

Steve Sisolak
Governor



Laura E. Freed
Director

Matthew Tuma
Deputy Director

Frank Richardson
Interim Administrator

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
209 E. Musser Street, Suite 101 | Carson City, Nevada 89701
Phone: (775) 684-0150 | <http://hr.nv.gov> | Fax: (775) 684-0122

MEMORANDUM

HR# 13-21

June 10, 2021

TO: DHRM Listserv Recipients
Nevada County Libraries
State Library and Archives

FROM: Frank Richardson, Interim Administrator *Frank Richardson*
Division of Human Resource Management

SUBJECT: NOTICE OF WORKSHOP – Amendments to NAC 284

The regulation changes included with this memorandum is being proposed for permanent adoption. In order to review the proposed changes in the regulation and solicit comments from interested persons, a workshop will be held at 9:00 a.m. on June 30, 2021, at the Nevada State Library and Archives Building, 100 N. Stewart St., Room 110, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 1400, 555 E. Washington Avenue, Las Vegas, Nevada.

Please circulate or post the attached *Notice of Workshop to Solicit Comments on Proposed Permanent Regulation* along with the text of the proposed regulation.

FR:nj

Attachments

Steve Sisolak
Governor



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REGULATION WORKSHOP

DATE: June 30, 2021
TIME: 9:00 a.m.
PLACE: Nevada State Library and Archives Grant Sawyer Building
Room 110 Room 1400
100 N. Stewart Street 555 E. Washington Avenue
Carson City, Nevada Las Vegas, Nevada

Effective June 1, 2021, the Governor's Emergency Directive expired, and Open Meeting Law procedures were reinstated.

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

Meeting materials are available on the Division of Human Resource Management's website at:

<http://hr.nv.gov/Boards/Master Meetings Calendar/>

AGENDA

1. Call to Order
2. Review of proposed change to NAC 284:

NAC #
284.5811

Regulation Leadline
Family and medical leave: Maximum amount in 12-month period; eligibility; use.

284.0995

"Sex- and gender-based harassment" defined.

284.496	Classes and training concerning prevention of sex- and gender-based harassment.
284.498	Training of supervisory and managerial employees.
284.650	Causes for disciplinary or corrective action.
284.696	Unlawful discrimination.
284.718	Confidential records.
284.726	Access to confidential records.
<i>NEW</i>	Appeal of determination to release confidential records.
284.771	Sex-and gender-based harassment.

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 change. Public comment may be limited to 5 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 regulation workshop, please contact Michelle Garton at (775) 684-0136.

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

CARSON CITY

Blasdel Building, 209 E. Musser Street
 NV State Library and Archives, 100 N. Stewart Street
 Legislative Counsel Bureau (LCB), 401 S. Carson Street

LAS VEGAS

Grant Sawyer State Office Building,
 555 E. Washington Avenue

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 participate in the meeting. If special arrangements for the meeting are necessary, please notify Breece Flores at (775) 684-0135 or bdflores@admin.nv.gov no later than five working days before the meeting.

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

The Division of Human Resource Management, 100 N. Stewart Street, Suite 200, Carson City, Nevada, telephone number (775) 684-0136, is proposing the permanent adoption and amendment of a regulation pertaining to Chapter 284 of Nevada Administrative Code. A workshop has been set for 9:00 a.m. on June 30, 2021 at the Nevada State Library and Archives Building, 100 N. Stewart St., Room 110, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 1400, 555 E. 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 regulation:

**Meeting materials are available on the Division of Human Resource Management’s
website at:**

[http://hr.nv.gov/Boards/Master Meetings Calendar/](http://hr.nv.gov/Boards/Master_Meetings_Calendar/)

<u>NAC #</u>	<u>Regulation Leadline</u>
284.5811	Family and medical leave: Maximum amount in 12-month period; eligibility; use.
284.0995	“Sex- and gender-based harassment” defined.
284.496	Classes and training concerning prevention of sex- and gender-based harassment.
284.498	Training of supervisory and managerial employees.
284.650	Causes for disciplinary or corrective action.
284.696	Unlawful discrimination.
284.718	Confidential records.
284.726	Access to confidential records.
<i>NEW</i>	Appeal of determination to release confidential records.
284.771	Sex-and gender-based harassment.

