



**DEPARTMENT OF PERSONNEL**  
**100 North Stewart, Room 200**  
**Carson City, Nevada 89701-4204**  
**(775) 684-0150**  
**<http://dop.nv.gov>**

**MEMO PERD # 44/11**  
**August 29, 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

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The regulation changes included with this memorandum are being proposed for adoption at the September 28, 2011 Personnel Commission meeting. This meeting will be held at 9:00 a.m. at the Legislative Counsel Bureau, Conference Room 4100, 401 South Carson Street, Carson City with videoconferencing to Las Vegas at the Grant Sawyer Building, Room 4412, 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 September 28, 2011, at the Legislative Counsel Bureau, Conference Room 4100, 401 South Carson Street, Carson City and in Las Vegas at the Grant Sawyer Building, Room 4412, 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:**

	<b><u>NAC #</u></b>
“Reviewing officer” defined	<b>LCB File #R056-10</b>
Preparation, filing, contents, discussion and distribution of reports;	NAC 284.097
power and duties of employees; review; adjustment of grievances	NAC 284.470
Warnings and written reprimand	NAC 284.638
	<b>LCB File #R007-11</b>
Preparation, filing, contents, discussion and distribution of reports;	NAC 284.470
power and duties of employees; review; adjustment of grievances	
Appeal of a contested report on performance	NAC 284.478
“Grievance” defined	NAC 284.658
Submission, form and contents of grievance; informal discussions	NAC 284.678
Filing of grievance with administrator of department; action by administrator	NAC 284.690
Submission of grievance to Employee-Management Committee	NAC 284.695
	<b>LCB File #R009-11</b>
Administration of screening tests	NAC 284.882
	<b>LCB File #R010-11</b>
Request for employees to submit to screening test: Interpretation of grounds; completion of required forms	NAC 284.888
	<b>LCB File #R011-11</b>
Hearing Procedures	New Section
Request for hearing and other communications	NAC 284.778
	<b>LCB File #R012-11</b>
Compensation for standby status	NAC 284.218
Holidays: Compensation for working	NAC 284.256

Unpaid furlough leave

**LCB File #R021-11**  
New Section

Holidays: Compensation for working

**LCB File #R022-11**  
NAC 284.256

Affirmative action program and equal employment opportunity

**LCB File #R023-11**  
NAC 284.114

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 September 7, 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 North 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, 100 North Stewart Street, Suite 200, Carson City; 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

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

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

**CARSON CITY**

Blasdel Building, 209 East Musser Street  
Nevada State Library and Archives, 100 Stewart St.  
Capitol Building, Main Floor  
Legislative Building, 401 South Carson Street  
Gaming Control Board, 1919 College Parkway  
Department of Personnel web site: [www.dop.nv.gov](http://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. R056-10

### Section 1. NAC 284.097 is hereby amended to read as follows:

**Explanation of Proposed Change:** This regulation change, proposed by the Legislative Counsel Bureau, reflects a subsection numbering change in the proposed revision of NAC 284.470.

**NAC 284.097 “Reviewing officer” defined. (NRS 284.065)** “Reviewing officer” means:

1. The supervisor of the person who prepared a report on performance of an employee; or
  2. Such other person designated by the appointing authority,
- ↪ who reviews the report on performance upon the request of the employee pursuant to paragraph (b) of subsection ~~{6}~~ 7 of NAC 284.470.

(Added to NAC by Personnel Comm’n by R038-03, eff. 10-30-2003; A by R144-05, 12-29-2005)

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

**Explanation of Proposed Change:** This regulation change, proposed by the Department of Personnel, moves content from the regulation regarding discipline and places it in the regulation regarding reports on performances. It will help ensure that employees are informed when their performance falls below standard in a timely manner, regardless of whether or not discipline is warranted.

**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 the performance of an employee falls below standard, his or her supervisor shall inform the employee promptly and specifically of the deficiencies in the performance of the employee regardless of whether a report on performance of the employee is completed or filed.***

5. 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.}~~6. 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.}~~7. Except as otherwise provided in subsection ~~{7.}~~8, 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~~8. If an employee is unavailable for a discussion of the report on performance pursuant to subsection ~~6~~7 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~~9. 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~~10. 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~~9:

(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~~11. An employee and his appointing authority may agree in writing to extend one or more of the periods prescribed in subsection ~~6 or 7.~~ 7 or 8.

~~11~~12. 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.

