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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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MEMORANDUM
HR#71-23

December 12, 2023

TO: DHRM Listserv Recipients

FROM: Mandee Bowsmith, Administrator *Mandee Bowsmith*
Division of Human Resource Management

SUBJECT: NOTICE OF INTENT TO ACT UPON A REGULATION – Permanent
Amendment of Regulations that Pertain to NAC 284

The regulation changes included with this memorandum are being proposed for amendment at the January 12, 2024, meeting of the Human Resources Commission. This meeting will be held at 9:00 a.m. at the Nevada State Library and Archives Building, 100 N. Stewart Street, Room 110, Carson City, Nevada with videoconferencing to the Eureka Building, 7251 Amigo Street, Suite 120, Las Vegas, Nevada.

Please circulate and post the attached *Notice of Intent to Act Upon A Regulation* along with the text of the proposed regulations.

Attachments

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

The Human Resources Commission will hold a public hearing at 9:00 a.m. on January 12, 2024, at the Nevada State Library and Archives Building, 100 N. Stewart Street, Room 110, Carson City, Nevada with videoconferencing to the Eureka Building, 7251 Amigo Street, Suite 120, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the permanent 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>
R134-22	Sec. 1	284.126	Creation of new class, reclassification of position or reallocation of existing class.
	Sec. 2	284.3745	Refusal to examine applicant or certify eligible person; Review of action; appeal.
R141-22	Sec. 1	284.524	Reporting for work; workweeks and workdays; periods for meals and rest.

Persons wishing to comment upon the proposed action of the Human Resources 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 September 22, 2023. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Human Resources Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted or 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 or amended will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada, and 7251 Amigo Street, Suite

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

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

Carson City

Bladel Building, 209 East Musser Street
Nevada State Library & Archives Building, 100 North Stewart Street
Nevada State Capitol Building, 101 North Stewart Street
Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Eureka Building, 7251 Amigo Street

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 CHANGE
Permanent Regulations

LCB File No. R134-22

Explanation of Proposed Change: The following amendment in Section 1 of this LCB File, proposed by the Division of Human Resource Management (DHRM), will allow for agencies to maintain the assignment of duties and responsibilities to a position in question through the reclassification process, rather than needing to allocate those duties to other positions. In addition, it will allow for reclassification to a more appropriate class absent significant change.

The amendment in Section 2 of this LCB File, also proposed by DHRM will change all deadlines related to appeals of refusal to examine or certify to calendar days for consistency.

**PROPOSED REGULATION OF
THE HUMAN RESOURCES COMMISSION**

LCB File No. R134-22

September 19, 2023

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

AUTHORITY: § 1, NRS 284.065, as amended by section 72 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3562, 284.155; § 2, NRS 284.065, as amended by section 72 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3562, NRS 284.155 and 284.245, as amended by section 87 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3569.

A REGULATION relating to the Human Resources System of the State; revising provisions relating to the reclassification of positions in the classified service of the State; revising provisions governing the review of certain actions related to certifying certain applicants and eligible persons; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Administrator of the Division of the Human Resource Management of the Department of Administration to prepare, maintain and revise a master classification plan for all positions in the classified service of the State, based upon similarity of duties and responsibilities. Existing law also: (1) authorizes the Administrator to make changes in the classification of positions under certain circumstances; and (2) provides that the classification plan and changes therein are subject to approval by the Human Resources Commission. (NRS 284.160, as amended by section 80 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3565) Finally, existing law requires the Human Resources Commission to adopt a code of regulations for the classified service. (NRS 284.155)

Existing regulations provide for the reclassification of a position to a different class if a significant change in the duties and responsibilities assigned to the position has occurred or may occur. Under existing regulations, a position that has a significant change cannot be reclassified to a higher grade if the incumbent does not meet the minimum qualifications for the higher level position. (NAC 284.126) **Section 1** of this regulation revises this prohibition to provide instead that a position that has a significant change cannot be reclassified to a higher grade if the incumbent does not meet the minimum qualifications for the higher level position or is unable to meet such qualifications as an underfill within 1 year after the effective date of the reclassification decision.

