



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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PERSONNEL COMMISSION

Meeting Notice

DATE: Friday, December 6, 2019

TIME: 9:00 a.m.

LOCATION: Legislative Counsel Bureau
401 S. Carson Street
Room 3137
Carson City, Nevada 89701

Grant Sawyer Building
555 E. Washington Avenue
Room 4401
Las Vegas, NV 89101

The sites will be connected by videoconference. The public is invited to attend at either location. As video conferencing gives the Commission, staff and others flexibility to attend meetings in either Northern or Southern Nevada, handouts to the Commission on the day of the meeting might not be transmitted to the distant locations.

Notice: The Personnel Commission may address agenda items out of sequence to accommodate persons appearing before the Commission or to aid the efficiency or effectiveness of the meeting at the Chair’s discretion. The Commission may combine two or more agenda items for consideration, and the Commission may remove an item from the agenda or delay discussion relating to an item on the agenda at any time. Comments will be limited to three minutes per person and persons making comment will be asked to begin by stating their name for the record and to spell their last name. The Commission Chair may elect to allow public comment on a specific agenda item when the item is being considered.

Agenda

- I. **Call To Order, Welcome, Roll Call, Announcements**
- II. **Public Comment:** No vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)
- FOR POSSIBLE ACTION III. **Approval of Minutes of Previous Meeting Dated September 20, 2019..... 4**
- FOR POSSIBLE ACTION IV. **Discussion and Possible Amendments to the Hearing Officer Rules of Procedure 12**

FOR POSSIBLE ACTION **V. Possible Decision to Renew the Contract with the Hearings Division and the Independent Contractor Contract or Possible Recruitment/Announcement of Independent Hearing Officer 26**

FOR POSSIBLE ACTION **VI. Discussion and Approval of Proposed Regulations Changes to Nevada Administrative Code, Chapter 28427**

- A. LCB File No. R015-19
 - Section 1. NAC 284.361 Use of lists and consideration of certified eligible persons: Applicable conditions.
 - Sec. 2. NAC 284.405 Reassignment of employee with disability who is unable to perform essential functions of position with or without reasonable accommodation.
 - Sec. 3. NAC 284.586 Civil leave with pay to vote.

- B. LCB File No. R016-19
 - Section 1. NAC 284.589 Administrative leave with pay.

- C. LCB File No. R019-19
 - Section 1. NAC 284.242 Overtime: Authorization.

INFORMATIONAL ITEM **VII. Regulations That Were Not Approved by Subcommittee to Review Regulations or Legislative Commission 63**

INFORMATIONAL ITEM **VIII. Report of Uncontested Classification Plan Changes Not Requiring Personnel Commission Approval per NRS 284.160..... 85**

The following items were posted for at least 20 working days. No written objections were received by the Administrator before the end of the posting period; therefore the changes automatically went into effect.

- Posting: #1-20
 - 9.603 Facility Manager/Supervisor Series
- Posting: #2-20
 - 5.222 Educator Licensing Analyst Series (formerly known as Teaching Licensing Analyst)

IX. Discussion and Announcement of Dates for Upcoming Meetings. Next Meeting Scheduled for March 6 or 13, 2020.

X. Commission Comments

XI. Public Comment: No vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020)

XII. Adjournment

Supporting material for this meeting is available at the Division of Human Resource Management at 209 E. Musser Street, Suite 101, Carson City, Nevada, 89701; 555 E. Washington Avenue, Suite 1400, Las Vegas, Nevada, 89101, or on our website http://hr.nv.gov/Boards/PersonnelCommission/Personnel_Commission_-_Meetings/. To obtain a copy of the supporting material, you may contact Carrie Lee at (775) 684-0131 or carrie.lee@admin.nv.gov.

Inquiries regarding the items scheduled for this Commission meeting may be made to Frank Richardson at (775) 684-0105 or frichardson@admin.nv.gov.

We are pleased to make reasonable accommodations for individuals who wish to attend this meeting. If special arrangements or audiovisual equipment are necessary, please notify the Division of Human Resource Management in writing at 209 E. Musser Street, Suite 101, Carson City, Nevada, 89701, no less than (5) five working days prior to the meeting.

Persons who wish to receive notice of meetings must subscribe to the Division of Human Resource Management LISTSERV HR Memorandums which can be found on the following webpage: http://hr.nv.gov/Services/HRM_Email_Subscription_Management/. If you do not wish to subscribe to LISTSERV and wish to receive notice of meetings, you must request to receive meeting notices and renew the request every 6 months thereafter per NRS 241.020(3)(c) which states in part, "A request for notice lapses 6 months after it is made." Please contact Carrie Lee at (775) 684-0131 or carrie.lee@admin.nv.gov to make such requests.

Notice of this meeting has been posted at the following locations:

Carson City

Blasdel Building, 209 East Musser Street
Nevada State Library, Archives and Public Records, 100 North Stewart Street
Nevada State Capitol Building, 101 North Carson Street
Nevada Public Notice website: <http://notice.nv.gov>
Division of Human Resource Management website: www.hr.nv.gov

Las Vegas

Grant Sawyer Building, 555 East Washington Avenue

**STATE OF NEVADA
PERSONNEL COMMISSION**

Held at the Legislative Counsel Bureau, 401 S. Carson Street, Room 3137, Carson City; and via video conference in Las Vegas
at the Grant Sawyer Building, 555 E. Washington Avenue, Room 4401.

**MEETING MINUTES
September 20, 2019
Subject to Commission Approval**

COMMISSIONERS PRESENT

IN CARSON CITY:

Ms. Katherine Fox, Chairperson
Ms. Patricia Hurley, Commissioner
Ms. Mary Day, Commissioner

Ms. Priscilla Maloney, Alternate Commissioner, non-voting

COMMISSIONERS PRESENT

IN LAS VEGAS:

Mr. Gary Mauger, Commissioner
Mr. Andreas Spurlock, Commissioner

STAFF PRESENT IN CARSON CITY:

Mr. Peter Long, Administrator, Division of Human Resource Management (DHRM)
Ms. Beverly Ghan, Deputy Administrator, DHRM
Mr. Frank Richardson, Deputy Administrator, DHRM
Ms. Michelle Garton, Supervisory Personnel Analyst, DHRM
Ms. Carrie Hughes, Personnel Analyst, DHRM
Ms. Keisha Harris, Personnel Analyst, DHRM
Ms. Tori Sundheim, Deputy Attorney General, Office of the Attorney General

STAFF PRESENT IN LAS VEGAS:

Ms. Michelle Morgando, Senior Appeals Officer, Hearings Division
Mr. Paul Trepanier, Information Systems Specialist, Hearings Division
Ms. Heather Dapice, Supervisory Personnel Analyst, DHRM

I. CALL TO ORDER, WELCOME, ROLL CALL, ANNOUNCEMENTS

Chairperson Fox: Called the meeting to order on Friday, September 20, 2019, at 9:30 a.m. and welcomed everyone, including the Commission's newly assigned Deputy Attorney General, Tori Sundheim.

II. PUBLIC COMMENT

Chairperson Fox: Advised that no vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken under NRS 241.020. She asked if there were any public comments; there were none.

III. APPROVAL OF MINUTES OF PREVIOUS MEETING DATED JUNE 21, 2019 – Action Item

Chairperson Fox: Asked if there were any corrections or changes to be made on the minutes from June 21, 2019. There were none.

MOTION: Moved to approve minutes of the June 21, 2019 meeting.
BY: Commissioner Mauger
SECOND: Commissioner Hurley

VOTE: The vote was in favor of the motion with Commissioner Day abstaining.

IV. PRESENTATION OF HEARING OFFICER CASE HANDLING STATISTICS - Informational Item

Michelle Garton: Introduced herself as the Supervisory Personnel Analyst with the Division of Human Resource Management. She presented the Hearing Officer Case Handling Statistics covering Fiscal Years 2016 through 2019. The statistics included the average number of days from appeal to outcome and the average cost per appeal. The Hearings Division has experienced several large cases that required petitions and motions, so costs were increased; the types of outcomes are charted and broken out by the Hearings Division and Charles Cockerill and by fiscal year.

Michelle Morgando: Introduced herself as the Senior Appeals Officer with the Department of Administration Hearings Division and would be happy to answer any questions the Commissioners might have regarding the Performance Survey Results.

Paul Trepanier: Introduced himself as the Information Systems Specialist with the Hearings Division and was also available to answer questions.

Commissioner Mauger: Stated he appreciated getting this report and had wanted to know how this was working although he was disappointed in the number of responses from the survey. Was there a process in place to oversee performance evaluations and whether the Division would want to continue to use the hearing officer or not? **Michelle Morgando:** Replied the hearing officers are designated by statute as Special Appeals Officers and are appointed by the sitting Governor for two-year terms. Their performance is reviewed based on these surveys because the positions are unclassified and formal evaluations are not conducted. When considered for reappointment, the performance of the hearing officers is discussed with the Director and recommendations are made as to whether to retain a hearing officer or not; it is ultimately the decision of the Governor.

Commissioner Mauger: Stated that until those reappointments are made, the hearing officers would fall in line with the selection process, like everyone else does. In the past, the Commission Members were the ones that would extend the contract, or not extend the contract, and that has been changed. What happens when the Division gets someone that is not favorable? **Michelle Morgando:** Replied that the Governor is the only one who can appoint or unappoint hearing officers; the Governor can unappoint them for very specific reasons in the two-year term. The usual process is if they are not going to be continued in that position they are not reappointed, and someone is appointed in their place.

Commissioner Mauger: Stated he was concerned about one individual who has been around for a while; the individual's review is not a good one and he was uneasy about continually using that individual in hearings. **Michelle Morgando:** Stated the Division did reach out this year and expanded the base of the possible pool of individuals who would receive a survey in hopes that we would have a bigger return. The survey was opened up to individual employees who had filed their hearings before DHRM and were not represented by an attorney. Previously, we sent it to attorneys or authorized representatives who appeared on behalf of the Division. So we did receive more responses this year, but the comments that Commissioner Mauger was referring to came from an individual who represented himself at the hearing. The rest of the responses came from either attorneys who represented the employee or the Deputy Attorney General on behalf of an agency.

Commissioner Mauger: Asked if the surveys regarding the unnamed individual were from an individual that was not represented by an attorney. **Michelle Morgando:** Answered in the affirmative. **Commissioner Mauger:** Indicated the bottom line was he appreciated this information; the overall response was disappointing, but maybe the Division can work on that. **Michelle Morgando:** Stated the Division is doing their best and was sending the results to all of the hearing officers and would talk individually with each one and review the comments, ratings and concerns and see if they can identify a particular issue or a problem that they can address going forward.

Chairperson Fox: Asked if there were any further questions and there were none. She thanked DHRM and the Hearings Division for their hard work. As Commissioner Mauger indicated, it is a work in progress, and the more they can get both the labor side and the management side to complete the surveys, the better the hearing officer process will be with job-related objective information about performance. She recommended that the surveys continue and liked being able to see the three-year window.

V. DISCUSSION AND APPROVAL OF ADDITION OF CLASSES OR POSITIONS APPROVED FOR PRE-EMPLOYMENT SCREENING FOR CONTROLLED SUBSTANCES AND REVISIONS TO CLASS SPECIFICATIONS – Action Item

A. The Department of Public Safety requests the addition of the following positions to the list approved for pre-employment screening for controlled substances:

- 2.210 Administrative Assistant IV, PCN: 3743-1111, 3743-1112
- 2.211 Administrative Assistant III, PCN: 3743-1100, 3743-1101, 3743-1102, 3743-1103, 3743-1104, 3743-1105, 3743-1106, 3743-1107, 3743-1108, 3743-1109
- 7.216 Administrative Services Officer III, PCN: 4709-0023
- 7.655 Business Process Analyst III, PCN: 4709-7005, 4709-7014
- 7.656 Business Process Analyst II, PCN: 4709-7013
- 7.657 Business Process Analyst I, PCN: 4709-7010, 4709-7011, 4709-7012, 4709-7015

Carrie Hughes: Introduced herself as a Personnel Analyst with the Division of Human Resource Management. The Department of Public Safety is requesting the addition of the requirement of pre-employment screening for controlled substances for the positions listed in Agenda Item V-A. The Department is requesting the addition of the requirement to the Administrative Assistant positions because the positions are responsible for receiving, assessing and disseminating reports of dangerous, violent and/or unlawful activity threatened, conducted at, or related to a school while maintaining the anonymity of those making those reports. The Department is requesting the addition of the requirement to the Business Process Analyst positions due to their having access to criminal history, personally identifiable and victim information. The Department is also requesting the addition of the requirement to the Administrative Services Officer position as it was previously required prior to reclassification due to access to criminal history, personally identifiable and victim information. A representative from the Department of Public Safety was available to answer any questions Commissioners might have.

Chairperson Fox: The Administrative Assistant III and IV mentions unlawful activity conducted in relation to a school. Is the Department referring to a university or community college setting? **Desiree Mattice:** Introduced herself as a Sergeant with the Department of Public Safety Investigation Division/Safe Voice program. Safe Voice is the school safety tip line that was initiated back in 2017 which involves all K-12 public, charter, and private schools within the State of Nevada.

Commissioner Spurlock: Stated the Commission is looking at pre-employment drug testing based on conditions that are written in NRS 284.4066 regarding the wording “affecting public safety.” He wants to be absolutely sure on what affects public safety. This is a new program that covers across the board and reaches down into the individual school districts. Administrative Assistants are to receive, assess, and disseminate reports of dangerous, violent or unlawful activity conducted in relation to a school while maintaining the anonymity of reporting parties and confidentiality of the report information. But the bottom line is they are not really making decisions and the information they are handling cannot be immediately converted to someone’s advantage for financial gain or misuse, such as a Social Security number or bank information. Administrative Assistants are merely gathering statistics. What is the need to have this considered such important information that they would have to be drug tested on a pre-employment basis? If it was up to me, I would have everybody pre-employment drug tested, but if you are going to pick and choose, and you’re going to have criteria, I want to make sure that that criteria is being followed consistently.

