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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management

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MEMORANDUM
HR#66-15

November 4, 2015

TO: Nevada County Libraries
State Library and Archives

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

SUBJECT: NOTICE OF PUBLIC HEARING – Amendments to NAC 284

The regulation changes included with this memorandum are being proposed for adoption at the December 4, 2015 Personnel Commission meeting. This meeting will be held at 9:00 a.m. at the Gaming Control Board, 1919 College Parkway, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 2450, 555 East Washington Avenue, Las Vegas, Nevada.

Please circulate or post the attached *Notice of Public Hearing* along with the text of the proposed regulations.

LE:mg

Attachments

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Amendment and Repeal 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 December 4, 2015 at the Gaming Control Board, 1919 College Parkway, Carson City, Nevada and by video conference at the Grant Sawyer Building, 555 East Washington Avenue, Room 2450, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the amendment and repeal 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.

LCB File:	NAC#:	Regulation Lead Line:
R041-15	NAC 284.097	"Reviewing officer" defined.
	NAC 284.470	Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances.
R042-15	NAC 284.394	Transfers initiated by appointing authorities.
	NAC 284.589	Administrative leave with pay.
	NAC 284.656	Notice.
	NAC 284.778	Request for hearing and other communications.
R043-15	NAC 284.398	Transfers to classified service; certain transfers to unclassified service.
	NAC 284.470	Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances.
	NAC 284.580	Leave of absence without pay during fiscal emergency of State or agency.
	NAC 284.262	Longevity pay: Eligibility.
	NAC 284.270	Longevity pay: Required rating of performance.
	NAC 284.274	Longevity pay: Dates of payment and eligibility; responsible agency.
	NAC 284.278	Longevity pay: Formulas for calculation.
	NAC 284.282	Longevity pay: Particular circumstances.
	NAC 284.284	Longevity pay: Return to state service.

R044-15	NAC 284.726	Access to confidential records.
	NAC 284.888	Request for employee to submit to screening test: Interpretation of grounds; completion of required form.
R102-15	NAC 284.088	"Promotion" defined.
	NAC 284.182	Adjustment and retention of pay progression date; restoration of date of appointment and pay progression date.
	NAC 284.444	Application of probationary period.
	NAC 284.462	Restoration of promoted employee to former position.

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 the Department of Administration, Division of Human Resource Management, 209 East Musser 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 December 4, 2015. 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 and repealed will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be amended and repealed will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada and 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 & Archives Building, 100 North Stewart Street
Nevada State Capitol Building, 101 North Carson Street
Legislative Counsel Bureau, 401 South Carson Street
Gaming Control Board, 1919 College Parkway

Las Vegas
Grant Sawyer Building, 555 East Washington Street

Websites
Legislative Counsel Bureau website: www.leg.state.nv.us
Nevada Public Notice website: http://notice.nv.gov
Division of Human Resource Management website: www.hr.nv.gov

REGULATION AMENDMENTS PROPOSED
FOR PERMANENT ADOPTION AND REPEAL

LCB File No. R041-15

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

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, is contingent upon the adoption of the amendments to NAC 284.470. Subsection 2 of NAC 284.097 refers to paragraph (b) of subsection 7 of NAC 284.470. A new subsection was added to NAC 284.470, which resulted in the necessity to renumber subsections 4 through 12 of NAC 284.470. As such, the reference to paragraph (b) of subsection 7 of NAC 284.470, will now be paragraph (b) of subsection 9 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 ~~[7]~~ ***9*** 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; R056-10, 10-26-2011)

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

Explanation of Proposed Change: The first amendment to this regulation, proposed by the Division of Human Resource Management (DHRM), clarifies the effect of a report on performance that is filed timely, untimely or not at all for purposes of both pay and performance rating. The second amendment to this regulation, also proposed by the Division, will allow an appointing authority to designate an individual to act on his or her behalf when agreeing to an extension of a time period as provided in subsection 13 of this regulation. The Consultation & Accountability Unit of the Division receives many inquiries surrounding this regulation as it is currently written, and it is important for supervisors and employees to understand the effect each scenario has both on the employer and employees in terms of pay and performance rating.

Through this proposed change, DHRM intends to encourage that a report of performance be submitted for all employees, even if the times specified in statute have not been met and the employee has received his or her merit salary increase (MSI). A report of performance serves as a summary of an employee's performance during a certain period, recognizing good performance, noting deficiencies when necessary, and documenting employee development plans. When a report on performance is not submitted for an employee, the employee's positive or negative performance typically is undocumented. Additionally, if a report on performance is not submitted for an employee who has applied for a transfer or a promotion to another agency, a current summary of his or her performance will not be available to an agency when making its hiring decision.

When a report on performance is filed with DHRM on or before the times prescribed by NRS 284.340, and the employee has achieved an overall rating of meets or exceeds standards, he or she is eligible for an MSI, unless the top step of his or her grade has been attained. Also under these circumstances, the employee's file of employment will reflect the rating received on the report on performance that has been timely filed.

If a report on performance is not filed on or before the time as specified in NRS 284.340, the employee will receive his or her MSI, unless the top step of his or her grade has been attained. If a report on performance is filed after the time as specified, the new rating will be reflected in the employee's file of employment at the time the report on performance is submitted to DHRM.

If a report of performance is not filed on or before the times as specified in NRS 284.340 and a subsequent report on performance for the rating period is not filed, the employee will be considered standard for pay purposes only and will receive his or her MSI, unless the top step of the grade has been attained. In this situation, the employee's file of employment will display no actual performance rating for that period.

Currently, the Nevada Employee Action and Timekeeping System (NEATS) is undergoing an upgrade to electronically capture the duties assigned, essential functions, and work performance standards for a position. It will also allow this data to be updated and archive previous versions for historical purposes. Additionally it will automatically populate an employee's evaluation with the employee's most up-to-date work performance standards. The supervisor will then complete the employee's evaluation online in the system. After the supervisor and employee have met, the employee and subsequent levels of approval will be applied online. We believe these system improvements will support a supervisor's ability to submit timely performance evaluations.

The amendment to subsection 13 authorizes an appointing authority to appoint a designee to extend the date related to 90 day follow-up evaluations for a substandard rating on a report on performance, or to extend the timelines for either a request for review by a reviewing officer, or the period of time for the reviewing officer to respond to such a request.

