



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 | Fax: (775) 684-0124

MEMORANDUM
HR#24-15

June 3, 2015

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

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

SUBJECT: NOTICE OF WORKSHOP - Amendments to NAC 284

The regulation changes included with this memorandum are being proposed for permanent adoption. In order to review the proposed changes in the regulations and solicit comments from interested persons, a workshop will be held at 9:00 a.m., on Thursday, June 25, 2015 at the Attorney General's Office, Mock Court Room 2nd floor, 100 North Carson Street, Carson City, Nevada and by video conference at the Grant Sawyer Building, Suite 3900, 555 East Washington Avenue, Las Vegas, Nevada.

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

LE:cr/tp

Enclosures



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REGULATIONS WORKSHOP

DATE: June 25, 2015

TIME: 9:00 a.m.

PLACE: Attorney General's Office Grant Sawyer Building
Mock Court Room, 2nd Floor Suite 3900
100 North 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:

<u>NAC#</u>	<u>Regulation Leadline</u>
284.470	Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances.
284.097	"Reviewing officer" defined.
284.52315	"Child" defined.
284.589	Administrative leave with pay.
284.394	Transfers initiated by appointing authorities.
284.778	Request for hearing and other communications.
284.262	Longevity pay: Eligibility.
284.270	Longevity pay: Required rating of performance.

284.274	Longevity pay: Dates of payment and eligibility; responsible agency.
284.278	Longevity pay: Formulas for calculation.
284.282	Longevity pay: Particular circumstances.
284.284	Longevity pay: Return to state service.
284.656	Notice.
284.726	Access to confidential records.
284.888	Request for employee to submit to screening test; Interpretation of grounds; completion of required form.
284.448	Time not counted toward completion of probationary period.
LCB File No. R138-13	Military leave with pay.

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 wishes to discuss in further detail, the items 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:

Blasdel Building, 209 E. Musser St., Carson City, NV

NV State Library and Archives, 100 N. Stewart St., Carson City, NV

Legislative Counsel Bureau (LCB), 401 S. Carson St., Carson City, NV

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

LCB website: www.leg.state.nv.us

Nevada Public Notice website: www.notice.nv.gov

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 by calling Carrie Lee at (775) 684-0135 no later than five working days before the meeting.

**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 amendments and repeal of regulations pertaining to Chapter 284 of Nevada Administrative Code for permanent adoption. A workshop has been set for 9:00 a.m. on Thursday, June 25, 2015 at the Attorney General's Office Mock Court Room 2nd Floor, 100 North Carson St., Carson City, Nevada and by video conference at the Grant Sawyer Building, Suite 3900, 555 East Washington Avenue, Las Vegas, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following topics that may be addressed in the proposed regulations:

<u>NAC #</u>	<u>Regulation Leadline</u>
284.470	Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances.
284.097	“Reviewing officer” defined.
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284.448	Time not counted toward completion of probationary period.
LCB File No. R138-13	Military leave with pay.

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the Division of Human Resource Management at 100 N. Stewart Street, Suite 200, Carson City, Nevada, telephone number (775) 684-0148, or 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-2663. A reasonable fee for copying may be charged. The agency's small business impact statement is attached.

This Notice of Workshop to Solicit Comments on Proposed Permanent 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
Legislative Counsel Bureau (LCB), 401 S. Carson St.
LCB website: www.leg.state.nv.us
Division of Human Resource Management
website: www.hr.nv.gov
Nevada Public Notice
website: www.notice.nv.gov

LAS VEGAS

Grant Sawyer State Office Building,
555 Washington Avenue

In addition, 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.

Proposed Permanent Regulation Amendments

Explanation of Proposed Change: The first amendment to this regulation, proposed by the Division of Human Resource Management (Division or DHRM) clarifies the effect of a report on performance that is filed timely, untimely or not at all for purposes of both pay and performance rating. The second amendment to this regulation, also proposed by the Division, will allow an appointing authority to designate an individual to act on his or her behalf when agreeing to an extension of a time period as provided in subsection 12 of this regulation.