### Sec. 3. NAC 284.638 is hereby amended to read as follows:

<p><b>Explanation of Proposed Change:</b> This regulation change, proposed by the Department of Personnel, removes content that is better addressed in the reports on performance regulation and is not relevant to warnings and written reprimands.</p>
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#### **NAC 284.638 Warnings and written reprimands. (NRS 284.065, 284.155, 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.~~ **conduct.**

2. 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 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.

## LCB FILE #R007-11

### Section 1. NAC 284.470 is hereby amended to read as follows:

**Explanation of Proposed Change:** This regulation change, previously approved as a temporary regulation and proposed by the Department of Personnel as permanent, 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.

#### **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 report on performance and requests a review, he must respond to the report in writing, identify the specific points of ~~{disagreement,}~~ **contention**, if such specificity is provided, and return the response to his supervisor. ~~{The}~~ **Except as otherwise provided in this paragraph, 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. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance.. The appointing authority shall review the recommendation of the reviewing officer regarding the contested report on performance and render a final decision to the employee within 10 working days after receiving the recommendation.**

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 report on performance and requests a review, he must respond to the report in writing, identify any specific point of ~~disagreement,~~ **contention**, if the report provides such specificity, and mail his response to his supervisor. ~~The~~ **Except as otherwise provided in this paragraph, 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. ~~from the employee.~~ **If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the report on performance and render a final decision to the employee within 10 working days after receiving the recommendation.** 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 ~~is~~ **requested by an employee pursuant to subsection 6 or 7** 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)

## Sec. 2. NAC 284.478 is hereby amended to read as follows:

**Explanation of Proposed Change:** This amendment was previously approved as a temporary regulation and is proposed by the Department of Personnel as permanent. It changes language 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.

**NAC 284.478 Appeal of decision of reviewing officer. (NRS 284.065, 284.155, 284.384)**  
**Upon the completion of the review process conducted pursuant to NAC 284.470, a permanent employee may appeal a ~~decision of a reviewing officer pursuant to NAC 284.470~~ 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)

**Sec. 3. NAC 284.658 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation change, proposed by the Legislative Counsel Bureau, is to be consistent with language adopted in NAC 284.470.

**NAC 284.658 “Grievance” defined. (NRS 284.065, 284.155, 284.384)**

1. As used in NAC 284.341 and 284.658 to 284.697, inclusive, a “grievance” means an act, omission or occurrence which a permanent employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement~~[-]~~ **or a contested report on performance.** The act, omission or occurrence must be established with factual information, including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved.

2. For the purposes of NAC 284.341 and 284.658 to 284.697, inclusive, the term “grievance” does not include any grievance for which a hearing is provided by NRS 284.165, 284.376 or 284.390.

[Personnel Div., Rule XV part § A, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep't of Personnel, 8-28-85; 10-18-89; 8-1-91; 3-27-92; R082-00, 8-2-2000; A by Personnel Comm'n by R023-05, 10-31-2005)

**Sec. 4. NAC 284.678 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This proposed change incorporates language previously passed in temporary regulation. Language from the temporary regulation requires 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 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.

**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 ~~the decision of a reviewing officer about~~ a **contested report on** performance, ~~evaluation~~ an employee must file a grievance that identifies the specific points of ~~disagreement,~~ **contention**, 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 conducted by the appointing authority pursuant to NAC 284.470**. 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 **report on** performance, ~~evaluation~~ the person who is at the next appropriate level of the grievance process **above such reviewing officer or other person who prepared or reviewed the report on** ~~who did not prepare or review the~~ performance. ~~evaluation.~~

**5. A grievance regarding a report on performance must be filed with the highest administrator in the department pursuant to NAC 284.690 before being submitted to the Committee pursuant to NAC 284.695.**

[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)

**Sec. 5. NAC 284.690 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation change, proposed by the Legislative Counsel Bureau, is to be consistent with language adopted in NAC 284.470.

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

1. 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; and
  - (b) Within 10 working days after the employee's grievance is deemed to have been received by the highest administrator of the department, the administrator 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. In rendering a decision concerning a **report on** performance, ~~evaluation,~~ an administrator shall address the findings of fact to the specific points of ~~disagreement~~ **contention** referred to in the grievance of the employee.
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; *R118-10, 5-5-2011*)

**Sec. 6. NAC 284.695 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation change, proposed by the Legislative Counsel Bureau, is to be consistent with language adopted in NAC 284.470.