NAC 284.470 Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances. (NRS 284.065, 284.155, 284.340, 284.383, 284.384)

1. A person shall not complete a report on performance unless he or she has completed the training provided or approved by the Administrator concerning the preparation of a report on performance.
2. A report on performance must be prepared on the form prescribed by the Division of Human Resource Management.
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.
4. ***If a report on performance is filed on or before the times specified in NRS 284.340, the overall rating of performance of the employee will be reflected in the employee's file of employment and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194.***

5. 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.]~~ ***for the purpose of determining the salary of the employee and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194. If an untimely report on performance:***

(a) Is filed thereafter, the employee's file of employment will be updated to reflect the overall rating of performance of the employee as reported, but that rating will not affect any merit pay increase to which the employee is otherwise entitled.

(b) Is not filed thereafter, the employee's file of employment will not include an overall rating of performance of the employee for that period of evaluation.

6. 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.]~~ ***7.*** 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.

~~[6.]~~ ***8.*** 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.

~~[7.]~~ ***9.*** Except as otherwise provided in subsection ~~[8,]~~ ***10,*** the preparation of each report on performance must include a discussion between the employee and his or her 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 the supervisor for forwarding to the reviewing officer or appointing authority.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify the specific points of contention, if such specificity is provided, and return the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management 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.

~~[8.]~~ ***10.*** If an employee is unavailable for a discussion of the report on performance pursuant to subsection ~~[7]~~ ***9*** 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 the supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify any specific point of contention, if the report provides such specificity, and mail the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management 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 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.

~~[9.]~~ ***11.*** A copy of each report on performance and, if applicable, any written response to such a report requested by an employee pursuant to subsection ~~[7]~~ ***9*** or ~~[8]~~ ***10*** must be provided to the employee and filed with the Division of Human Resource Management.

~~[10.]~~ ***12.*** 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 ~~[9:]~~ ***11:***

(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 receiving a copy of the revised report and submit the response to the Division of Human Resource Management for inclusion in his or her file of employment.

~~[11.]~~ ***13.*** An employee and his or her appointing authority ***or the designee of the appointing authority*** may agree in writing to extend one or more of the periods prescribed in subsection ~~[7]~~ ***9*** or ~~[8.~~
~~12.]~~ ***10.***

14. 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; R056-10, 10-26-2011; R007-11, 10-26-2011)

LCB File No. R042-15

Section 1. NAC 284.394 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will create consistency with NAC 284.394, which pertains to transfers initiated by appointing authorities, also referred to as involuntary transfers, and NAC 284.6561, which pertains to hearings regarding a dismissal, suspension or demotion.

NAC 284.589 currently requires, under certain circumstances, the granting of administrative leave to an employee so that he or she can appear at a hearing regarding his or her dismissal, suspension or a demotion. The first proposed amendment to NAC 284.589 will require the granting of administrative leave for an employee to appear at his or her hearing related to an involuntary transfer, as well as a claim of reprisal or retaliation based on the disclosure of improper governmental action.

Also, NAC 284.589 currently requires, under certain circumstances, that 8 hours of administrative leave be granted to an employee so that he or she can prepare for a hearing regarding an involuntary transfer, a dismissal, a suspension or a demotion. The second proposed amendment to NAC 284.589 will require the granting of 8 hours administrative leave for an employee to prepare for his or her hearing related to a claim of reprisal or retaliation based on the disclosure of improper governmental action.

Because the granting of administrative leave for these purposes will now be outlined in NAC 284.589, it is unnecessary to include in NAC 284.394 that an employee has the ability to request such leave.

The Division of Human Resource Management intends to include an informational note, such as the example below, in the *Rules for State Personnel Administration* publication explaining that administrative leave must be granted, under certain circumstances, to an employee to prepare for and attend a hearing regarding an appeal of his or her involuntary transfer. The informational note will ensure that it is clear that administrative leave may still be requested for this type of appeal hearing, and will direct individuals to the administrative leave regulation, NAC 284.589.

INFORMATIONAL NOTE: NAC 284.589 provides for, under certain circumstances, 8 hours of administrative leave to prepare for an appeal hearing regarding an involuntary transfer, as well as administrative leave to attend such hearings.

NAC 284.394 Transfers initiated by appointing authorities. (NRS 284.065, 284.155, 284.375)

1. Except as otherwise provided in subsection 2, an appointing authority may, after giving 5 working days' notice, transfer for the convenience of this State any employee to another position in:

(a) The same class; or

(b) A comparable class with the approval of the Division of Human Resource Management.

2. The notice required by subsection 1 need not be given if the transfer does not exceed 10 working days. If a bona fide or justifiable emergency exists, a transfer may be made immediately with the prior approval of the Division of Human Resource Management.

3. A transfer pursuant to this section must not be made to harass or discipline an employee.

4. A permanent employee who is required to transfer to a different geographical location and who declines the transfer has the same rights provided in NAC 284.630 as an employee who is laid off.

5. If an employee requests a hearing to appeal an involuntary transfer pursuant to NRS 284.376, the appointing authority may temporarily assign the employee, on a per diem basis, to transfer pending disposition of the appeal. ~~[The employee may request leave pursuant to NAC 284.589 to prepare for the hearing relating to the involuntary transfer.]~~

6. As used in this section, "geographical location" has the meaning ascribed to it in NAC 284.612.

[Personnel Div., Rule VI § D subsec. 5, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-18-89; A by Personnel Comm'n by R183-03, 1-27-2004)

Section 2. NAC 284.589 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will create consistency between hearings related to the dismissal, suspension or demotion of an employee, hearings related to the involuntary transfer of an employee and hearings related to a claim of reprisal or retaliation due to the disclosure of improper governmental action. Because employee preparation for, and his or her attendance at, such hearings is necessary so that the hearing officer can gather information from both parties, this change will mandate the approval of administrative leave for these purposes. The appearance of witnesses at such hearings will be allowable for all of the types of hearings listed above.

NAC 284.589 Administrative leave with pay. (NRS 284.065, 284.155, 284.345, 284.383, 284.385, 284.390)

1. An appointing authority may grant administrative leave with pay to an employee:

(a) To relieve the employee of his or her duties during the active investigation of a suspected criminal violation or the investigation of alleged wrongdoing;

(b) For up to 30 days when the appointing authority initiates the leave to obtain the results of an examination concerning the ability of the employee to perform the essential functions of his or her position;

(c) For up to 30 days to remove the employee from the workplace when he or she has committed or threatened to commit an act of violence;

(d) For up to 2 hours to donate blood;

(e) To relieve the employee of his or her duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065 ~~[;]~~ ***, as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049;*** or

(f) To attend a general employee benefits orientation or an educational session relating to employee benefits, including, without limitation, retirement and deferred compensation.

2. The appointing authority, upon approval of the Risk Management Division, may extend administrative leave with pay granted to an employee for a purpose set forth in paragraph (b) or (c) of subsection 1.

