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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management

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REGULATION WORKSHOP

DATE: June 17, 2022

TIME: 9:00 a.m.

PLACE: Nevada State Library and Archives
100 N. Stewart Street
Room 110
Carson City, Nevada

Grant Sawyer Building
555 E. Washington Avenue
Room 1400
Las Vegas, Nevada

Workshop Minutes

Staff present in Carson City:

Frank Richardson, Administrator, Division of Human Resource Management (DHRM)
Michelle Garton, Deputy Administrator, DHRM
Beverly Ghan, Deputy Administrator, DHRM
Mandee Bowsmith, Deputy Administrator, DHRM

Others present in Carson City:

Carrie Hughes, DHRM
Nora Johnson, DHRM
Raeven Johnson, UNR, NSHE
Salina Paz, UNR, NSHE
Sheri Brueggeman, DPS
Sherry Conrad, NDA
Alison Wall, NDOT
Kristin Anderson, DHRM
Nicole Peek, DHRM
Gigi Gentry, NDOT
Imran Hyman, DCFS
Connie Burgward Odgers, ADSD
Keisha Harris, DHRM

Tiffany Smorra, GFO
Darrell Morlan, DHRM
Peter Shaw, NDOT
Kevin Ranft, AFSCME 4041

Others present in Las Vegas:

Heather Dapice, DHRM
Doug Williams, DHRM
Kendrick McKinney, DHRM
Regina Rivera, UNLV
Jared Christensen, UNLV
Mildred Farkas, ADSA
Jessica McNeese, GCB
Rhonda Vivor, AHRS
Annie Houston, AHRS

1. Call to Order

Michelle Garton called the meeting to order at 9:00 a.m. on Friday, June 17 and asked everyone to introduce themselves. Ms. Garton indicated that the reason for the workshop today is to solicit comments on some topics dealing with regulations that DHRM may move forward for permanent adoption. Ms. Garton further indicated that because this group of regulations is so vast, the intent is to propose topics for the purpose of commentary rather than to provide specific language for adoption. Ms. Garton informed the attendees that there are comment cards for anyone who may not be comfortable speaking. Ms. Garton further informed the attendees that there are presenters on the different topics for discussion.

2. Review of related topics that may be addressed in proposed changes to and/or additions to Chapter 284 of the Nevada Administrative Code.

Heather Dapice, Classification Supervisor, recommended a change to NAC 284.126, Subsection 5, with regards to affecting reclassifications and minimum qualification requirements. Ms. Dapice indicated that the current regulation states that no position will be reclassified to a higher grade through the individual classification process if the incumbent does not meet the minimum qualifications for the higher level position. Currently, if an identified position does not meet the minimum qualifications, they would either get a special adjustment to pay of 2.5 percent for one grade or higher or 5 percent if two or more grades, and that's at most for one year. As such, if the individual would not meet the minimum qualifications for longer than that, duties would then have to be removed and reassigned to other positions, creating a ripple effect that affects classification of other positions. Ms. Dapice explained that currently, if minimum qualifications are met in under a year, the reclassification has gone into effect to have an individual underfill and clarified that the position, or an incumbent, can meet the minimal qualifications in a

position that has been identified as being able to underfill, and this will allow that.

Heather Dapice indicated that the second request concerns 284.130, regulations that allow DHRM to request an NPD 19 to review any position in state service to determine if the standards for that classification are being met. Ms. Dapice explained that there are several positions in state service that are misclassified either because they have been missed in an occupational group study, the agencies have moved positions around, or misclassified due to layoffs or loss of personnel. Ms. Dapice indicated that this lowers the level of complexity of the duties but if there is not significant change to the position, it can't be reclassified, which is what this proposal would allow.

Sheri Brueggeman questioned why a change is being contemplated if the wording already indicates the ability to investigate based on the appointed authority or employer and indicated the potential issues with the use of the word "reorg".

Heather Dapice reiterated that according to statute, a position can only be reclassified through the classification process with significant change. Ms. Dapice explained that the verbiage she suggested was as follows: if an existing classified position has been identified as being misclassified, the agency shall submit to the Division of Human Resource Management an NPD-19 to affect the correct classification of the position upon such position becoming vacant.

Imran Hyman indicated that while the idea of reclassifying an individual even if they don't meet the minimum qualifications is, in general, a good one, there may be issues where perhaps a classification requires a licensure that should be considered.

Heather Dapice concurred, indicating that a position would not be reclassified as an underfill if it required licensure not held by the individual.

