

Personnel Commission Meeting
June 25, 2021

FOR INFORMATION ONLY

Attached is SB 51 of the 2021 Legislative Session for your reference and consideration of the emergency regulations.

Senate Bill No. 51–Committee on
Legislative Operations and Elections

CHAPTER.....

AN ACT relating to state employees; prohibiting an employee of the Executive Department of the State Government from engaging in sex- or gender-based harassment; providing for the adoption and annual review of a policy for such employees concerning sex- or gender-based harassment; prescribing certain duties of an appointing authority relating to sex- or gender-based harassment; creating the Sex- or Gender-Based Harassment and Discrimination Investigation Unit within the Division of Human Resource Management of the Department of Administration; providing for the investigation of a complaint by the Investigation Unit; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law: (1) creates the Division of Human Resource Management of the Department of Administration; and (2) requires the Division to administer provisions governing employees of the Executive Department of the State Government. (NRS 284.025) **Section 2** of this bill: (1) declares that it is the policy of this State to ensure that its employees do not engage in sex- or gender-based harassment; and (2) prohibits such employees from engaging in such behavior against another employee, an applicant for employment or any other person in the workplace.

Section 3 of this bill requires the Administrator of the Division to adopt, maintain and annually review and update a policy for employees of the Executive Department concerning sex- or gender-based harassment. **Section 3** also requires an appointing authority to provide each employee with a copy of the policy upon employment and any update of the policy.

Section 5 of this bill creates the Sex- or Gender-Based Harassment and Discrimination Investigation Unit within the Division. **Section 4** of this bill requires an appointing authority to notify the Investigation Unit upon receipt of a complaint filed by an employee concerning sex- or gender-based harassment or discrimination. **Section 4** additionally requires an appointing authority to notify certain other persons responsible for providing legal advice to the agency upon receipt of a complaint.

Section 5 requires the Investigation Unit to appoint an investigator to investigate any complaint regarding suspected harassment or discrimination based on sex or gender filed by an employee. **Section 5** requires an investigator to prepare a written report of his or her findings at the conclusion of an investigation and submit the report to the Investigation Unit for transmission to the appointing authority of the agency in which the complaint arose and certain other persons. **Section 5** requires the appointing authority to: (1) review the report; (2) determine the appropriate resolution of the complaint; (3) notify the Investigation Unit in writing that a complaint has been resolved; and (4) retain a copy of the written report prepared by the investigator and the written notification of the resolution of the complaint. **Section 5** makes a complaint regarding suspected harassment or discrimination based on sex or gender and information relating to such a complaint confidential and prohibits its disclosure unless: (1) so ordered by the Administrator



or his or her designee or a court of competent jurisdiction; or (2) necessary to file a claim authorized by law that is based on the same facts and circumstances as those identified in the complaint. **Section 5** also: (1) requires that if the Administrator or his or her designee decides to order the disclosure of any such information which may be used to identify certain persons, the Administrator or designee must provide certain notice to the person before ordering the disclosure; and (2) authorizes a person who receives such notice to file a written appeal of the decision with the Personnel Commission. **Sections 5, 5.3 and 5.5** of this bill make a complaint regarding suspected harassment or discrimination based on sex or gender and information relating to such a complaint confidential regardless of whether the provisions of a collective bargaining agreement requires the disclosure of such information. **Section 6** of this bill makes a conforming change to indicate the exception of such information from disclosure as a public record.

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. Chapter 284 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. 1. *It is the policy of this State to ensure that its employees do not engage in sex- or gender-based harassment.*

2. Sex- or gender-based harassment violates the policy of this State and is a form of unlawful discrimination based on sex or gender under state and federal law. An employee shall not engage in sex- or gender-based harassment against another employee, an applicant for employment or any other person in the workplace.

Sec. 3. 1. *The Administrator shall adopt and maintain a policy concerning sex- or gender-based harassment. Such a policy must include, without limitation:*

(a) A definition of behavior that constitutes illegal sex- or gender-based harassment;

(b) Training requirements for employees concerning sex- or gender-based harassment;

(c) Training requirements for managerial or supervisory employees concerning equal employment opportunity; and

(d) A procedure for filing a complaint to report suspected harassment or discrimination based on sex or gender.

