

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Adoption and Amendment
of Regulations of the
Personnel Commission

The Personnel Commission will hold a public hearing at 9:00 a.m. on December 7, 2018, at the State Library and Archives, Room 110, 100 North Stewart Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 1400, 555 East Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations will not result in an increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.

| <u>LCB File:</u> | <u>Section:</u> | <u>NAC:</u> | <u>Leadline or Description</u> |
|-------------------------|------------------------|--------------------|--|
| R163-18 | Sec.1 | NEW | Restoration of permanent employee who voluntarily transfers and either fails to complete trial period in the new position or voluntarily chooses to revert to his or her prior position. |
| | Sec. 2 | 284.058 | “Eligible person” defined. |
| | Sec. 3 | 284.108 | “Trial period” defined. |
| | Sec. 4 | 284.444 | Application of probationary period. |
| | Sec. 5 | 284.448 | Time not counted toward completion of probationary period. |
| R164-18 | Sec. 1 | 284.172 | Rate of pay: Effect of promotion. |
| | Sec. 2 | 284.204 | Adjustment of steps within same grade: Conditions for approval; request; effective date; revocation. |
| | Sec. 3 | 284.206 | Special adjustments to pay. |
| | Sec. 4 | 284.360 | Certification and provision of certain lists by Division of Human Resource Management; certification of eligible persons on ranked or unranked lists or waiver of lists. |
| | Sec. 5 | 284.374 | Active lists: Removal and reactivation of names; no requirement or refusal to consider certain persons. |
| | Sec. 6 | 284.437 | Underfilling of positions. |
| R166-18 | Sec. 1 | 284.468 | Standards for performance of work. |
| | Sec. 2 | 284.576 | Catastrophic leave: Use and administration; appeal of denial. |
| R175-18 | Sec. 1 | | Amends Chapter 284 to add sections 2 and 3. |
| | Sec. 2 | NEW | “Gender identity or expression” defined. |

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| Sec. 3 | NEW | “Sexual orientation” defined. |
| Sec. 4 | 284.010 | Definitions. |
| Sec. 5 | 284.114 | Affirmative action program and equal employment opportunity. |
| Sec. 6 | 284.374 | Active lists: Removal and reactivation of names; no requirement or refusal to consider certain persons. |
| Sec. 7 | 284.470 | Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances. |
| Sec. 8 | 284.602 | Resignations. |
| Sec. 9 | 284.718 | Confidential records. |
| Sec. 10 | 284.726 | Access to confidential records. |

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Administration, Division of Human Resource Management, 209 East Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Frank Richardson. Written submissions must be received by the Division of Human Resource Management on or before December 7, 2018. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted and amended will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted and amended will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada, and 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption and amendment of any regulation, the agency, if requested to do so by an interested person, either before adoption and amendment, or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and amendment, and incorporate therein its reason for overruling the consideration urged against its adoption and amendment.

This notice of hearing has been posted at the following locations:

Carson City

Blasdel Building, 209 East Musser Street

Nevada State Library & Archives Building, 100 North Stewart Street

Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Grant Sawyer Building, 555 East Washington Avenue

Websites

Legislative Counsel Bureau website: www.leg.state.nv.us

Nevada Public Notice website: <http://notice.nv.gov>

Division of Human Resource Management website: www.hr.nv.gov

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R163-18

Section 1: NEW Restoration of permanent employee who voluntarily transfers and either fails to complete trial period in the new position or voluntarily chooses to revert to his or her prior position.

This amendment, proposed by the Division of Human Resource Management, will lay out the options for an employee if he or she voluntarily transfers to a position and either fails to complete the trial period in the position or voluntarily chooses to revert to the position from which they transferred. If a permanent employee voluntarily transfers and fails to complete the trial period in the new position, or chooses to revert, he or she must be restored to the position from which the employee transferred if such position is vacant, or to the same class that is vacant, to a comparable class that is vacant and which the employee meets the minimum qualifications, or be placed on a reemployment list.

Section 2: NAC 284.058 “Eligible person” defined.

This amendment, proposed by the Legislative Counsel Bureau, will include lists that do not require competition into the types of lists for which an individual could be considered an “eligible person.”

Section 3: NAC 284.108 “Trial period” defined.

This amendment, proposed by the Division of Human Resource Management, expands the definition of “trial status” to include the 6-month or 1-year period an employee who voluntarily transfers must serve.

Section 4: NAC 284.444 Application of probationary period.

This amendment, proposed by the Division of Human Resource Management, will require a permanent employee who voluntarily transfers to serve a trial period.

Section 5: NAC 284.448 Time not counted toward completion of probationary period.

This amendment makes a conforming change based on the amendments proposed in other sections of this LCB File.

**REVISED PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R163-18

October 19, 2018

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

AUTHORITY: §1, NRS 284.065, 284.155 and 284.375; §§2 and 3, NRS 284.065; §4, NRS 284.065, 284.155, 284.290 and 284.300; §5, NRS 281.145, 284.065, 284.155, 284.290 and 284.345.

A REGULATION relating to the State Personnel System; requiring a permanent employee who voluntarily transfers to certain classes to serve a trial period; requiring certain permanent employees who voluntarily transfer to certain classes to be restored to his or her former position or to be otherwise placed in another position or on a reemployment list; revising the definition of the term “eligible person”; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Personnel Commission to adopt: (1) regulations to carry out the provisions governing the State Personnel System; and (2) a code of regulations for the classified service. (NRS 284.065, 284.155)

Existing regulations set forth when a probationary or trial period applies to certain employees. (NAC 284.444) **Section 4** of this regulation requires a permanent employee who voluntarily transfers to any vacant position in the same class or a comparable class to serve a trial period. **Section 5** of this regulation makes conforming changes. Existing regulations define “trial period” to mean the 6-month or 1-year probationary period served by a permanent employee who has been promoted to a vacant position. (NAC 284.108) **Section 3** of this regulation makes conforming changes by applying the probationary period to a permanent employee who has been promoted to or who voluntarily transferred to a vacant position.

Existing law authorizes transfers to be made from one position to another position within the same grade under certain circumstances. (NRS 284.375) Existing regulations authorize an employee to request a transfer to certain positions that are in the same class or a comparable class as the employee’s current class. (NAC 284.390) **Section 1** of this regulation requires a permanent employee who voluntarily transfers to any vacant position in the same class or a

comparable class and who fails to complete his or her trial period or who voluntarily reverts back to his or her former class to be restored to his or her former position or to be otherwise placed in another position or on a reemployment list. **Section 1** additionally requires written notice to be given to the agency from which the employee voluntarily transferred in such situations.

Existing law requires the Commission to adopt regulations requiring that an appointee who is promoted to a position and fails to attain a permanent status in the position to which the appointee was promoted must be restored to the position from which the appointee was promoted unless the position has been filled by an employee with greater seniority. (NRS 284.300) Existing regulations, adopted pursuant to existing law, provide such requirements. (NAC 284.462) **Section 1** clarifies that the provisions of **section 1** do not apply to existing regulations as **section 1** applies to a permanent employee who voluntarily transfers to any vacant position while existing regulations apply to an employee who is promoted to a position.

