

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

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 regulations pertaining to Chapter 284 of Nevada Administrative Code. A workshop has been set for 9:00 a.m. on August 28, 2019, at the State Library and Archives, Room 110, 100 North Stewart Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 1400, 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>
284.444	Application of probationary period.
284.446	Time counted toward completion of probationary period.
284.448	Time not counted toward completion of probationary period.
284.450	Adjustment of probationary period.
284.892	Duties of employee who is referred to employee assistance program.
284.893	Return to work of employee who tests positive for alcohol or controlled substance while on duty.

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) 684-0136, or 555 E. Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-0034. 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 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 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, Suite 200, Carson City, Nevada, 89701-4204 or call Nora Johnson at (775) 684-0135, no later than five working days before the meeting.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will allow an appointing authority to waive a trial period in writing for a permanent employee who voluntarily transfers. The intent here is to allow an appointing authority greater flexibility in the appointment process similar to other subsections of the regulation. In addition, subsection 3 has been moved to the end of the regulation and subsections 11 and 12 have been moved up in the regulation.

NAC 284.444 Application of probationary period. (NRS 284.065, 284.155, 284.290, 284.300)

1. A probationary employee who transfers:
 - (a) Within the same class must serve the remaining portion of the probationary period.
 - (b) From one class to another class must serve a new probationary period.
2. A permanent employee must serve a trial period if he or she voluntarily transfers:
 - (a) Within the same class; or
 - (b) From one class to another class and such classes are comparable classes ~~†~~

~~†3. An employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period. Except for those unclassified employees who transfer pursuant to subsection 2 of NAC 284.398, the status of a permanent employee may not be attained until the satisfactory completion of the probationary period.†~~

↪ unless the trial period is waived in writing by the appointing authority. If the trial period is waived by the appointing authority, the status of the appointment of the employee remains as it was prior to the transfer.

3. Promotion to a vacant position requires a new probationary or trial period. Promotions which result from reclassification are governed by NAC 284.134 and 284.138.

4. Except as otherwise provided in subsection 11:

(a) No probationary period will be required if a permanent employee is demoted.

(b) A new probationary period will be required if a probationary employee is demoted.

~~†4.†~~ 5. An employee who is reinstated must serve a new probationary period unless it is waived in writing by the appointing authority. If an appointing authority waives the probationary period, the status of the appointment of the employee is permanent.

~~†5.†~~ 6. A probationary employee who is reappointed must serve a new probationary period.

~~†6.†~~ 7. A permanent employee who is reappointed to a class:

(a) At a higher grade level must serve a trial period unless it is waived by the appointing authority.

(b) At the same grade level or a lower grade level is not required to serve a trial period.

~~†7.†~~ 8. An employee who is laid off, but who is reemployed within 1 year, must serve a new probationary period if reemployed in a different class or in a different department than that from which he or she was laid off, and the employee is subject to the provisions of subsection 8 of NAC 284.630.

~~†8.†~~ 9. A person with a permanent disability arising from a work-related injury or occupational disease who is reemployed in a different class or option than his or her regular position must serve a new probationary period as required by NAC 284.6018.

~~†9.†~~ 10. A person who is on a military leave of absence pursuant to NRS 284.359 is entitled to return to the status of appointment held at the time he or she commenced the military leave of absence. If the employee did not complete the probationary period, he or she will only be required to complete the remaining portion thereof. Upon successful completion of the probationary period,

permanent status must be granted to the employee as of the date on which permanent status would have been granted if the employee had not taken a military leave of absence.

~~{10. Promotion to a vacant position requires a new probationary or trial period. Promotions which result from reclassification are governed by NAC 284.134 and 284.138.~~

~~— 11. Except as otherwise provided in subsection 12:~~

~~— (a) No probationary period will be required if a permanent employee is demoted.~~

~~— (b) A new probationary period will be required if a probationary employee is demoted.~~

~~12.} 11.~~ An employee who is restored to his or her former position or class pursuant to NAC 284.462 following a promotional appointment must serve the portion of the trial period which was remaining at the time of the promotion. No probationary period is required if, pursuant to subparagraph (1) of paragraph (c) of subsection 2 of NAC 284.462, an employee is placed in a position in a class equal to or lower than the class held by the employee immediately before the promotion.

