

**STATE OF NEVADA
PERSONNEL COMMISSION**

Held at the Nevada State Library and Archives Building, 100 N. Carson Street, Room 110, Carson City; and via video conference in Las Vegas at the Grant Sawyer Building, 555 E. Washington Avenue, Room 1400.

**MEETING MINUTES
June 25, 2021**

**COMMISSIONERS PRESENT
IN CARSON CITY:**

Ms. Patricia Hurley, Commissioner
Ms. Priscilla Maloney, Commissioner

Ms. Dana Carvin, Alternate Commissioner, non-voting

**COMMISSIONERS PRESENT
IN LAS VEGAS:**

Ms. Katherine Fox, Chairperson
Mr. Mark Olson, Commissioner
Mr. Andreas Spurlock, Commissioner

STAFF PRESENT IN CARSON CITY:

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

STAFF PRESENT IN LAS VEGAS:

Ms. Heather Dapice, Supervisory Personnel Analyst, DHRM

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

Chairperson Fox: Called the meeting to order on Friday June 25, 2021, at approximately 10:00 a.m. She welcomed everyone and did roll call.

II. PUBLIC COMMENT

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

III. DISCUSSION AND APPROVAL OR DENIAL OF PROPOSED EMERGENCY REGULATIONS CHANGES TO NEVADA ADMINISTRATIVE CODE, CHAPTER 284 – Action Item

Sec. 1. NEW Appeal of determination to release confidential records.

Sec. 2. NAC 284.0995 “Sex- and gender-based harassment” defined.

Sec. 3. NAC 284.496 Classes and training concerning prevention of sex- and gender-based harassment.

Sec. 4. NAC 284.498 Training of supervisory and managerial employees.

Sec. 5. NAC 284.650 Causes for disciplinary or corrective action.

Sec. 6. NAC 284.696 Unlawful discrimination.

Sec. 7. NAC 284.718 Confidential records.

Sec. 8. NAC 284.726 Access to confidential records.

Sec. 9. NAC 284.771 Sex- and gender-based harassment.

Michelle Garton: Good morning Madame Chair and members of the Commission. I'm Michelle Garton, Deputy Administrator for the Division of Human Resource Management (DHRM) for the record. We would like to present for adoption on an emergency basis, regulations stemming from recently passed and approved Senate Bill 51 (SB51). The vast majority of the amendments to the regulations are due to changes in the name of the Sexual Harassment and Discrimination Investigations Unit to Sex or Gender-based Harassment and Discrimination Investigations Unit.

The first regulation noted as 'section 1' is to put into regulation provisions around the ability of an employee who is affected by an Administrator's determination, if they should determine, the release of confidential records related to such an investigation. The Division would be required to inform anybody who's affected; witness, complainant, or the accused that the decision to release confidential information has been made and they have 10 days to appeal this to the Commission through the Administrator.

So, generally we based this regulation on other appeal type regulations that we have currently in place and really just placed out how a person who is subject to this determination must submit an appeal; in writing, addressed to the Administrator and an outline of what points they disagree with and why we should not release the confidential information.

We haven't had any experience with this type of appeal yet so this is a regulation we are proposing for permanent adoption, I want to let the Commission know also, we are proposing these regulations are adopted on an emergency basis and on June 30th we will be holding a regulations workshop to work through them, receive comments and input from interested parties so we can submit to the Legislative Counsel Bureau for pre-adoption review and hopefully, adoption on a permanent basis at the September 24th Personnel Commission meeting.

Of course, if people cannot attend the regulations workshop, they can send me an email or call me.

Moving on to 'section 2', Madame Chair did you want me to present all of them or do questions from the Commission after each section?

Chairperson Fox: I'd like to entertain questions at this time and as you go through the regulations, maybe that will highlight something you want to be sure to address.

My question is, in seeing item #1, where it says disclose confidential information of sex and gender-based harassment, then item #2 of that, it says a person receives notice pursuant to subsection 1, within 10 days following written appeal decision of the Commission. It says it must be in writing, addressed to the Administrator.

In terms of attempting to maintain confidentiality, of a potential witness etc., will the name be redacted so the Commissioners don't see it? What would be our obligation in terms of confidentiality? It's ok if you don't have an answer for me today, I just wanted to raise that from the perspective of, I believe we are held to a higher obligation of the appeal submitted to us to keep it confidential.

Michelle Garton: Thank you for understanding the nature of this, but what I can relate it to is an appeal to the Hearings Officer, separation, suspension, demotion, involuntary transfer that it's a closed hearing so, yes, the Personnel Commission receives the names, but the Division and the Personnel Commission would be the only ones to know. We are working on how to handle it, would you say, just as reference now, prefer to not know the name of persons affected by appealing?

Chairperson Fox: That's my preference.

Michelle Garton: We can certainly keep that in mind.

Chairperson Fox: I'm just speaking for me, that's my preference.

Commissioner Hurley: I have a question; don't they have the right to an in-person hearing or is this a written appeal?

Michelle Garton: It is a written appeal and a closed hearing so, I would imagine that people would want face to face.

Commissioner Hurley: I guess that's my question, they'll be there, I guess if it were written, you could redact but if they come in-person, not knowing the name wouldn't work.

When given confidential information, I would think this Commission could keep that information confidential, given it is a closed session and no one is allowed in but the appellant.

Commissioner Maloney: Chair Fox, I have a couple of questions about this particular section of SB51 that's now going to be encapsulated in a new NAC and I think, with your permission, I'd like to ask the questions I have.

