

STATE OF NEVADA
Department of Administration
Division of Human Resource
Management

REGULATION WORKSHOP

Carson City at the Legislative Counsel Bureau, 401 S. Carson Street, Room 2134, Carson City, Nevada;
and via video conference in Las Vegas at the Grant Sawyer State Building, Room 4412E, 555 East
Washington Avenue.

MEETING MINUTES Thursday, May 26, 2016

STAFF PRESENT IN CARSON CITY:

Shelley Blotter, Deputy Administrator, DHRM
Peter Long, Administrator, DHRM
Kristen Hanson, Personnel Analyst, DHRM
Denise Woo-Seymour, Personnel Analyst,
DHRM
Kathleen Kirkland, Personnel Officer, DHRM
Doug Williams, Personnel Analyst, DHRM

STAFF PRESENT IN LAS VEGAS:

OTHERS PRESENT IN CARSON CITY:

Melody Duley, NDOT
Allison Wall, NDOT
Kristen Bowling, NDOW
Dave Badger, DMV
Terry Hack, NDF
Deborah Harris, DHHS

OTHERS PRESENT IN LAS VEGAS:

Allan Gliponeo, DMV
Stephanie Lan, DMV

I. CALL TO ORDER

Shelley Blotter: Opened the meeting and explained the reason for the workshop being to solicit comments from affected parties with regard to the regulations proposed for permanent adoption. She noted that based on the feedback received, the proposed language may be changed, be deleted, additional regulations may be affected, or they may not move forward.

Peter Long: Introduced Doug Williams, the new Veteran Coordinator who is based in Las Vegas.

II. Review of Proposed Changes to NAC 284

NEW	Request for extension of time to notify employee of determination following internal administrative investigation.
NEW	Appeal of refusal to examine or certify.
284.152	Appeal of allocation or position or change in classification.
284.6561	Hearing.

Shelley Blotter: Explained process and that staff will explain each section and then comments will be accepted.

Michelle Garton: She explained, pursuant to NRS 284.387, an employee must be notified of an appointing authority's determination, following an internal administrative investigation within 90 days of being provided notice of the investigation. This statute also allows an appointing authority to request an extension of up to 60 days, should he/she be unable to complete the investigation and notify the employee within the initial 90 day period. Additionally, NRS 284.387 states that no further extensions will be granted unless approved by the Governor.

Subsection 1 of the new regulation states that the request for an extension must be submitted to the Administrator on or before the 90th day of the initial investigation period. This requirement is supported by the information contained at the bottom of Subsection 1, which states that a request submitted after the initial 90 day period may be denied for that reason, regardless of whether or not good cause is shown. The request must explain the reasons the investigation could not be completed within the 90 days. Finally, the employee must be provided a copy of the request for the extension.

This language was included based on a request and discussions with AFSCME and is intended to ensure that an employee is informed of the status of an investigation of which he/she is the subject. The language is currently drafted to require such a request be submitted on the form prescribed by the Division of Human Resource Management and a draft of this form is available at the back of the room.

She asked that during the comment period for participants to explain how they feel about using a form prescribed by DHRM and would it be a tool that you could use? She noted, it could be a concise way of providing the required information. Especially in light of it needing to be provided to the employee, or maybe a memo format would be preferred.

Finally, if an appointing authority who was granted up to a 60-day extension is also unable to complete an internal investigation and notify the employee within that time, a request for an additional extension must be approved by the Governor.

Subsection 2 of the regulation relates to this type of a request. The procedures are similar to a request for the initial 90-day extension and a written format is to be used in this situation.

Shelley Blotter: Requested comments. She reiterated that they were looking for feedback on the

form being an aide or a hindrance.

Allison Wall: Introduced herself as HR Manager for NDOT. She noted that she did like the form but was concerned about the amount of information needing to be put on the form relating to the reasoning behind why an investigation may be extended. She noted that describing this in much detail could jeopardize the investigation or the confidentiality of the investigation. She also asked for clarification if the form would be delivered to the employee.

Shelley Blotter: Noted that they were suggesting the form be submitted to the employee as a concise tool. She agreed that information would not need to be disclosed on the form that would jeopardize the investigation, a simple comment would suffice.

Peter Long: Noted the intent was not to approve or deny requests based on this information. That determination is not being made. It was merely to provide information to the employee on why it's being delayed.

Dave Badger: Introduced himself as Personnel Officer for the Department of Motor Vehicles. He asked, with regards to the extension and notification process, is the Department going to be stricter with regards to getting the investigation done within the prescribed 90 days?

Shelley Blotter: Stated, in regard to the 90 days and timely responses to employees, the two hearing officers had opined differently. One said that it didn't matter when the Division of Human Resource Management provided the extension, if it was after the 90 days, if an extension was provided, the hearing officer felt that was acceptable. Another hearing officer said basically that the extension request wasn't requested timely, it didn't matter if the extension had been provided or not.

Dave Badger: Noted he agreed with Allison Wall's statements about the comments on reasoning behind the extension and the potential to jeopardize the investigation or compromise the confidentiality.

Peter Long: Noted, the proposed regulation in Paragraph 1, Subparagraph B, says describe the reasons the employee was not notified of the determination within 90 days. So, if you want to put under there, cause for delay in completing the investigation, making a determination and notifying the employee, you can say something to the effect that we're requesting an extension. That's why they weren't notified of the results in 90 days.

Dave Badger: Explained, in the past, they would send something to the Administrator's Administrative Assistant briefly saying, we're still working through the process or something like that.

Peter Long: Noted, that is fine. It's not the intent to change that. He clarified that they had some concerns that something be on record that the employee had been notified of that because the issue has come up.