Under existing regulations, an employee who does not meet the minimum qualifications to reclassify his or her position is not eligible for promotion. (NAC 284.126) **Section 1** instead provides that an employee is not eligible for promotion unless the employee meets the minimum

qualifications to reclassify his or her position or is able to meet such qualifications as an underfill within 1 year after the effective date of the reclassification decision.

Existing regulations authorize the Division to investigate the classification of an existing position on its own initiative. (NAC 284.130) **Section 1** provides that a position may be reclassified absent a significant change in the duties and responsibilities assigned to the position upon a determination by the Division that: (1) the position is incorrectly classified; or (2) the duties and responsibilities assigned to the position are more consistent with the duties and responsibilities assigned to a position in a different class.

In general, existing regulations require that an appointment to or within the classified service of the State be made from a certified list of eligible persons. (NAC 284.329-284.3745) Existing regulations authorize the Administrator to refuse to examine certain applicants for employment or refuse to certify an eligible person for inclusion on a list under certain circumstances. (NAC 284.374) Existing regulations: (1) authorize an applicant affected by such a refusal to request a review of the action; and (2) prescribe procedures for the review of an action. (NAC 284.3745) **Section 2** of this regulation requires certain actions relating to a review to be calculated using calendar days instead of working days.

Section 1. NAC 284.126 is hereby amended to read as follows:

284.126 1. For the purposes of this section:

(a) “Agency human resources officer” means the Director of Personnel within the Nevada System of Higher Education or any person holding a position in the classified service with the title of Human Resources Officer.

(b) “Significant change” means a change in the duties and responsibilities assigned to a position in a class that:

- (1) Is outside of the scope of the class as described by the class specification;
- (2) Is not part of the scope of responsibility of the position; and
- (3) Results in the preponderance of duties and responsibilities being allocated to a different class.

2. If an appointing authority or an employee proposes the creation of a new class, a reclassification of a position to a different class or the reallocation of an existing class based upon a gradual accumulation of duties and responsibilities which results in a significant change

and is intended to be permanent, the Division of Human Resource Management or agency human resources officer must be notified on the appropriate form. If the creation, reclassification or reallocation is approved, the Division of Human Resource Management will allocate the position to one of the existing classes in the classification plan or to a new, revised or reallocated class as appropriate.

3. The effective date of the classification decision will be the date on which Form NPD-19 is received by the Division of Human Resource Management or agency human resources officer unless information that substantially affects the decision concerning the creation, reclassification or reallocation is received after this date. In that case, the effective date will be the date on which the appropriate information necessary to make the decision is received. However, the subsequent receipt of an application or examination score that confirms the qualifications of an incumbent will not have a bearing on the effective date. If the form was prepared but delayed due to an administrative or clerical error, the effective date must be determined by the appointing authority and must be based upon the date on which the form should reasonably have been submitted to the Division of Human Resource Management or agency human resources officer. In no case, however, may a retroactive adjustment because of an administrative or clerical error exceed 6 months after the date of receipt.

4. If an agency makes or anticipates making a significant change in the duties for a position or the agency anticipates a reorganization which will require the reclassification of an existing position, the reallocation of an existing class or the creation of a new class, it shall advise the Budget Division of the Office of Finance or, in the case of the Nevada System of Higher Education, the budget division of the applicable institution. The proposed change may not be required of an employee nor be submitted to the Division of Human Resource Management until

funding for it is approved. If the change is approved by the Division of Human Resource Management, the effective date will be determined by the Budget Division.

