



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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REGULATIONS WORKSHOP

DATE: June 25, 2019
TIME: 9:00 a.m.
PLACE: State Library and Archives Grant Sawyer Building
Room 110 Room 1400
100 N. Stewart Street 555 E. Washington Avenue
Carson City, Nevada Las Vegas, Nevada

Workshop Minutes

Staff present in Carson City:

Peter Long, Administrator, Division of Human Resource Management (DHRM)
Frank Richardson, Deputy Administrator, DHRM
Beverly Ghan, Deputy Administrator, DHRM
Michelle Garton, Supervisory Personnel Analyst, Consultation & Accountability, DHRM
Carrie Hughes, Personnel Analyst, Consultation & Accountability DHRM
Kara Sullivan, Supervisory Personnel Analyst, Recruitment, DHRM
Rachel Baker, Personnel Analyst, Compensation, DHRM
Denise Woo-Seymour, Personnel Analyst, Consultation & Accountability, DHRM
Keyna Jones, Management Analyst, Central Payroll & Records, DHRM
Kristen Anderson, Program Officer, Central Records, DHRM
Stephanie Neill, Personnel Officer, Agency HR Services, DHRM

Others present in Carson City:

Mavis Affo, Personnel Officer, Department of Public Safety (DPS)
Kevin Ranft, American Federation of State, County and Municipal Employees (AFSCME)
Dave Badger, Equal Employment Opportunity Officer, Department of Motor Vehicles (DMV)
Carol Nelson, Personnel Technician, Department of Conservation and Natural Resources
(DCNR)
Kristin Bowling, Personnel Officer, Department of Wildlife
Tonya Sieben, Personnel Officer, Department of Transportation (NDOT)
Bob Leedom, Human Resources Manager, Gaming Control Board
Teri Hack, Personnel Analyst, DCNR
Mary Gordon, Personnel Officer, NDOT

Allison Wall, Personnel Officer, NDOT
Kim Eberly, Personnel Analyst, DMV
Tiffany Davis, Executive Assistant, Silver State Health Insurance Exchange
Emily Kuhlman, Personnel Officer, Health Care Financing & Policy, Department of Health and Human Services (DHHS)
Logan Kuhlman, Personnel Analyst, Public & Behavioral Health, DHHS
Perry Faigin, Deputy Division Administrator, Real Estate Division

Others present in Las Vegas:

Brian Boughter, Personnel Officer, Department of Employment, Training and Rehabilitation (DETR)
Michelle Alanis, Deputy Attorney General, Office of the Attorney General
Jeanine Lake, AFSCME
Allan Gliponeo, Personnel Officer, DMV
Stephanie Lan, Personnel Analyst, DMV
Lisa Alfred, Personnel Analyst, Child & Family Services, DHHS
Michelle Carlson, Personnel Analyst, Child & Family Services, DHHS
Paula Miles, Personnel Technician, DETR

1. Call to Order

DHRM Deputy Administrator Frank Richardson called the workshop to order and explained that based on the feedback received, proposed language may be changed or deleted, and a group of regulations may be affected. If the regulations are submitted to the Personnel Commission for adoption, amendment or repeal, the minutes from the workshop and any other comments received will be provided to the Personnel Commission when the regulation is presented for their consideration. Staff will provide an explanation of the proposed changes and provide time for comments from the audience.

2. Review of proposed changes to NAC 284

284.405 Reassignment of employee with disability who is unable to perform essential functions of position with or without reasonable accommodation.

Carrie Hughes, with DHRM, explained this amendment will require an agency, that is looking for available positions for reassignment of an employee as part of the reasonable accommodation process, to inform the employee of the circumstances and actions outlined in subsection 10 that would forfeit his or her reassignment rights as outlined in this regulation.

The intent is to ensure that an employee will not unknowingly forfeit his or her reassignment rights prior to referral to DHRM for possible statewide reassignment.

Frank Richardson, with DHRM, asked for any feedback or concerns.

Dave Badger, with DMV, asked if oral notification would be sufficient and, if not, is there a specific form to be used. Peter Long, DHRM Administrator, responded that the intent is to ensure an employee is advised and not to make the notification formal.