Existing regulations provide the types of lists of eligible persons and the required priority for such lists, with the following lists receiving first priority: (1) reemployment lists; (2) lists of certain persons with disabilities; (3) transfer lists; and (4) divisional promotional lists. (NAC 284.358) Existing regulations define “eligible person” as any person who applies, is eligible, competes and successfully passes all phases of an examination and is placed on an appropriate eligible list. (NAC 284.058) **Section 2** of this regulation revises the definition of the term “eligible person,” in part, to include any person who is eligible to be placed on a: (1) reemployment list; (2) list of certain persons with disabilities; (3) transfer list; or (4) divisional promotional list.

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

1. If a permanent employee voluntarily transfers and the permanent employee fails to complete his or her trial period in the position to which he or she voluntarily transferred or voluntarily chooses to revert to his or her previous position, the permanent employee must, in the following order, be:

(a) Restored to the position from which the employee voluntarily transferred, if that position is vacant;

(b) If the position from which the employee voluntarily transferred is not vacant, appointed to another position in the agency from which the employee voluntarily transferred:

(1) For which a vacancy exists; and

(2) Which is in the same class as the position held by the employee immediately before he or she voluntarily transferred;

(c) If the position from which the employee voluntarily transferred is not vacant and a position described in paragraph (b) does not exist, appointed to a position in the agency from which the employee voluntarily transferred:

(1) For which a vacancy exists;

(2) Within a comparable class to the class of the position held by the employee immediately before he or she voluntarily transferred; and

(3) For which the employee meets the minimum qualifications;

(d) If the position from which the employee voluntarily transferred is not vacant and a position described in paragraph (b) or (c) does not exist, appointed to a position in the agency from which the employee voluntarily transferred:

(1) For which a vacancy exists;

(2) Within a class lower than the class of the position held by the employee immediately before he or she voluntarily transferred; and

(3) For which the employee meets the minimum qualifications; or

(e) If the position from which the employee voluntarily transferred is not vacant and a position described in paragraph (b), (c) or (d) does not exist, placed on the reemployment list for other classes:

(1) Which are equal to or lower than the class of the position held by the employee immediately before he or she voluntarily transferred; and

(2) For which the employee meets the minimum qualifications.

2. If an employee fails to complete the trial period and is restored to his or her former position or otherwise placed pursuant to subsection 1, the appointing authority which takes such action must give written notice to the agency from which the employee voluntarily transferred at least 30 calendar days before the effective date of the action. The agency which is taking the action is liable for the payment of the employee during this 30-day period unless the agency receiving the employee agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if notice of the action has been provided to the employee and filed with the Division of Human Resource Management on or before the last day of his or her trial period, even though the action takes place after the last day of the trial period.

3. If an employee voluntarily chooses to revert to his or her previous position and is restored to his or her former position or otherwise placed pursuant to subsection 1, the employee must notify the agency to which the employee voluntarily transferred. The agency to which the employee voluntarily transferred must then give written notice to the agency from which the employee voluntarily transferred at least 30 calendar days before the effective date of the action. The agency which is taking the action is liable for the payment of the employee during this 30-day period unless the agency receiving the employee agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if notice of the action has been filed with the Division of Human Resource Management on or

before the last day of his or her trial period, even though the action takes place after the last day of the trial period.

4. The provisions of this section do not apply to an employee described in NAC 284.462.

5. As used in this section, “voluntarily transfer” means any movement into a vacant position in the same class or a comparable class by a permanent employee, including, without limitation, transfers governed by NAC 284.390.

Sec. 2. NAC 284.058 is hereby amended to read as follows:

284.058 “Eligible person” means any person who ~~{applies, is eligible, competes}~~ *meets the required minimum qualifications* and :

1. Applies, successfully passes all phases of an examination , *when required*, and is placed on an appropriate eligible list ~~{}~~; *or*

2. Is eligible to be placed on a list described in paragraphs (a) to (d), inclusive, of subsection 1 of NAC 284.358.

Sec. 3. NAC 284.108 is hereby amended to read as follows:

284.108 “Trial period” means the 6-month or 1-year probationary period served by a permanent employee who has been promoted *to or who voluntarily transferred* to a vacant position.

Sec. 4. NAC 284.444 is hereby amended to read as follows:

284.444 1. A probationary employee who transfers:

(a) Within the same class must serve the remaining portion of the probationary period.

(b) From one class to another class must serve a new probationary period.

2. A permanent employee must serve a trial period if he or she voluntarily transfers:

(a) *Within the same class; or*

(b) *From one class to another class and such classes are comparable classes.*

3. An employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period. Except for those unclassified employees who transfer pursuant to subsection 2 of NAC 284.398, the status of a permanent employee may not be attained until the satisfactory completion of the probationary period.

~~[3.]~~ 4. An employee who is reinstated must serve a new probationary period unless it is waived in writing by the appointing authority. If an appointing authority waives the probationary period, the status of the appointment of the employee is permanent.

~~[4.]~~ 5. A probationary employee who is reappointed must serve a new probationary period.

~~[5.]~~ 6. A permanent employee who is reappointed to a class:

(a) At a higher grade level must serve a trial period unless it is waived by the appointing authority.

(b) At the same grade level or a lower grade level is not required to serve a ~~[probationary]~~ *trial* period.

~~[6.]~~ 7. An employee who is laid off, but who is reemployed within 1 year, must serve a new probationary period if reemployed in a different class or in a different department than that from which he or she was laid off, and the employee is subject to the provisions of subsection 8 of NAC 284.630.

~~[7.]~~ 8. A person with a permanent disability arising from a work-related injury or occupational disease who is reemployed in a different class or option than his or her regular position must serve a new probationary period as required by NAC 284.6018.

~~8.~~ **9.** A person who is on a military leave of absence pursuant to NRS 284.359 is entitled to return to the status of appointment held at the time he or she commenced the military leave of absence. If the employee did not complete the probationary period, he or she will only be required to complete the remaining portion thereof. Upon successful completion of the probationary period, permanent status must be granted to the employee as of the date on which permanent status would have been granted if the employee had not taken a military leave of absence.

~~9.~~ **10.** Promotion to a vacant position requires a new probationary *or trial* period. Promotions which result from reclassification are governed by NAC 284.134 and 284.138.

~~10.~~ **11.** Except as otherwise provided in subsection ~~11.~~ **12:**

- (a) No probationary period will be required if a permanent employee is demoted.
- (b) A new probationary period will be required if a probationary employee is demoted.

~~11.~~ **12.** An employee who is restored to his or her former position or class pursuant to NAC 284.462 following a promotional appointment must serve the portion of the trial period which was remaining at the time of the promotion. No probationary period is required if, pursuant to subparagraph (1) of paragraph (c) of subsection 2 of NAC 284.462, an employee is placed in a position in a class equal to or lower than the class held by the employee immediately before the promotion.

Sec. 5. NAC 284.448 is hereby amended to read as follows:

284.448 The following types of leave or temporary status do not count toward the completion of any probationary period:

1. Authorized military leave for active service, as set forth in subsection ~~8~~ 9 of NAC 284.444.
2. Authorized military leave for training beyond the 15 paid working days authorized by NRS 281.145 during a 12-month period, as prescribed in NAC 284.5875.
3. Except as otherwise provided in NAC 284.580, any leave without pay and catastrophic leave, combined, in excess of 240 hours or, in the case of an exempt classified employee, 30 working days, in a year if the regular work schedule of the employee is 80 hours or less biweekly. If the regular work schedule of an employee is more than 80 hours biweekly, the employee must be allotted additional leave without pay and catastrophic leave in proportion to the number of hours his or her regular work schedule exceeds 80 hours biweekly. As used in this subsection, “year” means a period equal to 12 months of full-time equivalent service measured backward from the employee’s pay progression date.
4. Time which is served in a temporary position pursuant to NAC 284.414.
5. Any hours worked which exceed 40 in a week.

