

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will place procedures and requirements related to requesting a hearing to determine the reasonableness of a dismissal, demotion or suspension into a separate regulation. Removing this language from NAC 284.6561 will ensure that it is clear that these procedures are to be used specifically when requesting a hearing pursuant to NRS 284.390.

The amendment also clarifies that the effective date of the discipline is the *first* day the discipline takes effect. In the case of a dismissal or demotion, there is only one clear effective date of the discipline. In order to apply one clear effective date of discipline in the case of a suspension, it is necessary to use the first date of the suspension as the effective date. This will clarify that an employee who receives a suspension has the same rights to appeal, 10 working days, as an employee who is dismissed or demoted.

This amendment also adds the requirement that the written notification of an appointing authority's decision regarding proposed disciplinary action must accompany such a request.

NEW Procedure to request hearing to determine reasonableness of dismissal, demotion or suspension.

1. An employee who has been dismissed, demoted or suspended may request a hearing before the hearing officer of the Division of Human Resource Management, pursuant to NRS 284.390, within 10 working days after the effective date of his or her dismissal, demotion or suspension. The effective date is the first day the disciplinary action takes effect. Such a request must be addressed to the Administrator and submitted on the form provided by the Division of Human Resource Management, and, except as otherwise provided in subsection 2, must be accompanied by the written notification of the appointing authority's decision regarding the proposed action given as required by paragraph b of subsection 7 of NAC 284.6561.

2. If the disciplinary action imposed is an immediate suspension or dismissal pursuant to paragraph b of subsection 2 of NAC 284.6563, the written notification of the appointing authority's decision regarding the proposed action need not accompany the request pursuant to subsection 1.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, makes a housekeeping change to the regulation, as suggested by the headline. When an employee submits an appeal of the disciplinary action, he or she is requesting a hearing, which this amendment will clarify. The new requirement that the appointing authority's decision regarding the proposed action given is also included in this amendment.

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}~~ *a hearing* must be addressed to the Administrator and submitted on the form provided by the Division of Human Resource Management. *The request must be accompanied by the written notification of the appointing authority's decision regarding the proposed action given as required by paragraph b of subsection 7 of NAC 284.6561. submitted pursuant to subsection 1 of NEW REGULATION, or in the case of immediate suspension or dismissal, pursuant to subsection 2 of NEW REGULATION.*

2. A copy of any written communication directed to a hearing officer must be sent to the clerk assigned to the hearing officer.

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; R042-15, 12-21-2015)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will clarify that the requirements outlined in subsection 1 of NRS 284.4065 (e.g., inform the employee in writing “whether the test will be for alcohol or drugs, or both”) do not apply to the situations outlined in subsection 2 of NRS 284.4065 (e.g., “has or is involved in a work-related accident, motor vehicle crash or injury”).

It will clarify that an entity or individual under contract and/or agreement with an appointing authority and acting pursuant to that contract and/or agreement may require an employee’s compliance with a request to submit to a screening test pursuant to paragraphs (b) and (c) of subsection 2 of NRS 284.4065 (i.e., “during the performance of the employee’s duties, drives a motor vehicle in such a manner as to cause bodily injury to the employee or another person or substantial damage to property“ and “has or is involved in a work-related accident, motor vehicle crash or injury”).

This amendment also makes conforming changes based on amendments made by the Nevada Legislature in 2015. At that time, the Legislature amended certain sections of existing law by changing the word “accident” to “crash,” and by adding “motor vehicle crash” when an “accident” is intended to include both a motor vehicle crash and an accidental incident of another type.

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

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. An appointing authority’s agent may request that an employee submit to a screening test pursuant to paragraphs (b) and (c) of subsection 2 of NRS 284.4065. The provisions of subsection 2 do not apply if an appointing authority or an appointing authority’s agent requests an employee to submit to a screening test pursuant to ~~[paragraph (b) of]~~ subsection 2 of NRS 284.4065.

4. For the purposes of subsection 2 of NRS 284.4065 : ~~[, as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049:]~~

- (a) “Substantial damage to property” includes, but is not limited to:
 - (1) The operation of a motor vehicle in such a manner as to cause more than \$500 worth of property damage; or
 - (2) The operation of a motor vehicle in such a manner as to cause two *crashes which cause damage to* property ~~[accidents]~~ within a 1-year period.

(b) “Work-related accident, *motor vehicle crash* or injury” means an accident, *motor vehicle crash* or injury that occurs 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; R044-15, 1-1-2016)