

**STATE OF NEVADA
PERSONNEL COMMISSION**

Held at the Legislative Counsel Bureau, 401 S. Carson Street, Room 2134, Carson City; and via video conference in Las Vegas at the Grant Sawyer Building, 555 E. Washington Avenue, Room 4401.

**MEETING MINUTES
March 6, 2020**

**COMMISSIONERS PRESENT
IN CARSON CITY:**

Ms. Katherine Fox, Chairperson
Ms. Patricia Hurley, Commissioner
Ms. Priscilla Maloney, Commissioner

Ms. Dana Carvin, Alternate Commissioner, non-voting

**COMMISSIONERS PRESENT
IN LAS VEGAS:**

Mr. Mark Olson, Commissioner
Mr. Andreas Spurlock, Commissioner

Mr. Armen Asherian, Alternate Commissioner, non-voting

STAFF PRESENT IN CARSON CITY:

Mr. Peter Long, Administrator, Division of Human Resource Management (DHRM)
Ms. Michelle Garton, Deputy Administrator, DHRM
Ms. Beverly Ghan, Deputy Administrator, DHRM
Ms. Tammy Smith, EEO Administrator, DHRM
Ms. Kara Sullivan, Supervisory Personnel Analyst, DHRM
Ms. Denise Woo-Seymour, Supervisory Personnel Analyst, DHRM
Ms. Carrie Hughes, Personnel Analyst, DHRM
Ms. Tori Sundheim, Deputy Attorney General, Office of the Attorney General

STAFF PRESENT IN LAS VEGAS:

Ms. Michelle Morgando, Senior Hearing Officer, Division of Hearings and Appeals
Ms. Heather Dapice, Supervisory Personnel Analyst, DHRM

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

Chairperson Fox: Called the meeting to order on Friday, March 6, 2020, at approximately 9:00 a.m. She welcomed everyone, indicated Commissioner Priscilla Maloney was serving in retired Commissioner Mauger's vacant position and welcomed newly appointed Commissioner Mark Olson, who will be filling Commissioner Sanchez' position.

Commissioner Olson: Shared he was a career Human Resources professional with well over 40 years in the business in both the public and the private sectors. He retired in 2016 as the Senior Vice President of HR at the Las Vegas Convention and Visitors Authority, was honored to serve as a Commissioner and was looking forward to the work ahead.

Chairperson Fox: Announced there have been three role changes within the Division of Human Resource Management. Peter Long has returned to his position as DHRM Administrator, Michelle Garton has been promoted to Deputy Administrator, and Denise Woo-Seymour has been promoted to Supervisory Personnel Analyst. Congratulations to all. Several alternate Commissioners were attending the meeting: Dana Carvin in the North and Armen Asherian in South.

II. PUBLIC COMMENT

Chairperson Fox: Advised that no vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken under NRS 241.020.

III. APPROVAL OF MINUTES OF PREVIOUS MEETING DATED DECEMBER 6, 2019 – Action Item

Chairperson Fox: Asked if there were any corrections or changes to be made on the minutes from December 6, 2019. There were none.

MOTION: Moved to approve minutes of the December 6, 2019, meeting.
BY: Chairperson Fox
SECOND: Commissioner Maloney
VOTE: The vote was unanimous in favor of the motion.

IV. DISCUSSION AND POSSIBLE AMENDMENTS TO THE *HEARING OFFICER RULES OF PROCEDURE* – Action Item

Michelle Garton: Stated the *Hearing Officer Rules of Procedure* were once again before the Commission for approval. There was a Commission request at the December 6, 2019, meeting to examine GENERAL PROVISIONS, Section 1.2, Personnel Hearing Officer Appointments. Discussions with Deputy Attorney General Sundheim and Michelle Morgando, Administrator of the Hearings Division, resulted in the proposed language being presented to the Commission today as the most appropriate language in that the language is referring to Chapter 284, the *Personnel Rules of Procedure*, and then Chapter 616C which are the provisions governing the Hearings Division. DHRM currently has and is proceeding forward with a contract with the Hearings Division for at least the next several years; the proposed language would be appropriate for governing those appointments. One benefit is if the arrangement was ever changed, the *Rules* could easily be updated.

