

Personnel Commission Meeting
June 23, 2017

FOR INFORMATION ONLY

Attached is AB 113 of the 2017 Legislative Session for your reference and consideration of the emergency regulations.

CHAPTER.....

AN ACT relating to public health; requiring certain employers to provide reasonable break times and a place for an employee who is a nursing mother to express breast milk; prohibiting an employer from retaliating against an employee for certain actions relating to this requirement; authorizing a public employee who is aggrieved by an employer’s failure to comply with this requirement or for retaliation by the employer to file a complaint; requiring the Local Government Employee-Management Relations Board to provide for an expedited review of such complaints by local government employees; exempting certain small employers and contractors from this requirement; authorizing the Labor Commissioner to enforce the requirement against a private employer; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires employers to provide their employees with meal and rest periods, with certain exceptions. (NRS 608.019) Existing law also authorizes the Labor Commissioner to prosecute violations of this requirement and makes violation of this requirement a misdemeanor, subject to a civil penalty of \$5,000 per violation. (NRS 608.180, 608.195) Existing federal law also requires an employer to provide reasonable break time and a private place for employees to express breast milk for a nursing child for 1 year after the child’s birth. (29 U.S.C. § 207(r))

Sections 2 and 5 of this bill require each public and private employer in this State, other than the Department of Corrections, certain small employers and certain licensed contractors, to provide a reasonable break time and a clean, private place for an employee who is a nursing mother to express breast milk. This break time may be provided with or without compensation, except that **section 5** requires the break time to be compensated if such break time is otherwise required to be compensated pursuant to a collective bargaining agreement between a private employer and an employee organization. Additionally, **sections 2 and 5** prohibit employers from retaliating against an employee who: (1) takes such break time or uses the designated place to express breast milk; or (2) takes any action to enforce this requirement. If a public or private employer would face an undue hardship relating to these requirements, **sections 2 and 5** authorize the employer to meet with the employee to discuss potential alternatives. If no agreement is reached on such an alternative, **sections 2 and 5** authorize the employer to require the employee to accept a reasonable alternative selected by the employer. **Section 2** also authorizes a public employee to file a complaint against his or her public employer for certain violations of **sections 2, 4 and 5** of this bill and require the Local Government Employee-Management Relations Board to create an expedited procedure to resolve such a complaint. **Section 5** exempts a private employer from the requirements of **section 5** if the employer: (1) has fewer than 50 employees and complying with the requirements would cause an undue hardship; or (2) is a licensed contractor and the employee is performing work at a construction jobsite that is at least 3 miles from the regular place of business of the employer. **Section 6**



of this bill authorizes the Labor Commissioner to enforce these requirements against private employers. Finally, **section 7** of this bill makes a private employer who violates these requirements guilty of a misdemeanor, subject to a civil penalty of \$5,000 per violation.

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

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 2. Chapter 281 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsections 2 and 5, a public body shall provide an employee who is the mother of a child under 1 year of age with:

(a) Reasonable break time, with or without compensation, for the employee to express breast milk as needed; and

(b) A place, other than a bathroom, that is reasonably free from dirt or pollution, protected from the view of others and free from intrusion by others where the employee may express breast milk.

2. If the public body determines that complying with the provisions of subsection 1 will cause an undue hardship considering the size, financial resources, nature and structure of the public body, the public body may meet with the employee to agree upon a reasonable alternative. If the parties are not able to reach an agreement, the public body may require the employee to accept a reasonable alternative selected by the public body and the employee may appeal the decision by filing a complaint in the manner set forth in subsection 4.

3. An officer or agent of a public body shall not retaliate, or direct or encourage another person to retaliate, against an employee of the public body because the employee has:

(a) Taken break time or used the space provided pursuant to subsection 1 or 2 to express breast milk; or

(b) Taken any action to require the public body to comply with the requirements of this section, including, without limitation, filing a complaint, testifying, assisting or participating in any manner in an investigation, proceeding or hearing to enforce the provisions of this section.

