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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management

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MEMO PERD #63/11
November 9, 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, Division Administrator
Department of Administration
Division of Human Resource Management 

SUBJECT: NOTICE OF PUBLIC HEARING - Amendments to NAC 284

The regulation changes included with this memorandum are being proposed for adoption at the December 9, 2011 Personnel Commission meeting. This meeting will be held at 9:00 a.m. at the Legislative Counsel Bureau, Conference Room 4100, 401 South Carson Street, Carson City with videoconferencing to Las Vegas at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue.

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/tp

Enclosures

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Amendment or Adoption of Regulations of the
Department of Administration
Division of Human Resource Management

The Personnel Commission will hold a public hearing at 9:00 a.m., on December 9, 2011, at the Legislative Counsel Bureau, Conference Room 4100, 401 South Carson Street, Carson City and in Las Vegas at the Grant Sawyer Building, Room 4401, 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:

Resolution Conference
“Grievance” defined
Submission of grievance to Employee-Management Committee
Hearing before Employee-Management Committee: Procedure
Hearing before Employee-Management Committee: Continuance
Unlawful discrimination

Investigation prior to disciplinary action
Suspensions and demotions
Dismissals
Appointing authorities authorized to define conflicting activities

NAC #
LCB File #R026-11
New Section
NAC 284.658
NAC 284.695
NAC 284.6955
NAC 284.6957
NAC 284.696
LCB File #R027-11
New Section
NAC 284.642
NAC 284.646
NAC 284.742

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 Administration, Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Division of Human Resource Management on or before November 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 North 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 Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City; 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the

proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

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

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

CARSON CITY

Blasdel Building, 209 East Musser Street

Nevada State Library and Archives, 100 Stewart St.

Capitol Building, Main Floor

Legislative Building, 401 South Carson Street

Gaming Control Board, 1919 College Parkway

Division of Human Resource Management 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.

REGULATIONS PROPOSED FOR PERMANENT ADOPTION

LCB File No. R026-11

Section 1. 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 (EMC.) This regulation allows for a resolution conference to be held as part of the grievance process. The resolution conference may be requested by either party after the grievance has been submitted to the EMC, but not less than 15 working days before the EMC hearing has been scheduled. The EMC will still consider the grievance if the resolution conference does not lead to an agreement or the agreement fails. The resolution 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 of the department pursuant to NAC 284.690 and submits a request for consideration of the grievance by the Committee pursuant to NAC 284.695, the employee or the highest administrator or his or her designee may request a resolution conference to meet informally in the presence of a neutral facilitator to discuss the grievance and possible resolutions.

2. Except as otherwise provided in this subsection, a request for a resolution conference may be submitted to the Division at any time after the employee submits his or her request for consideration of the grievance by the Committee. If the Committee has notified the parties of the date on which it will hold a hearing to consider the grievance, the request for a resolution conference may not be submitted less than 15 working days before that date.

3. Upon receipt of a request for a resolution conference, the Division shall appoint a neutral facilitator to conduct the resolution conference. The facilitator must not be affiliated with either party.

4. The submission of a request for a resolution conference does not deprive the Committee of jurisdiction to consider the grievance if:

(a) The parties are unable to reach an agreement for the resolution of the grievance at the resolution conference; or

(b) The parties reach an agreement for the resolution of the grievance at the resolution conference, but the employee subsequently notifies the Committee that the agreement has failed.

Sec. 2. 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 to hear the employee's issue if a hearing is provided by federal law or elsewhere in NRS Chapter 284 as cited below.

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 section 1 of LCB File No. R026-11* 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 or contested report on performance. 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 section 1 of LCB File No. R026-11**, the term “grievance” does not include any grievance for which a hearing is provided by **federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390.**

[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. 3. 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 federal law or elsewhere in NRS Chapter 284 as cited below.