Imran Hyman further indicated that the topic regarding significant change and DRM's power to review the classification of a position at any time and hold it until later has both good and bad sides to it: the good being that it works as a shield against people consistently asking for reclassification when it's not appropriate; the bad being that if it was done incorrectly the first time, the significant change prevents the fixing of an error. As such, Imran Hyman suggested there should be some wordsmithing to remove the change component so that it is still a framework for the classification process but no longer necessary that there has to have been some change created to move from one class to another. Imran Hyman further raised concern regarding issues holding a downward classification until a position is vacant, indicating that previous discussions on the topic internally called this red flagging, which creates an issue with tracking when a position becomes vacant to fix the classification before it is filled. Imran Hyman indicated that it is not in an agency's best interest to reduce the qualifications and compensation of a position, even if the classification is incorrect. Imran Hyman further indicated that because the whole classification system is based on a system of equity, holding steady an incorrectly classified position does not recognize the inequity to other class positions surrounding the individual who is being protected. As such, Imran Hyman requested to downwardly reclassify the

position and following the existing regulations.

Alison Wall, NDOT, questioned whether there has been discussion regarding where the authority to reclassify would come from and what involvement the agency would have.

Heather Dapice explained that those positions are identified upon receipt of an NPD-19 to reclassify another position.

Alison Wall indicated that this is a concern because it is going to enable the agency to possibly block some NPD-19s going further if they know that this may affect and downgrade. As such, Ms. Wall supported Imran Hyman's suggestion to discuss the process further and include NDOT in the discussions.

Heather Dapice clarified that an agency cannot block an NPD-19 request from the employee given the employee's right to file an NPD-19 with or without the agency's approval under NAC 284.130.

Alison Wall indicated that her concern regards agency managers more than employees and the ripple effect that can be created and reiterated her request that NDOT be involved in the discussion of this topic.

An unidentified speaker confirmed that in such a situation, discussion will occur with the agencies prior to moving forward.

Mandee Bowsmith discussed the recent decision under the First Judicial District Court of the State of Nevada that remanded a case that had gone before the Employee Management Committee, a decision set for judicial review, which was then remanded back to the EMC with the direction to create a standard for compensation requested by the grievant. Ms. Bowsmith explained that the EMC does not have jurisdiction to create standards in terms of compensation as that falls within the scope of work of the Personnel Commission and the Legislative Council Bureau. As such, Ms. Bowsmith indicated that the discussion indicates the need to add the Personnel Commission as the appropriate venue for something related to compensation items in terms of 284.

Kevin Ranft explained that he is a labor representative with AFSCME Local 4041 and that the Union has concerns in regards to this. Mr. Ranft further indicated that although the union is not opposed, its interest lies in ensuring fairness for employees. As such, Mr. Ranft indicated his belief that the legislature should look at this as well as the Personnel Commission in conjunction with the Department of Labor. Mr. Ranft discussed the importance of collective bargaining and ensuring that certain things should be negotiated within that process.

Sheri Brueggeman concurred that the EMC should not be involved in any compensation discussions.

Beverly Ghan discussed the appeal process when an applicant does not meet minimum

qualification. Ms. Ghan indicated that the NAC references multiple different days such as working days, days, and calendar days and explained that the intent here is to change the language to consistently say calendar days rather than have variation.

Doug Williams discussed a proposed possible amendment to NAC 284 that would include the authority for approval of administrative leave for new employees who are veterans to attend medical appointments related to their service until they have sufficient time to secure sick leave. Mr. Williams explained that this has been in place for quite some time for federal employees as well as in other states.

Jared Christensen asked if this is just to attend the appointment itself.

Doug Williams clarified that the intent is specific for the medical appointment itself.

Imran Hyman indicated concern regarding potential leave abuse depending on the phrasing in the regulation and asked why this would be limited to veterans rather than all new employees and wondered if there should be a maximum amount of leave for this purpose. Imran Hyman suggested four hours' time as maximum leave and questioned the possibility of a time limit on when this leave can be used.

Alison Wall indicated NDOT's request that a very detailed policy be provided from the Veteran Services Office of DHRM so that the entire state would be consistent. Ms. Wall further suggested a more general line in the NAC by which the agency authority or appointing authority or HR be able to grant administrative leave on a case-by-case basis.

Mandee Bowsmith indicated that the last time NRS was updated and revised with respect to the appointment of members was in 1983 and as such, indicated that topics 5 and 6 talk about soliciting feedback in terms of input regarding how the process can be updated, innovated, and progressed. Ms. Bowsmith explained that one of the glaring issues since July 1, 2021 is the difference between collective bargaining agreement processes regarding grievances and the 284 process for grievances. Ms. Bowsmith indicated that one of the ideas in discussion involves step 4 being a mandatory resolution conference, which mirrors the collective bargaining agreement grievance process where step 4 is mediation, and step 5 being the EMC. Ms. Bowsmith further indicated that there are other cumbersome items that could use reform such as: the employee packets moving to electronic distribution; tightening up the administrative process DHRM performs relative to coordination of the EMC.