4. An employee who is aggrieved by the failure of a public body to comply with the provisions of this section may:



(a) If the employee is employed by the Executive Department of State Government and is not an employee of an entity described in NRS 284.013, file a complaint with the Employee-Management Committee in accordance with the procedures provided pursuant to NRS 284.384;

(b) If the employee is employed by the Legislative Department of State Government, file a complaint with the Director of the Legislative Counsel Bureau;

(c) If the employee is employed by the Judicial Department of State Government, file a complaint with the Court Administrator; and

(d) If the employee is employed by a political subdivision of this State or any public or quasi-public corporation organized under the laws of this State, file a complaint with the Local Government Employee-Management Relations Board in the manner set forth in section 3.3 of this act.

5. The requirements of this section do not apply to the Department of Corrections. The Department is encouraged to comply with the provisions of this section to the extent practicable.

6. As used in this section, "public body" means:

(a) The State of Nevada, or any agency, instrumentality or corporation thereof;

(b) The Nevada System of Higher Education; or

(c) Any political subdivision of this State or any public or quasi-public corporation organized under the laws of this State, including, without limitation, counties, cities, unincorporated towns, school districts, charter schools, hospital districts, irrigation districts and other special districts.

Sec. 3. NRS 284.384 is hereby amended to read as follows:

284.384 1. The Commission shall adopt regulations which provide for the adjustment of grievances for which a hearing is not provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 **H and complaints filed pursuant to section 2 of this act.** Any grievance for which a hearing is not provided by NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 , **or any complaint filed pursuant to section 2 of this act,** is subject to adjustment pursuant to this section.

2. The regulations must provide procedures for:

(a) Consideration and adjustment of the grievance **or complaint** within the agency in which it arose.

(b) Submission to the Employee-Management Committee for a final decision if the employee is still dissatisfied with the resolution of the dispute.



(c) If requested by an employee or agency, the use of a resolution conference to resolve a grievance **H or complaint.**

3. The regulations must include provisions for:

(a) Submitting each proposed resolution of a dispute which has a fiscal effect to the Budget Division of the Office of Finance for a determination by that Division whether the resolution is feasible on the basis of its fiscal effects; and

(b) Making the resolution binding.

4. Any grievance **or complaint** which is subject to adjustment pursuant to this section may be appealed to the Employee-Management Committee for a final decision. Except as otherwise provided in subsection 3, a final decision of the Committee is binding. The Committee or an employee may petition a court of competent jurisdiction for enforcement of the Committee's binding decisions.

5. The employee may represent himself or herself at any hearing regarding a grievance **or complaint** which is subject to adjustment pursuant to this section or be represented by an attorney or other person of the employee's own choosing.

6. As used in this section, "grievance" means an act, omission or occurrence which an employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement.

Sec. 3.3. Chapter 288 of NRS is hereby amended by adding thereto a new section to read as follows:

The Board shall provide for an expedited review of a complaint filed by an employee pursuant to subsection 4 of section 2 of this act. To facilitate such a review, the Board shall:

1. Create and make available a form to be used by an employee to file a complaint;

2. Authorize the Commissioner to resolve such a complaint without referring the matter to the Board;

3. Establish an expedited timeline for issuing a decision; and

4. Take any other action necessary to ensure the complaint is reviewed in a timely manner.

Sec. 3.7. NRS 288.110 is hereby amended to read as follows:
288.110 1. The Board may make rules governing:

(a) Proceedings before it;

(b) Procedures for fact-finding;

(c) The recognition of employee organizations; and



(d) The determination of bargaining units.

2. The Board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by any local government employer, local government employee or employee organization. Except as otherwise provided in this subsection and NRS 288.280, *and section 3.3 of this act*, the Board shall conduct a hearing within 180 days after it decides to hear a complaint. If a complaint alleges a violation of paragraph (e) of subsection 1 of NRS 288.270 or paragraph (b) of subsection 2 of that section, the Board shall conduct a hearing not later than 45 days after it decides to hear the complaint, unless the parties agree to waive this requirement. The Board, after a hearing, if it finds that the complaint is well taken, may order any person to refrain from the action complained of or to restore to the party aggrieved any benefit of which the party has been deprived by that action. ~~The~~ *Except when an expedited hearing is conducted pursuant to section 3.3 of this act, the* Board shall issue its decision within 120 days after the hearing on the complaint is completed.

3. Any party aggrieved by the failure of any person to obey an order of the Board issued pursuant to subsection 2, or the Board at the request of such a party, may apply to a court of competent jurisdiction for a prohibitory or mandatory injunction to enforce the order.