A copy of all materials relating to the proposal may be obtained by contacting the Division of Human Resource Management at (775) 684-0136 or mgarton@admin.nv.gov. 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 Regulation has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

CARSON CITY

Blasdel Building, 209 E. Musser Street
NV State Library and Archives, 100 N. Stewart Street
Legislative Counsel Bureau (LCB), 401 S. Carson Street

LAS VEGAS

Grant Sawyer Building, 555 E. Washington Avenue

WEBSITES

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

In addition, this Notice of Workshop to Solicit Comments on Proposed Permanent Regulation 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 participate in the meeting. If special arrangements for the meeting are necessary, please notify Breece Flores at (775) 684-0135 or bdflores@admin.nv.gov no later than five working days before the meeting.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management (DHRM), will default the State’s Family and Medical Leave Act (FMLA) eligibility criteria to the criteria outlined in the U.S. Department of Labor’s FMLA regulations. “Paid status” is defined in NAC 284.0742 as including leave with pay (not including catastrophic leave) and leave without pay pursuant to NAC 284.580. However, the FMLA federal regulations base the hours requirement on the “hours of service” during the 12-month period immediately preceding the employee’s leave. The current method of FMLA eligibility calculation may, in certain circumstances, allow an employee to qualify for leave, based on this regulation, prior to qualifying based on the federal regulations. If an employee is provided FMLA leave early and then not granted FMLA-protected leave during the period the employee qualifies under the federal FMLA regulations, it could leave the State open to review by the FMLA regulatory body, the U.S. Department of Labor.

NAC 284.5811 Family and medical leave: Maximum amount in 12-month period; eligibility; use. (NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626, 608.0198)

1. Except as otherwise provided in subsection 2, an employee who is entitled to take leave pursuant to the Family and Medical Leave Act is limited to a total of 12 weeks of such leave during a rolling 12-month period. The rolling 12-month period is measured backward from the date an employee uses any leave pursuant to the Family and Medical Leave Act.

2. An employee who is entitled to take leave pursuant to the Family and Medical Leave Act to care for a covered service member is limited to a total of 26 weeks of such leave during a single 12-month period.

~~{3. To calculate eligibility for leave pursuant to the Family and Medical Leave Act, each hour that an employee is in paid status in the 12-month period immediately preceding the leave must be considered as time worked.}~~

~~{4.}~~ 3. Except as otherwise provided in subsections 5 and 6, an employee who meets the requirements for eligibility for and who is taking leave pursuant to the Family and Medical Leave Act must exhaust all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave that the employee is eligible to use based on the nature of the absence before using leave without pay. Any accrued sick leave, accrued annual leave, accrued compensatory time, catastrophic leave and holiday pay to which the employee is entitled pursuant to NAC 284.255 runs concurrently with the leave granted pursuant to the Family and Medical Leave Act if the employee is otherwise eligible for that sick leave, annual leave, compensatory time, catastrophic leave or holiday pay.

~~{5.}~~ 4. If an employee is absent from work as the result of a work-related injury or illness and meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:

(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and

(b) The employee may elect to use paid leave or leave without pay for the portion of time that he or she is not being compensated for the work-related injury or illness.

~~{6.}~~ 5. If an employee is absent from work as the result of a non-work-related injury or illness, the employee is receiving compensation for the injury or illness from a disability benefit plan and the employee meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:

(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and

(b) The employee may use paid leave for the time that the employee is being compensated for the non-work-related injury or illness if the employee has entered into an agreement with the

appointing authority to use the paid leave. If the employee and the appointing authority have not entered into such an agreement, the employee may not elect to use and the appointing authority may not require the employee to use paid leave for that time.

~~[7.]~~ 6. If an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator, is absent from work and meets the requirements for eligibility pursuant to the Family and Medical Leave Act, any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act.

~~[8.]~~ 7. An appointing authority may require an employee to provide medical or other appropriate documentation to support his or her need for leave pursuant to the Family and Medical Leave Act.

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95; R082-00, 8-2-2000; A by Personnel Comm'n by R096-03, 10-30-2003; R145-05, 12-29-2005; R060-09, 11-25-2009; R021-13, 10-23-2013; R037-17, 10-31-2017, eff. 1-1-2018)

NAC 284.0995 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities.

SB 51 also changes the term “sexual harassment” to “sex- and gender-based harassment” as used in various places throughout Chapter 284 of the Nevada Revised Statutes. This amendment replaces current language to define “sex-and gender-based harassment,” and expands on the type of behaviors that would be considered sex- and gender-based harassment.

