



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
100 N. Stewart Street, Suite 200 | Carson City, Nevada 89701
Phone: (775) 684-0150 | www.hr.nv.gov

MEMO PERD #55/13

December 20, 2013

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

FROM: Lee-Ann Easton, Administrator *Lee-Ann Easton*
Division of Human Resource Management

SUBJECT: NOTICE OF WORKSHOP - Amendment to NAC 284

The regulation changes included with this memorandum are being proposed for permanent adoption or repeal. In order to review the proposed regulations and solicit comments from interested persons, a workshop will be held at 9:00 a.m., on January 8, 2013 at the Legislative Counsel Bureau, Room 2135, 401 S. Carson Street, Carson City, Nevada and by video conference at the Grant Sawyer Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. An informational note explaining the nature and purpose of the proposed change precedes the regulation.

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

LE:cr/tp

Enclosures

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

The Division of Human Resource Management, 100 N. Stewart Street, Carson City, Nevada, telephone number (775) 684-0148, is proposing the permanent adoption or repeal of the regulations pertaining to Chapter 284 of Nevada Administrative Code. A workshop has been set for 9:00 a.m. on January 8, 2014 at the Legislative Counsel Bureau, Room 2135, 401 South Carson St. Carson City, Nevada and by video conference at the Grant Sawyer Building, Room 4406, 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>
Administrative leave with pay	NAC 284.589
Rate of Pay: Demotion	New
Reinstatement of former permanent employee	NAC 284.386
Separation for physical, mental or emotional disorder	NAC 284.611
Selection of qualified hearing officer	NAC 284.780

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the Division of Human Resource Management offices at 100 N. Stewart Street, Suite 200, Carson City, Nevada, telephone number (775) 684-0136, or 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-2663. A reasonable fee for copying may be charged.

This Notice of Workshop to Solicit Comments on Proposed Permanent Regulation 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 Counsel Bureau, 401 S. Carson St.	LAS VEGAS Grant Sawyer State Office Building, 555 E. Washington Ave.
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This Notice of Workshop to Solicit Comments on Proposed Permanent Regulations has been sent to:

ALL STATE AGENCIES
ALL NEVADA COUNTY PUBLIC LIBRARIES

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 Division of Human Resource Management, in writing, at 100 N. Stewart Street, Room 200, Carson City, Nevada 89701-4204 or call Carrie Lee at (775) 684-0135, no later than five working days before the meeting.



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REGULATION WORKSHOP

DATE: January 8, 2014

TIME: 9:00 a.m.

PLACE: Legislative Counsel Bureau Grant Sawyer Building
Room 2135 Room 4406
401 South Carson St. 555 East Washington Ave
Carson City, Nevada Las Vegas, Nevada

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

AGENDA

1. Call To Order
2. Review of proposed changes to NAC 284:
Regulation Leadline:
 - Administrative leave with pay NAC 284.589
 - Rate of pay: Demotion New
 - Reinstatement of former permanent employee NAC 284.386
 - Separation for physical, mental or emotional disorder NAC 284.611
 - Selection of qualified hearing officer NAC 284.780
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 item scheduled for this regulations workshop, please contact Shelley Blotter at (775) 684-0105.

Notices have been posted on the Division of Human Resource Management's website at www.hr.nv.gov and at the following locations:

Division of Human Resource Management - Blasdel Building, 209 East Musser Street, Carson City, Nevada

Library and Archives - 100 N. Stewart Street, Carson City, Nevada

Legislative Building – 401 S. Carson Street, Carson City, Nevada

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

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REGULATION CHANGES PROPOSED FOR PERMANENT ADOPTION AND REPEAL

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, provides an appointing authority or the Division of Human Resource Management with the authority to grant administrative leave to employees when it has been authorized by the Governor that employees should not report to work or employees may leave work prior to the end of the employee's shift. The stated emergency would include, without limitation, those relating to enemy attacks, hostile actions, natural causes, or catastrophes. This change excludes those employees who are designated as essential and have been notified to report to work or to remain at work. The current regulation only provides for administrative leave in an emergency when there is a building closure or pandemic. This new provision would expand the purposes that administrative leave can be granted to emergencies taking place outside of an employee's office or worksite. Frequently building closure isn't required during the emergency, especially if the emergency is weather related, but by granting administrative leave, it will increase the safety of employees by not requiring attendance in situations that are out of their control and they are otherwise ready and available to work.