Through this proposed change, DHRM intends to encourage that a report of performance be submitted for all employees, even if the times specified in statute have not been met and the employee has received his or her merit salary increase (MSI). A report of performance serves as a summary of an employee's performance during a certain period, recognizing good performance, noting deficiencies when necessary, and documenting employee development plans. When a report on performance is not submitted for an employee, the employee's positive or negative performance typically is undocumented. Additionally, if a report on performance is not submitted for an employee who has applied for a transfer or a promotion to another agency, a current summary of his or her performance will not be available to an agency when making its hiring decision. Currently, the Nevada Employee Action and Timekeeping System (NEATS) is undergoing an upgrade to electronically handle performance evaluations and related documents, which will support a supervisor's ability to submit timely performance evaluations. Creating and moving a performance evaluation through NEATS will simplify the process of documenting an employee's performance, providing feedback to an employee regarding his or her performance, and will reduce untimely evaluations.

The Consultation & Accountability Unit of the Division receives many inquiries surrounding this regulation as it is currently written, and it is important for supervisors and employees to understand the effect each scenario has both on the employer and employees in terms of pay and performance rating.

When a report on performance is filed with DHRM on or before the times prescribed by NRS 284.340, and the employee has achieved an overall rating of meets or exceeds standards, he or she is eligible for an MSI, unless the top step of his or her grade has been attained. Also under these circumstances, the employee's file of employment will reflect the rating received on the report on performance that has been timely filed.

If a report of performance is not filed on or before the time as specified in NRS 284.340, the employee will receive his or her MSI, unless the top step of his or her grade has been attained. If a report on performance is filed after the time as specified, the new rating will be reflected in the employee's file of employment at the time the report on performance is submitted to DHRM

If a report of performance is not filed on or before the times as specified in NRS 284.340 and a subsequent report on performance for the rating period is not filed, the employee will be considered standard for pay purposes only and will receive his or her MSI, unless the top step of the grade has been attained. In this situation, the employee's file of employment will display no actual performance rating for that period.

The amendment to subsection 12 authorizes an appointing authority to appoint a designee to extend the date related to 90 day follow-up evaluations for a substandard rating on a report on performance or to extend the timelines for either a request for review by a reviewing officer, or the period of time for the reviewing officer to respond to such a request. Allowing a designee will keep the process moving forward in a prompt fashion.

NAC 284.470 Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances. (NRS 284.065, 284.155, 284.340, 284.383, 284.384)

1. A person shall not complete a report on performance unless he or she has completed the training provided or approved by the Administrator concerning the preparation of a report on performance.

2. A report on performance must be prepared on the form prescribed by the Division of Human Resource Management.

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.

4. If a report on performance:

(a) Is filed on or before the times specified in NRS 284.340, the employee will be eligible for his or her merit pay increase, as appropriate, and the overall rating on the report of performance will be reflected in his or her file of employment;

(b) ~~is~~ Is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard ~~is~~ for pay purposes only and the employee will be eligible for his or her merit pay increase, pursuant to NAC 284.194. If a report on performance is submitted at any other time, the overall rating will be updated with the rating of the most recent evaluation.

~~4.~~ 5. If the performance of an employee falls below standard, his or her supervisor shall inform the employee promptly and specifically of the deficiencies in the performance of the employee regardless of whether a report on performance of the employee is completed or filed.

~~5.~~ 6. 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.

~~6.~~ 7. 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.

~~7.~~ 8. Except as otherwise provided in subsection ~~8~~ 9, the preparation of each report on performance must include a discussion between the employee and his or her 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 the supervisor for forwarding to the reviewing officer or appointing authority.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify the specific points of contention, if such specificity is provided, and return the response to the supervisor. Except as otherwise provided in this

paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the contested report on performance and render a final decision to the employee within 10 working days after receiving the recommendation.