Peter Long: Introduced himself as the Administrator of the Division of Human Resource Management and said NRS 284.4066 is about as broad as a statute could be. Section One reads, “Each appointing authority shall, subject to the approval of the Commission, determine whether each of its positions of employment affects the public safety.” That’s the criteria needed to determine whether or not the position should be subject to pre-employment drug screening. Safe Voice was implemented a few years ago and is a hotline that anyone can call into and report bullying. He thought one of the main intentions was for safety reasons with all the unfortunate, terrible incidents at schools with shootings; a lot of those incidents were not being reported or were being reported and no one paid attention to it. The Department of Public Safety administers this hotline and part of the information that is being maintained as confidential is the identity of the people that are reporting because they may be fearful of the person that they are reporting.

Desiree Mattice: Explained Safe Voice receives tips from students as well as parents, guardians, school personnel and community members who can report directly to Safe Voice either through a telephone call, a mobile app, or through the web. Safe Voice monitors in live time with personnel discussing things with the students or the tipsters. These tipsters have an opportunity to report dangerous activities that are occurring or that they are made aware of. They could see a snapshot on a

social media page that there's going to be a shooting at their school. They notify Safe Voice and the communication specialist, the Administrative Assistant IIIs and IVs in question, gathers what information they can: the who, what, when, where, why and how. That is vital because they are trying to ensure that when they pass this information off to the law enforcement agencies, as well as to the schools, they have the information to follow up and/or investigate. Safe Voice gets information on things like weapons, reports of a school shootings, bullying, suicide threats and reports of self-harm. So, the AA IIIs and IVs might be talking to somebody who is contemplating suicide. Sometimes they receive reports from parents who don't know what to do when their child is struggling with depression, self-harm and threatening suicide as well. It is vital to make sure that these AAs are of sound mind on the communication specialist side because they are communicating with that tipster in real time. Safe Voice personnel forward the information to law enforcement; Safe Voice does not obtain criminal history, unless that criminal history is provided to them, and do not investigate. The sensitive information that the Administrative Assistant IIIs and IVs will be viewing is the school information, which comes from Infinite Campus; that information would be provided to them from the school districts. They provide that information and it's very similar to HIPAA, but it's called FERPA. Sensitive, personal identification information is housed within the system. Nobody else has access to that, unless they have access to the system. The main portion as far as statistics are kept is if a suicide threat is received. Was there a follow up? Yes, law enforcement was involved. What was their procedure of involvement? Was the school involved? What was their procedure of involvement? As far as the Administrative Assistant IIIs and IVs, they're not following up other than making sure that somebody received the information, that they're doing their proper follow up to ensure the safety of those children.

Commissioner Spurlock: Asked if Safe Voice was the repository for everything? Are there things down at the school district level, at the school police level, that may not ever get to Safe Voice? **Desiree Mattice:** Stated they receive the information from tipsters so the tipster would have to provide them that information. If a report is received from a tipster, that information does get funneled to law enforcement, if warranted, and then gets sent to the school district, or the school's superintendent's office, depending on the event type. If law enforcement receives a direct report, they do not receive that information. If a tipster or a student or a parent complains directly to the school regarding a bullying incident or complaint, that information does not come to them. They do not house any information unless the tipster reaches out to them.

Commissioner Spurlock: Asked what information they may have on a minor student; what is the most confidential information that their staff at this job classification would consistently see since they are not seeing criminal histories or juvenile criminal histories. **Desiree Mattice:** Indicated they see the FERPA information. The information that comes in is usually when it's a life safety concern regarding a particular student. That information would be the FERPA information, which is synonymous to the HIPAA information, or PII. If law enforcement does make contact with a particular student, and they have to take this child to the hospital, that information is considered HIPAA, but they are being advised because it's follow up based on information that they received. The reason why that is important is because if law enforcement receives information regarding a student self-reporting that they're suicidal, they receive the information directly from the school district advising what the person's residence address is; maybe it's an after-hours tip. They then notify law enforcement and law enforcement does their follow up. They do make contact with that student to do a welfare check, and they then go into the Safe Voice system and ensure that they provide the details of their contact. So when the student goes back to school, there are resources to follow up with the student. It is the school's responsibility to do that and that is where that information sharing comes in, and sometimes there is detailed information regarding behavioral and mental health.

Commissioner Spurlock: Asked was it possible to make a motion to vote on the individual position classifications, or do they have to vote the entire section A as a group?

Chairperson Fox: Stated she had originally asked that they take section A as a block vote, but if they need to separate them out, she would entertain that motion at that time. When making the motion, the Commissioner could ask that it be done differently. She asked if Safe Voice operated 24/7? **Desiree Mattice:** Replied yes. **Chairperson Fox:** Asked if the Administrative Assistant IIIs and IVs perform like 9-11 operators or dispatchers, why didn't DPS use that job classification to staff Safe Voice for the call takers?

Mavis Affo: Personnel Officer 3 with the Department of Public Safety, replied these are brand new positions received during the legislative session that are currently filled with temporary employees; the intent was to try to get positions that can be easily classified and filled. In terms of a working title, they are referred to as Communication Specialists.

Commissioner Spurlock: Requested that they vote on 2.210 and 2.211, all of the Administrative Assistant IIIs and IVs as a separate vote, and then the remaining items under A, which are 7.216, 7.655, 7.656 and 7.657.

Chairperson Fox: Before entertaining a motion asked were there additional questions regarding Item V-A from the Commissioners? There were none. The Chair asked if there were any public comments related to Item V-A? There were none. The Chair said she would entertain a motion related to Item V-A, specifically class titles 2.210 Administrative Assistant IV, and 2.211 Administrative III with the appropriate PCNs.

MOTION: Moved to approve Agenda Item V-A, class titles 2.210 and 2.211 Administrative Assistant IV PCN 3743-1111, 3743-1112, 3743-1100, 3743-1101, 3743-1102, 3743-1103, 3743-1104, 3743-1105, 3743-1106, 3743-1107, 3743-1108, 3743-1109.
BY: Commissioner Mauger
SECOND: Commissioner Hurley
VOTE: The vote was in favor of the motion with Commissioner Spurlock voting in the negative.

Chairperson Fox: Stated she had to go on record to say, coming from her law enforcement background, she was concerned that DPS wouldn't use a more specific job class title such as Communication Specialist for managing a 24/7 hotline like this. "Administrative Assistant" is more an administrative clerical office support job class and that it was important to have a more specific public safety job class for this tip line. **Mavis Affo:** Responded she appreciated the feedback and it will definitely be taken into consideration for possible reclassification in the future.

Chairperson Fox: Stated she would accept a motion under V-A regarding class title 7.216 Administrative Services Officer III, PCN 4709-0023. This Administrative Services Officer III position was on the drug test roster prior to the reclassification, therefore, this is simply an update to reflect the new title. The position accesses criminal history information, fiscal and budget information, personally identifiable information, and victim information using a computer that has direct access to various databases.

MOTION: Moved to approve Agenda Item V-A, 7.216 Administrative Services Officer, PCN 4709-0023.
BY: Commissioner Hurley
SECOND: Commissioner Day
VOTE: The vote was unanimous in favor of the motion.

Chairperson Fox: Stated she would entertain a motion regarding the Business Process Analyst III, II, I, positions, class titles 7.655, 7.656, and 7.657. These positions are new and will access criminal history information, personally identifiable information, and victim information using a computer that has direct access to various databases and by receiving hard copies.

MOTION: Approve Agenda Item V-A, 7.655, 7.656 & 7.657 Business Process Analyst III, II, I PCN 4709-7005, 4709-7014, 4709-7013, 4709-7010, 4709-7011, 4709-7012, 4709-7015.
BY: Commissioner Spurlock
SECOND: Commissioner Hurley
VOTE: The vote was unanimous in favor of the motion.

V-B. The Department of Agriculture requests the addition of the following positions to the list approved for pre-employment screening for controlled substances and requests approval of class specification amendments to include pre-employment screening for controlled substances:

1. Classes and positions requested for approval of pre-employment screening for controlled substances:

- 1.401 Weights and Measures Inspector IV; PCN: All
- 1.404 Weights and Measures Inspector III; PCN: All
- 1.407 Weights and Measures Inspector II; PCN: All
- 1.410 Weights and Measures Inspector I; PCN: All
- 1.413 Weights and Measures Assistant (Seasonal); PCN: All

Carrie Hughes: Explained the Department of Agriculture is requesting the addition of the requirement of pre-employment screening for controlled substances for the classes listed in Agenda Item V-B-1. The Federal Motor Carrier Safety Administration requires pre-employment screening for controlled substances of positions that operate commercial motor vehicles and are subject to the requirement of a commercial driver's license. The positions in these classes are required to obtain and maintain a commercial driver's license due to driving commercial motor vehicles.

MOTION: Moved to approve Agenda Item V-B-1.
BY: Chairperson Fox
SECOND: Commissioner Hurley
VOTE: The vote was unanimous in favor of the motion.

V-B-2. Request for approval of class specification changes to include pre-employment screening for controlled substances for some positions:

- 1.401 Weights and Measures Inspector IV; PCN: All
- 1.404 Weights and Measures Inspector III; PCN: All
- 1.407 Weights and Measures Inspector II; PCN: All
- 1.410 Weights and Measures Inspector I; PCN: All
- 1.413 Weights and Measures Assistant (Seasonal); PCN: All

Carrie Hughes: Stated as the pre-employment screening for controlled substances was approved for these classes, the Department of Agriculture is requesting a change to the class specifications to reflect the approval of the requirement for pre-employment screening for controlled substances for these classes. The Department requests that approval be effective with today's revision date.

Chairperson Fox: Clarified the class specification indicates the requirement of a Nevada commercial driver's license at the time of employment and as a condition of continuing employment; she would entertain a motion.

MOTION: Moved to approve Agenda Item V-B-2.
BY: Chairperson Day
SECOND: Commissioner Hurley
VOTE: The vote was unanimous in favor of the motion.

VI. DISCUSSION AND APPROVAL OF PROPOSED CLASS SPECIFICATION MAINTENANCE REVIEW OF CLASSES RECOMMENDED FOR REVISIONS – Action Item

- A. Fiscal Management & Staff Services
 - 1. Subgroup: Financial
 - a. 7.175 Loan Officer
 - 2. Subgroup: Revenue Collections & Management
 - a. 7.232 Tax Program Supervisor Series
 - 3. Subgroup: Personnel & Training
 - a. 7.513 Employee Development Manager/Training Officer Series
 - 4. Subgroup: Actuarial/Research/Grants Analysis
 - a. 7.736 Maintenance Management Coordinator Series
 - b. 7.745 Statistician Series
 - c. 7.752 Legal Research Assistant Series
 - d. 7.761 Biostatistician Series
 - 5. Subgroup: Public Information
 - a. 7.848 Audiovisual Assistant Series

Chairperson Fox: Indicated the Commissioners would hear all the subgroups of VI-A at once, unless the Commissioners wanted to entertain motions separately for each subgroup. **Commissioner Spurlock:** Stated he and Commissioner Mauger would prefer to consider them all at once. **Commissioner Day:** Added with the exception of language in 4-c.

Heather Dapice: Introduced herself as the Supervisory Personnel Analyst with the Compensation, Classification and Recruitment section of the Division of Human Resource Management. Regarding Items VI-A-1-a and VI-A-2-a, Fiscal Management & Staff Services, Subgroup: Financial, Loan Officer, and Subgroup: Revenue Collections & Management, Tax Program Supervisor Series, a minor revision be made to the Loan Officer series to include general knowledge of Freddie Mac mortgage lending requirements. It is also recommended that minor revisions be made to both series to maintain consistency with verbiage, formatting and structure.

Keisha Harris: Introduced herself as a Personnel Analyst with the Division of Human Resource Management, Compensation, Classification and Recruitment section. Item VI-A-3-a on the agenda was reviewed as part of the biennial class specification maintenance review process. DHRM is recommending revision to the series and class concepts, as well as the minimum qualifications in each level of the respective series, to update occupational language, clarify respective duties, reflect current methods and practices being used, and maintain consistency with verbiage and formatting, as well as structure. Additionally, in regard to Item VI-A-4-b, Statistician Series, it is recommended that an Informational Note for applicants meeting the education requirement with an Associate’s degree be added. In regard to Item VI-A-4-c, Legal Research Assistant Series, it is recommended that revisions be made to the series concept to remove the comparison of an abolished class, and to the minimum qualifications, education and experience, to enhance recruitment efforts in both class levels of these series. Also, within the minimum qualifications, education and experience section of both levels, DHRM would like to fix a typographical error to read, “experience which included,” instead of “experience which includes.”

Heather Dapice: Item VI-A-5-a, Audiovisual Assistant Series from the Public Information Subgroup. In coordination with subject matter experts from the Nevada System of Higher Education, it was determined that the class concept, minimum qualifications and knowledge, skills and abilities are consistent with current expectations. It is recommended, however, that minor revisions be made to the series to maintain consistency with verbiage, formatting and structure. DHRM respectfully requests the Personnel Commission approve the recommended changes as presented, effective this date, to include the amendment to the Legal Research Assistant I and II, that it changes “includes” to “included” in the education and experience section of the minimum qualifications of Agenda Item VI-A-4-c.

MOTION: Moved to approve Agenda Item VI-A, Fiscal Management & Staff Services, revisions to class specifications Subgroups: number one Financial, number two Revenue Collections & Management, number three Personnel & Training, number four Actuarial/Research/Grants Analysis with the clerical correction to the Legal Research Assistant Series, as identified by the Division, and number five Public Information.

BY: Chairperson Fox

SECOND: Commissioner Day

VOTE: The vote was unanimous in favor of the motion.

- VI-B Mechanical & Construction Trades
1. Subgroup: Semi-Skilled General Labor
 - a. 9.493 Exhibit Technician Series
 2. Subgroup: Graphics, Printing & Reproduction
 - a. 9.741 Sign Writer Series

Heather Dapice: Occupational Group Mechanical & Construction Trades, Subgroup: Semi-Skilled General Labor for the Exhibit Technician Series, and Subgroup: Graphics, Printing and Reproduction for the Sign Writer Series, are Items VI-B-1-a and VI-B-2-a on the agenda. Regarding the Exhibit Technician Series, it is recommended that minor changes be made to the minimum qualifications to clarify experience required and to maintain consistency with formatting and structure. Regarding the Sign Writer Series, it is recommended that a change be made to the series concept to account for technological changes and to the minimum qualifications to maintain consistency with formatting and structure.

MOTION: Moved to approve Agenda Item VI-B-1 and VI-B-2, the review of classes and recommended revisions for Mechanical & Construction Trades.