Dave Badger: Agreed. He noted that a written notification might add to the whole process, but on the other hand, it would be good for the employee to have something in hand, specifically as opposed to just being told something by their supervisor.

Peter Long: Added, the goal is not to put any unnecessary burden on an agency, but we all know that as soon as we don't document something, that's the issue that's raised.

Dave Badger: Agreed. He noted it would help with the documentation piece, because they always ask the supervisor to let them know that they notified the employee that there was an extension. So we have that documentation. So it would help with that part of it.

Shelley Blotter: Moved to the next item, which was newly created, appeal of refusal to examine or

certify.

Beverly Ghan: Introduced herself as Personnel Analyst for the Recruitment Section of the Division of Human Resource Management. She explained, the following amendment proposed by the Division of Human Resource Management details the procedures for appealing the Administrator's refusal to examine or certify an applicant, pursuant to NRS 284.245. Additionally, the new regulation will ensure that the Personnel Commission is provided with the information regarding the Appellant's rationale for his/her disagreement with the Administrator's decision, not to examine an applicant or certify an eligible person.

NRS 284.245 reads: 'when the Administrator refuses to examine an applicant or after an examination, refuses to certify an eligible person, the applicant or eligible person may request the administrator to furnish to the applicant or eligible person a statement of the reason for refusing to examine or refusing to certify as the case may be. The Administrator shall furnish the statement upon request. The Administrator has 30 days to respond.'

NRS 284.245 also reads: 'if the Administrator refuses to examine an applicant or after an examination refuses to certify an eligible person, the applicant or eligible person may take an appeal to the Commission, in accordance with the regulation adopted by the Commission. If the Commission finds that the Administrator is in error in refusing to examine an applicant or in refusing to certify an eligible person, the Commission shall order the Administrator to examine or certify and the Administrator shall comply.'

As a result, pursuant to the above regulation, an applicant after having requested and obtained the statement from the Administrator, within 30 days, after the date of the receipt of the written statement, may file a written appeal to the decision of the Administrator or his/her designated representative for the Personnel Commission. The appeal must be in writing. It must be addressed to the Administrator. It must address points, outlined in the determination for the refusal to certify and examine and indicate the points with which the appellant disagrees and expressed reason for the disagreement. This regulation is mirroring the current regulation in place for classification appeals.

She asked if there were any comments.

Shelley Blotter: Noted this is a newly proposed regulation, meaning that we previously didn't have the appeal process documented. For many years, it was assumed such appeals would go to the EMC. It was determined more recently that it was actually meant to go to the Personnel Commission. This is setting up a procedure that mirrors other processes in which decisions are appealed to the Personnel Commission.

She asked if there were any comments.

Dave Badger: Stated, Alys Dobel did have a question in relation to the Administrator's statement, would that always be in a written format, or would there be times when it would be in electronic format, such as email?

Peter Long: Stated, they consider an email a written document. They get classification appeals in email and ask them to follow up with a hard copy. A lot of times, that's when they're approaching the end of their allowed amount of time. This really is more of an internal process that they're concerned about. They're the ones that have to respond to someone if they don't meet the minimum qualifications. Delegated agencies with recruitment responsibilities also have to do that. They want to see a paper trail and really, as Shelley said, the statute is in place. Sometimes it was unclear as to where a person should file a complaint. Then often they would try to go to the EMC. DHRM wants to make it clear. We haven't had a regulation in place for an MQ or an exam appeal. This just defines that and makes it clear that you can't contest being denied for recruitment six months after the fact. You've got 30 days after you received notice n email form, that you didn't meet the MQs. An email would be fine.

Melanie Dooley: Introduced herself as Personnel Officer for NDOT over the Recruiting Section. She stated, NRS 284.245 talks about refusing to examine or then refusing to certify. She asked, if after we've examined someone and made them eligible and then we determine they've made a false statement on their application and then remove them from eligibility. Is that part of this refusal to examine or certify? Would they use this for that procedure as well or would this be limited only to refusing to examine or certify, not related to then removing them from eligibility?

Peter Long: Acknowledged that was a really good question. He noted, the intent was refusal to examine, which means they don't meet the MQs, or refusal to certify meaning that, we're not going to place them on a list for a particular reason. There are other avenues to address if for whatever reason you remove them from the list. He doesn't think this is intended for that.

Shelley Blotter: Moved to the next item NAC 284.152.

Peter Long: Explained that they're proposing an amendment to NAC 284.152. Just to put the timeframes in line with the timeframe requirements of NRS. If you look at Paragraph 4, it talks about within 30 days. That's what is in statute. Everything above that was within 20 working days. DHRM is just trying to make it consistent. He doesn't believe this is taking any time away from the appellant's ability to file an appeal. Thirty calendar days is usually pretty consistent with 20 working days.

Shelley Blotter: Asked for comments. There was none. Moved on to NAC 284.6561.

Michelle Garton: Explained, the last regulation is NAC 284.6561, Hearing. It is similar to the change to NAC 284.656, Notice, which was recently adopted and approved. Senate Bill 62 of the 2015 Legislative Session amended NRS 284.385 which is related to the dismissal, suspension or demotion of classified State of Nevada employees. The intent of this change is to provide increased speed of delivery and ensure reliability by allowing the use of carriers such as Fed Ex and UPS, as long as tracking information and proof of delivery is provided. This change also clarifies that such notice shall not be given by electronic means, such as email or via social media.

Shelley Blotter: Noted, this change is consistent with the recent statute change and also a recent regulation change. Asked for comments. There was none.

III. ADJOURNMENT

Shelley Blotter: Adjourned the meeting.