



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

**MEMO PERD #17-11**  
**May 17, 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

A handwritten signature in cursive script, reading "Teresa J. Thienhaus".

**SUBJECT:** NOTICE OF WORKSHOP - Amendments to NAC 284

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The regulation changes included with this memorandum are being proposed for permanent adoption. In order to review the proposed changes in the regulation and solicit comments from interested persons, a workshop will be held at 1:30 p.m., June 2, 2011, at the Gaming Control Board Conference Room, 1919 College Parkway, Carson City, Nevada, and by video conference at the Grant Sawyer Building, Gaming Control Board Room 2450, 555 East Washington Avenue, Las Vegas, Nevada. An informational note explaining the nature and purpose of the proposed changes precedes the regulations.

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

TJT:vk

Enclosures

**NOTICE OF WORKSHOP  
TO SOLICIT COMMENTS ON PROPOSED REGULATIONS**

The Department of Personnel, 209 East Musser Street, Carson City, Nevada, telephone number (775) 684-0131, is proposing the permanent adoption, repeal, or amendment of regulations pertaining to Chapter 284 of Nevada Administrative Code. A workshop has been set for 1:30 p.m. on June 2, 2011 at the Gaming Control Board Conference Room, 1919 College Parkway, Carson City, Nevada and by video conference at the Grant Sawyer Building, Gaming Control Board Room 2450, 555 East Washington Avenue, Las Vegas, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

<u>Regulation Leadline:</u>	<u>NAC #</u>
Compensation for standby status	NAC 284.218
Holidays: Compensation for working	NAC 284.256
Hearing procedures	Uncodified NAC: LCB File #R063-09
Preparation filing, contents, discussion and distribution of reports: power and duties of employees; review; adjustment of grievances	NAC 284.470
Appeal of decision of reviewing officer	NAC 284.478
Suspensions and demotions	NAC 284.642
Dismissals	NAC 284.646
“Grievance” defined	NAC 284.658
Submission, form and contents of grievance; informal discussions	NAC 284.678
Resolution Conference	New Section
Submission of grievance to Employee-Management Committee	NAC 284.695
Hearing before Employee-Management Committee: Procedure	NAC 284.6955
Unlawful discrimination	NAC 284.696
Appointing authorities authorized to define conflicting activities	NAC 284.742
Request for hearing and other communications	NAC 284.778
Administration of screening tests	NAC 284.882
Request for employee to submit to screening test:	NAC 284.888
Interpretation of grounds; completion of required forms	

A copy of all materials relating to the proposals may be obtained at the workshop or by contacting the Department of Personnel offices at 209 E. Musser Street, Room 300, Carson City, Nevada, telephone number (775) 684-0131, or 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-2900. A reasonable fee for copying may be charged.

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent to all persons on the agency’s mailing list for administrative regulations and posted at the following locations.

CARSON CITY

Blasdel Building, 209 E. Musser St.  
NV State Library and Archives, 100 N. Stewart St.  
Legislative Building, 401 S. Carson St.  
Capitol Building, 101 N. Carson St.  
Gaming Control Board, 1919 College Parkway

LAS VEGAS

Grant Sawyer State Office Building  
555 E. Washington Ave.

This Notice of Workshop to Solicit Comments on Proposed Regulations has been sent to:  
ALL STATE AGENCIES  
ALL NEVADA COUNTY PUBLIC LIBRARIES

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*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 Valerie Kneefel at (775) 684-0131, no later than five working days before the meeting.*

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Date: May 17, 2011



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

**Regulations Workshop\***

**AGENDA**

**DATE:** June 2, 2011

**TIME:** 1:30 p.m.

**PLACE:** Gaming Control Board  
Conference Room  
1919 College Parkway  
Carson City, Nevada  
and  
Grant Sawyer Building  
Gaming Control Board, Room 2450  
555 East Washington Avenue  
Las Vegas, Nevada

The sites will be connected by videoconference. The public is invited at attend at either location.

