

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 2135, Carson City, Nevada; and via video conference in Las Vegas at the Grant Sawyer State Building, Room 4412E, 555 East Washington Avenue.

MEETING MINUTES
Friday, June 15, 2018

STAFF PRESENT IN CARSON CITY:

Peter Long, Administrator, Division of Human Resource Management (DHRM)
Shelley Blotter, Deputy Administrator, DHRM
Beverly Ghan, Deputy Administrator, DHRM
Michelle Garton, Supervisory Personnel Analyst, DHRM

STAFF PRESENT IN LAS VEGAS:

OTHERS PRESENT IN CARSON CITY:

Ashley Kopp, Management Analyst, Department of Health and Human Services
Melody Duley, Personnel Officer, Division of Welfare and Supportive Services
Mavis Affo, Personnel Officer, Department of Public Safety (DPS)
Kevin Ranft, American Federation of State, County and Municipal Employees
(AFSCME)

OTHERS PRESENT IN LAS VEGAS:

Brian Boughter, Personnel Officer, Department of Employment, Training and
Rehabilitation (DETR)
Molly Koch, Personnel Analyst, DETR
Tim McFarling, Associate Vice President, Human Resources, Nevada System of
Higher Education, Business Center North

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

284.576	Catastrophic leave; use and administration, appeal of denial.
284.468	Standards for performance of work.
284.718	Confidential records.
284.726	Access to confidential records.
284.374	Active lists: Removal and reactivation of names; no requirement or refusal to consider certain persons.
284.058	“Eligible person” defined.
284.108	“Trial period” defined.
284.444	Application of probationary period.
NEW	Restoration of permanent employee who voluntarily transfers and either fails to complete trial period in the new position or voluntarily chooses to revert to his or her prior position.
284.360	Certification and provision of certain lists by Division; certification of eligible persons ranked or unranked lists or waiver of lists.
284.172	Rate of pay; effect of promotion.
284.204	Adjustment of steps within same grade; Conditions for approval; request; effective date; revocation.
284.437	Underfilling of positions.

Michelle Garton: Introduced herself as the Supervisory Personnel Analyst for DHRM’s Consultation & Accountability Unit and addressed NAC 284.576, which contains two amendments. The first is based on SB 361 of the 2017 Legislative Session. Similar amendments were previously adopted and approved, requiring the granting of annual leave, sick leave and leave without pay for an employee in circumstances related to domestic violence. The amendment requires that catastrophic leave be approved for an employee eligible to receive catastrophic leave. The employee must be a victim or the immediate family member of a victim of domestic violence, if the employee is not the alleged perpetrator. The employee must have been employed for at least 90 days. The total amount of leave related to domestic violence must not exceed 160 hours of all combined leave types. An appointing authority may require evidence that the employee’s attendance is necessary in circumstances when an immediate family member is the victim of domestic violence.

The intent is that the employee’s situation must qualify for catastrophic leave and catastrophic leave hours from the agency bank, or donations must be available. It is not the intent that hours

be granted if none are available.

The second amendment removes the requirement for agencies to report to the Administrator of DHRM information regarding the donation or usage of catastrophic leave by employees, which is currently available through the payroll system as well as information related to the nature of the disability of each employee using catastrophic leave. Removal of Subsections 7 and 8 is intended to ease the administrative burden on agencies to submit reports relates to catastrophic leave. The potential downside of not reporting this information to DHRM is that Central Payroll would not be able to provide support in terms of reconciliation, if the information is not reported. If an issue comes up within the agency, Central Payroll would be unable to provide a failsafe to reconcile. Input is welcome in terms of holding off on such change until the new ERP software is rolled out, and specifically input regarding removing Subsection 7(b).

Shelley Blotter: Invited comments.

Melody Duley: Asked whether the requirement to exhaust all other leave types still applies for an employee requesting catastrophic leave for domestic violence. **Michelle Garton:** Confirmed that this is a qualifier.

Melody Duley: Expressed support for removing 7(b) as well as alleviating the reporting requirement, however she acknowledges this would make less information available in case of audit. For agency bank purposes, agencies will still need to track. This means the information should still be available, even if it is not reported to Central Payroll.