NAC 284.0995 ~~["Sexual"]~~ ***“Sex- and gender-based harassment”*** defined. (NRS 284.065) ~~["Sexual"]~~ ***“Sex- and gender-based harassment”*** means :

1. ***Making submission to*** unwelcome sexual advances, requests for sexual favors, ~~[or]~~ ***and*** other ~~[speech]~~ ***verbal*** or physical conduct of a sexual nature ~~[when:~~

~~—1. Submission to such speech or conduct is made]~~ either explicitly or implicitly a term or condition of a person’s employment;

2. ~~[Submission]~~ ***Making submission*** to or the rejection of such ~~[speech or]~~ conduct ***described in subsection 1*** by a person ~~[is used as the]~~ ***a*** basis ~~[for]~~ ***of*** employment decisions affecting that ***or any other*** person; or

3. ~~[Such speech or conduct]~~ ***Engaging in unwelcome harassing verbal or physical behavior that occurs because of the sex or gender of an individual or individuals and*** has the purpose or effect of unreasonably interfering with ~~[a person’s]~~ ***an individual’s*** work performance or creating an intimidating ~~[, hostile]~~ or offensive ~~[working]~~ ***work*** environment ~~[:] where:~~

(a) ***Harassing behavior is of a sexual nature;***

(b) ***Harassing behavior is not sexual in nature, but is related to the sex or gender of the victim or others;***

(c) ***Harassing behavior is sex- and gender-neutral in content but occurs because of an individual’s sex or gender; or***

(d) ***Any combination of types of behaviors described in paragraphs (a) through (c) of this subsection.***

(Added to NAC by Personnel Comm’n by R147-06, eff. 12-7-2006)

NAC 284.496 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities.

This amendment reduces the timeframe that a newly hired employee to complete a class concerning the prevention of sex- and gender-based harassment from 6 months to 30 days.

The amendment also changes the term “sexual harassment” to “sex- and gender-based harassment” based on the amendment to the definition in NAC 284.0995.

NAC 284.496 Classes and training concerning prevention of ~~sexual~~ sex- and gender-based harassment. (NRS 284.065, 284.155, 284.343)

1. Within ~~6 months~~ *30 days* after an employee is initially appointed to state service, the employee shall attend a certified class concerning the prevention of ~~sexual~~ sex- and gender-based harassment.

2. At least once every 2 years after his or her initial appointment to state service, an employee shall attend a certified refresher class or training concerning the prevention of ~~sexual~~ sex- and gender-based harassment.

3. An appointing authority may require an employee to retake any part or all of the classes or training required by subsections 1 and 2, or to participate in any additional classes or training deemed necessary by the appointing authority.

4. The appointing authority shall retain the proof of completion by an employee of a class or training required by this section.

5. The Division of Human Resource Management will certify the classes and training concerning the prevention of ~~sexual~~ sex- and gender-based harassment required by this section.

(Added to NAC by Personnel Comm'n by R096-03, 10-30-2003, eff. 1-1-2004)

NAC 284.498 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities.

This amendment adds training related to sex- and gender-based harassment to the required training of supervisors and managers. This training must be completed within 30 days of the employee being appointed to a supervisory or managerial position.

The amendment also changes the term “sexual harassment” to “sex- and gender-based harassment” based on the amendment to the definition in NAC 284.0995.

NAC 284.498 Training of supervisory and managerial employees. (NRS 284.065, 284.155, 284.343)

1. Except as otherwise provided in this section:

(a) *Within 30 days after an agency initially appoints an employee to a supervisory position or managerial position, the employee shall attend a training class concerning sex- and gender-based harassment.*

(b) Within 6 months after an agency initially appoints an employee to a supervisory position or managerial position, the employee shall attend a training class concerning work performance standards and the evaluation of the performance of employees.

~~(b)~~ (c) Within 12 months after an agency appoints an employee to a supervisory position or managerial position, the employee shall attend at least one training class which has been approved by the Division of Human Resource Management in each of the following areas:

(1) The following:

(I) Equal employment opportunity; and

(II) Unlawful discrimination and ~~sexual~~ sex- and gender-based harassment;

- (2) Interviewing and hiring;
- (3) Alcohol and drug testing;
- (4) Progressive disciplinary procedures;
- (5) Handling grievances; and
- (6) The following:

(I) Title I of the American with Disabilities Act of 1990, 42 U.S.C. §§ 12111-12117;

(II) The ADA Amendments Act of 2008, Public Law 110-325;

(III) The development of essential functions of positions that are described to each candidate and considered by the appointing authority pursuant to NAC 284.441; and

(IV) The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq.

