

**STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
DIVISION OF HUMAN RESOURCE MANAGEMENT**

**REGULATIONS WORKSHOP
MEETING MINUTES**

Wednesday, January 27, 2016

Gaming Control Board
1919 College Parkway
Carson City, Nevada

and

Grant Sawyer State Building, Room 2450
555 East Washington Avenue
Las Vegas, Nevada

STAFF PRESENT IN CARSON CITY:

Shelley Blotter, Deputy Administrator, DHRM
Lee-Ann Easton, Administrator, DHRM
Peter Long, Deputy Administrator, DHRM
Carrie Hughes, Personnel Analyst, DHRM
Rosana Woomer, Personnel Analyst, DHRM
Angelica Gonzalez, Personnel Analyst, DHRM
Beverly Ghan, Personnel Analyst, DHRM

STAFF PRESENT IN LAS VEGAS:

Adrian Foster, Personnel Analyst, DHRM

OTHERS PRESENT IN CARSON CITY:

Melody Duley, NDOT
Kimberly King, NDOT
Alys Dobel, DMV
Allison Wall, DETR
Stephanie Neill, NSHE
Jared Keller, NDOT
Tonya Sieben, NDOT
Nicole Waddell, NDF
Deborah Harris, BHHS
David Wright, NDOC
Ann Para, ADSD
Kathleen Kirkland, AHRS
Dave Badger, DMV

Susie Bargmann, DPBH
Scott Anderson, SOS
Sue Dunt, NSHE
Renee Depaoli, DWSS

OTHERS PRESENT IN LAS VEGAS:

Allan Gliponeo, DMV
Dottie Martin, ADSD
Lori Gaston, ADSD
John Scarborough, CSN

I. CALL TO ORDER

Shelley Blotter: Opened the meeting and explained the reason for the workshop was to solicit comments from affected parties with regard to the regulations proposed for permanent adoption. She noted that based on the feedback received, the proposed language may be changed, be deleted, additional regulations may be affected, or they may not move forward.

Lee-Ann Easton: Commented that the Division staff are here to listen and that nothing is set in stone. Asked that everyone give their comments because they do want a cooperative relationship with agencies.

II. Review of Proposed Changes to NAC 284

NEW	“Professional employee” defined.
284.5405	Annual leave: Credit upon reinstatement, rehiring, reemployment or transfer.
284.551	Sick leave: Credit upon rehiring, reemployment or transfer.
284.204	Adjustment of steps within same grade.
284.581	Adoption by reference of federal law and regulations.
284.52315	“Child” defined.
NEW	Use of medical marijuana.
284.650	Causes for disciplinary action.

Shelley Blotter: Explained that staff explain each section and then time would be allowed for comments.

Carrie Hughes: Introduced herself as a Personnel Analyst with the Division of Human Resource Management. She explained, The Nevada System of Higher Education employs individuals in positions which are categorized as professional or administrative faculty. The proposed new regulation, as well as the amendments to NAC 284.5405 and 284.551 are intended to address the inconsistent treatment of Nevada System of Higher Education professional employees when they transfer into classified or unclassified positions.

The proposed new regulation defines a Professional Employee as an employee of the Nevada System of Higher Education, with administrative duties that is not in the classified or unclassified service.

The proposed amendment to subsection 9 of NAC 284.5405 provides that a professional employee’s annual leave is recomputed based on what it would have been had the employee been in a classified or unclassified position and made available following a transfer into a classified or unclassified position without a break in

service.

The proposed amendment to subsection 5 of NAC 284.551 provides that a professional employee's sick leave is recomputed based on what it would have been had the employee been in a classified or unclassified position and made available following a transfer into a classified or unclassified position without a break in service.

Shelley Blotter: Requested comments.

Kimberly King: Introduced herself as being from NDOT. She asked if something could be put in front of 'professional employee' to identify that it's for Nevada System of Higher Education. Her concern is that it would not be clear as NDOT also has professional employees.

Shelley Blotter: Noted that the Legal Division of the Legislative Council will draft a lead line for that to be clearer.

Stephanie Neill: Introduced herself as being from NSHE. She noted that she feels this is a wonderful regulation as a long-term classified employee. She felt this guarantees the security of her leave accrual regardless of her decision to stay classified or move to administrative faculty type position.

Shelley Blotter: Asked Carrie Hughes if administrative faculty is also included.

Carrie Hughes: Stated that it is her understanding that it also include administrative faculty, and that may be something to clear up in the definition.

Shelley Blotter: Moved to the next item, NAC 284.204.

