

REVISED NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Amendment or Adoption of Regulations of the
Department of Administration
Division of Human Resource Management

The Personnel Commission will hold a public hearing at 9:00 a.m., on April 11, 2014 at the Legislative Counsel Bureau, Conference Room 3138, 401 South Carson Street, Carson City and in Las Vegas at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue via videoconferencing. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

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

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

NAC#

Regulation Lead Line:

LCB File# R137-13

NAC 284.589

Administrative leave with pay

LCB File# R138-13

New Section

Military leave with pay

LCB File# R008-14

NAC 284.173

Rate of pay: Demotion

LCB File# R009-14

NAC 284.386

NAC 284.611

Reinstatement of former permanent employee

Separation for physical, mental or emotional disorder

LCB File# R010-14

NAC 284.780

Selection of qualified hearing officer

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Department of Administration, Division of Human Resource Management, 209 E. Musser Street, Room 101, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Division of Human Resource Management on or before April 11, 2014. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

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

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

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

CARSON CITY

Blasdel Building, 209 East Musser Street
Nevada State Library and Archives, 100 Stewart St.
Legislative Building, 401 South Carson Street
Division of Human Resource Management website:
www.hr.nv.gov
Legislative Counsel Bureau website:
www.leg.state.nv.us
Additionally, this notice has been sent to all State agencies.

LAS VEGAS

Grant Sawyer State Office Building
555 East Washington Avenue

REGULATION AMENDMENTS PROPOSED FOR PERMANENT ADOPTION

Item VII-A: LCB File No. R137-13

Section 1. NAC 284.589 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, provides an appointing authority or the Division of Human Resource Management with the authority to grant administrative leave to employees when it has been authorized by the Governor that employees should not report to work or employees may leave work prior to the end of the employee's shift. The stated emergency would include, without limitation, those relating to enemy attacks, hostile actions, natural causes, or catastrophes. This change excludes those employees who are designated as essential and have been notified to report to work or to remain at work. The current regulation only provides for administrative leave in an emergency when there is a building closure or pandemic. This new provision would expand the purposes that administrative leave can be granted to emergencies taking place outside of an employee's office or worksite. Frequently building closure isn't required during the emergency, especially if the emergency is weather related, but by granting administrative leave, it will increase the safety of employees by not requiring attendance in situations that are out of their control and they are otherwise ready and available to work.

Additionally the Division recommends clarifying that administrative leave can be granted for employee assistance program (EAP) appointments that are telephone consultations. The State's current EAP vendor provides a number of consultative services over the telephone rather than just traditional in-person appointments.

The third amendment would allow administrative leave for an employee to attend health fairs and other related events, such as a flu shot clinic, coordinated by the Public Employees' Benefit Program, as well as, to attend general employee benefit education and training including without limitation, retirement and deferred compensation. It is not intended to cover personal consultation appointments for retirement, deferred compensation, general flu shot clinics (or administration by a pharmacy), or doctor's appointments.

NAC 284.589 Administrative leave with pay. (NRS 284.065, 284.155, 284.345, 284.383, 284.385, 284.930)

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 has committed or threatened to commit an act of violence;

(d) For up to 2 hours to donate blood; or

(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.

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 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 to 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.

~~[(e)]~~(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.

~~[(d)]~~(e) His or her appearance as an aggrieved employee or a witness at a hearing of the Committee.

~~[(e)]~~(f) His or her appearance as an appellant or a witness at a hearing conducted pursuant to NRS 284.390 by a hearing officer of the Division of Human Resource Management.

~~[(f)]~~(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 ~~[(d), (e) or (f)]~~ (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 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 ~~{which has been authorized by the Board of}~~ *or related event coordinated by the Public Employees' Benefits Program [-], a general employee benefits orientation or an educational session relating to employee benefits, including, without limitation, retirement and deferred compensation, except that the granting of administrative leave pursuant to this paragraph is not required if the appointing authority determines that the absence of the employee will cause an undue hardship to the operations of the appointing authority or adversely impact the provision of services to clients or to the public.*

(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 all hearings regarding a suspension, demotion or dismissal of the employee as provided in NAC 284.6561.

(e) Up to 8 hours for preparation for all hearings regarding an involuntary transfer of the employee.

(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)

Item VII- B: LCB File No. R138-13

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

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will clarify how the provisions of NRS 281.145 will be applied to public officers and employees of the Executive Department of State Government. This includes clarifying the meaning of the terms "to serve under orders," "work schedule," and "working day," and the allowance of 39 days of paid leave as provided for in AB 364 of the 2013 Legislative Session.