3. If an employee is granted administrative leave with pay pursuant to subsection 1 or 2, the employee must be available:

(a) By telephone to the supervisor of the employee; and

(b) To report to a work site or another location, as directed by the supervisor of the employee, ➥ during regular business hours.

4. Except as otherwise provided in subsection 5, an appointing authority or the Division of Human Resource Management may grant administrative leave with pay to an employee for any of the following purposes:

(a) His or her participation in, or attendance at, activities which are directly or indirectly related to the employee's job or employment with the State but which do not require him or her to participate or attend in an official capacity as a state employee.

(b) His or her safety during an emergency when employees have been authorized by the Governor not to report to work or to leave work before the end of their shifts during the emergency, including, without limitation, emergencies relating to enemy attacks or other hostile actions, natural causes or other catastrophes, except for employees who are designated as essential and notified that they are required to report to work or remain at work.

(c) Closure of the employee's office or work site caused by a natural disaster, pandemic or other similar adverse condition when the employee is scheduled and expected to be at work. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

(d) Closure, as a result of a pandemic, of a school or a center or facility that provides day care services which is attended by the employee's dependent child or the temporary cancellation, as a result of a pandemic, of a program attended by the employee's dependent child. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

(e) His or her appearance as an aggrieved employee or a witness at a hearing of the Committee.

(f) His or her appearance as ~~[an appellant or]~~ a witness at a hearing ~~[conducted pursuant to NRS 284.390 by a hearing officer of the Division of Human Resource Management.]~~ ***regarding a matter described in subparagraph (1), (2) or (3) of paragraph (e) of subsection 6.***

(g) His or her appearance to provide testimony at a meeting of the Commission.

5. An appointing authority or the Division of Human Resource Management shall grant administrative leave with pay to an employee for a purpose set forth in paragraph (e), (f) or (g) of subsection 4 if:

(a) The employee requests the administrative leave for a period of time that is reasonably needed to testify at the hearing or meeting;

(b) The employee requests the administrative leave at least 2 weeks before the leave is needed, unless such notice is impractical; and

(c) The absence of the employee will not cause an undue hardship to the operations of the appointing authority or adversely impact the provision of services to clients or to the public.

6. An appointing authority shall grant administrative leave with pay to an employee for any of the following purposes:

(a) The initial appointment and one follow-up appointment if the employee receives counseling through an employee assistance program, including, without limitation, consultations provided in person or telephonically.

(b) His or her attendance at a health fair or related event coordinated by the Public Employees' Benefits Program.

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

(d) Up to 8 hours for preparation for ~~[all hearings]~~ ***any hearing described in paragraph (e).***

(e) The appearance of the employee as a party at a hearing regarding ~~[a]~~ ***:***

(1) An alleged reprisal or retaliatory action against the employee for disclosing an improper governmental action as provided in NRS 281.641;

(2) An involuntary transfer of the employee as provided in NRS 284.376; or

(3) A suspension, demotion or dismissal of the employee as provided in ***NRS 284.390 and*** NAC 284.6561.

~~[(e) Up to 8 hours for preparation for all hearings regarding an involuntary transfer of the employee.]~~

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 4-20-90; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 9-13-91; 12-26-91; 11-12-93; 3-23-94; 11-16-95; 10-27-97; R042-99, 9-27-99; R058-01, 9-6-2001; A by Personnel Comm'n by R038-03, 10-30-2003; R183-03, 1-27-2004; R145-05, 12-29-2005; R141-07, 1-30-2008; R061-09 & R081-09, 10-27-2009; R063-09, 11-25-2009; R058-10, 10-15-2010; R137-13, 6-23-14)

Section 3. NAC 284.656 is hereby amended to read as follows:

Explanation of Proposed Change: S.B. 62 of the 2015 Legislative Session amends NRS 284.385, which is related to the dismissal, involuntary demotion and suspension of State of Nevada employees in the classified service. The requirement for delivery in person or by mail in subsection 3 of NRS 284.385 has been removed. Language has been added to the statute requiring that regulations be adopted setting forth the procedures for properly notifying a classified employee of dismissal, involuntary demotion or suspension.

The preferred method of delivery is in-person but if the employee is not available the proposed regulation would allow for delivery services other than just the U.S. Postal Service. This amendment, proposed by the Division of Human Resource Management, will provide increased speed of delivery and reliability by modernizing methods by which agencies may provide notice of the disciplinary actions listed above. The amendment will allow agencies to use alternative carriers such as Federal Express or United Parcel Service, as long as the carrier provides proof that the notice was sent and that it was delivered.

NAC 284.656 Notice. (NRS 284.065, 284.155, 284.383, 284.385, 284.390) Except as otherwise provided in NAC 284.6563, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure for providing notice of the proposed action must be followed:

1. The employee must be given at least 10 working days' written notice of the proposed action on the form provided by the Division of Human Resource Management.

2. The notice may be given in person or by ~~[mail.]~~ ***means of any delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received.*** If ~~[it is mailed,]~~ the notice ***is sent by means of a delivery service, the notice*** must be ~~[mailed]~~ ***sent*** to the employee's last known address ***.*** ~~[by registered or certified mail, return receipt requested. The date stamped on the receipt by the postal service is the date of delivery.]~~ If the notice is returned

without ~~[a return receipt signed]~~ ***having been received*** by the employee, the employee's date of receipt shall be deemed to be the third day after the date ~~[of the mailing.]~~ ***the notice was sent.***

3. The notice must:

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

(b) Inform the employee that a hearing has been scheduled on his or her behalf in the manner prescribed in NAC 284.6561 and specify the date, time and place of the hearing.

(c) Specify the charges, the reasons for them and the cause of action contained in NAC 284.646 or 284.650 on which the proposed action is based.

4. The notice of the proposed action must be signed by the appointing authority or his or her designated representative before the notice is given to the employee.

5. Upon its receipt, the employee must be asked to sign the notice. If he or she refuses to sign the notice, the refusal must be noted on the notice. The employee's signature is not an admission by him or her of any of the allegations set forth in the notice.

6. If the employee does not understand the reasons for the proposed action or the procedures related to disciplinary actions, including, without limitation, the right to notice, a hearing and an appeal, the employee may seek an explanation from the appointing authority or another person in the agency familiar with the procedure.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 7-21-89; 8-1-91; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 11-12-93; 11-16-95; 11-16-95; A by Personnel Comm'n by R063-09, 11-25-2009)

Section 4. NAC 284.778 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, improves efficiency and creates added flexibility in the process of employee appeals. At its January 10, 2014 meeting, the Personnel Commission selected the Hearings Division of the Department of Administration to act as the primary hearing officers for employee appeals beginning July 1, 2014. Also selected was one contracted hearing officer to hear employee appeals when a conflict of interest exists.

