

STATE OF NEVADA
Department of Administration
Division of Human Resource Management
REGULATION WORKSHOP

Carson City at the Legislative Counsel Bureau, 401 S. Carson Street, Room 2135, Carson City, Nevada; and via video conference in Las Vegas at the Grant Sawyer State Building, Room 4412E, 555 East Washington Avenue.

MEETING MINUTES
Wednesday August 30, 2017

STAFF PRESENT IN CARSON CITY:

Peter Long, Administrator, DHRM
Shelley Blotter, Deputy Administrator, DHRM
Cassie Moir, Deputy Administrator, DHRM
Michelle Garton, Supervisory Personnel Analyst, DHRM
Beverly Ghan, Supervisory Personnel Analyst, DHRM
Carrie Hughes, Personnel Analyst III, DHRM

STAFF PRESENT IN LAS VEGAS:

None

I. Call to order

Shelley Blotter: Opened the meeting and explained that the reason for the workshop was to solicit comments from affected parties with regard to the regulations proposed for permanent adoption. Based on the feedback received, the proposed language may be changed or deleted and additional 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 change with time allowed for comments.

II. Review of Proposed Changes to NAC 284

NEW	Filling a vacancy.
NEW	“Spouse” defined.
284.114	Affirmative action program and equal employment opportunity.
284.027	“Budget Division” defined.
284.126	Creation of new class, reclassification of position or reallocation of existing class.
284.2508	Compensatory time: Use.
284.458	Rejection of probationary or trial status employees.
NEW	Letter of Instruction: Use and administration.
NEW	Report of suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver’s license.
284.653	Driving under the influence; unlawful acts involving controlled

- substance.
- 284.890 Transportation of employee to and from location of screening test.
- 284.692 Agreement for extension of time to file grievance or take required action.

Shelley Blotter: Explained the process and invited attendees to provide their comments upon presentation of the changes.

Beverly Ghan: Explained that as a result of regulation changes related to filling vacancies pertaining to reassignments and a recent change per Assembly Bill 192 as to how the 700-hour program list is handled, DHRM is proposing an amendment. The amendment adds a new section to NAC 284 in order to clarify the process that must be used prior to filling vacancies through either competitive or noncompetitive means. The regulation will clarify that prior to filling any vacancy in State service in the classified system, the appointing authority must contact DHRM to verify if there is anyone on the reemployment list or through the reassignment process or on a list of persons with disabilities, commonly known as the 700-hour list. The appointing authority can also check to see if there is anyone on a transfer list when applicable. Transfer lists are only maintained during a Legislative year, until November 1st of that year for the Legislature transfer employees.

Shelley Blotter: Invited comments.

Cadence Matijevich: Acknowledged that the recent legislation makes hiring from the 700-hour list mandatory. She asked whether the other types, including reemployment, reassignment or transfer are mandatory or whether an interview is the only requirement. **Beverly Ghan:** Explained that the reemployment list is mandatory. The 700-hour list is also mandatory. Even though there is not an official list for the reassignment, it will take priority over both of these if someone is in the reassignment process.

Cadence Matijevich: Requested that there be clarification in the regulation, that it direct not only to see if a list is available, but also what the process is for using any person on the list. It seems that the intent is that if there are persons on the list that the agency would indeed have to hire them. **Beverly Ghan:** Concurred, adding that the regulation will be made clearer.

John Scarborough: Asked how this applies to NSHE with the delegation agreement. **Peter Long:** Stated that now that NSHE may or not have access to NVAPPS, because of NSHE's new system, the agreement was that the process must still be followed. If needed, they may reach out to verify whether there are any of these types of lists or potential employees available. They are still required to follow the regulation.