~~[8.]~~ **9.** If an employee is unavailable for a discussion of the report on performance pursuant to subsection ~~[7.]~~ **8** 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 the supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify any specific point of contention, if the report provides such specificity, and mail the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the report on performance and render a final decision to the employee within 10 working days after receiving the recommendation. 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.

~~[9.]~~ **10.** A copy of each report on performance and, if applicable, any written response to such a report requested by an employee pursuant to subsection ~~[7-or-8.]~~ **8 or 9** must be provided to the employee and filed with the Division of Human Resource Management.

~~[10.]~~ **11.** 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 ~~[9.]~~ **10**:

(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 receiving a copy of the revised report and submit the response to the Division of Human Resource Management for inclusion in his or her file of employment.

~~[11.]~~ **12.** An employee and his or her appointing authority *or his or her designee* may agree in writing to extend one or more of the periods prescribed in subsection ~~[7-or-8.]~~ **8 or 9**.

~~[12.]~~ **13.** 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; R056-10, 10-26-2011; R007-11, 10-26-2011)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, is contingent upon the adoption of the amendments to NAC 284.470. Subsection 2 of NAC 284.097 refers to paragraph (b) of subsection 7 of NAC 284.470. A new subsection was added to NAC 284.470, which resulted in the necessity to renumber subsections 4 through 12 to NAC 284.470. As such, the reference to paragraph (b) of subsection 7 of NAC 284.470, will now be paragraph (b) of subsection 8 of NAC 284.470.

NAC 284.097 “Reviewing officer” defined. (NRS 284.065) “Reviewing officer” means:

1. The supervisor of the person who prepared a report on performance of an employee; or
 2. Such other person designated by the appointing authority,
- ↳ who reviews the report on performance upon the request of the employee pursuant to paragraph (b) of subsection ~~7~~ 8 of NAC 284.470.

(Added to NAC by Personnel Comm’n by R038-03, eff. 10-30-2003; A by R144-05, 12-29-2005; R056-10, 10-26-2011)

Explanation of Proposed Change: This amendment, proposed by Division of Human Resource Management will bring the regulation into alignment with the Department of Labor’s interpretation of the definition of “son or daughter” in the federal Family and Medical Leave Act regulations. In the U.S. Department of Labor, Wage and Hour Division Administrator’s Interpretation No. 2010-3 it states, “It is the Administrator’s interpretation that the regulations do not require an employee who intends to assume the responsibilities of a parent to establish that he or she provides both day-to-day care and financial support in order to be found to stand in loco parentis to a child. For example, where an employee provides day-to-day care for his or her unmarried partner’s child (with whom there is no legal or biological relationship) but does not financially support the child, the employee could be considered to stand in loco parentis to the child and therefore be entitled to FMLA leave to care for the child if the child had a serious health condition.”

NAC 284.52315 “Child” defined. (NRS 284.065, 284.155, 284.345) “Child” means a person who is:

1. A biological, adopted or foster child, a stepchild, a legal ward or the child of a person with the daily responsibility of caring for ~~and~~ *or* financially supporting that child; and
2. Except as otherwise provided in NAC 284.5235 and 284.562, under 18 years of age or is 18 years of age or older and incapable of caring for himself or herself because of a mental or physical disability.

(Added to NAC by Dep’t of Personnel, eff. 3-23-94; A by Personnel Comm’n by R096-03, 10-30-2003)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will create consistency between hearings related to the dismissal, suspension or demotion of an employee, hearings related to the involuntary transfer of an employee and hearings related to a claim of reprisal or retaliation due to the disclosure of improper governmental action. Because employee preparation for, and his or her attendance at such hearings, is necessary so that the hearing officer can gather information from both parties, this change will mandate the approval of administrative leave for these purposes. The appearance of witnesses at such hearings will be allowable for all types of hearings listed above.