Prior July 1, 2014, all employee appeal hearings were heard by contracted hearing officers, and the Hearing Clerk of the Division of Human Resource Management served as the clerk to each of them. The Hearings Division directly employs clerks who are assigned to the hearing officers of that Division. It is much more efficient for written communications to be sent directly to either the hearing officer or his or her assigned clerk of the Hearings Division, rather than these communications being routed through the Division of Human Resource Management.

The amendment to this regulation creates added flexibility to the process by broadening the contact for written communications to a "general" hearing clerk, rather than a hearing clerk specific to the Division of Human Resource Management. This will allow the regulation to apply to all types of hearing officers the Personnel Commission may select to hear employee appeals.

NAC 284.778 Request for hearing and other communications. (NRS 281.641, 284.065, 284.155, 284.376, 284.390)

1. A request for an appeal must be addressed to the Administrator and submitted on the form provided by the Division of Human Resource Management.

2. A copy of any written communication directed to a hearing officer must be sent to the ~~[Hearing Clerk of the Division of Human Resource Management.]~~ ***clerk assigned to the hearing officer.***

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; A by Personnel Comm'n by R192-09, 6-30-2010, eff. 7-1-2010; R011-11, 10-26-2011)

Section 5.

Explanation: This section provides the effective dates for each of the regulations in this file. The effective date of Section 3 is January 1, 2016 in order to conform to the effective date in the applicable provision of SB 62.

1. This section and sections 1, 2, and 4 of this regulation become effective upon filing with the Secretary of State.

2. Section 3 of this regulation becomes effective on January 1, 2016.

LCB File No. R043-15

Section 1. NAC 284.398 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Legislative Counsel Bureau, changes the reference to NRS 284.3775 due to the changes to that statute upon the passage and approval of Senate Bill 510 of the 2015 Legislative Session. The amendment also removes longevity from the regulation due to the repeal of NRS 284.177 and 284.179 as a result of the passage and approval of Assembly Bill 436 of the 2015 Legislative Session.

NAC 284.398 Transfers to classified service; certain transfers to unclassified service. (NRS 284.065, 284.155, 284.375)

1. An unclassified employee who has less than 4 months of service and whose appointment was immediately preceded by an appointment in the classified service in which the person was a permanent employee may transfer back into the classified service under the same conditions and with the same benefits as classified employees, except that the duties and compensation of the position to which the person is transferred must be similar, as determined by the Division of Human Resource Management, to either the unclassified position or to a previously held classified position.

2. Employees of any governmental agency which is acquired for administration by the State pursuant to NRS 284.022 may transfer into the classified service or unclassified service with the rights and benefits authorized by the Legislature.

3. An employee who transfers into the classified service:

(a) Must complete an application and meet the minimum qualifications for the class of the position to which he or she is transferring;

(b) Must have his or her date of transfer and appointment to the classified position effective immediately following the last day of employment in the unclassified or nonclassified position unless he or she was employed as a legislative employee at the conclusion of a regular session of the Legislature to whom subsection ~~[6]~~ ***8*** of NRS 284.3775 ***, as amended by section 2 of Senate Bill No. 510, chapter 355, Statutes of Nevada 2015, at page 1993,*** applies; and

(c) May retain the credits which he or she has earned for annual and sick leave ***.*** ~~[and longevity.]~~

[Personnel Div., Rule VI § D subsec. 6, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 7-14-88; 1-22-90; 8-1-91; 3-23-94; R146-01, 1-18-2002; A by Personnel Comm'n by R183-03, 1-27-2004)

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

Explanation of Proposed Change: This amendment, proposed by the Legislative Counsel Bureau, removes longevity from the regulation due to the repeal of NRS 284.177 and 284.179 as a result of the passage and approval of Assembly Bill 436 of the 2015 Legislative Session.

NAC 284.470 Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances. (NRS 284.065, 284.155, 284.340, 284.383, 284.384)

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

2. A report on performance must be prepared on the form prescribed by the Division of Human Resource Management.

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.

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.

7. Except as otherwise provided in subsection 8, the preparation of each report on performance must include a discussion between the employee and his or her 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 the supervisor for forwarding to the reviewing officer or appointing authority.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify the specific points of contention, if such specificity is provided, and return the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management 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.

8. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 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 the supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify any specific point of contention, if the report provides such specificity, and mail the response to the supervisor. Except as otherwise provided in this paragraph,

the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management 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 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.

9. A copy of each report on performance and, if applicable, any written response to such a report requested by an employee pursuant to subsection 7 or 8 must be provided to the employee and filed with the Division of Human Resource Management.

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 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 receiving a copy of the revised report and submit the response to the Division of Human Resource Management for inclusion in his or her file of employment.

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

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.

[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; R056-10, 10-26-2011; R007-11, 10-26-2011)

Section 3. NAC 284.580 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Legislative Counsel Bureau, removes NAC 284.282, related to longevity, from the regulation due to the repeal of NRS 284.177 and 284.179 as a result of the passage and approval of Assembly Bill 436 of the 2015 Legislative Session.

NAC 284.580 Leave of absence without pay during fiscal emergency of State or agency. (NRS 284.065, 284.155, 284.175, 284.345, 284.360)

1. Upon the request of an appointing authority, the Department of Administration may authorize the appointing authority to place a nonexempt employee on a leave of absence without pay for a fiscal emergency of the State or an agency during any period for which the Governor has declared that the State or an agency will experience a shortfall in revenue or for any other reason is in a state of fiscal emergency.

2. All employees in the same classification must be treated equitably with respect to being placed on a leave of absence without pay pursuant to this section unless an employee volunteers to be placed on such a leave of absence.

3. The appointing authority shall reduce the pay of an employee who is placed on a leave of absence without pay pursuant to subsection 1 by an amount equal to the pay that the employee would otherwise receive for the hours for which the leave is approved.

4. The hours for which payment is withheld pursuant to subsection 3:

(a) Must be treated as hours in paid status for the purposes of NAC 284.182, 284.255, ~~[284.282,]~~ 284.448, 284.538, 284.5385, 284.544 and 284.614.

(b) Must not be considered as time worked in calculating overtime.

5. Regardless of whether an employee volunteers to be placed on a leave of absence pursuant to subsection 1, after notifying the employee in writing and allowing a reasonable period for the employee to return to work, an appointing authority:

(a) Shall revoke the placement of any employee on a leave of absence without pay pursuant to subsection 1 upon a declaration by the Governor that the fiscal emergency no longer exists.

(b) May revoke the placement of any employee on any leave of absence without pay pursuant to subsection 1 for any other bona fide reason.

