

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 3137, Carson City, Nevada; and via video conference in Las Vegas at the Grant Sawyer State Building, Room 4412E, 555 East Washington Avenue.

MEETING MINUTES
Tuesday December 12, 2017

STAFF PRESENT IN CARSON CITY:

Peter Long, Administrator, DHRM
Shelley Blotter, Deputy Administrator, DHRM
Michelle Garton, Supervisory Personnel Analyst, DHRM
Carrie Hughes, Personnel Analyst, DHRM

OTHERS PRESENT IN CARSON CITY:

Alys Dobel, Personnel Officer, DMV

I. Call To Order

Shelley Blotter: Opened the meeting and introduced herself as the Deputy Administrator for DHRM. She explained that the reason for the workshop was to solicit comments from affected parties with regard to the regulations proposed for permanent adoption. Based on the feedback received, the proposed language may be changed or deleted and additional regulations may be affected. If the regulations are submitted to the Personnel Commission for adoption, amendment or repeal, the minutes from the workshop and any other comments received will be provided to the Personnel Commission when the regulation is presented for their consideration. Staff will provide an explanation of the proposed change with time allowed for comments.

II. Review of Proposed Changes to NAC 284

284.544 Sick leave: Leave without pay; catastrophic leave; receipt of benefits for temporary total disability; computation.

Carrie Hughes: Addressed NAC 284.544, sick leave; leave without pay, catastrophic leave; receipt of benefits for temporary total disability; computation. The intent of the amendment is to resolve the apparent conflict with NAC 284.5775 and clarify that an employee receiving benefits for a temporary total disability may not use annual leave to supplement the benefit, unless he or she has exhausted his or her sick leave or is on federally protected family and medical leave. **Shelley Blotter:** Stated that the change came about during a request for interpretation of regulations and the realization that there was a conflict between two regulations. When looking at the history, this language had been removed in rule simplification in an attempt to make the regulations simpler, however in the end, it was determined necessary to add the language back in.

Shelley Blotter: Invited questions or comments regarding the regulation. **Alys Dobel:**

Introduced herself as the Personnel Officer at the DMV. She sought clarification of the explanation. If a person is off on disability for workers' compensation and they are in a use it or lose it situation with their annual leave, would they be allowed to take the annual leave in such a circumstance? **Shelley Blotter:** Stated she believed this was the example brought to DHRM's attention and she believes the answer is no, however she deferred to Carrie Hughes for further clarification. **Carrie Hughes:** Confirmed that this was the precise question brought to attention. There was consultation with Risk Management to inquire as to current recommendations as they manage the State's Workers' Compensation Program. This is aligned with current practice. The question with regard to annual leave and lose it or use it comes back to how NRS 281.390 subsection 5 mandates that it be handled. **Alys Dobel:** Asked for clarification on the following question: "So departments, if they are in a situation like that with an employee, at the end of the year, we would have to pay them up to the 240 hours. Am I clear on that?" **Carrie Hughes:** Explained that there are provisions in NRS 284 in terms of how the procedure for request of leave must take place.

Shelley Blotter: Invited further comments. There were none.

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| 284.589 | Administrative leave with pay. |
| 284.656 | Notice. |
| 284.6561 | Hearing. |
| NEW | Procedure to request hearing to determine reasonableness of dismissal, demotion or suspension. |
| 284.778 | Request for hearing and other communications. |

Michelle Garton: Introduced herself as the Supervisory Personnel Analyst with DHRM's Consultation and Accountability Unit. She addressed regulation amendments resulting from a few concept changes related to the disciplinary process. First, the term "hearing" has been changed to "pre-disciplinary review" in the hearing regulation, which also affects the administrative leave and the notice regulations. This change is proposed in order to clarify that this meeting is different from a hearing to determine the reasonableness of a dismissal, demotion or suspension (appeal hearing) with a hearing officer of the Personnel Commission. The next concept is related to the effective date of the disciplinary action. DHRM has included in the hearing regulation and the newly proposed regulation that the effective date of disciplinary action is the first day the discipline takes effect. In the case of a five-day suspension, for example, the effective date of the discipline is the first day. DHRM also proposes to break out subsection 9 of NAC 284.6561 into its own regulation related to the procedure for appealing a disciplinary action. DHRM is proposing to add the requirement that the written notification of an appointing authority's decision regarding discipline, after the pre-disciplinary review is held, must accompany an appeal. This requirement is waived when the disciplinary action is immediate, pursuant to NAC 284.6563. These regulation changes are related to dismissal, demotion and suspension. A whistleblower appeal or an appeal of involuntary transfer have different rules and are not subject to these regulations.

Michelle Garton: Reviewed the regulations individually. In NAC 284.589, the proposed amendment to subsection 6 simply adds pre-disciplinary review, as that will be the term used to describe the meeting required pursuant to NAC 284.6561. Similarly, the amendments in NAC 284.656 replace "hearing" with "pre-disciplinary review" because the meeting requirement pursuant to NAC 284.6561 is being described. For NAC 284.6561, the regulation is amended with the terminology change previously described. Language has also been added in subsection 5 to explain that during the pre-disciplinary review, an employee will have the opportunity to

rebut any allegations and provide mitigating information. Subsection 9 has been removed and placed into a new regulation. Also included here is that the idea that the effective date of disciplinary action is the first day the disciplinary action takes effect, which was described previously.

