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DEPARTMENT OF ADMINISTRATION
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MEMORANDUM
HR # 43-21

November 4, 2021

TO: DHRM Listserv Recipients

FROM: Frank Richardson, Administrator *Frank Richardson*
Division of Human Resource Management

SUBJECT: NOTICE OF PUBLIC HEARING – Amendment of Regulations that
Pertain to NAC 284

The regulation changes included with this memorandum are being proposed for adoption at the December 10, 2021 meeting of the Personnel Commission. This meeting will be held at 9:00 a.m. at the Nevada State Library and Archives Building, Room 110, 100 N. Stewart Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 1400, 555 E. Washington Avenue, Las Vegas, Nevada.

Please circulate and post the attached Notice of Hearing along with the text of the proposed regulations.

FR: mg

Attachments

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Amendment
of Regulations of the
Personnel Commission

The Personnel Commission will hold a public hearing at 9:00 a.m. on December 10, 2021, at the Nevada State Library and Archives Building, Room 110, 100 N. Stewart Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 1400, 555 E. Washington Avenue, Las Vegas, Nevada. 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.

<u>LCB File:</u>	<u>Section:</u>	<u>NAC:</u>	<u>Leadline or Description</u>
R015-21	Sec. 1	284.5811	Family and medical leave: Maximum amount in 12-month period; eligibility; use.
R016-21	Sec. 1	NEW	“Sex- or gender-based harassment” defined.
	Sec. 2	284.010	Definitions.
	Sec. 3	284.496	Classes and training concerning prevention of sex- or gender-based harassment.
	Sec. 4	284.498	Training of supervisory and managerial employees.
	Sec. 5	284.650	Causes for disciplinary or corrective action.
	Sec. 6	284.696	Unlawful discrimination.
	Sec. 7	284.718	Confidential records.
	Sec. 8	284.726	Access to confidential records.
	Sec. 9	284.771	Sex- or gender-based harassment.
	Sec. 10	284.0995	“Sexual harassment” defined.
R017-21	Sec. 1	NEW	Appeal of determination to release confidential records.
	Sec. 2	284.718	Confidential records.
	Sec. 3	284.726	Access to confidential records.

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 the Department of Administration, Division of Human Resource Management, 209 East Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Michelle Garton. Written submissions must be received by the Division of Human Resource Management on or before December 10, 2021. 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 adopted and amended will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted and amended will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada, and 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 and amendment of any regulation, the agency, if requested to do so by an interested person, either before adoption and amendment, or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and amendment, and incorporate therein its reason for overruling the consideration urged against its adoption and amendment.

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

Carson City

Blasdel Building, 209 East Musser Street

Nevada State Library & Archives Building, 100 North Stewart Street

Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Grant Sawyer Building, 555 East Washington Avenue

Websites

Legislative Counsel Bureau website: www.leg.state.nv.us

Nevada Public Notice website: <http://notice.nv.gov>

Division of Human Resource Management website: www.hr.nv.gov

EXPLANATION OF PROPOSED CHANGES
LCB File No. R015-21

Section 1: NAC 284.5811 Family and medical leave: Maximum amount in 12-month period; eligibility; use.

This amendment default to the State's Family and Medical Leave Act (FMLA) eligibility criteria to the criteria outlined in the U.S. Department of Labor's FMLA regulations. "Paid status" is defined in NAC 284.0742 as including leave with pay (not including catastrophic leave) and leave without pay pursuant to NAC 284.580. However, the FMLA federal regulations base the hours requirement on the "hours of service" during the 12-month period immediately preceding the employee's leave. The current method of FMLA eligibility calculation may, in certain circumstances, allow an employee to qualify for leave, based on this regulation, prior to qualifying based on the federal regulations. If an employee is provided FMLA leave early and then not granted FMLA-protected leave during the period the employee qualifies under the federal FMLA regulations, it could leave the State open to review by the FMLA regulatory body, the U.S. Department of Labor.

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R015-21

July 20, 2021

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

AUTHORITY: § 1, NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626 and 608.0198.

