

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
DIVISION OF HUMAN RESOURCE MANAGEMENT

Attorney General's Office
Mock Court Room, 2nd Floor
100 North Carson St.
Carson City, Nevada.

and

Grant Sawyer Building, Room 4500
555 East Washington Avenue
Las Vegas, Nevada

The sites will be connected by videoconference. The public is invited to attend at either location.

REGULATIONS WORKSHOP
MINUTES

Thursday, June 25, 2015

Speakers Present

In Carson City:

Lee-Ann Easton, Administrator, Division of Human Resource Management
Shelley Blotter, Deputy Administrator, Division of Human Resource Management
Michelle Garton, Supervisory Personnel Analyst, Division of Human Resource Management
Carrie Hughes, Personnel Analyst, Division of Human Resource Management
Kimberley King, Human Resources Manager, Department of Transportation
Kareen Masters, Deputy Director, Department of Health and Human Services
Kevin Ranft, Labor Representative, American Federation of State, County and Municipal Employees

Speaker Present

In Las Vegas:

Brian Boughter, Personnel Officer, Department of Corrections

1. CALL TO ORDER

Shelley Blotter: Opened the meeting at 9:00 a.m. She introduced herself and asked everyone to sign-in. She indicated the purpose of the workshop is to solicit comments from affected parties with regard to regulations proposed for permanent adoption. She explained that the regulations maybe heard at a future Personnel Commission meeting. She stated that the format would be that the staff would provide an explanation of the proposed regulation change which would be followed by comments. She indicated that comments would be summarized for the Personnel Commission and

provided to them at the time that it would be proposed for adoption. She noted that there were comment cards available if participants wanted to use that format or comments could be sent through the mail.

2. REVIEW OF PROPOSED CHANGES TO NAC 284:

NAC 284.470 Preparation, Filing, Contents, Discussion and Distribution of Reports, Powers and Duties of Employees, Review, Adjustment of Grievances.

Michelle Garton: Stated that the amendment to NAC 284.470 would clarify the effect that an evaluation would have on the employee's pay and performance rating including different circumstances such as a late evaluation or an evaluation that was not submitted. The goal of the clarification is to encourage supervisors to submit evaluations even though the employee may have already received his or her merit salary increase. She referred to Subsection 4(a) a description of the process as it should be followed, a timely standard or exceeds standard evaluation is submitted, the employee is eligible for a merit increase if they have not reached the top step of his or her grade, and the inclusion of that rating into the personnel file. She noted that Subsection 4(b) states if the evaluation was not filed on time the employee is deemed standard for the purposes of pay and would receive a merit increase if he or she has not reached the top step of his or her grade. The employee's performance rating would be the most recent rating the employee received. She noted that NEATS (Nevada Employee Action and Timekeeping System) was undergoing an upgrade and this would handle all online evaluations. DHRM believes that this will support supervisors in getting evaluations in punctually and simplify the process. She stated that the second amendment allows a designate to be appointed by the appointing authority to extend any timeframes as outlined for the request for review process.

Shelley Blotter: Reviewed how this change affected the process. She noted that if anyone had a supervisor that had submitted an evaluation late and it was past the point where the employee would be eligible for the merit salary increase then the employee would normally receive it. She explained the true change is that in the past it had been assumed that the employee's performance is "meets standards" if there was no new evaluation. The amendment is saying it would only be "meets standards" for the purposes of pay and whatever the evaluation rating is in the system would be what that person had actually been rated.

She asked if there were any comments. There were none in Las Vegas.

Kimberley King: Noted that she agrees with the change as at times the evaluation deadline could be missed while trying to work with an employee and agency wouldn't want then have to worry about the evaluation defaulting to a standard rating.

NAC 284.097 Reviewing Officer defined.

Michelle Garton: Stated that if the proposed amendment to NAC 284.470 is adopted then NAC 284.097 Reviewing Officer defined would need to be amended to change the reference to subsection 7 of NAC 284.470 to subsection 8 because a new subsection was being added to NAC 284.470.

Shelley Blotter: Asked if there were any comments. There were no comments.

NAC 284.52315 "Child" Defined

Carrie Hughes: Stated that the change to the regulation would bring it into alignment with federal FMLA (Family and Medical Leave Act) regulations and those regulations had been interpreted to not require an employee to prove that he or she provides both the day-to-day care and the financial support in order to be found to stand in *loco parentis*.