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R164-18

Section 1: NAC 284.172 Rate of pay: Effect of promotion.

This amendment, proposed by the Division of Human Resource Management, allows an appointing authority to request an accelerated rate under NAC 284.204 for an employee that is receiving a promotion.

Section 2: NAC 284.204 Adjustment of steps within same grade: Conditions for approval; request; effective date; revocation.

This amendment, proposed by the Division of Human Resource Management, removes subparagraph (c) of subsection 1, which requires maintenance of an appropriate differential, not to exceed two steps, between the base rate of pay of a supervisor and the base rate of pay of an employee of that supervisor. The intent of this amendment is to maintain equity and consistency across State agencies.

Section 3: NAC 284.206 Special adjustments to pay.

This amendment makes conforming changes based on the amendments proposed in other sections of this LCB File.

Section 4: NAC 284.360 Certification and provision of certain lists by Division of Human Resource Management; certification of eligible persons on ranked or unranked lists or waiver of lists.

This amendment will allow the Administrator of the Division of Human Resource Management to make a determination to certify a list of eligible applicants who are not ranked, or to waive the list, in addition to the three options included in subsection 6 of the regulation.

Section 5: NAC 284.374 Active lists: Removal and reactivation of names; no requirement or refusal to consider certain persons.

This amendment, proposed by the Division of Human Resource Management, clarifies that the 12-month period to refuse to consider an eligible person who has been subject to discipline includes decisions by a hearing officer or decisions by any reviewing court.

Section 6: NAC 284.437 Underfilling of positions.

This amendment, proposed by the Division of Human Resource Management, will allow the underfill of a position at any level in a series. An appointing authority may use his or her discretion to underfill a position at or below the journey level. However, an appointing authority must obtain the approval of the Division of Human Resource Management to underfill those positions above the journey level in the series. This changes the current process which only allows a position to be underfilled at or below the journey level.

**REVISED PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R164-18

October 12, 2018

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

AUTHORITY: §§1-3, NRS 284.065, 284.155 and 284.175; §4, NRS 284.065, 284.155 and 284.250; §5, NRS 284.065, 284.155, 284.250 and 284.295; §6, NRS 284.065, 284.155 and 284.305.

A REGULATION relating to the State Personnel System; revising provisions governing the adjustment of steps within a pay grade; revising provisions governing lists of eligible persons for appointment to a position; revising certain provisions concerning the refusal of consideration of certain eligible persons; revising provisions concerning the underfilling of a position; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Personnel Commission to adopt: (1) regulations to carry out the provisions governing the State Personnel System; and (2) a code of regulations for the classified service. (NRS 284.065, 284.155)

Existing law requires the Administrator of the Division of Human Resource Management of the Department of Administration to prepare a pay plan for all employees in the classified service that: (1) must include ranges for each class, grade or group of positions in the classified service; and (2) requires each employee in the classified service to be paid at one of the rates set forth in the pay plan for the class in which the employee is employed. Existing law also requires the Commission to adopt regulations to carry out this pay plan. (NRS 284.175) Existing regulations authorize the Division to approve an adjustment of steps within a pay grade to: (1) allow an appointing authority flexibility in adjusting the rate of pay for a position in certain situations; (2) maintain an equitable relationship in the status of steps among certain employees; and (3) maintain an appropriate differential between the base pay of a supervisor and the base pay of an employee. Before the Division may approve such an adjustment, the appointing authority must submit a request on a certain form that provides certain information. (NAC 284.204) **Section 2** of this regulation removes maintaining an appropriate differential between the base pay of a supervisor and the base pay of an employee as a reason for the Division to

approve an adjustment of steps within a pay grade. Existing regulations provide the procedure that governs the rate of pay which must be paid if an employee is promoted. (NAC 284.172) **Section 1** of this regulation makes existing regulations subject to **section 2**, thereby allowing an appointing authority to request an adjustment of steps for an employee that is receiving a promotion.

Existing law requires the Commission to adopt regulations for the establishment of eligible lists for appointment and promotion, with such lists containing the names of successful applicants. (NRS 284.250) Existing regulations require the Division, upon receiving a request for eligible candidates for a class, to provide, if possible, the following lists in the following order: (1) a reemployment list; (2) any available reassignment lists of certain employees with a disability; (3) any available lists of persons with disabilities who are eligible for temporary limited appointments; (4) any available transfer lists of employees who are entitled to transfer to a position; or (5) if no such lists exist, certify the names of eligible persons on ranked or unranked lists or waive the lists. The Division may certify a list of eligible persons on an unranked list or waive the list for certain classes. (NAC 284.360) **Section 4** of this regulation authorizes the Division also to certify such a list or waive the list for a class which is determined to be appropriate by the Administrator of the Division.

Existing regulations authorize an appointing authority to refuse to consider an eligible person for a class of employment if the eligible person has been subject to a suspension, demotion or termination as a result of a disciplinary action that occurred in the preceding 12 months. This 12-month period begins, in a contested case, on the date the hearing officer issues a final decision upholding the suspension, demotion or termination. (NAC 284.374) **Section 5** of this regulation sets forth that the 12-month period begins, in a contested case, on the date the hearing officer or any reviewing court issues a final decision upholding the suspension, demotion or termination. Existing regulations further require the names of eligible persons to be removed from active lists for certain causes. (NAC 284.374) **Section 5** authorizes the names of eligible persons to be removed from active lists for certain causes.

Existing law authorizes the Commission to adopt regulations which provide for filling positions in the classified service without competition in certain cases. (NRS 284.305) Existing regulations provide for underfilling a position, which is the filling of a position with an employee who holds a position in a lower classification, as a way to fill a position without competition. (NAC 284.110, 284.437) **Section 6** of this regulation allows for the underfilling of a position at any level with such underfilling being accomplished at either the discretion of the appointing authority or, in certain situations, with the approval of the Administrator or his or her designee. **Section 3** of this regulation makes conforming changes.

Section 1. NAC 284.172 is hereby amended to read as follows:

284.172 1. ~~The~~ *Except as otherwise provided in NAC 284.204, the* following provisions govern the rate of pay which must be paid if an employee is promoted:

(a) The employee must be placed at the lowest step in the higher grade that meets one of the following requirements:

(1) If the employee moves one or two grades above his or her former grade, he or she must be placed at the same step in the new grade as the step held in his or her former grade.

(2) If the employee moves three or more grades above his or her former grade, the employee must be placed:

(I) At a step which is equivalent to an increase of two steps above the step held in his or her former grade; or

(II) At the lowest step of the new grade,

↳ whichever pay is higher and in accordance with the provisions of NAC 284.179.

(b) A special adjustment to an employee's pay for performing supervisory duties which is granted in accordance with paragraph (c) of subsection 2 of NAC 284.206 is the present level of pay for the purpose of calculating a promotional increase authorized by paragraph (a) only if the employee has received the special adjustment to his or her pay for more than 6 months of continuous full-time service.

(c) If an employee has been demoted, he or she may not, within 1 year after the demotion, receive a promotional increase in pay that is greater than the increase which he or she would have otherwise been entitled to receive had he or she not been demoted unless the Administrator approves the promotional increase.

(d) This subsection does not apply when an employee is reemployed or reappointed to his or her former grade within 1 year after holding that grade.