A REGULATION relating to state personnel; revising eligibility requirements for certain state employees to take family and medical leave; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Personnel Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations for attendance and leave in the various classes of employee positions in the public service of the Executive Department of the State Government. (NRS 284.345) Existing regulations: (1) adopt by reference the federal Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq. (FMLA); and (2) provide that an employee in the public service who is entitled to take leave pursuant to the FMLA is limited to a total of 12 weeks of such leave during a rolling 12-month period. (NAC 284.062, 284.581, 284.5811) To calculate eligibility for leave pursuant to the FMLA, each hour that an employee is in paid status in the 12-month period immediately preceding the leave must be considered as time worked. (NAC 284.5811) An employee’s paid status includes time that an employee is on: (1) leave with pay, except catastrophic leave; or (2) leave of absence due to a fiscal emergency. (NAC 284.0742) This regulation eliminates the provision that requires each hour that an employee is in paid status in the 12-month period immediately preceding the FMLA leave to be considered as time worked. As a result, the determination of whether an employee is entitled to take leave pursuant to the FMLA is determined by the provisions of the FMLA, which exclude time that an employee is on leave. (29 U.S.C. § 207)

Section 1. NAC 284.5811 is hereby amended to read as follows:

284.5811 1. Except as otherwise provided in subsection 2, an employee who is entitled to take leave pursuant to the Family and Medical Leave Act is limited to a total of 12 weeks of such

leave during a rolling 12-month period. The rolling 12-month period is measured backward from the date an employee uses any leave pursuant to the Family and Medical Leave Act.

2. An employee who is entitled to take leave pursuant to the Family and Medical Leave Act to care for a covered service member is limited to a total of 26 weeks of such leave during a single 12-month period.

3. ~~To calculate eligibility for leave pursuant to the Family and Medical Leave Act, each hour that an employee is in paid status in the 12-month period immediately preceding the leave must be considered as time worked.~~

~~4.~~ Except as otherwise provided in subsections ~~5~~ 4 and ~~6~~ 5, an employee who meets the requirements for eligibility for and who is taking leave pursuant to the Family and Medical Leave Act must exhaust all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave that the employee is eligible to use based on the nature of the absence before using leave without pay. Any accrued sick leave, accrued annual leave, accrued compensatory time, catastrophic leave and holiday pay to which the employee is entitled pursuant to NAC 284.255 runs concurrently with the leave granted pursuant to the Family and Medical Leave Act if the employee is otherwise eligible for that sick leave, annual leave, compensatory time, catastrophic leave or holiday pay.

~~5~~ 4. If an employee is absent from work as the result of a work-related injury or illness and meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:

(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and

(b) The employee may elect to use paid leave or leave without pay for the portion of time that he or she is not being compensated for the work-related injury or illness.

~~16.1~~ 5. If an employee is absent from work as the result of a non-work-related injury or illness, the employee is receiving compensation for the injury or illness from a disability benefit plan and the employee meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:

(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and

(b) The employee may use paid leave for the time that the employee is being compensated for the non-work-related injury or illness if the employee has entered into an agreement with the appointing authority to use the paid leave. If the employee and the appointing authority have not entered into such an agreement, the employee may not elect to use and the appointing authority may not require the employee to use paid leave for that time.

~~17.1~~ 6. If an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator, is absent from work and meets the requirements for eligibility pursuant to the Family and Medical Leave Act, any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act.

~~18.1~~ 7. An appointing authority may require an employee to provide medical or other appropriate documentation to support his or her need for leave pursuant to the Family and Medical Leave Act.

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R016-21

Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities. The following regulation amendments result from this addition to law.

Section 1: NEW “Sex- or gender-based harassment” defined.

SB 51 changes the term “sexual harassment” to “sex- or gender-based harassment” as used in various places throughout Chapter 284 of the Nevada Revised Statutes. This amendment defines “sex- or gender-based harassment” in regulation to apply to Chapter 284 of the Nevada Administrative Code.

Section 2: NAC 284.010 Definitions.

This amendment is necessary to incorporate the new definition in Section 1 of this LCB File into Chapter 284 of the Nevada Administrative Code until codification of the amendment.

Section 3: NAC 284.496 Classes and training concerning prevention of sex- or gender- based harassment.