Commissioner Olson: Asked about the use of the word “days.” Within the document there are references to “business days,” “calendar days,” “working days” and just plain “days.” He recommended the language be cleaned up for consistency purposes.

Tori Sundheim: Answered that can certainly be addressed. The proposed changes should be agendized for the next meeting so staff can review and decide how to best clean up that language.

Chairperson Fox: Clarified the Commissioner is requesting the Division review the “days” issue and update the Commission at a future meeting regarding a recommended language change or not. She suggested the Commission approve the item with the understanding that there will be further staff review of the language regarding “days” and a report back to the Commission at a future meeting.

Michelle Morgando: Added she would be happy to work with the Deputy Attorney General and the Deputy Administrator on the proposed changes.

Chairperson Fox: Asked if there were further questions or comments, and there were none.

MOTION: Moved to approve the *Personnel Commission Hearing Officer Rules of Procedure* with the provision of the consistency regarding the use of the word “days” will be reviewed.
BY: Commissioner Olson
SECOND: Chairperson Fox
VOTE: The vote was unanimous in favor of the motion.

V. DISCUSSION AND APPROVAL OF PROPOSED REGULATIONS CHANGES TO NEVADA ADMINISTRATIVE CODE, CHAPTER 284 – Action Item

- A. LCB File No. R018-19
 - Section 1. NAC 284.498 Training of supervisory and managerial employees.
 - Sec. 2. NAC 284.726 Access to confidential records.

Carrie Hughes: Personnel Analyst with the Division of Human Resource Management presented Section 1 of LCB File No. R018-19 regarding NAC 284.498, Training of supervisory and managerial employees. The proposed amendment to NAC 284.498 will add a requirement for supervisors to receive training on the Americans with Disabilities Act, the ADA; and the Family Medical Leave Act, the FMLA; as well as training on the developing and revising of documented essential functions of positions. The intent is to ensure that supervisors are prepared to fill their responsibilities under these laws. Additionally, this amendment will provide for an additional component regarding sexual harassment and discrimination to be added to the existing Equal Employment Opportunity class for managers and supervisors. This additional component will not replace the employee required sexual harassment and discrimination class but instead provide additional supervisor-specific training.

Denise Woo-Seymour: Supervisory Personnel Analyst for the Division of Human Resource Management Consultation and Accountability Unit presented Section 2 of LCB File No. R018-19. The first amendment to NAC 284.726 will provide access to any appointing authority of an agency, in addition to the other individuals listed, to information related to a sexual harassment or discrimination investigation. The intent of this amendment is to expand access to an employee's record of employment to appointing authorities across the State of Nevada. The amendment to subsection 8 of NAC 284.726 brings the regulation into alignment with the requirements that an employee must have filed an appeal of disciplinary action in order to access any notes, records, recordings, findings or other information obtained from an internal investigation, through the administrative process related to the disciplinary action. No comments were received regarding the amendments to NAC 284.726 at the June 25, 2019, Regulation Workshop.

Chairperson Fox: Asked if there were any comments or questions from Commissioners or the public. Hearing none, she would entertain a motion.

MOTION: Moved to approve Item V-A, Sections 1 and 2.
BY: Commissioner Maloney
SECOND: Commissioner Hurley
VOTE: The vote was unanimous in favor of the motion.

- V-B. LCB File No. R068-19
- Section 1. NAC 284.442 Length of probationary period.
 - Sec. 2. NAC 284.444 Application of probationary period.
 - Sec. 3. NAC 284.448 Time not counted toward completion of probationary period.
 - Sec. 4. NAC 284.450 Adjustment of probationary period.