BY: Commissioner Mauger

SECOND: Commissioner Hurley

VOTE: The vote was unanimous in favor of the motion.

VII. REPORT OF UNCONTESTED CLASSIFICATION PLAN CHANGES NOT REQUIRING PERSONNEL COMMISSION APPROVAL PER NRS 284.160 - Informational Item

- Posting: #27-19
11.380 Background Investigation Technician Series
- Posting: #28-19
1.817 Conservation Crew Supervisor Series

VIII. DISCUSSION AND ANNOUNCEMENT OF DATES FOR UPCOMING MEETINGS

Chairperson Fox: Stated the next meeting is December 6, 2019, and the meeting after that will be March 13, 2020. The Commissioners will plan for their June meeting at the December meeting.

IX. COMMISSION COMMENTS

Peter Long: Reported that he had an answer to a question asked by Chairperson Fox at the June meeting regarding AB530 about prospective employees needing to undergo a background check every five years upon being hired. DAG Tori Sundheim confirmed and agreed that a background check is required under AB530 every five years.

X. PUBLIC COMMENT

Chairperson Fox: Advised that no vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken under NRS 241.020. She asked if there were any public comments; there were none.

XI. ADJOURNMENT

Chairperson Fox: Thanked everyone and adjourned the meeting.

Personnel Commission Meeting
December 6, 2019

FOR DISCUSSION AND POSSIBLE ACTION

The Hearing Officer Rules of Procedure that are currently in effect were reviewed and approved by the Personnel Commission on July 11, 2014. The Division of Human Resource Management recommends two amendments to these rules for review and approval at the December 6, 2019, meeting of the Personnel Commission.

First, the removal of the language regarding the type of subpoena is recommended to open the reference up to any type of subpoena that may be issued. Next, it is recommended that the timeframe for the service of a subpoena to a witness to appear at a hearing be increased to 15 days. The current timeframe of service of a subpoena a minimum of 5 days prior to the hearing date does not provide adequate time for preparation by the witness. In addition, the 5-day timeframe does not allow adequate time should travel be required. The 15-day timeframe is currently in place for subpoenas issued by the Employee-Management Committee and an assigned Deputy Attorney General cited the basis for this recommendation as Rule 45(b) of the Nevada Rules of Civil Procedure (N.R.C.P.).

In addition, a new subsection was added to reference the N.R.C.P. in relation to subpoenas issued to the State of Nevada, its public entities and political subdivisions, and their officers and employees.

Finally, it is recommended that the language in Section 4.1(d) of the Hearing Officer Rules of Procedure be amended to clarify that per diem and travel expenses must be paid by the party at whose request the witness is subpoenaed, but that these expenses could be awarded as costs to the prevailing party by a hearing officer.

**NEVADA PERSONNEL COMMISSION
HEARING OFFICER RULES OF PROCEDURE**

1. GENERAL PROVISIONS

1.1. Applicability

- a) These rules shall be known and may be cited as Hearing Officer Rules of Procedure.
- b) Scope: Hearings related to dismissals, suspensions, demotions and involuntary transfers
 - 1. NAC 284.774 to 284.818, inclusive, govern hearings in all cases relating to dismissals, suspensions, demotions, and involuntary transfers before the hearing officer and hearings for a written appeal filed pursuant to NRS 281.641.
 - 2. Except as otherwise provided in this document, the hearing officer shall use the hearings procedures established in NAC 284.774 to 284.818, inclusive and any hearings procedures provided by the Division of Human Resource Management if interested parties have proper notice of any procedural changes or are not prejudiced thereby. A copy of the hearings procedures is available by contacting the Division of Human Resource Management at 100 N. Stewart St., Suite 200, Carson City, Nevada 89701 or on the Division’s website at:
<http://hr.nv.gov/uploadedFiles/hrnv.gov/Content/Resources/Publications/Hearing%20Officer%20Rules.pdf>
 - 3. Each hearing officer may adopt supplementary rules governing practice before him or her to the extent they are not inconsistent with these rules, NRS 281 and 284, and NAC 284. The supplementary rules must be made available, in writing, to all parties not less than five business days before a hearing.
- c) Scope: Hearings related to claim of reprisal or retaliatory action for disclosing improper governmental action (“Whistleblower”)
 - 1. NAC 281.305 to 281.315 and NAC 284.774 to 284.806, inclusive, NAC 284.818 govern the procedure for conducting a hearing for a written appeal filed pursuant to NRS 281.641.
 - 2. NRS 281.641 (4): The Personnel Commission may adopt rules of procedure for conducting a hearing pursuant to this section that are not inconsistent with the procedures set forth in NRS 284.390 to 284.405, inclusive.

1.2. Organization of Personnel Hearing Officer System

- a) Hearing officers for personnel appeals are appointed by the Personnel Commission pursuant to NRS 284.091.

1.3. Governing Statutes and Regulations

- a) All hearings conducted before the hearing officer shall be held in accordance with the applicable provisions of NRS 281 and 284, NAC 284, and 233B, Nevada Administrative Procedures Act, to the extent referenced in NRS 284.

2. FILING AND SETTING OF CASES

2.1. Filing an Appeal

- a) Within 10 working days after the effective date of the challenged involuntary transfer, suspension, demotion, dismissal, a permanent classified employee may request a hearing before the hearing officer to determine the reasonableness of the action.
- b) Within 10 working days after the date of an alleged reprisal or retaliation, a State officer or employee who claims such action was taken against him or her for disclosing information concerning improper governmental action may request a hearing before the hearing officer.
- c) A request for a hearing before a hearing officer shall be made in writing and addressed to the Administrator of the Division of Human Resource Management, 100 N. Stewart St., Suite 200, Carson City, Nevada 89701. Requests will also be accepted by fax. Appeals must be filed on an Appeal of "Whistleblower" Retaliation Under the Provisions of NRS 281.641 (NPD-53) or Request for Hearing Regarding Dismissal, Suspension, Demotion, or Involuntary Transfer (NPD-54) form and must be signed by the employee. These forms can be found on the Division of Human Resource Management website at <http://hr.nv.gov/Resources/Forms/Hearings/Hearings/>.

2.2. Assignment of Hearing Officers

- a) Method of selection
 1. For each hearing requested in a claim relating to a dismissal, suspension, demotion, involuntary transfer, or reprisal or retaliatory action, the Senior Appeals Officer of the Hearings Division shall provide to each party to the claim a list of three qualified Hearings Division Appeals Officers (referred to herein as hearing officers).
 2. Each party may strike one name from the list and shall return the list with the remaining names to the Senior Appeals Officer of the Hearings Division not later than seven working days after receipt of the list.
 3. Except as otherwise provided in subsection paragraph 5, each person whose name is struck from the list pursuant to paragraph 2 is ineligible to serve as a hearing officer in that claim.
 4. Except as otherwise provided in paragraph 5, the Senior Appeals Officer of the Hearings Division shall select a hearing officer for the hearing from

among the persons whose names were not struck from the list pursuant to paragraph 2.

5. If a strike list is not returned from either party within seven working days the Senior Appeals Officer of the Hearings Division may assign a hearing officer based on the information available.

6. If for any reason all of the hearing officers whose names were not struck from the list pursuant to paragraph 2 are unqualified or otherwise unavailable to serve as a hearing officer for the hearing, the Senior Appeals Officer of the Hearings Division will provide a new list of hearing officers to the parties in the manner provided in this section.

- a) The Senior Appeals Officer of the Hearings Division will notify the selected hearing officer and provide case materials as soon as the determination of assignment is made.
- b) If a hearing officer finds it necessary to recuse himself or herself from hearing an appeal, the basis for said recusal shall be documented in writing and addressed to the Senior Appeals Officer of the Hearings Division, who will then provide a new list of hearing officers to the parties in accordance with the provisions of 2.2(a).

2.3. Setting of cases

- a) Pursuant to NRS 284.390, the hearing officer shall schedule an employee's hearing within 20 working days after receipt of the employee's written request by the Division of Human Resource Management unless this time period is waived in writing by the employee or there is a conflict with the hearing calendar of the hearing officer. The hearing must be scheduled for the earliest possible date.
- b) Hearings may be scheduled by telephone and thereafter shall be confirmed in writing.
- c) In the interest of convenient, expeditious and complete determination of matters, the Senior Appeals Officer of the Hearings Division may consolidate hearing proceedings involving any number of issues.

3. COMMUNICATION WITH THE HEARING OFFICER

3.1 Communication with the Hearing Officer

- a) Any communication with the hearing officer or the clerk to the hearing officer that is by email, letter or facsimile must demonstrate that all concerned parties have been copied on the communication.

- b) When responding to an email from counsel or the hearing officer, use the “Reply to All” feature, so that all parties, counsel and the hearing officer know that everyone has received the communication.

3.2 Filing of Documents

- a) Filing of a document occurs when the original is received by and is in the actual physical custody of the hearing officer.
- b) A document over five pages in length may not be filed by facsimile unless so ordered or approved in advance by the Hearings Division. If a document which is five pages or less in length is received by facsimile, the document will be accepted and the date of receipt stamped on the document. If a document is received by facsimile and the original of the document is received within 3 business days after it is received by facsimile, the original will be stamped with the date it is received, but shall be deemed filed on the date the facsimile was received.
- c) A document may be filed by electronic mail upon prior written approval of the Hearings Division. A document filed by electronic mail must be:
 - i. Accompanied by an acknowledgment of receipt.
 - ii. Sent to the clerk for the hearing officer and to each party to the proceeding.

4. SUBPOENAS, PLEADINGS AND DOCUMENTS, DISCOVERY

4.1 Subpoenas

- a) The hearing officer, upon application of any party to a hearing, may issue subpoenas. ~~requiring the attendance and testimony of witnesses at the proceeding. Subpoenas All subpoenas~~ must be served a minimum of ~~five~~ fifteen days prior to the hearing date.
- b) Subpoenas issued to the State of Nevada, its public entities and political subdivisions, and their officers and employees, must be served in accordance with N.R.C.P. 4(d).
- b)c) A request for subpoena shall be either in writing or on the record identifying the witness and stating how the witness’ testimony is material and necessary to the proceedings before the hearing officer.
- e)d) Per diem and travel expenses must be paid by the party at whose request the witness is subpoenaed. ~~The~~ However, the hearing officer may award as costs the amount of all such expenses to the prevailing party.

4.2. Pleadings and documents

- a) All pleadings, written motions and documents prepared for submission to the hearing officer shall be:
 - 1. In legible type on clean, white paper, 8 ½ by 11 inches in size, and lined and numbered in the left margin.
 - 2. Free of any personal indentifying information or such information redacted, in particular any Social Security Numbers. All documents must be reviewed and signed certification required by NRS 239B.030 must submitted. Evidence packets or documents containing personal indentifying information may be rejected by the hearing officer.
 - 3. Two-hole punched at the top and if the submission is over 25 pages, it must be secured with “ACCO”-type fasteners.
- b) Evidence packets:
 - i. Must contain a comprehensive index and separately numbered pages.
 - ii. Must not contain any double-sided documents.
- b) Parties to an action shall furnish copies of any pleadings, documents or written motions to one another.
- c) The hearing officer shall refuse to file any document or pleading which is not properly signed by all persons, or which does not comply with these rules.
- d) A document or piece of physical evidence sought to be introduced during the hearing must first be identified for the record and the hearing officer may request the production of such records and the appearance of such persons as he or she requires.

4.3. Discovery

- a) The extent to which discovery is allowed, if at all, is at the discretion of the hearing officer who must make every effort to ensure that the discovery, if any, is neither costly nor burdensome.
- b) Discovery methods allowed by the hearing officer shall be utilized to assist parties in preparing to meet their responsibilities and protect their rights without unduly delaying, burdening or complicating the hearing process and with due regard to the rights and responsibilities of other parties and persons affected.
- c) If a party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the hearing officer to obtain an order compelling discovery. In the disposition of the motion, the party

seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues in controversy are significant enough to warrant the discovery. Discovery motions shall include certification by moving counsel that after consultation with opposing counsel they have been unable to resolve the matter.

5. MOTIONS: POINTS AND AUTHORITIES AND DECISIONS, EXTENSION OF TIME

5.1. Motions: Points and authorities and decisions

- a) All motions shall be accompanied by points and authorities and any exhibits or affidavits relied upon.
- b) The responding party shall file and serve upon all parties, within 10 days after service of a motion, answering points and authorities and counter-affidavits.
- c) The moving party may serve and file reply points and authorities within five days after service of the answering points and authorities.
- d) The hearing officer may hold a telephone conference with parties on any motion.
- e) The hearing officer shall render a decision on the motion within 10 days of the moving party's final reply. Notice of the decision shall be provided to all parties at least five days prior to the scheduled hearing.

5.2. Motions: Extension of time

- a) A request to extend the deadline for filing any motion shall be made at least five days prior to the deadline, with notice to all counsel and the hearing officer.
- b) No ex parte application for extension of time will be granted unless a satisfactory showing is made to the hearing officer that a good faith effort has been made to notify opposing counsel of the motion. If the hearing officer finds good cause therefore, he or she may order a temporary extension pending a determination of the motion.

6. PREHEARING CONFERENCES

6.1. The hearing officer may require a prehearing conference upon his or her own motion or upon motion of a party at which both parties and their counsel shall meet with the hearing officer to consider:

- a) Simplification of the issues;

- b) Necessity or desirability of amending documents for the purposes of clarification, simplification or limitation;
- c) Stipulations as to undisputed facts or contents and authenticity of documents;
- d) Limitation of the number of witnesses;
- e) Such other matters as may tend to expedite the disposition of the proceedings and to ensure a just conclusion.

6.2. Statements of counsel made at a prehearing conference are not admissible in evidence unless so provided by a prehearing order.

7. HEARING STATEMENTS

7.1. Five calendar days before the hearing, each party may serve and file a hearing statement which shall set forth the following matters in the following order:

- a) A concise statement of the claimed facts supporting the party's claims or defenses.
- b) A statement of admitted or undisputed facts.
- c) A statement of issues of law supported by a memorandum of authorities.
- d) Summaries or schedules referring to exhibits, and reasons which clearly reflect the claims, defenses, or evidence of the party, together with references to the records or other sources upon which such summaries or schedules are based.
- e) The names and addresses of all witnesses, except impeaching witnesses.
- f) Any other appropriate comment, suggestion, or information for the assistance of the hearing officer in the hearing of the case.
- g) Certification by counsel that discovery has been completed, unless late discovery has been allowed by order of the hearing officer.