2. Every 3 years, a supervisor or managerial employee shall complete training which is approved by the Division of Human Resource Management in each of the topic areas described in subsection 1.

3. The appointing authority, at its discretion, may accept, in lieu of the training required by subsection 1, supervisory or managerial training classes in each of the topic areas described in subsection 1 which are approved by the Division of Human Resource Management and taken by the employee during the 3 years immediately preceding the employee’s appointment.

4. In addition to the training otherwise required by this section, the Division of Human Resource Management or an appointing authority may require a supervisor or managerial employee to retake any part or all of the training required by this section, or to participate in any additional training or other classes deemed necessary by the Division of Human Resource Management or appointing authority.

5. As used in this section:

(a) “Managerial position” means a position which is held by an employee who:

- (1) Formally evaluates supervisors;
- (2) Is involved in the hiring and firing of subordinate staff;
- (3) Determines organizational structure within a component of the organization; and
- (4) Develops, monitors and implements policies to accomplish long-range goals.

(b) “Supervisory position” means a position which is held by an employee who:

- (1) Formally evaluates staff;
- (2) Is involved in the hiring and firing of subordinate staff; and
- (3) Establishes policies which affect the performance or behavior of subordinate staff.

[Personnel Div., Rule X part § F, eff. 1-18-82]—(NAC A by Dep’t of Personnel, 10-26-84; 5-27-86; 10-18-89; 3-23-94; R197-99, 1-26-2000; A by Personnel Comm’n by R182-03, 1-27-2004; R057-10, 10-15-2010; R139-12, 10-4-2013; R018-19, 6-8-2020)

NAC 284.650 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities.

This amendment changes the term “sexual harassment” to “sex- and gender-based harassment” based on the amendment to the definition in NAC 284.0995.

NAC 284.650 Causes for disciplinary or corrective action. (NRS 284.065, 284.155, 284.383, 284.385) Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.
2. Disgraceful personal conduct which impairs the performance of a job or causes discredit to the agency.
3. The employee of any institution administering a security program, in the considered judgment of the appointing authority, violates or endangers the security of the institution.
4. Discourteous treatment of the public or fellow employees while on duty.
5. Incompetence or inefficiency.
6. Insubordination or willful disobedience.
7. Inexcusable neglect of duty.
8. Fraud in securing appointment.
9. Prohibited political activity.
10. Dishonesty.
11. Abuse, damage to or waste of public equipment, property or supplies because of inexcusable negligence or willful acts.
12. Drug or alcohol abuse as described in NRS 284.4062 and NAC 284.884.
13. Conviction of any criminal act involving moral turpitude.
14. Being under the influence of intoxicants, a controlled substance without a medical doctor's prescription or any other illegally used substances while on duty.
15. Unauthorized absence from duty or abuse of leave privileges.
16. Violation of any rule of the Commission.
17. Falsification of any records.
18. Misrepresentation of official capacity or authority.
19. Violation of any safety rule adopted or enforced by the employee's appointing authority.
20. Carrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his or her appointing authority.
21. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.
22. Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning **[sexual] sex- or gender-based** harassment.
23. Failure to participate in an administrative investigation authorized by the employee's appointing authority.
24. Failure to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license when required pursuant to NAC 284.652.

[Personnel Div., Rule XII § D, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 7-22-87; 12-26-91; 7-1-94; 11-16-95; R031-98, 4-17-98; A by Personnel Comm'n by R065-98, 7-24-98; R147-06, 12-7-2006; R118-17, 10-25-2018)

NAC 284.696 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities.

This amendment changes the term “sexual harassment” to “sex- and gender-based harassment” based on the amendment to the definition in NAC 284.0995.

NAC 284.696 Unlawful discrimination. (NRS 284.065, 284.155, 284.384)

1. An employee alleging unlawful discrimination based on any pertinent state or federal law or regulation may:
 - (a) Report the alleged discrimination to:
 - (1) The division of the Division of Human Resource Management that investigates ~~[sexual]~~ *sex- and gender-based* harassment and discrimination;
 - (2) The Attorney General;
 - (3) The employee’s appointing authority;
 - (4) An equal employment opportunity officer;
 - (5) A personnel representative of the department in which the employee is employed; or
 - (6) The office charged with enforcing affirmative action within the appropriate university, state college or community college which is part of the Nevada System of Higher Education;
 - (b) Except as otherwise provided in NRS 284.384, use the procedure for the adjustment of a grievance contained in NAC 284.658 to 284.6957, inclusive; or
 - (c) File a complaint, other than a complaint described in NAC 284.658, with:
 - (1) The Nevada Equal Rights Commission pursuant to NRS 613.405; or
 - (2) The United States Equal Employment Opportunity Commission.
2. The appointing authority of an employee who has alleged unlawful discrimination shall promptly notify the deputy attorney general or staff counsel assigned to represent the agency of the allegation and the actions which are being undertaken by the agency to address the allegation.