Janine Nelson: Acknowledged that she did not realize there was an Assembly Bill associated with this and requested an outline of the bill. **Beverly Ghan:** Explained that AB 192 essentially states that if anyone is on the 700-hour list, which is accumulated through the DETR Vocational Rehabilitation office. The normal process by DHRM, upon request for recruitment, is to send out the reemployment list first. If that is not used for whatever reason, DHRM issues the 700-hour list. When the 700-hour list is issued, agencies are now required to work with the person on the list, including reach out efforts. The person may be provided the essential functions of the job. If the individual signs off stating the functions can be performed, the job must be offered to the person. If there is more than one person on the list, they will not be ranked. The agency must decide which person is the most qualified. **Janine Nelson:** Noted that it has always been the State philosophy to first try to hire from within. She inquired whether this takes away the ability to manage an internal, noncompetitive appointment within the department for a vacancy. **Beverly Ghan:** Affirmed this understanding. The regulations require that the mandatory lists be addressed first, followed with the normal process, if needed. **Peter Long:** Agreed, noting that statute

requires this. He compared it to the process of reemployment. If a person on the 700-hour list is capable of performing the essential functions, it is mandatory that they be offered the position.

Alys Dobel: Sought clarification on reemployment, posing a scenario where a person is reverted back to their position, which has already been filled. The person who is reverted back has rights to the position as long as they have more seniority than the person currently in the position. In a case where they do not have greater seniority, they are placed on the reemployment list. **Peter Long:** Stated that recent steps have been added in the restoration process. Reemployment would apply for the person who had backfilled. This is specifically addressed in regulation. Before a vacancy is filled, the question must always be asked as to whether there is a reemployment available.

Susie Bargmann: Referred to the 700-hour list. Because this is not a ranked list, she questioned whether the mandatory five must be contacted. Alternatively, if an individual can be selected as the most qualified and subsequently chooses not to select the person, must the agency move on with the 700-hour list or is it now finished with the 700-hour list? **Beverly Ghan:** Clarified that if there is more than one person on the list, the agency has the authority to choose the most qualified person, based on the information available. If the choice does not work out, the agency can send the list back to DHRM. **Peter Long:** Stated that this is a good question, which may need to be looked at more closely. The intent is for the agency to review the various people on the 700-hour list. He stated that agencies should reach out to all the individual's on the list, partly because the agency needs an understanding of an individual has any personal limitations. The ability to perform the essential functions has the potential to narrow down the list. In summary, the agency could not simply choose the most qualified and if the individual cannot perform the essential functions, the agency may not disregard the other individuals, but would need to reach out to all of them that are available. Once it is determined which individuals meet the essential functions, the agency can choose the one it deems most qualified.

Carrie Hughes: Addressed the new regulation, which defines the term "spouse" as an individual who is in a marriage, as well as a domestic partner, to be used throughout Nevada Administrative Code, Chapter 284. The reference to NRS 122A.100 refers to domestic partnerships entered into in Nevada. The reference to NRS 122A.500 refers to partnerships entered into outside the State of Nevada.

Shelley Blotter: Invited comments. There were none.

Michelle Garton: Addressed NAC 284.114, affirmative action program and equal employment opportunity. NRS 122A.200 states that a public agency shall not discriminate against a person on the basis that that person is in a domestic partnership, rather than a spouse. It also states that domestic partners have the same right to nondiscriminatory treatment as that provided to spouses. As such it is proposed to add "domestic partnership" to NAC 284.114.

Shelley Blotter: Invited comments. There were none.

Michelle Garton: Addressed NAC 284.027, Budget Division defined and NAC 284.126, creation of new class, reclassification of position or reallocation of existing class. The purpose of the amendments is to reflect that the Budget Division was moved from the Department of Administration to the Governor's Office of Finance in Assembly Bill 469 of the 2015 Legislative Session. This type of change is generally handled through codification. However, because the Legislative Council Bureau has not codified NAC 284 for more than two years, DHRM is proposing these changes to the regulations at this time.

Shelley Blotter: Invited comments. There were none.