8. CONTINUANCES

8.1. No continuance of a hearing shall be granted except for good cause shown. Continuances shall be denied or granted as determined by the hearing officer and the hearing officer shall put in the file a record of continuances by party. Request for continuance shall be made in the following manner:

- a) A party may request a continuance not later than five business days before the date of the scheduled hearing by filing a written motion or stipulation with the

hearing officer. Notice of the motion or stipulation and a copy of the motion or stipulation must be sent to each party to the hearing and to the clerk to the hearing officer.

- b) A party may contest a request for continuance submitted by another party by filing a written motion with the hearing officer not later than two business days after receiving the notice of the request for a continuance. Notice of the motion and a copy of the motion must be sent to each party to the hearing and to the clerk to the hearing officer.
- c) The hearing officer shall not grant a continuance requested on the day of a scheduled hearing unless 1) the hearing officer, any party, the legal counsel for a party or a primary witness cannot attend because of an emergency; 2) the hearing exceeds the time allotted for the day; or 3) the hearing officer recesses the hearing until a future date.
- d) If the hearing officer recesses a hearing pursuant to a request for a continuance which is filed on the day of the scheduled hearing, the hearing must be held not later than 20 business days after the date of request for a continuance, unless there is a conflict with the schedule of the hearing officer.

8.2. Any and all cases shall have a disposition within a six month period from the date the appeal is filed unless good cause exists.

9. CONDUCT OF HEARINGS

9.1. Authority of Hearing Officer

A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair and impartial hearing, including the following:

- a) To administer oaths and affirmations;
- b) To rule upon offers of proof and receive relevant evidence;
- c) To regulate the course of the hearing and the conduct of the parties and their counsel;
- d) To consider and rule upon procedural requests;
- e) To examine witnesses and direct witnesses to testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify;
- f) To conclude the hearing at such time as all relevant testimony has been presented; and
- g) To issue findings and recommendations and render decisions.

9.2. Sanctions for Noncompliance

If a party or attorney/representative fails or refuses to comply with the rules, the hearing officer may make such orders and impose such sanctions as are just, including, but not limited to the following:

- a) Continue any hearing until the disobedient party or attorney/representative has complied with the requirement imposed.
- b) Require the disobedient party to pay the other party his or her expenses, including a reasonable attorney's fee incurred in preparing for and attending such hearing.
- c) Dismiss the case.

9.3. Communications with the Hearing Officer

- a) A party shall not communicate with the hearing officer regarding the merits of a case 1) except in the presence of all parties to the hearing; or 2) unless all parties to the hearing are notified of the communication in advance.
- b) The hearing officer shall not initiate ex parte communications with any interested person or party, directly or indirectly, regarding any matter in connection with a substantive issue.
- c) Nothing shall prevent the hearing officer from communicating about routine matters such as requests for continuances or opportunities to inspect the file, as long as all parties are informed of the substance of the communication. The date and type of communication, the persons involved and the results of such routine communications shall be part of the record.

9.4. Settlement Agreements

- a) When a case is settled prior to the hearing, the parties or their attorney/representative must notify the hearing officer no later than 24 business hours prior to the scheduled hearing; this includes cancellations for hearings scheduled on a Monday.
- b) Unless specifically requested by the parties, the hearing officer may not initiate settlement negotiations on the date scheduled for the hearing.
- c) Unless otherwise agreed upon in writing by all parties, an offer or demand of settlement made by a party must not be disclosed to or proposed by the hearing officer before the issuance of a final decision by the hearing officer.
- d) The hearing officer has no authority to change, amend or modify any settlement agreement of the parties to the proceeding.

9.5. Hearings

- a) All hearings must be open to the public except on motion of either party for good cause shown. On the motion of either party, the hearing officer shall exclude witnesses not at the time under examination from the hearing room, except the parties to the proceeding.
- b) The employee may represent himself or herself at the hearing or be represented by an attorney or other person of the employee's own choosing.

9.6. The following shall be the order of proceeding of a hearing related to dismissals, suspensions, demotions and involuntary transfers:

- a) Presentation, argument and disposition of motions preliminary to the hearing.
- b) Opening statement for the employer.
- c) Opening statement for the employee, unless reserved.
- d) Presentation of the employer's case, followed by cross-examination.
- e) Presentation of the employee's case, followed by cross-examination.
- f) The parties may respectively offer rebutting testimony only, unless the hearing officer permits additional evidence upon the original cause.
- g) Argument for the employer.
- h) Argument for the employee.
- i) Closing argument for the employer.

9.7. The following shall be the order of proceeding of a hearing related to a claim of reprisal or retaliatory action for disclosing information concerning improper governmental action:

- a) Presentation, argument and disposition of motions preliminary to the hearing.
- b) The opening statement for the State officer or employee.
- c) The opening statement for the employer, unless reserved.
- d) Presentation of the State officer's or employee's case, followed by cross-examination. The State officer or employee must establish that:
 - 1. He or she was a State officer or employee on the date of the alleged reprisal or retaliatory action;

2. He or she disclosed information concerning improper governmental action;
and
 3. The alleged reprisal or retaliatory action was taken against him or her within two years after the date he or she disclosed the information concerning improper governmental action.
- e) If these facts are established, presentation of the employer's case, followed by cross-examination, to establish that the employer did not engage in reprisal or retaliatory action or that the action was taken for a legitimate business purpose.
 - f) If the employer establishes a legitimate business purpose for the action, the State officer or employee may introduce evidence, followed by cross-examination, to demonstrate that the stated business purpose is a pretext for the action.
 - g) The parties may respectively offer rebutting testimony only, unless the hearing officer permits additional evidence upon the original cause.
 - h) The argument for the State officer or employee.
 - i) The argument for the employer.
 - j) The closing argument for the State officer or employee.

10. TESTIMONY AND EVIDENCE

- 10.1. All testimony and exhibits offered at the hearing must be relevant and bear upon the matter in contention. Any testimony or exhibits which are considered by the hearing officer as not meeting this criterion may properly be excluded.
- 10.2. Testimony
 - a) All testimony must be under oath administered by the hearing officer, except that the hearing officer may, for good cause shown, accept the sworn affidavit of a witness in lieu of the witness's appearance.
 - b) At the beginning of his or her testimony, each witness who has not previously testified in the hearing shall state his or her name, business address and business/department, and job title or position.
 - c) Testimony may be presented in the form of a statement or questions and answers.
 - d) The hearing officer may allow testimony by telephone or videoconference in consideration of the cost or feasibility of the witness being present at the

hearing, the nature and duration of the expected testimony, or whether there is a good reason the witness is unavailable to testify in person.

- e) Testimony is recorded and may be transcribed when necessary.

10.3. Evidence

- a) The hearing officer shall determine the evidence based upon the charges and specifications set forth by the appointing authority in the appropriate documents. Additional evidence beyond the scope of the charges shall not be considered.
- b) An employer or employee's past performance by way of an act or a failure to act may be shown by competent evidence.
- c) Reports, evaluations, and other written evidence may be considered only upon a showing that the parties were made aware of the contents of the material.
- d) The hearing officer shall consider the objection of either side to the introduction of evidence. Competence and relevance must be the primary test in ruling on objections.
- e) All documents and exhibits offered into evidence at the hearing must be marked before submission in the following manner: employee/petitioner shall use numbers, employer/respondent shall use letters. Each party to the hearing must bring four complete copies of materials to the hearing.
- f) Any item offered into evidence must be properly authenticated and, if received, must be marked by the hearing officer or clerk with a distinguishing number or letter. The representative for the opposing party is entitled to examine the exhibit when it is offered.
- g) Technical rules of evidence do not apply at the hearing.
- h) The hearing officer shall return all documents and materials related to a case to the clerk within seven business days from the date of the decision.

11. FINDINGS AND DECISION

11.1. The hearing officer shall make no assumptions of innocence or guilt but shall be guided in his or her decision by the weight of the evidence as it appears to him or her at the hearing.

11.2. At the conclusion of the hearing the hearing officer shall take the case under submission and shall render his or her decision in writing, including findings of fact and conclusions of law and opinions.

- 11.3. If the hearing officer determines that the dismissal, demotion or suspension was without just cause as provided in NRS 284.385, the action must be set aside and the employee reinstated with full pay for the period of dismissal, demotion or suspension. The hearing officer may determine the reasonableness of the disciplinary actions and recommend appropriate levels of discipline, but only the appointing authority has the power to prescribe the actual discipline imposed on a permanent classified employee.
- 11.4. In a case regarding alleged reprisal or retaliatory action for reporting improper governmental action if the hearing officer determines that the action taken was a reprisal or retaliatory action, he or she may issue an order directing the proper person to desist and refrain from engaging in such action. The hearing officer shall file a copy of his or her decision with the Governor or any other elected State officer who is responsible for the actions of that person.
- 11.5. The hearing officer shall notify the parties in writing of his or her decision, findings and recommendations within 30 days from the date of the hearing.
- 11.6. The decision of the hearing officer is binding on the parties.
- 11.7. A petition for rehearing or reconsideration must be filed with the hearing officer within 15 days after the date of service of the hearing officer's decision. An order granting or denying the petition must be served on all parties at least five days before the expiration of the time for filing the petition for judicial review. If the petition is granted, the subsequent order shall be deemed the final order for the purpose of judicial review.
- 11.8. Any petition for judicial review of the decision of the hearing officer must be filed in accordance with the provisions of chapter 233B of NRS.

FOR DISCUSSION AND POSSIBLE ACTION

The current contract with the Department of Administration Hearings Division and independent contractor, Charles Cockerill, will expire on June 30, 2020. The Division of Human Resource Management is requesting that the Personnel Commission advise the Division whether to renew one or both of the contracts for a term of 4 years.

Recommendation

Based on the data and analysis provided to the Personnel Commission on September 20, 2019, DHRM recommends renewing the contract with the Hearings Division. The Hearings Division has the facilities and expertise to continue performing as the primary hearing officers for disciplinary and Whistleblower appeals. Seven Hearing Officers, formerly known as Special Appeals Officers, have been appointed by the Governor for two-year terms beginning on September 1, 2019, and ending on August 31, 2021.

In addition to the Hearings Division, DHRM recommends maintaining a contract with an independent Hearing Officer so the Hearings Division will have four Hearing Officers to rotate for the northern and southern strike lists. In addition, DHRM recommends continuing to directly contract with a Hearing Officer so that the Hearings Division will have four Hearing Officers to rotate for the northern and southern strike lists. Charles Cockerill has expressed an interest in renewing his contract with DHRM for these services. The Personnel Commission may elect to renew Mr. Cockerill's contract or advise DHRM to recruit for a new independent Hearing Officer.

DHRM has confirmed the following billing structure will continue to apply to the renewed contract with the Hearings Division should the Personnel Commission choose this option.

Billing Structure

\$100/hr. in 15-minute increments

\$50/hr. in 15-minute increments for clerical staff

Charge for postal expenditures at current rate

\$0.25/page for copies

Transcription costs for petitions for judicial review

Reimbursement for travel expenditures (mileage, hotel, meals, airfare, ground transportation)

Personnel Commission Meeting
December 6, 2019

FOR INFORMATION ONLY

Attached are the minutes of the June 25, 2019, regulation workshop, written comments submitted to the Division, and the Small Business Impact Statement, as they are related to the regulations proposed for permanent adoption.



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
209 E. Musser Street, Suite 101 | Carson City, Nevada 89701
Phone: (775) 684-0150 | <http://hr.nv.gov> | Fax: (775) 684-0122

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.

Good afternoon Mrs. Garton,

Hello my name is TeJay Harvey and I am employed by the Department of Corrections at NNCC. I spoke with you regarding NAC 284.242, thank you so much for returning my call! I do apologize for being out of the loop. Thank you for allowing me the opportunity to share some thoughts regarding the proposed changes from an officer's perspective.

As a subject matter expert regarding NAC 284.242 I am sure you are aware of the ongoing controversy regarding this NAC and its four hour requirement to notify officers if they will be mandated to work overtime, with the exception of an unpredictable emergency. The crux of the issue at hand is that the NDOC believes that they cannot operate their institutions effectively while giving officers a full 4 hour notice stating they will be mandated to stay for a second 8 hour shift (although I am unaware of them trying anything else).

Here is a brief background of how the policy is implemented at NNCC. Currently at NNCC a mandatory overtime list is circulated from unit to unit with approximately 20 names of officers who are on the list and required to acknowledge their position on the mandatory list. Once the supervisor begins to staff for the next shift is when they actually know how many officers they will need to mandate to work. This equates to an officer only being given a one hour notice that they will not be able to leave at the end of the shift but must stay for 8 more hours. The department position pertaining to the policy is, and this can be verified by a coworker's grievance response and testimony at the EMC hearing on 4/04/2019, that anytime any officer's name is on the mandatory overtime list they should make arrangements to work a second shift. Furthermore they state that when officers are hired they are notified that they "could be required to work overtime on short notice". The NDOC has contended that by circulating the list of the next 20 officers that could be required to work overtime they are complying with the current version of an NAC 284.242 and providing ample notice for officers to make arrangements to stay a second eight hour shift. The problem is, when an officer agrees to work under these conditions they do not know that "short notice" is defined as less than an hour to make accommodations; they also don't understand they're required to work under these conditions on nearly an every day basis.

Recently during the 4/04/2019 EMC hearing the committee ruled that in fact a mandatory list, as it is being utilized, does not comply with the NAC 284.242 because it does not notify an employee if they will work, only if there's a possibility that that they *could* work. Regarding this, member of the EMC, Co-vice chair Beigel states, "an example is an officer having to cancel a doctors appointment and then paying a fee for the cancellation, and then it turned out that the NDOC did not need the officer, NDOC's action would have cost the officer money." Another example would be an officer hiring a babysitter, and then not being needed to work. The officer will incur the cost of the babysitter but not have the income from the overtime. The status quo creates an unfair hardship on officers at NDOC.