(Added to NAC by Dep’t of Personnel, eff. 10-26-84; A 9-16-92; 11-16-95; A by Personnel Comm’n by R023-05, 10-31-2005; R026-11, 12-30-2011, eff. 1-1-2012; R033-17, 10-31-2017)

NAC 284.718 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities.

This amendment changes the term “sexual harassment” to “sex- and gender-based harassment” based on the amendment to the definition in NAC 284.0995.

NAC 284.718 Confidential records. (NRS 284.065, 284.155, 284.355, 284.407)

1. The following types of information, which are maintained by the Division of Human Resource Management or the agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished on the condition that the source remain confidential;

(b) Any document which is used in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any recording or document which is used in the process of interviewing an applicant, including, without limitation, a document containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by an employee assistance program offered by the State of Nevada;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person's application or relating to his or her status as an eligible person; and

(j) Information in the record of employment of a current or former employee which relates to:

(1) The employee's performance;

(2) The employee's conduct, including any disciplinary actions taken against the employee;

(3) The employee's usage or balance of his or her annual leave and sick leave;

(4) The employee's race, ethnic identity or affiliation, sex, sexual orientation, gender identity or expression, genetic information, disability or date of birth;

(5) The employee's personal telephone number;

(6) The employee's social security number;

(7) Any grievance filed by the employee pursuant to NAC 284.678, any response to the grievance and any other documents related to the grievance, unless a hearing is held to determine the disposition of the grievance pursuant to NAC 284.6955;

(8) Any complaint filed by the employee pursuant to NRS 281.755, any response to the complaint and any other document related to the complaint, unless a hearing is held to determine the disposition of the complaint pursuant to NAC 284.6955;

(9) Any request made pursuant to NAC 284.5243 and any response to the request;

(10) The health, medical condition or disability of the employee or a member of his or her immediate family; or

(11) Any claim for workers' compensation made by the employee and any documentation relating to the claim.

2. If the employee has requested that his or her home address be listed as confidential, the employee's record of employment must be so designated and list his or her mailing address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

(a) The employee dies; or

(b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his or her immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation relating to ~~[sexual]~~ sex- or

gender-based harassment or discrimination, or both, and any findings of such an investigation are confidential.

6. Any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct are confidential.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 7-21-89; 7-6-92; 11-12-93; R058-01, 9-6-2001; A by Personnel Comm'n by R068-03, 10-30-2003; R182-03, 1-27-2004; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009; R055-10, 6-30-2010; R137-12 & R045-13, 10-23-2013; R175-18, 1-30-2019)

NAC 284.726 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities.

This amendment, proposed by the Division of Human Resource Management, amends NAC 284.726 to include the exception provided in SB 51 that allows the Administrator of the Division of Human Resource Management to make a decision to release any information related to a report of sex- or gender-based harassment or discrimination.

The amendment also changes the term "sexual harassment" to "sex- and gender-based harassment" based on the amendment to the definition in NAC 284.0995.

NAC 284.726 Access to confidential records. (NRS 284.065, 284.155, 284.335, 284.4066, 284.4068, 284.407)

1. Except as otherwise provided in this subsection and subsections 2 and 11, 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 subsection 11 and NRS 284.4068, access to information concerning the results of an applicant's screening test which indicate the presence of a controlled substance is limited to an appointing authority or his or her designated representative and the Administrator or his or her designated representative.

3. Except as otherwise provided in subsections 11 and 12, access to an employee's record 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 record of employment.

(c) An appointing authority or his or her designated representative.

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

(e) 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.

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

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

4. The portion of an employee's record of employment that concerns the health, medical condition or disability of the employee or a member of his or her immediate family must be kept in a locked cabinet, separate from any other portion of the employee's record of employment.

5. Except as otherwise provided in subsection 11, 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. *Except as otherwise provided in section 6 of Senate Bill 51 of the 2021 Legislative Session and subsections 11 and 12 of this section, access to any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to ~~sexual~~ sex- and gender-based harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority is limited to:*

(a) An appointing authority.

(b) A designated representative of the agency with 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. Except as otherwise provided in subsections 11 and 12, 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 with 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.