Brian Boughter: Expressed support for removing 7(a) and 7(b), preferring the lessening of reporting functions. The concern overall is determining how someone qualifies. **Michelle Garton:** Stated there have been no requests by agencies for consultation services regarding leave for domestic violence. **Brian Boughter:** Stated that DETR has not faced this issue thus far. **Shelley Blotter:** Noted that this relates to statute change during the last session and there has not yet been much experience with this. They may need to assist as circumstances arise. In some cases, documentation such as police report would substantiate a claim. **Brian Boughter:** Noted the sensitivity of the subject matter, which may lead to uncomfortable situations when collecting this type of documentation.

Shelley Blotter: Invited further comments. There were none.

Michelle Garton: Addressed NAC 284.468. The amendment revises the terms used to define job elements, so that they will align with a revised classified employee performance evaluation process. Proposing this amendment now will provide preparation for changing the performance evaluation process in the future. **Peter Long:** Stated that the Governor's Office asked the Department of Administration and DHRM to coordinate an HR working group for the State. The group has been in place since December, 2017, and has been meeting on a biweekly basis to review concerns regarding all aspects of HR operations and responsibilities. Many of these proposed regulation amendments are a result of recommendations from the HR working group. This regulation looks at work performance standards which would tie to the employee evaluation process.

Shelley Blotter: Invited comments.

Brian Boughter: Referenced work performance standards and asked whether the expectation of the agency would be immediate revision of current work performance standards to more closely align with the items identified. **Peter Long:** Replied that he doesn't believe they have gotten that far. If the standards get through the regulation workshop, the Personnel Commission and the Legislative Commission, then direction will be provided to the agencies. The intent is to make things easier for employees and agencies when putting together the appraisals. It is not expected that Mr. Boughter be required to revise 1,500 to 1,800 work performance standards for all employees overnight.

Tim McFarling: Stated that there is reference to a revised process for performance review and asked for an overview of expectations. **Peter Long:** Explained that the items listed in the performance of work would translate to the employee appraisal. The job elements would all have the same weighting. **Tim McFarling:** Noted that the job elements are quantitative and qualitative. He asked if the intent is for them to replace the language under the heading for the performance standards on the right hand side of the form (more descriptors). **Peter Long:** Confirmed the intent. The job element would be the larger category and performance standard would be the descriptor under the job element. **Shelley Blotter:** Added that the draft performance evaluation allows the potential response "Does not meet standard, meets standard, or exceeds standard," which would be the only checkbox. Alternatively, comments could be added in. It is encouraged that if the assessment states "Does not meet standards," that comments be included. **Tim McFarling:** Asked for a timeline, noting that his agency has just implemented an ERP system as of last October. They are looking to incorporate functionality for performance appraisals. They would prefer not to move forward with existing forms, if this is soon to be changed. **Peter Long:** Acknowledged that the intent for the timeline is as soon as possible, likely six months to one year.

Michelle Garton: Addressed NAC 284.718 and 284.726. The changes to NAC 284.718 clarify that the type of information included in the regulation either held by an agency or DHRM is confidential. It will not be released, except as allowed in NAC 284.726. Certain grievances, health and workers' compensation information has been included in NAC 284.718, which would be included in an employee's record of employment and considered confidential. With both NAC 284.718 and 284.726, consistency is created by using the term "record of employment," rather than "file." The term "record of employment" is intended to be broader than the personnel folder, which would be commonly referred to as a service jacket kept by Central Records, as it refers to information that would be either held by DHRM or an agency. The intent is to ease information sharing across agencies. Under federal and State laws, the State of Nevada is considered one employer. Agencies will still have the ability to limit access to the information using common protocols in place to allow specific individuals to have access. **Shelley Blotter:** Stated that an agency personnel liaison, head agency HR person, could access the records when making decisions related to hiring current State employees into their agency.

Molly Koch: Expressed appreciation for the regulation change. One of the hardest aspects of an employee moving from one agency to another is determining their medical history in terms of

FMLA and Workers' Comp. The ability for agencies to share information will make administration of the programs much easier.

Kevin Ranft: Addressed the issue of grievances being reviewed by other agencies. Sometimes an employee will simply accept a step one or step two response. There is an option to accept or withdraw the grievance. Often times, these employees do not want the information carried over to other agencies, should they transfer or promote. AFSCME advises that the employee withdraw the grievance if it has been settled. He asked whether a withdrawn grievance would not go into the official file. **Shelley Blotter:** Surmised that it would be in the Incident Tracking System and agencies would have the ability to review whatever is contained in that system. If the employee and management have come to an agreeable resolution, that is contained in the history as well.

