



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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MEMO PERD #42/13

September 10, 2013

TO: Nevada County Libraries
State Library and Archives

FROM: Lee-Ann Easton, Division Administrator *Lee-Ann Easton*
Division of Human Resource Management

SUBJECT: NOTICE OF PUBLIC HEARING – NAC 284 Regulation Changes

The regulation changes included with this memorandum are being proposed for adoption at the October 10, 2013 Personnel Commission meeting. This meeting will be held at 9:00 a.m. at the Legislative Counsel Bureau, Room 3138, 401 South Carson Street, Carson City, Nevada 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.

LE:cr/mg/tp

Enclosures

bcc: file

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Amendment or Adoption of Regulations of the
Department of Administration
Division of Human Resource Management

The Personnel Commission will hold a public hearing at 9:00 a.m., on October 10, 2013 at the Legislative Counsel Bureau, Conference Room 3138, 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:

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

Regulation Lead Line:

Family and medical leave: Maximum amount in 12-month period; eligibility; use

NAC #
LCB File #R021-13
NAC 284.5811

Furlough Leave

LCB File #R022-13
NAC 284.531

Active lists: Removal and reactivation of names; refusal to consider certain persons

LCB File #R023-13
NAC 284.374

Inquiry of availability of eligible person

LCB File #R024-13
NAC 284.373

Use of lists and consideration of eligible persons

LCB File #R025-13
NAC 284.361

Organizational Climate Study Defined

General Provisions

Confidential Records

Access to confidential records

LCB File #R0137-12
New Section
NAC 284.210
NAC 284.718
NAC 284.726

Confidential records

Access to confidential records

LCB File #R045-13
NAC 284.718
NAC 284.726

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 Administration, Division of Human Resource Management, 209 E. Street, Room 101, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Division of Human Resource Management on or before September 20, 2013. 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 regulation 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 Division of Human Resource Management, 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 regulation 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 regulation 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
Division of Human Resource Management web site:
www.hr.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. R021-13

Section 1. NAC 284.5811 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will bring the regulation into alignment with the interpretation of the Family and Medical Leave Act (FMLA) regulations. This amendment clarifies that employers cannot require employees on FMLA to use paid leave while the employee is receiving short-term or long-term disability plan benefits.

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

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

2. An employee who is entitled to take leave pursuant to the Family and Medical Leave Act to care for a covered service member is limited to a total of 26 weeks of such leave during a single 12-month period.

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

4. Except as otherwise provided in ~~subsection~~ **subsections 5 and 6**, an employee who meets the requirements for eligibility for and who is taking leave pursuant to the Family and Medical Leave Act must exhaust all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave that the employee is eligible to use based on the nature of the absence before using leave without pay. Any accrued sick leave, accrued annual leave, accrued compensatory time, catastrophic leave and holiday pay to which the employee is entitled pursuant to NAC 284.255 runs concurrently with the leave granted pursuant to the Family and Medical Leave Act if the employee is otherwise eligible for that sick leave, annual leave, compensatory time, catastrophic leave or holiday pay.

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

(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and

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

6. *If an employee is absent from work as the result of a non work-related injury or illness, the employee is receiving compensation for the injury or illness from a disability benefit plan and the employee meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:*

(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and

(b) The employee may use paid leave for the time that the employee is being compensated for the non-work related injury or illness if the employee has entered into an agreement with the appointing authority to use the paid leave. If the employee and the appointing authority

have not entered into such an agreement, the employee may not elect to use and the appointing authority may not require the employee to use paid leave for that time.

7. An appointing authority may require an employee to provide medical or other appropriate documentation to support his or her need for leave pursuant to the Family and Medical Leave Act.

LCB File No. R022-13

Section 1. NAC 284.531 is hereby submitted as follows:

Explanation of Proposed Change: Assembly Bill 511 of the 2013 Legislative Session requires most State employees to take 48 hours of unpaid furlough leave in each of the next two fiscal years. This is consistent with the requirement in fiscal years 2012 and 2013. The proposed regulation change extends the effective date of the current regulation through June 30, 2015. Additionally, the proposed regulation updates the reference in subsection 10 with reference to AB 511 of the 2013 Legislative Session.