284.446 Time counted toward completion of probationary period.

284.448 Time not counted toward completion of probationary period.

284.450 Adjustment of probationary period.

Kara Sullivan, with DHRM, explained the changes to these regulations clarify that time counted toward the completion of a probationary period is also time counted toward the completion of a trial period. A trial period is the one-year probationary period a permanent employee who has been promoted to or voluntary transfers to a vacant position must serve. Because a trial period is a type of probation, amendments to NAC 284.446, NAC 284.448 and NAC 284.450 clarify that this is referring to both types of probationary periods.

Frank Richardson, with DHRM, asked for any feedback or concerns.

Dave Badger, with DMV, said the concern is that there is already some confusion in his agency, and he would assume most agencies, regarding probationary periods and trial periods. This regulation change only adds to the confusion by alluding to them as being essentially the same.

A probationary employee is not the same as an employee serving trial period. A probationary employee is serving his or her initial probationary period with State service and does not have the same rights as a permanent employee. A trial period is applied to an employee who has completed his or her initial probationary period, has attained permanent status and has been promoted. This means he or she is trying out the job and the supervisor is working on making the employee successful during the trial period. If the employee fails to meet the job expectations as documented by the supervisor, the employee may request to be reverted back or the supervisor may revert the employee back to his or her former position. Also, if the trial employee does not like the job, he or she can request to be reverted back to his or her former position. A probationary employee, on the other hand, has no rights and he or she can be terminated for any lawful reason. For example, in relation to the confusion this causes, when you look at NAC 284.446, time counted towards completion of the probationary period, subsection 1 says except as otherwise provided in subsection 4, a probationary or trial employee must perform his or her duties continuously in the classified service for either six months or one year, full time equivalency, as required with the class in which he or she is employed to attain permanent status. So, this amendment will apply to the completion of probation or a trial period, when only the completion of the probationary period accomplishes this. So, we believe that this amendment is just adding more confusion because there needs to be a clear distinction between probationary periods and trial periods. So, for that reason, DMV would request that DHRM reconsider the implementation of this proposed regulation amendment.

284.586 Civil leave with pay to vote.

Carrie Hughes, with DHRM, explained the proposed amendment to NAC 284.586, provides an employee with the right to take civil leave for early voting. This amendment will ensure consistency in application between agencies and allow agencies to better manage office coverage during the period of early and regular voting.

Frank Richardson, with DHRM, asked for any feedback or concerns. There was none.

284.589 Administrative leave with pay.

NEW Required administrative leave with pay.

Carrie Hughes, with DHRM, explained the amendment to NAC 284.589 and a newly proposed regulation regarding required administrative leave with pay. The proposed amendments effectively split NAC 284.589 into two separate regulations. The intent is to better indicate under which circumstances administrative leave is mandatory or permissive and for ease of use. The amendment to NAC 284.589 further removes the requirement for employees to be available by telephone or available to report to work when administrative leave is used for donating blood and attending benefits orientation or education sessions. Finally, the amendment to NAC 284.589 extends administrative leave to employees who are veterans, for up to two hours, to attend veterans and military related events sponsored by the State's Legislature.

Frank Richardson, with DHRM, asked for any feedback or concerns. There was none.

284.458 Rejection of probationary employees; rejection of permanent employees on trial period; removal of ineligible request for adjustment of grievance or appeal from procedure; notice; satisfactory completion of probation.

NEW Removal of ineligible request for appeal from process; notice.

Michelle Garton, with DHRM, explained that the next regulation amendments are related to the removal of grievances from the procedure for the adjustment of grievances and the removal of an appeal of disciplinary action from the appeal process.

An employee may not grieve or appeal a rejection from probation or a trial period. Subsection 3 of NAC 284.458 was added in June of 2018, to allow DHRM to remove a grievance or an appeal of disciplinary action from the process when it is filed as a result of a rejection from trial or probation. However, there are additional situations when an employee is not eligible to file a grievance or an appeal and DHRM has not had a regulatory basis to remove grievances and appeals in those situations. The intent of these amendments is to increase efficiency while cutting associated costs associated with the process. The specifics are as follows:

Subsection 3 of NAC 284.458 is proposed to be removed because the ability for DHRM to remove a grievance or an appeal will be expanded, and this subsection will be placed into a new regulation that addresses other situations when either a grievance or an appeal is inappropriately filed.

The next regulation is a new regulation. This regulation essentially includes subsection 3 which is proposed to be removed from NAC 284.458 as it relates to appeals, including DHRM's notification requirements. Also included in this regulation is the ability for DHRM to remove an appeal from the process when it has been filed by an employee who is not in the classified service.

