




DEPARTMENT OF PERSONNEL
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MEMO PERD #26-10

April 19, 2010

TO: Nevada County Libraries
State Library and Archives

FROM: Teresa J. Thienhaus, Director 
Department of Personnel

SUBJECT: NOTICE OF PUBLIC HEARING – NAC 284 Regulation Changes

The regulation changes included with this memorandum are being proposed for adoption at the May 21, 2010 Personnel Commission meeting. This meeting will be held at 9:00 a.m. at the Gaming Control Board, Conference Room, 1919 College Parkway, Carson City, Nevada with videoconferencing to Las Vegas at the Grant Sawyer Building, Gaming Control Board, Room 2450, 555 East Washington Avenue.

Please circulate or post the enclosed *Notice of Public Hearing* along with the text of the proposed regulations.

TJT:sb

Enclosures

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

The Personnel Commission will hold a public hearing at 9:00 a.m., on May 21, 2010, at the Gaming Control Board, Conference Room, 1919 College Parkway, Carson City and in Las Vegas at the Grant Sawyer Building, Gaming Control Board, Room 2450, 555 East Washington Avenue via videoconferencing. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

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

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

Regulation Lead Line:

	<u>NAC #</u>
Unpaid Furlough	LCB R080-09
NEW: Assignment of hearing officer	NAC 284
Scope	NAC 284.774
Request for hearing and other communications	NAC 284.778
Continuances	NAC 284.786
NEW: "Genetic information" defined	NAC 284
Affirmative action program and equal employment opportunity	NAC 284.114
Confidential records	NAC 284.718

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Department of Personnel, 209 E. Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Department of Personnel on or before April 30, 2010. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at the Department of Personnel, 209 E. Musser Street, Room 300, Carson City; 555 East Washington

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

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

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

CARSON CITY

Blasdel Building, 209 East Musser Street
Nevada State Library and Archives, 100 Stewart St.
Capitol Building, Main Floor
Legislative Building, 401 South Carson Street
Gaming Control Board, 1919 College Parkway
Department of Personnel web site: www.dop.nv.gov
Main branch of Nevada County Public Libraries

LAS VEGAS

Grant Sawyer State Office Building
555 East Washington Avenue

Additionally, this notice has been sent to all State agencies.

LCB File No. R187-09:

Section 1: LCB file No. R080-09 is hereby amended to read as follows:

Explanation of Proposed Regulation: Senate Bill 433 of the 2009 Legislative Session requires most State classified employees to take 96 hours of unpaid furlough leave in each of the next two fiscal years and for other than classified employees, 1 days of unpaid furlough leave a month during each of the next two fiscal years. The purpose of this regulation is to address concerns expressed by the Legislative Commission when they approved the permanent regulation.

NEW: Unpaid furlough leave

1. Except as otherwise provided in *subsection 2 and* Senate Bill No. 433, chapter 391, Statutes of Nevada 2009, at page 2147 [~~3-a~~]:

(a) A full-time classified employee shall take 8 hours of furlough leave each month and a part-time classified employee shall take a number of hours of furlough leave per month that is equivalent to the portion of an 8-hour day that his scheduled workweek or biweekly schedule bears to a full-time workweek or biweekly schedule. [~~unless:~~

~~(a) The]~~

(b) *A full-time employee, other than a classified employee, shall take 1 day of furlough leave each month. A full-time employee, other than a classified employee, whose standard workday is longer than 8 hours shall take 8 hours of furlough leave on a single workday and may take annual leave for the remainder of the day, work a reduced schedule that day or work a modified schedule approved by his employer. A part-time employee, other than a part-time classified employee, shall take a number of hours of furlough leave per month that is equivalent to the portion of an 8-hour day that his scheduled workweek or biweekly schedule bears to a full-time workweek or biweekly schedule. As used in this paragraph, "1 day" has the meaning ascribed to it in subsection 2 of section 3 of Senate Bill No. 433, chapter 391, Statutes of Nevada 2009, at page 2159.*

2. *The requirements set forth in subsection 1 do not apply if:*

(a) *An employee's appointing authority files a plan with the Director and the Director of the Department of Administration or their designated representatives or, in the case of employees of the Nevada System of Higher Education, with the chief financial officer of the applicable institution for the employee to take furlough leave pursuant to an alternate schedule because of workload demands; and*

(b) *The plan is approved in advance by the Director and the Director of the Department of Administration or their designated representatives or by the chief financial officer of the institution, as applicable.*

~~[2.]~~3. Each appointing authority shall establish a policy that defines the minimum increment of furlough leave required to be taken at any one time by a classified employee of the appointing authority. The policy may provide different increments for employees in different divisions, locations or work groups based on business necessity. The appointing authority shall disseminate the policy to each employee under its authority who is required to take furlough leave.