NAC 284.531 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 full 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 Administrator of the Division of Human Resource Management 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 workweek 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 chapter ~~[374,]~~ **447**, Statutes of Nevada ~~[2011,]~~ **2013** at page ~~[2207-]~~ **2625**.

Sec. 2. NAC 284.531 is hereby repealed.

Explanation of Proposed Change: This section repeals the furlough proposed for adoption in section 1. In Section 5, it repeals Section 1 as of 6/30/15.

Sec. 3. Section 2 of LCB File No. R021-11 is hereby repealed.

Explanation of Proposed Change: This section repeals the regulation regarding the FY12-13 furloughs as of filing the regulation proposed in section 1 with the Secretary of State.

Sec. 4. The emergency regulation adopted by the Personnel Commission on June 20, 2013, and assigned as LCB File No. E001-13, is hereby repealed.

Explanation of Proposed Change: This section repeals the emergency regulation upon filing of this regulation with the Secretary of State.

Sec. 5. 1. This section and sections 1, 3 and 4 of this regulation become effective upon filing with the Secretary of State.

2. Section 2 of this regulation becomes effective on July 1, 2015.

Explanation of Proposed Change: This section sets the timeframes for each action in this regulation.

LCB File No. R023-13

Section. 1. NAC 284.374 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, reduces the number of times an agency must consider an eligible person from three times to one time. This change will increase the efficiency of the hiring process by not requiring agencies to interview an otherwise eligible person when the person has previously interviewed for a position from the same recruitment.

NAC 284.374 Active lists: Removal and reactivation of names; refusal to consider certain persons. (NRS 284.065, 284.155, 284.250, 284.295)

1. The names of eligible persons will be removed from the active lists for any of the following causes:

(a) Appointment after certification to fill a full-time permanent position in the class for which the examination was given.

(b) Expiration of the term of eligibility.

(c) Separation of a person who is eligible for promotion from the state service.

(d) Failure by an eligible person to respond within the required time to an inquiry of availability.

(e) A statement by the eligible person that he or she is not willing to accept any type of appointment from the eligible list.

(f) Any of the causes listed in NRS 284.240 pursuant to which the Administrator may refuse to examine or certify an eligible person, failure to disclose convictions as required by NAC 284.321 or, if the employee has been laid off, reemployment pursuant to subsection 7 of NAC 284.630.

2. An appointing authority need not consider an eligible person more than ~~three times~~ **one time** from recruitment. Consideration of an applicant for other than full-time permanent positions must not be counted for the purposes of this subsection.

3. An appointing authority need not consider an otherwise eligible person who cannot perform the essential functions of the position with or without reasonable accommodation.

4. An appointing authority may refuse to consider an eligible person who has been subject to a suspension, demotion or termination as a result of an upheld or uncontested disciplinary action in the preceding 12 months. The 12-month period begins on the effective date of the uncontested action or, if it is contested, on the date the hearing officer issues a final decision upholding a suspension, demotion or termination. If an employee is removed from consideration pursuant to this subsection, the appointing authority must notify the employee of that fact in writing before interviewing the next candidate or making its selection. The employee has 3 working days after being notified that he or she has been removed from consideration pursuant to this subsection to notify the appointing authority of any discrepancy in the information in his or her personnel file which led to the removal of the employee from consideration. The appointing authority may not make its selection: make its selection:

(a) If the employee does not notify the appointing authority of a discrepancy, until after the end of the period pursuant to which the employee may notify the appointing authority of a discrepancy; or

(b) If the employee notifies the appointing authority of a discrepancy, until after the appointing authority determines whether the removal of the employee from consideration pursuant to this subsection was appropriate.

