the use of the word “may” has caused confusion for agencies leading them to believe they had discretion over rendering a decision or forwarding the grievance to the EMC.

NAC 284.690 is hereby amended to read as follows:

Section 1:

NAC 284.690 Filing of grievance with administrator of department; action by administrator. (NRS 284.065, 284.155, 284.384)

1. ~~{ff}~~ *Except as otherwise provided in NAC 284.692*

(a) *If* the employee has not received satisfactory relief within 10 working days after his grievance is deemed to have been received by the head of the division, he may file his grievance with the highest administrator of the department. ~~{Except as otherwise provided in NAC 284.692,}; and~~

(b) *Within 10 working days the employee’s grievance is deemed to have been received by the highest administrator of the department,* the administrator ~~{may hold a hearing within 10 working days after receiving the employee’s grievance}~~ *or the designee of the administrator shall:*

(1) *Gather information regarding the grievance;*

(2) *Render a decision resolving the grievance, including, without limitation, denying the grievance; and*

(3) *Notify the employee of the resolution.*

2. ~~{Except as otherwise provided in NAC 284.692, the highest administrator may render a decision following the hearing or allow the grievance to be forwarded directly to the Committee within 10 working days.~~

~~—3—~~In rendering a decision concerning a performance evaluation, an administrator shall address the findings of fact to the specific points of disagreement referred to in the grievance of the employee.

~~{4.}~~ 3. Within the established time limitations, including any extensions to those time limitations obtained pursuant to NAC 284.692, the highest administrator may appoint a person or committee composed of managers and employees to assist in the finding of facts and recommending a course of action.

[Personnel Div., Rule XV § A subsec. 4, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep’t of Personnel, 10-26-84; 10-18-89; A by Personnel Comm’n by R065-98, 7-24-98; R023-05, 10-31-2005)

Explanation of Proposed Change: This change, recommended by the Legislative Counsel Bureau, removes redundant language from the regulation.

Sec. 2:

NAC 284.695 is hereby amended to read as follows:

NAC 284.695 Submission of grievance to Employee-Management Committee. (NRS 284.065, 284.155, 284.384) If an employee ~~[has not received satisfactory relief within 10 working days after his receipt of]~~ *is not satisfied with* the decision ~~[from]~~ *rendered by* the highest administrator in the department~~[,]~~ *pursuant to NAC 284.690*, he may request consideration of the grievance by the Committee pursuant to its rules. The employee must submit his request to the Committee within 10 working days following his receipt of the decision from the administrator. The request must include all appropriate documentation, a citation of the statutes and regulations pertinent to the grievance, if any, the specific points of disagreement and supporting evidence. The Committee will, within 45 working days after the receipt of the employee's request:

1. Answer the request without a hearing if the case is based upon the Committee's previous decisions or does not fall within its jurisdiction; or

2. Hold a hearing to determine the proper disposition of the request. If a hearing is held, the Committee will:

(a) Except as otherwise provided in paragraph (b), provide at least 21 working days' written notice to all parties concerned.

(b) Provide notice to the employee by:

(1) Sending a written notification by certified mail, return receipt requested, at least 21 working days before the hearing; or

(2) Personally delivering a written notification to the employee at least 5 working days before the hearing, if the Chairman approves of such notice.

(c) Render a decision within 45 days after the closure of the hearing.

[Personnel Div., Rule XV § A part subsec. 6, eff. 8-11-73; A 6-9-74; 7-3-76; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89; 10-18-89; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 3-27-92; 11-12-93; 3-23-94; 11-16-95)

REGULATION CHANGES PROPOSED FOR TEMPORARY ADOPTION

Explanation of Proposed Change: This regulation change, proposed by the Department of Personnel, adds language stating that the appointing authority has the final decision regarding reviews of contested reports on performance. This change will eliminate confusion over who has final authority for the content of reports on performance and will make the regulation consistent with NRS 284.340, which states that reports on performance are ultimately the duty of the appointing authority. The reviewing officer will make recommendations on whether to uphold or modify the report on performance and the appointing authority will have 10 working days to render a final decision on the recommendation.