(Added to NAC by Dep't of Personnel, eff. 9-16-92; A 11-12-93; 3-23-94; R147-01, 1-22-2002; A by Personnel Comm'n by R096-03, 10-30-2003)

Section 4. NAC 284.262, 284.270, 284.274, 284.278, 284.282 and 284.284 are hereby repealed.

Explanation of proposed change: Assembly Bill 436 of the 2015 Legislative Session repeals NRS 284.177 and NRS 284.179, which include the provisions associated with longevity pay. As a result, the regulations surrounding longevity pay, NAC 284.262 through 284.284, inclusive, must be repealed.

TEXT OF REPEALED SECTIONS

NAC 284.262 Longevity pay: Eligibility. (NRS 284.065, 284.155, 284.175) Classified and unclassified employees are eligible for longevity pay pursuant to NRS 284.177.

[Personnel Div., Rule III § M subsec. 1, eff. 8-11-73; A 9-6-74; 2-5-82]—(NAC A by Dep't of Personnel by R147-01, eff. 1-22-2002)

NAC 284.270 Longevity pay: Required rating of performance. (NRS 284.065, 284.155, 284.175, 284.335)

1. For an employee to be eligible for longevity pay pursuant to NRS 284.177, he or she must receive a rating of performance of standard or better on his or her most recent report on performance.

2. An employee's performance will be deemed to be standard on the date on which the report on performance was due if:

(a) The employee's performance was not rated during the previous 12 months; or

(b) A subsequent report on performance was not filed after the employee received a substandard rating of performance pursuant to the provisions of subsection 4 of NRS 284.340.

[Personnel Div., Rule III § M subsec. 3, eff. 8-11-73; A 9-6-74; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 7-22-87; 10-18-89; 11-16-95; R147-01, 1-22-2002)

NAC 284.274 Longevity pay: Dates of payment and eligibility; responsible agency. (NRS 284.065, 284.155, 284.175)

1. After 8 years of continuous service, an employee is eligible for longevity pay in semiannual payments on December 31 and June 30.

2. Except as otherwise provided in NAC 284.282, such employees who are eligible and have not been separated from state service as of these dates will receive longevity pay.

3. An agency is responsible for the payment of longevity pay due an employee if that employee is employed by the agency on the date on which the employee becomes eligible for the semiannual payment.

[Personnel Div., Rule III § M subsec. 4, eff. 8-11-73; A 9-6-74; 4-14-76; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 12-17-87; 7-14-88; 7-21-89; 3-1-96; A by Personnel Comm'n by R065-98, 7-24-98, eff. 1-1-99; A by Dep't of Personnel by R147-01, eff. 1-22-2002)

NAC 284.278 Longevity pay: Formulas for calculation. (NRS 284.065, 284.155, 284.175)

1. Except as otherwise provided in subsection 2, longevity pay for nonexempt employees must be calculated based on the following formula:

$$\frac{\text{The number of hours worked during the 6-month qualifying period}}{\text{Total full-time equivalent hours for the pay class designation during the 6-month qualifying period}} \text{ X longevity increment = longevity payment for the 6-month period}$$

2. Longevity pay for exempt classified employees and exempt unclassified employees must be calculated based on the following formula:

$$\frac{\text{The number of 8-hour days worked during the 6-month qualifying period}}{\text{Total full-time equivalent 8-hour days for the pay class designation during the 6-month qualifying period}} \text{ X longevity increment = longevity payment for the 6-month period}$$

3. As used in this section, "hours worked" includes only the base hours for the pay class designation.

[Personnel Div., Rule III § M subsec. 6, eff. 9-6-74; A and renumbered as subsec. 5, 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 9-13-91; 3-23-94; R031-98, 4-17-98; R058-01, 9-6-2001; R147-01, 1-22-2002)

NAC 284.282 Longevity pay: Particular circumstances. (NRS 284.065, 284.155, 284.175, 284.345, 284.355, 284.3626)

1. Except as otherwise provided in NAC 284.580 for a leave of absence without pay during a fiscal emergency, an employee who is on leave without pay or catastrophic leave, or any

combination of both, for the entire 6-month period of qualification is not entitled to longevity pay for that period.

2. The payment for longevity pay for a full-time employee will not be prorated pursuant to NAC 284.278 if he or she:

(a) Is an exempt classified employee or exempt unclassified employee and he or she uses an amount of leave without pay or catastrophic leave, or any combination of both, that equals 30 days or less in a calendar year; or

(b) Is a nonexempt employee, the base hours established for his or her pay class designation are 40 hours per week or 80 hours biweekly and he or she uses 240 hours or less of leave without pay or catastrophic leave, or any combination of both, in a calendar year.

3. If the base hours established for a pay class designation exceed 40 hours per week or 80 hours biweekly, an employee in that pay class designation must be allotted leave without pay and catastrophic leave in proportion to his or her base hours and full-time equivalency. The longevity pay of such an employee will not be prorated unless his or her use of leave without pay and catastrophic leave proportionally exceeds the limits set forth in subsections 2 and 4.

4. A part-time employee must be allotted leave without pay and catastrophic leave in proportion to his or her base hours and the full-time equivalency for his or her pay class designation. The longevity pay of such an employee will not be prorated unless his or her use of leave without pay and catastrophic leave proportionally exceeds the limit set for a full-time employee in his or her pay class designation pursuant to subsection 2.

5. An employee who retires pursuant to the provisions of chapter 286 of NRS or who dies during the 6-month qualifying period is eligible for longevity pay according to the applicable formula in NAC 284.278.

6. An employee who is laid off and is rehired within 1 year after the date of layoff is eligible for the longevity pay he or she would have earned if he or she had not been laid off. The longevity pay must be calculated as if the employee had been on leave without pay pursuant to subsection 2.

7. A person with a permanent disability arising from a work-related injury or occupational disease who is reemployed following a separation from state service within 1 year after the date on which he or she sustained the permanent disability as determined pursuant to NAC 284.6013 is eligible for the longevity pay he or she would have earned if he or she had not been separated from state service. The longevity pay of such an employee must be calculated as if the employee had been on leave without pay pursuant to subsection 2.

8. An employee is eligible to earn service credit for the calculation of longevity pay when he or she is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS and he or she uses accrued sick leave, accrued annual leave or accrued compensatory time to meet the difference between his or her normal pay and the benefits he or she receives. Such an employee ceases to earn service credit for the calculation of longevity pay when he or she is placed on a leave of absence without pay or catastrophic leave.