2. At least annually, the Administrator shall review the policy adopted pursuant to subsection 1 for compliance with relevant state and federal law and make any necessary updates to the policy.



3. *An appointing authority shall provide each employee of the appointing authority with a copy of the policy adopted pursuant to subsection 1 upon commencement of employment and any update of the policy.*

Sec. 4. *Upon receipt of a complaint filed by an employee alleging he or she is being harassed or discriminated against based on his or her sex or gender or has witnessed an employee being harassed or discriminated against based on his or her sex or gender, an appointing authority shall promptly notify the Sex- or Gender-Based Harassment and Discrimination Investigation Unit created by section 5 of this act and:*

1. *A person designated by the appointing authority to handle issues relating to sex- or gender-based harassment and discrimination; or*

2. *The deputy attorney general or other counsel designated to act as an attorney for the agency.*

Sec. 5. 1. *The Sex- or Gender-Based Harassment and Discrimination Investigation Unit is hereby created within the Division.*

2. *The Sex- or Gender-Based Harassment and Discrimination Investigation Unit shall promptly assign or appoint an investigator to investigate any complaint regarding suspected harassment or discrimination based on sex or gender filed by an employee pursuant to the procedure established in accordance with section 3 of this act or received pursuant to section 4 of this act. An investigator assigned or appointed pursuant to this section shall inform each person involved in such an investigation of the provisions of subsection 6. The investigation must be conducted as discreetly and with as minimal disruption to the workplace as possible.*

3. *At the conclusion of the investigation, the investigator shall prepare a written report of his or her findings and submit the report to the Sex- or Gender-Based Harassment and Discrimination Investigation Unit for transmission to the appointing authority of the agency in which the complaint arose or a person designated by the appointing authority to handle issues relating to sex- or gender-based harassment and discrimination and the deputy attorney general or other counsel designated to act as an attorney for the agency.*

4. *The Sex- or Gender-Based Harassment and Discrimination Investigation Unit shall notify a complainant when a report has been completed and forwarded to the appointing authority for review.*



5. Upon receipt of a written report prepared pursuant to subsection 3, the appointing authority shall review the report and determine the appropriate resolution of the complaint. The appointing authority shall:

(a) Notify the Sex- or Gender-Based Harassment and Discrimination Investigation Unit in writing of its determination regarding the resolution of the complaint within 30 days after the date on which the resolution occurs; and

(b) Retain a copy of the written report prepared pursuant to subsection 3 and the written notification of the resolution of the complaint described in paragraph (a).

6. Except as otherwise provided in subsection 8, a complaint filed pursuant to section 4 of this act and any information relating to the complaint, including, without limitation, information that is:

(a) Obtained by the investigator in the investigation of a complaint pursuant to subsection 2;

(b) Contained in a written report of a complaint retained pursuant to subsection 5; or

(c) Contained in a written resolution of a complaint retained pursuant to subsection 5,

↳ is confidential and must not be disclosed unless so ordered by the Administrator or his or her designee or a court of competent jurisdiction. Such information that is ordered to be disclosed must not be disclosed until after the conclusion of the investigation.

7. If the Administrator or his or her designee decides pursuant to subsection 6 to order the disclosure of any information that may be used to identify a person who filed a complaint pursuant to section 4 of this act, a person who is the subject of such a complaint or a person who claims to have witnessed an employee being harassed or discriminated against based on his or her sex or gender, the Administrator or his or her designee shall notify the person regarding the decision at least 10 days before ordering the disclosure. A person who receives such notice may, within 10 days after receiving the notice, file a written appeal of the decision with the Commission. If such an appeal is filed, the Commission shall, in a closed hearing, consider the decision of the Administration for which the appeal is taken. If the Commission determines that the information must not be disclosed, the Commission shall keep the information confidential.

8. A person or governmental entity identified in a complaint filed pursuant to section 4 of this act may disclose the identity of any other person or entity identified in the complaint if such



disclosure is necessary to file a claim authorized by law that is based on the same facts and circumstances as those identified in the complaint.