5. In effecting a reclassification pursuant to subsection 2 or 4, the appointing authority must review and take into consideration the organizational structure and the qualifications of the incumbent before assigning new duties to a position which are intended to be permanent. No position will be reclassified to a higher grade through the individual classification process if the incumbent does not meet the minimum qualifications for the higher level position ~~†~~ *or is unable to meet such qualifications as an underfill within 1 year after the effective date of the reclassification decision.* If an employee does not meet the minimum qualifications to reclassify his or her position ~~†~~ *or is unable to meet such qualifications as an underfill within 1 year after the effective date of the reclassification decision,* the employee is not eligible for promotion, but may be eligible for a special adjustment to his or her pay pursuant to NAC 284.206.

6. The establishment of a new class or reallocation of a class in an occupational study which results in a fiscal cost becomes effective when the funding is provided by the Legislature in the biennial operating budget for this State.

7. From the date on which the Division of Human Resource Management formally announces the beginning of an occupational study until the date on which the occupational study becomes effective:

(a) An existing position in the occupational study that has a significant change may only be reclassified to an existing class.

(b) An existing class in the occupational study must not be reallocated to a different grade.

(c) A new position may be allocated to an existing class or a new class as determined by the Division of Human Resource Management.

8. A position may be reclassified absent significant change in the duties and responsibilities assigned to the position upon a determination by the Division of Human Resource Management that:

(a) The position is incorrectly classified; or

(b) The duties and responsibilities assigned to the position are more consistent with the duties and responsibilities assigned to a position in a different class.

Sec. 2. NAC 284.3745 is hereby amended to read as follows:

284.3745 1. An applicant affected by a refusal to evaluate the applicant or an eligible person affected by a refusal to certify the eligible person may request a review of the action by the appointing authority not later than 30 calendar days after the applicant or eligible person receives notification of the refusal to evaluate or the refusal to certify, as applicable.

2. The appointing authority shall conduct the review and return it to the applicant or eligible person within 10 *calendar* days after receipt of the request for review. If the applicant or eligible person is not satisfied with the review by the appointing authority, the applicant or eligible person may request that the appointing authority provide, in accordance with NRS 284.245, a statement of the reasons for the refusal to evaluate or the refusal to certify, as applicable. Such a request must be made within 30 calendar days after receipt of the response by the appointing authority.

3. An applicant or eligible person may, within 30 ~~working~~ *calendar* days after receipt of the statement of the appointing authority provided pursuant to subsection 2, appeal the decision to the Commission. The appeal must:

- (a) Be in writing;
- (b) Be addressed to the Administrator;
- (c) Address the points outlined in the statement issued pursuant to subsection 2 regarding the refusal to evaluate or certify the applicant or eligible person; and
- (d) Indicate the points in the statement with which the applicant or eligible person disagrees and express the reasons for the disagreement.

EXPLANATION OF PROPOSED CHANGE
Permanent Regulations

LCB File No. R141-22

Explanation of Proposed Change: This amendment is in response to a recent decision out of the First Judicial District Court of the State of Nevada remanding the decision back to the Employee-Management Committee (EMC) to determine which activities performed before or after a regularly scheduled shift are compensable, however, pursuant to NRS 284.065, the authority to adopt regulations lies with the Human Resources Commission, and as such, the administrative regulation making process is appropriate to address the court's decision. This revised proposed draft of the LCB File clarifies that an employee who arrives to work early is not entitled to overtime unless it has been preapproved.

**REVISED PROPOSED REGULATION OF
THE HUMAN RESOURCES COMMISSION**

LCB File No. R141-22

November 6, 2023

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

AUTHORITY: § 1, NRS 284.065, as amended by section 72 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3562, 284.155 and 284.345.