4. The Board may not consider any complaint or appeal filed more than 6 months after the occurrence which is the subject of the complaint or appeal.

5. The Board may decide without a hearing a contested matter:

(a) In which all of the legal issues have been previously decided by the Board, if it adopts its previous decision or decisions as precedent; or

(b) Upon agreement of all the parties.

6. The Board may award reasonable costs, which may include attorneys' fees, to the prevailing party.

Sec. 4. NRS 288.270 is hereby amended to read as follows:

288.270 1. It is a prohibited practice for a local government employer or its designated representative willfully to:

(a) Interfere, restrain or coerce any employee in the exercise of any right guaranteed under this chapter.

(b) Dominate, interfere or assist in the formation or administration of any employee organization.

(c) Discriminate in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization.



(d) Discharge or otherwise discriminate against any employee because the employee has signed or filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because the employee has formed, joined or chosen to be represented by any employee organization.

(e) Refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150. Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter.

(f) Discriminate because of race, color, religion, sex, age, physical or visual handicap, national origin or because of political or personal reasons or affiliations.

(g) Fail to provide the information required by NRS 288.180.

(h) Fail to comply with the requirements of section 2 of this act.

2. It is a prohibited practice for a local government employee or for an employee organization or its designated agent willfully to:

(a) Interfere with, restrain or coerce any employee in the exercise of any right guaranteed under this chapter.

(b) Refuse to bargain collectively in good faith with the local government employer, if it is an exclusive representative, as required in NRS 288.150. Bargaining collectively includes the entire bargaining process, including mediation and fact-finding, provided for in this chapter.

(c) Discriminate because of race, color, religion, sex, age, physical or visual handicap, national origin or because of political or personal reasons or affiliations.

(d) Fail to provide the information required by NRS 288.180.

Sec. 5. Chapter 608 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsections 3, 5 and 6, each employer shall provide an employee who is the mother of a child under 1 year of age with:

(a) Reasonable break time, with or without compensation, for the employee to express breast milk as needed; and

(b) A place, other than a bathroom, that is reasonably free from dirt or pollution, which is protected from the view of others and free from intrusion by others where the employee may express breast milk.

2. If break time is required to be compensated pursuant to a collective bargaining agreement entered into by an employer and an employee organization, any break time taken pursuant to



subsection 1 by an employee which is covered by the collective bargaining agreement must be compensated.

3. If an employer determines that complying with the provisions of subsection 1 will cause an undue hardship considering the size, financial resources, nature and structure of the business of the employer, the employer may meet with the employee to agree upon a reasonable alternative. If the parties are not able to reach an agreement, the employer may require the employee to accept a reasonable alternative selected by the employer.

4. An employer shall not retaliate, or direct or encourage another person to retaliate, against any employee because that employee has:

(a) Taken break time or used the space provided pursuant to subsection 1 or 3 to express breast milk; or

(b) Taken any action to require the employer to comply with the requirements of this section, including, without limitation, filing a complaint, testifying, assisting or participating in any manner in an investigation, proceeding or hearing to enforce the provisions of this section.

5. An employer who employs fewer than 50 employees is not subject to the requirements of this section if these requirements would impose an undue hardship on the employer, considering the size, financial resources, nature and structure of the business of the employer.

6. An employer who is a contractor licensed pursuant to chapter 624 of NRS is not subject to the requirements of this section with regard to an employee who is performing work at a construction jobsite that is located at least 3 miles from the regular place of business of the employer.

Sec. 6. NRS 608.180 is hereby amended to read as follows:

608.180 The Labor Commissioner or the representative of the Labor Commissioner shall cause the provisions of NRS 608.005 to 608.195, inclusive, **and section 5 of this act** to be enforced, and upon notice from the Labor Commissioner or the representative:

1. The district attorney of any county in which a violation of those sections has occurred;

2. The Deputy Labor Commissioner, as provided in NRS 607.050;

3. The Attorney General, as provided in NRS 607.160 or 607.220; or

4. The special counsel, as provided in NRS 607.065,

↪ shall prosecute the action for enforcement according to law.



Sec. 7. NRS 608.195 is hereby amended to read as follows:

608.195 1. Except as otherwise provided in NRS 608.0165, any person who violates any provision of NRS 608.005 to 608.195, inclusive, *and section 5 of this act*, or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

2. In addition to any other remedy or penalty, the Labor Commissioner may impose against the person an administrative penalty of not more than \$5,000 for each such violation.