This amendment reduces the timeframe that a newly hired employee to complete a class concerning the prevention of sex- or gender-based harassment from 6 months to 30 days. The amendment also changes the term “sexual harassment” to “sex- or gender-based harassment” based on the new definition in Section 1 of this LCB File.

Section 4: NAC 284.498 Training of supervisory and managerial employees.

This amendment adds training related to sex- or gender-based harassment to the required training of supervisors and managers. This training must be completed within 30 days of the employee being appointed to a supervisory or managerial position.

The amendment also changes the term “sexual harassment” to “sex- or gender-based harassment” based on the new definition in Section 1 of this LCB File.

Section 5: NAC 284.650 Causes for disciplinary or corrective action.

This amendment changes the term “sexual harassment” to “sex- or gender-based harassment” based on the new definition in Section 1 of this LCB File

Section 6: NAC 284.696 Unlawful discrimination.

This amendment changes the term “sexual harassment” to “sex- or gender-based harassment” based on the new definition in Section 1 of this LCB File.

Section 7: NAC 284.718 Confidential records.

This amendment changes the term “sexual harassment” to “sex- or gender-based harassment” based on the new definition in Section 1 of this LCB File.

Section 8: NAC 284.726 Access to confidential records.

This amendment changes the term “sexual harassment” to “sex- or gender-based harassment” based on the new definition in Section 1 of this LCB File. The amendment also rewords subsection 12 of the regulation for clarity and incorporates the new definition.

Section 9: NAC 284.771 Sex- or gender-based harassment.

This amendment prescribes that any disciplinary sanctions imposed by an appointing authority shall be proportionate to a violation related to sex- or gender-based harassment, be proportionate to a violation related to sex- or gender-based harassment.

The amendment also changes the term “sexual harassment” to “sex- or gender-based harassment” based on the amendment to the definition in NAC 284.0995.

Section 10: NAC 284.0995 ”Sexual harassment” defined.

Section 1 of LCB File No. R016-21 defines “sex- or gender-based harassment,” which will be placed into a new, separate regulation. As a result of the new definition, this definition is no longer necessary and is proposed to be repealed.

**SECOND REVISED PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R016-21

October 25, 2021

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

AUTHORITY: §§ 1, 2 and 10, NRS 284.065 and section 3 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1912 (NRS 284.4082); §§ 3, 4 and 6, NRS 284.065, 284.155 and 284.343 and section 3 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1912 (NRS 284.4082); § 5, NRS 284.065, 284.155, 284.343 and 284.385 and section 3 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1912 (NRS 284.4082); §§ 7-9, NRS 284.065 and 284.155 and section 3 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1912 (NRS 284.4082).

A REGULATION relating to state employees; defining “sex- or gender-based harassment”; requiring state employees to attend certain training classes concerning sex- or gender-based harassment; replacing the term “sexual harassment” with “sex- or gender-based harassment”; making various other changes related to sex- or gender-based harassment; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law: (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 is a form of unlawful discrimination; and (3) it is prohibited for a state employee to engage in sex- or gender-based harassment against another employee, an applicant for employment or any other person in the workplace (Section 2 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1912 (NRS 284.408))

Section 1 of this regulation defines “sex- or gender-based harassment.” **Section 2** of this regulation makes a conforming change to indicate the proper placement of **section 1** in the Nevada Administrative Code.

Existing regulations require an employee to attend a certified class concerning the prevention of sexual harassment within 6 months after the initial appointment of the employee to state service. (NAC 284.496) **Section 3** of this regulation instead requires an employee to attend a certified class concerning the prevention of sex- or gender-based harassment within 30 days after his or her initial appointment to state service.

Existing regulations set forth certain training requirements for an employee who is appointed to a supervisory or managerial position, including that such an employee attend at least one training class in sexual harassment. (NAC 284.498) **Section 4** of this regulation instead

requires a supervisory or managerial employee to attend: (1) a training class concerning sex- or gender-based harassment within 30 days after his or her appointment to the supervisory or managerial position; and (2) an additional training class on sex- or gender-based harassment within 12 months after his or her appointment to the supervisory or managerial position.