**1. Call To Order**

**2. Review of proposed changes to NAC 284:**

Regulation Leadline:

- A. Compensation for standby status
- B. Holidays: Compensation for working
- C. Hearing Procedures
- D. Preparation filing, contents, discussion and distribution of reports; power and duties of employees; review; adjustment of grievances.
- E. Appeal of decision of reviewing officer
- F. Suspensions and demotions
- G. Dismissals
- H. "Grievance" defined
- I. Submission, form and contents of grievance; informal discussions

NAC # :  
NAC 284.218  
NAC 284.256  
Uncodified NAC:  
LCB File #R063-09  
NAC 284.470  
  
NAC 284.478  
NAC 284.642  
NAC 284.646  
NAC 284.658  
NAC 284.678

J. Resolution Conference	New Section
K. Submission of grievance to Employee-Management Committee	NAC 284.695
L. Hearing before Employee-Management Committee: Procedure	NAV 284.6955
M. Unlawful discrimination	NAC 284.696
N. Appointing authorities authorized to define conflicting activities	NAC 284.742
O. Request for hearing and other communications	NAC 284.778
P. Administration of screening tests	NAC 284.882
Q. Request for employee to submit to screening test: Interpretation of grounds; completion of required forms	NAC 284.888

### 3. Adjournment

\* This workshop will be conducted in accordance with the Open Meeting Law (NRS 241.020).

**NOTE:** Comments by the general public will be taken following a description of the proposed regulation changes. Public comment may be limited to 15 minutes per person at the discretion of the staff member conducting the workshop.

If anyone has questions or wish to discuss in further detail, the items scheduled for this regulations workshop, please contact Mark Evans at (775) 684-0149.

**Notices have been posted on the Department of Personnel's Website [www.dop.nv.gov](http://www.dop.nv.gov) and at the following locations:**

Department of Personnel - Blasdel Building, 209 East Musser Street, Carson City, Nevada

Library and Archives - 100 North Stewart Street, Carson City, Nevada

Capitol Building - 101 North Carson Street, Carson City, Nevada

Legislative Building - 401 South Carson Street, Carson City, Nevada

Gaming Control Board, 1919 College Parkway, Carson City, Nevada

Grant Sawyer Office Building - 555 East Washington Avenue, Las Vegas, Nevada

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 Valerie Kneefel, in writing at 209 East Musser Street, Room 300, Carson City, Nevada 89701, or by calling (775) 684-0131 no later than five working days prior to the meeting.

## REGULATION CHANGES PROPOSED FOR PERMANENT ADOPTION

### Sec. 1. 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. 2. 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. 3. 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. 4. NAC 284.470 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation change, proposed by the Department of Personnel, adds language stating that the appointing authority has the final decision regarding reviews of contested reports on performance. This change will eliminate confusion over who has final authority for the content of reports on performance and will make the regulation consistent with NRS 284.340, which states that reports on performance are ultimately the duty of the appointing authority. The reviewing officer will make recommendations on whether to uphold or modify the report on performance and the appointing authority will have 10 working days to render a final decision on the recommendation.

**NAC 284.470 Preparation, filing, contents, discussion and distribution of reports; power and duties of employees; review; adjustment of grievances. (NRS 284.065, 284.155, 284.340, 284.384)**

1. A person shall not complete a report on performance unless he has completed the training provided or approved by the Director concerning the preparation of a report on performance.
2. A report on performance must be prepared on the form prescribed by the Department of Personnel.
3. A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee. If a report on performance is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard.
4. If any information that would have affected the rating of performance of an employee during a period of evaluation becomes available after the date on which the report on performance of the employee is filed for that period, the information may be included in the report on performance for the current period of evaluation and taken into consideration in determining the rating of performance for the current period of evaluation.
5. When a report on performance is given which reports the overall rating of performance of an employee as substandard:
  - (a) The report must contain a written notice that such reports affect both merit pay increases and the employee's eligibility for longevity pay; and
  - (b) An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard or disciplinary action is taken against the employee.
6. Except as otherwise provided in subsection 7, the preparation of each report on performance must include a discussion between the employee and his immediate supervisor. Within 10 working days after the discussion takes place:
  - (a) The employee must complete and sign the appropriate section on the report on performance and return the report to his supervisor for forwarding to the reviewing officer or appointing authority.
  - (b) If the employee ~~disagrees with~~ **contests the content of** the report on performance and requests a review, he must respond to the report in writing, identify the specific points of disagreement, if such specificity is provided, and return the response to his supervisor.
  - (c) The reviewing officer shall respond ~~to the employee~~ in writing on a form prescribed by the Department of Personnel within 10 working days after the supervisor receives the request **and the employee shall receive a copy. If the reviewing officer is not the appointing authority, he or she shall submit the form with recommendations to uphold or modify the report on**