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 or contention and supporting evidence. The Committee will, within 45 working days after the receipt of the employee’s request:

1. **Deny the request if the case is based on a grievance for which a hearing is provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376, 284.390;**

2. Answer the request without a hearing if the case is based upon the Committee’s previous decisions; or ~~{does not fall within its jurisdiction;~~

~~or~~

~~—2.]~~ 3. 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. 4. 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. 5. NAC 284.6957 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation change, proposed by the Legislative Counsel Bureau, is to be consistent with language developed in conjunction with amendments to Assembly Bill 354.

NAC 284.6957 Hearing before Employee-Management Committee: Continuance. (NRS 284.065, 284.155, 284.384)

1. A party may request a continuance of a hearing to determine the proper disposition of a grievance pursuant to NAC 284.695 by submitting a request for a continuance to the Chairman of the Committee or his designated representative at least 12 working days before the scheduled hearing, unless the party received personal notice of the hearing less than 21 working days before the hearing pursuant to subsection ~~{2}~~ 3 of NAC 284.695, in which case he may request a continuance as long as the request is made at least 4 working days before the scheduled hearing.

2. The Committee may grant a request for a continuance if good cause is shown.

(Added to NAC by Dep't of Personnel, eff. 3-27-92; A 11-16-95)

Sec. 6. 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 makes the regulation consistent with other regulation changes.

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}~~ *Except as otherwise provided in NRS 284.384, use* the procedure for the adjustment of a grievance contained in NAC 284.658 to 284.6957, inclusive ~~{;}~~, *and section 1 of LCB File No. R026-11;* 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. 7. Effective Date:

1. This section and section 4 of this regulation become effective upon filing with the Secretary of State.

2. Sections 1, 2, 3, 5 and 6 of this regulation become effective upon filing with the Secretary of State or on January 1, 2012, whichever is later.

LCB File No. R027-11

Section 1. 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 made to Assembly Bill 179 regarding the progressive discipline process. This change ensures that an impartial fact-finding investigation has been conducted before a permanent employee is dismissed, suspended or demoted. This 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.

New Section: Investigation prior to disciplinary action.

1. Except as otherwise provided in subsection 2, before an appointing authority may dismiss, suspend or demote a permanent employee, the appointing authority must first ensure that an impartial fact-finding investigation has been conducted to determine that evidence exists to justify the dismissal, suspension or demotion.

2. The investigation described in subsection 1 may be waived if the employee agrees in writing with the allegations on which the dismissal, suspension or demotion is based.

Sec. 2. 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. This change adds the reference to the new regulation regarding impartial investigations.

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. An exempt classified employee may only be suspended without pay in increments of one or more full workweeks.

3. The rights and procedures set forth in NAC 284.656 and sections 2 and 3 of LCB File No. R063-09 *and section 1 of LCB File No. R027-11* 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. 3. 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 adds the reference to the new regulation regarding impartial investigations.

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. The rights and procedures set forth in NAC 284.656 and sections 2 and 3 of LCB File No. R063-09 *and section 1 of of LCB File No. R027-11* apply to any dismissal made pursuant to this section.

4. 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. 4. 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 the process of progressive discipline and also be given a copy of the policy if it is revised. It 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. (NRS 284.065, 284.155)

1. Each appointing authority [~~may~~] *shall* determine, [~~and describe in writing,~~] subject to the approval of the Commission, those specific activities which, for employees under [~~his~~] *its* jurisdiction, are [~~considered~~] *prohibited as* inconsistent, incompatible or in conflict with their duties as employees. *The appointing authority shall identify those activities in the policy established by the appointing authority pursuant to NRS 284.383, as amended by section 1.5 of Assembly Bill No. 179, chapter 272, Statutes of Nevada 2011, at page 1495.*

2. [~~The~~] *If an* appointing authority *revises the policy described in subsection 1, the appointing authority* shall provide a copy *of the revised policy* 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.~~] *An appointing authority shall include in the policy described in subsection 1 an explanation of the process of progressive discipline as administered by the appointing authority. The process must conform to the provisions of NRS 284.383 and NAC 284.638 to 238.656, inclusive, and sections 2 and 3 of LCB File No. R063-09 and section 1 of of LCB File No. R027-11.*

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