12. An employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period. Except for those unclassified employees who transfer pursuant to subsection 2 of NAC 284.398, the status of a permanent employee may not be attained until the satisfactory completion of the probationary period.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 7-21-89; 8-1-91; 12-26-91; 3-1-96; A by Personnel Comm'n by R142-05 & R143-05, 12-29-2005; R141-07, 1-30-2008; R102-15, 12-21-2015, eff. 1-1-2016; R163-18, 1-30-2019)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will clarify the time counted toward the completion of a probationary period and the time counted toward the completion of a trial period. Essentially, a new employee serves an initial probationary period of 6 months or 1 year as required for the class, a permanent employee who has been promoted serves a 1-year trial period in the new class and a permanent employee who voluntarily transfers to a vacant position may be required to serve a trail period (NAC 284.108).

NAC 284.446 Time counted toward completion of probationary *or trial* period. (NRS 284.065, 284.155, 284.290)

1. Except as otherwise provided in subsection 4 and in NAC 284.4375, ~~{a}~~ *an employee serving an initial* probationary ~~{employee}~~ *period* must perform his or her duties continuously in the classified service for either 6 months or 1 year (full-time equivalent) as required for the class in which he or she is employed to attain permanent status. *A permanent employee who promotes must serve a trial period for 1 year full-time equivalent, and a permanent employee who voluntarily transfers may be required to serve a trial period if such is not waived by the appointing authority.*

2. Service in provisional, emergency, or special disabled status must be credited towards a probationary *or trial* period if it is immediately followed by probationary, *trial* or permanent status in the same class.

3. Service in a seasonal position must be credited towards the probationary *or trial* period for the class.

4. If an employee of a governmental agency transfers ~~{to}~~ *within* the classified service pursuant to NRS 284.022 and subsection 2 of NAC 284.398, the time which he or she spent in the ~~{comparable}~~ *same* class in the governmental agency counts toward the probationary *or trial*

period which is required for the state class. If the employee has satisfactorily completed the equivalent of the State's probationary *or trial* period for the new class, the employee is entitled to transfer with permanent status. All continuous service which is equivalent to full-time employment in the governmental agency before the transfer counts towards permanent employee status.

[Personnel Div., Rule VIII § A part subsec. 1, eff. 8-11-73; A 7-3-76]—(NAC A by Dep't of Personnel, 10-26-84; 1-22-90; 8-1-91; 7-6-92; 3-1-96)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will clarify the time counted toward the completion of a probationary period and the time counted toward the completion of a trial period. Essentially, a new employee serves an initial probationary period of 6 months or 1 year as required for the class, a permanent employee who has been promoted serves a 1-year trial period in the new class and a permanent employee who voluntarily transfers to a vacant position may be required to serve a trail period (NAC 284.108).

NAC 284.448 Time not counted toward completion of probationary *or trial* period. (NRS 281.145, 284.065, 284.155, 284.290, 284.345) The following types of leave or temporary status do not count toward the completion of any probationary *or trial* period:

1. Authorized military leave for active service, as set forth in subsection 9 of NAC 284.444.
2. Authorized military leave for training beyond the 15 paid working days authorized by NRS 281.145 during a 12-month period, as prescribed in NAC 284.5875.
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; R039-15, 10-27-15; R163-18, 1-30-2019)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will clarify the time counted toward the completion of a probationary period and the time counted toward the completion of a trial period. Essentially, a new employee serves an initial probationary period of 6 months or 1 year as required for the class, a permanent employee who has been promoted serves a 1-year trial period in the new class and a permanent employee who voluntarily transfers to a vacant position may be required to serve a trail period (NAC 284.108).