9. Service in a seasonal position must be credited toward the calculation of longevity pay if the employee is employed on December 31 and June 30 and if the requirements for eligibility for longevity pay have been met. If an employee in a seasonal position is not on the payroll on those two dates and he is reemployed within 12 months, the employee is entitled to receive prorated longevity pay for his or her service during the previous longevity period.

10. If a person is on leave of absence without pay for military service pursuant to NRS 284.359 or is reemployed within 90 days after the military service, the time during which he or she was not in paid status because of his or her military service will be counted as service credit for the

calculation of longevity pay. The person is eligible for longevity pay for the time he or she is in paid status in accordance with the provisions of subsection 2.

11. If a nonclassified employee or an employee covered by NRS 284.022 is appointed without a break in service to the classified or unclassified service, the previous time served is counted for the purpose of calculating longevity pay, but the employee is not eligible for any retroactive longevity pay.

[Personnel Div., Rule III § M subsec. 7, eff. 9-6-74; A and renumbered as subsec. 6, 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 12-17-87; 7-14-88; 7-21-89; 9-13-91; 9-16-92; 11-12-93; 3-23-94; 7-1-94; 11-16-95; 3-1-96; 10-27-97; R031-98, 4-17-98; R147-01, 1-22-2002; A by Personnel Comm'n by R142-05, 12-29-2005)

NAC 284.284 Longevity pay: Return to state service. (NRS 284.065, 284.155, 284.175)

1. An employee who was eligible for longevity pay and who separated from state service before July 1, 1981, and returns to state service retains his or her eligibility for longevity pay.

2. For the purposes of this section, the employee will receive the same semiannual rate of payment that he or she received at the time of his or her separation from service. However, the employee may not receive any semiannual increases until he or she has again served the same number of years without a break in service that he or she had served at the time of his or her separation from service plus 1 year.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A by R147-01, 1-22-2002; A by Personnel Comm'n by R038-03, 10-30-2003)

LCB File No. R044-15

Section 1. NAC 284.726 is hereby amended to read as follows:

Explanation of Proposed Change: S.B. 62 of the 2015 Legislative Session clarifies that the Division of Human Resource Management may be provided information regarding an applicant's pre-employment drug test result. The Division's access to this information allows for the removal of an applicant who tests positive from all hiring lists for positions which require pre-employment testing pursuant to NAC 284.894.

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

1. Except as otherwise provided in this subsection ~~[,]~~ ***and subsection 2,*** 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 ***NRS 284.4068, as amended by section 10 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1050, access to information concerning the results of an applicant's screening test which indicate the presence of a controlled substance is limited to the appointing authority or his or her designated representative and the Administrator or his or her designated representative.***

3. Except as otherwise provided in subsections ~~[3 and 4,]~~ ***4 and 5,*** 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.]~~ ***4.*** 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 ~~[9,]~~ ***10,*** access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.

~~[4.]~~ ***5.*** Except as otherwise provided in subsection ~~[9,]~~ ***10,*** 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.]~~ ***6.*** Except as otherwise provided in subsection ~~[9,]~~ ***10,*** 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.]~~ ***7.*** Except as otherwise provided in subsection ~~[9,]~~ ***10,*** 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 by 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.

~~[7.]~~ ***8.*** 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.

~~[8.]~~ ***9.*** 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.

~~[9.]~~ ***10.*** 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.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 9-30-88; 7-21-89; 8-14-90; 7-6-92; 3-23-94; R042-99, 9-27-99; R082-00, 8-2-2000; R058-01, 9-6-2001; R147-01, 1-22-2002; A by Personnel Comm'n by R068-03, 10-30-2003; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009, R059-10, 10-15-2010; R137-12 & R045-13, 10-23-2013)

Section 2. NAC 284.888 is hereby amended to read as follows:

Explanation of Proposed Change: The following amendment, proposed by the Division of Human Resource Management, is required by S.B. 62 of the 2015 Legislative Session and defines "work-related accident or injury" pursuant to NRS 284.4065. This definition encompasses the basis for testing that was previously outlined in subsection 1(e), therefore we propose removing subsection 1(e) from the regulation.

NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (NRS 284.065, 284.155, 284.407)

1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his or her duties safely and efficiently include, but are not limited to:

(a) Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;

(b) The odor of alcohol or a controlled substance on the breath of the employee;

(c) Observation of the employee consuming alcohol; ***or***

(d) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source **.** ~~[; or~~

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

2. 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 Division of Human Resource Management.

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]~~

4. For the purposes of subsection 2 of NRS 284.4065 ~~[, "substantial]~~ ***, as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049:***

(a) "Substantial damage to property" includes, but is not limited to:

~~[(a)]~~ ***(1)*** The operation of a motor vehicle in such a manner as to cause more than $500 worth of property damage; or

~~[(b)]~~ ***(2)*** The operation of a motor vehicle in such a manner as to cause two property accidents within a 1-year period.

(b) "Work-related accident or injury" means an accident or injury that occurs in the course of employment or that involves an employee on the premises of the workplace.

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A by Personnel Comm'n by R066-09, 10-27-2009; R193-09, 4-20-2010; R010-11, 10-26-2011)

Section 3.

Explanation: This section provides the effective dates for each of the regulations in this file. The effective date of Section 3 is January 1, 2016 in order to conform to the effective date in the applicable provision of SB 62.

1. This section and section 1 of this regulation become effective upon filing with the Secretary of State.

2. Section 2 of this regulation becomes effective on January 1, 2016.

LCB File No. R102-15

Section 1. NAC 284.088 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Legislative Counsel Bureau, makes a conforming change based on the proposed amendment to NAC 284.462, which is included in this LCB File.

NAC 284.088 "Promotion" defined. (NRS 284.065) "Promotion" means an advancement to a position in a class which has a higher grade than the class previously held. ~~[The term does not include the restoration of a promoted employee to his or her former position pursuant to NAC 284.462.]~~

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A by Personnel Comm'n by R183-03, 1-27-2004)

Section 2. NAC 284.182 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Legislative Counsel Bureau, makes a conforming change based on the proposed amendment to NAC 284.462, which is included in this LCB File.

NAC 284.182 Adjustment and retention of pay progression date; restoration of date of appointment and pay progression date. (NRS 284.065, 284.155, 284.175)

1. An employee receives a new pay progression date if he or she is:

(a) Promoted to a position that results in an increase of two grades or more; or

(b) Reinstated.

2. An employee who is:

(a) Promoted to a position that results in an increase of one grade;

(b) In a position that is reclassified to a higher class as a result of an individual classification study or an occupational study;

(c) Transferred to a position without receiving an increase in grade;

(d) Reappointed to a position at a grade that he or she formerly held;

(e) Reemployed and has remained continuously employed; or

(f) Demoted,

➥ retains the pay progression date held before the action described in paragraphs (a) to (f), inclusive, occurred.