Co-vice chair Beigel touches on the biggest problem, and abuse, regarding the way the NDOC is conducting their mandatory overtime. At NNCC on graveyard it takes a minimum of 30 officers to start the shift. Daily the mandatory list is created with at least 20 officers being notified that they may have to work a second eight hour shift. (At NNCC a copy of our daily overtime list are archived) In June of this year a coworker on graveyard was on the mandatory notification list 18 out of the 22 days he was scheduled to work. So far this month I personally have been on the mandatory list every day I have come into work. So, in practice, according to the NDOC every day we come to work we should be prepared to work a second eight hour shift. Are we not allowed to have a personal life during our work week because of the profession we chose? It is not allowed to request leave during a period of time we are not scheduled yet we can be mandated to work during this time.

This is an unfair burden put on our officers that no other department within the state has to bear. In practice the NDOC is saying that their employees must be available to work 16 hours each day they are scheduled. Again, I am stating this based on facts; I work on dayshift and this month I have not been mandated to work as of yet but have been on the list every day, I cannot make any plans after work until I am off the list. This is an extreme burden; I can't plan around my wife's work schedule, children's activities, or even dinner with friends. My wife works sporadic evenings and anytime I actually am mandated to work we have to do our best to scramble to find childcare with only one hour notice. There will be a day I have to refuse because I am unable to find childcare and when this day occurs I face termination, there has to be a better system.

Graveyard has less staff and is on the mandatory list 90% of the time they report to work, thus they can almost never make plans during their off time. Utilizing the list as it is, an officer is forced to speculate whether they will actually be mandated to work or not. One officer I know on graveyard is a single parent whose wife has recently passed away. He has had to send his grade school age children to school in a taxi cab because the supervisors would not let him leave to attend his children. The NDOC should shoulder some of this burden and utilize a better system to staff their shifts during times of a large volume of overtime being hired. After all it is the NDOC that is responsible for hiring and maintaining enough personnel to staff their prisons yet it is the staff that is paying the price.

If section 3 is added to NAC 284.242 stating that this requirement, "does not apply to any position that affects the health, safety, and welfare of the people of the State of Nevada..." the NDOC will only have further leverage to continue the mistreatment of their staff and have no reason to attempt to alleviate the burden that is currently being placed on staff. NDOC AR 326, regarding the hiring of mandatory overtime, is currently under review. I have personally suggested a system that will help elevate some of the last minute hiring of overtime.

As it stands the staffing Sergeants do not start staffing their shift until about one hour before the shift is scheduled to arrive, however they have knowledge of most ongoing vacancies weeks in advance. The sole driving force behind the need to hire overtime is that fact that our institutions are *severely understaffed*. The bottom line is, if we had a full roster at NNCC we would most likely never have to hire overtime. NNCC

has been approximately 30 positions short all year long. This being said, since vacant positions, as well as military leave, FMLA, employees under continuing investigation, can be planned for well in advance – a lions share of the institutional overtime could be hired well in advance. I have proposed utilizing a two week schedule made in advance that allows a window of time where Officers can volunteer for available posts, then a window of time that unfilled posts known to be vacant can be filled ahead of time using mandated officers. This system will eliminate most of the last minute overtime, leaving the only overtime needing to be hired on a daily basis the result of Officer call ins or inmates that are requiring supervision in the hospital. These reasons fall under the current definition and intention NAC 284.242. The current version reads that in unpredictable emergencies the NDOC is not required to provide a four hour notice to hire overtime. If the NDOC makes a good faith attempt to hire overtime in advance and utilizes a schedule like the one I have suggested, they will be able to comply with the current version of the NAC.

In summary, NRS 284.010 states, under Legislative declaration of purpose:

1. The Legislature declares that the purpose of this chapter is:
 - a. To provide all citizens a fair and equal opportunity for public service
 - b. To establish conditions of service which will attract officers and employees of character and ability.

Currently the NDOC is having an extremely difficult time retaining Officers, to the point that by the time a new academy graduates we have already lost that many positions in current staff. One academy I am aware of that graduated two years ago has already lost over 80% of its Officers. The current mandatory hiring policy has a lot to do with this turn over. It creates animosity between supervisors and staff, as well as creates a feeling of anxiety every time you report to work. The NRS presented above states that our goal is to attract officers of character and ability as well as provide a fair and equal opportunity for public service. The status quo is not fitting the bill. Two years ago a single mother was hired by the NDOC, she uprooted her family and relocated from New Mexico. She was being mandated to work so often she could no longer find child care and was forced to quit and return to New Mexico, this was not a fair and equal opportunity to serve in the State of Nevada. During this period in 2017 I also was mandated to work 41 times in a 7 month period, it is hard to maintain any sort of life outside of work when you are being forced to work nearly 2 extra random shifts per week for that length of time. This burden isn't a new one for officers at the NDOC but no one seems to be doing anything to help lift the yoke. If section 3 is added NDOC will be not only making no attempt to change their status quo, but will have license to further ignore this problem. Thank you so much for hearing my grievances regarding this problem.

Sincerely,

C/O TeJay Harvey

NDOC

NNCC

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June 7, 2019

Regulation Small Business Impact Statement

Section 15 of Article 15 of the Nevada Constitution requires the Legislature to provide for a State merit system governing the employment of employees in the Executive Branch of State government and in 1969 the Legislature provided for such in NRS 284. Additionally, NRS 284.013 provides limitations to which employees of the Executive Branch are covered by NRS 284. NRS 284.065 authorizes the Personnel Commission to adopt regulations to carry out the provisions of this chapter.

Due to the limitations of the Nevada State Constitution and NRS 284, the Division of Human Resource Management staff has determined that the adoption of this proposed regulation does not affect small businesses, impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business. These regulations only impact employees moving into the nonclassified, classified, or unclassified service of the Executive Branch.

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

Peter Long

Peter Long, Administrator

June 7, 2019

Date

Personnel Commission Meeting
December 6, 2019

FOR DISCUSSION AND POSSIBLE ACTION

The following regulation has been proposed for permanent adoption. A brief explanation precedes the regulation and summarizes the intent of the regulation change. **NOTE:** Language in *italics* is new, and language in brackets ~~omitted material~~ is to be omitted.

The following summarizes the recommended action of the Personnel Commission and identifies if there has been support or opposition to the proposed action.

LCB File No. R015-19

The Division of Human Resource Management recommends the regulation amendments contained in LCB File No. R015-19.

The intent of the amendment to NAC 284.405 in Section 2 of this LCB File is to ensure that an employee will not unknowingly forfeit his or her reassignment rights prior to referral to the Division of Human Resource Management for possible statewide reassignment.

The amendment to NAC 284.586 in Section 3 is intended to give supervisors and managers more latitude to address last minute requests for civil leave on election day. This will give agencies greater flexibility in workload management. For example, an agency will be able to stretch civil leave with pay over a longer period of time, which will allow the voting process to be managed with little to no effect on an agency.

Section 1 of the regulation makes conforming changes to NAC 284.361 due to the amendment to NAC 284.405 in this LCB File, which renumbers the subsections.

No comments were made in support or opposition regarding the amendments to this regulation at the regulation workshop.

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R015-19

Section 1: NAC 284.361 Use of lists and consideration of certified eligible persons: Applicable conditions.

This amendment makes conforming changes based on the amendment to NAC 284.405 in Section 2 of this LCB File.

Section 2: NAC 284.405 Reassignment of employee with disability who is unable to perform essential functions of position with or without reasonable accommodation.

This amendment, proposed by the Division of Human Resource Management, will require that an employee who is proceeding through the reassignment process must be made aware in writing by his or her agency of the consequences of exhausting his or her reassignment rights pursuant to the new subsection 11 of the regulation.

Section 3: NAC 284.586 Civil leave with pay to vote.

This amendment, proposed by the Department of Employment, Training and Rehabilitation, will require civil leave to be granted to an employee during early voting or on election day and requires that a request for such leave be made on the day before the leave is to be taken.

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R015-19

September 10, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1 and 2, NRS 284.065, 284.155 and 284.305; §3, NRS 284.065, 284.155 and 284.345.

A REGULATION relating to state personnel; revising provisions relating to the reassignment of certain state employees; revising provisions relating to the granting of civil leave with pay for voting; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Personnel Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations that provide for filling positions in the classified service without competition by the appointment of current employees with disabilities to certain positions if the employee becomes unable to perform the essential functions of his or her position with or without reasonable accommodation. (NRS 284.305) Existing regulation sets forth the process for the reassignment of such an employee, including that the employee will continue to be referred to vacant positions for which the employee meets the minimum qualifications until the reassignment rights of the employee are exhausted. (NAC 284.405) **Section 2** of this regulation requires that before the commencement of the reassignment process the appointing authority notify the employee in writing that the employee will continue to be referred to such positions until the exhaustion of the employee’s reassignment rights. **Section 1** of this regulation makes conforming changes.

Existing law entitles a registered voter to leave his or her place of employment to vote if it is impracticable for the voter to vote before or after his or her hours of employment. (NRS 293.463) Existing regulation requires that civil leave with pay be granted to an employee of the Executive Department of the State Government for this purpose if the request for such leave is submitted before the day of the election. (NAC 284.586) Under existing law, early voting by personal appearance is authorized before election day. (NRS 293.356-293.361) **Section 3** of this regulation clarifies that the civil leave with pay for voting for employees of the Executive Department must be granted during the period of early voting or on day of an election and changes the deadline for submission of a request for such leave from before election day to before the date on which the employee wishes to take the leave.

Section 1. NAC 284.361 is hereby amended to read as follows:

284.361 When using lists of persons who are eligible and considering eligible persons who have been certified, the following conditions apply:

1. When a reemployment list is certified, persons who are available for appointment and who are certified on reemployment lists, other than seasonal reemployment lists, must be hired in the order in which they appear unless the appointing authority, upon submitting written justification, obtains the written concurrence of the Governor to deviate from the order of priority or to hire from another list. The appointing authority must make the written justification available for examination by affected persons or their designated representatives.

2. The Division of Human Resource Management shall integrate the name of a person who is eligible for reassignment pursuant to subsection ~~2~~ 3 or ~~4~~ 5 of NAC 284.405 with the names of employees who are placed on a reassignment list pursuant to subsection ~~3~~ 4 or ~~5~~ 6 of NAC 284.405 whenever there is a reassignment list certified to the agency that employed the person in his or her regular position.

3. A person must accept or refuse an offer of employment:

(a) If the offer of employment is sent by mail to the person, within 6 calendar days after the postmarked date appearing on the envelope in which the offer was mailed; or

(b) If the offer is an oral offer of employment, within 3 business days after the oral offer has been made.

4. The appointing authority may request selective certification for a particular position if the normal method of certification does not provide candidates qualified to perform the duties of the position satisfactorily. Where selective certification is necessary, the appointing authority shall furnish in writing the special requirements peculiar to the position and his or her reasons therefor. If the facts and reasons justify such a method of selection, the Division of Human

Resource Management may certify the highest ranking eligible persons who possess the special qualifications.

5. Certification of only eligible persons who are the same sex must not be made unless there is clear evidence that the duties assigned could be performed efficiently only by the sex specified.

6. When using ranked lists other than those for reemployment, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least 5 persons in the first 10 ranks to determine their availability and qualifications. The names on each type of list must be considered before names from the next succeeding list. If there are fewer than 10 ranks with persons who are available for appointment on a given list and the appointing authority requests a full complement of 10 ranks, the name or names at the top of the next succeeding list must be combined with those on the preceding list to establish 10 eligible ranks with persons who are available for appointment. Except as otherwise provided in subsection 8, all competitive appointments from ranked lists must be made from the persons who:

- (a) Are in a rank of persons who received the 10 highest scores on the examination; and
- (b) Are available for appointment.

7. If the list is unranked or waived, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least five eligible persons he or she deems most qualified based upon a review of their respective qualifications as they relate to the position or class, or with all of the eligible persons if there are five or less. Except as otherwise provided in subsection 1, any eligible person who is certified from an unranked or waived list may be appointed.

8. If persons from fewer than five ranks of eligible persons are willing to accept appointment:

(a) The appointing authority may make an appointment from among those remaining available eligible persons.

(b) Certification and appointment may be made from other appropriate lists, including lists of higher grades as determined by the Division of Human Resource Management. The names from other lists must follow those which have been certified, if any, from the original lists.

(c) A new recruitment may be conducted.

(d) A provisional appointment may be made only if the requirements of NAC 284.406 are met.

Sec. 2. NAC 284.405 is hereby amended to read as follows:

284.405 1. The Division of Human Resource Management shall assist an appointing authority with the reassignment of an employee with a disability who is unable to perform the essential functions of his or her position with or without reasonable accommodation by identifying any vacant or soon to be vacant positions for which the employee meets the minimum qualifications. Those vacant or soon to be vacant positions may include positions that are outside of the geographical location of the employee. A refusal by the employee of an offer of a position that is outside of the geographical location of the employee will not affect the employee's reassignment rights pursuant to this section. ~~The~~

2. Before an appointing authority commences the reassignment of an employee pursuant to this section, the appointing authority shall notify the employee in writing that the employee will continue to be referred to positions pursuant to this section until the reassignment rights of the employee are exhausted in accordance with subsection ~~10.~~

~~2.1~~ 11.

3. The appointing authority of the employee shall, through the interactive process, determine if a vacant or soon to be vacant position at the employee's current grade exists within the employee's agency. If such a position is identified and the employee meets the minimum qualifications, as determined by the Division of Human Resource Management pursuant to NAC 284.317, and is able to perform the essential functions of the position with or without reasonable accommodation, the appointing authority shall offer the employee the position unless the appointing authority demonstrates that such an appointment would cause an undue hardship to the appointing authority.

~~13.1~~ 4. If the appointing authority of the employee is not able to reassign the employee pursuant to subsection ~~12.1~~ 3, the appointing authority of the employee shall notify the Division of Human Resource Management. For at least 30 days after receipt of the notification, the Division of Human Resource Management shall place the employee on reassignment lists for any vacant or soon to be vacant positions being filled at the grade of the current position of the employee if the employee meets the minimum qualifications for the positions and has expressed an interest in those positions. If such a position is determined to be available and it is determined through the interactive process that the employee is able to perform the essential functions of the position with or without reasonable accommodation, the employee must be offered the position unless it is demonstrated that such an appointment would cause an undue hardship.

