

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) 684-0148, 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 June 25, 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>
284.405	Reassignment of employee with disability who is unable to perform essential functions of position with or without reasonable accommodation.
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.
284.586	Civil leave with pay to vote.
284.589	Administrative leave with pay.
NEW	Required administrative leave with pay.
284.458	Rejection of probationary employees; rejection of permanent employees on trial period; removal of ineligible request for adjustment of grievance or appeal from procedure; notice; satisfactory completion of probation.
NEW	Removal of ineligible request for appeal from process; notice.
284.693	Removal of ineligible request for adjustment of grievance or complaint from procedure; notice; appeal.
284.210	Differential rate of pay for qualifying shift.
284.255	Holidays: Holiday pay.
284.242	Overtime: Authorization.
284.498	Training of supervisory and managerial employees.
284.726	Access to confidential records.

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) 684-0148, 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

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

LAS VEGAS

Grant Sawyer State Office Building,
555 E. Washington Avenue

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 require that an employee who is proceeding through the reassignment process must be made aware by his or her agency of the consequences of exhausting his or her reassignment rights pursuant to subsection 10 of the regulation.

NAC 284.405 Reassignment of employee with disability who is unable to perform essential functions of position with or without reasonable accommodation. (NRS 284.065, 284.155, 284.305)

1. The Division of Human Resource Management shall assist an appointing authority with the reassignment of an employee with a disability who is unable to perform the essential functions of his or her position with or without reasonable accommodation by identifying any vacant or soon to be vacant positions for which the employee meets the minimum qualifications. Those vacant or soon to be vacant positions may include positions that are outside of the geographical location of the employee. A refusal by the employee of an offer of a position that is outside of the geographical location of the employee will not affect the employee's reassignment rights pursuant to this section. The employee **must be made aware by the employee's agency that he or she** will continue to be referred to positions pursuant to this section until the reassignment rights of the employee are exhausted in accordance with subsection 10.

2. The appointing authority of the employee shall, through the interactive process, determine if a vacant or soon to be vacant position at the employee's current grade exists within the employee's agency. If such a position is identified and the employee meets the minimum qualifications, as determined by the Division of Human Resource Management pursuant to NAC 284.317, and is able to perform the essential functions of the position with or without reasonable accommodation, the appointing authority shall offer the employee the position unless the appointing authority demonstrates that such an appointment would cause an undue hardship to the appointing authority.

3. If the appointing authority of the employee is not able to reassign the employee pursuant to subsection 2, the appointing authority of the employee shall notify the Division of Human Resource Management. For at least 30 days after receipt of the notification, the Division of Human Resource Management shall place the employee on reassignment lists for any vacant or soon to be vacant positions being filled at the grade of the current position of the employee if the employee meets the minimum qualifications for the positions and has expressed an interest in those positions. If such a position is determined to be available and it is determined through the interactive process that the employee is able to perform the essential functions of the position with or without reasonable accommodation, the employee must be offered the position unless it is demonstrated that such an appointment would cause an undue hardship.

4. If reassignment is not available pursuant to subsection 2 or 3, the appointing authority of the employee shall, through the interactive process, determine if a vacant or soon to be vacant position below the grade of the current position of the employee exists within the employee's agency. If such a position is identified and the employee meets the minimum qualifications, as determined by the Division of Human Resource Management pursuant to NAC 284.317, and is able to perform the essential functions of the position with or without reasonable accommodation, the appointing authority shall:

(a) Consider the employee for any such positions in the order of the grade of the positions beginning with the grade closest to the grade of the current position of the employee if multiple positions with different grades are determined to be available within the employee's agency; and

(b) Offer the employee such a position unless the appointing authority demonstrates that such an appointment would cause an undue hardship to the appointing authority.

5. If reassignment is not available pursuant to subsection 2, 3 or 4, the appointing authority of the employee shall notify the Division of Human Resource Management. For at least 30 days after receipt of the notification, the Division of Human Resource Management shall place the employee on reassignment lists for vacant or soon to be vacant positions being filled at or below the grade of the current position of the employee if the employee meets the minimum qualifications for the positions and has expressed an interest in those positions. If such a position is determined to be available and it is determined through the interactive process that the employee is able to perform the essential functions of the position with or without reasonable accommodation, the employee must be offered the position unless it is demonstrated that such an appointment would cause an undue hardship.