In regards to the procedure to request hearing to determine reasonableness of dismissal, demotion or suspension, the new regulation is intended to address the procedure an employee may use for appealing a dismissal, demotion or suspension. It is essentially the language from subsection 9 of NAC 284.6561, with the addition that the written notification of an appointing authority's decision regarding dismissal, demotion or suspension after the pre-disciplinary review is held, must accompany an appeal. The blue underlined font in the handout provided is the waiver of this requirement, when the disciplinary action is immediate, pursuant to NAC 284.6563. The idea that the effective date of disciplinary action is the first day the disciplinary takes effect is also included. For NAC 284.778, request for hearing and other request, the underlined blue font in the handout provided includes language referring back to the new regulation just discussed. It falls in the Practice Before Division of Human Resource Management section of NAC 284, and the new regulation previously addressed is intended to go into the Disciplinary Procedures section.

Shelley Blotter: Added that DHRM is basically rebranding. Traditionally, this has been called the pre-disciplinary hearing. The language is being changed, so that people are not confused on the process taking place prior to the hearing officer hearing. She invited comments or questions.

Alys Dobel: Commented that she likes the changes, believing that they will be very helpful. In the past, employees have been confused by the word "hearing." Sometimes the language about the waivers can also be confusing. She likes the fact that they will have to provide the document that actually is a final say in whether it is a suspension, demotion or termination. At the DMV, it is signed by the director. Employees are told that is the document which will inform them as to the true effective date and what the effective action is. **Shelley Blotter:** Thanked Ms. Dobel for her comments.

284.882 Administration of screening tests.

Carrie Hughes: Discussed NAC 284.882, administration of screening tests. For employee candidate and employee breath alcohol testing that is not federally regulated, NAC 284.882 provides an equipment standard similar to the U.S. Department of Transportation's current standard. The U.S. Department of Transportation's current standard is that equipment used for breath alcohol testing not only be approved by the National Highway Traffic Safety Administration (NHTSA) but that it also be published on one of the administration's conforming lists. However, as of January 1st, 2018, alcohol breath testing regulated by the U.S. Department of Transportation may be performed on equipment approved by NHTSA, but not yet published on their conforming list. This amendment is intended to continue the matching equipment standard for federally regulated testing and testing that is not federally regulated. This will prevent the need to identify or track which collection sites can be used for testing.

Shelley Blotter: Invited questions or comments. There were none.

284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form.

Carrie Hughes: Addressed NAC 284.888, request for employee to submit to screening test; interpretation of grounds; completion of required form. This amendment includes three changes. First, based on legislative changes to the related statute, NRS 284.4065, it adds language to clarify when an accident is intended to reference a motor vehicle crash or a different type of accident. Secondly, language has been removed from subsection 3 to conform the regulation to NRS 284.4065 in identifying the circumstances outlined in subsection 2 of NRS 284.4065, a law enforcement officer discharging a firearm other than by accident, driving a motor vehicle in such a manner as to cause bodily injury, or substantial property damage or involvement in a work-related accident, motor vehicle crash or injury, as exempt from the requirements in subsection 1 of NRS 284.4065, including preparing and presenting to an employee the objective facts leading to reasonable suspicion of impairment. Finally, new language has been proposed since the posting for this workshop; the underlined changes can be found in the provided draft amendment handout. The language is being proposed to clarify that an appointing authority may delegate, in a contract or agreement, the authority to direct an employee to submit to a screening test in the circumstances outlined in paragraphs b and c of subsection 2 of NRS 284.4065, driving a motor vehicle in such a manner as to cause bodily injury or substantial property damage or involvement in a work-related accident, motor vehicle crash or injury.

Shelley Blotter: Stated that the current version of the regulation is in conflict with the Drug and Alcohol Program Overview. It was discovered through a hearing officer decision and case that leaving in the reference to paragraph b in subsection 3 created a conflict. This Overview is being updated. However, until this regulation goes into effect, the employee would need to be notified of this type of a test. She asked for confirmation of Ms. Hughes, who confirmed this understanding.

Shelley Blotter: Invited questions or comments.

Peter Long: Informed attendees of an issue he just became aware of yesterday in working with Fleet Services. Occasionally, employees are bringing vehicles back with damage which they are not reporting to Fleet Services, and the damage is found later. This could have an effect on when or if such a test should be requested. It could also have bearing on someone determining whether it is \$500 of damage or more. It is Mr. Long's understanding that Fleet Services is planning on starting to notify agencies that this has occurred, and that they may want to keep track of more than two crashes in one year. This may be something that the regulation needs to address. He is uncertain how a screening test could be requested when the damage is discovered later and not when the vehicle is returned. **Shelley Blotter:** Commented that in a case of alcohol, it would likely be out of their system already. However, there is a potential for drug detection, depending on the period of time since use. **Peter Long:** Added that agencies might address the issue of vehicle damage being unreported by including a remedy in prohibitions and penalties.

Shelley Blotter: Invited additional questions or comments. There were none.

III. Adjournment

Shelley Blotter: Adjourned the meeting.