9. An appointing authority shall take any action necessary to protect a complainant whose identity is disclosed pursuant to subsection 6 or 8 from retaliation for filing the complaint.

10. In the event of a conflict between this section and the provisions of a collective bargaining agreement entered into pursuant to NRS 288.400 to 288.630, inclusive, the provisions of this section prevail.

Sec. 5.3. NRS 284.013 is hereby amended to read as follows:

284.013 1. Except as otherwise provided in subsection 4, this chapter does not apply to:

(a) Agencies, bureaus, commissions, officers or personnel in the Legislative Department or the Judicial Department of State Government, including the Commission on Judicial Discipline;

(b) Any person who is employed by a board, commission, committee or council created in chapters 445C, 590, 623 to 625A, inclusive, 628, 630 to 644A, inclusive, 648, 652, 654 and 656 of NRS; or

(c) Officers or employees of any agency of the Executive Department of the State Government who are exempted by specific statute.

2. Except as otherwise provided in subsection 3, the terms and conditions of employment of all persons referred to in subsection 1, including salaries not prescribed by law and leaves of absence, including, without limitation, annual leave and sick and disability leave, must be fixed by the appointing or employing authority within the limits of legislative appropriations or authorizations.

3. Except as otherwise provided in this subsection, leaves of absence prescribed pursuant to subsection 2 must not be of lesser duration than those provided for other state officers and employees pursuant to the provisions of this chapter. The provisions of this subsection do not govern the Legislative Commission with respect to the personnel of the Legislative Counsel Bureau.

4. Any board, commission, committee or council created in chapters 445C, 590, 623 to 625A, inclusive, 628, 630 to 644A, inclusive, 648, 652, 654 and 656 of NRS which contracts for the services of a person, shall require the contract for those services to be in writing. The contract must be approved by the State Board of Examiners before those services may be provided.

5. ~~[(F)]~~ *Except as otherwise provided in section 5 of this act, to* the extent that they are inconsistent or otherwise in conflict, the



provisions of this chapter do not apply to any terms and conditions of employment that are properly within the scope of and subject to the provisions of a collective bargaining agreement or a supplemental bargaining agreement that is enforceable pursuant to the provisions of NRS 288.400 to 288.630, inclusive.

Sec. 5.5. NRS 288.505 is hereby amended to read as follows:

288.505 1. Each collective bargaining agreement must be in writing and must include, without limitation:

(a) A procedure to resolve grievances which applies to all employees in the bargaining unit and culminates in final and binding arbitration. The procedure must be used to resolve all grievances relating to employment, including, without limitation, the administration and interpretation of the collective bargaining agreement, the applicability of any law, rule or regulation relating to the employment and appeal of discipline and other adverse personnel actions.

(b) A provision which provides that an officer of the Executive Department shall, upon written authorization by an employee within the bargaining unit, withhold a sufficient amount of money from the salary or wages of the employee pursuant to NRS 281.129 to pay dues or similar fees to the exclusive representative of the bargaining unit. Such authorization may be revoked only in the manner prescribed in the authorization.

(c) A nonappropriation clause that provides that any provision of the collective bargaining agreement which requires the Legislature to appropriate money is effective only to the extent of legislative appropriation.

2. Except as otherwise provided in subsections 3 and 4, the procedure to resolve grievances required in a collective bargaining agreement pursuant to paragraph (a) of subsection 1 is the exclusive means available for resolving grievances described in that paragraph.

3. An employee in a bargaining unit who has been dismissed, demoted or suspended may pursue a grievance related to that dismissal, demotion or suspension through:

(a) The procedure provided in the agreement pursuant to paragraph (a) of subsection 1; or

(b) The procedure prescribed by NRS 284.390,
↳ but once the employee has properly filed a grievance in writing under the procedure described in paragraph (a) or requested a hearing under the procedure described in paragraph (b), the employee may not proceed in the alternative manner.



4. An employee in a bargaining unit who is aggrieved by the failure of the Executive Department or its designated representative to comply with the requirements of NRS 281.755 may pursue a grievance related to that failure through:

(a) The procedure provided in the agreement pursuant to paragraph (a) of subsection 1; or

(b) The procedure prescribed by NRS 288.115,

↳ but once the employee has properly filed a grievance in writing under the procedure described in paragraph (a) or filed a complaint under the procedure described in paragraph (b), the employee may not proceed in the alternative manner.