Shelley Blotter: Asked if there were any comments.

Brian Boughter: Asked if there was any proposal on how to document whether the employee had day-to-day care or financially supports a child.

Carrie Hughes: She stated that this was like most of the things that were not addressed on the FMLA certification forms and agency staff could either take a statement either verbally or in writing. She confirmed that there is a provision for the requirement of supporting documentation.

Kareen Masters: Expressed that she had concerns with the concept of patterning state regulations after federal regulations or interpretations as they could change. She referred to the administrator's ruling which stated it was based on a two-page document. She noted that this document contained substantial information which she considered important. She stated that if the document was reviewed the conclusion stated whether any employee stood in *loco parentis* and this would depend on particular facts. She noted that the intention appeared to be that a number of facts would have to be weighed to determine if it would fall within that document. She suggested that they hold true to the federal regulations and perhaps include an informational box to replicate the administrator's ruling or provide an email link. She considered this preferential. She added that it should be kept in mind that the rule of the administrator talks about an individual caring for the child but once you change the 'and' to 'or' you would also have to look at the other part of the equation, e.g. financial support, as one aspect only would not suggest that it was that individual's child.

Shelley Blotter: Asked Kareen if she felt it would be preferable to adopt the federal definition of "child" and also "loco parentis" and not try to deal with it at the state level.

Kareen Masters: Agreed as the agencies would be in a difficult position because they would have to conform with both federal and state regulations and if federal law changed they would have this on the books and it could create confusion.

Shelley Blotter: Asked for confirmation that she was suggesting that they repeal the action and then adopt the other sections by reference.

Kareen Masters: Agreed and noted they had done that in other parts of the regulation where they would adopt the definition by reference.

Shelley Blotter: Asked for any other comments including comments on Kareen Masters' suggestion. There were no other comments.

NAC 284.589 Administrative Leave with Pay.

Michelle Garton: Stated that the changes would create consistency in the granting of administrative leave for an employee to prepare or attend hearings related to his or her dismissal, demotion, suspension, involuntary transfer, and/or a claim of retaliation for the disclosure of improper governmental action, otherwise referred to as a 'whistleblower appeal'. She stated that currently the regulation did not specifically provide preparation time for an employee's whistleblower appeal so it would be added. This change would also require the appointing authority to grant the employee administrative leave to attend his or her hearing. She added that the employee would receive administrative leave for preparation and attendance at all hearings before a hearing officer. The current time allowed was 8 hours for preparation but there was no timeframe given for actual attendance at the hearings. She noted that what had been reflected was that administrative leave would be available to the employee for the duration of the hearings. The appointing authority could grant leave time to the employee to make up the difference between the length of the hearing and the remainder of the employee's shift.

Shelley Blotter: Asked for comments and there were none.

NAC 284.394 Transfers Initiated by Appointing Authorities.

Michelle Garton: Stated that the proposed amendment to NAC 284.394 is recommended due to the amendments proposed for NAC 284.589. She noted that the proposal is to remove the last sentence, subsection 5, which stated that the employee might receive administrative leave to prepare for a hearing on any involuntary transfer. If the amendment to NAC 284.589 is adopted, it is unnecessary to have it in NAC 284.394.

Shelley Blotter: Asked for comments and there were none.

NAC 284.778 Request for Hearing and Other Communications.

Michelle Garton: Stated that on July 1, 2014 the Personnel Commission selected the Hearings Division of the Department of Administration as the primary hearing officers for employee appeals. As a result, there is no need to have all the written communication come through the Division of Human Resource Management. She stated that the Hearings Division employs clerks that work for the hearing officers and any written communication would be directed to the clerk who is supporting the hearing officer for that particular hearing.

Shelley Blotter: Asked for comments and there were none.

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.

Michelle Garton: Stated that these were the regulations related to longevity pay. Assembly Bill 436 of the 2015 Legislative Session repealed NRS 284.177 and NRS 284.179 and these statutes included the provisions for longevity pay. Therefore DHRM is recommending the repeal of the associated regulations for longevity pay.

Shelley Blotter: Asked for comments and there were none.

NAC 284.656 Notice.

