



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

MEMO PERD #31/07
July 25, 2007

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

FROM: Todd C. Rich, Director
Department of Personnel

SUBJECT: NOTICE OF WORKSHOP AND HEARING - AMENDMENTS TO
NAC 284

ABW for Todd Rich

The regulation changes included with this memorandum are being proposed for permanent adoption at the September 14, 2007, Personnel Commission meeting. This meeting will be held at 9:00 a.m. in Carson City at the Legislative Building, 401 South Carson Street, Room 2134. A videoconference link will also be available in Las Vegas at the Grant Sawyer Building, 555 East Washington Avenue, Room 4401.

In order to review the proposed changes in the regulations and solicit comments from interested persons, a workshop will be held at 11:00 a.m. on August 10, 2007, at the Department of Personnel, 209 E. Musser Street, Room 100, Carson City, Nevada and via videoconference at the Grant Sawyer Building, 555 E. Washington Avenue, Suite 1400, Las Vegas, Nevada. An informational note precedes each regulation which explains the nature and purpose of the proposed change to the regulation.

Please circulate or post the enclosed *Notice of Workshop to Solicit Comments on Proposed Regulations* and *Notice of Hearing* along with the *text of the proposed regulations* or otherwise notify your employees.

TR/SB:sb



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

NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED REGULATIONS AND
NOTICE OF HEARING
FOR THE AMENDMENT OF
REGULATIONS OF THE STATE PERSONNEL DEPARTMENT

Workshop Notice: The Department of Personnel, 209 East Musser Street, Carson City, Nevada, telephone number (775) 684-0119, is proposing the adoption of regulations pertaining to Chapter 284 of the Nevada Administrative Code.

A workshop has been set for **11:00 a.m. on August 10, 2007**, at the Blasdel Building, 209 E. Musser Street, Room 100 in Carson City, Nevada. A videoconference link will also be available at the Grant Sawyer Building, 555 East Washington Avenue, Suite 1400 in Las Vegas, Nevada.

Action – Regulations Proposed for Permanent Adoption

Use of Lists and consideration of eligible persons
Reinstatement of former permanent employee
Separation for physical, mental or emotional disorder
Layoffs: procedure
Layoffs: Voluntary demotions

NAC REGULATION

NAC 284.361
NAC 284.386
NAC 284.611
NAC 284.614
NAC 284.618

A copy of all materials relating to the proposed regulations is included with this announcement. Additional copies may be obtained at the workshop or by contacting the Department of Personnel offices at 209 East Musser Street, Room 300, Carson City, Nevada, telephone number (775) 684-0119, or 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-2900. A reasonable fee for copying may be charged.

Hearing Notice: The Personnel Commission will hold a public hearing at **9:00 a.m. on September 14, 2007**, in Carson City at the Legislative Building, 401 South Carson Street, Room 2134. A videoconference link will also be available in Las Vegas at the Grant Sawyer Building, 555 East Washington Avenue, Room 4401. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations. If no person, who is directly affected by the proposed action, appears to request

Notice of Workshop and Hearing

July 25, 2007

Page 2 of 2

time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

- 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.

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 Shelley Blotter, Department of Personnel, 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204. **Written submissions must be received by the Department of Personnel on or before August 24, 2007.** A copy of this notice and the regulations to be adopted will be on file at the State Library and Archives, 100 Stewart Street, Carson City, Nevada for inspection by members of the public during business hours. Additional copies of the notice and the regulations to be adopted will be available at the Department of Personnel, 209 East Musser Street, Room 300, Carson City, Nevada, or at the Department of Personnel, 555 East Washington Avenue, 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. The text of each regulation will include the entire text of any section of the Nevada Administrative Code that is proposed for adoption. Copies 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 prior to adoption or within 30 days thereafter, will issue a concise statement of the principle reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

The notice of the Workshop and 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

ALL STATE AGENCIES

ALL NEVADA COUNTY PUBLIC LIBRARIES

LAS VEGAS

Grant Sawyer State Office Building
555 East Washington Avenue

NOTE:

We are pleased to make reasonable accommodations for individuals with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Department of Personnel, in writing, at 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204, or call Debra Berry at (775) 684-0110, no later than five working days prior to the meeting.

**TEMPORARY REGULATIONS ADOPTED BY THE PERSONNEL COMMISSION
PROPOSED FOR PERMANENT ADOPTION**

Section 1. NAC 284.361 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation was adopted as a temporary regulation effective January 8, 2007 and the Department is now requesting its permanent adoption.

This amendment, proposed by the Department of Personnel, expands the circumstances under which an appointing authority may designate specialized experience necessary to perform the duties of a position. The designation of specialized experience may occur, as permitted now, at the time of recruitment or when the appointing authority determines there will be such a need in the future. The specialized experience requirement is subject to approval by the Department of Personnel.