6. The appointing authority of an employee to whom subsection 1 applies may offer the employee a position in the employee's agency below the grade of the current position of the employee if:

(a) A vacant or soon to be vacant position at the grade of the current position of the employee is not identified within the employee's agency;

(b) The employee meets the minimum qualifications of the position as determined by the Division of Human Resource Management pursuant to NAC 284.317; and

(c) It is determined that the employee is able to perform the essential functions of the position with or without reasonable accommodation unless it is demonstrated that such an appointment would cause an undue hardship.

→ If the employee accepts the position offered pursuant to this subsection, the employee may continue to exercise his or her reassignment rights pursuant to subsections 1 to 5, inclusive, and subsections 7 to 12, inclusive, for a period of 60 days following the appointment.

7. An employee may not be reassigned to underfill a vacant or soon to be vacant position allocated at grade 30 or higher if that position is allocated at a higher grade than the position the employee currently occupies.

8. After the reassignment of an employee is made pursuant to this section, the status of appointment of the employee will be determined in accordance with NAC 284.444.

9. The reassignment of an employee which is made pursuant to this section will take precedence over all other types of appointments and use of lists, including, without limitation, the lists, other than reemployment lists, set forth in NAC 284.358.

10. Except as otherwise provided in subsection 6, reassignment rights pursuant to this section are exhausted when an employee:

(a) Accepts a reassignment at or below the grade of the current position of the employee;

(b) Accepts a position through a competitive or noncompetitive appointment;

(c) Notifies the appointing authority in writing that he or she no longer wishes to seek reassignment;

(d) Has not been appointed from any of the lists on which his or her name was included in accordance with this section and the Division of Human Resource Management determines that there are no other positions available;

(e) Refuses a position within his or her geographical location that is at or below the grade of the current position of the employee; or

(f) Accepts reemployment pursuant to NAC 284.6014.

11. The provisions of this section do not prohibit an employee from accepting another position through a competitive or noncompetitive appointment.

12. As used in this section:

(a) "Agency" includes:

(1) A department as defined in NAC 284.055;

- (2) Any other entity of the Executive Branch of State Government which employs persons in the classified service, including, without limitation, the office of an elected officer;
 - (3) A division of the Department of Health and Human Services; and
 - (4) Any division or institution of the Nevada System of Higher Education.
- (b) "Geographical location" has the meaning ascribed to it in NAC 284.612.
- (c) "Soon to be vacant" means a position in which:
- (1) The Division of Human Resource Management is aware will have an imminent vacancy;
 - (2) A list has not been certified for the position; and
 - (3) The employee will be able and available to fill the position within 30 days after the position becomes open.
- (d) "Undue hardship" has the meaning ascribed to it in 29 C.F.R. § 1630.2.

(Added to NAC by Personnel Comm'n by R097-16, eff. 11-2-2016)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will clarify that time counted toward the completion of a probationary period is also the time counted toward the completion of a trial period. A trial period is essentially the 1-year probationary period a permanent employee who has been promoted to or voluntarily transfers to a vacant position must serve (NAC 284.108). Because a trial period is a type of probation, the amendments to NAC 284.446 will clarify that it is referring to both types of probationary periods.

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 probationary *or trial* employee 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.
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 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 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 that time counted toward the completion of a probationary period is also the time counted toward the completion of a trial period. A trial period is essentially the 1-year probationary period a permanent employee who has been promoted to or voluntarily transfers to a vacant position must serve (NAC 284.108). Because a trial period is a type of probation, the amendments to NAC 284.448 will clarify that it is referring to both types of probationary periods.

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 that time counted toward the completion of a probationary period is also the time counted toward the completion of a trial period. A trial period is essentially the 1-year probationary period a permanent employee who has been promoted to or voluntarily transfers to a vacant position (NAC 284.108). Because a trial period is a type of probation, the amendments to NAC 284.450 will clarify that it is referring to both types of probationary periods.