~~14.1~~ 5. If reassignment is not available pursuant to subsection ~~12-or-3.1~~ 3 or 4, the appointing authority of the employee shall, through the interactive process, determine if a vacant or soon to be vacant position below the grade of the current position of the employee exists within the employee's agency. If such a position is identified and the employee meets the minimum

qualifications, as determined by the Division of Human Resource Management pursuant to NAC 284.317, and is able to perform the essential functions of the position with or without reasonable accommodation, the appointing authority shall:

(a) Consider the employee for any such positions in the order of the grade of the positions beginning with the grade closest to the grade of the current position of the employee if multiple positions with different grades are determined to be available within the employee's agency; and

(b) Offer the employee such a position unless the appointing authority demonstrates that such an appointment would cause an undue hardship to the appointing authority.

~~15.1~~ **6.** If reassignment is not available pursuant to subsection ~~12.1~~ 3 ~~10.1~~ 4, 4 or 5, the appointing authority of the employee shall notify the Division of Human Resource Management.

For at least 30 days after receipt of the notification, the Division of Human Resource Management shall place the employee on reassignment lists for vacant or soon to be vacant positions being filled at or below the grade of the current position of the employee if the employee meets the minimum qualifications for the positions and has expressed an interest in those positions. If such a position is determined to be available and it is determined through the interactive process that the employee is able to perform the essential functions of the position with or without reasonable accommodation, the employee must be offered the position unless it is demonstrated that such an appointment would cause an undue hardship.

~~16.1~~ **7.** The appointing authority of an employee to whom subsection 1 applies may offer the employee a position in the employee's agency below the grade of the current position of the employee if:

(a) A vacant or soon to be vacant position at the grade of the current position of the employee is not identified within the employee's agency;

(b) The employee meets the minimum qualifications of the position as determined by the Division of Human Resource Management pursuant to NAC 284.317; and

(c) It is determined that the employee is able to perform the essential functions of the position with or without reasonable accommodation unless it is demonstrated that such an appointment would cause an undue hardship.

↪ If the employee accepts the position offered pursuant to this subsection, the employee may continue to exercise his or her reassignment rights pursuant to subsections 1 to ~~15~~ 6, inclusive, and subsections ~~17~~ 8 to ~~12~~ 13, inclusive, for a period of 60 days following the appointment.

~~17~~ 8. An employee may not be reassigned to underfill a vacant or soon to be vacant position allocated at grade 30 or higher if that position is allocated at a higher grade than the position the employee currently occupies.

~~18~~ 9. After the reassignment of an employee is made pursuant to this section, the status of appointment of the employee will be determined in accordance with NAC 284.444.

~~19~~ 10. The reassignment of an employee which is made pursuant to this section will take precedence over all other types of appointments and use of lists, including, without limitation, the lists, other than reemployment lists, set forth in NAC 284.358.

~~10~~ 11. Except as otherwise provided in subsection ~~6~~ 7, reassignment rights pursuant to this section are exhausted when an employee:

- (a) Accepts a reassignment at or below the grade of the current position of the employee;
- (b) Accepts a position through a competitive or noncompetitive appointment;
- (c) Notifies the appointing authority in writing that he or she no longer wishes to seek reassignment;

(d) Has not been appointed from any of the lists on which his or her name was included in accordance with this section and the Division of Human Resource Management determines that there are no other positions available;

(e) Refuses a position within his or her geographical location that is at or below the grade of the current position of the employee; or

(f) Accepts reemployment pursuant to NAC 284.6014.

~~111~~ 12. The provisions of this section do not prohibit an employee from accepting another position through a competitive or noncompetitive appointment.

~~112~~ 13. As used in this section:

(a) “Agency” includes:

(1) A department as defined in NAC 284.055;

(2) Any other entity of the Executive Branch of State Government which employs persons in the classified service, including, without limitation, the office of an elected officer;

(3) A division of the Department of Health and Human Services; and

(4) Any division or institution of the Nevada System of Higher Education.

(b) “Geographical location” has the meaning ascribed to it in NAC 284.612.

(c) “Soon to be vacant” means a position in which:

(1) The Division of Human Resource Management is aware will have an imminent vacancy;

(2) A list has not been certified for the position; and

(3) The employee will be able and available to fill the position within 30 days after the position becomes open.

(d) “Undue hardship” has the meaning ascribed to it in 29 C.F.R. § 1630.2.

Sec. 3. NAC 284.586 is hereby amended to read as follows:

284.586 Civil leave with pay must be granted to allow an employee time off to vote *during the period for early voting or on the day of an election* subject to the conditions established in NRS 293.463. If an employee determines he or she will need *such* time off to vote, he or she must submit a request for civil leave with pay to the person authorized to grant such leave before the day ~~of the election.~~ *on which the employee wishes to take such leave.*

FOR DISCUSSION AND POSSIBLE ACTION

The following regulation has been proposed for permanent adoption. A brief explanation precedes the regulation and summarizes the intent of the regulation change. **NOTE:** Language in *italics* is new, and language in brackets ~~omitted material~~ is to be omitted.

The following summarizes the recommended action of the Personnel Commission and identifies if there has been support or opposition to the proposed action.

LCB File No. R016-19

The Division of Human Resource Management recommends the regulation amendments contained in LCB File No. R016-19.

The movement of paragraphs (d) and (f) of subsection 1 to subsection 4 of NAC 284.589 is necessary because subsection 3 requires that an employee be available by phone and to report to work if approved for administrative leave with pay pursuant to subsections 1 or 2. Generally, subsection 1 could be disciplinary in nature, and donating blood or attending a general benefits orientation are not considered disciplinary matters.

The amendment to paragraph (e) of subsection 4 is intended to support participation in “Veterans Day at the Legislature” by allowing employees who are veterans to participate.

Finally, the amendment to paragraph (c) of subsection 6 is necessary to ensure that employees who serve as a member of a committee or board created by statute have the time necessary to prepare in advance for meetings.

No comments were made regarding the amendments to this regulation at the regulation workshop.

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R016-19

Section 1: NAC 284.589 Administrative leave with pay.

This amendment, proposed by the Division of Human Resource Management, moves paragraphs (d) and (f) of subsection 1 of NAC 284.589 to subsection 4 so that an employee who is approved for administrative leave with pay to donate blood or attend an employee benefits orientation will not be required to be available by telephone or to report to work pursuant to subsection 3.

Paragraph (f) of subsection 4 has been added so that an employee who is a veteran may be granted administrative leave with pay to attend Veterans Day at the Legislature, which was established pursuant to NRS 236.047.

Finally, the amendment to paragraph (c) of subsection 6 clarifies that an employee who serves on a committee or board created by statute shall be granted administrative leave with pay to prepare for meetings, as well as to participate in meetings.

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R016-19

July 30, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §1, NRS 284.065, 284.155, 284.345, 284.383 and 284.385.

A REGULATION relating to state personnel; revising provisions relating to administrative leave with pay; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law creates the Personnel Commission in the Division of Human Resource Management of the Department of Administration. (NRS 284.030) Existing law requires the Commission to adopt regulations necessary to carry out provisions of law relating to the state personnel system, including regulations for attendance and leave with or without pay or reduced pay in the various classes of positions in the public service. (NRS 284.065, 284.155, 284.345, 284.385) Existing regulations authorize an appointing authority to grant administrative leave with pay to an employee under certain conditions. Existing regulations also require an appointing authority or the Division to grant administrative leave with pay to employees for certain purposes. (NAC 284.589) This regulation clarifies that administrative leave granted for an employee’s participation as a member of a committee or board created by statute includes any time spent reviewing materials submitted in connection with any agenda item or otherwise preparing for the meeting. This regulation also removes a requirement that an employee who is granted administrative leave with pay to donate blood or attend general employee benefits orientation or an educational session relating to employee benefits be available: (1) by telephone to his or her supervisor; or (2) to report to work or another location. This regulation also authorizes the Division to grant such leave.

Existing law creates “Veterans Day at the Legislature” in recognition of the contributions veterans have made to the prosperity of Nevada and the United States. (NRS 236.047) This regulation authorizes an appointing authority or the Division to grant administrative leave with pay to an employee who is a veteran for up to 2 hours for participating in Veterans Day at the Legislature.

Section 1. NAC 284.589 is hereby amended to read as follows:

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

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

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

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

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

~~(e)~~ To relieve the employee of his or her duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065 . ~~;~~ ~~or~~

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

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

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

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

(b) To report to a work site or another location, as directed by the supervisor of the employee,

↳ during regular business hours.

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

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

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

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

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

(e) *Up to 2 hours for participating in Veterans Day at the Legislature established pursuant to NRS 236.047, if the employee is a veteran.*

(f) *Up to 2 hours for donating blood.*

(g) *For attending a general employee benefits orientation or an educational session relating to employee benefits, including, without limitation, retirement and deferred compensation.*

(h) His or her appearance as an aggrieved employee, an employee who filed a complaint described in NAC 284.658 or a witness at a hearing of the Committee.

~~(i)~~ (i) His or her appearance as a witness at a hearing regarding a matter described in subparagraph (1), (2) or (3) of paragraph (f) of subsection 6.

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

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

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

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

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

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

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

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

(c) His or her participation in an official capacity as a member of a committee or board created by statute on which he or she serves as a representative of state employees ~~[]~~, *including, without limitation, any time spent reviewing materials submitted in connection with any agenda item or otherwise preparing for the meeting.* Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board.

(d) Up to 8 hours for preparation for any predisciplinary review.

(e) Up to 8 hours for preparation for any hearing described in paragraph (f).

(f) The appearance of the employee as a party at a hearing regarding:

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

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

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

FOR DISCUSSION AND POSSIBLE ACTION

The following regulation has been proposed for permanent adoption. A brief explanation precedes the regulation and summarizes the intent of the regulation change. **NOTE:** Language in *italics* is new, and language in brackets ~~omitted material~~ is to be omitted.

The following summarizes the recommended action of the Personnel Commission and identifies if there has been support or opposition to the proposed action.

LCB File No. R019-19

The Division of Human Resource Management is neutral regarding the regulation amendments contained in LCB File No. R019-19.

The intent of this amendment is to reduce the burden on agencies with mandated staffing levels for customer safety or health of the public as it is difficult for such agencies to provide 4 hours' notice which is currently required. Call-in procedures vary between agencies, with many requiring an employee to call in sick an hour before the shift begins, thus making the 4-hour notification requirement difficult.

Multiple comments were received at the workshop, both in support of and opposition to, this amendment. Written comments in opposition were received after the workshop and can be found on page 37 of your binder.

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R019-19

Section 1: NAC 284.242 Overtime: Authorization.

This amendment, proposed by the Division of Human Resource Management, will exempt positions at agencies that maintain a workweek longer than a 40-hour workweek or that perform duties that affect public health, safety or welfare from the requirement to communicate the need for overtime to an employee at least 4 hours in advance.

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R019-19

July 22, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §1, NRS 284.065, 284.155 and 284.175.

A REGULATION relating to the State Personnel System; revising provisions requiring advance communication to certain employees required to work overtime; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing regulations, if a nonexempt employee of a state agency is required to work overtime, the overtime must be: (1) authorized in accordance with statute; and (2) communicated to the employee at least 4 hours before being worked, unless an unpredictable emergency prevents compliance with those requirements. (NRS 284.242) This regulation provides that the requirement for advance communication to an employee who is required to work overtime does not apply to a nonexempt employee who: (1) is employed at an agency that maintains a workweek longer than 40 hours; and (2) performs duties that affect public health, safety or welfare.

Section 1. NAC 284.242 is hereby amended to read as follows:

284.242 1. If a nonexempt employee is required to work overtime, the overtime must be

~~[authorized]~~:

(a) *Authorized* pursuant to subsection 10 of NRS 284.180 ; and ~~[communicated]~~

(b) *Communicated* to the employee at least 4 hours in advance by the responsible supervisor

before being worked,

↳ unless an unpredictable emergency prevents prior approval and communication.

2. If a nonexempt employee requests to work overtime, the overtime must be authorized in advance pursuant to subsection 10 of NRS 284.180.

3. *The provisions of paragraph (b) of subsection 1 do not apply to a nonexempt employee who:*

(a) Is employed at an agency that maintains a workweek longer than the 40-hour workweek required by NRS 281.110; and

(b) Performs duties that affect public health, safety or welfare.

FOR INFORMATION ONLY

Pursuant to NRS 233B.067, agencies must submit to the Legislative Counsel permanent regulations that have been adopted for review and approval by the Legislative Commission or the Subcommittee to Review Regulations. While the vast majority of regulations adopted by the Personnel Commission are subsequently approved by the Legislative Commission, there have been two recent instances when the regulations were not approved. The LCB Files have been provided for your reference. The following is a summary and description of the basis of the Legislative Commission's objection to the regulations.

LCB File No. R118-17

This LCB File was adopted by the Personnel Commission at its September 7, 2018, meeting. Subsequently, it was submitted to the Legislative Counsel along with the required documentation. The LCB File was heard at the September 27, 2018, meeting of the Subcommittee to Review Regulations.

At the meeting, there was a mix of positive and negative opinions shared by the members regarding a new regulation in Section 3 of the LCB File which laid out provisions related to the requirement of an employee to report an arrest, charge or conviction of an offense if it results in the employee being temporarily or permanently unable to perform the duties of his or her position. The greatest concern regarding this new requirement was the requirement to report an arrest because it may not end with a charge or conviction. An example given in opposition by a member was the arrest for civil disobedience resulting from participating in a picket line, which may not affect an employee's job. An example given in support by another member was that it may be important for an employee who works in a position that handles money was arrested for alleged financial crimes.

Administrator Peter Long explained to the Subcommittee that this requirement is important so that agencies are made aware of an arrest, charge and conviction and that the intent is not that an arrest, charge or conviction would specifically lead to disciplinary action.

Action was taken at the meeting to defer LCB File No. R118-17. After discussions with Legislative Counsel staff, the decision was made to remove the Section 3 and the revised adopted draft was approved and became effective on October 25, 2018.

LCB File No. R057-18

This LCB File was adopted by the Personnel Commission at its March 15, 2019, meeting. This file was also submitted to the Legislative Counsel in accordance with the requirements. The LCB File was heard at the June 25, 2019, meeting of the Legislative Commission.

At the meeting, a concern was raised by a member regarding NAC 284.693 in Section 4 of the LCB File. NRS 284.384, in part, defines grievance as "...an injustice relating to any condition arising out of the relationship between an employer and an employee..." Based on this definition, the Division proposed that it be provided the ability to remove a grievance that does involve coworkers, rather than the employment relationship. A member of the Commission expressed a concern regarding what options an employee has when an issue arises between coworkers.