Kara Sullivan: Supervisory Personnel Analyst for the Division of Human Resource Management Recruitment Unit presented amendments proposed for permanent adoptions in LCB File No. R068-19. Section 1 is a proposed amendment to NAC 284.442. Currently the regulation specifies which employees are assigned to a probationary period of a year and those which are assigned a probationary period of six months. The amendment specifies that these same provisions would apply to employees serving a trial period. Section 2 would allow for a trial period for a permanent employee to be waived by the appointing authority. If the trial period is waived, the employee would retain their status of appointment held at the time of transfer; the waiver must be made in writing by the appointing authority. This proposed amendment will allow more flexibility by agencies to transfer employees without the concern of a trial period, which may deter some employees from transferring. The amendment also includes some reorganization of the regulation for ease of administration. Section 3 clarifies the types of leave, status or service that do not count toward the completion of a probationary period would also not count toward the completion of a trial period. Section 4 clarifies that adjustments made to the probationary period to ensure the employee works the required number of months would also apply to those employees on a trial status. If an employee on a trial status does not work the required number of months, the trial period would be extended until the necessary amount of time has been served.

Chairperson Fox: Asked if there were any comments or questions from Commissioners or the public. Hearing none, she would entertain a motion.

MOTION: Moved to approve Items V-B, Sections 1, 2, 3, & 4.
BY: Commissioner Olson
SECOND: Commissioner Hurley
VOTE: The vote was unanimous in favor of the motion.

V-C. LCB File No. R069-19.

Section 1. NAC 284.892 Duties of employee who is referred to employee assistance program.

Sec. 2. NAC 284.893 Return to work of employee who tests positive for alcohol or controlled substance while on duty.

Carrie Hughes: Presented the regulation amendments proposed for adoption in LCB File No. R069-19. Section 1, NAC 284.892, Duties of employee who is referred to employee assistance program and Section 2, NAC 284.893, Return to work of employee who tests positive for alcohol or controlled substance while on duty. As part of a mandatory referral to an employee assistance program due to a positive result on an alcohol and/or controlled substance screening test, an employee is required to provide documentation demonstrating participation in and completion of the referral. These amendments will clarify that an agency can act upon documentation provided directly by the employee assistance program, as well as the employee similar to a healthcare provider directly submitting documentation related to sick leave or the Family Medical Leave Act. Additionally, it provides that an employee is only subject to disciplinary action for failure to provide the required evidence if the appointing authority determines that the failure is the fault of the employee.

Chairperson Fox: Asked if there were any comments or questions from Commissioners or the public. Hearing none, she would entertain a motion.

MOTION: Moved to approve Item V-C, Sections 1 & 2.
BY: Commissioner Hurley
SECOND: Commissioner Maloney
VOTE: The vote was unanimous in favor of the motion.

V-D. LCB File No. R124-19

Section 1. NAC 284.726 Access to confidential records.

Denise Woo-Seymour: Stated the intent of the amendment to NAC 284.726 in Section 1 of LCB File No. R124-019 is to ensure that the Division of Human Resource Management can conduct thorough sexual harassment and discrimination investigations by requiring an appointing authority of an agency to produce requested documents. There is currently no such requirement which can make it challenging for the Division to receive all requested records when conducting these types of investigations. No comments were received regarding this amendment at the Regulation Workshop on December 3, 2019.

Commissioner Spurlock: Asked how is the State handling gender identification? If the gender has been changed by the employee from a medical standpoint, is that considered a medical record?

Tammy Smith: Newly-appointed Equal Employment Opportunity Administrator replied all medical records are confidential. Gender identity is disclosed and employees can identify in the gender they relate with.

Commissioner Spurlock: Asked if gender identification is not considered a medical record in any way. It is just a static identifier code and public record, correct? **Tammy Smith:** Answered in the affirmative. Gender identity records are reported in and don't identify with a person. Transitional paperwork is considered to be part of confidential medical records.

Chairperson Fox: Asked if there were any comments or questions from Commissioners or the public. Hearing none, she would entertain a motion.

MOTION: Moved to approve Item V-D, Section 1.
BY: Commissioner Olson
SECOND: Commissioner Hurley
VOTE: The vote was unanimous in favor of the motion.

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

A. The Nevada System of Higher Education, Business Center North, requests the addition of the following positions to the list approved for pre-employment screening for controlled substances:

- 9.549 Meat Plant Manager, PCN: All
- 9.548 Meat Plant Supervisor, PCN: All
- 9.547 Meat Plant Technician II, PCN: All
- 9.546 Meat Plant Technician I, PCN: All
- 9.545 Meat Plant Technician Trainee, PCN: All

Carrie Hughes: Stated the Nevada System of Higher Education, Business Center North (BCN) is requesting the addition of the requirement of pre-employment screening for controlled substances for the classes listed in Agenda Item VI-A. As a basis for their request, BCN has indicated that incumbents must ensure humane animal actions, as well as personal and consumer safety. BCN also noted that the Manager and Supervisor positions may not be on the production floor a preponderance of time.