*performance to the appointing authority. The appointing authority shall review the reviewing officer's recommendations regarding the contested report on performance and shall render a final decision to the employee within 10 working days after receiving the recommendation. The appointing authority has final decision-making authority in the review process.*

7. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 6 because of an extended absence, the immediate supervisor of the employee shall cause the report to be mailed to the employee. Within 10 working days after the date on which the employee receives the report:

(a) The employee must complete and sign the appropriate section on the report on performance and mail the report to his supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee ~~[disagrees with]~~ **contests the content of** the report on performance and requests a review, he must respond to the report in writing, identify any specific point of disagreement, if the report provides such specificity, and mail his response to his supervisor.

(c) The reviewing officer shall respond ~~[to the employee]~~ in writing on a form prescribed by the Department of Personnel within 10 working days after the supervisor receives the request **and the employee shall receive a copy. If the reviewing officer is not the appointing authority, he or she shall submit the form with recommendations to uphold or modify the report on performance to the appointing authority. The appointing authority shall review the reviewing officer's recommendations regarding the contested report on performance and shall render a final decision to the employee within 10 working days after receiving the recommendation. The appointing authority has final decision-making authority in the review process.** For the purposes of this paragraph, a report on performance or request for review is deemed to have been received on the third day after the date on which the report or request is postmarked.

8. A copy of each report on performance and, if applicable, any written response to such a report, must be provided to the employee and filed with the Department of Personnel.

9. If any written comments are added to a report on performance after a copy of the report has been provided to the employee pursuant to subsection 8:

(a) A copy of the revised report which includes the written comments must be provided to the employee; and

(b) The employee may respond, in writing, to the additional comments in the revised report not later than 10 working days after he receives a copy of the revised report and submit the response to the Department of Personnel for inclusion in his file of employment.

10. An employee and his appointing authority may agree in writing to extend one or more of the periods prescribed in subsection 6 or 7.

11. If a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

[Personnel Div., Rule IX § A, eff. 8-11-73; A 12-28-75]—(NAC A by Dep't of Personnel, 10-26-84; 9-17-87; 10-18-89; 11-16-95; R031-98, 4-17-98; A by Personnel Comm'n by R065-98, 7-24-98; A by Dep't of Personnel by R197-99, 1-26-2000; R147-01, 1-22-2002; A by Personnel Comm'n by R069-02, 8-14-2002; R096-03, 10-30-2003; R144-05, 12-29-2005; R174-08, 9-29-2008; **T006-11, 3-25-2011**)

**Sec. 5. NAC 284.478 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel, changes language to state that a grievance about an evaluation relates to the content of the report on performance and not the decision of the reviewing officer. This change reflects the new advisory role of the reviewing officer.

**NAC 284.478 Appeal of ~~[decision of reviewing officer]~~ a contested report on performance. (NRS 284.065, 284.155, 284.384)** Upon the completion of the review process, ~~[A]~~ a permanent employee may appeal ~~[a decision of a reviewing officer pursuant to NAC 284.470]~~ a contested report on performance through the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

[Personnel Div., Rule IX § D, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-18-89; R197-99, 1-26-2000; *T006-11, 3-25-2011*)

**Sec. 6. NAC 284.642 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments made to Assembly Bill 179 which addressed the progressive discipline process. The change provides for an impartial investigation to be conducted before a permanent employee is demoted or suspended without pay. This change is consistent with common practice in most agencies. The amendment allows the employee to waive the investigation, in writing, if he or she agrees with the allegation. Representatives from the American Federation of State, County and Municipal Employee, Local 4041 have stated that there have been times when employees have admitted to the allegation and find that having the discipline delayed based on a pending investigation is needlessly stressful.

**NAC 284.642 Suspensions and demotions. (NRS 284.065, 284.155, 284.383, 284.385)**

1. If other forms of disciplinary or corrective action have proved ineffective, or if the seriousness of the offense or condition warrants, an employee may be:

(a) Suspended without pay for a period not to exceed 30 calendar days for any cause set forth in this chapter; or

(b) Demoted for any cause set forth in this chapter.