2. As used in this section, “present level of pay” means a rate of pay that is equal to the amount that is assigned to the step within the grade which is closest to, but does not exceed, the employee’s pay after a special adjustment to pay pursuant to the provisions of NAC 284.206.

Sec. 2. NAC 284.204 is hereby amended to read as follows:

284.204 1. ~~[The]~~ *Subject to the provisions of subsection 2, the* Division of Human Resource Management may approve an adjustment of steps within the same grade to:

(a) Allow an appointing authority the flexibility to adjust the rate of pay for a position that will be filled by a person from a pool of eligible persons who are applying for the position on an open competitive basis in order to:

(1) Meet a difficult recruiting problem in which an effort to recruit a person for a position or class has failed to produce at least five eligible persons who are available to work, or the recruitment for the position or class has been deemed historically difficult. Such an adjustment of steps may be approved by the Division of Human Resource Management for a class for a period of 1 year.

(2) Employ a person whose education or experience is superior to those of another eligible person and who exceeds the minimum qualifications of the class. Any experience or education which is considered by the appointing authority pursuant to this subparagraph must be given a greater weight for those areas which are directly related to the position than general education and experience.

(b) Maintain an equitable relationship in the status of steps among the employees of the appointing authority if a disparity exists. An adjustment will not be granted pursuant to this section if the disparity in steps is:

(1) Among employees of different departments or agencies; or

(2) A result of:

(I) The length of service of employees;

(II) An adjustment in pay which was attained in a former class; or

(III) An adjustment in pay for an employee who resides in a particular geographical

area.

~~[(c) Maintain an appropriate differential, not to exceed two steps, between the base rate of pay of a supervisor and the base rate of pay of an employee who is in the direct line of authority of the supervisor. An adjustment may be granted pursuant to this paragraph if, before the adjustment, the base rate of pay of the employee is the same or greater than the base rate of pay of the supervisor.]~~

2. Before ~~[granting]~~ *the Division of Human Resource Management may approve* an adjustment of steps pursuant to ~~[this section,]~~ *subsection 1*, the appointing authority must submit a request on a form prescribed by the Division of Human Resource Management to the Division of Human Resource Management which:

(a) Specifies the qualifying conditions and justification for the request; and

(b) Certifies that the appointing authority has, where applicable:

(1) Considered the requirements for the pay required to meet the need described in subparagraph (1) of paragraph (a) of subsection 1;

(2) Considered the qualifications of any other eligible person who is available for work for the purposes of subparagraph (2) of paragraph (a) of subsection 1;

(3) Ensured that the adjustment is feasible on the basis of its fiscal effects; and

(4) Prepared and maintained an accurate record of the consideration of the factors listed in this section.

3. If an adjustment of steps ~~{pursuant to this section}~~ is approved by the Division of Human Resource Management ~~{}~~ *pursuant to subsection 1*, the effective date of such an adjustment is the date on which a request that complies with subsection 2 is received by the Division of Human Resource Management or the personnel office of the department or agency at which the employee who is receiving the adjustment is employed. If a request for an adjustment of steps is delayed because an administrative or clerical error prevented the delivery of the request, the effective date must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment must not exceed 6 months from the date on which the Division of Human Resource Management receives the request.

4. An adjustment of steps which is made pursuant to subparagraph (1) of paragraph (a) of subsection 1 may be revoked when:

(a) The recruiting problem which caused the adjustment was due to the geographical location of the position; and

(b) The employee moves from one position to another position in either a different area within the department or agency in which the employee is currently employed or a different

department or agency than the department or agency in which the employee is currently employed, and a similar recruiting problem does not exist in the new area, department or agency.

~~{→The}~~

5. If an adjustment of steps is revoked pursuant to subsection 4, the employee must be placed at the step he or she would have received if he or she had not received the adjustment.

Sec. 3. NAC 284.206 is hereby amended to read as follows:

284.206 1. The Division of Human Resource Management may approve a special adjustment to the pay of an employee pursuant to this section. A request for a special adjustment to pay may be initiated by an employee, the appointing authority or the Division of Human Resource Management. A special adjustment to pay does not constitute a promotion.

2. An employee may receive a special adjustment to pay equivalent to 5 percent of the employee's base rate of pay during any period in which:

(a) The employee works out of his or her class on a continuing basis and performs essentially all the duties and responsibilities of a position classified at a higher grade. To receive the increase, the employee must be assigned duties and responsibilities of the higher grade which are clearly demonstrated in the class specification and carry out the duties and responsibilities for at least 16 consecutive workdays before the increase becomes effective. The adjustment to pay pursuant to this paragraph is effective retroactively, commencing on the date on which the employee assumed the additional duties and responsibilities. The adjustment to pay must not continue for more than 6 months in any 12-month period unless:

(1) The employee is underfilling a position pursuant to NAC 284.437 . ~~{and recruitment has failed to produce a sufficient number of applicants on the appropriate list.}~~

(2) The duties and responsibilities that the employee has been carrying out have been assumed from one or more positions that have not been authorized to be filled because of a hiring freeze or fiscal emergency. A hiring freeze or fiscal emergency must be certified by the Chief of the Budget Division or, in the case of an agency that does not receive money from the State General Fund or the Nevada System of Higher Education, certified by the administrator of that agency or the System.

(3) The appointing authority submits a written request to the Administrator accompanied by documentation justifying an extension of the 6-month period and certifies that money is available to pay for the continuation of the special adjustment to pay. The Administrator may authorize the continuation of the special adjustment to pay after receiving the request and documentation and determining that the extension of the 6-month period is a business necessity and in the best interest of the State.

(b) The employee is required to use bilingual skills or sign language for persons who are deaf at least 10 percent of his or her work time.

(c) The employee is supervising other employees of the same or a higher grade if the supervision:

(1) Is not part of the supervision or management responsibilities for a program that is provided for in the class specification; and

(2) Includes, without limitation, selection, work assignment, training, work review, reports on performance and discipline of employees.

(d) The employee is required regularly to perform custodial work and clean up human bodily waste in a medical, clinical or inpatient facility.

(e) Except as otherwise provided in this paragraph, the employee is conducting a formal training program for employees. The training program must:

- (1) Be conducted weekly;
- (2) Consist of training on the job and in the classroom or training only in the classroom;
- (3) Include a test to determine the employees' progress in the program; and
- (4) Result in the award of a certificate of completion or advancement in a class series to the journey level.

↪ If an adjustment to pay is granted pursuant to this paragraph, the adjustment begins when the employee starts conducting the training program and ends when the training program is completed. An adjustment will not be granted if the duty to conduct training is clearly set forth in the class specification. Informal orientation given to new employees will not be considered for this special adjustment.

(f) The employee, if employed as a law enforcement officer, is assigned to motorcycle duty.

(g) The employee, if employed by the Department of Corrections, is responsible for the supervision of a group of inmates assigned to a work area of an institution and who is responsible for implementing security procedures, including, without limitation:

- (1) Securing the work area from inmates who are not authorized to enter the work area;
- (2) Accounting for all inmates who have been assigned to the work area; and
- (3) Accounting for all materials, tools and equipment in the work area.

↪ The adjustment to pay pursuant to this paragraph will be granted only if such duties are not provided for in the class specification.

(h) The employee is authorized by the Legislature to receive such an adjustment to his or her pay.