Peter Long: Introduced himself as Deputy Administrator for the Division of Human Resources Management. He explained, the revision is proposing modifications to NAC 284.204, adjustment of steps within the same grade, at the request of and in coordination with the Office of the Governor, the Governor's Office of Finance and the Department of Administration.

He reiterated that, this is the draft and they are looking for any and all comments on how it can work for agencies. He noted, basically what this does is modifies when an accelerated rate may be given, clarifies an adjustment for equity among positions within the same department or agency and not across State service. It removes the ability to create an inequity unless approval is obtained from the Office of the Governor and makes revocation of the accelerated rate a requirement when the criteria that caused the adjustment no longer exists or the employee moves to a position in an area where a recruiting problem does not exist.

He noted, there was feedback in written form from the Secretary of State's Office, specifically from Scott Anderson, Chief Deputy Secretary of State and that memo will be entered into the record as part of the minutes from this meeting.

Scott Anderson: Introduced himself as Chief Deputy Secretary of State from the Office of the Secretary of State, Barbara Cegvaske. He appreciated the opportunity to give comments in regards to this and from the letter that was sent, there were a couple of concerns. They have spoken with the Governor's Office and understand the concerns which brought this regulation forward. They did have a few concerns, especially about the 'mandating' and the 'must', as far as taking back an increase that may have been otherwise warranted.

There were no objections to subsections 1(a) or 1(b). It was mainly in regards to subsection 1(c). They feel

that there could be problems with a supervisor that has to say, discipline somebody that was the cause for the supervisor's increase and there may be some hesitation to do that, knowing that if they were to demote or dismiss an employee that it wouldn't negatively impact on the supervisor's pay. He noted, there are some issues, unforeseen issues that may occur because of that.

Further he noted, there were also some concerns about the mandate and the 'must' language. They felt that leaving it as a 'may' and perhaps adding some additional review of such circumstances by DHRM, that there could be still some discretion left to the agency.

Kimberly King: Stated she had some questions. She asked, what is to be accomplished with these regulations?

Peter Long: Explained that what they are trying to accomplish is to maintain fairness and equity across agency lines, specifically for equity adjustments. He stated, EMC has had their fair share of grievances lately, from departments that can't afford to adjust pay based on equity and those employees are comparing themselves with agencies that can. Per the feds, the State could be perceived as one employer. To allow adjustments within one agency and not across other agencies, could be seen as an Equal Pay for Equal Work issue. The intent is to narrow the criteria. They're certainly not trying to stop someone or any agency who does have a need for an accelerated rate or equity adjustments, they're just trying to get a handle on how to maintain fairness across State service.

Kimberly King: Stated, her comment on that would be, everyone knows there is a problem. They've been doing budget Band-Aids for a while now. Those budget Band-Aids are now coming into play that there are inequities across the State, even within departments. That's what is happening with the employees complaining and what the EMC is seeing.

Her understanding of this regulation in the past, is that they couldn't make an adjustment of a step unless it was fiscally possible to adjust others to make sure there were no inequities. It appears that this regulation change is actually going to give the ability to create inequities. She thinks that's going to be problematic.

She further stated, now it looks like an inequity can be created, it makes it clear that is allowable if the Governor's Office approves it. The question there is, how will discriminatory type decisions be prevented, or defended if it's not discriminatory? Because, what will happen is, the agencies no longer have delegated authority, so they're actually giving them what they need but it's going to be up to them to make that decision. She thinks that might become problematic in the big picture.

She further noted the term "critical to agency operations." That might be difficult to defend. She is unsure on the definition of that is, so that would be another question.

Also, in subsection 3, this subsection applies to only initial appointments. She noted, that makes it so that if there are recruitment difficulties, if there is an exceptional candidate, as long as they don't work for the State, they can look at an accelerated salary, but if they work for the State—let's say they came in as a clerk because they needed a job, but this person has experience, they have the criteria and now they want to put them up here and they want to keep them that employee would not be able to receive an accelerated rate. Should that be allowable for existing employees? Because it's telling State employees, you aren't valued as much as the outside candidates.

Lee-Ann Easton: Stated, that's not the intent.

Kimberly King: Acknowledged that and stated, they get a lot of comments. She stated, she thinks she knows what this means, but the subsection only applies to initial appointment in State service. It does not

apply if a selective criteria was used in the recruitment and it does not apply if the adjustment will cause an inequity between current employees, which would require the adjustment of steps for those employees, unless upon submitting written justification the appointed authority obtains written concurrence from the Officer of the Governor. She thinks that plays into that the Governor's Office can create an inequity.