5. An appointing authority shall refuse to consider an eligible person whose appointment to a position will violate NRS 281.210, NAC 284.375 or a policy approved by the Commission pursuant to NAC 284.375.

6. An eligible person whose name has been removed from an active list may request that his or her name be reactivated by stating his or her reasons for the request. If the Division of Human Resource Management determines that the reasons are justified, and the person's term of eligibility has not otherwise expired, his or her name may be reactivated.

LCB File No. R024-13

Section 1. NAC 284.373 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, changes the number of days in which an eligible person has to respond to an inquiry of availability by electronic mail, voicemail, or any other electronic message from 3 days to 2 days. This change will reduce the time needed to fill available positions, allowing agencies to move through the list of eligible persons more expeditiously.

NAC 284.373 Inquiry of availability of eligible person. (NRS 284.065, 284.155, 284.250)

1. While an eligible person may be contacted to determine his or her availability, no attempt may be made to obtain a waiver in order to alter the ranking of any person on the list.
2. An eligible person must respond to an inquiry of availability within:
 - (a) Six days after an inquiry by mail has been postmarked;
 - (b) ~~Three~~ **Two** days after an inquiry by electronic mail has been sent;
 - (c) Twenty-four hours after a written inquiry is hand-delivered;
 - (d) Twenty-four hours after an oral inquiry has been made if the oral inquiry was made during a conversation with the eligible person; or
 - (e) If an oral inquiry by telephone was attempted and a voicemail or other similar kind of electronic message was left, ~~3~~ **2** days after that message was left.
3. An exception to a time limit may be granted by the originating agency.

LCB File No. R025-13

Section 1. NAC 284.361 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, would require agencies to interview at least 5 eligible persons in the first 10 ranks, rather than all persons in the first 5 ranks. With this change, all competitive appointments from ranked lists will be made from available persons in a rank of persons who received the 10 highest scores on the examination, rather than in a rank of persons who received the 5 highest scores. This change will allow a greater number of individuals the opportunity to be selected for an interview for a vacancy, as well as provide agencies with a larger candidate pool from which to choose, allowing the best hiring decision possible to be made.

NAC 284.361 Use of lists and consideration of eligible persons. (NRS 284.065, 284.155, 284.250) When using lists of persons who are eligible and considering eligible persons who have been certified, the following conditions apply:

1. When a reemployment list is certified:
 - (a) Eligible persons who are available for appointment and who are certified on reemployment lists, other than seasonal reemployment lists, must be hired in the order in which they appear unless the appointing authority, upon submitting written justification, obtains the written concurrence of the Governor to deviate from the order of priority or to hire from another list. The appointing authority must make the written justification available for examination by affected persons or their designated representatives.
 - (b) A person must accept or refuse an offer of reemployment:
 - (1) If the offer of reemployment is sent by mail to the person, within 6 calendar days after the postmarked date appearing on the envelope in which the offer was mailed; or
 - (2) If the offer is an oral offer of reemployment, within 3 business days after the oral offer has been made.
2. The appointing authority may request selective certification for a particular position if the normal method of certification does not provide candidates qualified to perform the duties of the

position satisfactorily. Where selective certification is necessary, the appointing authority shall furnish in writing the special requirements peculiar to the position and his or her reasons therefor. If the facts and reasons justify such a method of selection, the Division of Human Resource Management may certify the highest ranking eligible persons who possess the special qualifications.

3. Certification of only eligible persons who are the same sex will not be made unless there is clear evidence that the duties assigned could be performed efficiently only by the sex specified.

4. When using ranked lists other than those for reemployment, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with **at least 5** persons in the first ~~{five}~~ **10** ranks to determine their availability and qualifications. The names on each type of list must be considered before names from the next succeeding list. If there are fewer than ~~{five}~~ **10** ranks with persons who are available for appointment on a given list and the appointing authority requests a full complement of ~~{five}~~ **10** ranks, the name or names at the top of the next succeeding list must be combined with those on the preceding list to establish ~~{five}~~ **10** eligible ranks with persons who are available for appointment. Except as otherwise provided in subsection 6, all competitive appointments from ranked lists must be made from the persons who:

(a) Are in a rank of persons who received the ~~{five}~~ **10** highest scores on the examination; and

(b) Are available for appointment.

