



DEPARTMENT OF PERSONNEL
209 East Musser Street, Room 101
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MEMO PERD # 12/11

April 5, 2011

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

FROM: Teresa J. Thienhaus, Director 
Department of Personnel

SUBJECT: NOTICE OF PUBLIC HEARING - Amendments to NAC 284

The regulation changes included with this memorandum are being proposed for temporary adoption at the May 6, 2011 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 and in Las Vegas at the Grant Sawyer Building, Gaming Control Board, 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 regulations, or otherwise notify your employees.

TJT:dws

Enclosures

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Temporary 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 6, 2011, 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:

Unpaid furlough leave

Compensation for standby status

Holidays: Compensation for working

Hearing procedures

Request for hearing and other communications

Administration of screening tests

Request for employee to submit to screening test:

Interpretation of grounds; completion of required forms

NAC #

Uncodified NAC:

LCB File #R187-09

NAC 284.218

NAC 284.256

Uncodified NAC:

LCB File #R063-09

NAC 284.778

NAC 284.882

NAC 284.888

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 15, 2011. 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
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.

REGULATION CHANGES PROPOSED FOR TEMPORARY ADOPTION

Section 1. LCB File No. R187-09 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation change, submitted by the Department of Personnel, is to remove the regulation's current expiration date of June 30, 2011. Approval by the Personnel Commission will be made conditional on Legislative approval of furlough leave.

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:

(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.

(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 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

(Added to NAC by Personnel Comm'n by R080-09, eff. 10-27-09; R187-09, 6-30-10)

Sec. 2. NAC 284.218 is hereby amended to read as follows:

Explanation of Proposed Change: Pay for Standby Status is reportable to the Public Employees' Retirement System (PERS). Although Central Payroll complies with this reporting requirement when this event is compensated with pay, it is not always in compliance when it is earned as accrued compensatory time off. This regulation change, proposed by the Department of Personnel, would ensure proper employee compensation reporting to PERS.

NAC 284.218 Compensation for standby status. (NRS 284.065, 284.155, 284.175)

1. A nonexempt employee in the classified service of the State is on standby status when he is:

(a) Directed to remain available for notification to work during specified hours;

(b) Prepared to work if the need arises;

(c) Able to report to work within a reasonable time;

(d) Directed by his supervisor to carry a paging device, provide a telephone number where he may be notified or provide any other acceptable means for notification; and

(e) Allowed to use the time during which he is waiting for notification to work for his personal pursuits.

2. When a nonexempt employee in the classified service of the State who is on standby status begins the performance of his regular duties after receiving notice to work, he ceases to be on standby status and qualifies for straight time or overtime pay, whichever is applicable, for the actual time worked. Upon completion of the work, he returns to standby status for the remainder of the time he has been directed to be available to work.

3. A nonexempt employee in the classified service of the State is entitled to receive additional pay [~~or equivalent compensatory time off,~~] at the rate of 5 percent of his normal rate of pay for every hour he is on standby status.

4. [~~Cash payment is the preferred method of compensation pursuant to this section, but compensatory time off, not to exceed the maximum allowed pursuant to subsection 3 of NAC~~]

~~284.250, must be granted in lieu of cash payment if the employee requests compensatory time and the agency approves the request.]~~

~~[5.] Any class designated by statute as a 24-hour class does not automatically qualify for this additional pay.~~

~~[Personnel Div., Rule III § K, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 10-26-84; 7-22-87; 3-23-94; R147-01, 1-22-2002)~~

Sec. 3. NAC 284.256 is hereby amended to read as follows:

Explanation of Proposed Change: Holiday Premium Pay is reportable to the Public Employees' Retirement System (PERS). Although Central Payroll complies with this reporting requirement when this event is compensated with pay, it is not always in compliance when it is earned as accrued compensatory time off. This regulation change, proposed by the Department of Personnel, would ensure proper employee compensation reporting to PERS.

NAC 284.256 Holidays: Compensation for working. (NRS 284.065, 284.155, 284.175)

1. As used in this section, "holiday premium pay" means pay ~~for compensatory time~~ at the rate of time and one-half of an employee's normal rate of pay for hours designated as worked on a holiday, except those hours that are considered overtime pursuant to NRS 284.180.

2. A nonexempt employee who works on a holiday is entitled to receive holiday premium pay *or* overtime pay ~~for compensatory time~~ for the hours he works on the holiday, in addition to any holiday pay that he is entitled to be paid pursuant to NAC 284.255. ~~[A nonexempt employee who elects to receive compensatory time for the hours he works on a holiday must not exceed the limits on the accrual of compensatory time set forth in NAC 284.250.]~~

~~[Personnel Div., Rule VII § B part subsec. 3, eff. 8-11-73]—(NAC A by Dep't of Personnel, 7-21-89; 9-13-91; 3-23-94; R058-01, 9-6-2001; R147-01, 1-22-2002)—(Substituted in revision for NAC 284.530)~~

Sec. 4. LCB File No. R063-09, section 2 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, will require requests for appeals regarding dismissals, suspension and demotions to be submitted on a form provided by the Department. The use of a required form is part of the Department's effort to improve the appeal process and its outcomes. The form will eliminate confusion for employees on how to file an appeal and will also provide useful information about the employee's concerns.