Finally, it's proposed that DHRM be given the ability to remove an appeal because it was not filed in accordance with NAC 284.6562 which includes that the employee must be a permanent employee and he or she must submit the written notification of the appointing authority's decision regarding the

proposed disciplinary action if written notice was provided.

Frank Richardson, with DHRM, asked for any feedback or concerns. There was none.

284.693 Removal of ineligible request for adjustment of grievance or complaint from procedure; notice; appeal.

Michelle Garton, with DRHM, explained this regulation has been in effect since June of 2016, and currently allows for the removal of a grievance from the process for many more situations of an improperly filed grievance than we currently have with appeals. The exception related to NAC 284.458 has been removed and now includes a reference to that regulation in subparagraph (a) of subsection 1. Also included is the ability for DHRM to remove a grievance related to a report on performance in the event that the employee did not request a review of that report on performance prior to filing a grievance.

Finally, it is proposed that the requirement for an agency to make a request to remove grievance be included in this regulation. The change supports the DHRM's reliance on agencies to request grievance removal to start the process.

Frank Richardson, with DHRM, asked for any feedback or concerns. There was none.

284.210 Differential rate of pay for qualifying shift.

Rachel Baker, with DHRM, explained this amendment. The amendment intends to clarify that a shift deemed as qualifying meets the criteria outlined in subsection 1(b) of the regulation. Currently, as written and defined, an employee could work a two-hour shift of regular time and six hours of overtime and qualify for shift differential. Historically, the application of qualifying shift must be eight hours or more of regular time. Six hours of overtime is not a qualifying shift. As the amendment is being proposed, an employee working at a 24-hour agency that has had his or her shift reassigned from day to evening would not be excluded from qualifying for shift differential.

Frank Richardson, with DHRM, asked for any feedback or concerns. There was none.

284.255 Holidays: Holiday pay.

Rachel Baker, with DHRM, explained the amendment to subsection 8 of NAC 284.255 clarifies which agency is responsible for the compensation of a non-exempt employee who transfers from one agency to another on the day before or on the day of a holiday. The revised language outlined in the subsection reverts to the language used prior to 2002.

Frank Richardson, with DHRM, asked for any feedback or concerns. There was none.

284.242 Overtime: Authorization.

Peter Long, Administrator, DHRM, detailed NAC 284.242. The amendment being proposed is intended to make it clearer to agencies and employees when overtime needs to be communicated.

Right now it says it must be communicated four hours in advance. It is being proposed that there be a carve out for agencies that maintain a work week greater than required or that affect the health, safety and welfare of the people of the State of Nevada. Basically, this would include an agency that operates 24-hour a day. In particular, law enforcement, corrections, healthcare, etc., where it's difficult to give four hours advance notification for overtime, when there's nothing in regulations or statute that requires a person to call in within a certain amount of time. So, call in rules are typically a policy of an agency and most agencies have a requirement to call in within an hour before your shift starts.

So, for agencies with mandated manning levels for customer safety or health of the public, it's difficult to give four hours notice. This is simply a proposal and they are hoping for input from agencies with their concerns or if it's all okay. This isn't intended to harm employees or agencies. It's intended to assist both so that an employee knows that they're going to be working overtime. If they're told at the beginning of the shift or if they're told an hour before the end of the shift because someone called in sick, that's the intent.

Peter Long, with DRHM, asked for any feedback or concerns.

Kevin Ranft, with AFSCME, stated that NAC 284.242 has been an issue for a long time. It's really just a policy issue that's internally vague within NDOC and he was going to use NDOC as an example. There is not a consistent breakdown with respect to how the overtime is handled, specifically mandatory overtime. It is often found that it is not applied fairly and consistently.

Earlier this year, there was an EMC hearing which produced an EMC decision that NDOC was not properly providing the four-hour notice as required by NAC 284.242. This changes that. Mr. Ranft said he understands that the agencies want to have this process in place so they can just go up to an employee and say you're working mandatory overtime.

There are some studies done throughout the nation that even in the prison system that an employer figures out how to help employees and their families with childcare needs. Whether it's coming up with a policy on how to get on a voluntary list, get their name off a mandatory list or provide actual childcare. There are numerous different options. NDOC, respectfully, has yet to come up with a policy. Instead, they want to parade a Nevada Administrative Code to really just give them an out. AFSCME is wholeheartedly opposed to that.