New Section. Military leave with pay. (NRS 281.145)

1. In accordance with NRS 281.145 and subsections 2 and 3:

(a) If a public officer or employee has a work schedule that does not include any portion of Saturday or Sunday, the public officer or employee must be granted a maximum of 15 working days of military leave with pay in a calendar year to serve under orders; and

(b) If a public officer or employee has a work schedule that includes any portion of Saturday or Sunday, the public officer or employee must be granted a maximum of 39 working days of military leave with pay in a calendar year to serve under orders.

2. If the work schedule of a public officer or employee is changed in a calendar year from including any portion of Saturday or Sunday to not including any portion of Saturday or Sunday, the public officer or employee is entitled to receive not more than 15 working days of military leave with pay after the effective date of the change to the work schedule, but is not

entitled to receive more than a total of 39 working days of military leave with pay for the calendar year.

3. If the work schedule of a public officer or employee is changed in a calendar year from not including any portion of Saturday or Sunday to including any portion of Saturday or Sunday, the public officer or employee is entitled to receive not more than 39 working days of military leave with pay for the calendar year from the effective date of the change to the work schedule, but is not entitled to receive more than a total of 39 working days of military leave with pay for the calendar year or more than 15 working days of military leave with pay before the effective date of the change. If the public officer or employee took more than 15 working days of military leave to serve under orders before the effective date of the change to the work schedule, military leave with pay must not be granted retroactively for those working days.

4. As used in this section and NRS 281.145, the Commission will interpret:

(a) "To serve under orders" to mean to perform military service pursuant to orders issued by the appropriate military authority, including, without limitation, orders for deployment and any orders to complete training.

(b) "Work schedule" to mean a public officer's or employee's regularly assigned schedule of work. The term does not include any short-term changes to a schedule, overtime, standby status or instances where the public officer or employee is called back to work during his or her scheduled time off, unless the change becomes part of his or her regularly assigned schedule.

(c) "Working day" to mean a period of work consisting of the number of hours a public officer or employee is regularly scheduled to work. The term does not include overtime, standby status or instances where the public officer or employee is called back to work during his or her scheduled time off.

Item VII-C: LCB File No. R008-14

Section 1. NAC 284.173 is hereby amended to read as follows:

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment simplifies the process of determining the rate of pay for an employee who demotes. This amendment simply allows an employee to be paid at or below his or her current rate of pay, not to exceed the top step of the new class. It is widely believed that demotion only occurs as a result of disciplinary action, but demotion can also be used to allow an employee the flexibility to change his or her career path and/or enter a different class entirely. This amendment is intended to provide dedicated employees greater latitude to manage their career and the incentive to stay within State service. Additionally, this amendment will result in fewer errors on employee transaction forms, thereby reducing the number of under or over salary payments and reducing the time needed to correct these transactions.

NAC 284.173: Rate of pay: Effect of demotion. (NRS 284.065, 284.155, 284.175)

Except as otherwise provided ~~{in this section and}~~ paragraph (b) of subsection 1 NAC 284.618, an employee who is demoted must be paid at a step within the grade of the class to which he or she was demoted as follows:

1. ~~{H}~~ *Except as otherwise provided in subsections 2 to 5, inclusive, if the employee has attained a permanent status in the class from which he or she was demoted and the demotion is*

instituted at the employee's request or is acceptable to the employee, the appointing authority shall pay him or her at a step in the grade of the class to which he or she was demoted which is [:

~~[(a) Equal]~~ **equal to or less than** his or her ~~[present]~~ base rate of pay ~~]; or~~

~~(b) Equivalent to a decrease of not more than one step from his or her base rate of pay in the position from which he or she was demoted. Except as otherwise provided in subsection 2, if the base rate of pay in the position from which he or she was demoted does not fall within the grade of the class to which he or she was demoted, the employee must be paid at a step in the grade of the class to which he or she was demoted which is equal to:~~

~~(1) The step he or she would have received if he or she had not been promoted to the position from which he or she was demoted; or~~

~~(2) The step he or she would have received if he or she had been employed in that class from the inception of employment with the State of Nevada.] in the position from which he or she was demoted, but not greater than the highest step of the class to which he or she was demoted.~~

2. An exception to ~~[paragraph (b) of]~~ subsection 1 may be granted by the appointing authority to pay an employee at a rate that does not fall within the grade of the class to which he or she is demoted if the appointing authority determines that the demotion is in the best interest of the employee and the State of Nevada. If such an exception is granted:

(a) The employee's base rate of pay will be limited to three grade levels above the grade of the class to which he or she is demoted or his or her base rate of pay in the position from which he or she was demoted, whichever is less.