5. If the list is unranked or waived, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least five eligible persons he or she deems most qualified based upon a review of their respective qualifications as they relate to the position or class, or with all of the eligible persons if there are five or less. Except as otherwise provided in subsection 1, any eligible person who is certified from an unranked or waived list may be appointed.

6. If persons from fewer than five ranks of eligible persons are willing to accept appointment:

(a) The appointing authority may make an appointment from among those remaining available eligible persons.

(b) Certification and appointment may be made from other appropriate lists, including lists of higher grades as determined by the Division of Human Resource Management. The names from other lists will follow those which have been certified, if any, from the original lists.

(c) A new recruitment may be conducted.

(d) A provisional appointment may be made only if the requirements of NAC 284.406 are met.

LCB File No. R0137-12

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

Explanation of Proposed Change: The Division of Human Resource Management proposes an additional section to define the term “organizational climate study.”

New Section. Organizational Climate Study Defined. *“Organizational climate study” means an independent study conducted by the Division of Human Resource Management to assess and evaluate the culture, effectiveness of management, employee morale and internal communication of an organization through a variety of methods, including, without limitation:*

1. *Surveys;*
2. *Interviews, including, without limitation exit interviews;*
3. *Review of policies, procedures and internal communications;*
4. *Review of issues related to recruitment;*
5. *Review of data relating to employees, including, without limitation, statistics relating to turnover; and*
6. *Review of grievances filed by employees.*

Sec. 2 NAC 284.210 is hereby amended to read as follows:

Explanation of Proposed Change: This section incorporates the new definition of “organizational climate study” into the General Provisions of NAC 284.

As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 284.021 to 284.1125, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

Sec. 3. NAC 284.718 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management proposes additional language that will designate information gathered during an organizational climate study that directly reflects on a specific employee’s performance as confidential. This is consistent with other provisions of the regulation.

NAC 284.718 Confidential records. (NRS 284.065, 284.155, 284.355, 284.407)

1. The following types of information, which are maintained by the Division of Human Resource Management or the personnel office of an agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished to the Division of Human Resource Management on the condition that the source remain confidential;

(b) Any document which is used by the Division of Human Resource Management or an agency in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any document which is used by the Division of Human Resource Management or an agency in the process of interviewing an applicant, including, without limitation, a document containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by an employee assistance program offered by the State of Nevada;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person’s application or relating to his or her status as an eligible person; and

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

(1) Performance;

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

(3) Usage or balance of his or her annual leave and sick leave;

(4) Race, ethnic identity or affiliation, sex, genetic information, disability or date of birth;

- (5) Home telephone number; or
- (6) Social security number.
- 2. If the employee has requested that his or her personal mailing address be listed as confidential, the employee's file must be so designated and list his or her business address.
- 3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:
 - (a) The employee dies; or
 - (b) The employee signs a release.
- 4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his or her immediate family are confidential.
- 5. Any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential.
- 6. *Any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct are confidential.*

Sec. 4. NAC 284.726 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management proposes additional language that will establish which individuals will have access to information gathered as part of an organizational climate study.

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

- 1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph 2 of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.
- 2. Except as otherwise provided in subsections 3 and 4, access to an employee's file of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:
 - (a) The employee.
 - (b) The employee's representative when a signed authorization from the employee is presented or is in his or her employment file.
 - (c) The appointing authority or a designated representative of the agency by which the employee is employed.
 - (d) The Administrator or a designated representative.
 - (e) An appointing authority, or a designated representative, who is considering the employee for employment in the agency.
 - (f) Persons who are authorized pursuant to any state or federal law or an order of a court.
 - (g) The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.
 - (h) Persons who are involved in processing records for the transaction of business within and between state agencies.
 - (i) Persons who are involved in processing records for the transaction of business that is authorized by the employee.
- 3. Information concerning the health, medical condition or disability of an employee or a member of his or her immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection ~~{7,}~~ 8, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.