5. If there is a conflict between any provision of an agreement between the Executive Department and an exclusive representative and:

(a) Any regulation adopted by the Executive Department, the provision of the agreement prevails unless the provision of the agreement is outside of the lawful scope of collective bargaining.

(b) An existing statute, other than a statute described in paragraph (c), the provision of the agreement may not be given effect unless the Legislature amends the existing statute in such a way as to eliminate the conflict.

(c) ~~IA~~ *Except as otherwise provided in section 5 of this act*, a provision of chapter 284 or 287 of NRS or NRS 288.570, 288.575 or 288.580, the provision of the agreement prevails unless the Legislature is required to appropriate money to implement the provision, within the limits of legislative appropriations and any other available money.

Sec. 6. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119A.677, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392,



209.3923, 209.3925, 209.419, 209.429, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 226.300, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239.014, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 239C.420, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095, 268.0978, 268.490, 268.910, 269.174, 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 286.118, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.5757, 293.870, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.2242, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.0075, 379.008, 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.033, 391.035, 391.0365, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 393.045, 394.167, 394.16975, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 414.280, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902, 432C.140, 432C.150, 433.534, 433A.360, 437.145, 437.207, 439.4941, 439.840, 439.914, 439B.420, 439B.754, 439B.760, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735, 442.774, 445A.665, 445B.570, 445B.7773, 447.345, 449.209, 449.245, 449.4315, 449A.112, 450.140, 450B.188, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.535, 480.545, 480.935, 480.940, 481.063, 481.091, 481.093, 482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484A.469, 484E.070, 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.303, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.238,



622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.2673, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.3415, 632.405, 633.283, 633.301, 633.4715, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.580, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641.221, 641.325, 641A.191, 641A.262, 641A.289, 641B.170, 641B.282, 641B.460, 641C.760, 641C.800, 642.524, 643.189, 644A.870, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 653.900, 654.110, 656.105, 657A.510, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370, 677.243, 678A.470, 678C.710, 678C.800, 679B.122, 679B.124, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.325, 706.1725, 706A.230, 710.159, 711.600, *and section 5 of this act*, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains



information that is confidential if the governmental entity can redact, delete, conceal or separate, including, without limitation, electronically, the confidential information from the information included in the public book or record that is not otherwise confidential.

4. If requested, a governmental entity shall provide a copy of a public record in an electronic format by means of an electronic medium. Nothing in this subsection requires a governmental entity to provide a copy of a public record in an electronic format or by means of an electronic medium if:

(a) The public record:

(1) Was not created or prepared in an electronic format; and

(2) Is not available in an electronic format; or

(b) Providing the public record in an electronic format or by means of an electronic medium would:

(1) Give access to proprietary software; or

(2) Require the production of information that is confidential and that cannot be redacted, deleted, concealed or separated from information that is not otherwise confidential.

5. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in the medium that is requested because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.

Sec. 7. This act becomes effective upon passage and approval.



**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 the prohibition of sex- and gender-based harassment; and

WHEREAS, the Commission finds that an emergency exists insofar as the need for swift action resulting from the implementation of provisions related to prohibiting an employee of the Executive Department of the State Government from engaging in sex- and gender-based harassment, effective June 3, 2021, does not leave adequate time for the Commission to use the procedures mandated by Chapter 233B of the NRS for adding a permanent regulation;

NOW THEREFORE, the Commission hereby adopts the following Emergency Regulation which shall be effective on June 25, 2021 upon the endorsement by the Governor and filing with the Secretary of State.

FOR THE COMMISSION:

KATHERINE FOX, Chairman
Nevada Personnel Commission

Date

GOVERNOR'S ENDORSEMENT

I, Governor Steve Sisolak, endorse the Nevada Personnel Commission's foregoing Statement of Emergency.

STEVE SISOLAK
Governor of Nevada

Date

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EMERGENCY REGULATIONS

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

NEW Appeal of determination to release confidential records.