Existing regulations authorize appropriate disciplinary or corrective action to be taken against an employee for the failure of the employee to participate in an investigation concerning sexual harassment. (NAC 284.650) **Section 5** of this regulation instead authorizes appropriate disciplinary or corrective action to be taken for the failure of the employee to participate in an investigation concerning sex- or gender-based harassment.

Sections 6-8 of this regulation replace the term “sexual harassment” with “sex- or gender-based harassment” in certain provisions relating to investigations of discrimination by the Division of Human Resource Management of the Department of Administration.

Existing regulations authorize an appointing authority to impose harsh disciplinary sanctions on, or dismiss, persons who commit sexual harassment. (NAC 284.771) **Section 9** of this regulation instead authorizes an appointing authority to impose harsh disciplinary sanctions on, or dismiss, persons who commit sex- or gender-based harassment. **Section 9** further requires that any disciplinary sanction imposed by an appointing authority for sex- or gender-based harassment be proportionate to the violation.

Section 10 of this regulation repeals the definition of the term “sexual harassment.”

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

“Sex- or gender-based harassment” means:

1. Unwelcome sexual advances, requests for sexual favors or any other verbal or physical conduct of a sexual nature when:

(a) Submission to such conduct is explicitly or implicitly made a term or condition of a person’s employment; or

(b) Submission to or rejection of such conduct is explicitly or implicitly made a basis of employment decisions affecting a person; or

2. Engaging in unwelcome harassing verbal or physical conduct that occurs because of the sex or gender of a person or persons and has the purpose or effect of unreasonably interfering with a person’s work performance or creating an intimidating or offensive work environment where:

(a) The harassing conduct is of a sexual nature;

(b) The harassing conduct is not of a sexual nature but is related to the sex or gender of a person;

(c) The harassing conduct is sex- and gender-neutral in content but occurs because of the sex or gender of a person; or

(d) Any combination of harassing conduct described in paragraphs (a), (b) and (c).

Sec. 2. NAC 284.010 is hereby amended to read as follows:

284.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 284.021 to 284.1125, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

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

284.496 1. Within ~~16 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- or 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- or 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- or gender-based* harassment required by this section.

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

284.498 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- or 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- or 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.

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

284.650 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 misuse 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. Failure of an employee who is authorized pursuant to NRS 202.3673 to carry a concealed firearm while on the premises of the public building in which he or she is employed to notify the appointing authority or a designated representative of the appointing authority, in accordance with section 1 of LCB File No. R123-19, that the employee will be carrying the concealed firearm.
22. 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.
23. Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning ~~sexual~~ *sex- or gender-based* harassment.
24. Failure to participate in an administrative investigation authorized by the employee's appointing authority.

25. 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.

Sec. 6. NAC 284.696 is hereby amended to read as follows:

284.696 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- or 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.

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

284.718 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.

7. 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 are confidential.

8. Any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387 are confidential.

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

284.726 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 subsections 11 and 12, access to any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to ~~{sexual}~~ *sex- or 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}~~ *an investigation regarding suspected* harassment or ~~{other}~~ discrimination ~~{investigation.}~~, *including, without limitation, suspected sex- or gender-based harassment or discrimination.*

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

284.771 1. ~~{Sexual}~~ *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 ~~{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. *Any disciplinary sanction imposed by an appointing authority for sex- or gender-based harassment must be proportionate to the violation.*

Sec. 10. NAC 284.0995 is hereby repealed.

TEXT OF REPEALED SECTION

284.0995 “Sexual harassment” defined. (NRS 284.065) “Sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other speech 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 to or the rejection of such speech or conduct by a person is used as the basis for employment decisions affecting that person; or
3. Such speech or conduct has the purpose or effect of unreasonably interfering with a person’s work performance or creating an intimidating, hostile or offensive working environment.

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R017-21

Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities. The following regulation amendments result from this addition to law.

Section 1: NEW Appeal of determination to release confidential records.

SB 51 allows the Administrator of the Division of Human Resource Management to make a decision to release any information related to a report of sex- or gender-based harassment or discrimination. This amendment codifies the process an employee must use to appeal the disclosure of any information related to a report of sex- or gender-based harassment or discrimination.