2. *If an appointing authority determines that a permanent employee be demoted or suspended without pay, the appointing authority shall first ensure that an impartial fact-finding investigation has been conducted to determine that evidence exists to support the discipline.*

3. *If an employee agrees, in writing, with the allegation on which the demotion or suspension is based, the investigation can be waived.*

~~[2]~~ 4. An exempt classified employee may only be suspended without pay in increments of one or more full workweeks.

~~[3]~~ 5. The rights and procedures set forth in NAC 284.656 and sections 2 and 3 of LCB File No. R063-09 apply to any disciplinary action taken pursuant to this section.

[Personnel Div., Rule XII § B, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 3-23-94; R147-01, 1-22-2002; A by Personnel Comm'n by R147-06, 12-7-2006; R063-09, 11-25-09)

**Sec. 7. NAC 284.646 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments made to Assembly Bill 179 which addressed the progressive discipline process. This change provides for an impartial investigation to be conducted before a permanent employee is dismissed. The change is consistent with common practice in most agencies. The amendment allows the employee to waive the investigation, in writing, if he or she agrees with the allegation. Representatives from the American Federation of State, County and Municipal Employee, Local 4041 have stated that there have been times when employees have admitted to the allegation and find that having the discipline delayed based on a pending investigation is needlessly stressful.

**NAC 284.646 Dismissals. (NRS 284.065, 284.155, 284.383, 284.385)**

1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:

(a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause; or

(b) The seriousness of the offense or condition warrants such dismissal.

2. An appointing authority may immediately dismiss an employee for the following causes, unless the conduct is authorized pursuant to a rule or policy adopted by the agency with which the employee is employed:

(a) Intentionally viewing or distributing pornographic material at the premises of the workplace, including, without limitation, intentionally viewing or distributing pornographic material on any computer owned by the State, unless such viewing or distributing is a requirement of the employee's position.

(b) Unauthorized release or use of confidential information.

(c) Participation in sexual conduct on the premises of the workplace, including, without limitation, participation in sexual conduct in a vehicle that is owned by the State.

(d) Absence without approved leave for 3 consecutive days during which the employee is scheduled to work.

(e) The suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law.

(f) Threatening another person with a deadly weapon during any time in which the employee is:

(1) On the premises of the workplace; or

(2) Conducting state business or otherwise performing any duties of employment.

(g) Stealing or misappropriating any property that is owned by the State or located on state property.

**3. *If an appointing authority determines that a permanent employee be dismissed, the appointing authority shall first ensure that an impartial fact-finding investigation has been conducted to determine that evidence exists to support the discipline.***

**4. *If an employee agrees, in writing, with the allegation on which the dismissal is based, the investigation can be waived.***

~~[3.]~~ **5.** The rights and procedures set forth in NAC 284.656 and sections 2 and 3 of LCB File No. R063-09 apply to any dismissal made pursuant to this section.

~~[4.]~~ **6.** As used in this section:

(a) "Material" has the meaning ascribed to it in NRS 201.2581.

(b) "Nudity" has the meaning ascribed to it in NRS 201.261.

(c) "Pornographic material" means material that, all or in part, contains any description or representation of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of adults and is without serious literary, artistic, political or scientific value.

(d) "Sado-masochistic abuse" has the meaning ascribed to it in NRS 201.262.

(e) "Sexual excitement" has the meaning ascribed to it in NRS 201.264.

[Personnel Div., Rule XII § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; R147-06, 12-7-2006; R063-09, 11-25-09)

**Sec. 8. NAC 284.658 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with Assembly Bill 354 which addressed the Employee-Management Committee. This change clarifies that the grievance process should not be used if another complaint process is provided by state or federal law to hear the employee's issue.

**NAC 284.658 "Grievance" defined. (NRS 284.065, 284.155, 284.384)**

1. As used in NAC 284.341 and 284.658 to 284.697, inclusive, and NAC 284.692, a "grievance" means an act, omission or occurrence which a permanent employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement. The act, omission or occurrence must be established with factual information, including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved.

