

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

The Personnel Commission will hold a public hearing at 9:00 a.m. on September 7, 2018, at the Legislative Counsel Building, Room 3138, 401 South Carson Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption and 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>
R118-17	Sec. 1		Amends Chapter 284 to add sections 2 and 3.
	Sec. 2	NEW	Report of suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license.
	Sec. 3	NEW	Report of arrest, charge or conviction of an offense.
	Sec. 4	284.646	Dismissals.
	Sec. 5	284.650	Causes for disciplinary action.
	Sec. 6	284.653	Driving under the influence; unlawful acts involving controlled substance.
	Sec. 7	284.890	Transportation of employee to and from location of screening test.
R063-18	Sec. 1	NEW	Refusal to submit to a screening test: Reasons an applicant or employee shall be deemed to have refused a test; potential consequences of a refusal to submit to a screening test by an applicant.
	Sec. 2	284.578	Leave of absence without pay.

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: Shelley Blotter. Written submissions must be received by the Division of Human Resource Management on or before September 7, 2018. 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

**REGULATIONS PROPOSED
FOR PERMANENT ADOPTION AND AMENDMENT**

LCB File No. R118-17

Section 1. Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, amends NAC 284 by adding a new section to require an employee to report within 5 working days the suspension, revocation or cancellation of a license, certificate or permit which is a requirement of the position. Subparagraph (e) of subsection 2 of NAC 284.646 allows for the immediate dismissal of an employee who has had such a license, certificate or permit suspended, revoked or cancelled.

NEW Report of suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license.

1. An employee must report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license to his or her appointing authority within 5 working days after the suspension, revocation or cancellation occurs if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law.

2. If an employee fails to make the report required pursuant to subsection 1:

(a) The appointing authority may immediately dismiss the employee pursuant to subsection 2 of NAC 284.646; or

(b) Appropriate disciplinary or corrective action may be taken against the employee pursuant to NAC 284.650.

Sec. 3.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, amends NAC 284 by adding a new section to require an employee to report being arrested for, charged with or convicted of an offense that either temporarily or permanently results in the employee not being able to perform the duties of his or her position.

This regulation is proposed due to situations where off duty behavior has resulted in an employee not being able to perform his or her duties. It is important for an appointing authority to know of an arrest, charge, or conviction in order to make a determination if the employee can no longer serve in his or her position, may need to be placed on leave, or take any other action to protect the public that is served.

NEW Report of arrest, charge or conviction of an offense.

1. An employee or a designated representative of the employee must report being arrested for, charged with or convicted of any offense, including, without limitation, being arrested for, charged with or convicted of an offense that took place during working or nonworking hours, to his or her appointing authority within 5 working days after the arrest, charge or conviction occurs if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position.

2. An employee must make the report required pursuant to subsection 1 in every situation where the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position, even if the employee:

(a) Is not absent from work as a result of an arrest, charge or conviction; or

(b) Is absent from work as a result of an arrest, charge or conviction and the absence is:

(1) Authorized by his or her appointing authority; or

(2) Unauthorized.

3. Except as otherwise provided in subsection 6 of NAC 284.653, if an employee fails to make the report required pursuant to subsection 1:

(a) The appointing authority may immediately dismiss the employee pursuant to subsection 2 of NAC 284.646; or

(b) Appropriate disciplinary or corrective action may be taken against the employee pursuant to NAC 284.650.

Sec. 4. NAC 284.646 is hereby amended to read as follows:

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment allows an appointing authority to immediately dismiss or discipline an employee in accordance with Sections 2 and 3 of this LCB File.

NAC 284.646 Dismissals. (NRS 284.065, 284.155, 284.383, 284.385, 284.390)

1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:

(a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause; or

(b) The seriousness of the offense or condition warrants such dismissal.

2. An appointing authority may immediately dismiss an employee *pursuant to the standards and procedures set forth in NAC 284.6563* for the following causes, unless the conduct is authorized pursuant to a rule or policy adopted by the agency with which the employee is employed:

(a) Intentionally viewing or distributing pornographic material at the premises of the workplace, including, without limitation, intentionally viewing or distributing pornographic material on any computer owned by the State, unless such viewing or distributing is a requirement of the employee's position ; ~~⊞~~

(b) Unauthorized release or use of confidential information ; ~~⊞~~

(c) Participation in sexual conduct on the premises of the workplace, including, without limitation, participation in sexual conduct in a vehicle that is owned by the State ; ~~⊞~~

(d) Absence without approved leave for 3 consecutive days during which the employee is scheduled to work ; ~~⊞~~

(e) The suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license if the possession of the professional or occupational license,

certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law ; ~~§~~

(f) Threatening another person with a deadly weapon during any time in which the employee is:

(1) On the premises of the workplace; or

(2) Conducting state business or otherwise performing any duties of employment ; ~~§~~

(g) Stealing or misappropriating any property that is owned by the State or located on state property ~~§~~ ;

(h) Failure to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license pursuant to section 2 of this regulation if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law; or

(i) Failure to report being arrested for, charged with or convicted of any offense pursuant to section 3 of this regulation if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position.