Section 2: NAC 284.718 Confidential records.

This amendment includes the exceptions provided in Senate Bill 51 when the release of information related to a report of sex- or gender-based harassment or discrimination is allowable.

Section 3: NAC 284.726 Access to confidential records.

This amendment incorporates the exception provided in Senate Bill 51 that allows the Administrator of the Division of Human Resource Management to release any information related to a report of sex- or gender-based harassment or discrimination.

REVISED PROPOSED REGULATION OF

THE PERSONNEL COMMISSION

LCB File No. R017-21

October 21, 2021

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

AUTHORITY: §§ 1-3, NRS 284.065 and section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913.

A REGULATION relating to state employees; revising provisions relating to the disclosure of certain information relating to an investigation of a complaint filed by an employee of the Executive Department of State Government regarding sexual harassment or other discrimination; prescribing the requirements for a written appeal of a decision to order the disclosure of such information; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing regulations make confidential certain information in the record of employment of an employee of the Executive Department of State Government and any notes, records, recordings or findings of an investigation relating to sexual harassment or discrimination. (NAC 284.718) Existing regulations authorize only certain persons to access certain notes, records, recordings, findings or certain other information obtained from an investigation. (NAC 284.726) Senate Bill No. 51 of the 2021 Legislative Session makes confidential a complaint filed by an employee of the Executive Department of State Government regarding suspected harassment or discrimination based on sex or gender and information relating to such a complaint. Senate Bill No. 51 also prohibits the disclosure of such information unless the disclosure is: (1) ordered by the Administrator of the Division of Human Resource Management of the Department of Administration, 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 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913) **Sections 2 and 3** of this regulation make conforming changes related to the provisions of Senate Bill No. 51 by authorizing the disclosure of certain information relating to an investigation of a complaint regarding sexual harassment or other discrimination in the circumstances where such disclosure is authorized by that bill.

Senate Bill No. 51 of the 2021 Legislative Session 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 notify the person before ordering the disclosure; and (2) authorizes a person who receives such notice to

file an appeal of the decision with the Personnel Commission. (Section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913) **Section 1** of this regulation requires such an appeal to: (1) be in writing; (2) be submitted to the Administrator for transmittal to the Personnel Commission; and (3) set forth the specific reasons the appellant disagrees with the decision of the Administrator or his or her designee.

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

An appeal filed pursuant to subsection 7 of section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913, must:

- 1. Be in writing;*
- 2. Be submitted to the Administrator for transmittal to the Commission; and*
- 3. Set forth the specific reasons the appellant disagrees with the decision of the Administrator or his or her designee.*

Sec. 2. NAC 284.718 is hereby amended to read as follows:

284.718 *Except as otherwise provided in section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913:*

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 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.

7. 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 are confidential.

8. Any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387 are confidential.

Sec. 3. NAC 284.726 is hereby amended to read as follows:

284.726 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 subsection 11 **H** and *section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913*, access to any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to sexual 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 **H** and *section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913*, 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, *and section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913*, 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 harassment or other discrimination investigation.

Steve Sisolak
Governor



Laura E. Freed
Director

Matthew Tuma
Deputy Director

Frank Richardson
Administrator

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
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Regulation Small Business Impact Statement

Section 15 of Article 15 of the Nevada Constitution requires the Legislature to provide for a State merit system governing the employment of employees in the Executive Branch of State government and in 1969 the Legislature provided for such in NRS 284. Additionally, NRS 284.013 provides limitations to which employees of the Executive Branch are covered by NRS 284. NRS 284.065 authorizes the Personnel Commission to adopt regulations to carry out the provisions of this chapter.

Due to the limitations of the Nevada State Constitution and NRS 284, the Division of Human Resource Management staff has determined that the adoption of this proposed regulation does not affect small businesses, impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business. This regulation only impacts employees moving into the nonclassified, classified, or unclassified service of the Executive Branch.

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 was prepared properly and is accurate.

Frank Richardson

Frank Richardson, Administrator

6/8/2021

Date