NAC 284.450 Adjustment of probationary *or trial* period. (NRS 284.065, 284.155, 284.290)

1. Except as otherwise provided in NAC 284.448, if a probationary *or trial* employee has not, during his or her prescribed probationary *or trial* period, worked the required number of months (full-time equivalent) which are established for the probationary *or trial* period for the class, his or her probationary *or trial* period must be extended until he or she has worked the required number of months.

2. An employee who changes from working full-time to part-time or the reverse will have his or her probationary *or trial* period adjusted to equal the required number of months of service which are applicable to the probationary *or trial* period of the class.

[Personnel Div., Rule VIII § A part subsec. 1, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 3-1-96)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will allow for an employee assistance program (EAP) provider to provide an agency with the documentation required as part of a mandatory referral due to a positive result on an alcohol and/or drug screening test. This amendment will make the documentation process consistent with other documentation required from providers of health care processes such as documentation from a provider of health care of the need to use sick leave.

NAC 284.892 Duties of employee who is referred to employee assistance program. (NRS 284.065, 284.155, 284.407)

1. If an employee is referred to an employee assistance program as a result of a positive result on a screening test or pursuant to NAC 284.653, ~~the or she~~ *the employee or an employee assistance program provider* shall provide to the appointing authority:

(a) Evidence of ~~this or her~~ *the employee's* consultation with a counselor employed by an employee assistance program; and

(b) Any recommendation of the counselor with respect to ~~this or her~~ *the employee's* rehabilitation,

↪ within 5 working days after the date of the initial consultation.

2. The employee *or an employee assistance program provider* shall provide to the appointing authority on a monthly basis all recommendations of the counselor with respect to ~~this or her~~ *the employee's* rehabilitation.

3. The employee *or an employee assistance program provider* shall provide to the appointing authority evidence of ~~this or her~~ *the employee's* completion of any rehabilitation program recommended by the counselor within 5 working days after completing the program.

4. ~~[An employee who fails to provide evidence of his or her consultation with a counselor or successful completion of a rehabilitation program is]~~ *The employee shall be* subject to disciplinary action, *if the appointing authority is not timely provided evidence of the employee's consultation with a counselor or successful completion of a rehabilitation program solely due to the fault of the employee.*

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A 11-12-93)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will allow for an employee assistance program (EAP) provider to provide an agency with the documentation required as part of a mandatory referral due to a positive result

on an alcohol and/or drug screening test. This amendment will make the documentation process consistent with other documentation required from providers of health care processes such as documentation from a provider of health care of the need to use sick leave.

NAC 284.893 Return to work of employee who tests positive for alcohol or controlled substance while on duty. (NRS 284.065, 284.155, 284.407)

1. The appointing authority of an employee who tests positive for the presence of alcohol or a controlled substance while on duty and who, as a result, is subject to disciplinary action pursuant to NAC 284.646 or 284.650 but is not terminated shall, before allowing the employee to return to work, require ~~the employee to~~:

(a) ~~Provide~~ *The employee or an employee assistance program to provide* to the appointing authority documentation from a counselor who is licensed or certified pursuant to chapter 641C of NRS or another health care provider who has training or experience in substance abuse counseling, which verifies that the employee is able to return to duty and perform the essential functions of his or her job.

(b) ~~Submit~~ *The employee to submit* to a screening test.

2. The employee is responsible for the cost of any:

(a) Counseling services the employee receives to verify that the employee is able to return to duty and perform the essential functions of his or her job and any documentation of those services; and

(b) Screening test,

↪ required pursuant to subsection 1.

3. An employee who fails or refuses to submit to a screening test required pursuant to subsection 1 is subject to disciplinary action, including, without limitation, termination, at the discretion of the employee's appointing authority.

(Added to NAC by Personnel Comm'n by R066-09, eff. 10-27-2009; A by R195-09, 4-20-2010; R138-12, 10-4-2013)



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 | www.hr.nv.gov | Fax: (775) 684-0122

August 7, 2019

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. These regulations only impact 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.

Peter Long

Peter Long, Administrator

August 7, 2019

Date