The intent of this amendment is to ensure that when a position's duties have changed over time and recruitment has not occurred, specialized experience requirements are recognized in the event of a layoff. Approved designations of specialized experience requested in anticipation of future vacancies will only be recognized if the request was received by the Department of Personnel at least 75 calendar days prior to the notification of layoff. This is the same time period referenced in subsection 1 of NAC 284.632 relating to the use of performance evaluation ratings when calculating seniority for layoffs. This amendment is intended to address the concerns of departments and employees as the Department of Personnel moves toward the development of classes and class series that are more broad and generic than in the past.

NAC 284.361 Use of lists and consideration of eligible persons. (NRS 284.065, 284.155, 284.250) When using lists of persons who are eligible and considering eligible persons who have been certified, the following conditions apply:

1. When a reemployment list is certified:

(a) Eligible persons who are available for appointment and who are certified on reemployment lists, other than seasonal reemployment lists, must be hired in the order in which they appear unless the appointing authority, upon submitting written justification, obtains the written concurrence of the Governor to deviate from the order of priority or to hire from another list. The appointing authority must make the written justification available for examination by affected persons or their designated representatives.

(b) A person must accept or refuse an offer of reemployment:

(1) If the offer of reemployment is sent by mail to the person, within 6 calendar days after the postmarked date appearing on the envelope in which the offer was mailed; or

(2) If the offer is an oral offer of reemployment, within 3 business days after the oral offer has been made.

2. ~~the appointing authority may request selective certification for a particular position~~ ***If the appointing authority determines that the normal method of certification [does] will not provide candidates qualified to perform the duties of [the] a position satisfactorily. [Where selective certification is necessary], the appointing authority may request selective certification for the position:***

(a) At the time at which a recruitment or a list of eligible persons is requested for the position; or

(b) In anticipation of future vacancies in the position.

3. ***To request selective certification for a position,*** the appointing authority shall furnish in writing ***to the Department of Personnel*** the special requirements peculiar to the position and ~~his~~

reasons therefore. ~~If~~ *the reasons for requesting selective certification for the position. If the Department of Personnel determines that the facts and reasons justify [such a method of selection,] selective certification,* the Department of Personnel ~~[may certify the highest ranking eligible persons who possess the special qualifications.~~

~~3.] will approve the requested selective certification.~~

4. If the Department of Personnel approves a request for selective certification for a position at the time at which a recruitment or a list of eligible persons is requested for the position by an appointing authority:

(a) The Department of Personnel may certify the highest ranking eligible persons who possess the special qualifications for the position; and

(b) The appointing authority may consider the special qualifications for the position for the purposes of paragraph (e) of subsection 1 of NAC 284.614 and subsection 4 of NAC 284.618.

5. If the Department of Personnel approves a request from an appointing authority for selective certification for a position that has been made in anticipation of future vacancies in the position, and if the request for selective certification was received at least 75 days before the notification date of a layoff, the appointing authority may consider the special qualifications for the position for the purposes of paragraph (e) of subsection 1 of NAC 284.614 and subsection 4 of NAC 284.618.

6. Certification of only eligible persons who are the same sex will not be made unless there is clear evidence that the duties assigned could be performed efficiently only by the sex specified.

~~[4.]~~ **7. When using ranked lists other than those for reemployment, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with persons in the first five ranks to determine their availability and qualifications. The names on each type of list must be considered before names from the next succeeding list. If there are fewer than five ranks with persons who are available for appointment on a given list and the appointing authority requests a full complement of five ranks, the name or names at the top of the next succeeding list must be combined with those on the preceding list to establish five eligible ranks with persons who are available for appointment. Except as otherwise provided in subsection ~~[6,] 9,~~ all competitive appointments from ranked lists must be made from the persons who:**

(a) Are in a rank of persons who received the five highest scores on the examination; and

(b) Are available for appointment.

~~[5.]~~ **8. If the list is unranked or waived, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least five eligible persons he deems most qualified based upon a review of their respective qualifications as they relate to the position or class, or with all of the eligible persons if there are five or less. Except as otherwise provided in subsection 1, any eligible person who is certified from an unranked or waived list may be appointed.**

~~[6.]~~ **9. If persons from fewer than five ranks of eligible persons are willing to accept appointment:**

(a) The appointing authority may make an appointment from among those remaining available eligible persons.

(b) Certification and appointment may be made from other appropriate lists, including lists of higher grades as determined by the Department of Personnel. The names from other lists will follow those which have been certified, if any, from the original lists.

(c) A new recruitment may be conducted.

(d) A provisional appointment may be made only if the requirements of NAC 284.406 are met.