Sheri Brueggeman indicated her support for all of these resolutions but did express concern regarding the procedure by which the Governor would appoint the committee, citing the need for a better vetting process.

Mandee Bowsmith indicated that a decision has not yet been made regarding whether or not a committee will be formed and indicated the value of the input of the members at the meeting regarding best next steps.

An unidentified speaker recommended a partnership among all agencies and DHRM in this process.

Jared Christensen indicated his support of the mandatory resolution conference, of electronic exhibition, and of a committee or workgroup to discuss further adjustments to the process.

Mandee Bowsmith encouraged the meeting attendees to email Michelle with any further ideas or suggestions that might occur to members following the meeting.

Michelle Garton discussed page 13 of NAC 246.555, the request for extension and investigation. Ms. Garton indicated that the intent is to clarify in subsections 3 and 4 that the administrator may grant or deny or the governor may grant or deny, explaining the change would be to add grant given the DAGs' opinions that the wording is a bit gray given only the word deny is currently in use.

Mandee Bowsmith indicated that Topic 8 is something that has received a lot of feedback regarding possibly codifying provisions related to telework or remote work with the NAC. As such, Ms. Bowsmith indicated the need for the group's input regarding this topic.

Imran Hyman discussed mileage reimbursement for employees using personal vehicles for state business, equating this to the need for reimbursement for state employees using personal property in telework. Imran Hyman next discussed the need for employees to have signed agreements regarding search and seizure of their personal devices being used for work as this could be considered public record. Imran Hyman further indicated that the State Administrative Manual indicates that the issue of reimbursement and confidentiality are left up to individual departments to determine, and as such, encouraged that this issue of potential provision of equipment for telework be addressed.

Sheri Brueggeman indicated that there is still CARES money available for teleworking that would provide money for equipment. Ms. Brueggeman further indicated that a policy or codification may prove difficult as there are some departments slow on accepting the policies for telework. Ms. Brueggeman also discussed the difficulty in the decision process regarding teleworkers out of state and how to ensure that provided equipment will be returned and suggested working some sort of legal means into the policy to ensure return of equipment in these cases.

Alison Wall indicated that NDOT does have a telecommuting policy and is working through all the same challenges. Ms. Wall further wondered about the benefit if having something in NAC, indicating that it could potentially stifle what the individual agencies need.

Kevin Ranft reiterated the fact that this is a national issue and as such, indicated the need to study this as an opportunity for the agency to use as an asset. Mr. Ranft indicated the importance of having a clear definition of telework versus remote work as agencies have differing definitions. In addition, Mr. Ranft discussed the importance of a fair and

equitable process when assigning remote or telework. Mr. Ranft informed the group that there are policies in existence already that can be studied so as not to reinvent the wheel regarding this subject.

Jared Christensen suggested that if this is codified in the NAC but if it is, broad authority should be granted to agencies as each one is going have a different kind of need and structure.

Jessica McNeese, Nevada Gaming Control Board, indicated the possibilities of productivity suffering in cases of telework or employees not actually working when they should be and suggested updating the language to empower agencies should they run into issues such as these.

Sheri Brueggeman agreed that telework is not really timeclock-type work and as such, indicated the importance of potentially moving away from the hour-for-hour type of work and more towards salary-work that empowers employees to get the job done on their terms and thus negate the non-productivity issue.

Keisha Harris, referring back to the discussion regarding position changes, indicated the importance of having the agencies use the existing regulations to make it easier to help DHRM in terms of notifying when there is a known permanent change to a position.

Michelle Garton reminded the attendees of the comment cards that can be used as well as the ability to email comments post-meeting. Ms. Garton explained that written comments will be forwarded to the Legislative Council Bureau for consideration on the regulations moving forward. Ms. Garton further indicated that if any of the regulation ideas to become amendments, they would be heard for permanent adoption if they are turned over to the Personnel Commission meetings prior to the end of September or December. Ms. Garton next informed the attendees that the temporary regulations related to succession planning are currently in effect as emergency regulations until July 30 and as such, they will be pulled from the Personnel Commission meeting on Friday, the 24th and submitted to LCB as temporary regulations on July 1, following which a meeting will be scheduled within approximately 30 days to discuss the temporary regulations related to succession planning.

3. Adjournment

Michelle Garton adjourned the June 17, 2022, meeting.