Currently, the regulation allows under certain circumstances, the granting of administrative leave for the attendance of an employee and any witnesses at all hearings related to the dismissal, suspension or demotion of an employee. With the amendment to subsection 4(f), the granting of administrative leave for these hearings will continue to be allowable for witnesses to attend such hearings. Also, the granting of administrative leave will also be allowable for witnesses to attend hearings related to the involuntary transfer of an employee, as well as hearings related to a claim of reprisal or retaliation due to the disclosure of improper governmental action. It is important that the granting of administrative leave to witnesses remain allowable rather than mandatory so agencies are not faced with potential staffing shortages and can ensure proper staffing levels.

The granting of administrative leave for an appellant to attend hearings related to his or her dismissal, suspension or demotion will now be required rather than allowable, as outlined below in the explanation of the change to subsection 6.

Subsection 6 of NAC 284.589 currently requires the granting of 8 hours of administrative leave for an employee to prepare for hearings related to his or her dismissal, suspension or demotion, as well as hearings related to his or her involuntary transfer. The change to this subsection will also require the granting of 8 hours of administrative leave for an employee to prepare for hearings related to a claim of reprisal or retaliation due to the disclosure of improper governmental action.

As explained above related to the change to subsection 4(f), the granting of administrative leave for the appearance of an employee as an appellant at a hearing related to his or her dismissal, suspension, demotion, involuntary transfer, or a claim of reprisal or retaliation due to the disclosure of improper governmental action is placed in subsection 6(e) and will be required, rather than allowable.

NAC 284.589 Administrative leave with pay. (NRS 284.065, 284.155, 284.345, 284.383, 284.385, 284.390)

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 or she has committed or threatened to commit an act of violence;

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

(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; *or*

(f) To attend a general employee-benefits orientation or an educational session relating to employee benefits, including, without limitation, retirement and deferred compensation.

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) His or her safety during an emergency when employees have been authorized by the Governor not to report to work or to leave work before the end of their shifts during the 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 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.

(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.

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

(f) His or her appearance as ~~[an appellant or]~~ a witness at a hearing conducted pursuant to **NRS 281.641**, NRS 284.390 ~~[by a hearing officer of the Division of Human Resource Management.]~~ **and NAC 284.6561, or NRS 284.376 and NAC 284.394.**

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

5. 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 (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 of the appointing authority or adversely impact the provision of services to clients or to the public.

6. 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, without limitation, consultations provided in-person or telephonically.*

(b) His or her attendance at a health fair *or related event coordinated by* the Public Employees' Benefits Program.

(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 *the following*:

(1) ~~fa~~ A suspension, demotion or dismissal of the employee as provided in NAC 284.6561~~f~~;

(2) *An involuntary transfer as provided in NRS 284.376 and NAC 284.394; or*

(3) *Reprisal or retaliatory action against an employee who discloses improper governmental actions as provided in NRS 281.641.*

(e) ~~Up to 8 hours for preparation for all hearings regarding an involuntary transfer of the employee.~~ *His or her appearance as an appellant at a hearing conducted pursuant to NRS 284.641, NRS 284.390 and NAC 284.6561, or NRS 284.376 and NAC 284.394.*

(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; ***R137-13, 6-23-14***)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will create consistency in NAC 284.394, which pertains to transfers initiated by appointing authorities, also referred to as involuntary transfers, and NAC 284.6561, which pertains to hearings regarding a dismissal, suspension or demotion. This change was identified as necessary during the drafting process of changes proposed to be made to NAC 284.589.

NAC 284.589 currently requires, under certain circumstances, the granting of administrative leave to an employee so that he or she can appear at a hearing regarding his or her dismissal, suspension or a demotion. A proposed amendment to NAC 284.589 will require the granting of administrative leave for an employee to appear at his or her hearing related to an involuntary transfer, as well as a claim of reprisal or retaliation based on the disclosure of improper governmental action.

Also, NAC 284.589 currently requires, under certain circumstances, that 8 hours of administrative leave be granted to an employee so that he or she can *prepare* for a hearing regarding an involuntary transfer, a dismissal, a suspension or a demotion. The proposed amendment to NAC 284.589 will require the granting of 8 hours administrative leave for an employee to prepare for his or her hearing related to a claim of reprisal or retaliation based on the disclosure of improper governmental action.