[Personnel Div., Rule V § F, eff. 8-11-73; A 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89; 11-16-95; 11-16-95; R082-00, 8-2-2000; A by Personnel Comm'n by R069-02, 8-14-2002; R183-03, 1-27-2004)—(Substituted in revision for NAC 284.378)

Sec 2. NAC 284.386 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation was adopted as a temporary regulation effective January 8, 2007 and the Department is now requesting its permanent adoption.

The Department of Employment, Training and Rehabilitation has proposed that more flexibility be granted in order to reinstate former permanent employees whose last appointment was not one in which they gained permanent status. As a result, the Department of Personnel had proposed amending this section to allow reinstatements beyond 2-years with the approval of the Department of Personnel. Additionally, it is the Department's intent to change the interpretation of this section to allow for an individual to be reinstated even if the most recent appointment held was not that of permanent status. This change allows State agencies to immediately fill vacancies with individuals with the knowledge, skills and abilities to perform the job. This is particularly important due to expected retirements within the next five to ten years.

NAC 284.386 Reinstatement of former permanent employee. (NRS 284.065, 284.155, 284.305)

1. Except as otherwise provided in subsection ~~[2,]~~ **4**, an appointing authority may reinstate a ~~[former permanent employee within]~~ **person who has held permanent status in state employment and who was not dismissed from state employment pursuant to NAC 284.646:**

(a) **Within** a 2-year period following his termination from state employment ~~[if the employee was separated without prejudice. A separation without prejudice must be determined by the appointing authority using the standards contained in NRS 284.240.]~~ ; **or**

(b) **After the 2-year period following his termination from state employment, with the approval of the Department of personnel.**

2. ~~[If an employee is laid off and is entitled to have his name appear on a reemployment list pursuant to NAC 284.630, the appointing authority may reinstate the employee within 2 years after the date on which his right to reemployment expires.]~~

~~[3,]~~ The grade of the class to which a person is reinstated may only exceed the current grade of the class he formerly held or a comparable class if that class has been reallocated.

~~[4]~~**3.** Except as otherwise provided in subsection ~~[3,]~~ **2**, a person may not be reinstated to underfill a position allocated at grade 30 or higher if that position is allocated at a higher grade than the position the person formerly held.

~~[5]~~**4.** A reinstatement to a similar class requires the approval by the Department of Personnel before the appointing authority may make a commitment to reinstate.

~~[6]~~**5.** It is the responsibility of a person seeking reinstatement to make his interest known by providing a new application to the appointing authority.

~~[7]~~**6.** The person must meet the current minimum qualifications for the class for which the reinstatement is sought.

[Personnel Div., Rule VI § C, eff. 8-11-73; A 10-10-76]—(NAC A by Dep't of Personnel, 8-26-83; 10-26-84; 10-18-89; 11-12-93; 10-27-97; A by Personnel Comm'n by R183-03, 1-27-2004)

Sec. 3. NAC 284.611 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation was adopted as a temporary regulation effective January 8, 2007 and the Department is now requesting its permanent adoption.

This amendment, proposed by the Department of Personnel, removes the two-year limitation to reinstatement as is consistent with the changes proposed to NAC 284.386.

NAC 284.611 Separation for physical, mental or emotional disorder. (NRS 284.065, 284.155, 284.355)

1. Before separating an employee because of a physical, mental or emotional disorder which results in the inability of the employee to perform the essential functions of his job, the appointing authority must:

(a) Verify with the employee's physician or by an independent medical evaluation paid for by the appointing authority that the condition does not, or is not expected to, respond to treatment or that an extended absence from work will be required;

(b) Determine whether reasonable accommodation can be made to enable the employee to perform the essential functions of his job;

(c) Make a request to the Administrator of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation to obtain the services provided by that Division, or if the employee is receiving workers' compensation, request the services of the rehabilitation provider, to evaluate the employee's condition and to provide any rehabilitative services possible; and

(d) Ensure that all reasonable efforts have been made to retain the employee.

2. A separation pursuant to this section is only justified when:

(a) The information obtained through the procedures specified in subsection 1 supports the decision to separate;

(b) The employee is not on sick leave or other approved leave; and

(c) A referral has been made to the Public Employees' Retirement System and the employee has been determined to be ineligible for, or has refused, disability retirement.

3. A permanent employee separated pursuant to this section is entitled to the same rights and privileges afforded permanent employees who are dismissed for disciplinary reasons. The procedures contained in NAC 284.656 must be followed, and he may appeal his separation to the hearing officer.