3. An employee may receive a special adjustment to pay if he or she occupies a position in which the duties have been recognized through the classification process as being at a higher level, but who does not meet the minimum qualifications for the class. The special adjustment to the employee's pay must be equivalent to 2.5 percent of the employee's base rate of pay if the employee performs duties classified one grade higher than his or her current position, or 5 percent of the employee's base rate of pay if the employee performs duties classified two or more grades higher than his or her current position. A special adjustment to an employee's pay made pursuant to this subsection may continue in effect from the date on which the position questionnaire is received:

- (a) Until the employee meets the minimum qualifications and is promoted;
- (b) For 1 year after the effective date of the special adjustment to pay; or
- (c) Until the date the higher level duties are removed,

↳ whichever occurs first.

4. Except as otherwise provided in paragraph (a) of subsection 2, any special adjustment to pay made pursuant to subsection 2 must be revoked when the conditions justifying it cease to exist.

5. Except as otherwise provided in this section, the effective date of a special adjustment to pay is the date on which the written request is received by the Division of Human Resource Management or the personnel office of the agency at which the employee who is receiving the special adjustment to pay is employed. If the request for the special adjustment to pay is delayed

because an administrative or clerical error prevented its delivery, the effective date of the special adjustment to pay must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment to pay must not exceed 6 months from the date on which the Division of Human Resource Management receives the written request.

Sec. 4. NAC 284.360 is hereby amended to read as follows:

284.360 1. After being contacted by an appointing authority pursuant to subsection 3 of NAC 284.358 regarding the availability of eligible candidates in a specific class, the Division of Human Resource Management must verify the availability of a reemployment list for that class. If a reemployment list is available, the Division of Human Resource Management must certify and provide the reemployment list to the appointing authority. Eligible persons who appear on reemployment lists are ranked in order of seniority. Except as otherwise provided in subsection 2 of NAC 284.6017, placement on a reemployment list must be determined using the criteria governing the determination of seniority for layoff pursuant to NAC 284.632.

2. If there is no reemployment list available, the Division of Human Resource Management must certify and provide to the appointing authority any available reassignment lists pursuant to NAC 284.405.

3. If there are no reassignment lists available, the Division of Human Resource Management must certify and provide to the appointing authority any available lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327.

4. If there are no available lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327, the Division of Human Resource Management

must certify and provide to the appointing authority any available transfer lists of employees who are entitled to transfer to a position pursuant to NRS 284.3775.

5. If no list described in subsection 1, 2 or 3 is available, the Division of Human Resource Management must, upon request of the appointing authority and in accordance with subsections 6 and 7 ~~[, certify]~~ :

(a) *Certify* the names of eligible persons on ranked or unranked lists described in paragraphs (e) to (i), inclusive, of subsection 1 of NAC 284.358 ~~[, or waive]~~ ; *or*

(b) *Waive* the list.

6. The names of eligible persons on ranked lists must appear in the order of the total rating which they earned in the examination, including preferences for veterans and residents.

7. The Division of Human Resource Management may certify a list of eligible ~~[applicants]~~ *persons* who are not ranked, or may waive the list, for:

(a) A class that is grade 20 or below;

(b) A class designated in the classification plan as entry level; ~~[or]~~

(c) A class designated in the classification plan as a class for which applicants for promotion are not normally available ~~[;]~~ ; *or*

(d) *A class determined to be appropriate by the Administrator.*

8. Only an eligible person who has indicated the willingness to accept the location of the vacancy and the other conditions of employment may be certified.

Sec. 5. NAC 284.374 is hereby amended to read as follows:

284.374 1. The names of eligible persons ~~[will]~~ *may* be removed from the active lists for any of the following causes:

(a) Appointment after certification to fill a full-time permanent position in the class for which the examination was given ; ~~and~~

(b) Expiration of the term of eligibility ; ~~and~~

(c) Separation of a person who is eligible for promotion from the state service ; ~~and~~

(d) Failure by an eligible person to respond within the required time to an inquiry of availability ; ~~and~~

(e) A statement by the eligible person that he or she is not willing to accept any type of appointment from the eligible list ; ~~and~~

(f) Any of the causes listed in NRS 284.240 pursuant to which the Administrator may refuse to examine *an applicant* or , *after examination, may refuse to* certify an eligible person ; or ~~if~~ ~~the~~

(g) If the eligible person is an employee *who* has been laid off ~~and~~ *and placed on the statewide reemployment list*, reemployment pursuant to subsection 7 of NAC 284.630.

2. An appointing authority need not consider an eligible person more than one time from a recruitment. Consideration of an applicant for other than full-time permanent positions must not be counted for the purposes of this subsection.

3. An appointing authority need not consider an otherwise eligible person who cannot perform the essential functions of the position with or without reasonable accommodation.

4. An appointing authority may refuse to consider an eligible person who has been subject to a suspension, demotion or termination as a result of an upheld or uncontested disciplinary action in the preceding 12 months. The 12-month period begins on the effective date of the uncontested action or, if it is contested, on the date the hearing officer *or any reviewing court*

issues a final decision upholding a suspension, demotion or termination. If an employee is removed from consideration pursuant to this subsection, the appointing authority must notify the employee of that fact in writing before interviewing the next candidate or making its selection. The employee has 3 working days after being notified that he or she has been removed from consideration pursuant to this subsection to notify the appointing authority of any discrepancy in the information in his or her personnel file which led to the removal of the employee from consideration. The appointing authority may not make its selection:

(a) If the employee does not notify the appointing authority of a discrepancy, until after the end of the period pursuant to which the employee may notify the appointing authority of a discrepancy; or

(b) If the employee notifies the appointing authority of a discrepancy, until after the appointing authority determines whether the removal of the employee from consideration pursuant to this subsection was appropriate.

5. An appointing authority shall refuse to consider an eligible person whose appointment to a position will violate NRS 281.210, NAC 284.375 or a policy approved by the Commission pursuant to NAC 284.375.

6. An eligible person whose name has been removed from an active list may request that his or her name be reactivated by stating his or her reasons for the request. If the Division of Human Resource Management determines that the reasons are justified, and the ~~person's~~ term of eligibility *for the person* has not otherwise expired, his or her name may be reactivated.

Sec. 6. NAC 284.437 is hereby amended to read as follows:

284.437 1. ~~{Except as provided in subsection 4, before a position may be underfilled, it must be approved in writing by the Division of Human Resource Management. The Division of Human Resource Management will only approve a position to be underfilled if there are less than five eligible ranks on the appropriate list who are available for appointment.~~

~~—2.— Except as otherwise provided in subsection 4, if a position is approved to be underfilled, the Division of Human Resource Management will begin a recruitment for the class of the position unless a recruitment within 12 months before the approval failed to produce sufficient applicants on the appropriate list.~~

~~—3.— Except as otherwise provided in subsection 4, the position may not continue to be underfilled for more than 30 working days after five or more ranks of eligible persons on the appropriate list who are available for appointment are certified to the appointing authority.~~

~~—4.— Subsections 1, 2 and 3 do not apply to the underfilling of a position:~~

~~—(a) If the position is authorized at or below the journey level and an employee fills that position in a class which is a training or intermediate level preparatory to promotion;~~

~~—(b) If an employee's position is reclassified pursuant to NAC 284.138; or~~

~~—(c) If an appointing authority has requested and received approval from the Division of Human Resource Management to underfill a position because money is not available and that fact has been certified by the Chief of the Budget Division or, in the case of an agency which is not funded from the General Fund or the Nevada System of Higher Education, by the administrator of that agency or System.~~

~~—5.] *The appointing authority may underfill a position at or below the journey level at the discretion of the appointing authority.*~~

2. *The appointing authority may underfill a position above the journey level upon written approval of the Administrator or his or her designee.*

3. An employee or former employee may not be selected through noncompetitive means to underfill a position allocated at grade 30 or higher if that position is allocated at a higher grade than ~~the~~:

(a) *The* position the employee currently holds ; or ~~in~~

(b) *In* the case of a former employee, the current grade of the position the person formerly held.