She further noted, this does not apply if selective criteria was used in their recruitment. They have a 15.39 vacancy rate in her department. They are recruiting. They have snow plows that don't have people to put in them. They don't believe in shortening the recruitment period because that just means that you get less numbers, it doesn't mean that you get the best qualified.

She explained, they use selective criteria to get the best qualified for those jobs, which in reality, if selective criteria is used, it's going to make it even more difficult to show that somebody has exceptional qualifications because they will be compared to other people who have those great criteria. If they can use selective criteria, they're getting the better crop that they're comparing to.

In addition, they do vacancy based recruitment at NDOT as much as they can. They want to give managers lists that they can use that people are interested in. Currently, they would not be able to continue doing that because DHRM requires a selective criteria if there is an existing list. That would be problematic.

The matrix. The matrix is already required procedurally by DHRM. It's been an interesting process. Those matrixes can take staff two full days to do one, because they're doing a good comparison. They look at the minimum qualifications and the exceptional qualifications for a job.

She stated, they've been using those matrixes and doing accelerated offers, and they are having people turn them down. They have a couple of problems. One is that it takes too long and candidates are getting other jobs. They're also having people turn them down because they can't meet the salary needed because they can't get it up any higher and create an inequity with existing employees.

She noted that under subsection 4(a) the term "criteria" is used, and believes that is more vague than what was there before, and that a definition of exactly what is meant be included.

Lee-Ann Easton: Gave thanks and appreciation for the comments and added she just wanted to state that Ms. King is not alone in this. They do know that there are issues with hiring and there are a lot of difficult positions to fill out there. They're trying to do the best they can on regulations, and do understand the concerns.

Kimberly King: Proposed getting a task force together and do some brainstorming to find solutions to the big picture.

Lee-Ann Easton: Explained that the Governor's Office has a task force put together that is going to be meeting in the next week to look at exactly this and as a global, overall State process. Unfortunately, revenue streams haven't been at a level where everyone can be adjusted at this point. The Governor's Office definitely recognizes the difficulties with hiring.

Peter Long: Noted that he and the Department understands the concerns with this. He asked that any solutions to these concerns would be useful and that they could be submitted to him.

He stated, "critical" was just a term that was used. Another broader term could be used, possibly a term that is already in regulation, for example, "urgent and compelling." That is when someone contests an exam and an agency can still get a list if they demonstrate an "urgent and compelling" need.

The intent is to remain a little vague on these so that they address your concerns as they come up and not be tied to something so specific that they have to say no. If there is another word that might fit better there, please suggest it. The intent is to limit this to positions that really do need an accelerated rate.

The intent was not to devalue State employees at all. In the merit system, they were tasked to do internal recruitments before going to open competitive. Open competitive must be requested first. What this is doing is saying, there are no internal candidates, then the rate for an outside candidate may be accelerated. This is clarifying what is already in practice based on questions from agencies. There's a regulation related to the pay on promotion. Also, the Division has assisted agencies in the last few years by unranking a number of lists. So, there's no need to do an internal promotional recruitment for someone to be in the top 5 ranks. This enables agencies to reach candidates down to what used to be six or seven or eight, which may be the better candidate. It was not intended to devalue State employees in any way.

Kimberly King: Recognized it wasn't intended. She explained that at this time, State employees are leaving State employment. They do better leaving State employment and coming back because of the recruitment difficulties. Basically, they're unable to retain good employees. In addition, when they do these evaluations on whether or not there should be an accelerated salary, they are comparing to everybody else on that list. They have to create that matrix, first of all comparing everybody on that list, and then if they're going to do the accelerated salary, then they have to do a matrix comparing to everybody else in that job class, in her Department, unless they can identify a location that's different. This isn't something where they're going down to just pick an internal candidate where they're asking for the accelerated salary. These are the truly exceptional and outstanding employees that they need to keep the State moving forward.

Peter Long: Added that the way the regulation is written now, it could be open to abuse. An agency is fortunate to get a list of 20-30 people, and they are starting to produce lists with more people. He can't address the quality of the list, except through feedback that they've gotten since they started with Careers in Government and being out on some of the social media; they have gotten feedback that the quality of the applicants has improved. They don't ask you to compare every person on the list. They ask you to compare five or six. The system could be abused if the five least qualified on that list are compared against the person for which an accelerated rate is being requested. They don't go through all the other 15 or 25 to see if maybe they had better qualifications than the five that was used for comparison. They were just trying to tighten that up so that it truly is the top candidate that's being asked to receive an accelerated rate.