3. The rights and procedures set forth in NAC 284.655 to 284.6563, inclusive, apply to any dismissal made pursuant to this section.

4. As used in this section:

(a) "Material" has the meaning ascribed to it in NRS 201.2581.

(b) "Nudity" has the meaning ascribed to it in NRS 201.261.

(c) "Pornographic material" means material that, all or in part, contains any description or representation of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of adults and is without serious literary, artistic, political or scientific value.

(d) "Sado-masochistic abuse" has the meaning ascribed to it in NRS 201.262.

(e) "Sexual excitement" has the meaning ascribed to it in NRS 201.264.

[Personnel Div., Rule XII § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; A by Personnel Comm'n by R147-06, 12-7-2006; R063-09, 11-25-2009; R027-11, 12-30-2011)

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

<p>Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment allows an appointing authority discipline an employee in accordance with sections 2 and 3 of this LCB File.</p>

NAC 284.650 Causes for disciplinary action. (NRS 284.065, 284.155, 284.383)

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 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 pursuant to section 2 of this regulation if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law.*
 25. *Failure to report being arrested for, charged with or convicted of any offense pursuant to section 3 of this regulation if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position.*
- [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)

Sec. 6. NAC 284.653 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, requires an employee to report being arrested for, charged with, or convicted of an offense related to drugs or alcohol. Additionally, the amendment includes that an

employee is required to report arrests, charges, or convictions for an offense that occurred during his or her personal time away from the workplace if the arrest, charge, or conviction results in the employee's inability to temporarily or permanently perform the duties of his or her position.

NAC 284.653 Driving under the influence; unlawful acts involving controlled substance. (NRS 284.065, 284.155, 284.383, 284.385, 284.407)

1. An employee is subject to any disciplinary action set forth in subsection 2, as determined by the appointing authority, if the employee is convicted of any of the following offenses:

(a) If the offense occurred while the employee was driving a state vehicle, or a privately owned vehicle on state business:

(1) Driving under the influence in violation of NRS 484C.110; or

(2) Any offense resulting from an incident in which the employee was:

(I) Originally charged with driving under the influence; or

(II) Charged with any other offense for which driving under the influence is an element of the offense.

(b) The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance on the premises of the workplace or on state business.

2. An appointing authority may impose the following disciplinary actions if an employee is convicted of an offense set forth in subsection 1:

(a) For the first offense:

(1) Dismissal;

(2) Demotion, if permitted by the organizational structure of the agency for which he or she is employed;

(3) Suspension for 30 calendar days; or

(4) Suspension for 30 calendar days and demotion.

(b) For the second offense within 5 years, dismissal.

3. An employee who is suspended or demoted pursuant to subsection 2 must:

(a) Agree to be evaluated through an employee assistance program; and

(b) Complete any program of treatment recommended by the evaluation.

4. If an employee fails to complete the program of treatment, the appointing authority must dismiss the employee.

5. Pursuant to NRS 193.105, an employee who is convicted of violating any state or federal law prohibiting the sale of a controlled substance must be dismissed.

6. An employee must report ~~[a conviction]~~ *being arrested for, charged with or convicted of* any offense described in this section, *including, without limitation, being arrested for, charged with or convicted of an offense that took place during working or nonworking hours*, to his or her appointing authority within 5 working days after it occurs ~~[]~~ *if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position*. If the employee fails to make ~~[that]~~ *such a* report, ~~[he or she must be dismissed.]~~ *the appointing authority shall immediately dismiss the employee*.

(Added to NAC by Dep't of Personnel, eff. 7-22-87; A 4-20-90; 3-27-92; A by Personnel Comm'n by R147-06, 12-7-2006; R141-07, 1-30-2008)

Sec. 7. NAC 284.890 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will provide agencies flexibility in assuring that an employee is safely

transported from the test location when he or she will not be returning to the workplace due to the end of a work day, a positive test result, or no immediate test result. The addition to the regulation allowing an employee to make his or her own transportation arrangements is intended to provide an employee with an additional option. It is not the intent to remove the agency's responsibility to ensure the employee's transportation. The amendment also allows an agency, as needed, to respond to an obvious medical crisis that happens prior to or during transportation of the employee following the test.

NAC 284.890 Transportation of employee to and from location of screening test. (NRS 284.065, 284.155, 284.407)

1. If an *appointing authority requests an* employee ~~[is required]~~ to submit to a screening test ~~[]~~ *based on the reasonable belief of the appointing authority that the employee is under the influence of alcohol or drugs and the employee has not refused to submit to the screening test,* the appointing authority shall provide transportation for the employee to the location of the test.

2. After the employee submits to the screening test, the appointing authority, *based on which of the following is most appropriate,* shall ~~[provide]~~ :

(a) *Provide* transportation for the employee to his or her home ~~[]~~ ;

(b) *Assist the employee in arranging for a person chosen by the employee to provide transportation for the employee; or*

(c) *Arrange for emergency medical assistance if the appointing authority or any other person, before or during the transportation of the employee to his or her home, reasonably believes, based on objective facts, that the employee needs emergency medical assistance.*

(Added to NAC by Dep't of Personnel, eff. 12-26-91)

LCB File No. R063-18

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, outlines when an employment candidate or employee has refused to submit to a screening test.