1. Pursuant to section 7 of Senate Bill 51 of the 2021 Legislative Session, an employee affected by a decision by the Administrator to disclose any information related to a report of sex- or gender-based harassment or discrimination that identifies the employee as the person who reported the allegation, a person who is the subject of such a report or a person who claims to have witnessed an employee being harassed or discriminated against based on his or her sex or gender, shall be notified at least 10 days before ordering the release of the information.

2. A person who receives notice pursuant to subsection 1 may, within 10 days after receipt of a determination to disclose the information, file a written appeal of the decision with the Commission. The appeal must:

- (a) Be in writing;
- (b) Be addressed to the Administrator;
- (c) Address the points outlined in the decision regarding the disclosure of the information; and
- (d) Indicate the points with which the appellant disagrees and express the reasons for the disagreement.

Sec. 2. NAC 284.0995 is hereby amended to read as follows:

NAC 284.0995 ~~["Sexual"]~~ "Sex- and gender-based harassment" defined. (NRS 284.065)
~~["Sexual"]~~ "Sex- and gender-based harassment" means :

1. Making submission to unwelcome sexual advances, requests for sexual favors, ~~or] and~~ other ~~speech] verbal~~ or physical conduct of a sexual nature ~~when:~~

~~—1. Submission to such speech or conduct is made]~~ either explicitly or implicitly a term or condition of a person's employment;

2. ~~Submission]~~ Making submission to or the rejection of such ~~speech or]~~ conduct described in subsection 1 by a person ~~is used as the]~~ a basis ~~for]~~ of employment decisions affecting that *or any other* person; or

3. ~~Such speech or conduct]~~ Engaging in unwelcome harassing verbal or physical behavior that occurs because of the sex or gender of an individual or individuals and has the purpose or effect of unreasonably interfering with ~~a person's]~~ an individual's work performance or creating an intimidating ~~, hostile]~~ or offensive ~~working]~~ work environment ~~.] where:~~

- (a) Harassing behavior is of a sexual nature;
- (b) Harassing behavior is not sexual in nature, but is related to the sex or gender of the victim or others;
- (c) Harassing behavior is sex- and gender-neutral in content but occurs because of an individual's sex or gender; or
- (d) Any combination of types of behaviors described in paragraphs (a) through (c) of this subsection.

(Added to NAC by Personnel Comm'n by R147-06, eff. 12-7-2006)

Sec. 3. NAC 284.496 is hereby amended to read as follows:

NAC 284.496 Classes and training concerning prevention of ~~sexual~~ sex- and gender-based harassment. (NRS 284.065, 284.155, 284.343)

1. Within ~~6 months~~ *30 days* after an employee is initially appointed to state service, the employee shall attend a certified class concerning the prevention of ~~sexual~~ *sex- and gender-based* harassment.

2. At least once every 2 years after his or her initial appointment to state service, an employee shall attend a certified refresher class or training concerning the prevention of ~~sexual~~ *sex- and gender-based* harassment.

3. An appointing authority may require an employee to retake any part or all of the classes or training required by subsections 1 and 2, or to participate in any additional classes or training deemed necessary by the appointing authority.

4. The appointing authority shall retain the proof of completion by an employee of a class or training required by this section.

5. The Division of Human Resource Management will certify the classes and training concerning the prevention of ~~sexual~~ *sex- and gender-based* harassment required by this section.

(Added to NAC by Personnel Comm'n by R096-03, 10-30-2003, eff. 1-1-2004)

Sec. 4. NAC 284.498 is hereby amended to read as follows:

NAC 284.498 Training of supervisory and managerial employees. (NRS 284.065, 284.155, 284.343)

1. Except as otherwise provided in this section:

(a) *Within 30 days after an agency initially appoints an employee to a supervisory position or managerial position, the employee shall attend a training class concerning sex- and gender-based harassment.*

(b) Within 6 months after an agency initially appoints an employee to a supervisory position or managerial position, the employee shall attend a training class concerning work performance standards and the evaluation of the performance of employees.