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R166-18

Section 1: NAC 284.468 Standards for performance of work.

This amendment, proposed by the Division of Human Resource Management, revises the terms previously used to define “job elements,” to include the new terms to be used in a revised process to complete reports on performance of State of Nevada classified employees.

Section 2: NAC 284.576 Catastrophic leave: Use and administration; appeal of denial.

This amendment, proposed by the Division of Human Resource Management, will no longer require agencies to report on the nature of the disability.

**REVISED PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R166-18

October 17, 2018

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

AUTHORITY: §1, NRS 284.065, 284.155 and 284.335; §2, NRS 284.065, 284.155, 284.3626 and 608.0198.

A REGULATION relating to the State Personnel System; revising the job elements of an employee's position upon which a standard for the performance of work is based; revising certain information concerning the donation and use of catastrophic leave that an appointing authority is required to provide to the Administrator of the Division of Human Resource Management of the Department of Administration; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the appointing authorities of the various state departments, agencies and institutions to: (1) establish standards of work performance for each class of positions; and (2) provide each employee with a copy of the standards for his or her position. (NRS 284.335) Existing regulations provide that a standard for the performance of work is a written statement prepared on a form prescribed by the Division of Human Resource Management of the Department of Administration of the results or behavior expected of an employee when the job elements of the employee's position are satisfactorily performed. (NAC 284.468) **Section 1** of this regulation revises the job elements of positions.

Existing law requires each appointing authority to report certain information concerning the use of an account for catastrophic leave to the Administrator of the Division of Human Resource Management of the Department of Administration. (NRS 284.3625; NAC 284.576) **Section 2** of this regulation removes a requirement that each appointing authority provide information regarding the period and nature of the disability for each employee using catastrophic leave.

Section 1. NAC 284.468 is hereby amended to read as follows:

284.468 1. A standard for the performance of work is a written statement prepared on a form prescribed by the Division of Human Resource Management of the results or behavior, or both, expected of an employee when the job elements of the employee's position are satisfactorily performed under existing working conditions. Standards are required for all classified positions.

2. The appointing authority is responsible for ensuring that each position has standards and that each employee is evaluated using those standards. The supervisor has responsibility for establishing the initial standards, but the employee must be given the opportunity to provide comments when the standards for his or her position are revised.

3. The appointing authority has final approval of the standards for a position.

4. Standards must be reviewed annually and amended when appropriate.

5. Each employee must be provided with a copy of the standards for his or her position.

6. As used in this section, "job elements" means ~~[the principal assignments, job tasks, goals, objectives, responsibilities or related factors, or any combination thereof.]~~ :

(a) Quality of work;

(b) Quantity of work;

(c) Work habits;

(d) Relationships with other persons;

(e) Taking action independently;

(f) Meeting work commitments;

(g) Analyzing situations and materials; and

(h) If supervising the work of other persons is part of the responsibilities of an employee, supervising the work of other persons.

Sec. 2. NAC 284.576 is hereby amended to read as follows:

284.576 1. An account for catastrophic leave may be established for an employee when he or she or a member of his or her immediate family experiences a catastrophe and the employee has used all of his or her accrued leave.

2. An employee who is affected by a catastrophe and has used or is about to use all of his or her leave may request, on the appropriate form, the transfer of leave to an account for catastrophic leave for his or her personal use after the balance of all of his or her leave has been used. Such a request must be accompanied by a statement from a physician on a form provided by the Committee on Catastrophic Leave created pursuant to NRS 284.3627 which substantiates the necessity of the leave.

3. When a member of the immediate family of an employee is affected by a catastrophe, the appointing authority of the employee may require substantiating evidence that the member of the immediate family requires the employee's attendance before approving the transfer of leave to an account for catastrophic leave for use by the employee. Such evidence may include a statement by an attending physician regarding the status of the catastrophe.

4. The appointing authority shall approve or deny a request for catastrophic leave, taking into consideration the nature of the catastrophe and the expected duration of the leave. The decision of the appointing authority may be appealed to the Committee on Catastrophic Leave pursuant to NRS 284.3629.

5. An employee who wishes to donate hours to an account for catastrophic leave for use by another employee who has been approved to receive the donated hours shall notify his or her appointing authority on the appropriate form of his or her intent to donate the leave. The appointing authority of the employee donating the leave shall submit a copy of the form to the appointing authority of the employee receiving the leave. The appointing authority of the recipient shall use the notice to effect a transfer of leave from the account of the donor to the account of the recipient when the recipient needs to use those hours. If more than one notice of intent to donate leave is received by the recipient's appointing authority on behalf of the recipient, the notices must be maintained in chronological order and used, one at a time as needed, according to the date in which they were received.

6. A donor and his or her appointing authority must be notified on the appropriate form when the donated leave specifically designated for use by another employee has been used or if the amount of leave donated is in excess of the amount approved for use by the recipient. Except as otherwise provided in this subsection, excess leave must be restored to the account of the donor within 30 working days after the last day on which the recipient was eligible to receive catastrophic leave. If the donor is separated from state service before the excess leave is restored pursuant to this subsection, the excess leave must be transferred to the account for catastrophic leave of the appointing authority of the donor when the donation of leave was made.

7. ~~The~~ *For each employee who donates or uses catastrophic leave, the* appointing authority shall ~~provide the following information on a calendar year basis~~ *annually*, or as requested by the Administrator ~~:~~

~~—(a) Each~~, *provide to the Administrator the number assigned to each* employee ~~[under its authority, identified by a number assigned]~~ in accordance with subsection 8 ~~[, donating or using catastrophic leave, his or her]~~ *and the* grade and rate of pay and the number of hours and dollar value of the leave donated, excluding any excess leave restored to the account of a donor, pursuant to subsection 6, or used by ~~[the]~~ *each such* employee . ~~[; and~~

~~—(b) The period and nature of the disability for each employee using catastrophic leave.]~~

8. The appointing authority shall assign numbers to employees for the purposes of subsection 7 in a sequential order and in such a manner that ensures the confidentiality of the identity of those employees.

9. Hours donated to an account for catastrophic leave must be donated in increments of 8 hours.

10. As used in this section, “immediate family” has the meaning ascribed to it in NAC 284.562.

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R175-18

Section 1: Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Section 2: NEW “Gender identity or expression” defined.

This amendment, proposed by the Legislative Counsel Bureau, defines “Gender identity or expression” for the purposes of Chapter 284 of the Nevada Administrative Code, to have the meaning ascribed to it in NRS 0.034.

Section 3: NEW “Sexual orientation” defined.

This amendment, proposed by the Legislative Counsel Bureau, defines “Sexual orientation” for the purposes of Chapter 284 of the Nevada Administrative Code, to have the meaning ascribed to it in NRS 0.055.

Section 4: NAC 284.010 Definitions.

This amendment incorporates the two new definitions proposed in this file (e.g. “Gender identity or expression” defined and “Sexual orientation” defined) into the General Provisions pertaining to Chapter 284 of the Nevada Administrative Code.