4. Except as otherwise provided in subsection ~~{7.}~~ 8, access to information concerning the employee's usage or balance of annual leave and sick leave is limited to the employee, the employee's immediate supervisor and the employee's appointing authority or the designated representative of the appointing authority.

5. *Except as otherwise provided in subsection 8, access to any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct is limited to:*

(a) The employee.

(b) The Administrator or a designated representative of the Administrator.

(c) The appointing authority or a designated representative of the agency with which the employee is employed.

(d) Persons who are authorized pursuant to any state or federal law or an order of a court.

(e) The Governor or a designated representative of the Governor.

6. Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

~~{6.}~~ 7. Upon request, the Division of Human Resource Management will provide the personal mailing address of any employee on file with the Division of Human Resource Management to the State Controller's Office and the Internal Revenue Service.

~~{7.}~~ 8. The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission or a court.

LCB File No. R045-13

Section 1. NAC 284.718 is hereby amended to read as follows:

Explanation of Proposed Change: The Department of Health and Human Services and the Department of Transportation requested that internal studies conducted by an individual department that directly reflects on an individual's actions, conduct and/or performance shall remain confidential.

NAC 284.718 Confidential records. (NRS 284.065, 284.155, 284.355, 284.407)

1. The following types of information, which are maintained by the Division of Human Resource Management or the personnel office of an agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished to the Division of Human Resource Management on the condition that the source remain confidential;

(b) Any document which is used by the Division of Human Resource Management or an agency in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any document which is used by the Division of Human Resource Management or an agency in the process of interviewing an applicant, including, without limitation, a document containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by an employee assistance program offered by the State of Nevada;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person's application or relating to his or her status as an eligible person; and

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

(1) Performance;

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

(3) Usage or balance of his or her annual leave and sick leave;

(4) Race, ethnic identity or affiliation, sex, genetic information, disability or date of birth;

(5) Home telephone number; or

(6) Social security number.

2. If the employee has requested that his or her personal mailing address be listed as confidential, the employee's file must be so designated and list his or her business address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

(a) The employee dies; or

(b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his or her immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential.

6. Any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct are confidential.

Sec. 2. NAC 284.726 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management proposes additional language that will establish which individuals will have access to information gathered as part of an organizational climate study.

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

1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph (2) of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in subsections 3 and 4, access to an employee's file of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

(a) The employee.

(b) The employee's representative when a signed authorization from the employee is presented or is in his or her employment file.

(c) The appointing authority or a designated representative of the agency by which the employee is employed.

(d) The Administrator or a designated representative.

(e) An appointing authority, or a designated representative, who is considering the employee for employment in the agency.

(f) Persons who are authorized pursuant to any state or federal law or an order of a court.

(g) The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.

(h) Persons who are involved in processing records for the transaction of business within and between state agencies.

(i) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

3. Information concerning the health, medical condition or disability of an employee or a member of his or her immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection ~~{7,}~~ 8, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.

4. Except as otherwise provided in subsection ~~{7,}~~ 8, access to information concerning the employee's usage or balance of annual leave and sick leave is limited to the employee, the employee's immediate supervisor and the employee's appointing authority or the designated representative of the appointing authority.

5. *Except as otherwise provided in subsection 8, access to any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct is limited to:*

(a) The employee.

(b) The appointing authority or a designated representative of the agency with which the employee is employed.

(c) Persons who are authorized pursuant to any state or federal law or an order of a court.

(d) The Governor or a designated representative of the Governor.

6. Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

~~{6,}~~ 7. Upon request, the Division of Human Resource Management will provide the personal mailing address of any employee on file with the Division of Human Resource Management to the State Controller's Office and the Internal Revenue Service.

~~{7,}~~ 8. The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission or a court.