Kevin Ranft: Asked whether there has been a change with regard to accepting a supervisor's recommendation on a certain step versus withdrawing by the employee and whether all these activities are seen through the record keeping process. **Shelley Blotter:** Said there is no change in terms of how it is currently being used. The point is to state that grievances are confidential up to the point where it goes to the EMC, which is a public hearing. **Kevin Ranft:** Stated that there are concerns that the grievance would follow an employee. **Shelley Blotter:** Reiterated that is a universal viewpoint, where the State of Nevada is considered as one employer, rather than agency-specific.

Beverly Ghan: Introduced herself as Deputy Administrator of the Compensation, Classification & Recruitment Section. DHRM proposes an amendment to subsection 4 of NAC 284.374 to include and clarify that the 12-month period in which an agency can refuse to consider an eligible person who has been subjected to discipline includes decisions made not only by a hearing officer but also decisions made by the court on a judicial review or a decision by the Supreme Court of Nevada.

Shelley Blotter: Invited comments, noting that this is just a clarification of the process, as it goes to levels beyond the initial hearing by a hearing officer. There were no comments.

Beverly Ghan: Addressed the amendment to NAC 284.058, which is broadens the definition of the term "eligible" to include not only those applicants meeting minimum qualifications and passing exams when required, but also to include those eligible persons listed in NAC 284.358, which are the reemployment, reassignment (those on the 700 Hour list), and transfers (noncompetitive appointments).

Shelley Blotter: Invited comments. There were none.

Beverly Ghan: Discussed the amendment to NAC 284.108 to include a trial period that will be served not only by the employees that promote, but also by those employees that are laterally or comparably transferring into a position, in the definition of "trial period." NAC 284.444 addresses the application of the trial period. The amendment adds subsection 2 to the regulation to require a trial period be served by an employee who laterally or comparably transfers. There is a small change to subsection 10 to emphasize the requirement for probation or a trial period, if

an employee promotes.

Shelley Blotter: Invited comments.

Kevin Ranft: Said this is a concern with some State employees, noting that serving a probationary period upon transferring may be a deterrent from doing so. AFSCME is opposed to it at this time, but would like to know the reasoning behind the proposal. **Peter Long:** Stated that is seen as a benefit for employees and agencies. Currently, without a trial period, agencies are reluctant to bring someone onboard, because they have not had time to evaluate someone. It is a hindrance for employees to transfer to another position in another agency, which may be better for their career path. If someone fails to complete the trial period or wishes to voluntarily return to their previous job, there is a new proposed regulation to allow both options.

Melody Duley: Expressed support of the proposed change as being beneficial to both agencies as well as employees. She agrees that agencies are hesitant to take on a lateral or comparable transfer without a trial period. This will encourage them to do so.

Tim McFarling: Stated that the concern is the restoration process. The changes would place more people into the displacement from those hired to backfill positions. Restorations are difficult, involving a number of people, including the person being restored, the person backfilling the position and the agency that has spent time training another employee. At face value it sounds like a good thing, however, what needs to be considered is to what extent they would add to restoration and difficulties for backfilled and displaced employees. **Peter Long:** Noted that they proposed restoration regulation will be discussed next.

Beverly Ghan: Explained that a recommendation has been made to have employees who transfer serve a trial period. The proposed new regulation will provide guidelines to be followed if an employee who transfers fails in a trial period or voluntarily chooses to revert to the position from which they transferred. Subsection 1 requires that if a permanent employee voluntarily transfers and fails to complete the trial period in the new position or chooses to revert, he or she must be restored to the position from which the employee transferred, if such position is vacant, or to the same class that is vacant, or to a comparable class that is vacant and of which the employee meets the minimum qualifications, or be placed on a reemployment list. The reversion can occur at any point during the trial period. Subsection 2 states that when an employee fails to complete the trial period and will be reverted, the appointing authority must give 30 days' written notice to the agency to which the employee will be reverted. Subsection 3 includes steps an employee and agency must take when the employee voluntarily chooses to revert, requiring that the employee must inform his or her current agency. The agency must then give 30 days' notice to the receiving agency.

Beverly Ghan: Noted that Mr. McFarling had expressed concern regarding displacing other employees that may have been trained. The proposed change avoids displacements. She invited him to reaffirm his concerns. **Tim McFarling:** Affirmed that the explanation does provide an answer to his questions, stating his understanding is that an employee who reverts and whose position is currently occupied would have his/her name placed on the reemployment list. **Peter Long:** Clarified that if the position is vacant, they go back to the position. If it is not

vacant, they would go back to a position in the class that is vacant, or they would go back to a position in a comparable class for which they are qualified, or they would be placed on the reemployment list. Worst-case scenario would be the reemployment list. The employee should be made aware to all possibilities, should they choose to transfer.