Kimberly King: Recognized the comment. Wanted to make it known how they work the selective criteria to bring up the cream of the crop instead of having a two or three day recruitment to get applicants in, if a lot of good candidates are expected, they will put a selective on there. The next thing that they do is to use the clarifying questions to help hiring managers identify which people are going to be most qualified for that position so that they're interviewing those people. They have to be able to define what their selection criteria was for the interviews. And then from there, they make their selection. She noted, if there is concern about that, she would rather do a comparison of everybody on the list rather than to make it so that selective criteria cannot be used. This could be more work for them and the managers.

Peter Long: Noted, he's not suggesting that. If the selective is working, then that was just put in there. There is a statement included that any experience or education which is considered by the appointed authority must be given a greater weight for those areas which are directly related to the position than general education and experience. If an open recruitment is done, the desired experience could be included. When a selective is used, it doesn't really tie to what's written there, other than general education and experience, because everyone is going to have the selective criteria to be on the list. He was actually trying to clarify that when he wrote it. He thanked Ms. King for the feedback on how it could be more difficult to administrate.

He continued by discussing the term "create an inequity." He noted, they may be doing that now in equity

adjustments in that someone is selected based on special experience and the years of experience that they have to get the accelerated rate. Then other employees are adjusted or asked to have their steps adjusted for equity based on what he's seen, and he may be missing something, based on their years of experience. It is not years of experience tied to the specific type of experience that caused the original candidate to get the accelerated rate. He further noted, if they're adjusting for equity, it should be for the specific employees that have the experience related to why that person got an accelerated rate, not every employee that has a certain number of years' experience that ties to that employee who got the accelerated rate.

He added, what they're seeing is, the system itself is a little messed up due to the freeze of MSIs. They're seeing employees that are upset because someone comes in at an accelerated rate and they've been there a year and they're at a higher step than someone who worked through the years without MSIs, was a dedicated State employee, and can't be adjusted if the Department doesn't have the money to adjust them. What it also does is limit the Department from hiring a good employee because they can't afford to adjust everyone else. So they're taking an employee that is at a lower step so they don't create an inequity. The intent was that, yes, they can create an inequity if that specific experience was what they needed and not just based on years of experience across the board.

Kimberly King: Stated that could create a problem with morale amongst current employees. They've got people starting to leave the State and get other jobs and then they'll come back because they do have exceptional experience and education that they want to retain but are losing. Some come back, some don't.

Peter Long: Acknowledged that may not be working, but that was the intent to try and address that situation so an inequity could be created.

Kimberly King: Stated she would go through the regulations and see if there was anything she could make recommendations on. She stated, she thought the regulations were already clear that each agency is different.

Peter Long: Explained that it was clear to those in HR, but not to the layman, and that's why we have seen some grievances going before the EMC. The changes are trying to clarify what DHRM already thought was clear.

Kimberly King: Stated she thought the regulations were already clear, and at the same time, she doesn't believe they should be making inequities.

Shelley Blotter: Asked for further comment. There was none. Move on to NAC 284.52315 and 284.581.

Carrie Hughes: Explained, that the repeal of NAC 284.52315 and the amendment to NAC 284.581 will apply to the Family Medical Leave Act's definition of the term "child" to the use of "child" in the Attendance and Leaves section of Nevada Administrative Code, Chapter 284. The intent is to provide a uniform definition for family sick and administrative leave use, both when the FMLA does and does not apply. The FMLA's current definition of 'child' will be provided in an informational note, in the Rule State Personnel Administration publication.

Shelley Blotter: Asked for further comment. There was none.

Carrie Hughes: Explained that SB 447 of the 2015 Legislative Session amended NRS 453A.800 to include new subsections allowing law enforcement agencies to prohibit an employee from engaging in the medical use of marijuana. Two versions of the new amendment were proposed based on these statute changes.

In subsection 1 of both versions, employees who are "peace officers," as defined in NRS 289.010, employees who are in positions that have been determined by the Personnel Commission to "affect the public's safety"

and positions and subject of random testing such as those under the Federal Motor Carrier Safety Administration's rules are prohibited from using medical marijuana.

Also in both versions, it provides that an employee who is pre-employment tested when conditionally offered another position and who tests positive for marijuana but holds a valid registry identification card to engage in the medical use of marijuana will be removed from all lists requiring pre-employment testing and will have the offer withdrawn but will not be subject to disciplinary action on the basis of being under the influence of medical marijuana nor will the employee be subject to a return to work test.