This is a matter of respect and dignity, trust and appreciation. This goes a long way with creating an environment that is healthy to work in. In essence, creating a prison environment that has the elements of security that NDOC is looking for, and Highway Patrol and mental health and other 24-hour facilities. Often, this is a case really just to staff their facilities.

Those agencies need to seriously review how officers and staff are respected. If they're provided that dignity, given the trust to do their job and appreciated this would go a long way with retainment of officers and getting them to just simply volunteer overtime, but that's not always the case. They feel disrespected.

NAC 284.242 already provides for a process if there's an unpredictable emergency necessitating officers to work overtime. There are a lot of good supervisors and a lot of good lieutenants, but we

find often that it's simply easier for a supervisor to select officers for mandatory overtime versus just picking up the phone and calling officers or staff that are on their days off to come in and work that voluntary shift.

During the EMC hearing earlier this year mentioned previously, there was a motion made that a recommendation was sent to the Governor's Office suggesting that a climate study to be done with NDOC to evaluate staffing and other concerns. We are strongly opposed to this NAC regulation.

Mr. Long, with DHRM, asked Mr. Ranft, with AFSCME, if he had any recommendations as to how this could be changed to address his concerns. Mr. Long said DHRM wants to try to ensure consistency across departments, and they don't have the authority to tell an agency what policy they must set. So how can they do something in regulation to help the employee and the agency address the concerns raised.

Mr. Ranft, with AFSCME, summed up his views by saying that going forward, instead of changing the NAC, it should be up to the agencies to work together to see what's working and what's not working to ensure something that works for them on the overtime and to apply some of those things that he talked about in his testimony in regard to a fair and consistent policy. Second, they need to ensure that officers are respected and appreciated. It's currently not there. Mr. Ranft said he wished he had a suggestion to fix all agencies, but he thinks it's a two-way street.

Mr. Long, with DHRM, asked Mr. Ranft, with AFSCME, a follow-up question. Mr. Ranft said that NAC 284.242 already allows an agency to assign overtime without the four hours notice. In subsection (b), where it refers to an unpredictable emergency prevents prior approval—in Mr. Ranft's example, what if NDOC simply started using that and said that someone calling in is an unpredictable emergency because we have shifts scheduled with the correct number of people and someone called in sick. That's unpredictable, we don't know when someone is going to call in sick and what if they started utilizing that section of the statute or regulation. "Unpredictable emergency" is not defined anywhere.

Mr. Ranft, with AFSCME, replied that NDOC knows on a continual basis that they're short staffed. AFSCME feels that over the years they have created their own problem on having short staff. On a daily basis they know that they're going to have a large call out. On a daily basis, they're going to know that they have people on leave. The only emergency situation that's typically like an escape, a large amount of inmates that have gone to the hospital. What they find though is NDOC doesn't declare this an emergency. Therefore, they feel by them not saying this is an emergency, we're going to mandate you on overtime without any notice, they have never truly done that. They either say, you're my buddy, I'm going to let you not work mandatory overtime or you're a younger officer, I'm going to nab you for mandatory overtime. There's no consistency. It's either you're my buddy, or you're a young officer and you have to work the mandatory overtime. If there was a true emergency, it wouldn't matter at that point. All officers would be willing to step up and say I'm going to be here to protect the citizens of Nevada and do my job that I signed up to do. But you're right, there is no clear definition of that. That's something that they could work with the agency on to ensure what that definition is. It's going to take awhile to get some of the things in place, but Mr. Ranft thinks that this NAC would give them an out.

Mr. Long, with DHRM, had one final question for Mr. Ranft, with AFSCME. He asked in his position

as the Labor Rep for AFSCME, is his concern specifically for Corrections or is it for all agencies that maintain a work week greater than required and affect the safety and welfare of the State.

Mr. Ranft, with AFSCME, replied they see this specifically in behavioral health, specifically mental health. Lakes Crossing, NAMHS, Stein and SNAMHS down in Las Vegas. And maybe some of the Summit and maybe the Nevada Youth Camp in Elko.