~~[3.]~~4. To the extent practicable, an employee who is required to take furlough leave and his or her supervisor shall jointly determine in advance a schedule pursuant to which the employee will take furlough leave. If, because of business necessity, such a schedule cannot be mutually

agreed upon, a supervisor may direct an employee to take furlough leave on a specific day or at a specific time, or both.

[4.]5. Movement of an employee from one position to another position must not alter the amount of furlough leave required to be taken by the employee.

[5.]6. The amount of furlough leave that an employee is required to take must not be offset by any savings realized as a result of a vacancy delay in filling the position.

[6.]7. An employee who is initially appointed to state service after July 1, 2009, may only be required to take the number of hours or days of furlough leave that is required to be taken during the remainder of the fiscal year after his appointment. If such an employee is appointed on a day other than the first of a month, the employee may not be required to commence taking furlough leave until the immediately succeeding month.

[7.]8. An employee may not:

(a) Take more than 8 hours of furlough leave in a workweek.

(b) Receive overtime pay, compensatory time, pay for standby status, added regular time for work as a part-time employee or callback pay in the same pay period in which the employee takes furlough leave, unless approved in advance by the Director and the Director of the Department of Administration or their designated representatives or, in the case of employees of the Nevada System of Higher Education, by the chief financial officer of the applicable institution.

(c) Be required to take more furlough leave than the amount of furlough leave required by the provisions of Senate Bill No. 433, chapter 391, Statutes of Nevada 2009 at page 2147.

[8.]9. If an employee who leaves state service has taken more than the equivalent of 8 hours of furlough leave per month at the time of his separation from state service, the employee will not be reimbursed for the additional furlough leave taken.

[9.]10. Any furlough leave that an employee takes must be considered time worked for the purpose of calculating the employee's eligibility to take leave under the federal Family and Medical Leave Act. Any furlough leave that is taken during the time in which an employee takes leave that qualifies under the Family and Medical Leave Act will not be counted against the amount of leave for which an employee is entitled to take under the Family and Medical Leave Act.

[10.]11. As used in this section, "furlough leave" means the unpaid leave required to be taken pursuant to the provisions of Senate Bill No. 433, chapter 391, Statutes of Nevada 2009 at page 2147.

Sec. 2: LCB file No. R080-09 is hereby amended to read as follows:

Explanation: The Legislative Counsel Bureau has added a section so that the regulation will automatically expire on June 30, 2011. This will be included as an informational note in the *Rules for State Personnel Administration*.

Sec. 2. This regulation and LCB File No. R080-09 expire by limitation on June 30, 2011.

LCB File No. R192-09:

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

Explanation of Proposed Change: This new section, proposed by the Department of Personnel, describes the method for the assignment of a hearing officer when an employee has filed an appeal of a dismissal, suspension, demotion, involuntary transfer, or a “Whistle Blower” complaint.

NEW: Assignment of hearing officer.

1. For each hearing requested in a claim relating to a dismissal, suspension, demotion, involuntary transfer, or reprisal or retaliatory action, the Director shall provide to each party to the claim:

- (a) A list of three qualified hearing officers; or*
- (b) A list of five qualified hearing officers.*

2. If the Director provides a list of:

- (a) Three qualified hearing officers, each party may strike one name from the list; or*
- (b) Five qualified hearing officers, each party may strike two names from the list,*

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

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

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

5. If for any reason all of the hearing officers whose names were not struck from the list pursuant to subsection 2 are unqualified or otherwise unavailable to serve as a hearing officer for the hearing, the Director may provide a new list of hearing officers to the parties in the manner provided in this section or may select any qualified hearing officer who is available to serve as a hearing officer in the hearing.

Sec. 2. NAC 284.774 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies that the hearing officers may only adopt supplementary procedures to those established in regulation and by the Department of Personnel.

NAC 284.774 Scope. (NRS 284.065, 284.155, 284.376, 284.390)

1. NAC 284.774 to 284.818, inclusive, ~~[governs]~~ *and section 1 of this regulation govern* hearings in all cases relating to dismissals, suspensions, demotions, and involuntary transfers before the hearing officer~~[-]~~ *and hearings for a written appeal filed pursuant to NRS 281.641.*

2. ~~[The]~~ *Except as otherwise provided in subsection 3, the hearing officer* ~~[may modify or alter]~~ *shall use the hearings procedures established in NAC 284.774 to 284.818, inclusive, and section 1 of this regulation and any hearings procedures provided by the Department of Personnel* if ~~[experience and circumstances indicate such action and]~~ interested parties have proper notice of any procedural changes or are not prejudiced thereby. *A copy of the hearings*

procedures is available by contacting the Department of Personnel at 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204.