Version 2 differs in that it additionally addresses post-accident and reasonable suspicion testing. It provides that an employee who tests positive due to a post-accident or reasonable suspicion test and holds a valid registry identification card to engage in the medical use of marijuana may be disciplined as provided for in NAC 284.650. However, the employee will not be subject to a return to work test.

The intent of exempting an employee who holds a valid registry identification card to engage in the medical use of marijuana from a return to work test is to prevent an automatic disciplinary separation as most agency's Prohibitions and Penalties allow for or require a disciplinary separation upon an employee's testing positive twice. This gives an agency an opportunity to investigate whether it is possible to "make reasonable accommodations for the medical needs" of the employee as outlined in NRS 453A.800.

Shelley Blotter: Stated that they know that this is a very contentious issue and that many have concerns regarding this. She noted, they are still going through the process of trying to determine what is legally appropriate under Nevada State Law and federal law. They welcome comments, either on the topic in general or one of the two versions.

Kimberly King: Noted she had a statement and then one comment. NDOT has concerns as a recipient of federal funds which requires the agency to follow the federal Drug-Free Workplace Act. The agency would not want to risk any federal funding. She further stated, her other comment related to 284.650(15), use of marijuana. It is important to be clear on that; if the intent is not smoking or ingesting on the work site. Her understanding is, if an employee has a positive test and it's in his or her system, he or she is using marijuana.

Deborah Harris: Introduced herself as Deputy Director, Administrative Services, Department of Health and Human Services. She thinks that it's been discussed in prior meetings but their main concern is that they did obtain an Attorney General opinion from Linda Anderson who was also responsible for the medical marijuana program with the State. Ms. Anderson feels that the regulations suffice as currently written.

She further noted, they don't really believe that there's a need to separate medical marijuana from any other drugs or controlled substances that employees are utilizing due to medical conditions. They believe that they should manage them consistently across the board. The concern is, why is medical marijuana now any different from any other prescription that an employee may have for a medical condition?

Version two is the most palatable but they still have concerns because they believe it's an unnecessary regulation changes and they are comfortable with regulation as it currently stands.

Kimberly King: She noted that she was coming up as a private citizen of the State of Nevada. She explained that she has made the State her home and she intends to retire here in the future.

She stated she understands that the Legislature and the State of Nevada support medical marijuana. She also supports the availability of medical marijuana for individuals for whom this drug will help with their medical needs. However, she is concerned that these regulations, as written, will not allow agencies to receive federal funding to comply with the federal Drug-Free Workplace Act.

Although the State of Nevada has legalized medical marijuana, at this time the federal government has not, and still considers medical marijuana an illegal drug. The Drug-Free Workplace Act requires the recipient of federal funds to publish a statement notifying employees that the unlawful manufacturing, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantees workplace and specifying the actions that will be taken against employees for the violations of such prohibition.

She sees this regulatory language as contrary to the law, the federal law. She's requesting the Division of Human Resource Management and subsequently the Personnel Commission, review and ensure that the regulatory language will allow agencies that are federal recipients to be in compliance with the Drug-Free Workplace Act.

Sue Dunt: Introduced herself as being Risk Manager with Nevada System of Higher Education. From their perspective of the two versions, they would clearly prefer Version 2. That allows them to do management in regard to liability if they have employees that may be over-utilizing their medical marijuana or maybe not using it at night, versus during the day. They would definitely support, if this were to move forward, that this second version be the one that would be considered.

She further explained that they are also a recipient of a large amount of federal funds. They think it would be beneficial to have some kind of acknowledgment within the regulations that, if there are federal funds involved, that maybe legality of allowing this in the workplace should be looked at.

Overall, NSHE has developed an internal policy that doesn't allow the use of medical marijuana, primarily due to the federal funding issues. So, they just would be hopeful that it could somehow work out that the issue is considered and it's somehow being worked into the regulation.

Shelley Blotter: Asked if there were further comment.

Lee-Ann Easton: Explained that she also had some concern after the workshop and this is why these workshops are so important, that we all try to work together and get as much information as possible.

Shelley Blotter: Noted, there is one other regulation – 284.650. One of the commenters already commented on the changes, but in the event someone wants to speak to that one directly, comments would be accepted on that before closing. She commented that, with that, it looks like all the territory had been covered. She expressed appreciation and reminded attendees to feel free to send any written comments to her, or Lee-Ann or Peter.

III. ADJOURNMENT

Shelley Blotter: Adjourned the meeting.