Sec. 8. (Deleted by amendment.)

Sec. 9. This act becomes effective on July 1, 2017.



**NEVADA PERSONNEL COMMISSION'S
STATEMENT OF EMERGENCY**

WHEREAS, the Nevada Personnel Commission (“Commission”) has convened this public meeting for the purpose of considering the adoption of the foregoing Emergency Regulations, which relate to an employee who is a nursing mother; and

WHEREAS, the Commission finds that an emergency exists insofar as the need for swift action resulting from the implementation of requirements for a time and place for an employee who is a nursing mother of a child under 1 year of age to express breast milk, and a corresponding complaint process, effective July 1, 2017, does not leave adequate time for the Commission to use the procedures mandated by Chapter 233B of the NRS for amending a permanent regulation;

NOW THEREFORE, the Commission hereby adopts the following Emergency Regulations which shall be effective on July 1, 2017, upon the endorsement by the Governor and filing with the Secretary of State.

FOR THE COMMISSION:

KATHERINE FOX, Chairwoman
Nevada Personnel Commission

Date

GOVERNOR’S ENDORSEMENT

I, Governor Brian Sandoval, endorse the Nevada Personnel Commission’s foregoing Statement of Emergency.

BRIAN SANDOVAL
Governor of Nevada

Date

[Text continues on next page]

EMERGENCY REGULATIONS

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

NEW Reasonable break times and place to express milk. An employee who is the mother of a child under 1 year of age must be permitted to take reasonable breaks to express milk. Her appointing authority shall:

- 1. If the employee determines that her rest periods are not sufficient to express milk:
 - (a) Approve the use of accrued annual leave, accrued compensatory time or leave without pay to make up the difference between her normal rest period and the time she uses to express milk and for reasonable breaks other than her rest periods to express milk; or*
 - (b) Permit the employee to modify her work schedule to make up the difference between her normal rest period and the time she uses to express milk and for reasonable breaks other than her rest periods to express milk.**
- 2. Provide a place, other than a bathroom, that is reasonably free of dirt or pollution, protected from the view of others, and free from intrusion by others.*

Section 2. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

NEW Request for break times and place to express milk.

- 1. Each department or agency within the Executive Branch shall develop a procedure for an employee to request reasonable break times and place for the expression of milk as provided for in section 2 of Assembly Bill No. 113, chapter 281, Statutes of Nevada 2017.*
- 2. Every effort should be made to address the specific employee's needs. If the employee is on leave at the time the request is received, including Family and Medical Leave, the department or agency may attempt to contact and consult with the employee.*
- 3. A request for break times and place to express milk is deemed to be received by a department or agency:
 - (a) On the date on which the employee or his or her chosen representative personally delivers the request, transmits it by facsimile machine, or submits it by email; or*
 - (b) If the employee mails a request, 3 days after:
 - (1) The date on which the request was postmarked; or*
 - (2) The date on the return receipt if sent by certified mail.***
- 4. Within 5 working days after the employee's request is deemed to have been received by the department or agency, the department or agency shall answer the request.*

Section 3. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

NEW "Complaint" defined. As used in NAC 284.662 to 284.697, and NAC 284.589, a "complaint" has the meaning ascribed to it in section 2 of Assembly Bill No. 113, chapter 281, Statutes of Nevada 2017.

Section 4. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

NEW Submission of complaint to Employee-Management Committee.

1. If:

(a) An employee is not satisfied with the response by the department or agency or there is no response by the department or agency, pursuant to the employee's request for reasonable break times and place for the expression of breast milk; or

(b) It is alleged that an officer or employee has retaliated, or directed or encouraged another person to retaliate against an employee pursuant to section 3 of Assembly Bill No. 113, chapter 281, Statutes of Nevada 2017,

↪ the employee may request consideration of a complaint by the Committee pursuant to its rules.

2. The employee must submit the complaint, on the form provided by the Division of Human Resource Management, to the Committee within 10 working days following his or her receipt of the response from the department or agency, or within 10 working days after the date of the alleged retaliation. If the employee does not receive a response within 8 working days after the complaint was deemed to be received by the department or agency, the employee may submit a complaint pursuant to this section. The complaint must include the specific points of disagreement or contention and supporting evidence. The Committee will, within 28 working days after the receipt of the employee's request:

(a) Answer the request without a hearing if the case is based upon the Committee's previous decisions or if the complaint does not fall within its jurisdiction; or

(b) Hold a hearing to determine the proper disposition of the request. If a hearing is held, the Committee will:

(1) Except as otherwise provided in paragraph (b), provide at least 21 working days' written notice to all parties concerned.