Peter Long explained to the Commission that such a grievance does not meet the definition of a grievance pursuant to statute and that there are alternative avenues for redress such as mediation.

Action was taken at the meeting to defer LCB File No. R057-18. Subsequently, the decision was made to withdraw the LCB File.

**REVISED ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R118-17

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-3, NRS 284.065, 284.155, 284.383 and 284.385; §4, NRS 284.065, 284.155 and 284.407.

A REGULATION relating to the State Personnel System; requiring employees to report professional disciplinary action and disciplinary action relating to a driver's license in certain circumstances; revising provisions relating to requesting an employee to submit to and providing transportation to and from a drug or alcohol screening test; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Personnel Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations to carry out the provisions governing the State Personnel System. (NRS 284.065) Existing law further requires the Commission to adopt a code of regulations for the classified service of the State of Nevada. (NRS 284.155) The classified service of the State of Nevada is comprised of all positions in the public service that are lawfully designated as being in the classified service. (NRS 284.150)

Existing law requires the Commission to adopt regulations that set forth a system for administering disciplinary measures against a state employee in which, except in cases of serious violations of law or regulations, less severe measures are first used, after which more severe measures are applied if the less severe measures did not work. (NRS 284.383) Existing law authorizes an appointing authority to: (1) dismiss or demote any permanent classified employee; and (2) suspend without pay, for disciplinary purposes, a permanent employee for a period not to exceed 30 days. (NRS 284.385) Existing regulations set forth various situations when appropriate disciplinary or corrective action may be taken. (NAC 284.650) Existing regulations additionally set forth the system for administering disciplinary measures by detailing when a warning, written reprimand, suspension or demotion of an employee may occur. (NAC 284.638, 284.642) Existing regulations further set forth when an appointing authority may dismiss an employee. (NAC 284.646)

Section 1 of this regulation requires an employee to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or a driver's license to his or her appointing authority within 5 working days after it occurs if such a license, certificate or permit is required for the employee's position. If the employee fails to make the required report within 5 working days, **section 1** authorizes the appointing authority to immediately

dismiss the employee or to take appropriate disciplinary or corrective action against the employee. **Sections 2 and 3** of this regulation make conforming changes.

Existing regulations authorize an appointing authority to immediately dismiss an employee if: (1) the appointing authority has reasonable cause to believe that retaining the employee on active duty poses a threat to life, limb or property or may be seriously detrimental to the interests of the State; and (2) temporarily assigning the employee to different duties is not feasible. Existing regulations provides that before immediately dismissing such an employee, the appointing authority, his or her designated representative or the employee's supervisor are required to: (1) attempt to inform the employee before the dismissal occurs of the charges against the employee; and (2) provide the employee with an opportunity to rebut the charges. Procedural notice and hearing requirements must be followed as soon as practicable after the immediate dismissal of the employee occurs. (NAC 284.6563) **Section 2** authorizes an appointing authority to immediately dismiss an employee for certain causes pursuant to the standards and procedures set forth in existing regulations.

Existing law authorizes an appointing authority to request an employee to submit to a screening test if the appointing authority reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs which are impairing the employee's ability to perform the employee's duties safely and efficiently. (NRS 284.4065) If an employee is required to submit to a screening test pursuant to existing law, existing regulations require the appointing authority of the employee to provide transportation for the employee: (1) to the location of the test; and (2) after the employee submits to the screening test, to his or her home. (NAC 284.890) **Section 4** of this regulation requires the appointing authority to provide transportation for the employee to the location of the screening test only in certain circumstances. **Section 4** further requires the appointing authority, after an employee submits to the screening test, to: (1) provide transportation for the employee to his or her home; (2) assist the employee in arranging transportation; or (3) arrange for emergency medical assistance if the appointing authority or any other person reasonably believes that the employee needs emergency medical assistance, whichever is most appropriate.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

1. An employee must report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license to his or her appointing authority within 5 working days after the suspension, revocation or cancellation occurs if the employee was required to possess the professional or occupational license, certificate or permit or driver's license at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided

to the employee at the time of appointment, or required thereafter pursuant to federal or state law.

2. If an employee fails to make the report required pursuant to subsection 1:

(a) The appointing authority may immediately dismiss the employee pursuant to subsection 2 of NAC 284.646; or

(b) Appropriate disciplinary or corrective action may be taken against the employee pursuant to NAC 284.650.

Sec. 2. NAC 284.646 is hereby amended to read as follows:

284.646 1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:

(a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause; or

(b) The seriousness of the offense or condition warrants such dismissal.

2. An appointing authority may immediately dismiss an employee *pursuant to the standards and procedures set forth in NAC 284.6563* for the following causes, unless the conduct is authorized pursuant to a rule or policy adopted by the agency with which the employee is employed:

(a) Intentionally viewing or distributing pornographic material at the premises of the workplace, including, without limitation, intentionally viewing or distributing pornographic material on any computer owned by the State, unless such viewing or distributing is a requirement of the employee's position ; ~~†~~

(b) Unauthorized release or use of confidential information ; ~~†~~

(c) Participation in sexual conduct on the premises of the workplace, including, without limitation, participation in sexual conduct in a vehicle that is owned by the State ; ~~+~~

(d) Absence without approved leave for 3 consecutive days during which the employee is scheduled to work ; ~~+~~

(e) The suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law ; ~~+~~

(f) Threatening another person with a deadly weapon during any time in which the employee is:

(1) On the premises of the workplace; or

(2) Conducting state business or otherwise performing any duties of employment ; ~~+~~

(g) Stealing or misappropriating any property that is owned by the State or located on state property ~~+~~ ; *or*

(h) Failure to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license when required pursuant to section 1 of this regulation.

3. The rights and procedures set forth in NAC 284.655 to 284.6563, inclusive, apply to any dismissal made pursuant to this section.

4. As used in this section:

(a) "Material" has the meaning ascribed to it in NRS 201.2581.

(b) "Nudity" has the meaning ascribed to it in NRS 201.261.

(c) "Pornographic material" means material that, all or in part, contains any description or representation of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of adults and is without serious literary, artistic, political or scientific value.

(d) "Sado-masochistic abuse" has the meaning ascribed to it in NRS 201.262.

(e) "Sexual excitement" has the meaning ascribed to it in NRS 201.264.

Sec. 3. NAC 284.650 is hereby amended to read as follows:

284.650 Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.
2. Disgraceful personal conduct which impairs the performance of a job or causes discredit to the agency.
3. The employee of any institution administering a security program, in the considered judgment of the appointing authority, violates or endangers the security of the institution.
4. Discourteous treatment of the public or fellow employees while on duty.
5. Incompetence or inefficiency.
6. Insubordination or willful disobedience.
7. Inexcusable neglect of duty.
8. Fraud in securing appointment.
9. Prohibited political activity.
10. Dishonesty.

11. Abuse, damage to or waste of public equipment, property or supplies because of inexcusable negligence or willful acts.
12. Drug or alcohol abuse as described in NRS 284.4062 and NAC 284.884.
13. Conviction of any criminal act involving moral turpitude.
14. Being under the influence of intoxicants, a controlled substance without a medical doctor's prescription or any other illegally used substances while on duty.
15. Unauthorized absence from duty or abuse of leave privileges.
16. Violation of any rule of the Commission.
17. Falsification of any records.
18. Misrepresentation of official capacity or authority.
19. Violation of any safety rule adopted or enforced by the employee's appointing authority.
20. Carrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his or her appointing authority.
21. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.
22. Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning sexual harassment.
23. Failure to participate in an administrative investigation authorized by the employee's appointing authority.

24. Failure to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license when required pursuant to section 1 of this regulation.

Sec. 4. NAC 284.890 is hereby amended to read as follows:

284.890 *1.* If an *appointing authority requests an* employee ~~is required~~ to submit to a screening test ~~is~~ *based on a reasonable belief that the employee is under the influence of alcohol or a controlled substance or any other drug and the employee has not refused to submit to the screening test*, the appointing authority shall provide transportation for the employee to the location of the test.

2. After the employee submits to the screening test, the appointing authority shall ~~provide~~, *as appropriate:*

(a) Provide transportation for the employee to his or her home ~~is~~ ;

(b) Assist the employee in arranging his or her own transportation; or

(c) Arrange for emergency medical assistance if the appointing authority or any other person reasonably believes, based on objective facts, that the employee is in need of emergency medical assistance.

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R057-18

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-5, NRS 284.065, 284.155, 284.340 and 284.384.

A REGULATION relating to state employees; revising provisions concerning reports on performance; revises provisions relating to adjustment of grievances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires each appointing authority to periodically file a report with the Administrator of the Division of Human Resource Management of the Department of Administration on the performance of certain employees. (NRS 284.340) Existing regulations prescribe the procedure for the preparation, discussion and filing of a report on performance. (NRS 284.470, 284.474, 284.478) Existing regulation requires the immediate supervisor of an employee to discuss the report on performance with the employee or to mail such a report to the employee if the employee is unavailable to discuss the report because of an extended absence. Existing regulation also requires such an employee who contests the report on performance and requests a review to respond to the report in writing and return the response to the supervisor. (NAC 284.470) **Section 1** of this regulation requires that the discussion of the report on performance occur between the employee and the person who prepared the report, which may not be the employee’s immediate supervisor. **Section 1** also clarifies the manner in which an employee completes his or her portion of the report, including a request for a review of the report by the appointing authority. **Section 1** also expands the methods by which the person who prepared a report may transmit such a report to an unavailable employee and by which the unavailable employee may transmit a report from only mail to other reasonable methods of delivery that provide a written or electronic record of the date on which the report is received, except for social media.

Section 1 additionally: (1) removes the requirement that a reviewing officer review a contested report on performance and submit a recommendation to the appointing authority regarding the report and instead only requires the appointing authority to review such a report; and (2) changes the number of days in which the appointing authority must render a final decision regarding such a report from 10 working days to 20 working days. **Sections 2, 3 and 5** of this regulation make conforming changes.

Existing regulations define “rating of performance” to mean the overall rating of an employee’s performance which is included in the report on performance of an employee. (NAC

284.0915) **Section 1** removes redundant references to “overall” with respect to a rating of performance without altering any substantive requirements.

Existing regulation prescribes the actions that the Division is required to take if a request for the adjustment of a grievance is not eligible for the procedures for adjusting grievances. (NAC 284.693) **Section 4** of this regulation clarifies that the procedures for adjusting grievances do not apply to situations involving coworkers and to persons who were rejected during their trial periods.

Section 1. NAC 284.470 is hereby amended to read as follows:

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

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

3. A report on performance must be filed *with the Administrator* at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee.

4. If a report on performance is filed on or before the times specified in NRS 284.340, the ~~overall~~ rating of performance of the employee will be reflected in the employee’s file of employment and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194.

5. If a report on performance is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard for the purpose of determining the salary of the employee and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194. If an untimely report on performance:

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

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

6. If the performance of an employee falls below standard, his or her supervisor shall inform the employee promptly and specifically of the deficiencies in the performance of the employee regardless of whether a report on performance of the employee is ~~completed~~ prepared or filed.

7. If any information that would have affected the rating of performance of an employee during a period of evaluation becomes available after the date on which the report on performance of the employee is filed for that period, the information may be included in the report on performance for the current period of evaluation and taken into consideration in determining the rating of performance for the current period of evaluation.

8. When a report on performance is given which reports the ~~overall~~ rating of performance of an employee as substandard:

(a) The report must contain a written notice that such reports affect merit pay increases; and

(b) An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard or disciplinary action is taken against the employee.

9. Except as otherwise provided in subsection 10, the preparation of each report on performance must include a discussion between the employee and ~~this or her immediate~~

~~supervisor.} the person who prepared the report.~~ Within 10 working days after the discussion takes place ~~};~~

~~—(a) The} and the employee receives the report on performance signed by the person who prepared the report, the~~ employee must ~~complete and sign the appropriate section on the report on performance and return the report to the supervisor for forwarding to the reviewing officer or appointing authority.~~

~~—(b)} :~~

(a) Indicate in the appropriate section of the report whether the employee agrees or disagrees with the report and, if he or she disagrees, whether the employee requests a review of the report by the appointing authority. If the employee ~~contests} requests a review of~~ the report on performance , ~~and requests a review,} he or she must respond to the report in writing, identify the specific points} specify each point~~ of ~~contention, if such specificity is provided, and return the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the contested report on performance and render a final decision to the employee within 10 working days after receiving the recommendation.} disagreement with the report, in writing, in the appropriate section of the report or in a document attached to the report.~~

(b) Return the report to the person who prepared the report for forwarding to the appointing authority for its agreement or revision and signature.

10. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 9 because of an extended absence, the ~~immediate supervisor of the employee~~ *person who prepared the report* shall *sign the report and* cause the report to be ~~mailed~~ *sent* to the employee ~~+~~ *by any reasonable means of delivery that provides a written or electronic record of the date on which the report is received, except for social media.* Within 10 working days after the date on which the employee receives the ~~report:~~

~~—(a) The~~ *report on performance, the* employee must ~~complete and sign the appropriate section on the report on performance and mail the report to the supervisor for forwarding to the appointing authority or reviewing officer.~~

~~—(b)~~ :

(a) Indicate in the appropriate section of the report whether the employee agrees or disagrees with the report and, if he or she disagrees, whether the employee requests a review of the report by the appointing authority. If the employee ~~contests~~ *requests a review of* the report on performance , ~~and requests a review,~~ he or she must ~~respond to the report in writing, identify any specific~~ *specify each* point of ~~contention, if the report provides such specificity, and mail the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The~~ *disagreement with the report, in writing, in the appropriate section of the report or in a document attached to the report.*

(b) Send the report by any reasonable means of delivery that provides a written or electronic record of the date on which the report is received, except for social media, to the person who prepared the report for forwarding to the appointing authority for its agreement or revision and signature.

11. If the employee requested a review of the report on performance pursuant to subsection 9 or 10, the appointing authority shall ~~review the recommendation of the reviewing officer regarding the report on performance and render~~, within 20 working days after the date on which the person who prepared the report on performance received the report from the employee:

(a) Render a ~~final~~ decision ~~to the employee within 10 working days after receiving the recommendation. For the purposes of this paragraph, a report on performance or request for review is deemed to have been received on the third day after the date on which the report or request is postmarked.~~

~~11.~~ ~~A~~ regarding the report on performance and indicate that decision in the appropriate section of the report or in a document attached to the report;

(b) Sign the report on performance;

(c) Send a copy of the report on performance, including any attachment, to the employee and the person who prepared the report; and

(d) File a copy of the report on performance with the Administrator.