3. If a person who is eligible for military reemployment is reemployed, he or she retains the pay progression date held when separated from this State for his or her service in the military.

4. If an employee was promoted but is being restored to his or her former position ***or class*** pursuant to the provisions of NAC 284.462, the date of appointment and pay progression date of the former position must be restored. ***If, pursuant to subparagraph (1) of paragraph (c) of subsection 2 of NAC 284.462, the employee is placed in a position in a class equal to or lower than the class of the position held by the employee immediately before the promotion, the pay progression date of the former position must be restored.***

5. Except as otherwise provided in this subsection and subsection 6, an employee's pay progression date must be adjusted:

(a) To equal 1 year of full-time equivalent service for an employee who changes from full-time employment to part-time employment or from part-time employment to full-time employment; or

(b) On a day-for-day basis for the amount of time the employee:

(1) Was separated from state service if the employee is reemployed within 1 year after the date on which he or she was laid off or received a seasonal separation.

(2) Was separated from state service if the employee is a person with a permanent disability arising from a work-related injury or occupational disease who is reemployed within 1 year after the date on which he or she sustained the permanent disability as determined pursuant to NAC 284.6013.

(3) Was on leave without pay, or on catastrophic leave, if the employee is:

(I) A nonexempt employee and the leave without pay or catastrophic leave was in excess of 240 hours; or

(II) An exempt classified employee and the leave without pay or catastrophic leave was in excess of 30 working days,

➥ in a year, except for leave without pay for a work-related injury or illness pursuant to NRS 281.390 or on a military leave of absence pursuant to NRS 284.359 or a leave of absence without pay during a fiscal emergency pursuant to NAC 284.580. An employee whose base hours are more than 80 hours biweekly must be allotted additional leave without pay and catastrophic leave in proportion to the base hours for his or her pay class designation. As used in this subparagraph, "year" means a period equal to 12 months of full-time equivalent service measured backward from the employee's pay progression date.

6. If the number of total hours of leave without pay or catastrophic leave of a nonexempt employee that exceed 240 hours is less than 1 day of full-time equivalent service for the pay class designation of the employee, an adjustment will not be made for those hours.

7. If an employee is on leave without pay, or on catastrophic leave, on his or her pay progression date, any adjustment to his pay progression date will be made after he or she returns to work.

[Personnel Div., Rule III part § G, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 8-28-85; 5-27-86; 8-22-86; 4-19-88; 7-21-89; 10-18-89; 3-27-92; 7-6-92; 9-16-92; 11-16-95; 3-1-96; 10-27-97; R043-99, 9-27-99; R147-01, 1-22-2002; A by Personnel Comm'n by R182-03, 1-27-2004; R022-05, 10-31-2005; R142-05, 12-29-2005)

Section 3. NAC 284.444 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Legislative Counsel Bureau, makes a conforming change based on the proposed amendment to NAC 284.462, which is included in this LCB File.

NAC 284.444 Application of probationary period. (NRS 284.065, 284.155, 284.290)

1. A probationary employee who transfers:

(a) Within the same class must serve the remaining portion of the probationary period.

(b) From one class to another class must serve a new probationary period.

2. An employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period. Except for those unclassified employees who transfer pursuant to subsection 2 of NAC 284.398, the status of a permanent employee may not be attained until the satisfactory completion of the probationary period.

3. An employee who is reinstated must serve a new probationary period unless it is waived in writing by the appointing authority. If an appointing authority waives the probationary period, the status of the appointment of the employee is permanent.

4. A probationary employee who is reappointed must serve a new probationary period.

5. A permanent employee who is reappointed to a class:

(a) At a higher grade level must serve a trial period unless it is waived by the appointing authority.

(b) At the same grade level or a lower grade level is not required to serve a probationary period.

6. An employee who is laid off, but who is reemployed within 1 year, must serve a new probationary period if reemployed in a different class or in a different department than that from which he or she was laid off, and the employee is subject to the provisions of subsection 8 of NAC 284.630.

7. A person with a permanent disability arising from a work-related injury or occupational disease who is reemployed in a different class or option than his or her regular position must serve a new probationary period as required by NAC 284.6018.

8. A person who is on a military leave of absence pursuant to NRS 284.359 is entitled to return to the status of appointment held at the time he or she commenced the military leave of absence. If the employee did not complete the probationary period, he or she will only be required to complete the remaining portion thereof. Upon successful completion of the probationary period, permanent status must be granted to the employee as of the date on which permanent status would have been granted if the employee had not taken a military leave of absence.

9. Promotion to a vacant position requires a new probationary period. Promotions which result from reclassification are governed by NAC 284.134 and 284.138.

10. Except as otherwise provided in subsection 11:

(a) No probationary period will be required if a permanent employee is demoted.

(b) A new probationary period will be required if a probationary employee is demoted.

11. An employee who is restored to his or her former position ***or class*** pursuant to NAC 284.462 following a promotional appointment must serve the portion of the ~~[probationary]~~ ***trial*** period which was remaining at the time of the promotion. ***No probationary period is required if, pursuant to subparagraph (1) of paragraph (c) of subsection 2 of NAC 284.462, an employee is placed in a position in a class equal to or lower than the class held by the employee immediately before the promotion.***

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 7-21-89; 8-1-91; 12-26-91; 3-1-96; A by Personnel Comm'n by R142-05 & R143-05, 12-29-2005; R141-07, 1-30-2008)

Section 4. NAC 284.462 is hereby amended to read as follows:

Explanation of Proposed Change: S.B. 62 of the 2015 Legislative Session amends NRS 284.300 requiring the Personnel Commission to adopt regulations regarding an employee who fails to attain permanent status in the position to which the appointee was promoted, i.e., didn't pass his or her trial period, or who is dismissed for cause other than misconduct or delinquency on the appointee's part, i.e., laid off, from the position to which the employee was promoted.

Additionally, the amendment addresses what happens to an employee when he or she is displaced by another employee with greater seniority.