Chairperson Fox: Go ahead.

Commissioner Maloney: Thank you. Ms. Sundheim, our Deputy Attorney General (DAG) the question I have and I'm looking at the proposed language for the emergency regulation on page 2, I can tell you for the benefit of the entire body, the rest of the proposed regulations are not a concern to me.

This appears to expand if you will, the Personnel Commissions jurisdiction to hear an appeal. Do you think, in your professional opinion, that the outcome, one way or another from that appeal, say someone who files an appeal has counsel, would they be able under NRS 233B, to litigate that decision, our decision, to district court?

Tori Sundheim: Yes

Commissioner Maloney: Ok, so, it would be a contested appeal...ok. I just want us to be clear, that's what we're setting ourselves up for, if we approve this regulation today, that process is...

Tori Sundheim: Right, I would say anytime something comes before the Personnel Commission, Collective Bargaining will change it a little bit, for most employees, the way it's worked up until now is to go to the Personnel Commission or the Hearing Officer, both of those make decisions and already, those decisions are grievable to the district courts and so are the decisions of the Employee-Management Committee, they're grievable to the district courts.

Commissioner Maloney: So, I believe our jurisdiction is in fact 284.065, isn't that the statute that lays out our authority? I did look that statute up and I was wondering, are we authorized to hear these appeals? In other words, by the language of that statute, I think there's a catch-all phrase that says 'and other matters', do you think we'd have a problem there?

Tori Sundheim: Yes, I think it covers the power to do this. The Legislative Counsel Bureau, their counsel definitely reviews this to ensure there are no conflicts and they have already done that, they have said...

Commissioner Maloney: And they are satisfied that we have the authority?

Michelle Garton: If you're talking about the regulation, this is just emergency so they have not yet, but once we submit them for pre-adoption on July 1st, they will start to review it.

Tori Sundheim: So, my answer then is I'm not concerned with the authority, the Legislative Counsel Bureau will be reviewing it independently and if they have any concerns, they'll send it back.

Commissioner Maloney: Thank you.

Frank Richardson: Let me just add something, we don't submit anything without talking to our DAG and in my experience since I've been here with the State, I don't recall anything not being reviewed.

Tori Sundheim: We do take it very seriously.

Chairperson Fox: Thank you Commissioner Maloney, other Commissioners, do you have questions?

There were none.

Michelle Garton: Section 2 and really throughout, there is one other area that's different, the rest of the regulations are based on the Governor's task force on sexual harassment and discrimination that was released in June 2019. In that report they did suggest amendments to certain regulations currently in place. The overarching main theme again is changing the phrase 'sexual harassment' to 'sex and gender-based harassment' so this regulation notes those changes.

In additions to subsection 3, of section 2 of NAC 284.0995 this was also suggested by the task force.

As we move on to section 3, NAC 284.496 this is again changing it to 'sex and gender-based harassment' but also sets a time limit an employee or a supervisor has to and are required to take training related to sex and gender-based harassment. We currently have a training requirement in place, and it goes from 6 months to 30 days.

Moving on to section 5, 284.650, again it's the terminology.

In 284.718, that's the same thing, just one change there and then in NAC 284.726 in section 8, it does make the change to 'sex and gender-based harassment' but also in subsection 6 it allows for the exception if the Administrator does determine to release confidential records it puts that exception in there.

The last one is NAC 284.771, section 9, and it's the change of phrase and recommends the sanctions be proportionate to the violation. While it seems nonspecific, I think it gives the ability to interpret that as necessary.

I'm happy to answer any questions from the Commission.

Chairperson Fox: Thank you. Commissioners do you have questions? For the Commissions understanding, we are going to adopt, if we approve them, we will adopt these emergency regulation changes that will go into effect today and that gives the opportunity for the Division to work with their employee groups with the proposed regulation changes, solicit feedback from them as well as send the regulations to the Legislative Counsel Bureau to be put in the proper language. So, we will see these again with changes potentially in September. From my perspective, I think you're probably going to get employee comments on the confidentiality piece.

With that said, I will entertain a motion.

Commissioner Olson: I move to approve the proposed emergency regulations, the changes as it pertains to the Nevada Administrative Code, chapter 284 as presented.

Chairperson Fox: I will second that motion, discussion? Public comment?

There was none.

Chairperson Fox: It's been moved and seconded that the Commission approve proposed emergency regulation changes to Nevada Administrative Code, chapter 284 as identified in the agenda item section 1 through 9.

The vote was unanimous.

MOTION: Moved to approve the proposed emergency regulations, the changes as it pertains to the Nevada Administrative Code, chapter 284 as presented.
BY: Commissioner Olson
SECOND: Chairperson Fox
VOTE: The vote was unanimous in favor of the motion.

IV. COMMISSION COMMENTS

Commissioner Spurlock: Ms. Garton down here after the prior meeting we just had the alternate, Armen Asherian, we were talking and he had no concerns about SB51 and potentially being in conflict with how he has to handle title 9, he had to run I don't think he was aware of the second meeting but when we started talking more about the second meeting, I think it's highly pertinent to him, as a favor, would you mind emailing him this second meeting packet with the agenda and packet.

Michelle Garton: Absolutely.

Commissioner Spurlock: Thank you so much.

Chairperson Fox: Any other Commission comments?

There were none.

V. 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. There were no public comments.

VI. ADJOURNMENT

Chairperson Fox: Thanked everyone and adjourned the meeting at approximately 10:25 am.