(2) Provide notice to the employee by:

(I) Sending a written notification by certified mail, return receipt requested, at least 21 working days before the hearing; or

(II) Personally delivering a written notification to the employee at least 5 working days before the hearing, if the Chair approves of such notice.

(3) Render a decision within 10 days after the closure of the hearing.

(c) For the purpose of determining placement on upcoming Committee meetings' agendas, a complaint has priority over a grievance.

Section 5. NAC 284.0735 is hereby amended to read as follows:

NAC 284.0735 "Organizational climate study" defined. (NRS 284.065, 284.155)
"Organizational climate study" means an independent study conducted by the Division of Human Resource Management to assess and evaluate the culture, effectiveness of management, employee morale and internal communication of an organization through a variety of methods, including, without limitation:

1. Surveys;
2. Interviews, including, without limitation, exit interviews;
3. Review of policies, procedures and internal communications;

4. Review of issues related to recruitment;
5. Review of data relating to employees, including, without limitation, statistics relating to turnover; and
6. Review of grievances *or complaints* filed by employees.
(Added to NAC by Personnel Comm'n by R137-12, eff. 10-23-2013)

Section 6. NAC 284.112 is hereby amended to read as follows:

NAC 284.112 “Working day” defined. (NRS 284.065) “Working day,” for the purpose of a grievance, *complaint*, or an appeal, means Monday to Friday, inclusive, excluding holidays.
(Added to NAC by Dep’t of Personnel, eff. 10-26-84)

Section 7. NAC 284.589 is hereby amended to read as follows:

NAC 284.589 Administrative leave with pay. (NRS 284.065, 284.155, 284.345, 284.383, 284.385, 284.390)

1. An appointing authority may grant administrative leave with pay to an employee:
 - (a) To relieve the employee of his or her duties during the active investigation of a suspected criminal violation or the investigation of alleged wrongdoing;
 - (b) For up to 30 days when the appointing authority initiates the leave to obtain the results of an examination concerning the ability of the employee to perform the essential functions of his or her position;
 - (c) For up to 30 days to remove the employee from the workplace when he or she has committed or threatened to commit an act of violence;
 - (d) For up to 2 hours to donate blood;
 - (e) To relieve the employee of his or her duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065, as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049; or
 - (f) To attend a general employee-benefits orientation or an educational session relating to employee benefits, including, without limitation, retirement and deferred compensation.
2. The appointing authority, upon approval of the Risk Management Division, may extend administrative leave with pay granted to an employee for a purpose set forth in paragraph (b) or (c) of subsection 1.
3. If an employee is granted administrative leave with pay pursuant to subsection 1 or 2, the employee must be available:
 - (a) By telephone to the supervisor of the employee; and
 - (b) To report to a work site or another location, as directed by the supervisor of the employee,
↳ during regular business hours.
4. Except as otherwise provided in subsection 5, an appointing authority or the Division of Human Resource Management may grant administrative leave with pay to an employee for any of the following purposes:
 - (a) His or her participation in, or attendance at, activities which are directly or indirectly related to the employee’s job or employment with the State but which do not require him or her to participate or attend in an official capacity as a state employee.

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

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

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

(e) His or her appearance as an aggrieved employee , *a complainant*, or a witness at a hearing of the Committee.

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

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

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

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

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

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

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

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

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

(c) His or her participation in an official capacity as a member of a committee or board created by statute on which he or she serves as a representative of state employees. Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board.

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

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

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

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

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

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 4-20-90; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 9-13-91; 12-26-91; 11-12-93; 3-23-94; 11-16-95; 10-27-97; R042-99, 9-27-99; R058-01, 9-6-2001; A by Personnel Comm'n by R038-03, 10-30-2003; R183-03, 1-27-2004; R145-05, 12-29-2005; R141-07, 1-30-2008; R061-09 & R081-09, 10-27-2009; R063-09, 11-25-2009; R058-10, 10-15-2010; R137-13, 6-23-14; R042-15, 12-21-2015)

Section 8. Section 1 of LCB File No. R076-15 is hereby amended to read as follows:

Section 1 of LCB File No. R076-15 Removal of ineligible grievance *or complaint* from procedure.