Because the granting of administrative leave for these purposes will now be outlined in NAC 284.589, it is unnecessary to include in NAC 284.394 that an employee has the ability to request such leave.

The Division of Human Resource Management intends to include an informational note, such as the example below, in the *Rules for State Personnel Administration* publication explaining that administrative leave must be granted, under certain circumstances, to an employee to prepare for and attend a hearing regarding an appeal of his or her involuntary transfer. The informational note will ensure that it is clear that administrative leave may still be requested for this type of appeal hearing, and will direct individuals to the administrative leave regulation, NAC 284.589.

INFORMATIONAL NOTE: NAC 284.589 provides for, under certain circumstances, 8 hours of administrative leave to prepare for a hearing requested to appeal an involuntary transfer, as well as administrative leave to attend such hearings.

NAC 284.394 Transfers initiated by appointing authorities. (NRS 284.065, 284.155, 284.375)

1. Except as otherwise provided in subsection 2, an appointing authority may, after giving 5 working days' notice, transfer for the convenience of this State any employee to another position in:

- (a) The same class; or
- (b) A comparable class with the approval of the Division of Human Resource Management.

2. The notice required by subsection 1 need not be given if the transfer does not exceed 10 working days. If a bona fide or justifiable emergency exists, a transfer may be made immediately with the prior approval of the Division of Human Resource Management.

3. A transfer pursuant to this section must not be made to harass or discipline an employee.

4. A permanent employee who is required to transfer to a different geographical location and who declines the transfer has the same rights provided in NAC 284.630 as an employee who is laid off.

5. If an employee requests a hearing to appeal an involuntary transfer pursuant to NRS 284.376, the appointing authority may temporarily assign the employee, on a per diem basis, to transfer pending disposition of the appeal. ~~[The employee may request leave pursuant to NAC 284.589 to prepare for the hearing relating to the involuntary transfer.]~~

6. As used in this section, “geographical location” has the meaning ascribed to it in NAC 284.612.

[Personnel Div., Rule VI § D subsec. 5, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 10-18-89; A by Personnel Comm’n by R183-03, 1-27-2004)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, improves efficiency and creates added flexibility in the process of employee appeals. At its January 10, 2014 meeting, the Personnel Commission selected the Hearings and Appeals Division of the Department of Administration to act as the primary hearing officers for employee appeals beginning July 1, 2014. Also selected was one contracted hearing officer to hear employee appeals when a conflict of interest exists.

Prior July 1, 2014, all employee appeal hearings were heard by contracted hearing officers, and the Hearing Clerk of the Division of Human Resource Management served as the clerk to each of them. The Hearings and Appeals Division directly employs clerks who are assigned to the hearing officers of that Division. It is much more efficient for written communications to be sent directly to either the hearing officer or his or her assigned clerk of the Hearings and Appeals Division, rather than these communications being routed through the Division of Human Resource Management.

The amendment to this regulation also creates added flexibility to the process by broadening the contact for written communications to a “general” hearing clerk, rather than a hearing clerk specific to the Division of Human Resource Management. This will allow the regulation to apply to all types of hearing officers the Personnel Commission may select to hear employee appeals.

NAC 284.778 Request for hearing and other communications. (NRS 281.641, 284.065, 284.155, 284.376, 284.390)

1. A request for an appeal must be addressed to the Administrator and submitted on the form provided by the Division of Human Resource Management.
2. A copy of any written communication directed to a hearing officer must be sent *directly* to ~~the Hearing Clerk of the Division of Human Resource Management.~~ *that hearing officer or to the clerk assigned to him or her.*
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; A by Personnel Comm’n by R192-09, 6-30-2010, eff. 7-1-2010; R011-11, 10-26-2011)

NAC 284.262 through NAC 284.284, inclusive, are hereby repealed.