4. A permanent employee who is separated because of a physical, mental or emotional disorder is eligible for reinstatement pursuant to NAC 284.386 if he recovers from the disorder [~~within 2 years~~] after his termination.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-1-91; 12-26-91; 7-6-92; R197-99, 1-26-2000; A by Personnel Comm'n by R182-03, 1-27-2004; R143-05, 12-29-2005)

Sec. 4. NAC 284.614 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, clarifies that for the purposes of layoffs, selective certifications approved by the Department of Personnel pursuant to NAC 284.361 can be used in determining layoffs.

NAC 284.614 Layoffs: Procedure. (NRS 284.065, 284.155, 284.380)

1. Except as otherwise provided in NAC 284.425, if it becomes necessary for a classified employee to be laid off because of a shortage of work or money, the abolition of a position, or some other material change in duties or organization:

(a) The director of the department shall determine in what geographical location, class series, class and option the reductions in staff will have the least detrimental effect on the operations of the department and shall specify layoffs accordingly. In the Department of Health and Human Services and the Nevada System of Higher Education, the administrator of a division may be designated to make these determinations with the approval of the director of the department.

(b) Within the department, geographical location, class series, class and option selected, all employees of the department who are not permanent must be separated from service before any permanent employees in the following order:

- (1) Emergency employees.
- (2) Temporary employees.
- (3) Provisional employees.
- (4) Probationary employees.

(c) If additional reductions are necessary, permanent employees must be laid off on the basis of seniority pursuant to NAC 284.632.

(d) In the department, geographical location, class series, class and option where layoffs are to take place, those employees with the least seniority must be laid off, transferred as set forth in subsection 2 or voluntarily demoted as set forth in NAC 284.618.

(e) An appointing authority may consider limiting layoffs to employees in full-time or part-time positions. Similar considerations may be given to and limitations placed on positions ~~requiring~~ *for which* selective certification *is approved* pursuant to NAC 284.361.

2. If a permanent employee must be laid off for one of the reasons set forth in subsection 1, the appointing authority shall notify the employee that he may choose to:

(a) Transfer within his department, class and option into the position of the employee in his department, class and option with the least seniority;

(b) Be voluntarily demoted as set forth in NAC 284.618; or

(c) Exercise his reemployment rights as set forth in NAC 284.630.

3. Within 3 working days after an employee has been notified of his choices pursuant to subsection 2, he must designate in writing to the appointing authority the choice he will exercise.

4. For the purposes of this section, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

[Personnel Div., Rule XIII § B subsec. 1, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 8-28-85; 8-22-86; 7-21-89; 8-1-91; 3-27-92; 9-16-92; 11-16-95; 10-27-97; R031-98, 4-17-98; R043-99, 9-27-99; R146-01, 1-18-2002; R147-01, 1-22-2002; A by Personnel Comm'n by R096-03, 10-30-2003; R143-05, 12-29-2005)

Sec. 5. NAC 284.618 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, clarifies that for the purposes of layoffs and associated voluntary demotions, selective certifications approved by the Department of Personnel pursuant to NAC 284.361 can be used in determining layoffs.

NAC 284.618 Layoffs: Voluntary demotions. (NRS 284.065, 284.155, 284.175, 284.380)

1. In lieu of being laid off, a permanent employee may choose to be voluntarily demoted to a vacant position or displace an employee within the department and geographical location where employed to one of the next lower classes:

(a) Within his current class series and option; or

(b) Within the class series and option from which he was appointed to his current position during current continuous service if he cannot be demoted pursuant to paragraph (a).

↪ For the purposes of this subsection, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

2. No employee in a higher class may displace an employee in a lower class who has more seniority. If an employee chooses to displace another, he must displace the member of the next lower class who has the least seniority. If that member has more seniority, the displacing employee must descend further in the class series.

3. The employees displaced reestablish the layoff class.

4. An employee may choose to displace another only if he meets the minimum qualifications for the class, option and position. For the purposes of this subsection, qualifications for a position may be different from those of the class and option only when selective certification is ~~[required]~~ **approved** pursuant to ~~[subsection 2]~~ **subsections 2 to 5, inclusive**, of NAC 284.361.

5. Full-time, part-time and seasonal employees must be treated separately and can only displace like employees.

6. Displacement is always a movement to a class at a lower grade.

7. A current employee who elects to displace another employee has priority over former employees already on reemployment lists.

8. The pay of the employee who is taking a voluntary demotion cannot exceed the highest step for the class to which the employee is being demoted. If the current pay falls within the lower rate range, no reduction in pay may occur unless money is not available as certified by the Chief of the Budget Division of the Department of Administration or, in the case of an agency which is not supported from the State General Fund, as certified by the administrator of that agency.

[Personnel Div., Rule XIII § B subsec. 2, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 10-26-84; 7-21-89; 8-1-91; R146-01, 1-18-2002; A by Personnel Comm'n by R096-03, 10-30-2003; R143-05, 12-29-2005)