1. If the Division of Human Resource Management determines that a request for the adjustment of a ~~grievance~~:

(a) *Grievance* is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in subsection 1 of NAC 284.658 or because a hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390, *or*

(b) *Complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in section 2 of Assembly Bill No. 113, chapter 281, Statutes of Nevada 2017,*

↳ the Division must, as soon as practicable:

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

~~(b)~~ (2) Provide to the person who submitted the request and the agency in which the grievance *or complaint* arose:

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

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

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

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

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

(Added to NAC by Personnel Comm'n by R076-15, eff. 4-4-2016)

Section 9. NAC 284.662 is hereby amended to read as follows:

NAC 284.662 Providing assistance to employee. (NRS 284.065, 284.155, 284.384)

1. An employee filing for a review of a grievance *or complaint* may be assisted or represented by any person of his or her choosing, if the person agrees to act in this capacity, at any step of the procedure except the initial informal discussion with his or her immediate supervisor.

2. If the assistant is a state employee, he or she may only assist on his or her own time.

3. An employee may not be discriminated against in recruitment, examination, appointment, training, promotion, retention, classification or any other personnel action for informally seeking or formally filing a request to have his or her grievance *or complaint* reviewed, testifying on behalf of another employee, helping another employee prepare a grievance ~~report~~ *or complaint* or acting as a representative of any employee requesting a review of a grievance *or complaint*.

4. To assist in resolving an employee's grievance *or complaint*, the resources and consultation available from the Division of Human Resource Management and the personnel offices of the agency must be made available to all parties.

[Personnel Div., Rule XV part § A, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; A by Personnel Comm'n by R096-03, 10-30-2003)

Section 10. NAC 284.680 is hereby amended to read as follows:

NAC 284.680 Date of receipt of grievance *or complaint*. (NRS 284.065, 284.155, 284.384)

1. For the purposes of NAC 284.682, 284.686 and 284.690, a grievance is deemed to have been received at each step in the grievance procedure

~~1.—On~~ *on* the date on which the employee or his or her chosen representative personally delivers the grievance, transmits it by facsimile machine or submits it via the Internet using the Employee Incident Tracking System within the Nevada Employee Action and Timekeeping System developed by the Division of Human Resource Management, which is available at <https://nvapps.state.nv.us/NEATS/admin/Home.aep>; ~~or~~

2. *For the purposes of Section 4 of this regulation, a complaint is deemed to have been received by the Division of Human Resource Management on the date on which the employee or his or her chosen representative personally delivers the complaint, transmits it by facsimile machine, or submits it by email; or*

3. If the employee mails ~~the~~ *a* grievance *or complaint*, 3 days after:

(a) The date on which the grievance *or complaint* was postmarked; or

(b) The date on the return receipt if sent by certified mail.

(Added to NAC by Personnel Comm'n by R065-98, eff. 7-24-98; A by R044-08, 8-26-2008)

Section 11. NAC 284.692 is hereby amended to read as follows:

NAC 284.692 Agreement for extension of time to file grievance *or complaint*, or take required action. (NRS 284.065, 284.155, 284.384)

1. Except as otherwise provided in subsection, the time limit for filing a grievance and for taking any other action required by either party at any step in the grievance procedure may be extended by the mutual agreement of the employee who may file the grievance and the appointing authority or his or her designated representative.

~~2.~~ An agreement to an extension of time entered into pursuant to *this* subsection ~~is~~ must be ~~:~~

~~(a) Made~~ *made* in writing ~~on a form prescribed by the Division of Human Resource Management; and~~

~~(b) Signed by:~~

~~(1) The~~ and authorized by both the employee ~~;~~ and
~~(2) The~~ and the appointing authority or his or her designated representative.