2. For the purposes of NAC 284.341 and 284.658 to 284.697, inclusive, and NAC 284.692, the term "grievance" does not include any grievance for which a hearing is provided by NRS 284.165, 284.376 or 284.390 *or which a complaint process is otherwise provided for by state or federal law or regulation.*

[Personnel Div., Rule XV part § A, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep't of Personnel, 8-28-85; 10-18-89; 8-1-91; 3-27-92; R082-00, 8-2-2000; A by Personnel Comm'n by R023-05, 10-31-2005)

**Sec. 9. NAC 284.678 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This proposed change incorporates language previously passed in temporary regulation and also adds new language developed with the employee associations in conjunction with Assembly Bill 354. Language from the temporary regulation requires all grievances concerning reports on performance be submitted to the highest administrator of the department before being filed with the Employee-Management Committee (EMC). This will allow the agency a final opportunity to resolve the grievance or uphold the report on performance. It will give the agency an opportunity to clarify its response to the employee and the EMC. Changes were also made to consistently use the term "reports on performance" instead of alternating it with "performance evaluation." "Reports on performance" is more consistent with the language used in statute. The Department of Personnel and the employee associations jointly propose change requiring that grievances be filed within 10 working days after the date of the origin of the grievance or the date the employee learns of the problem. This change, developed in conjunction with Assembly Bill 354, will help expedite the process and allow additional time later in the grievance process for the parties to hold a resolution conference if they desire.

**NAC 284.678 Submission, form and contents of grievance; informal discussions. (NRS 284.065, 284.155, 284.384)**

1. Except as otherwise provided in subsections 3 and 4 and NAC 284.692, an employee who feels aggrieved and wishes to file a formal grievance must submit his grievance in writing to his immediate supervisor on the official form, or in a letter if the official form is not available, within ~~[20]~~ **10** working days after the date of the origin of the grievance or the date the employee learns of the problem. The parties should make every effort to resolve the grievance through informal discussions within these ~~[20]~~ **10** working days.

2. If the employee submits a letter, it must include:
  - (a) His name;
  - (b) His most recent date of hire;
  - (c) His position;
  - (d) His department, division and section;
  - (e) His mailing address;
  - (f) His business telephone number;
  - (g) A statement that he is filing a formal grievance;
  - (h) The date, time and place of the event or the date the employee learns of the event leading to the grievance;
  - (i) A concise statement of his grievance;
  - (j) A detailed description of his grievance, including the names of other persons involved in the event, if any;
  - (k) A proposed solution of his grievance;
  - (l) His signature; and
  - (m) The date he signed the statement.

3. Except as otherwise provided in NAC 284.692, if a grievance relates to ~~the decision of a reviewing officer about a performance evaluation~~ **a contested report on performance**, an employee must file a grievance that identifies the specific points of disagreement, if such specificity is provided, not later than 10 working days after the date the employee receives ~~the~~ **a decision [of the reviewing officer] regarding the review from the appointing authority**. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of a reviewing officer **or appointing authority** to respond to a request for a review within the time required by NAC 284.470, an employee must file a grievance not later than 10 working days after the date on which the time for such a response expired.

4. A grievance filed pursuant to subsection 3 must be filed with:
  - (a) The person who is at the next appropriate level of the grievance process; or
  - (b) If the person who is at the next appropriate level of the grievance process is the reviewing officer or other person who prepared or reviewed the ~~performance evaluation~~ **report on performance**, the person who is at the next appropriate level of the grievance process ~~who did not prepare or review the performance evaluation~~.

**(c) Grievances regarding reports on performance must be filed with the highest administrator in the department for a response before being submitted to the Employee-Management Committee.**

[Personnel Div., Rule XV § A part subsec. 1, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 10-18-89; 3-23-94; R197-99, 1-26-2000; A by Personnel Comm'n by R023-05, 10-31-2005; R191-09, 4-20-2010; **T006-11, 3-25-2011**)

**Sec. 10. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:**

**Explanation of Proposed Change:** This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments to Assembly Bill 354 which addressed the Employee-Management Committee. This regulation allows for a resolution conference to be held as part of the grievance process. The resolution conference will be held if either party requests it within 30 days after the agency's top administrator renders a decision or 10 working days prior to a scheduled Employee-Management Committee hearing on the issue. The regulation stipulates that the conference is designed to be an informal proceeding between the two parties with the assistance of a neutral facilitator.