Section 1:

NAC 284.470 is hereby amended to read as follows:

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.

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}~~ **contests the content of** 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.

(c) 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 **and the employee shall receive a copy. If the reviewing officer is not the appointing authority, he or she shall submit the form with recommendations to uphold or modify the report on**

performance to the appointing authority. The appointing authority shall review the reviewing officer's recommendations regarding the contested report on performance and shall render a final decision to the employee within 10 working days after receiving the recommendation. The appointing authority has final decision-making authority in the review process.

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]~~ **contests the content of** 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.

(c) 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 **and the employee shall receive a copy. If the reviewing officer is not the appointing authority, he or she shall submit the form with recommendations to uphold or modify the report on performance to the appointing authority. The appointing authority shall review the reviewing officer's recommendations regarding the contested report on performance and shall render a final decision to the employee within 10 working days after receiving the recommendation. The appointing authority has final decision-making authority in the review process.** 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, 9-29-2008)

Explanation of Proposed Change: The language has been changed to state that a grievance about an evaluation relates to the content of the report on performance and not the decision of the reviewing officer. This change reflects the new advisory role of the reviewing officer.

Sec. 2:

NAC 284.478 is hereby amended to read as follows:

NAC 284.478 Appeal of ~~[decision of reviewing officer]~~ a contested report on performance. (NRS 284.065, 284.155, 284.384) Upon the completion of the review process, [A] a permanent employee may appeal ~~[a decision of a reviewing officer pursuant to NAC 284.470]~~ a *contested report on performance* through the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

[Personnel Div., Rule IX § D, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-18-89; R197-99, 1-26-2000)

Explanation of Proposed Change: Language has been added requiring that all grievances concerning reports on performance be submitted to the highest administrator of the department before being filed with the Employee-Management Committee (EMC). This will allow the agency a final opportunity to resolve the grievance or uphold the report on performance. It will also give the agency an opportunity to clarify its response to the employee and the EMC. Changes were also made to consistently use the term “reports on performance” instead of alternating it with “performance evaluation.” “Reports on performance” is more consistent with the language used in statute.

Sec. 3:

NAC 284.678 is hereby amended to read as follows:

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

1. Except as otherwise provided in subsections 3 and 4 and NAC 284.692, an employee who feels aggrieved and wishes to file a formal grievance must submit his grievance in writing to his immediate supervisor on the official form, or in a letter if the official form is not available, within 20 working days after the date of the origin of the grievance or the date the employee learns of the problem. The parties should make every effort to resolve the grievance through informal discussions within these 20 working days.

2. If the employee submits a letter, it must include:

- (a) His name;
- (b) His most recent date of hire;
- (c) His position;
- (d) His department, division and section;
- (e) His mailing address;
- (f) His business telephone number;
- (g) A statement that he is filing a formal grievance;
- (h) The date, time and place of the event or the date the employee learns of the event leading to the grievance;
- (i) A concise statement of his grievance;
- (j) A detailed description of his grievance, including the names of other persons involved in the event, if any;
- (k) A proposed solution of his grievance;
- (l) His signature; and
- (m) The date he signed the statement.

3. Except as otherwise provided in NAC 284.692, if a grievance relates to ~~[a decision of a reviewing officer about a performance evaluation]~~ a *contested report on performance*, 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]~~ a decision ~~[of the reviewing officer]~~ *regarding the review from the appointing authority*. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of a

reviewing officer *or appointing authority* to respond to a request for a review within the time required by NAC 284.470, an employee must file a grievance not later than 10 working days after the date on which the time for such a response expired.

4. A grievance filed pursuant to subsection 3 must be filed with:

(a) The person who is at the next appropriate level of the grievance process; or

(b) If the person who is at the next appropriate level of the grievance process is the reviewing officer or other person who prepared or reviewed the ~~[performance evaluation]~~ **report on performance**, the person who is at the next appropriate level of the grievance process ~~[who did not prepare or review the performance evaluation]~~.

(c) ***Grievances regarding reports on performance must be filed with the highest administrator in the department for a response before being submitted to the Employee-Management Committee.***

[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; R191-09, 4-20-2010)