Additionally the Division recommends clarifying that administrative leave can be granted for employee assistance program (EAP) appointments that are telephone consultations. The State's current EAP vendor provides a number of consultative services over the telephone rather than just traditional in-person appointments.

The third amendment would allow administrative leave for an employee to attend general employee benefit education, training, and/or to receive health benefits, such as flu shots, received through the State. It is not intended to cover personal consultation appointments for retirement or doctor's appointments.

NAC 284.589 Administrative leave with pay. (NRS 284.065, 284.155, 284.345, 284.383, 284.385, 284.930)

1. An appointing authority may grant administrative leave with pay to an employee:

(a) To relieve the employee of his or her duties during the active investigation of a suspected criminal violation or the investigation of alleged wrongdoing;

(b) For up to 30 days when the appointing authority initiates the leave to obtain the results of an examination concerning the ability of the employee to perform the essential functions of his or her position;

(c) For up to 30 days to remove the employee from the workplace when he has committed or threatened to commit an act of violence;

(d) For up to 2 hours to donate blood; or

(e) To relieve the employee of his or her duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065.

2. The appointing authority, upon approval of the Risk Management Division, may extend administrative leave with pay granted to an employee for a purpose set forth in paragraph (b) or (c) of subsection 1.

3. If an employee is granted administrative leave with pay pursuant to subsection 1 or 2, the employee must be available:

(a) By telephone to the supervisor of the employee; and

(b) To report to a work site or another location, as directed by the supervisor of the employee, during regular business hours.

4. Except as otherwise provided in subsection 5, an appointing authority or the Division of Human Resource Management may grant administrative leave with pay to an employee for any of the following purposes:

(a) His or her participation in, or attendance at, activities which are directly or indirectly related to the employee's job or employment with the State but which do not require him or her to participate or attend in an official capacity as a state employee.

(b) *It has been authorized by the Governor that employees should not to report to work or employees are to leave work prior to the end of the employee's shift during an emergency, including, without limitation, emergencies relating to enemy attacks or other hostile actions, natural causes or other catastrophes, except for employees who are designated as essential and notified that they are required to report to work or to remain at work.*

(c) Closure of the employee's office or work site caused by a natural disaster, pandemic or other similar adverse condition when the employee is scheduled and expected to be at work. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

~~((e))~~(d) Closure, as a result of a pandemic, of a school or a center or facility that provides day care services which is attended by the employee's dependent child or the temporary cancellation, as a result of a pandemic, of a program attended by the employee's dependent child. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

~~((d))~~(e) His or her appearance as an aggrieved employee or a witness at a hearing of the Committee.

~~((e))~~(f) His or her appearance as an appellant or a witness at a hearing conducted pursuant to NRS 284.390 by a hearing officer of the Division of Human Resource Management.

~~((f))~~(g) His or her appearance to provide testimony at a meeting of the Commission.

~~{5}~~6. An appointing authority or the Division of Human Resource Management shall grant administrative leave with pay to an employee for a purpose set forth in paragraph ~~[(d), (e) or (f)]~~ (e), (f) or (g) of subsection 4 if:

(a) The employee requests the administrative leave for a period of time that is reasonably needed to testify at the hearing or meeting;

(b) The employee requests the administrative leave at least 2 weeks before the leave is needed, unless such notice is impractical; and

(c) The absence of the employee will not cause an undue hardship to the operations the appointing authority or adversely impact the provision of services to clients or to the public.

~~{6}~~7. An appointing authority shall grant administrative leave with pay to an employee for any of the following purposes:

(a) The initial appointment and one follow-up appointment if the employee receives counseling through an employee assistance program ~~{-}~~ ***including in-person and telephone consultations.***

(b) His or her attendance at a health fair ~~{which has been authorized by the Board of the Public Employees' Benefits Program.}~~ ***or related event, general employee benefits orientation and/or education sessions, including without limitation, retirement and deferred compensation.***

(c) His or her participation in an official capacity as a member of a committee or board created by statute on which he or she serves as a representative of state employees. Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board.

(d) Up to 8 hours for preparation for all hearings regarding a suspension, demotion or dismissal of the employee as provided in NAC 284.6561.