**NAC 284.695 Submission of grievance to Employee-Management Committee. (NRS 284.065, 284.155, 284.384)** If an employee is not satisfied with the decision 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 *or contention* 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; *R118-10, 5-5-2011*)

**LCB File No. R009-11**

**Section 1. NAC 284.882 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel and previously approved as a temporary regulation, would allow the Personnel Commission to adopt supplemental drug testing standards and procedures in addition to the adopted federal standards.

**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~~

(a) *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 United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for

Substance Abuse Prevention, Division of Workplace Programs, 1 Choke Cherry Road, Rockville, Maryland, 20857~~[-]~~; *and*

*(b) Any supplementary standards and procedures established by the Commission.*

2. Alcohol by testing a person's breath must be conducted using a breath-testing device certified in accordance with the "Conforming Products List of Evidential Breath Alcohol Measurement Devices" published in the Federal Register for the National Highway Traffic Safety Administration of the United States Department of Transportation.

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A 10-27-97; R082-00, 8-2-2000; R066-09, 10-27-2009)

## **LCB File No. R010-11**

**Section 1. NAC 284.888 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment is currently in effect as a temporary regulation and is proposed by the Department of Personnel. It brings NAC 284.888 into alignment with NRS 284.4065. It will allow an appointing authority to more easily test an employee who, while on duty, operates a motor vehicle in any manner that causes bodily injury to himself or another or substantial damage to property.

**NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required forms. (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}~~ (b) The odor of alcohol or a controlled substance on the breath of the employee;

~~{d}~~ (c) Observation of the employee consuming alcohol;

~~{e}~~ (d) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source; or

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

2. ~~{Pursuant}~~ *Except as otherwise provided in subsection 3, before requiring an employee to submit to a screening test, the supervisor of the employee must complete a form provided by the Department of Personnel.*

3. *The provisions of subsection 2 do not apply if an appointing authority requests an employee to submit to a screening test pursuant to paragraph (b) of subsection 2 of NRS 284.4065. ~~{}~~ As used in 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 \$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 forms provided by the Department of Personnel.}~~

(Added to NAC by Dep't of Personnel, eff. 12-26-91; R066-09, 10-27-2009; R193-09, 4-20-10)

## **LCB File No. R011-11**

### **Section 1. LCB File No. R063-09, section 2 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment is currently in effect as a temporary regulation and is proposed by the Department of Personnel to become permanent. It requires requests for appeals regarding dismissals, suspension and demotions to be submitted on a form provided by the Department. The use of a required form is part of the Department's effort to improve the appeal process and its outcomes. The form will eliminate confusion for employees on how to file an appeal and will also provide useful information about the employee's concerns.

**NEW. Hearing procedures. (NRS 284.065, 284.155, 284.383, 284.385, 284.390)** Except as otherwise provided in section 3 of ~~[this regulation]~~ *LCB File No. R063-09*, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure for a hearing before the proposed action must be followed:

1. A hearing must be scheduled on the employee's behalf unless waived in writing by the employee pursuant to subsection 2. The hearing must be scheduled to take place not earlier than 7 working days after the written notice of the proposed action is delivered or deemed received pursuant to subsection 2 of NAC 284.656. The hearing must not be scheduled on a day which is not a regular working day for the employee. If the appointing authority or his or her designated representative and the employee agree, the date of the hearing may be changed.

2. The employee may waive the right to a hearing before the proposed action in writing. If the employee makes such a waiver, the employee 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.

3. The appointing authority or his or her designated representative shall conduct the hearing. The designated representative must be a person with the authority to recommend a final decision to the appointing authority. The appointing authority shall render the final decision.

4. At any time after receiving the notice and before the hearing, the employee may examine all materials that 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 or her suspension, demotion or dismissal.

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

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

7. The employee must be:

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

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

8. An employee who has been dismissed, demoted or suspended may request a hearing before the hearing officer of the Department of Personnel pursuant to NRS 284.390 within 10 working days after the effective date of his or her dismissal, demotion or suspension. Such a request must be ~~[in writing and]~~ addressed to the ~~[Department of Personnel or may be]~~ *Director and* submitted on the form provided by the Department of Personnel.

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

**Sec. 2. NAC 284.778 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed as permanent by the Department of Personnel, adds language regarding the use of a required form to request a hearing. This makes the regulation consistent with the changes made to the hearing procedures regulation.