Deputy Attorney General Michelle Alanis stated that for the record, she was the attorney present at the EMC hearing for the decision that was previously referenced, as well as the attorney of record in two appeals cases related to this overtime issue, where suspensions were upheld. Ms. Alanis said she would agree with Mr. Ranft that this is a common occurrence with NDOC, but she disagrees with some of the statements he made.

Deputy Attorney General Alanis, said her Division in the Attorney General's Office, is in favor of an amendment being made to this regulation because what they see is that NDOC has a policy in place that they are trying to consistently apply, but what they have is a situation where employees then are refusing to work the overtime. The policy is there's an overtime scheduling sheet presented to the employee at the start of their shift, which would be about eight hours before the next shift. On that sheet, at the very top is the voluntary overtime list. Below that is the mandatory overtime list and it's numbered from one to, however long they make the list that day. The officers are required to initial next to their name, their location on the mandatory overtime sheet which signifies you will be first to be called, second, third, as we go down the list, as the needs require. So, it's not that they are approaching employees two minutes before the next shift. There is a procedure and a policy in place. The problem is it an unpredictable emergency where staff has called off. This is the problem because the EMC clearly didn't believe that falling below minimum staffing was not an unpredictable emergency. So now there are inconsistent decisions. What we have is a scenario where the Legislature has created this minimum staffing for NDOC. That's not optimal staffing, that's bare bones minimum staffing. When the officers are not working mandatory overtime, it's creating this situation where we're falling below minimum staffing. What this amendment is trying to do is to alleviate the situation that we're facing.

Jeanine Lake, with AFSCME, was next to speak. She said in her 24 years of working as a Labor Representative, the staffing and maintaining of employees in many of the public safety, 24-hour facilities has been an issue. Turnover has been very high at times. At what point does it stop being an emergency when the agency is consistently understaffed? At what point does an agency consider the impact to an employee with forced overtime? State employees have lives too. They have families, they have spouses who must work and mandatory overtime can disrupt their schedules, their family lives, especially when it comes to childcare, transportation to and from school, doctor's appointments and more. It's difficult enough to work in those agencies without the forced overtime being a very consistent issue. It's troublesome for some of these 24-hour facilities that understaffing and turnover continue to be a problem and year after year, not enough has been done to maintain those employees. In some cases, employees are treated with little to no regard and in many instances, if they refuse the overtime or simply cannot remain on the job due to prior commitments they can be and many times are disciplined. DHRM should not proceed with this regulation change and should allow the agencies and the employee unions to determine such matters through the collective bargaining process which was just passed in the legislature. That would be the most fair and equitable way to address those

concerns for all sides. Employees have good suggestions. They have input. They would like that opportunity.

284.498 Training of supervisory and managerial employees.

Carrie Hughes, with DRHM, said the proposed amendment to NAC 284.498 will add a requirement for supervisors to receive training on the Americans with Disabilities Act, the ADA and the Family and Medical Leave Act, the FMLA; as well as training on the developing and revising of documented essential functions of positions. The intent is to ensure that supervisors are prepared to fulfill their responsibilities under these laws. Additionally, this amendment will provide for an additional component regarding sexual harassment and discrimination to be added to the existing Equal Employment Opportunity Class for managers and supervisors. This additional component will not replace the employee required sexual harassment and discrimination class, but instead provide additional supervisor specific training.

Frank Richardson, with DHRM, asked for any feedback or concerns.

Allan Gliponeo, with DMV, had some comments on NAC 284.498. He said his department is very pleased and they agree with the addition of the subparagraph (b)(6) of subsection 1, Title 1 of the ADA, FMLA and the essential functions and development of that. The addition of the sexual harassment and discrimination component to the Equal Employment Opportunity section is also a plus.

284.726 Access to confidential records.

Michelle Garton, with DHRM, explained the final regulation for the workshop, regarding access to confidential records. Recently, this regulation and NAC 284.718, confidential records, were amended to expand access to confidential records because the State of Nevada is seen as one employer under state and federal law. Subsection 5 of NAC 284.718 makes various items related to sexual harassment and/or discrimination investigation confidential. The amendment to this regulation, NAC 284.726 will include access to some of the various items related to these types of investigations between agencies. Again, as currently is the case, agencies have the ability to limit access to confidential information by staff using protocols currently in place.

Frank Richardson, with DHRM, asked for any feedback or concerns. There was none.

3. Adjournment

After thanking everyone for attending and participating, Mr. Richardson adjourned the workshop.