Subsection 1 outlines what situations would constitute an employment candidate or an employee having refused to submit to an alcohol or drug screening test. Subsection 2 outlines consequences of a candidate's refusal to submit to a screening test, and subsection 3 defines terminology used in this new section.

NRS 284.4063 outlines that an employee who fails or refuses to submit to a screening test is subject to disciplinary action, and therefore that statute would be utilized as the basis related to consequences for an employee who refuses to submit to a screening test.

NEW Refusal to submit to a screening test: Reasons an applicant or employee shall be deemed to have refused a test; potential consequences of a refusal to submit to a screening test by an applicant.

1. For the purposes of NRS 284.4063, 284.4065 and 284.4066, an applicant or employee is deemed to have refused to submit to a screening test requested pursuant to NRS 284.4065 or required pursuant to NRS 284.4066 when the applicant or employee:

(a) Provides oral or written notice to the appointing authority that he or she refuses to take the requested or required screening test;

(b) Absent any extenuating circumstances, fails to appear at the collection site for a screening test within a reasonable time after being requested or required to do so;

(c) Absent any extenuating circumstances, fails to remain at the collection site until the collection process is complete;

(d) Fails to provide a sufficient amount of specimen when requested or required to do so pursuant to the standards adopted by reference in NAC 284.882 and fails to undergo a medical evaluation to determine whether there is a legitimate medical explanation for the insufficient amount of specimen;

(e) Fails to provide a sufficient amount of specimen when requested or required to do so pursuant to the standards adopted by reference in NAC 284.882, and it has been determined, through a required medical evaluation, that there was no legitimate medical explanation for the insufficient amount of specimen;

(f) Fails to cooperate with any part of the process related to the screening test, including, without limitation, refusing to sign any required forms;

(g) Brings materials or devices to the collection site for the purpose of adulterating, substituting or diluting the specimen;

(h) Attempts to adulterate, substitute or dilute the specimen; or

(i) Admits to the collector or Medical Review Officer that he or she adulterated or substituted the specimen.

2. The appointing authority shall rescind any offer of employment that is contingent upon successful passage of a screening test made to an applicant who is deemed, pursuant to subsection 1, to have refused to submit to a screening test required by NRS 284.4066.

3. As used in this section:

(a) "Collection site" means a location where specimens are collected.

(b) "Collector" means a person trained to instruct and assist an applicant or employee in providing a specimen.

(c) "Medical Review Officer" means a licensed physician who has entered into a contract with the State of Nevada or with a vendor that has entered into a contract with the State of Nevada to review, verify and report the results of screening tests.

(d) "Specimen" means breath or fluid collected from an applicant or employee for the purpose of conducting a screening test.

Sec. 2. NAC 284.578 is hereby amended to read as follows:

<p>Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, is a housekeeping change to make the regulation consistent with similar provisions governing the approval or denial of sick leave and compensatory time for an employee who is the victim of an act which constitutes domestic violence or whose family or household</p>

member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator.

NAC 284.578 Leave of absence without pay. (NRS 284.065, 284.155, 284.345, 284.360, 608.0198)

1. Except as otherwise provided in NRS 284.360, an appointing authority may grant a leave of absence without pay to an employee for not more than 1 year for any satisfactory reason.

2. The Commission may grant leaves of absence without pay in excess of 1 year for purposes deemed beneficial to the public service.

3. An appointing authority may require an employee on leave of absence without pay to submit every 2 weeks a statement of his or her intent to return to work.

4. If the reason for granting the leave no longer exists, the appointing authority may revoke the leave after notifying the employee in writing and allowing, so far as is practicable, not less than 5 working days after the date of notification for the employee to return to work.

5. An employee shall request leave without pay at least 30 days in advance of when the need for the leave is foreseeable, if practicable.

6. An employee may not use leave without pay in lieu of sick leave or annual leave without approval of the appointing authority.

7. An employee who is using leave pursuant to the Family and Medical Leave Act may not use leave without pay until the employee has exhausted 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, as required by NAC 284.5811.

8. An appointing authority shall grant leave without pay, upon request, to 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 if:

(a) The employee has been employed in public service for at least 90 days; and

(b) The combination of all leave taken by the employee for this purpose ~~[, including, without limitation, sick leave, annual leave, compensatory time and leave without pay,]~~ does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence occurred.

[Personnel Div., Rule VII § E subsecs. 1-4, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 3-23-94; 10-27-97; A by Personnel Comm'n by R145-05, 12-29-2005; R060-09, 11-25-2009; R037-17, 10-31-2017, eff. 1-1-2018)



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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August 7, 2018

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. These regulations only impact 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.

Peter Long

Peter Long, Administrator

August 7, 2018

Date