Michelle Garton: Stated that the regulation was related to appeal hearings and concerned notices of dismissal, demotion and suspension of classified State of Nevada employees. She added the intent was to open the method to communicate to an employee by providing for a delivery service or a carrier such as FedEx or UPS or any company providing tracking information and proof of delivery.

Shelley Blotter: Asked for comments and there were none.

NAC 284.726 Access to Confidential Records

Carrie Hughes: Stated that NAC 284.894 required the removal of an applicant who tested positive for the use of a controlled substance from all hiring lists requiring pre-employment testing for a year or until the applicant provided evidence of successful conclusion of a rehabilitation program. She noted that Senate Bill 62 of the 2015 Legislative Session in part amended NRS 284.4068 to allow the Division of Human Resource Management access to those confidential results of applicants' pre-employment test results. She stated that that would allow for the statewide implementation of the requirement in NAC 284.894. She added that the proposed amendment to NAC 284.726 outlined the access in regulation.

Shelley Blotter: Asked for comments.

Kimberley King: Indicated that this was helpful and she supported it.

Shelley Blotter: Stated that currently the Division receives this information anecdotally. She noted that it would allow for a more systematic implementation.

NAC 284.888 Request for Employee to Submit to Screening Test, Interpretation of Grounds, Completion of Required Form.

Carrie Hughes: Stated that effective January 1, 2016 Senate Bill 62 of the 2015 Legislative Session concerned the involvement in a work-related accident or injury, the circumstances being listed in NRS 284.4065 for which an agency could request an employee to submit to an alcohol and/or controlled substance test. She added that SB62 additionally mandated that the Personnel Commission should by regulation define the term "work-related accident or injury" as it was currently used in Subsection 2 of NRS 284.4065. She added that the amendment to NAC 284.888 defined "work-related accident or injury".

Shelley Blotter: Asked for comments.

Kimberley King: Indicated that this was helpful and they supported having it in that section. She asked if they still wanted to retain e) in Subsection in 1.

Carrie Hughes: Indicated it was something to think about but she did not think it hurt. She added it might not be necessary.

Kevin Ranft: Indicated that AFSCME was in support and thought that it would clarify many of the concerns that had been brought forward in the past.

Shelley Blotter: Asked for additional comments.

Kareen Masters: Asked if they were being too restrictive saying it would have to occur on the premises of the workplace as they often had employees who worked out in the field.

Shelley Blotter: Responded that the injury or accident that would happen in the course of employment. She considered that working in the field would fall under the course of employment.

Carrie Hughes: Stated the phrase "premises of the workplace" was picked specifically because it was defined in regulation in NAC 284.0875. She suggested that that section could be reviewed and the description was fairly broad.

NAC 284.448 Time Not Counted Toward Completion of Probationary Period and LCB File Number R138-13 Military Leave with Pay

Carrie Hughes: Stated on June 19th the Personnel Commission approved the amendments to NAC 284.448 in LCB File Number R138-13 as emergency regulations. She added that as emergency regulations were only effective for 120 days they were proposing adopting the amendments as permanent regulations. She noted that both the amendment to NAC 284.448 and LCB File Number R138-13 were intended to bring the regulations into agreement with the statutory change to NRS 281.145 made by Assembly Bill 388 in the 2015 Legislative Session. She stated that the amendments' explanation of proposed changes stated that the amendments were contingent upon the passage and approval of AB388.

She stated that the Governor signed AB388 into law on June 4th. Effective July 1st NRS 281.145 would require the Personnel Commission to prescribe a 12-month period that state agencies would use to determine the eligibility of their employees who were reservists or members of the National Guard who would take military leave without loss of their regular compensation. In LCB File Number R138-13 they were proposing that all state agencies with the exception of the Office of the Military continue to use the calendar year for that purpose. She noted that the Office of the Military requested that they be able to use the federal fiscal year for the purpose due to the funding source and some of their affected positions. She added that all of the existing language in LCB R138-13 would be removed as it was now obsolete due to the amendment to NRS 281.145. She stated that the amendment to NAC 284.448 referenced the change to the period for calculating employees' military leave in NRS 281.145.

Shelley Blotter: Stated that they would be discussing military leave and changes in the law later in the day. This amendment was getting the regulations to conform to what the statute currently provided.

She asked if there were any comments in general and any proposed changes.

3. ADJOURNMENT

Shelley Blotter: Adjourned the Regulations Workshop.