Shelley Blotter: Invited further comments.

Ashley Kopp: Stated that the Department of Health and Human Services is supportive of the regulation in general, and appreciates the work done.

Beverly Ghan: Addressed NAC 284.360, which includes a small change in subsection 6 to allow the Administrator of DHRM to unrank or waive a list requirement of a class as determined appropriate by him or her. **Peter Long:** Stated that the change would allow an agency to make their case to the Administrator of DHRM that a list should be unranked.

Shelley Blotter: Invited comments. There were none.

Beverly Ghan: Discussed the addition of subsection 3 to NAC 284.172, which will allow the appointing authority to request an accelerated salary pursuant to NAC 284.204. **Peter Long:** Described the intent of the amendment, noting that he often receives calls from agencies and employees. Currently, if an employee promotes, they are limited to a maximum increase of 10 percent. Yet, under current regulation, you can bring someone new from the outside and request an accelerated rate. Therefore, a brand new employee can make more than a long-term employee. This would allow an agency to use the provisions of NAC 284 to adjust a promoting employee's step.

Shelley Blotter: Invited comments. There were none.

Beverly Ghan: Addressed the amendment to NAC 284.204, which removes subparagraph (c) of subsection 1, removing the ability to adjust a supervisor's steps based on the pay of the subordinate. **Peter Long:** Noted that this subsection was added 15 years ago with an amendment since that time. It originally indicated that the supervisor's step could be adjusted. It was then changed to not to exceed two steps. Moving in the direction of viewing the State as one employer, it was brought to DHRM's attention that agencies may not be applying this equitably across agency lines because there are agencies that may be fortunate enough to have funding available to increase the supervisor's step and other agencies that do not have available funding and are unable to increase the supervisor's step. In the interest of equity across State service, it is proposed that this section be removed.

Shelley Blotter: Invited comments.

Mavis Affo: Commented that the change is appreciated for DPS, as they have dealt with issues related to this. There have been issues in the Department, including grievances stemming from lack of funding since the recession.

Kevin Ranft: Stated that AFSCME is neutral on the amendment. The Department of

Corrections has Senior Correctional Officers (Cos) and COs, resulting in questions of authority. Many Senior COs are not given the supervisor tasks because they are not paid two grades higher than a CO. He asked whether the amendment would resolve this issue. **Peter Long:** Stated that this would not resolve the issue, as Senior COs are not eligible for the adjustment in the first place. The duties of a position and responsibilities of a position are associated with the grade of the position. Steps are more related to longevity with the State. Ultimately, the supervisor will be making more than a long-term employee once they become a long-term employee.

Shelley Blotter: Invited further comments. There were none.

Beverly Ghan: Addressed NAC 284.437, which references underfilling of positions. The proposed amendment allows the underfill at or below the journey level at the discretion of the appointing authority. Also being recommended is to allow for underfills above the journey level with written approval by DHRM. She invited questions.

Melody Duley: Stated that she is in support of the regulation change. She has found underfilling positions to be an extremely useful tool when the agency has been unable to fill at the full level of the position. Additional discretion is appreciated. Also appreciated is the ability to request underfilling at a higher level for positions that are difficult to fill and there is not a large applicant pool.

Kevin Ranft: Said this is a catch-22 situation. The need for underfill positions is understood. The change does provide for unintended consequences for people who may wish to use this option rather than the regular process to fill the position. The option should not be overused, but only used when needed to fill positions and ensure that the public is being taken care of. There is potential for abuse in the situation. **Peter Long:** Noted that his intent with “upon the approval of DHRM,” is to review the request carefully and ensure there is a valid reason. It affords opportunities for current employees to move up to higher level positions for which they might not currently qualify. By moving up one class, this can move them to higher classes. **Kevin Ranft:** Thanked Peter Long for the assurances.

Shelley Blotter: Invited further comments. There were none. She reminded attendees that comment cards are available, if anyone wished to submit comments subsequent to the meeting. They will be discussing the feedback received today. Anything they decide to move forward with will be sent to the Legislative Council for preadoption review. Potentially, these will be discussed in the upcoming Personnel Commission meeting in September or December, if they move forward.

III. ADJOURNMENT

Shelley Blotter: Adjourned the meeting.