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

1. A request for an appeal must be addressed to the Director~~[.]~~ *and submitted on the form approved by the Department of Personnel.*

2. A copy of any written communications directed to a hearing officer must be sent to the Hearing Clerk of the Department of Personnel.

3. A party shall not communicate with a hearing officer regarding the merits of a case:

(a) Except in the presence of all parties to the hearing; or

(b) Unless all parties to the hearing are notified of the communication in advance.

4. Unless otherwise agreed upon in writing by all parties, an offer or demand of settlement made by a party must not be disclosed to or proposed by a hearing officer before the issuance of a final decision by the hearing officer.

[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; R192-09, 7-1-10)

**LCB File No. R012-11**

**Section 1. NAC 284.218 is hereby amended to read as follows:**

**Explanation of Proposed Change:** Pay for Standby Status is reportable to the Public Employees' Retirement System (PERS). Although Central Payroll complies with this reporting requirement when this event is compensated with pay, it is not always in compliance when it is earned as accrued compensatory time off. This regulation change, proposed by the Department of Personnel, would ensure proper employee compensation reporting to PERS.

**NAC 284.218 Compensation for standby status. (NRS 284.065, 284.155, 284.175)**

1. A nonexempt employee in the classified service of the State is on standby status when he is:

(a) Directed to remain available for notification to work during specified hours;

(b) Prepared to work if the need arises;

(c) Able to report to work within a reasonable time;

(d) Directed by his supervisor to carry a paging device, provide a telephone number where he may be notified or provide any other acceptable means for notification; and

(e) Allowed to use the time during which he is waiting for notification to work for his personal pursuits.

2. When a nonexempt employee in the classified service of the State who is on standby status begins the performance of his regular duties after receiving notice to work, he ceases to be on standby status and qualifies for straight time or overtime pay, whichever is applicable, for the actual time worked. Upon completion of the work, he returns to standby status for the remainder of the time he has been directed to be available to work.

3. A nonexempt employee in the classified service of the State is entitled to receive additional pay ~~[, or equivalent compensatory time off,]~~ at the rate of 5 percent of his normal rate of pay for every hour he is on standby status.

4. ~~[Cash payment is the preferred method of compensation pursuant to this section, but compensatory time off, not to exceed the maximum allowed pursuant to subsection 3 of NAC 284.250, must be granted in lieu of cash payment if the employee requests compensatory time and the agency approves the request.]~~

[5:] Any class designated by statute as a 24-hour class does not automatically qualify for this additional pay.

[Personnel Div., Rule III § K, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 10-26-84; 7-22-87; 3-23-94; R147-01, 1-22-2002)

**Sec. 2. NAC 284.256 is hereby amended to read as follows:**

**Explanation of Proposed Change:** Holiday Premium Pay is reportable to the Public Employees' Retirement System (PERS). Although Central Payroll complies with this reporting requirement when this event is compensated with pay, it is not always in compliance when it is earned as accrued compensatory time off. This regulation change, proposed by the Department of Personnel, would ensure proper employee compensation reporting to PERS.

**NAC 284.256 Holidays: Compensation for working. (NRS 284.065, 284.155, 284.175)**

1. As used in this section, "holiday premium pay" means pay ~~for compensatory time~~ at the rate of time and one-half of an employee's normal rate of pay for hours designated as worked on a holiday, except those hours that are considered overtime pursuant to NRS 284.180.

2. A nonexempt employee who works on a holiday is entitled to receive holiday premium pay ~~for~~ **or** overtime pay ~~for compensatory time~~ for the hours he works on the holiday, in addition to any holiday pay that he is entitled to be paid pursuant to NAC 284.255. ~~[A nonexempt employee who elects to receive compensatory time for the hours he works on a holiday must not exceed the limits on the accrual of compensatory time set forth in NAC 284.250.]~~

[Personnel Div., Rule VII § B part subsec. 3, eff. 8-11-73]—(NAC A by Dep't of Personnel, 7-21-89; 9-13-91; 3-23-94; R058-01, 9-6-2001; R147-01, 1-22-2002)—(Substituted in revision for NAC 284.530)

**LCB File No. R021-11**

**Section 1. Chapter 284 of NAC is hereby amended by adding to thereto a new section to read as follows:**

**Explanation of Proposed Change:** Senate Bill 505 requires State employees to take a set amount of unpaid furlough leave during fiscal years 2012 and 2013. This regulation addresses various provisions related to the implementation of furlough leave.