A REGULATION relating to human resources; specifying when the work shift of certain employees in the Executive Department of the State Government begins for purposes of determining compliance with requirements relating to attendance; providing that the workday of certain employees in the Executive Department of State Government includes certain work-related activities; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Human Resources Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations relating to the attendance of certain state employees at work. (NRS 284.345) Existing regulations require an employee in the Executive Department of the State Government to report for a work shift on time and ready to perform the duties assigned to his or her position. (NAC 284.524) This regulation provides that, for purposes of determining whether an employee is in compliance with the requirement that an employee report for a work shift on time, the work shift of an employee who is not working remotely begins when the employee arrives at the entrance to the physical location at which the employee performs his or her duties or responsibilities. This regulation also clarifies that an employee who reports for a work shift early is not entitled to receive overtime unless the overtime is approved in accordance with certain statutory and regulatory provisions.

Existing regulations prescribe requirements relating to the workday for certain employees in the Executive Department of State Government. (NAC 284.524) This regulation provides that the workday for such an employee who is not working remotely includes the time it takes the employee to: (1) travel to and from the entrance to the physical location at which the employee performs his or her duties and responsibilities and to a location designated as his or her assigned workstation within that location; (2) conduct a mandatory pre- or post-shift briefing between arriving and departing staff; and (3) perform any other activities required by the appointing authority.

Section 1. NAC 284.524 is hereby amended to read as follows:

284.524 1. An employee shall report for a work shift on time and ready to perform the duties and tasks assigned to his or her position. *For purposes of determining whether an employee is in compliance with the requirement that an employee report for a work shift on time, the work shift of an employee who is not working remotely begins when the employee arrives at the entrance to the physical location at which the employee performs his or her duties or responsibilities. An employee who reports for a work shift early is not entitled to receive overtime unless the overtime is approved in accordance with subsection 10 of NRS 284.180 and NAC 284.242.*

2. Except as otherwise provided in this subsection, the workweek for state employees is 40 hours. A workweek of a different number of hours may be established to meet the needs of state agencies in compliance with the provisions of NRS 281.100, 281.110 and 284.180.

3. *The workday for a state employee who is not working remotely begins at the time specified in subsection 1 and includes, without limitation, the time it takes the employee to:*

(a) Travel to and from the entrance to the physical location at which the employee performs his or her duties or responsibilities and to a location designated by his or her employer as his or her assigned workstation within that location;

(b) Conduct a mandatory pre- or post-shift briefing between arriving and departing staff;
and

(c) Perform any other activities required by an appointing authority.

4. The workday for a full-time state employee who works a standard or nonstandard work schedule consists of two work periods separated by a 1/2- to 1-hour meal period. Insofar as practicable, the meal period must occur in the middle of the work shift. A rest period of 15

minutes must be granted for each 4-hour period of work and, except as otherwise provided in NAC 284.5242 and insofar as practicable, must occur in the middle of the period of work.

~~13.1~~ 5. Except as otherwise provided in subsections ~~14.1~~ 6 and ~~15.1~~ 7, an appointing authority shall provide a meal period and rest period to an employee who has an innovative work schedule during each workday as follows:

(a) A 1/2- to 1-hour meal period must be provided during each period of work that exceeds 6 hours. Insofar as practicable, the meal period must occur in the middle of the work shift.

(b) A rest period of 15 minutes must be provided for each 4-hour period of work and, except as otherwise provided in NAC 284.5242 and insofar as practicable, must occur in the middle of the period of work.

~~14.1~~ 6. The requirement to relieve an employee for a 1/2- to 1-hour meal period does not apply to an employee who receives a paid meal period.

~~15.1~~ 7. The requirement for a rest period does not apply to an employee who works:

(a) Directly with the inmates at a correctional institution.

(b) For the Division of Public and Behavioral Health of the Department of Health and Human Services and who:

(1) Maintains or monitors the equipment in a heat plant which operates 24 hours a day;
and

(2) Works a straight 8-hour work shift.

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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 Human Resources 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.

A concerted effort was made to determine any economic burden. The Department has relied on the expert knowledge of Department staff. The regulation solely addresses pay for government employees so the impact is solely on government employees and agencies and no small business will be affected.

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.

Mandee Bowsmith
Mandee Bowsmith, Administrator

December 12, 2023
Date