NAC 284.462 Restoration of promoted employee to former position. (NRS 284.065, 284.155, 284.290)

1. For the purposes of this section only "promotion" means any movement into a vacant position which has a higher grade than the position previously occupied by a classified employee who has ~~[served 6 months of continuous (full-time equivalent) service.]~~ ***completed an initial probationary period.***

2. An employee ***who is*** promoted ~~[pursuant to subsection 1 who]~~ ***and*** fails to attain permanent status in the position to which he or she was promoted or who is dismissed for a cause other than misconduct or delinquency on his or her part from the position to which he or she was promoted, either during the probationary period ***for that position*** or at its conclusion, must ***, in the following order,*** be ~~[restored]~~ ***:***

(a) Restored to the position from which ~~[he or she]~~ ***the employee*** was promoted ~~[.]~~ ***, unless that position is held by an employee with greater seniority;***

(b) If the position from which the employee was promoted is held by an employee with greater seniority, appointed to another position in the agency from which the employee was promoted:

(1) For which a vacancy exists; and

(2) Which is in the same class as the position held by the employee immediately before the promotion; or

(c) If the position from which the employee was promoted is held by an employee with greater seniority and a position described in paragraph (b) does not exist:

(1) Appointed to a position in the agency from which the employee was promoted:

(I) For which a vacancy exists;

(II) Within a class equal to or lower than the class of the position held by the employee immediately before the promotion; and

(III) For which the employee meets the minimum qualifications; or

(2) Placed on the reemployment list for other classes for which the employee meets the minimum qualifications.

3. If an employee fails to attain permanent status and is restored to his or her former position ~~[,]~~ ***or otherwise placed pursuant to subsection 2,*** the appointing authority which ~~[is effecting the restoration]~~ ***takes such action*** must give written notice to the agency from which the employee was promoted at least 30 calendar days before the effective date ~~[.]~~ ***of the action.*** The agency which is taking ***the*** action ~~[to restore the employee to his or her former position]~~ is liable for the payment of the employee during this 30-day period unless the agency ~~[to which]~~ ***receiving*** the employee ~~[is being restored]~~ agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if ~~[a report of separation or notice of intent to restore an employee to his or her former position]~~ ***notice of the action*** has been provided to the employee and filed with the Division of Human Resource Management on or before the last day of his or her ~~[probationary]~~ ***trial*** period, even though the ~~[separation or restoration]~~ ***action*** takes place after the last day of the ~~[probationary]~~ ***trial*** period.

4. ***If an employee is restored to the position from which he or she was promoted and displaces an employee with less seniority pursuant to paragraph (a) of subsection 2, the displaced employee must be placed, in the following order, unless the displaced employee waives his or her rights to be placed pursuant to this subsection:***

(a) In a vacant position in the agency with which the displaced employee is employed in the same class;

(b) In a vacant position in the agency with which the displaced employee is employed in a comparable class for which the employee meets the minimum qualifications;

(c) In a vacant position in the agency with which the displaced employee is employed in a class with a lower grade that is closest to the grade most recently held by the employee for which the employee meets the minimum qualifications; or

(d) If a vacant position is not available for the employee pursuant to paragraph (a), (b) or (c) and the employee has attained permanent status with the State, the employee must be placed on the reemployment list for other classes for which the employee meets the minimum qualifications.

5. A demotion from probationary status in a higher class to the former lower level class may not be appealed.

6. For the purposes of calculating an employee's seniority for paragraph (a) of subsection 2:

(a) Except as otherwise provided in this section, the total number of years of continuous full-time equivalent service up to the effective date of the rejection from probationary status must be included.

(b) Except as otherwise provided in subsection 7, the sum of the calculation made pursuant to paragraph (a) or, if applicable, subsection 10 must be reduced by the following periods if those periods occurred during the 36 months immediately preceding the date of the notification of rejection from probationary status:

(1) For a nonexempt employee, any combination of leave without pay and catastrophic leave in excess of 240 hours in the period preceding the date of the notification of rejection from probationary status equal to 12 months of full-time equivalent service;

(2) For an exempt classified employee or exempt unclassified employee, any combination of leave without pay and catastrophic leave in excess of 30 working days in the period preceding the date of the notification of rejection from probationary status equal to 12 months of full-time equivalent service; and

(3) Any time covered by a report on performance which rated the employee below standard, excluding evaluations received within 75 calendar days before the notification of rejection from probationary status.

7. For the purposes of the reduction in the calculation of seniority required by paragraph (b) of subsection 6:

(a) The reduction may not include:

(1) A leave of absence without pay during a fiscal emergency of the State or an agency pursuant to NAC 284.580;

(2) A leave of absence without pay for a work-related injury or illness pursuant to NRS 281.390; or

(3) A military leave of absence pursuant to NRS 284.359.

(b) As set forth in subparagraphs (1) and (2) of paragraph (b) of subsection 6, an employee whose base hours are more than 80 hours biweekly must be allotted additional leave without pay and catastrophic leave in proportion to the base hours for his or her pay class designation.

8. For the purposes of calculating an employee's seniority for paragraph (a) of subsection 2, if seniority is otherwise equal, seniority must be determined in the following order:

(a) Total time within the occupational group;

(b) Total time within the department; and

(c) By lot.

9. For the purposes of calculating seniority for reemployment, if seniority is otherwise equal, seniority must be determined by lot.

10. A department may request from the Commission approval to calculate the number of years of continuous full-time equivalent service of an employee of the department by doubling the time spent by the employee in his or her present occupational group as categorized by NRS

284.171 and adding that amount to the time spent by the employee in all former occupational groups up to the date of rejection from probationary status. If the Commission approves the request of the department to calculate the number of years of service pursuant to this section, the department shall use this method to calculate the number of years of service:

(a) Only to determine whether an employee will be restored to the position from which the employee was promoted and not for the placement of an employee on a reemployment list; and

(b) Until the department seeks from and is granted approval by the Commission to revert to the method of calculating the number of years of service set forth in paragraph (a) of subsection 6.

[Personnel Div., Rule VIII § C subsec. 4, eff. 8-11-73; A 4-14-76]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89)

Section 5.

Explanation: This section provides the effective date for each of the regulations in LCB File No. R102-15.

This regulation becomes effective on January 1, 2016.

Brian Sandoval
Governor

James R. Wells, CPA
Director

Lee-Ann Easton
Administrator

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management

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June 2, 2015

Regulation Small Business Impact Statement

The Division of Human Resource Management has determined that the adoption of this proposed regulation does not impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business.

These regulations only impact the classified service of Executive Branch departments and the Nevada System of Higher Education.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small business and that the information contained in this statement is accurate.

Lee-Ann Easton

Lee-Ann Easton, Administrator

6/2/15

Date

Brian Sandoval
Governor

James R. Wells, CPA
Director

Lee-Ann Easton
Administrator

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management

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July 20, 2015

Regulation Small Business Impact Statement

The Division of Human Resource Management has determined that the adoption of this proposed regulation does not impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business.

These regulations only impact the classified service of Executive Branch departments and the Nevada System of Higher Education.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small business and that the information contained in this statement is accurate.

Peter Long for
Lee-Ann Easton

Lee-Ann Easton, Administrator

7/20/15
Date