**NEW SECTION: Resolution conference.**

1. *If an employee is not satisfied with the decision rendered by the highest administrator in the department, or if the administrator believes additional discussion may produce resolution, either party may request a resolution conference. A resolution conference may be requested within 30 days after receiving the decision from the administrator and up to 10 working days prior to a scheduled hearing before the Employee-Management Committee.*

2. *A resolution conference shall be conducted by a neutral facilitator, not otherwise affiliated with either party.*

3. *This process is an informal proceeding between the two parties, the appointing authority or his or her designee and the employee, who meet together to discuss the grievance and possible resolutions. Each party may be accompanied by a person of his or her choice.*

4. *If, after reaching a resolution, the agreement between the parties fails, the grievance shall be forwarded to the Employee-Management Committee for consideration.*

**Sec. 11. NAC 284.695 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments to Assembly Bill 354. This proposed amendment clarifies what areas fall outside of the Employee-Management Committee's (EMC) jurisdiction. An issue does not fall within the EMC's jurisdiction if another hearing process is provided through State or federal regulation or statute.

**NAC 284.695 Submission of grievance to Employee-Management Committee. (NRS 284.065, 284.155, 284.384)** If an employee *is not satisfied with* the decision rendered by the highest administrator in the department pursuant to NAC 284.690, he may request consideration of the grievance by the Committee pursuant to its rules. The employee must submit his request to the Committee within 10 working days following his receipt of the decision from the administrator. The request must include all appropriate documentation, a citation of the statutes and regulations pertinent to the grievance, if any, the specific points of disagreement and supporting evidence. The Committee will, within 45 working days after the receipt of the employee's request:

1. Answer the request without a hearing if the case is based upon the Committee's previous decisions [~~or does not fall within its jurisdiction~~]; ***another hearing process is provided in NRS 284.165, 284.245, 284.3629, 284.376, 284.390; or a complaint can be filed in accordance with NAC 284.696.***

2. Hold a hearing to determine the proper disposition of the request. If a hearing is held, the Committee will:

(a) Except as otherwise provided in paragraph (b), provide at least 21 working days' written notice to all parties concerned.

(b) Provide notice to the employee by:

(1) Sending a written notification by certified mail, return receipt requested, at least 21 working days before the hearing; or

(2) Personally delivering a written notification to the employee at least 5 working days before the hearing, if the Chairman approves of such notice

(c) Render a decision within 45 days after the closure of the hearing.

[Personnel Div., Rule XV § A part subsec. 6, eff. 8-11-73; A 6-9-74; 7-3-76; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89; 10-18-89; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 3-27-92; 11-12-93; 3-23-94; 11-16-95; R118-09, 5-5-2011)

**Sec. 12. NAC 284.6955 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments to Assembly Bill 354. This proposed amendment removes the hearing procedures of the Employee-Management Committee from regulation to allow for hearings to follow a less formal process. The process for conducting Employee-Management Committee hearings will be established by rules adopted by the Employee-Management Committee pursuant to NRS 284.071.

**NAC 284.6955 Hearing before Employee-Management Committee: Procedure. (NRS 284.065, 284.155, 284.384)** If a hearing is held to determine the proper disposition of a grievance pursuant to NAC 284.695, the following procedure must be followed:

1. Each party shall submit to the Chairman of the Committee or his designated representative 10 copies of the set of documents and materials to be presented at the hearing or any rescheduled hearing. These copies must be submitted not less than 12 working days before the scheduled date of the hearing. The Chairman or his designated representative shall forward one copy of the set of the documents and materials of each party to the other party.

2. If the employee fails to comply with subsection 1, the Chairman or his designated representative may reschedule the hearing to the next time designated for such hearings, but in no case earlier than 20 working days after the originally scheduled date of the hearing. If the employer fails to comply with subsection 1, the Chairman or his designated representative may reschedule the hearing at his discretion. If the employee fails to comply with the provisions of subsection 1 for a rescheduled hearing, his grievance must be dismissed with prejudice unless he can show in writing to the Committee's satisfaction that the reason for noncompliance was beyond his control.

3. Each document or material offered in evidence must be marked as follows:

(a) Documents or materials presented by the employee must be marked at the bottom of the page as "Exhibit\_\_\_\_" indicated by consecutive Arabic numerals, beginning with the number "1."

(b) Documents or materials presented by the employer must be marked at the bottom of the page as "Exhibit\_\_\_\_" indicated by consecutive letters of the English alphabet, beginning with the letter "A." If the employer offers more than 26 exhibits, the 27th exhibit must be marked as "Exhibit AA," the 28th exhibit as "Exhibit BB," and so forth.