(e) Up to 8 hours for preparation for all hearings regarding an involuntary transfer of the employee.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 4-20-90; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 9-13-91; 12-26-91; 11-12-93; 3-23-94; 11-16-95; 10-27-97; R042-99, 9-27-99; R058-01, 9-6-2001; A by Personnel Comm'n by R038-03, 10-30-2003; R183-03, 1-27-2004; R145-05, 12-29-2005; R141-07, 1-30-2008; R061-09 & R081-09, 10-27-2009; R063-09, 11-25-2009; R058-10, 10-15-2010)

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment simplifies the process of determining the rate of pay for an employee who demotes. This amendment simply allows an employee to be paid at or below his or her current rate of pay, not to exceed the top step of the new class. It is widely believed that demotion only occurs as a result of disciplinary action, but demotion can also be used to allow an employee the flexibility to change his or her career path and/or enter a different class entirely. This amendment is intended to provide dedicated employees greater latitude to manage their career and the incentive to stay within State service. Additionally, this amendment will result in fewer errors on employee transaction forms, thereby reducing the number of under or over salary payments and reducing the time needed to correct these transactions.

NEW: Rate of pay: Demotion. (NRS 284.065, 284.155, 284.175)

Except as otherwise provided in this section and paragraph (b) of subsection 1 of NAC 284.618, an employee who is demoted must be paid at a step within the grade of the class to which he or she was demoted as follows:

1. If the employee has attained a permanent status in the class from which he or she was demoted and the demotion is instituted at the employee's request or is acceptable to the employee *and subsection 2, 3 or 4 do not apply*, the appointing authority shall pay him or her at a step in the grade of the class to which he or she was demoted which is *at or below his or her current rate of pay not to exceed the top step of the new class*.

~~[(a) Equal to his or her present base rate of pay; or~~

~~(b) Equivalent to a decrease of not more than one step from his or her base rate of pay in the position from which he or she was demoted. Except as otherwise provided in subsection 2, if the base rate of pay in the position from which he or she was demoted does not fall within the grade of the class to which he or she was demoted, the employee must be paid at a step in the grade of the class to which he or she was demoted which is equal to:~~

~~(1) The step he or she would have received if he or she had not been promoted to the position from which he or she was demoted; or~~

~~(2) The step he or she would have received if he or she had been employed in that class from the inception of employment with the State of Nevada.~~

~~2. An exception to paragraph (b) of subsection 1 may be granted by the appointing authority to pay an employee at a rate that does not fall within the grade of the class to which he or she is~~

~~demoted if the appointing authority determines that the demotion is in the best interest of the employee and the State of Nevada. If such an exception is granted:~~

~~(a) The employee's base rate of pay will be limited to three grade levels above the grade of the class to which he or she is demoted or his or her base rate of pay in the position from which he or she was demoted, whichever is less.~~

~~(b) The employee's base rate of pay in the position to which he or she was demoted will be frozen until it falls within the grade of the class to which he or she was demoted or for a maximum of 2 years after the date of demotion, making the employee ineligible for any merit pay increases, cost of living adjustments or adjustments for a class of employees that has been approved by the Legislature.~~

~~(c) If the employee's frozen base rate of pay does not fall within the grade of the class to which he or she was demoted within the 2-year period, his or her base rate of pay will be adjusted to the highest step within the grade of the class to which he or she was demoted.]~~

~~[3.] 2. If an employee accepts a promotion and is demoted before attaining permanent status in the class, he or she must be paid at a step in the grade of the class to which he or she was demoted which is equivalent to the base rate of pay to which he or she would have been entitled had he or she not been promoted.~~

~~[4.] 3. If the demotion is instituted by the appointing authority for disciplinary reasons and is not covered by subsection [2] 1, the appointing authority shall determine the step in the grade of the class to which the employee was demoted at which the employee will be paid.~~

~~[5.] 4. If an employee is demoted during his or her probationary period in state service, the appointing authority may pay the demoted employee at any step in the grade of the class to which the employee was demoted that is not greater than his or her base rate of pay before the demotion.~~

(Added to NAC by Personnel Comm'n by R133-12, eff. 10-4-2013)

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment removes the current 2-year limitation on reinstating a former employee to any formerly held position or similar position making it more desirable for qualified, highly skilled, and valued former employees to return to State service. This benefits the State by reducing the time to fill a position as a recruitment is not necessary. Additionally, reinstating a former employee will reduce the training time required for the employee to become proficient compared with a new employee who had not previously held the position or a similar position.