NEW. Hearing procedures. (NRS 284.065, 284.155, 284.383, 284.385, 284.390) Except as otherwise provided in section 3 of LCB File No. R063-09, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure for a hearing before the proposed action must be followed:

1. A hearing must be scheduled on the employee's behalf unless waived in writing by the employee pursuant to subsection 2. The hearing must be scheduled to take place not earlier than 7 working days after the written notice of the proposed action is delivered or deemed received pursuant to subsection 2 of NAC 284.656. The hearing must not be scheduled on a day which is not a regular working day for the employee. If the appointing authority or his or her designated representative and the employee agree, the date of the hearing may be changed.

2. The employee may waive the right to a hearing before the proposed action in writing. If the employee makes such a waiver, the employee may not be dismissed, suspended or demoted

before the proposed effective date. The waiver does not waive the employee's right to an appeal after the action is taken.

3. The appointing authority or his or her designated representative shall conduct the hearing. The designated representative must be a person with the authority to recommend a final decision to the appointing authority. The appointing authority shall render the final decision.

4. At any time after receiving the notice and before the hearing, the employee may examine all materials that are to be used by the person conducting the hearing. The employee is entitled to administrative leave with pay as provided in NAC 284.589 to prepare for the hearings regarding his or her suspension, demotion or dismissal.

5. This process is an informal proceeding between the two parties, the appointing authority and his or her designated representative and the employee, who meet together to discuss the proposed action. Witnesses are not allowed to attend, but each party may be accompanied by a person of his choice.

6. The employee may respond both orally and in writing to the appointing authority or his or her designated representative at the hearing.

7. The employee must be:

(a) Given a copy of the finding or recommendation, if any, resulting from the hearing; and

(b) Informed, in writing, of the appointing authority's decision regarding the proposed action on or before the effective date of the action.

8. An employee who has been dismissed, demoted or suspended may request a hearing before the hearing officer of the Department of Personnel pursuant to NRS 284.390 within 10 working days after the effective date of his or her dismissal, demotion or suspension. Such a request must be ~~in writing and addressed to the Department of Personnel or may be~~ **addressed to the Director and** submitted on the form provided by the Department of Personnel.

(Added to NAC by Dep't of Personnel, eff. 10-27-09)

Sec. 5. NAC 284.778 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, adds language regarding the use of a required form to request a hearing. This makes the regulation consistent with the changes made to the hearing procedures regulation.

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

1. A request for an appeal must be addressed to the Director **and submitted on the form provided by the Department of Personnel.**

2. A copy of 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.

[Personnel Div., Hearings Procedures § (A) subsec. (1), eff. 11-28-65; A 6-9-74]—(NAC A by Dep't of Personnel, 10-26-84; R192-09, 7-1-10)

Sec. 6. NAC 284.882 is hereby amended to read as follows:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel, would allow the Personnel Commission to adopt supplemental drug testing standards and procedures in addition to the adopted federal standards.

NAC 284.882 Administration of screening tests. (NRS 284.065, 284.155, 284.407) A screening test to detect the general presence of:

1. A controlled substance must comply with the standards [~~and procedures~~] established by the United States Department of Health and Human Services which are hereby adopted by reference. A copy of the standards [~~and procedures~~] is available, without charge, from the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace Programs, 1 Choke Cherry Road, Rockville, Maryland, 20857. *The Commission may adopt supplementary standards and procedures.*

2. Alcohol by testing a person's breath must be conducted using a breath-testing device certified in accordance with the "Conforming Products List of Evidential Breath Alcohol Measurement Devices" published in the Federal Register for the National Highway Traffic Safety Administration of the United States Department of Transportation.

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A 10-27-97; R082-00, 8-2-2000; R066-09, 10-27-2009)

Sec. 7. NAC 284.888 is hereby amended to read as follows:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel, brings NAC 284.888 into alignment with NRS 284.4065. It will allow an appointing authority to more easily test an employee who, while on duty, operates a motor vehicle in any manner that causes bodily injury to himself or another or substantial damage to property.

NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required forms. (NRS 284.065, 284.155, 284.407)

1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his duties safely and efficiently include, but are not limited to:

(a) [~~The operation of a motor vehicle by the employee in any manner that causes bodily harm;~~
(~~b~~)] Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;

(~~e~~)*b*) The odor of alcohol or a controlled substance on the breath of the employee;

(~~d~~)*c*) Observation of the employee consuming alcohol; or

(~~e~~)*d*) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source; or

(~~f~~)*e*) The occurrence of any accident while the employee is on the premises of the workplace for which the employee receives medical treatment.

2. Pursuant to subsection 2 of NRS 284.4065, ***an appointing authority may request an employee to submit to a screening test if during the performance of his duties, the employee drives a motor vehicle in such a manner as to cause bodily injury to himself or another person or substantial damage to property.***

(a) “[s]Substantial damage to property” includes, but is not limited to:

([a]1) The operation of a motor vehicle in such a manner as to cause more than \$500 worth of property damage; or

([b]2) The operation of a motor vehicle in such a manner as to cause two property accidents within a 1-year period.

3. Before requiring an employee to submit to a screening test, a supervisor must complete forms provided by the Department of Personnel.

(a) ***This subsection does not apply when testing is performed pursuant to subsection 2.***

(Added to NAC by Dep’t of Personnel, eff. 12-26-91; R066-09, 10-27-2009; R193-09, 4-20-10)