(b) The employee's base rate of pay in the position to which he or she was demoted will be frozen until it falls within the grade of the class to which he or she was demoted or for a maximum of 2 years after the date of demotion, making the employee ineligible for any merit pay increases, cost of living adjustments or adjustments for a class of employees that has been approved by the Legislature.

(c) If the employee's frozen base rate of pay does not fall within the grade of the class to which he or she was demoted within the 2-year period, his or her base rate of pay will be adjusted to the highest step within the grade of the class to which he or she was demoted.]

3. If an employee accepts a promotion and is demoted before attaining permanent status in the class, he or she must be paid at a step in the grade of the class to which he or she was demoted which is equivalent to the base rate of pay to which he or she would have been entitled had he or she not been promoted.

4. If the demotion is instituted by the appointing authority for disciplinary reasons and is not covered by subsection 2, the appointing authority shall determine the step in the grade of the class to which the employee was demoted at which the employee will be paid.

5. If an employee is demoted during his or her probationary period in state service, the appointing authority may pay the demoted employee at any step in the grade of the class to which the employee was demoted that is not greater than his or her base rate of pay before the demotion.

(Added to NAC by Personnel Comm'n by R133-12, eff. 10-4-2013)

Item VII-D: LCB File No. R009-14

Section 1. NAC 284.386 is hereby amended to read as follows:

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment removes the current 2-year limitation on reinstating a former employee to any formerly held position or similar position making it more desirable for qualified, highly skilled, and valued former employees to return to State service. This benefits the State by reducing the time to fill a position as a recruitment is not necessary. Additionally, reinstating a former employee will reduce the training time required for the employee to become proficient compared with a new employee who had not previously held the position or a similar position.

NAC 284.386 Reinstatement of former permanent employee. (NRS 284.065, 284.155, 284.305)

1. ~~Except as otherwise provided in subsection 2, an~~ **An** appointing authority may reinstate a former permanent employee ~~within a 2-year period~~ following his or her termination from state employment, ***including, without limitation, a former permanent employee who was laid off and is entitled to have his or her name appear on a reemployment list pursuant NAC 284.630,*** if the ***former permanent*** employee was separated without prejudice. A separation without prejudice must be determined by the appointing authority using the standards contained in NRS 284.240.

2. ~~If an employee is laid off and is entitled to have his or her name appear on a reemployment list pursuant to NAC 284.630, the appointing authority may reinstate the employee within 2 years after the date on which his or her right to reemployment expires.~~

~~{3.} The grade of the class to which a person is reinstated may only exceed the current grade of the class he or she formerly held or a comparable class if that class has been reallocated.~~

~~{4.} 3. Except as otherwise provided in subsection {3} 2, a person may not be reinstated to underfill a position allocated at grade 30 or higher if that position is allocated at a higher grade than the position the person formerly held.~~

~~{5.} 4. A reinstatement to a similar class requires the approval by the Division of Human Resource Management before the appointing authority may make a commitment to reinstate.~~

~~{6.} 5. It is the responsibility of a person seeking reinstatement to make his or her interest known by providing a new application to the appointing authority.~~

~~{7.} 6. The person must meet the current minimum qualifications for the class for which the reinstatement is sought.~~

[Personnel Div., Rule VI § C, eff. 8-11-73; A 10-10-76]—(NAC A by Dep't of Personnel, 8-26-83; 10-26-84; 10-18-89; 11-12-93; 10-27-97; A by Personnel Comm'n by R183-03, 1-27-2004)

Section 2. NAC 284.611 is hereby amended to read as follows:

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment eliminates the 2-year reinstatement limitation for a former permanent employee who was separated from service due to a physical, mental or emotional disorder. This amendment will give a former employee additional time to recover from his or her disorder and allow a qualified, skilled, and valued former employee to return to State service. This amendment also makes this section consistent with the amendments proposed in NAC 284.386.

NAC 284.611 Separation for physical, mental or emotional disorder. (NRS 284.065, 284.155, 284.355, 284.383, 284.385, 284.390)

1. Before separating an employee because of a physical, mental or emotional disorder which results in the inability of the employee to perform the essential functions of his or her job, the appointing authority must:

(a) Verify with the employee's physician or by an independent medical evaluation paid for by the appointing authority that the condition does not, or is not expected to, respond to treatment or that an extended absence from work will be required;

(b) Determine whether reasonable accommodation can be made to enable the employee to perform the essential functions of his or her job;

(c) Make a request to the Administrator of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation to obtain the services provided by that Division, or if the employee is receiving worker's compensation, request the services of the rehabilitation provider, to evaluate the employee's condition and to provide any rehabilitative services possible; and

(d) Ensure that all reasonable efforts have been made to retain the employee.

