



DEPARTMENT OF PERSONNEL
209 East Musser Street, Room 101
Carson City, Nevada 89701-4204
(775) 684-0150
<http://dop.nv.gov>

MEMO PERD # 65/08

November 18, 2008

TO: Personnel Commission Members
Department Directors
Division Administrators
Agency Personnel Liaisons
Agency Personnel Representatives
Designees for Rules Distribution
Employee Representatives
Interested Parties

FROM: Shelley Blotter, Interim Director
Department of Personnel

A handwritten signature in black ink, appearing to read "S. Blotter".

SUBJECT: NOTICE OF PUBLIC HEARING – Temporary Amendments to NAC 284

The regulation changes included with this memorandum are being proposed for temporary repeal or adoption at the December 19, 2008, Personnel Commission meeting. This meeting will be held at 9:00 a.m. at the Richard Bryan Building, 901 S. Stewart Street, Suite 2002 in Carson City and in Las Vegas at the Grant Sawyer Building, Room 2450, 555 East Washington Avenue via videoconferencing.

Please circulate or post the enclosed *Notice of Public Hearing* along with the *text of the proposed regulation*, or otherwise notify your employees.

SB:vk

Enclosures



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

The Personnel Commission will hold a public hearing at 9:00 a.m. on December 19, 2008 at the Richard Bryan Building, 901 S. Stewart Street, Suite 2002 in Carson City and in Las Vegas at the Grant Sawyer Building, Room 2450, 555 East Washington Avenue via videoconferencing. The purpose of the hearing is to receive comments from all interested persons regarding the temporary repeal or 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.
- A statement of the need for and the purpose of the proposed regulations precedes the text of each regulation included in the attached document. The following regulation amendments will be considered at this meeting:

<u>Regulation Lead Line:</u>	<u>NAC #</u>
Unauthorized and unreported absences	284.594
Confidential Records	284.718
Access to confidential records	284.726

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 November 28, 2008. 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 repealed or amended will be available at the Department of Personnel, 209 E. Musser Street, Room 300, Carson City, 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. Copies of this notice and the proposed regulation 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

Bladel Building, 209 East Musser Street
Nevada State Library and Archives, 100 Stewart St.
Capitol Building, Main Floor
Legislative Building, 401 South Carson Street
Department of Personnel Web Site www.dop.nv.gov
Main branch of Nevada County Public Libraries
Richard Bryan Building, 901 S. Stewart Street

LAS VEGAS

Grant Sawyer State Office Building
555 East Washington Avenue

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

TEMPORARY REGULATIONS PROPOSED FOR ADOPTION

Sec. 1. NAC 284.594 is amended as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies that an employee who has an unauthorized or unreported absence may be subject to disciplinary action under NAC 284.646 and subject to a deduction of pay for the absence.

NAC 284.594 Unauthorized and unreported absences. (NRS 284.065, 284.155, 284.175, 284.345)

1. An unauthorized and unreported absence must be considered an absence without leave and a deduction of pay must be made for the absence.
2. An *unauthorized or* unreported absence may be considered an absence without leave, and a deduction of pay may be made for the absence.
3. An employee who has an unauthorized or unreported absence may be subject to disciplinary action pursuant to *NAC 284.646 or* NAC 284.650.
4. A deduction from the pay of an exempt classified employee or exempt unclassified employee must be made in increments of a full workday.

[Personnel Div., Rule VII § G, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 1-26-87; 11-16-95; R147-01, 1-22-2002; A by Personnel Comm'n by R145-05, 12-29-2005)

Sec. 2. NAC 284.718 is amended as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, recognizes that there can exist a clear connection between an employee's leave balances and his medical history as it relates to protections provided by the Family Medical Leave Act and the Americans with Disabilities Act. Classifying leave balances as confidential employee information will insure that State employees applying for other jobs within State service are not eliminated from consideration through discriminatory practices resulting from the release of leave usage information.

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 the Employee Assistance Program;

(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 his:

(1) Performance;

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

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

(4) Home telephone number; [Ø]

(5) *Annual leave and sick leave usage and balances; or*

(6) 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)

Sec 3. NAC 284.726 is hereby amended as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, recognizes that there can exist a clear connection between an employee's leave balances and his medical history as it relates to protections provided by the Family Medical Leave Act and the Americans with Disabilities Act. This amendment balances the employee's right to confidentiality with the employer's record keeping requirements.

NAC 284.726 Access to confidential records. (NRS 284.065, 284.155, 284.335, 284.407)

1. Except as otherwise provided in this subsection, 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 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 3, access to an employee's file 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 employment file.
- (c) The appointing authority or a designated representative of the agency by which the employee is employed.
- (d) The Director or his designated representative.
- (e) An appointing authority, or his designated representative, who is considering the employee for employment in his agency.
- (f) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (g) 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.
- (h) Persons who are involved in processing records for the transaction of business within and between state agencies.
- (i) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

3. Information concerning the health, medical condition or disability of an employee or a member of his immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection [6] 7, access to such information is limited to the employee, his current supervisor, and the appointing authority or his designated representative.

4. ***Except as otherwise provided in subsection 7, access to annual leave and sick leave usage and balances is limited to the employee, his current supervisor, and the appointing authority or his designated representative.***

5. Except as otherwise provided by specific statute, records maintained by the Employee Assistance Program must not be released without written permission signed by the employee to whom the records pertain.

~~[5.]~~ 6. Upon request, the Department of Personnel will provide the personal mailing address of any employee on file with the Department to the State Controller's Office and the Internal Revenue Service.

~~[6.]~~ 7. The Director or the appointing authority, or his designated representative, shall authorize the release of any confidential records under his control which are requested by the Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission or a court. If the Director or his designated representative determines that the release of any confidential record is not necessary for those purposes, the decision may be appealed.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 9-30-88; 7-21-89; 8-14-90; 7-6-92; 3-23-94; R042-99, 9-27-99; R082-00, 8-2-2000; R058-01, 9-6-2001; R147-01, 1-22-2002; A by Personnel Comm'n by R068-03, 10-30-2003; R024-05, 10-31-2005)