12. If an employee did not request a review of a report on performance pursuant to subsection 9 or 10, a copy of ~~each~~ the report on performance ~~and, if applicable, any written response to such a report requested by an employee pursuant to subsection 9 or 10,~~ signed by

the appointing authority must be provided to the employee and filed with the ~~Division of Human Resource Management.~~

~~12.~~ *Administrator.*

13. If any written comments are added to a report on performance after a copy of the report has been provided to the employee pursuant to subsection 11 ~~11~~ *or 12:*

(a) A copy of the revised report which includes the written comments must be provided to the employee; and

(b) The employee may respond, in writing, to the additional comments in the revised report not later than 10 working days after receiving a copy of the revised report and submit the response to the ~~Division of Human Resource Management~~ *Administrator* for inclusion in his or her file of employment.

~~13.~~ **14.** An employee and his or her appointing authority or the designee of the appointing authority may agree in writing to extend one or more of the periods prescribed in ~~subsection 9 or 10.~~

~~14.~~ ~~If a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the~~ *this section.*

15. *An* employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive ~~11~~, *if:*

(a) *The appointing authority failed to respond to a request for review of the report on performance from the employee within the time required by this section; or*

(b) *The employee disagrees with the report on performance after receiving a copy of the report from the appointing authority pursuant to subsection 11 or 12.*

16. For the purposes of subsections 10 and 11, a report on performance that is sent by any reasonable means of delivery that provides a written or electronic record of the date on which the report is received, except for social media, is deemed to have been received on:

- (a) The third day after the date on which the report is postmarked;*
- (b) The date on which the report is sent by an electronic mail program or service; or*
- (c) The third day after the report is sent by any other delivery service.*

17. As used in this section, “social media” :

(a) Includes, without limitation, any electronic service or account or electronic content, including, without limitation, any video, photograph, blog, podcast, instant message or text message.

(b) Does not include an electronic mail program or service.

Sec. 2. NAC 284.678 is hereby amended to read as follows:

284.678 1. Except as otherwise provided in subsections 3 and 4 and NAC 284.692, an employee who feels aggrieved and wishes to file a formal grievance must submit the grievance in writing to his or her immediate supervisor on the official form, or in a letter if the official form is not available, within 20 working days after the date of the event leading to the grievance or the date the employee learns of the event leading to the grievance. The parties should make every effort to resolve the grievance through informal discussions within these 20 working days.

2. If the employee submits a letter, it must include:

- (a) His or her name;
- (b) His or her most recent date of hire;
- (c) His or her position;
- (d) His or her department, division and section;

- (e) His or her mailing address;
- (f) His or her business telephone number;
- (g) A statement that he or she is filing a formal grievance;
- (h) The date, time and place of the event leading to the grievance or the date the employee learns of the event leading to the grievance;
- (i) A concise statement of the grievance;
- (j) A detailed description of the grievance, including the names of other persons involved in the event, if any;
- (k) A proposed solution of the grievance;
- (l) His or her signature; and
- (m) The date he or she signed the statement.

3. Except as otherwise provided in *this subsection and* NAC 284.692, if a grievance relates to a contested report on performance, an employee must file a grievance that identifies ~~the~~ *any* specific ~~points~~ *point* of ~~contention, if such specificity is provided,~~ *disagreement with the report* not later than 10 working days after the date the employee receives a ~~decision regarding the review conducted by~~ *copy of the report from* the appointing authority pursuant to NAC 284.470. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of ~~a reviewing officer or~~ *an* appointing authority to respond to a request for a review within the time required by NAC 284.470, an employee must file a grievance not later than 10 working days after the date on which the time for such a response expired.

4. A grievance filed pursuant to subsection 3 must be filed with:

- (a) The person who is at the next appropriate level of the grievance process; or

(b) If the person who is at the next appropriate level of the grievance process is the ~~reviewing officer or other~~ person who prepared or reviewed the report on performance, the person who is at the next appropriate level of the grievance process above ~~such reviewing officer or other~~ *the* person who prepared or reviewed the report on performance.

5. A grievance regarding a report on performance must be filed with the highest administrator in the department pursuant to NAC 284.690 before being submitted to the Committee pursuant to NAC 284.695.

Sec. 3. NAC 284.690 is hereby amended to read as follows:

284.690 1. Except as otherwise provided in NAC 284.692:

(a) If the employee has not received satisfactory relief within 10 working days after his or her grievance is deemed to have been received by the head of the division, he or she may file the grievance with the highest administrator of the department; and

(b) Within 10 working days after the employee's grievance is deemed to have been received by the highest administrator of the department, the highest administrator or the designee of the highest administrator shall:

(1) Gather information regarding the grievance;

(2) Render a decision resolving the grievance, including, without limitation, denying the grievance; and

(3) Notify the employee of the resolution.

2. In rendering a decision concerning a *contested* report on performance, an administrator shall address the findings of fact to the specific points of ~~contention~~ *disagreement* referred to in the grievance of the employee.

3. Within the established time limitations, including any extensions to those time limitations obtained pursuant to NAC 284.692, the highest administrator may appoint a person or committee composed of managers and employees to assist in the finding of facts and recommending a course of action.

Sec. 4. NAC 284.693 is hereby amended to read as follows:

284.693 1. ~~If the~~ *The* Division of Human Resource Management *must take the actions described in subsection 2 if the Division* determines that a request for the adjustment of:

(a) A grievance is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because ~~the~~ :

(1) *The* person who submitted the request is not a person described in subsection 2 of NAC 284.658 , *including, without limitation, because the act, omission or occurrence only involves a coworker;*

(2) *The person who submitted the request was rejected during his or her trial period pursuant to NAC 284.458;* or ~~because a~~

(3) *A* hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 . ~~is or~~

(b) A complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in paragraph (a) of subsection 4 of NRS 281.755 . ~~is~~

~~the Division must take the actions described in subsection 2.~~

2. Upon making a determination pursuant to subsection 1 that a request for the adjustment of a grievance or complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, the Division must, as soon as practicable:

(a) Remove the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive; and

(b) Provide to the person who submitted the request and the agency in which the grievance or complaint arose:

(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, and an explanation for that determination;

(2) Notice that the Division has removed the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive;

(3) If applicable, information relating to the appropriate procedure for resolving the person's concern; and

(4) Information relating to the person's right to appeal the determination to the Committee.

3. If the Division of Human Resource Management determines that a request for the adjustment of a grievance or complaint is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.

Sec. 5. NAC 284.097, 284.474 and 284.478 are hereby repealed.

TEXT OF REPEALED SECTIONS

284.097 “Reviewing officer” defined. (NRS 284.065, 284.335, 284.340) “Reviewing officer” means:

1. The supervisor of the person who prepared a report on performance of an employee; or
2. Such other person designated by the appointing authority,

↳ who reviews the report on performance upon the request of the employee pursuant to paragraph (b) of subsection 9 of NAC 284.470.

284.474 Employee entitled to copy of report. (NRS 284.065, 284.155, 284.340) Each employee must be given a copy of the report prepared by the supervisor measuring the employee’s performance and development on the job. The report will not become official until signed by the rater. If requested, a copy must be provided to the employee at the time of the discussion between the supervisor and the employee. After the processing has been completed, a copy with all appropriate signatures will be provided the employee.

284.478 Appeal of decision of reviewing officer. (NRS 284.065, 284.155, 284.340, 284.384) Upon completion of the review process conducted pursuant to NAC 284.470, a permanent employee may appeal a contested report on performance through the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

REPORT OF CLASSIFICATION CHANGES NOT REQUIRING PERSONNEL COMMISSION APPROVAL

Attached is a report of changes made to the classification plan pursuant to NRS 284.160, sections 4 through 6 which reads as follows:

“4. The classification plan and changes therein are subject to approval by the Commission, except that the Administrator may make a change in the classification plan without the prior approval of the Commission if:

- (a) The Administrator deems it necessary for the efficiency of the public service;
- (b) The change is not proposed in conjunction with an occupational study; and
- (c) The Administrator, at least 20 working days before acting upon the proposed change:

(1) Provides written notice of the proposal to each member of the Commission, to all departments and to any head of an employees' organization who requests notice of such proposals; and

(2) Posts a written notice of the proposal in each of the principal offices of the Division.

Any occupational study conducted by the Division in connection with the preparation, maintenance or revision of the classification plan must be approved by the Commission.

5. If no written objection to the proposed change to the classification plan is received by the Administrator before the date it is scheduled to be acted upon, the Administrator may effect the change. The Administrator shall report to the Commission any change in the classification plan made without its approval at the Commission's next succeeding regular meeting.

6. If a written objection is received before the date the proposed change is scheduled to be acted upon, the Administrator shall place the matter on the agenda of the Commission for consideration at its next succeeding regular meeting.”

The conditions set forth in these statutes have been met. A copy of the justifications and revised class specifications are on file in the office of the Administrator of the Division of Human Resource Management.

The following changes have been effected:

REPORT OF CLASSIFICATION CHANGES

POSTING#: 1-20
Effective: 09/12/19

CURRENT				APPROVED			
CODE	TITLE	GRADE	EEO-4	CODE	TITLE	GRADE	EEO-4
9.603	Facility Manager	37	H	<i>9.603</i>	<i>Facility Manager</i>	<i>37</i>	<i>H</i>
9.606	Facility Supervisor III	35	H	<i>9.606</i>	<i>Facility Supervisor III</i>	<i>35</i>	<i>H</i>
9.609	Facility Supervisor II	33	H	<i>9.609</i>	<i>Facility Supervisor II</i>	<i>33</i>	<i>H</i>
9.612	Facility Supervisor I	31	H	<i>9.612</i>	<i>Facility Supervisor I</i>	<i>31</i>	<i>H</i>

BASIS FOR RECOMMENDATION

At the request of the Nevada Department of Administration, Public Works Division (PWD), a review was conducted of the Special Requirements of the Minimum Qualifications for the Facility Manager/Supervisor Series.

In consultation with subject matter experts from the PWD and analysts from the Division of Human Resource Management (DHRM), it is recommended that a Special Requirement be added detailing that some positions will require a valid commercial driver's license (CDL) within six months of appointment and as a condition of continuing employment.

A CDL is required to drive a commercial vehicle, which is defined as having a gross combination weight rating of 26,001 pounds or more inclusive of a towed unit(s) within a gross vehicle weight rating of more than 10,000 pounds; or has a gross vehicle weight rating of 26,001 pounds or more; or is designed to transport 16 or more passengers, including the driver; or is of any size and is used in the transportation of hazardous materials that require placarding.

The requirement of the CDL will cover all box trailers, flatbeds and dumps with a gross vehicle weight over 26,001 pounds that are part of the PWD and/or other Departments/Divisions that will utilize this series.

In addition, minor changes were made to the series concept, class concept and Education & Experience section of the Minimum Qualifications at every level to maintain consistency with verbiage, formatting and structure.

Throughout the review, management and human resource staff within the Public Works Division and analysts within DHRM participated by offering recommendations and reviewing changes as the process progressed and they support the recommended changes.

POSTING#: 2-20
Effective: 10/03/19

CURRENT				APPROVED			
CODE	TITLE	GRADE	EEO-4	CODE	TITLE	GRADE	EEO-4
	<i>New</i>			5.222	<i>Educator Licensing Analyst II</i>	35	<i>B</i>
5.221	Teacher Licensing Analyst	33	B	5.221	<i>Educator Licensing Analyst I</i>	33	<i>B</i>
	<i>New</i>			5.219	<i>Educator Licensing Analyst Trainee</i>	31	<i>B</i>

BASIS FOR RECOMMENDATION

As the result of an Individual Classification Study (NPD-19) and in partnership with Subject Matter Experts from the Department of Education (DOE) and analysts within the Division of Human Resource Management (DHRM), it was determined that two new levels in the Teacher Licensing Analyst series be created to account for a supervisory level and a trainee level. Furthermore, it was determined that the classes within the series be renamed Educator Licensing Analyst to be consistent with verbiage utilized in the Educator Licensure Section within DOE.

Educator Licensing Analysts evaluate transcripts and determine eligibility for educator licensure for one of two geographical division of the State.

- a) The newly established Educator Licensing Analyst II, in addition to performing the full range of duties described in the series concept, will oversee the day-to-day activities of the unit and supervise lower level Educator Licensing Analysts. Incumbents ensure compliance with agency, statutory, and regulatory rules, regulations, policies and procedures; monitor business processes for efficiency and ease of use and make recommendations for changes; assist in the development of rules, regulations, policies and procedures; assist in budget development and monitoring; respond to customer complaints; develop analytical, narrative and statistical reports on unit activities; coordinate with Information Technology staff and vendors in the development, implementation and maintenance of unit databases and computer systems; testify in support of initiatives and proposed statutory/regulation changes on behalf of the department; attend meetings on behalf of leadership; and provide testimony and/or technical assistance regarding educator licensure. This will be the supervisory level in the series.
- b) The existing Teacher Licensing Analyst is renamed to Educator Licensing Analyst I and will perform the full range of duties described in the series concept. This will be the journey level in the series.
- c) The Educator Licensing Analyst Trainee receives training in performing duties described in the series concept. This is the trainee level in the series and incumbents may progress to the next level upon meeting the minimum qualifications, satisfactory performance and with the approval of the appointing authority.

It is recommended that the Educator Licensing Analyst II be allocated at grade 35 and the Educator Licensing Analyst Trainee at a grade 31. This is a two-grade differential between levels in the series, which is consistent with most class specifications within State service. The

EEO-4 job category will remain at the category “B – Professional” which are occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge.

In addition, representative duties were added to the series concept to account for the responsibility incumbents have regarding interpreting and explaining policies, regulations and requirements; responding to requests for information; and developing, compiling, organizing, consolidating and submitting documentation.

Lastly, minor changes were made to the existing Teacher Licensing Analyst, newly titled Educator Licensing Analyst I, to maintain consistency with formatting and structure.

Throughout the review, management staff within DOE and analysts within DHRM participated by offering recommendations and reviewing changes as the process progressed and they support the recommended changes.