**NEW: Unpaid furlough leave**

**1. The total number of hours of furlough leave required to be taken in a fiscal year by an employee who is initially appointed to state service after the commencement of the fiscal year is:**

**(a) For a full-time employee, the equivalent of 4 hours of furlough leave for each full month remaining in the fiscal year.**

**(b) For a part-time employee, the equivalent of the portion of 4 hours of furlough leave for each month remaining in the fiscal year that is proportional to the average number of hours worked by the part-time employee.**

**↳ If such an employee is appointed on a day other than the first day of a month, the month in which the employee is appointed is not included in the calculation set forth in this subsection.**

**2. An appointing authority may establish a policy that defines the minimum increment of furlough leave required to be taken at any one time by an employee of the appointing authority if the appointing authority determines that the minimum increment is necessary based on business necessity. 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 delay in filling the position that the employee holds.*

6. *An appointing authority shall not require or allow an employee to take more than 12 hours of furlough leave in a workweek.*

7. *Unless approved in advance by the Director of the Department of Personnel 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, an appointing authority shall not require or allow an employee to work additional time during the same pay period in which the employee takes furlough leave if the additional time would be:*

(a) *Overtime for which the employee would be entitled to be compensated; or*

(b) *Added regular time for work as a part-time employee.*

8. *An employee who leaves state service will not be reimbursed for any furlough leave taken.*

9. *Any furlough leave taken by an employee 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 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. 505, chapter 374, Statutes of Nevada 2011, at page 2207.*

Sec. 2. This regulation expires by limitation on June 30, 2013.

## **LCB File No. R022-11**

**Section 1. NAC 284.256 is hereby amended to read as follows:**

**Explanation of Proposed Change:** Pursuant to A.B. 560 of the 2011 Legislative Session, this amendment changes the rate of pay for an employee who works on a State holiday from time and one-half of the employee's normal rate of pay to the rate of the employee's normal rate of pay. Overtime worked on a State holiday will continue to be paid at the rate of time and one-half the employee's normal rate of pay. The pay for working on a holiday is in addition to any other pay the employee maybe eligible for as provided for by regulation including but not limited to compensation for the State holiday itself.

### **NAC 284.256 Holidays: Compensation for working. (NRS 284.065, 284.155, 284.175)**

1. As used in this section, "holiday premium pay" means pay or compensatory time at ~~the rate of time and one-half of~~ an employee's normal rate of pay for hours designated as worked on a holiday, except those hours that are considered overtime pursuant to NRS 284.180.

2. A nonexempt employee who works on a holiday is entitled to receive holiday premium pay, overtime pay or compensatory time for the hours he works on the holiday, in addition to any

holiday pay that he is entitled to be paid pursuant to NAC 284.255. A nonexempt employee who elects to receive compensatory time for the hours he works on a holiday must not exceed the limits on the accrual of compensatory time set forth in NAC 284.250.

[Personnel Div., Rule VII § B part subsec. 3, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 7-21-89; 9-13-91; 3-23-94; R058-01, 9-6-2001; R147-01, 1-22-2002)—(Substituted in revision for NAC 284.530)

## **LCB File No. R023-11**

### **Section 1. NAC 284.114 is hereby amended to read as follows:**

Explanation of Proposed Change: Pursuant to A.B. 211 of the 2011 Legislative Session, this amendment adds “gender identity or expression” to ensure equal access and non-discrimination regarding employment. Staff recommends that this regulation become effective on October 1, 2011, the effective date of A.B. 211.

### **NAC 284.114 Affirmative action program and equal employment opportunity. (NRS 284.065)**

1. The Department of Personnel is responsible for establishing, coordinating and evaluating an affirmative action program for this State.

2. The Department of Personnel will cooperate and consult with agencies to:

(a) Identify barriers in the personnel management system which may adversely affect the ability of applicants and employees to reach their full employment potential without regard to race, sex, sexual orientation, *gender identity or expression*, religion, color, national origin, age, genetic information or disability.

(b) Coordinate programs to remove barriers to equal employment opportunity while ensuring the effectiveness of the merit system and the opportunity for persons to enter the system and progress in it to the extent of their merit.

3. *As used in this section, “gender identity or expression” has the meaning ascribed to it in NRS 281.370, as amended by section 16 of Assembly Bill No. 211, chapter 112, Statutes of Nevada 2011, at page 501.*

[Personnel Div., Rule I § C, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 10-26-84; 7-6-92; R098-99, 9-27-99; R055-10, 6-30-10)