~~(b)~~ (c) Within 12 months after an agency appoints an employee to a supervisory position or managerial position, the employee shall attend at least one training class which has been approved by the Division of Human Resource Management in each of the following areas:

(1) The following:

(I) Equal employment opportunity; and

(II) Unlawful discrimination and ~~sexual~~ *sex- and gender-based* harassment;

(2) Interviewing and hiring;

(3) Alcohol and drug testing;

(4) Progressive disciplinary procedures;

(5) Handling grievances; and

(6) The following:

(I) Title I of the American with Disabilities Act of 1990, 42 U.S.C. §§ 12111-12117;

(II) The ADA Amendments Act of 2008, Public Law 110-325;

(III) The development of essential functions of positions that are described to each candidate and considered by the appointing authority pursuant to NAC 284.441; and

(IV) The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq.

2. Every 3 years, a supervisor or managerial employee shall complete training which is approved by the Division of Human Resource Management in each of the topic areas described in subsection 1.

3. The appointing authority, at its discretion, may accept, in lieu of the training required by subsection 1, supervisory or managerial training classes in each of the topic areas described in subsection 1 which are approved by the Division of Human Resource Management and taken by the employee during the 3 years immediately preceding the employee's appointment.

4. In addition to the training otherwise required by this section, the Division of Human Resource Management or an appointing authority may require a supervisor or managerial employee to retake any part or all of the training required by this section, or to participate in any additional training or other classes deemed necessary by the Division of Human Resource Management or appointing authority.

5. As used in this section:

(a) "Managerial position" means a position which is held by an employee who:

- (1) Formally evaluates supervisors;
- (2) Is involved in the hiring and firing of subordinate staff;
- (3) Determines organizational structure within a component of the organization; and
- (4) Develops, monitors and implements policies to accomplish long-range goals.

(b) "Supervisory position" means a position which is held by an employee who:

- (1) Formally evaluates staff;
- (2) Is involved in the hiring and firing of subordinate staff; and
- (3) Establishes policies which affect the performance or behavior of subordinate staff.

[Personnel Div., Rule X part § F, eff. 1-18-82]—(NAC A by Dep't of Personnel, 10-26-84; 5-27-86; 10-18-89; 3-23-94; R197-99, 1-26-2000; A by Personnel Comm'n by R182-03, 1-27-2004; R057-10, 10-15-2010; R139-12, 10-4-2013; R018-19, 6-8-2020)

Sec. 5. NAC 284.650 is hereby amended to read as follows:

NAC 284.650 Causes for disciplinary or corrective action. (NRS 284.065, 284.155, 284.383, 284.385) Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.

2. Disgraceful personal conduct which impairs the performance of a job or causes discredit to the agency.

3. The employee of any institution administering a security program, in the considered judgment of the appointing authority, violates or endangers the security of the institution.

4. Discourteous treatment of the public or fellow employees while on duty.

5. Incompetence or inefficiency.

6. Insubordination or willful disobedience.

7. Inexcusable neglect of duty.

8. Fraud in securing appointment.

9. Prohibited political activity.

10. Dishonesty.

11. Abuse, damage to or waste of public equipment, property or supplies because of inexcusable negligence or willful acts.

12. Drug or alcohol abuse as described in NRS 284.4062 and NAC 284.884.

13. Conviction of any criminal act involving moral turpitude.
14. Being under the influence of intoxicants, a controlled substance without a medical doctor's prescription or any other illegally used substances while on duty.
15. Unauthorized absence from duty or abuse of leave privileges.
16. Violation of any rule of the Commission.
17. Falsification of any records.
18. Misrepresentation of official capacity or authority.
19. Violation of any safety rule adopted or enforced by the employee's appointing authority.
20. Carrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his or her appointing authority.
21. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.
22. Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning ~~sexual~~ *sex- or gender-based* harassment.
23. Failure to participate in an administrative investigation authorized by the employee's appointing authority.
24. Failure to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license when required pursuant to NAC 284.652.