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 Department of Employment, Training and Rehabilitation, is intended to give supervisors and managers more latitude to address last minute requests for civil leave on election day. This will give agencies greater flexibility in workload management. For example, an agency will be able to stretch civil leave with pay over a longer period of time, which will allow the voting process to be managed with little to no effect on an agency.

NAC 284.586 Civil leave with pay to vote. (NRS 284.065, 284.155, 284.345) Civil leave with pay must be granted to allow an employee time off to vote subject to the conditions established in NRS 293.463. If an employee determines he or she will need time off to vote, *either during early voting or on the day of the election*, he or she must submit a request for civil leave with pay to the person authorized to grant such leave ~~before the day of the election~~ prior to the day the leave is to be taken.

[Personnel Div., Rule VII § E subsec. 7, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 10-26-84; A by Personnel Comm’n by R145-05, 12-29-2005)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, breaks out subsections 5 and 6 of NAC 284.589 into a new regulation. NAC 284.589 has been amended many times and has grown lengthy. The intent of the amendments is to include only the situations in which administrative leave *may* be granted. A new regulation is also proposed to include the situations in which administrative leave *shall* be granted.

Additionally, the amendments move the donation of blood and attendance at a general employee benefits orientation into subsection 4 so that the employee is not required to be available by phone or working at another location pursuant to subsection 3.

Finally, this amendment will allow employees who are veterans to request up to 2 hours of administrative leave to attend veterans and military events sponsored by the Legislature. Assembly Bill 62 of the 2015 Legislative Session established “Veteran’s Day at the Legislature,” and allowing the approval of administrative leave for employees who are veterans us intended to support participation by such individuals.

NAC 284.589 ~~Administrative~~ Permissive administrative leave with pay. (NRS 284.065, 284.155, 284.345, 284.383, 284.385, 284.390)

1. An appointing authority may grant administrative leave with pay to an employee:
 - (a) To relieve the employee of his or her duties during the active investigation of a suspected criminal violation or the investigation of alleged wrongdoing;
 - (b) For up to 30 days when the appointing authority initiates the leave to obtain the results of an examination concerning the ability of the employee to perform the essential functions of his or her position;
 - (c) For up to 30 days to remove the employee from the workplace when he or she has committed or threatened to commit an act of violence; *or*
~~(d) For up to 2 hours to donate blood;~~
~~(e) (d) To relieve the employee of his or her duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065 .~~ *; or*
~~(f) To attend a general employee benefits orientation or an educational session relating to employee benefits, including, without limitation, retirement and deferred compensation.]~~

2. The appointing authority, upon approval of the Risk Management Division, may extend administrative leave with pay granted to an employee for a purpose set forth in paragraph (b) or (c) of subsection 1.

3. If an employee is granted administrative leave with pay pursuant to subsection 1 or 2, the employee must be available:

- (a) By telephone to the supervisor of the employee; and
- (b) To report to a work site or another location, as directed by the supervisor of the employee, during regular business hours.

4. Except as otherwise provided in subsection ~~15.1~~ **2 of NEW NAC**, an appointing authority or the Division of Human Resource Management may grant administrative leave with pay to an employee for any of the following purposes:

(a) His or her participation in, or attendance at, activities which are directly or indirectly related to the employee's job or employment with the State but which do not require him or her to participate or attend in an official capacity as a state employee.

(b) His or her safety during an emergency when employees have been authorized by the Governor not to report to work or to leave work before the end of their shifts during the emergency, including, without limitation, emergencies relating to enemy attacks or other hostile actions, natural causes or other catastrophes, except for employees who are designated as essential and notified that they are required to report to work or remain at work.

(c) Closure of the employee's office or work site caused by a natural disaster, pandemic or other similar adverse condition when the employee is scheduled and expected to be at work. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

(d) Closure, as a result of a pandemic, of a school or a center or facility that provides day care services which is attended by the employee's dependent child or the temporary cancellation, as a result of a pandemic, of a program attended by the employee's dependent child. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

(e) For up to 2 hours to attend veterans or military events sponsored by the Legislature for an employee who is a veteran.

(f) For up to 2 hours to donate blood.

(g) To attend a general employee benefits orientation or an educational session relating to employee benefits, including, without limitation, retirement and deferred compensation.