2. *Except as otherwise provided in subsection 3, the time limit for filing a complaint and for taking any other action required by either party in the complaint procedure may be extended by the mutual agreement of the employee who may file the complaint and the appointing authority or his or her designated representative. An agreement to an extension of time entered into pursuant to this subsection must be made in writing and authorized by both the employee and the appointing authority or his or her designated representative.*

3. The provisions of this section do not apply to a grievance *or complaint* that has been submitted to the Committee.

(Added to NAC by Personnel Comm'n by R023-05, eff. 10-31-2005)

Section 12. NAC 284.6952 is hereby amended to read as follows:

NAC 284.6952 Request for resolution conference; appointment of facilitator; effect of request for resolution conference on jurisdiction of Employee-Management Committee. (NRS 284.065, 284.155, 284.384)

1. If an employee is not satisfied with the decision rendered by the highest administrator of the department pursuant to NAC 284.690 and submits a request for consideration of the grievance by the Committee pursuant to NAC 284.695, the employee or the highest administrator or his or her designee may request a resolution conference to meet informally in the presence of a neutral facilitator to discuss the grievance and possible resolutions.

2. *If an employee is not satisfied with the decision rendered by the department or agency pursuant to Section 2 of this regulation and submits a request for consideration of a complaint by the Committee pursuant to Section 4 of this regulation, the employee or the highest administrator or his or her designee may request a resolution conference to meet informally in the presence of a neutral facilitator to discuss the complaint and possible resolutions.*

3. Except as otherwise provided in this subsection, a request for a resolution conference may be submitted to the Division at any time after the employee submits his or her request for consideration of the grievance *or complaint* by the Committee. If the Committee has notified the parties of the date on which it will hold a hearing to consider the grievance *or complaint*, the request for a resolution conference may not be submitted less than 15 working days before that date.

~~[3. Upon receipt of a request for a]~~ 4. *If either party requests a resolution conference, the Division shall appoint a neutral facilitator to conduct the resolution conference and both parties must participate.* The facilitator must not be affiliated with either party.

~~[4.]~~ 5. The submission of a request for a resolution conference does not deprive the Committee of jurisdiction to consider the grievance *or complaint* if:

(a) The parties are unable to reach an agreement for the resolution of the grievance *or complaint* at the resolution conference; or

(b) The parties reach an agreement for the resolution of the grievance *or complaint* at the resolution conference, but the employee subsequently notifies the Committee that the agreement has failed.

6. *If a party to a complaint submits a request for a resolution conference, the Division will attempt to arrange a resolution conference prior to the scheduled hearing. If a requested resolution conference cannot be arranged within the period between the request for a resolution*

conference and the scheduled hearing, the Division will provide the Committee, upon request, with the basis for the failure to arrange a resolution conference.

(Added to NAC by Personnel Comm'n by R026-11, 12-30-2011, eff. 1-1-2012)

Section 13. NAC 284.6955 is hereby amended to read as follows:

NAC 284.6955 Hearing before Employee-Management Committee: Procedure. (NRS 284.065, 284.155, 284.384) If a hearing is held to determine the proper disposition of a grievance pursuant to NAC 284.695, *or a complaint pursuant to Section 4 of this regulation*, the following procedure must be followed:

1. Each party shall submit to the Clerk of the Committee 12 copies of the set of documents and materials to be presented at the hearing or any rescheduled hearing. These copies must be submitted not less than 15 working days before the scheduled date of the hearing. The Clerk of the Committee shall forward one copy of the set of the documents and materials of each party to the other party.

2. If the employee fails to comply with subsection 1, the Chair or a member of the Committee designated by the Chair may reschedule the hearing to the next time designated for such hearings, but in no case earlier than 20 working days after the originally scheduled date of the hearing. If the employer fails to comply with subsection 1, the Chair or a member of the Committee designated by the Chair may reschedule the hearing at his or her discretion. If the employee fails to comply with the provisions of subsection 1 for a rescheduled hearing, the grievance *or complaint* must be dismissed with prejudice unless he or she can show in writing to the Committee's satisfaction that the reason for noncompliance was beyond his or her control.

3. Each document or material offered in evidence must be marked as follows:

(a) Documents or materials presented by the employee must be marked at the bottom of the page as "Exhibit____" indicated by consecutive Arabic numerals, beginning with the number "1."

(b) Documents or materials presented by the employer must be marked at the bottom of the page as "Exhibit____" indicated by consecutive letters of the English alphabet, beginning with the letter "A." If the employer offers more than 26 exhibits, the 27th exhibit must be marked as "Exhibit AA," the 28th exhibit as "Exhibit BB," and so forth.