[Personnel Div., Rule XII § D, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 7-22-87; 12-26-91; 7-1-94; 11-16-95; R031-98, 4-17-98; A by Personnel Comm'n by R065-98, 7-24-98; R147-06, 12-7-2006; R118-17, 10-25-2018)

Sec. 6. 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~~ *sex- and gender-based* 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, other than a complaint described in NAC 284.658, 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; R033-17, 10-31-2017)

Sec. 7. NAC 284.718 is hereby amended to read as follows:

NAC 284.718 Confidential records. (NRS 284.065, 284.155, 284.355, 284.407)

1. The following types of information, which are maintained by the Division of Human Resource Management or the agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished on the condition that the source remain confidential;

(b) Any document which is used 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 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 record of employment of a current or former employee which relates to:

(1) The employee's performance;

(2) The employee's conduct, including any disciplinary actions taken against the employee;

(3) The employee's usage or balance of his or her annual leave and sick leave;

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

(5) The employee's personal telephone number;

(6) 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 home address be listed as confidential, the employee's record of employment must be so designated and list his or her 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 relating to ~~sexual~~ **sex- or gender-based** harassment or discrimination, or both, and any findings of such an investigation 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.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 7-21-89; 7-6-92; 11-12-93; R058-01, 9-6-2001; A by Personnel Comm'n by R068-03, 10-30-2003; R182-03, 1-27-2004; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009; R055-10, 6-30-2010; R137-12 & R045-13, 10-23-2013; R175-18, 1-30-2019)

Sec. 8. NAC 284.726 is hereby amended to read as follows:

NAC 284.726 Access to confidential records. (NRS 284.065, 284.155, 284.335, 284.4066, 284.4068, 284.407)

1. Except as otherwise provided in this subsection and subsections 2 and 11, 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 11 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 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 11 and 12, access to an employee's 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.
- (c) An appointing authority or his or her designated representative.
- (d) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (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.
- (f) Persons who are involved in processing records for the transaction of business within and between state agencies.
- (g) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

4. The portion of an employee's record of employment that concerns the health, medical condition or disability of the employee or a member of his or her immediate family must be kept in a locked cabinet, separate from any other portion of the employee's record of employment.

5. Except as otherwise provided in subsection 11, 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.

6. Except as otherwise provided in *section 6 of Senate Bill 51 of the 2021 Legislative Session and* subsections 11 and 12 *of this section*, access to any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to ~~sexual~~ *sex- and gender-based* harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority is limited to:

(a) An appointing authority.

(b) A designated representative of the agency with 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 subsections 11 and 12, 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 with 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.

8. Except as otherwise provided in subsections 11 and 12, 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 and who requests a hearing pursuant to NRS 284.390.

(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.

9. 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.

10. Upon request, the Division of Human Resource Management will provide the home address of any employee maintained by the Division of Human Resource Management in the employee's record of employment to the 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.

11. 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.

12. The appointing authority or a designated representative of the agency with which the employee is employed shall authorize the release of any confidential records under his or her control which are requested by the Division of Human Resource Management for the purpose of conducting a ~~sexual~~ *sex- and gender-based* harassment or other discrimination investigation.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 9-30-88; 7-21-89; 8-14-90; 7-6-92; 3-23-94; R042-99, 9-27-99; R082-00, 8-2-2000; R058-01, 9-6-2001; R147-01, 1-22-2002; A by Personnel Comm'n by R068-03, 10-30-2003; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009, R059-10, 10-15-2010; R137-12 & R045-13, 10-23-2013; R044-15; 12-21-2015; R175-18, 1-30-2019; R018-19 & R124-19, 6-8-2020)

Sec. 9. NAC 284.771 is hereby amended to read as follows:

NAC 284.771 ~~Sexual~~ *Sex- and gender-based* harassment. (NRS 284.065, 284.155)

1. ~~Sexual~~ *Sex- and gender-based* harassment violates the policy of this State and is a form of unlawful discrimination based on sex *or gender* under state and federal law. An employee shall not engage in ~~sexual~~ *sex- or gender-based* harassment against another employee, an applicant for employment, or any other person in the workplace.

2. ~~Sexual~~ *Sex- or gender-based* harassment is a very serious disciplinary infraction. An appointing authority may impose harsh disciplinary sanctions on, or dismiss, persons who commit ~~sexual~~ *sex- or gender-based* harassment including, without limitation, first-time offenders, *and sanctions shall be proportionate to the violation.*

(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 R147-06, 12-7-2006)