Explanation of proposed change: Assembly Bill 436 of the 2015 Legislative Session repeals NRS 284.177 and NRS 284.179, which include the provisions associated with longevity pay. As a result, the regulations surrounding longevity pay, NAC 284.262 through 284.284, inclusive, must be repealed.

This amendment is contingent on the passage and approval of A.B. 436.

Explanation of Proposed Change: S.B. 62 of the 2015 Legislative Session amends NRS 284.385, which is related to the dismissal, involuntary demotion and suspension of State of Nevada employees in the classified service. The requirement for delivery in person or by mail in subsection 3 of NRS 284.385 has been removed. Language has been added to the statute requiring that regulations be adopted setting forth the procedures for properly notifying a classified employee of dismissal, involuntary demotion or suspension.

This amendment, proposed by the Division of Human Resource Management, will provide increased speed of delivery and reliability by modernizing methods by which agencies may provide notice of the disciplinary actions listed above. The amendment will allow agencies to use alternative carriers to the U.S. Postal Service, such as Federal Express or United Parcel Service, as long as the carrier provides proof that the notice was sent and that it was delivered.

NAC 284.656 Notice. (NRS 284.065, 284.155, 284.383, 284.385, 284.390) Except as otherwise provided in NAC 284.6563, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure for providing notice of the proposed action must be followed:

1. The employee must be given at least 10 working days' written notice of the proposed action on the form provided by the Division of Human Resource Management.

2. The notice may be given in person or by ~~mail~~ *a delivery service that provides proof of both the date the notice was sent and the date the notice was delivered.* If ~~it is mailed,~~ *the notice is sent,* the notice must be ~~mailed~~ *sent* to the employee's last known address ~~by registered or certified mail, return receipt requested. The date stamped on the receipt by the postal service is the date of delivery.~~ If the notice is returned ~~without a return receipt signed by the employee,~~ the employee's date of receipt shall be deemed to be the third day after the ~~date of the mailing.~~ *date the notice was sent.*

3. The notice must:

(a) Specify the proposed date on which the action is effective.

(b) Inform the employee that a hearing has been scheduled on his or her behalf in the manner prescribed in NAC 284.6561 and specify the date, time and place of the hearing.

(c) Specify the charges, the reasons for them and the cause of action contained in NAC 284.646 or 284.650 on which the proposed action is based.

4. The notice of the proposed action must be signed by the appointing authority or his or her designated representative before the notice is given to the employee.

5. Upon its receipt, the employee must be asked to sign the notice. If he or she refuses to sign the notice, the refusal must be noted on the notice. The employee's signature is not an admission by him or her of any of the allegations set forth in the notice.

6. If the employee does not understand the reasons for the proposed action or the procedures related to disciplinary actions, including, without limitation, the right to notice, a hearing and an appeal, the employee may seek an explanation from the appointing authority or another person in the agency familiar with the procedure.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 7-21-89; 8-1-91; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 11-12-93; 11-16-95; 11-16-95; A by Personnel Comm'n by R063-09, 11-25-2009)

Explanation of Proposed Change: S.B. 62 of the 2015 Legislative Session clarifies that the Division of Human Resource Management may be provided information regarding an applicant's pre-employment drug test result. The Division's access to this information allows for the removal of an applicant who tests positive from all hiring lists for positions which require pre-employment testing pursuant to NAC 284.894.

NAC 284.726 Access to confidential records. (NRS 284.065, 284.155, 284.335, 284.407)

1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph (2) of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in subsections 3 and 4, access to an employee's file of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

(a) The employee.

(b) The employee's representative when a signed authorization from the employee is presented or is in his or her employment file.

(c) The appointing authority or a designated representative of the agency by which the employee is employed.

(d) The Administrator or a designated representative.

(e) An appointing authority, or a designated representative, who is considering the employee for employment in the agency.

(f) Persons who are authorized pursuant to any state or federal law or an order of a court.

(g) The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.