Carrie Hughes: Discussed NAC 284.2508, compensatory time: use. In conjunction with the regulations and amendments proposed at the July Regulation Workshop, the amendment to NAC 284.2508 is proposed to address the provisions of Senate Bill 361 of the 2017 Legislative Session, which provides for new employment benefits and requirements relating to domestic abuse. The amendment will allow an employee who has been employed at least 90 days and is a victim of an act of domestic violence or his or her family or household member is a victim of domestic violence to take accrued compensatory time up to a combined maximum, potentially including annual leave, sick leave and leave without pay of 160 hours in 12 month period following the act of domestic violence.

Shelley Blotter: Stated that this is a companion to regulations that were proposed at a previous workshop. She invited comments. There were none.

Michelle Garton: Addressed NAC 284.458, Rejection of probationary or trial status employee. This amendment will make it clear in regulation that an employee who was rejected from probation or trial status may not submit an appeal or a grievance as a result of the decision by the appointing authority. The new Subsection 3 in the regulation will allow the Administrator to remove an appeal or a grievance from the process, when either is filed as a result of a rejection from probation or trial status. Removing appeals and grievances from the process that have been inappropriately filed will improve efficiency in both of the processes.

Shelley Blotter: Stated that Kevin Ranft, labor representative with AFSCME was unable to attend, but provided written comments. She read his comments into the record:

“Regarding NAC 284.458, Rejection of probationary or trial status employees. These recommended changes in regard to NAC 284.458 don’t address a concern that employees often see when being rejected. There has been many cases where an employee is rejected off of a probationary or trial status and are very confused with their situation. The confusion is based upon two main concerns. One, the agency supervisor/manager has not met the requirement of providing the three, seven and/or 11 month appraisal evaluation process with the employee. This is a very important process for the employee to succeed. The employee hasn’t received their full training or the training they have received is insufficient. I understand that these concerns are not always relevant in an employee’s rejection. However, a process should be in an NAC regulation that requires an agency supervisor or manager to meet their obligation prior to any employee being rejected, unless egregious circumstances exist. There have been times where an employee is being set up to fail by the supervisor’s inaction. There is no recourse for the employee in these situations and little to no accountability for the supervisor or manager. Our organization would like to see these concerns addressed.”

Shelley Blotter: Invited comments. There were none.

Michelle Garton: Addressed a new regulation, letter of instruction: use and administration. This amendment was proposed by the College of Southern Nevada and will place into regulation the use and administration of letters of instruction, which many agencies currently use as a coaching or performance management tool. A letter of instruction is not part of the disciplinary process and no threat of discipline should be included. This regulation specifies the contents that should be included in a letter of instruction and what it must not contain. The requirement of a meeting between the supervisor and employee is included in the regulation and the retention of a letter of instruction is also addressed. Because many agencies have utilized letters of instruction for many years, DHRM is particularly interested in feedback related to this regulation.

Shelley Blotter: Invited Mr. Scarborough or a representative from CSN to the table for comments. **John Scarborough:** Stated that he and Ms. Blotter discussed this several months ago when they proposed this,

in order to remove any ambiguity about exactly what a letter of instruction is. CSN uses letters of instruction extensively, not only for classified employees, but for academic and administrative faculty as a way of coaching employees so that they improve problem areas or correct misunderstandings. CSN appreciates the fact that DHRM has developed a regulation to address this. **Shelley Blotter:** Commented that some agencies were receiving grievances from employees, where the employee had received a letter of instruction. And because there was a consequence associated with the letter of instruction, the Employee-Management Committee viewed it as a documented oral warning. This effort is intended to clarify that the letter of instruction does not include any consequences and is truly meant as a training tool. She invited further comments.