8. *Except as otherwise provided in subsections 11 and 12, access to any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387 is limited to:*

(a) The employee who is the subject of the internal administrative investigation and who requests a hearing pursuant to NRS 284.390.

(b) The appointing authority or a designated representative of the agency by which the employee who is the subject of the internal administrative investigation 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.

9. 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.

10. Upon request, the Division of Human Resource Management will provide the home address

of any employee maintained by the Division of Human Resource Management *in the employee's record of employment* to the *Division of Welfare and Supportive Services of the Department of Health and Human Services, the Department of Employment, Training and Rehabilitation* and the Internal Revenue Service.

11. 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, *the United States Equal Employment Opportunity Commission* or a court.

12. The appointing authority or a designated representative of the agency with which the employee is employed shall authorize the release of any confidential records under his or her control which are requested by the Division of Human Resource Management for the purpose of conducting a ~~{sexual}~~ *sex- and gender-based* harassment or other discrimination investigation.

[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; R044-15; 12-21-2015; R175-18, 1-30-2019; R018-19 & R124-19, 6-8-2020)

Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

Explanation of Proposed Change: Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities.

SB 51 allows the Administrator of the Division of Human Resource Management to make a decision to release any information related to a report of sex- or gender-based harassment or discrimination. This amendment codifies the process an employee must use to appeal the disclosure of any information related to a report of sex- or gender-based harassment or discrimination.

NEW Appeal of determination to release confidential records.

1. Pursuant to section 5 of Senate Bill 51 of the 2021 Legislative Session, an employee affected by a decision by the Administrator to disclose any information related to a report of sex- or gender-based harassment or discrimination that identifies the employee as the person who reported the allegation, a person who is the subject of such a report or a person who claims to have witnessed an employee being harassed or discriminated against based on his or her sex or gender, shall be notified at least 10 days before ordering the release of the information.

2. A person who receives notice pursuant to subsection 1 may, within 10 days after receipt of a determination to disclose the information, file a written appeal of the decision with the Commission. The appeal must:

(a) Be in writing;

(b) Be addressed to the Administrator;

(c) Address the points outlined in the decision regarding the disclosure of the information;

and

(d) Indicate the points with which the appellant disagrees and express the reasons for the

disagreement.

NAC 284.771 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities.

This amendment prescribes that any disciplinary sanctions imposed by an appointing authority shall be proportionate to a violation related to sex- or gender-based harassment.

The amendment also changes the term “sexual harassment” to “sex- and gender-based harassment” based on the amendment to the definition in NAC 284.0995.

NAC 284.771 ~~{Sexual}~~ *Sex-and gender-based* harassment. (NRS 284.065, 284.155)

1. ~~{Sexual}~~ *Sex- and gender-based* harassment violates the policy of this State and is a form of unlawful discrimination based on sex *or gender* under state and federal law. An employee shall not engage in ~~{sexual}~~ *sex- or gender-based* harassment against another employee, an applicant for employment, or any other person in the workplace.

2. ~~{Sexual}~~ *Sex- or gender-based* harassment is a very serious disciplinary infraction. An appointing authority may impose harsh disciplinary sanctions on, or dismiss, persons who commit ~~{sexual}~~ *sex- or gender-based* harassment including, without limitation, first-time offenders, *and sanctions shall be proportionate to the violation.*

(Added to NAC by Dep’t of Personnel, eff. 10-26-84; A 9-16-92; 11-16-95; A by Personnel Comm’n by R147-06, 12-7-2006)

Steve Sisolak
Governor



Laura E. Freed
Director

Matthew Tuma
Deputy Director

Frank Richardson
Interim
Administrator

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Regulation Small Business Impact Statement

Section 15 of Article 15 of the Nevada Constitution requires the Legislature to provide for a State merit system governing the employment of employees in the Executive Branch of State government and in 1969 the Legislature provided for such in NRS 284. Additionally, NRS 284.013 provides limitations to which employees of the Executive Branch are covered by NRS 284. NRS 284.065 authorizes the Personnel Commission to adopt regulations to carry out the provisions of this chapter.

Due to the limitations of the Nevada State Constitution and NRS 284, the Division of Human Resource Management staff has determined that the adoption of this proposed regulation does not affect small businesses, impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business. This regulation only impacts employees moving into the nonclassified, classified, or unclassified service of the Executive Branch.

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 was prepared properly and is accurate.

Frank Richardson

Frank Richardson, Interim Administrator

6/8/2021

Date