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

1. Except as otherwise provided in subsection 2, an appointing authority may reinstate a former permanent employee [~~within a 2-year period~~] following his or her termination from state employment if the employee was separated without prejudice. A separation without prejudice must be determined by the appointing authority using the standards contained in NRS 284.240.

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

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

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

5. A reinstatement to a similar class requires the approval by the Division of Human Resource Management before the appointing authority may make a commitment to reinstate.

6. It is the responsibility of a person seeking reinstatement to make his or her interest known by providing a new application to the appointing authority.

7. The person must meet the current minimum qualifications for the class for which the reinstatement is sought.

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

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment eliminates the 2-year reinstatement limitation for a former permanent employee who was separated from service due to a physical, mental or emotional disorder. This amendment will give a former employee additional time to recover from his or her disorder and allow a qualified, skilled, and valued former employee to return to State service. This amendment also makes this section consistent with the amendments proposed in NAC 284.386.

NAC 284.611 Separation for physical, mental or emotional disorder. (NRS 284.065, 284.155, 284.355, 284.383, 284.385, 284.390)

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

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

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

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

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

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

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

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

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

3. A permanent employee separated pursuant to this section is entitled to the same rights and privileges afforded permanent employees who are dismissed for disciplinary reasons. The procedures contained in NAC 284.656, 284.6561 and 284.6563 must be followed, and he or she may appeal the separation to the hearing officer.

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

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-1-91; 12-26-91; 7-6-92; R197-99, 1-26-2000; A by Personnel Comm'n by R182-03, 1-27-2004; R143-05, 12-29-2005; R063-09, 11-25-2009)

Explanation of Proposed Change: The Division of Human Resource Management is proposing that the Hearing and Appeals Division of the Department of Administration be the primary source of Hearing Officers for the Appeals process and that one or more independent Hearing Officers is retained to hear appeals where there is a conflict of interest with the Hearings and Appeals Division Hearing Officers. This change will require the *Hearing Officer Rules of Procedure* to be modified to describe the Hearing Officer selection process.

NAC 284.780 Selection of qualified hearing officer. (NRS 284.065, 284.155, 284.376, 284.390)

~~[1. For each hearing requested in a claim relating to a dismissal, suspension, demotion, involuntary transfer, or reprisal or retaliatory action, the Administrator shall provide to each party to the claim:~~

~~(a) A list of three qualified hearing officers; or~~

~~(b) A list of five qualified hearing officers.~~

~~2. If the Administrator provides a list of:~~

~~(a) Three qualified hearing officers, each party may strike one name from the list; or~~

~~(b) Five qualified hearing officers, each party may strike two names from the list,~~

~~→ and shall return the list with the remaining names to the Administrator not later than 10 days after receipt of the list.~~

~~3. Except as otherwise provided in subsection 5, each person whose name is struck from the list pursuant to subsection 2 is ineligible to serve as a hearing officer in that claim.~~

~~4. Except as otherwise provided in subsection 5, the Administrator shall select a hearing officer for the hearing from among the persons whose names were not struck from the list pursuant to subsection 2.~~

~~5. If, for any reason, all of the hearing officers whose names were not struck from the list pursuant to subsection 2 are unqualified or otherwise unavailable to serve as a hearing officer for the hearing, the Administrator may provide a new list of hearing officers to the parties in the manner provided in this section or may select any qualified hearing officer who is available to serve as a hearing officer in the hearing.]~~

(Added to NAC by Personnel Comm'n by R192-09, 6-30-2010, eff. 7-1-2010)

Brian Sandoval
Governor



Jeff Mohlenkamp
Director

Lee-Ann Easton
Administrator

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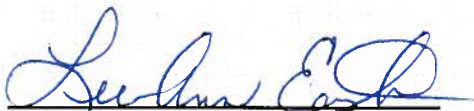
December 9, 2013

Regulation Small Business Impact Statement

The Division of Human Resource Management has determined that the adoption of this proposed regulation does not impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business.

These regulations only impact the classified service of Executive Branch departments and the Nevada System of Higher Education.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small business and that the information contained in this statement is accurate.



Lee-Ann Easton, Administrator



Date