Alys Dobel: Noted that the letter of instruction has been around for quite some time, but may not always be called a letter of instruction. It could also be referred to as a memorandum to the employee. The retention schedule indicates that letters of instruction are to be removed from the employee's file. If it is in the supervisor's file, it indicates it must be removed after a year. She does not necessarily agree with this. Part of an employee's supervisor's file is the history of the employee. Letters of instruction should remain in the employee's file for even two to three years, as it demonstrates improvement. If an employee knows the letter will be removed after one year, they may revert to previous behavior. **Shelley Blotter:** Stated she would be happy to look into this. There are sometimes agreements made between the employee and the supervisor. She does not recall the provision where the letter is removed after a year, but she will review this. **Alys Dobel:** Added that she likes the policy overall, in that it clarifies what needs to go in a letter of instruction. She would like more information on whether a memorandum of understanding or similarly titled document must be specifically called a letter of instruction. **Shelley Blotter:** Noted that at this point, it is still in the formulation stage. She would see all such documents as similar coaching tools commonly referred to as a letter of instruction. This can be looked at for the possibility of creating a broader net. She invited further comments.

Brian Boughter: Stated that he likes the regulation. However, recently he was asked the following question: "Can we pull a document out of a supervisor file? Can the supervisor do that?" His advice to the employee was to share his preference for a complete supervisor file, where nothing is removed. The same would apply to letters of commendation. Another reason he likes the regulation is because DETR has difficulty having people understand what the letter of instruction is, what information it will contain, whether it will contain violations, whether it can be listed as a violation or an applicable rule. DETR had ended up listing items as applicable rules instead of violations in order to minimize the perception of the disciplinary aspect.

Gennie Hudson: Referred to Ms. Dobel's earlier comments regarding a letter of instruction not necessarily being termed "letter of instruction." Simple items such as an email can serve to document a conversation between an employee and a supervisor and are not necessarily given formal document titles. **Renee Depaoli:** Echoed the comments, noting that when she took Progressive Discipline training, it was referred to in tools and training that it could be a memorandum of understanding or called something else. Welfare and Supportive Services uses letters of instruction on a daily basis. She appreciates that this regulation provides clarity to the process. However, sometimes what such a document is called can make a difference in how it is received. The term "letter of instruction" has a bite to it, where a memorandum of understanding might be received more easily. She stated that records retention to working files may need to be revised. **Shelley Blotter:** Assured that she would look at this. There is opportunity to provide feedback to the committee that oversees records retention.

Janine Nelson: Stated that she likes the regulation. She noted that item 2(d) states that "The letter of instruction should contain the following elements." The term "should" seems to provide wiggle room, which would be helpful. Some letters of instruction may not include an associated time frame. She asked whether it is okay to exclude whether something is applicable, according to how the regulation is written.

Shelley Blotter: Stated her belief that this is correct, that it is meant to be a framework for use. Otherwise the regulation would read “shall include” rather than “should include.”

Janine Nelson: Addressed number 5 and noted that the language is soft, that as an FYI, the document can be used to build upon discipline. Some employees are surprised that a letter of instruction may be referenced in an oral warning. Therefore the language in 5 is good to have and in her opinion, could be a little more firm that the document can be used in the progressive progress. **Shelley Blotter:** Commented that this is something that she and the Employee’s Association representatives have spoken about, specifically whether the document can be used in future discipline. The Division feels firmly that it establishes previous efforts with the employee to change behavior.

Shelley Blotter: Read into the record an additional written comment from Kevin Ranft as follows:

“In regards to the new NAC being proposed addressing the use of letters of instruction, this has been a topic for years and I am grateful that it is being addressed. Although our organization disagrees with an LOI being used in discipline, as it is not grievable and sometimes used inappropriately, I am hopeful that supervisors will use this regulation change to draft an LOI properly and the situation is corrected by the employee. I know that we all agree that when an LOI is used properly, it can prevent a situation from becoming a bigger issue. Again, I am grateful to see the LOI process being added to the NAC. I would like to suggest that this regulation add a Section 6 citing something similar to the following: A supervisor must attach a written response, if submitted by the employee to the letter of instruction. Any use of the letter of instruction for future discipline must include the employee’s response, if submitted.”