Section 5: NAC 284.114 Affirmative action program and equal employment opportunity.

This amendment makes a conforming change based on the proposed addition of the definition, “Gender identity or expression” defined.

Section 6: NAC 284.374 Active lists: Removal and reactivation of names; no requirement or refusal to consider certain persons.

This amendment, proposed by the Division of Human Resource Management, makes a conforming change to reference an employee’s “personnel file” to refer instead to a “record of employment.” Throughout this LCB File, the new term, “record of employment,” is intended to be broader than the “personnel file,” as it will contain information held either by a State of Nevada agency or the Division of Human Resource Management.

Section 7: NAC 284.470 Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances.

This amendment, proposed by the Division of Human Resource Management, makes a conforming change to reference an employee’s “file” to refer instead to a “record of employment.”

Section 8: NAC 284.602 Resignations.

This amendment, proposed by the Division of Human Resource Management, makes a conforming change to reference an employee’s “file” to refer instead to a “record of employment.”

Section 9: NAC 284.718 Confidential records.

This amendment, proposed by the Division of Human Resource Management, clarifies that information either held by the Division or an agency is not public record and will not be released unless specifically allowed in NAC 284.726.

This amendment also adds several types of information to be included in an employee's record of employment. In addition, this amendment makes several housekeeping changes.

Section 10: NAC 284.726 Access to confidential records.

This amendment, proposed by the Division of Human Resource Management, broadens access to confidential records among State of Nevada agencies. As the State of Nevada is one employer under State and federal employment laws, this will allow ease in sharing information, including but not limited to, information related to health and disability information, leave balances, and performance. Agencies will still be able to limit access to this information using security protocols built into the human resource management data systems.

**REVISED PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R175-18

October 22, 2018

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

AUTHORITY: §§1-8, NRS 284.065 and 284.155; §9, NRS 284.065, 284.155, 284.355 and 284.407; §10, NRS 284.065, 284.155, 284.335, 284.4068 and 284.407.

A REGULATION relating to state employees; revising provisions relating to confidential personnel records; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This regulation changes references to an employee's file of employment to refer instead to a record of employment.

Existing regulations provide that certain types of information which are maintained by the Division of Human Resource Management of the Department of Administration or the personnel office of an agency are confidential. (NAC 284.718) **Section 9** of this regulation expands the scope of the confidentiality of certain types of information maintained by the Division or a state agency by eliminating references to specific entities who received, used or were the source of the information. **Section 9** makes the following additional information confidential: (1) certain grievances, complaints and requests and responses thereto and workers' compensation claims; (2) a recording used in the process of interviewing an applicant for employment; and (3) any notes, records, recordings, findings or other information obtained from an internal administrative investigation. **Sections 9 and 10** of this regulation clarify that information concerning the health, medical condition or disability of an employee or a member of his or her family are a part of the employee's record of employment and are confidential but must be kept in a locked cabinet, separate from any other portion of the employee's record of employment.

Existing regulations limit access to certain information in an employee's record of employment. (NAC 284.726) **Section 10** expands access to such information from the employing appointing authority to any appointing authority or his or her designated representative. **Section 10** limits access to any notes, records, recordings, findings or other information obtained from an internal administrative investigation to: (1) the employee who is the subject of the investigation;

(2) the appointing authority or a designated representative of the agency by which the employee is employed; and (3) certain other authorized persons. **Section 10** also revises: (1) who is authorized to access certain health-related information and information concerning an employee's usage or balance of annual leave and sick leave; and (2) the governmental entities to which the Division may provide the home address of an employee. **Section 10** additionally authorizes the Administrator of the Division, the appointing authority or a designated representative to release confidential records under his or her control to the United States Equal Employment Opportunity Commission.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *“Gender identity or expression” has the meaning ascribed to it in NRS 0.034.*

Sec. 3. *“Sexual orientation” has the meaning ascribed to it in NRS 0.055.*

Sec. 4. NAC 284.010 is hereby amended to read as follows:

284.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 284.021 to 284.1125, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 284.114 is hereby amended to read as follows:

284.114 1. The Division of Human Resource Management is responsible for establishing, coordinating and evaluating an affirmative action program for this State.

2. The Division of Human Resource Management will cooperate and consult with agencies to:

(a) Identify barriers in the personnel management system which may adversely affect the ability of applicants and employees to reach their full employment potential without regard to race, sex, sexual orientation, gender identity or expression, religion, color, national origin, age, genetic information, disability or whether or not the person is a domestic partner.

(b) Coordinate programs to remove barriers to equal employment opportunity while ensuring the effectiveness of the merit system and the opportunity for persons to enter the system and progress in it to the extent of their merit.

~~{3. As used in this section, “gender identity or expression” has the meaning ascribed to it in NRS 281.370.}~~

Sec. 6. NAC 284.374 is hereby amended to read as follows:

284.374 1. The names of eligible persons will be removed from the active lists for any of the following causes:

(a) Appointment after certification to fill a full-time permanent position in the class for which the examination was given.

(b) Expiration of the term of eligibility.

(c) Separation of a person who is eligible for promotion from the state service.

(d) Failure by an eligible person to respond within the required time to an inquiry of availability.

(e) A statement by the eligible person that he or she is not willing to accept any type of appointment from the eligible list.

(f) Any of the causes listed in NRS 284.240 pursuant to which the Administrator may refuse to examine or certify an eligible person or, if the employee has been laid off, reemployment pursuant to subsection 7 of NAC 284.630.

2. An appointing authority need not consider an eligible person more than one time from a recruitment. Consideration of an applicant for other than full-time permanent positions must not be counted for the purposes of this subsection.

3. An appointing authority need not consider an otherwise eligible person who cannot perform the essential functions of the position with or without reasonable accommodation.

4. An appointing authority may refuse to consider an eligible person who has been subject to a suspension, demotion or termination as a result of an upheld or uncontested disciplinary action in the preceding 12 months. The 12-month period begins on the effective date of the uncontested action or, if it is contested, on the date the hearing officer issues a final decision upholding a suspension, demotion or termination. If an employee is removed from consideration pursuant to this subsection, the appointing authority must notify the employee of that fact in writing before interviewing the next candidate or making its selection. The employee has 3 working days after being notified that he or she has been removed from consideration pursuant to this subsection to notify the appointing authority of any discrepancy in the information in his or her ~~[personnel file]~~ *record of employment* which led to the removal of the employee from consideration. The appointing authority may not make its selection:

(a) If the employee does not notify the appointing authority of a discrepancy, until after the end of the period pursuant to which the employee may notify the appointing authority of a discrepancy; or

(b) If the employee notifies the appointing authority of a discrepancy, until after the appointing authority determines whether the removal of the employee from consideration pursuant to this subsection was appropriate.

5. An appointing authority shall refuse to consider an eligible person whose appointment to a position will violate NRS 281.210, NAC 284.375 or a policy approved by the Commission pursuant to NAC 284.375.

6. An eligible person whose name has been removed from an active list may request that his or her name be reactivated by stating his or her reasons for the request. If the Division of Human Resource Management determines that the reasons are justified, and the person's term of eligibility has not otherwise expired, his or her name may be reactivated.

Sec. 7. NAC 284.470 is hereby amended to read as follows:

284.470 1. A person shall not complete 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 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~~ record 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~~ *record* 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~~ *record* of employment will not include an overall 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 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 his or her immediate supervisor. Within 10 working days after the discussion takes place:

(a) 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) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify the specific points 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.