4. All evidence offered at the hearing must be relevant and bear upon the grievance.

5. Each person who provides a statement at the hearing shall state his or her name, address, and occupation for the record.

6. It is the responsibility of each party to arrange for the appearance of all necessary witnesses. The Committee may request additional witnesses or information as it deems necessary.

7. If a subpoena is issued for a document and the person named in the subpoena determines that the document contains confidential information, the person must provide to the Committee by the date specified in the subpoena:

(a) Two copies of the original document, submitted under seal, and

(b) One copy of the document with the confidential information redacted.

8. For good cause shown, the Committee may take testimony from a person by telephone or video conference whether or not the person is at a location designated on the agenda as a location for the hearing.

9. Upon proper recognition by the Chair or the member of the Committee designated to act as the Chair during the hearing, any member of the Committee may ask a question of a party or witness at any time during the hearing.

(Added to NAC by Personnel Comm'n, eff. 8-1-91; A by Dep't of Personnel, 11-16-95; A by Personnel Comm'n by R026-11, 12-30-2011, eff. 1-1-2012; R076-15, 4-4-2016)

Section 14. NAC 284.6957 is hereby amended to read as follows:

NAC 284.6957 Hearing before Employee-Management Committee: Continuance. (NRS 284.065, 284.155, 284.384)

1. A party may request a continuance of a hearing to determine the proper disposition of a grievance pursuant to NAC 284.695 or request to have a grievance *or complaint* held in abeyance. The party must submit the request to the Clerk of the Committee at least 12 working days before the scheduled hearing, unless the party received personal notice of the hearing less than 21 working days before the hearing pursuant to subsection 2 of NAC 284.695, in which case he or she may request a continuance as long as the request is made at least 4 working days before the scheduled hearing.

2. The Chair or a member of the Committee designated by the Chair may grant a request for a continuance *of a hearing to determine the proper disposition of a grievance pursuant to NAC 284.695* or a request to have a grievance *or complaint* held in abeyance if good cause is shown.

(Added to NAC by Dep't of Personnel, eff. 3-27-92; A 11-16-95; A by Personnel Comm'n by R076-15, 4-4-2016)

Section 15. NAC 284.696 is hereby amended to read as follows:

NAC 284.696 Unlawful discrimination. (NRS 284.065, 284.155, 284.384)

1. An employee alleging unlawful discrimination based on any pertinent state or federal law or regulation may:

(a) Report the alleged discrimination to:

(1) The division of the Division of Human Resource Management that investigates sexual harassment and discrimination;

(2) The Attorney General;

(3) The employee's appointing authority;

(4) An equal employment opportunity officer;

(5) A personnel representative of the department in which the employee is employed; or

(6) The office charged with enforcing affirmative action within the appropriate university, state college or community college which is part of the Nevada System of Higher Education;

(b) Except as otherwise provided in NRS 284.384, use the procedure for the adjustment of a grievance contained in NAC 284.658 to 284.6957, inclusive; or

(c) File a ~~complaint~~ *charge* with:

(1) The Nevada Equal Rights Commission pursuant to NRS 613.405; or

(2) The United States Equal Employment Opportunity Commission.

2. The appointing authority of an employee who has alleged unlawful discrimination shall promptly notify the deputy attorney general or staff counsel assigned to represent the agency of the allegation and the actions which are being undertaken by the agency to address the allegation.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 9-16-92; 11-16-95; A by Personnel Comm'n by R023-05, 10-31-2005; R026-11, 12-30-2011, eff. 1-1-2012)

Section 16. NAC 284.697 is hereby amended to read as follows:

NAC 284.697 When resolution of grievance *or complaint* becomes binding. (NRS 284.065, 284.155, 284.384)

1. Except as otherwise provided in subsection 2, the resolution of a grievance *or complaint* is binding when:

(a) There is an agreement between the person filing the grievance *or complaint* and the appointing authority or the designated representative of the employing agency; or

(b) The Committee renders a final decision.

2. The appointing authority or the designated representative of the employing agency shall submit each proposed resolution of a grievance *or complaint* which has a fiscal effect to the Budget Division for a determination of whether the resolution is feasible on the basis of its fiscal effects. The resolution is binding only if it is so found.

(Added to NAC by Dep't of Personnel, eff. 8-28-85; A by Personnel Comm'n by R030-02, 5-2-2002)