Shelley Blotter: Noted some confused reaction as to what the comments mean. She surmised that if an employee responds to a supervisor in writing to the letter of instruction, then that response would be attached to the letter of instruction, in the event that the letter of instruction is used for future discipline.

Shelley Blotter: Invited further comments. There were none.

Michelle Garton: Discussed a new regulation, report of suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver’s license. The regulation will require that an employee report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver’s license within five days, if holding such a license or certificate is stated in the work performance standards or essential functions of the employee’s position. When DHRM submits the regulation to the Legislative Council Bureau for pre-adoption review, it will be proposing that the five day requirement is five working days. The regulation supports NAC 284.646 for the immediate dismissal and NAC 284.650, causes for disciplinary action, by requiring a notification to the agency.

Shelley Blotter: Invited comments.

Janine Nelson: Asked whether the requirements must be included in each document, as the department does not typically include these requirements in work performance standards. **Michelle Garton:** Stated that the way it is written in terms of intent, it would be “or,” as in whether it is work performance standards or the essential functions.

Janine Nelson: Asked about the rationale for adding NPD-19 in. **Peter Long:** Replied that he would not be opposed to adding it. Furthermore, it could be looked at to clarify that the requirements are “or,” rather than “and.” The intent is that the employee be notified somewhere that the licensure is appropriate. **Shelley Blotter:** Commented that it would be appropriate to include on essential functions, as this would be the document to be used for reassignments.

Alys Dobel: Stated that within the DMV, if a position requires an employee to have a driver's license, it is included in essential functions. She feels it is appropriate for inclusion in work performance standards, as the license must be maintained. She has worked in other agencies with employees such as social workers, nurses, psychologists, nurses, etc. The requirement is included on the documents, because CEUs must be maintained to retain licenses.

Shelley Blotter: Invited further comments. There were none.

Carrie Hughes: Addressed NAC 284.653, driving under the influence: unlawful acts involving controlled substance. The amendment will require employees to report to their appointing authorities within five working days arrests and convictions relating to driving under the influence, the unlawful manufacture, distribution, dispensing, possessing or use of a controlled substance or violation of any state or federal law prohibiting the sale of a controlled substance. The report is required, regardless of whether the incident leading to the arrest or conviction occurs while an employee is working or is on his or her own personal time. Violation of this requirement will require the dismissal of the employee.

Shelley Blotter: Invited comments.

Cadence Matijevich: Asked for clarification on the intent of the requirement, particularly in terms of something that happens off duty, noting that an arrest is not a conviction. In addition, she asked why an employee must report the loss of a license, if it is not associated with the performance of their duties.

Peter Long: Clarified that the requirement only states that if the employee fails to make the report, they would be dismissed. They will not necessarily be dismissed for being arrested, as current verbiage says "upon conviction." This was brought to our attention, because there have been situations where a State employee on their private time was arrested and did not report it to their appointing authority. For example, an employee receives a DUI arrest. Typically upon arrest, their license is suspended. The employee's job may require a valid driver's license. The employee may continue to illegally drive while on duty. It is at the discretion of the appointing authority, but the intent is to give the appointing authorities the tools to make this decision. **Carrie Hughes:** Added that the regulation is specific as to the types of offenses which are applicable. She does not believe that the regulation ties it to job duties.

Cadence Matijevich: Suggested that perhaps the regulation could be narrowed to those circumstances where the ability to operate a motor vehicle is specifically noted. She has concern regarding the employee/employer relationship outside of the workplace. If the employee's behavior outside of the workplace does not relate to his or her job duties and the consequences would not prevent them from performing their duties, she questioned the nexus.

Shelley Blotter: Invited further comments.

Susie Bargmann: Agreed with the prior comments. Based on how this is written, it does not indicate that it would be relevant to the person's job duties. It merely indicates that an employee must report it. In the example of an administrative assistant, there is likely no requirement for a driver's license. If such an employee does not report the act, the regulation indicates that the employee must be dismissed.