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 shall cause the report to be mailed to the employee. Within 10 working days after the date on which the employee receives the report:

(a) 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) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify any specific 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 appointing authority shall review the recommendation of the reviewing officer regarding the report on performance and 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 copy of each report on performance and, if applicable, any written response to such a report requested by an employee pursuant to subsection 9 or 10 must be provided to the employee and filed with the Division of Human Resource Management.

12. 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:

(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 for inclusion in his or her ~~file~~ *record* of employment.

13. 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 employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

Sec. 8. NAC 284.602 is hereby amended to read as follows:

284.602 1. Unless the appointing authority and employee agree to a shorter period of time, an employee who wishes to resign shall submit his or her resignation in writing at least 2 weeks before resigning and notify the appointing authority of the reason for and the effective date of the resignation. If an employee fails to comply with this subsection, the appointing authority may note the insufficient notice in the employee's ~~file~~ *record of employment*.

2. The employee shall report and the appointing authority shall acknowledge the resignation to the Division of Human Resource Management on a form provided by the Division of Human Resource Management. The form must contain a statement of the employee's right to revoke the resignation pursuant to NRS 284.381.

Sec. 9. NAC 284.718 is hereby amended to read as follows:

284.718 1. The following types of information, which are maintained by the Division of Human Resource Management or the ~~[personnel office of an]~~ agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished ~~[to the Division of Human Resource Management]~~ on the condition that the source remain confidential;

(b) Any document which is used ~~[by the Division of Human Resource Management or an agency]~~ in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any *recording or* document which is used ~~[by the Division of Human Resource Management or an agency]~~ in the process of interviewing an applicant, including, without limitation, a document containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by an employee assistance program offered by the State of Nevada;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person's application or relating to his or her status as an eligible person; and

(j) Information in the ~~{file or}~~ record of employment of a current or former employee which relates to : ~~{the employee's:}~~

(1) ~~{Performance;}~~ *The employee's performance;*

(2) ~~{Conduct;}~~ *The employee's conduct,* including any disciplinary actions taken against the employee;

(3) ~~{Usage}~~ *The employee's usage* or balance of his or her annual leave and sick leave;

(4) ~~{Race;}~~ *The employee's race,* ethnic identity or affiliation, sex, *sexual orientation, gender identity or expression,* genetic information, disability or date of birth;

(5) ~~{Home}~~ *The employee's personal* telephone number; ~~{or}~~

(6) ~~{Social}~~ *The employee's social* security number ~~{-}~~;

(7) *Any grievance filed by the employee pursuant to NAC 284.678, any response to the grievance and any other documents related to the grievance, unless a hearing is held to determine the disposition of the grievance pursuant to NAC 284.6955;*

(8) *Any complaint filed by the employee pursuant to NRS 281.755, any response to the complaint and any other document related to the complaint, unless a hearing is held to determine the disposition of the complaint pursuant to NAC 284.6955;*

(9) *Any request made pursuant to NAC 284.5243 and any response to the request;*

(10) The health, medical condition or disability of the employee or a member of his or her immediate family; or

(11) Any claim for workers' compensation made by the employee and any documentation relating to the claim.

2. If the employee has requested that his or her ~~[personal mailing]~~ *home* address be listed as confidential, the employee's ~~[file]~~ *record of employment* must be so designated and list his or her ~~[business]~~ *mailing* address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

- (a) The employee dies; or
- (b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his or her immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation ~~[conducted by the Division of Human Resource Management]~~ relating to sexual harassment or discrimination, or both, and any findings of such an investigation ~~[that are provided to an appointing authority]~~ are confidential.

6. Any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct are confidential.

7. Any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct are confidential.

8. Any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387.

Sec. 10. NAC 284.726 is hereby amended to read as follows:

284.726 1. Except as otherwise provided in this subsection and ~~subsection~~ *subsections 2 and 10*, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph (2) of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in *subsection 10 and* NRS 284.4068, access to information concerning the results of an applicant's screening test which indicate the presence of a controlled substance is limited to ~~the~~ *an* appointing authority or his or her designated representative and the Administrator or his or her designated representative.

3. Except as otherwise provided in ~~subsections 4 and 5,~~ *subsection 10*, access to an employee's ~~file~~ *record* of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

(a) The employee.

(b) The employee's representative when a signed authorization from the employee is presented or is in his or her *record of* employment . ~~{file.}~~

(c) ~~{The}~~ *An* appointing authority or ~~{a}~~ *his or her* designated representative . ~~{of the agency by which the employee is employed.}~~

(d) ~~{The Administrator or a designated representative.}~~

~~—(e) An appointing authority, or a designated representative, who is considering the employee for employment in the agency.~~

~~—(f) Persons who are authorized pursuant to any state or federal law or an order of a court.~~

~~{(g)}~~ *(e)* The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.

~~{(h)}~~ *(f)* Persons who are involved in processing records for the transaction of business within and between state agencies.

~~{(i)}~~ *(g)* Persons who are involved in processing records for the transaction of business that is authorized by the employee.

4. ~~{Information concerning}~~ *The portion of an employee's record of employment that concerns* the health, medical condition or disability of ~~{an}~~ *the* employee or a member of his or her immediate family must be kept *in a locked cabinet*, separate from ~~{the}~~ *any other portion of the* employee's ~~{file in a locked cabinet. Except as otherwise provided in subsection 10, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.}~~ *record of employment.*

5. ~~{Except as otherwise provided in subsection 10, access to information concerning the employee's usage or balance of annual leave and sick leave is limited to the employee, the~~

~~employee's immediate supervisor and the employee's appointing authority or the designated representative of the appointing authority.~~

~~6.]~~ Except as otherwise provided in subsection 10, access to any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct is limited to:

- (a) The employee.
- (b) The Administrator or a designated representative of the Administrator.
- (c) The appointing authority or a designated representative of the agency with which the employee is employed.
- (d) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (e) The Governor or a designated representative of the Governor.

~~7.]~~ **6.** Except as otherwise provided in subsection 10, access to any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct is limited to:

- (a) The employee.
- (b) The appointing authority or a designated representative of the agency by which the employee is employed.
- (c) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (d) The Governor or a designated representative of the Governor.

7. Except as otherwise provided in subsection 10, access to any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387 is limited to:

(a) *The employee who is the subject of the internal administrative investigation.*

(b) *The appointing authority or a designated representative of the agency by which the employee who is the subject of the internal administrative investigation is employed.*

(c) *Persons who are authorized pursuant to any state or federal law or an order of a court.*

(d) *The Governor or a designated representative of the Governor.*

8. Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

9. Upon request, the Division of Human Resource Management will provide the ~~personal mailing]~~ *home* address of any employee ~~[on file with]~~ *maintained by* the Division of Human Resource Management *in the employee's record of employment* to the ~~[State Controller's Office]~~ *Division of Welfare and Supportive Services of the Department of Health and Human Services, the Department of Employment, Training and Rehabilitation* and the Internal Revenue Service.

10. The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission, *the United States Equal Employment Opportunity Commission* or a court.



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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November 5, 2018

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 these proposed regulations does not affect small businesses, impose a significant economic burden on small businesses, nor will the regulations restrict the formation, operation or expansion of small business. These regulations only impact employees 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 regulations on small businesses and that the information contained in this statement was prepared properly and is accurate.

Peter Long

Peter Long, Administrator

November 5, 2018

Date