4. All evidence offered at the hearing must be relevant and bear upon the grievance.

5. Each person who ~~[testifies]~~ **provides a statement** at the hearing shall state his name, address, and occupation for the record ~~[before testifying].~~

6. It is the responsibility of each party to arrange for the appearance of all necessary witnesses. The Committee may request additional witnesses or information as it deems necessary.

~~[7.—The grievance must be heard in the following order:~~

~~—(a) Opening statement for the employee.~~

~~—(b) Opening statement for the employer.~~

~~—(c) Presentation of employee's case, followed by cross-examination.~~

~~—(d) Presentation of employer's case, followed by cross-examination.~~

~~—(e) Closing statement for the employee.~~

~~—(f) Closing statement for the employer.]~~

8. Upon proper recognition by the Chairman or his designated representative, any member of the Committee may ask a question of a party or witness at any time during the hearing.

(Added to NAC by Personnel Comm'n, eff. 8-1-91; A by Dep't of Personnel, 11-16-95)

**Sec. 13. NAC 284.696 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments to Assembly Bill 354. This proposed regulation change removes the provision allowing for unlawful discrimination complaints to be filed with the Employee-Management Committee. There are other internal and external processes for filing these types of complaints that are more appropriate than the EMC.

**NAC 284.696 Unlawful discrimination. (NRS 284.065, 284.155, 284.384)**

1. An employee alleging unlawful discrimination based on any pertinent state or federal law or regulation may:

(a) Report the alleged discrimination to:

(1) The division of the Department of Personnel that investigates sexual harassment and discrimination;

(2) The Attorney General;

(3) The employee's appointing authority;

(4) An equal employment opportunity officer;

(5) A personnel representative of the department in which the employee is employed; or

(6) The office charged with enforcing affirmative action within the appropriate university, state college or community college which is part of the Nevada System of Higher Education;

(b) ~~[Use the procedure for the adjustment of a grievance contained in NAC 284.658 to 284.6957, inclusive; or~~

~~(c)]~~ File a complaint with:

(1) The Nevada Equal Rights Commission pursuant to NRS 613.405; or

(2) The United States Equal Employment Opportunity Commission.

2. The appointing authority of an employee who has alleged unlawful discrimination shall promptly notify the deputy attorney general or staff counsel assigned to represent the agency of the allegation and the actions which are being undertaken by the agency to address the allegation.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 9-16-92; 11-16-95; R023-05, 10-31-2005)

**Sec. 14. NAC 284.742 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments made to Assembly Bill 179 which addressed the progressive discipline process. This proposed regulation change requires each agency to have a policy, commonly referred to as "Prohibitions and Penalties", approved by the Personnel Commission which outlines prohibited acts and the corresponding levels of discipline. The majority of agencies have these policies in place. It requires that employees be made aware of the policy and any significant changes that occur. It also requires the use of progressive discipline, but allows for higher levels of discipline when the seriousness of the offense warrants it.

**NAC 284.742 Appointing authorities authorized to define conflicting activities: Use of disciplinary measures; progressive discipline. (NRS 284.065, 284.155, 284.383)**

1. Each appointing authority ~~[may determine and describe in writing, subject to the approval of the Commission, those specific activities which, for employees under his jurisdiction, are considered inconsistent, incompatible or in conflict with their duties as employees]~~ **shall provide its employees with a policy approved by the Commission that explains prohibited acts, activities that are considered inconsistent, incompatible or in conflict with their duties, possible violations and penalties, and a fair and equitable process for taking disciplinary action against**

*a state employee. Employees must be notified and provided with a copy of the policy when significant change occurs.*

2. The appointing authority shall ~~[provide a copy to each employee.~~

~~—3. In making this determination, the appointing authority shall]~~ consider the prohibitions described in NAC 284.650 and NAC 284.746 to 284.762, inclusive, *in its policy*.

*3. By general policy, an appointing authority shall use a process of progressive discipline for administering disciplinary actions to a permanent employee.*

*4. Higher levels of discipline may occur, regardless of previous discipline, if the seriousness of the offense warrants it.*

[Personnel Div., Rule XI § A part subsec. 2, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84)

**Sec. 15. 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 approved 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. 16. NAC 284.882 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This 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. 17. NAC 284.888 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This 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)