3. Each hearing officer may ~~from time to time~~ adopt supplementary rules governing practice before him not inconsistent with ~~[NAC 284.774 to 284.818, inclusive.]~~ ***the provisions of subsection 2. The supplementary rules must be available, in writing, to all parties not less than 5 business days before a hearing.***

Sec. 3. NAC 284.778 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, addresses communications between parties in an appeal and the hearing officer

NAC 284.778 Request for hearing and other communication. (NRS 284.065, 284.155, 284.376, 284.390)

1. A request for an appeal ~~[and other pertinent communications directed to the hearing officer]~~ must be addressed to the Director.

2. ***Any written communications directed to a hearing officer must be sent to the hearing clerk of the Department of Personnel.***

3. ***A party shall not communicate with a hearing officer regarding the merits of a case:***

(a) ***Except in the presence of all parties to the hearing; or***

(b) ***Unless all parties to the hearing are notified of the communication in advance.***

4. ***Unless otherwise agreed upon in writing by all parties, an offer or demand of settlement made by a party must not be disclosed to or proposed by a hearing officer before the issuance of a final decision by the hearing officer.***

Sec. 4. NAC 284.786 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies the procedure for requesting a continuance and when it is appropriate for a continuance to occur.

NAC 284.786 Continuances. (NRS 284.065, 284.155, 284.376, 284.390)

1. Hearings may be continued beyond the period originally scheduled or recessed until a future date which is agreeable to the hearing officer and the parties if good cause is shown.

2. ***A party may request a continuance not later than 5 business days before the date of the scheduled hearing by filing a written motion or stipulation with the hearing officer. Notice of the motion or stipulation and a copy of the motion or stipulation must be sent to each party to the hearing and to the Department of Personnel.***

3. ***A party may contest a request for a continuance submitted by another party by filing a written motion with the hearing officer not later than 2 business days after receiving the notice of the request for a continuance. Notice of the motion and a copy of the motion must be sent to each party to the hearing and to the Department of Personnel.***

4. ***A hearing officer shall not grant a continuance requested on the day of a scheduled hearing, unless:***

(a) ***The hearing officer, any party, the legal counsel for a party or a primary witness cannot attend the hearing because of an emergency;***

(b) The hearing exceeds the time allotted for the day; or

(c) The hearing officer recesses the hearing until a future date.

5. If a hearing officer recesses a hearing until a future date pursuant to a request for a continuance which is filed on the day of the scheduled hearing, the hearing must be held not later than 20 business days after the date of the request for a continuance, unless there is a conflict with the schedule of the hearing officer.

LCB File No. R055-10:

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

Explanation of Proposed Change: This new section, proposed by the Department of Personnel, defines “genetic information” which is included in the provisions of equal employment opportunity as required by the Genetic Information Nondiscrimination Act that went into effect on November 21 2009.

NEW: “Genetic information” defined.

“Genetic information” means information that is obtained:

- 1. From genetic testing of a person;**
- 2. From genetic tests of a family member of a person; or**
- 3. About the manifestation of a disease or disorder in a family member of a person.**

Sec 2. NAC 284.114 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation change, proposed by the Department of Personnel, adds genetic information to the list of items included in the provisions for equal employment opportunity as required by the Genetic Information Nondiscrimination Act that went into effect on November 21, 2009.

**NAC 284.114 Affirmative action program and equal employment opportunity.
(NRS 284.065)**

1. The Department of Personnel is responsible for establishing, coordinating and evaluating an affirmative action program for this State.

2. The Department of Personnel will cooperate and consult with agencies to:

(a) Identify barriers in the personnel management system which may adversely affect the ability of applicants and employees to reach their full employment potential without regard to race, sex, sexual orientation, religion, color, national origin, age, *genetic information* or disability.

(b) Coordinate programs to remove barriers to equal employment opportunity while ensuring the effectiveness of the merit system and the opportunity for persons to enter the system and progress in it to the extent of their merit.

[Personnel Div., Rule I § C, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 10-26-84; 7-6-92; R098-99, 9-27-99)

Sec. 3. NAC 284.718 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation change, proposed by the Department of Personnel, adds genetic information to the list of items that are considered confidential as required by the Genetic Information Nondiscrimination Act that went into effect on November 21, 2009.

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

1. The following types of information, which are maintained by the Department of Personnel or the personnel office of an agency, are confidential:

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

(b) Any document which is used by the Department of Personnel or an agency 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 document which is used by the Department of Personnel or an agency 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 status as an eligible person; and

(j) Information in the file or record of employment of a current or former employee which relates to ~~[the employee's:]~~ **his**:

(1) Performance;

(2) Conduct, including any disciplinary actions taken against him;

~~[(3) Usage or balance of his or her annual and sick leave;]~~

(3) Race, ethnic identity or affiliation, sex, **genetic information**, disability or date of birth;

(4) Home telephone number; or

(5) Social security number.

2. If the employee has requested that his personal mailing address be listed as confidential, his file must be so designated and list his business 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 immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation conducted by the Department of Personnel relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential.

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