(h) Persons who are involved in processing records for the transaction of business within and between state agencies.

(i) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

3. Information concerning the health, medical condition or disability of an employee or a member of his or her immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection 9, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.

4. Except as otherwise provided in subsection 9, access to information concerning the employee's usage or balance of annual leave and sick leave is limited to the employee, the employee's immediate supervisor and the employee's appointing authority or the designated representative of the appointing authority.

5. Information concerning the results of an applicant's screening test indicating the presence of a controlled substance shall be limited to an appointing authority or a designated representative of the agency and the Division of Human Resource Management.

~~5.~~ **6.** Except as otherwise provided in subsection 9, access to any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct is limited to:

(a) The employee.

(b) The Administrator or a designated representative of the Administrator.

(c) The appointing authority or a designated representative of the agency with which the employee is employed.

(d) Persons who are authorized pursuant to any state or federal law or an order of a court.

(e) The Governor or a designated representative of the Governor.

~~[6.]~~ **7.** Except as otherwise provided in subsection 9, access to any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct is limited to:

(a) The employee.

(b) The appointing authority or a designated representative of the agency by which the employee is employed.

(c) Persons who are authorized pursuant to any state or federal law or an order of a court.

(d) The Governor or a designated representative of the Governor.

~~[7.]~~ **8.** Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

~~[8.]~~ **9.** Upon request, the Division of Human Resource Management will provide the personal mailing address of any employee on file with the Division of Human Resource Management to the State Controller's Office and the Internal Revenue Service.

~~[9.]~~ **10.** The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on

Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission or a court.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 9-30-88; 7-21-89; 8-14-90; 7-6-92; 3-23-94; R042-99, 9-27-99; R082-00, 8-2-2000; R058-01, 9-6-2001; R147-01, 1-22-2002; A by Personnel Comm'n by R068-03, 10-30-2003; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009, R059-10, 10-15-2010; R137-12 & R045-13, 10-23-2013)

Explanation of Proposed Change: The following amendment, proposed by the Division of Human Resource Management, is based upon S.B. 62 of the 2015 Legislative Session and defines “work-related accident or injury” pursuant to NRS 284.4065.

NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (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 or her duties safely and efficiently include, but are not limited to:

(a) Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;

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

(c) Observation of the employee consuming alcohol;

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

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

2. Except as otherwise provided in subsection 3, before requiring an employee to submit to a screening test, the supervisor of the employee must complete a form provided by the Division of Human Resource Management.

3. The provisions of subsection 2 do not apply if an appointing authority requests an employee to submit to a screening test pursuant to paragraph (b) of subsection 2 of NRS 284.4065.

4. As used in subsection 2 of NRS 284.4065 ~~[, “substantial”]~~:

(a) *“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.

(b) *“Work-related accident or injury” means an injury or accident that happens in the course of employment or that involves an employee on the premises of the workplace.*

(Added to NAC by Dep’t of Personnel, eff. 12-26-91; A by Personnel Comm’n by R066-09, 10-27-2009; R193-09, 4-20-2010; R010-11, 10-26-2011)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, brings this regulation into agreement with the amendment to NRS 281.145 in A.B. 388 of the 2015 Legislative Session.

This amendment is contingent on the passage approval of A.B. 388.

NAC 284.448 Time not counted toward completion of probationary period. (NRS 284.065, 284.155, 284.290) The following types of leave or temporary status do not count toward the completion of any probationary period:

1. Authorized military leave for active service, as set forth in subsection 8 of NAC 284.444.
2. Authorized military leave for training beyond the 15 paid working days in ~~any 1 calendar year, as set forth in subsection 8 of NAC 284.444.]~~ *a 12-month period pursuant to NRS 281.145.*

3. Except as otherwise provided in NAC 284.580, any leave without pay and catastrophic leave, combined, in excess of 240 hours or, in the case of an exempt classified employee, 30 working days, in a year if the regular work schedule of the employee is 80 hours or less biweekly. If the regular work schedule of an employee is more than 80 hours biweekly, the employee must be allotted additional leave without pay and catastrophic leave in proportion to the number of hours his or her regular work schedule exceeds 80 hours biweekly. As used in this subsection, “year” means a period equal to 12 months of full-time equivalent service measured backward from the employee’s pay progression date.