Chairperson Fox: Asked if there were any comments or questions from Commissioners or the public.

Janine Nelson: Manager, BCN Job Evaluation and Analysis, verified that the manager and supervisor are not on the floor a preponderance of the time. Ultimately, it is the manager who's responsible for consumer safety pursuant to the USDA. There is a conceptual and larger picture of safety than just the output of the meat.

Chairperson Fox: Asked if there were any further comments or questions from Commissioners or the public. Hearing none, she would entertain a motion.

MOTION: Moved to approve Item VI-A.
BY: Commissioner Maloney
SECOND: Commissioner Hurley
VOTE: The vote was unanimous in favor of the motion.

B. The Nevada System of Higher Education, Business Center North, requests approval of a class specification change to include the requirement of pre-employment screening for controlled substances for the positions in the following class codes:

- 9.549 Meat Plant Manager, PCN: All
- 9.548 Meat Plant Supervisor, PCN: All
- 9.547 Meat Plant Technician II, PCN: All
- 9.546 Meat Plant Technician I, PCN: All
- 9.545 Meat Plant Technician Trainee, PCN: All

Carrie Hughes: As pre-employment screening for controlled substances was approved for the classes listed in Agenda Item VI-A, BCN is requesting a change to the class series specification to reflect that approval of the requirement for pre-employment screening for controlled substances for the classes.

Chairperson Fox: Asked if there were any further comments or questions from Commissioners or the public. Hearing none, she would entertain a motion.

MOTION: Moved to approve Item VI-B.
BY: Commissioner Maloney
SECOND: Commissioner Hurley
VOTE: The vote was unanimous in favor of the motion.

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

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

Posting: #3-20
12.136 ESD Manager Series
Posting: #4-20:
7.612 Management Analyst Series
Posting: #5-20:
7.263 Contributions Examiner Series
Posting: #6-20:
12.442 Rehabilitation Technician Series
Posting: #7-20:
1.805 Forestry Program Manager
Posting: #8-20:
11.298 Polygraph/Background Supervisor/Examiner Series
11.380 Background Investigation Technician Series

VIII. DISCUSSION AND ANNOUNCEMENT OF DATES FOR UPCOMING MEETINGS

Chairperson Fox: Wondered if it would be possible to reschedule the June 12, 2020, meeting to June 26, 2020? Everyone concurred.

Peter Long: Asked about the date of the September meeting. The Commissioners discussed their schedules and it was decided the best date was September 18, 2020.

IX. COMMISSION COMMENTS

Commissioner Maloney: Stated one of the discrepancies that has not been clearly resolved was Hearing Officers Rule of Procedure #4, SUBPOENAS, PLEADINGS, DOCUMENTS AND DISCOVERY. Section 4.1 discusses subpoenas and in subsection b, it reads, "Subpoenas issued to the State of Nevada, its public entities and political subdivisions, and their officers and employees, must be served in accordance with N.R.C.P. 4(d)." N.R.C.P. 4(d) deals with service of a summons and complaint when an action subject to the *Nevada Rules of Civil Procedure* (N.R.C.P.) is filed in Nevada and not specifically on the issuance of subpoenas. There is a separate rule which specifically deals with the issuance of subpoenas for actions in Nevada which is N.R.C.P. 45. As it is not agendaized for this meeting, Commissioner Maloney would like to see the issue addressed in the future.

Peter Long: Stated he discussed this with DAG Sundheim, and DHRM is prepared to bring this forward in the future with a revision to address whatever possible revisions Commissioner Maloney might suggest.

X. PUBLIC COMMENT

Chairperson Fox: Advised that no vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken under NRS 241.020.

XI. ADJOURNMENT

Chairperson Fox: Thanked everyone and adjourned the meeting.