Janine Nelson: Agreed with the prior comments with the exception that the regulation should not only tie to a driver's license, but also to job duties. For example, the department would not want to have a substance abuse counselor providing services when they themselves have been arrested for this type of conviction. She suggested specificity that it be related to duties versus licensure. However, she agrees that it does not apply to everyone. **Shelley Blotter:** Stated that Ms. Nelson raises a good point. In situations where there is not necessarily a license requirement, certain classes of employee may be required to have pre-employment drug testing. She questioned whether these classes would be covered

in this situation and how they would be linked in order for the employee to be informed that an arrest would need to be reported. **Janine Nelson:** Stated she would need to think through the various customers to answer the question, however, she likes the idea to tie to the class. For example, childcare workers do not have to have a license, but they do have to pass certain background check requirements.

Peter Long: Noted that the intent is to assist the agencies as well as the employees. The idea is that the employer is at least made aware of any arrests and potential loss of licensure. **Alys Dobel:** Commented that on a personal level, she would not want her rights to be violated. The DMV runs background clearances. Incidents only show up if they are a true conviction. Because the DMV must follow federal and state laws, they have drafted disclosure statements for employees to sign, if they are in positions that would require a specific clearance to continue in their jobs. **Peter Long:** Added that some agency positions have certain criteria they must meet, which may not fall under drug or substance abuse violations.

Shelley Blotter: Invited further comments.

Brian Boughter: Said that he was curious as to how this reconciles with recent legislation regarding “Ban the Box” and background information. The guidance essentially states that the employer should not be seeing background information until after someone has been offered a job. **Peter Long:** Acknowledged the comments, but stated that “Ban the Box” was specific to not discriminating based on background of this type for employment. This regulation refers to current employees.

Shelley Blotter: Invited further comments. There were none.

Carrie Hughes: Discussed NAC 284.890, transportation of employee to and from location of screening test. As the use of alcohol and/or drugs can at times lead to a need for immediate medical intervention, the intent of the amendment is to provide agencies with the flexibility to respond as necessary to ensure an employee’s safety when arranging for appropriate transportation following a screening test that does not immediately establish an employee is not impaired. The determination that an employee needs emergency medical assistance does not necessarily require a medical professional’s evaluation, but instead, this regulation relies upon the reasonable person standard. Additionally, it allows for an employee to choose to make his or her own transportation arrangements. However, all three options in the regulation continue to require an appointing authority to actively ensure that an employee has appropriate transportation.

Shelley Blotter: Invited comments. There were none.

Michelle Garton: Explained that amendment to NAC 284.692, agreement for extension of time to file a grievance or take required action, was proposed by the Department of Employment, Training and Rehabilitation. There are times when an employee or agency representative are out of the office for an extended period of time and unavailable to enter into a written agreement for the extension of time to file a grievance or take required action. This amendment will allow for an exception to the agreement in these types of documented situations, which would be granted or denied by DHRM. Examples of such absences are listed in the regulation and the granting or denial of the exception could be reviewed by the Employee-Management Committee, if the grievance proceeds to a hearing. She invited Mr. Boughter to provide comments.

Brian Boughter: Stated that the Department of Employment, Training and Rehabilitation recently experienced a grievance situation whereby this regulation change was proposed. The Department had an employee who went out on a short-term disability event and was unable to be reached. In terms of the spirit and intent of the grievance process, a meeting should take place at the lowest level and each

proceeding level with the employee. If the employee is unavailable, they have the right to go into the NEATS system and escalate their grievance without having any conversation or interaction. This is an attempt to give the agency an opportunity to get to the employee at the lowest level, if possible.

Shelley Blotter: Invited further comments. There were none. She thanked everyone for their attendance at the workshop. She further invited attendees to forward additional comments and questions. The proposed changes will be submitted within the next few days to the Legislative Council Bureau for pre-adoption review.

III. Adjournment

Shelley Blotter: Adjourned the meeting.