2. A separation pursuant to this section is only justified when:

(a) The information obtained through the procedures specified in subsection 1 supports the decision to separate;

(b) The employee is not on sick leave or other approved leave; and

(c) A referral has been made to the Public Employees' Retirement System and the employee has been determined to be ineligible for, or has refused, disability retirement.

3. A permanent employee separated pursuant to this section is entitled to the same rights and privileges afforded permanent employees who are dismissed for disciplinary reasons. The procedures contained in NAC ~~{284.656 to}~~ **284.656, 284.6561 and** 284.6563 ~~{inclusive,}~~ must be followed, and he or she may appeal the separation to the hearing officer.

4. A permanent employee who is separated because of a physical, mental or emotional disorder is eligible for reinstatement pursuant to NAC 284.386 if he or she recovers from the disorder. ~~{within 2 years after the termination.}~~

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-1-91; 12-26-91; 7-6-92; R197-99, 1-26-2000; A by Personnel Comm'n by R182-03, 1-27-2004; R143-05, 12-29-2005; R063-09, 11-25-2009)

Item VII-E: LCB File No. R010-14

Section 1. NAC 284.780 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, clarifies that the Commission will provide qualified hearing officers for appeals related to personnel matters. At the January 2014 Personnel Commission meeting, the Commission selected the Appeals Officers of the Department of Administration, Hearing and Appeals Division to serve as the primary hearing officers. Additionally, one of the current independent contractors in northern Nevada was selected in the event that the Hearings and Appeals Division Appeals Officers had a conflict of interest or personal interest in a case and were required to recuse themselves. At this Personnel Commission meeting, a determination will be made regarding an alternate hearing officer in southern Nevada.

NAC 284.780 Selection of qualified hearing officer. (NRS 284.065, 284.155, 284.376, 284.390)

1. For each hearing requested in a claim relating to a dismissal, suspension, demotion, involuntary transfer, or reprisal or retaliatory action, the ~~{Administrator shall}~~ **Commission will** provide ~~{to each party to the claim:~~

(a) ~~A list of three}~~ **for a** qualified hearing ~~{officers; or~~

(b) ~~A list of five qualified hearing}~~ **officer.**

2. If ~~{the Administrator provides a list of:~~

(a) ~~Three}~~ **it is determined that the** qualified hearing ~~{officers, each party may strike one name from the list; or~~

(b) ~~Five qualified hearing officers, each party may strike two names from the list,~~

→ ~~and shall return the list with the remaining names to the Administrator not later than 10 days after receipt of the list.~~

3. ~~Except as otherwise provided in subsection 5, each person whose name is struck from the list pursuant to subsection 2 is ineligible to serve as a hearing officer in that claim.~~

4. ~~Except as otherwise provided in subsection 5, the Administrator shall select a hearing officer for the hearing from among the persons whose names were not struck from the list pursuant to subsection 2.~~

5. ~~If, for any reason, all of the hearing officers whose names were not struck from the list pursuant to subsection 2 are unqualified or}~~ **officer provided for pursuant to subsection 1 is precluded from serving due to a conflict of interest or is** otherwise unavailable to serve as a hearing officer for the hearing, the ~~{Administrator may}~~ **Commission will** provide ~~{a new list of hearing officers to the parties in the manner provided in this section or may select any}~~ **for a** qualified hearing officer who is available to serve as a hearing officer in the hearing.

(Added to NAC by Personnel Comm'n by R192-09, 6-30-2010, eff. 7-1-2010)

Brian Sandoval
Governor



Jeff Mohlenkamp
Director

Lee-Ann Easton
Administrator

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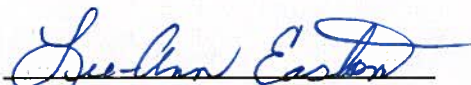
March 11, 2014

Regulation Small Business Impact Statement

The Division of Human Resource Management has determined that the adoption of this proposed regulation does not impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business.

These regulations only impact the classified service of Executive Branch departments and the Nevada System of Higher Education.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small business and that the information contained in this statement is accurate.



Lee-Ann Easton, Administrator



Date