4. Time which is served in a temporary position pursuant to NAC 284.414.

5. Any hours worked which exceed 40 in a week.

(Added to NAC by Dep’t of Personnel, eff. 10-26-84; A 5-27-86; 3-27-92; 9-16-92; 11-16-95; 3-1-96; R147-01, 1-22-2002; A by Personnel Comm’n by R182-03, 1-27-2004; R141-07, 1-30-2008)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, removes language that has become obsolete due to amendments to NRS 281.145 in A.B. 388 of the 2015 Legislative Session.

Additionally A.B. 388 requires the Personnel Commission to adopt regulations to prescribe the 12-month period that State agencies will use to determine an employee's eligibility for military leave. The proposed amendment to this section will retain the calendar year, previously included in NRS 281.145, for all State agencies except for the Office of the Military. The Office of the Military will use the federal fiscal year for this purpose due to the funding source of some of their affected positions.

This amendment is contingent on the passage and approval of A.B. 388.

LCB File No. R138-13 *Military leave with pay.* (NRS 281.145, 284.065, 284.345)

~~[1. In accordance with NRS 281.145 and subsections 2 and 3:~~

~~(a) If a public officer or employee has a work schedule that does not include any portion of Saturday or Sunday, the public officer or employee must be granted a maximum of 15 working days of military leave with pay in a calendar year to serve under orders; and~~

~~(b) If a public officer or employee has a work schedule that includes any portion of Saturday or Sunday, the public officer or employee must be granted a maximum of 39 working days of military leave with pay in a calendar year to serve under orders.~~

~~— 2. If the work schedule of a public officer or employee is changed in a calendar year from including any portion of Saturday or Sunday to not including any portion of Saturday or Sunday, the public officer or employee is entitled to receive not more than 15 working days of military leave with pay after the effective date of the change to the work schedule, but is not entitled to receive more than a total of 39 working days of military leave with pay for the calendar year.~~

~~— 3. If the work schedule of a public officer or employee is changed in a calendar year from not including any portion of Saturday or Sunday to including any portion of Saturday or Sunday, the public officer or employee is entitled to receive not more than 39 working days of military leave with pay for the calendar year from the effective date of the change to the work schedule, but is not entitled to receive more than a total of 39 working days of military leave with pay for the calendar year or more than 15 working days of military leave with pay before the effective date of the change. If the public officer or employee took more than 15 working days of military leave to serve under orders before the effective date of the change to the work schedule, military leave with pay must not be granted retroactively for those working days.~~

~~4. As used in this section and NRS 281.145, the Commission will interpret:~~

~~(a) "To serve under orders" to mean to perform military service pursuant to orders issued by the appropriate military authority, including, without limitation, orders for deployment and any orders to complete training.~~

~~(b) "Work schedule" to mean a public officer's or employee's regularly assigned schedule of work. The term does not include any short term changes to a schedule, overtime, standby status or instances where the public officer or employee is called back to work during his or her scheduled time off, unless the change becomes part of his or her regularly assigned schedule.~~

~~(c) "Working day" to mean a period of work consisting of the number of hours a public officer or employee is regularly scheduled to work. The term does not include overtime, standby status or instances where the public officer or employee is called back to work during his or her scheduled time off.]~~

For the purposes of subsection 1 and 2 of NRS 281.145, a calendar year will be used for all State agencies except for the Office of the Military. The Office of the Military will use the federal fiscal year beginning on October 1 for this purpose.

(Added to NAC by Personnel Comm'n by R138-13, eff. 6-23-14)

Brian Sandoval
Governor



James R. Wells, CPA
Director

Lee-Ann Easton
Administrator

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June 2, 2015

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