~~(h)~~ His or her appearance as an aggrieved employee, an employee who filed a complaint described in NAC 284.658 or a witness at a hearing of the Committee.

~~(i)~~ His or her appearance as a witness at a hearing regarding a matter described in subparagraph (1), (2) or (3) of paragraph (f) of subsection ~~16~~.

~~(g) 1 of NEW NAC.~~

(j) His or her appearance to provide testimony at a meeting of the Commission.

~~15. An appointing authority or the Division of Human Resource Management shall grant administrative leave with pay to an employee for a purpose set forth in paragraph (e), (f) or (g) of subsection 4 if:~~

~~(a) The employee requests the administrative leave for a period of time that is reasonably needed to testify at the hearing or meeting;~~

~~(b) The employee requests the administrative leave at least 2 weeks before the leave is needed, unless such notice is impractical; and~~

~~(c) The absence of the employee will not cause an undue hardship to the operations of the appointing authority or adversely impact the provision of services to clients or to the public.~~

- ~~—6. An appointing authority shall grant administrative leave with pay to an employee for any of the following purposes:~~
- ~~(a) The initial appointment and one follow-up appointment if the employee receives counseling through an employee assistance program, including, without limitation, consultations provided in person or telephonically.~~
- ~~(b) His or her attendance at a health fair or related event coordinated by the Public Employees' Benefits Program.~~
- ~~(c) His or her participation in an official capacity as a member of a committee or board created by statute on which he or she serves as a representative of state employees. Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board.~~
- ~~(d) Up to 8 hours for preparation for any predisiplinary review.~~
- ~~(e) Up to 8 hours for preparation for any hearing described in paragraph (f).~~
- ~~(f) The appearance of the employee as a party at a hearing regarding:~~
- ~~(1) An alleged reprisal or retaliatory action against the employee for disclosing an improper governmental action as provided in NRS 281.641;~~
- ~~(2) An involuntary transfer of the employee as provided in NRS 284.376; or~~
- ~~(3) A suspension, demotion or dismissal of the employee as provided in NRS 284.390 and at a predisiplinary review as provided in NAC 284.6561.]~~

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 4-20-90; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 9-13-91; 12-26-91; 11-12-93; 3-23-94; 11-16-95; 10-27-97; R042-99, 9-27-99; R058-01, 9-6-2001; A by Personnel Comm'n by R038-03, 10-30-2003; R183-03, 1-27-2004; R145-05, 12-29-2005; R141-07, 1-30-2008; R061-09 & R081-09, 10-27-2009; R063-09, 11-25-2009; R058-10, 10-15-2010; R137-13, 6-23-14; R042-15, 12-21-2015; R033-17, 10-31-2017; R150-17, 6-26-2018)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, breaks out subsections 5 and 6 of NAC 284.589 into a new regulation. NAC 284.589 has been amended many times and has grown quite lengthy. The intent of this new regulation is to include the situations in which administrative leave *shall* be granted into a separate regulation. NAC 284.589 is also proposed to be amended to include only the situations in which administrative leave *may* be granted.

Also added to this regulation is a clarification that participation as a member of a committee or board includes preparation for the meeting such as reading and reviewing related documents.

NEW Required administrative leave with pay.

- 1. An appointing authority shall grant administrative leave with pay to an employee for any of the following purposes:*

(a) The initial appointment and one follow-up appointment if the employee receives counseling through an employee assistance program, including, without limitation, consultations provided in person or telephonically.

(b) His or her attendance at a health fair or related event coordinated by the Public Employees' Benefits Program.

(c) His or her participation in an official capacity as a member of a committee or board created by statute on which he or she serves as a representative of state employees. Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board. As used in this section, "participation" also includes the

time spent reading and reviewing documentation submitted in connection with meeting agenda items.

- (d) *Up to 8 hours for preparation for any predisciplinary review.*
 - (e) *Up to 8 hours for preparation for any hearing described in paragraph (f).*
 - (f) *The appearance of the employee as a party at a hearing regarding:*
 - (1) *An alleged reprisal or retaliatory action against the employee for disclosing an improper governmental action as provided in NRS 281.641;*
 - (2) *An involuntary transfer of the employee as provided in NRS 284.376; or*
 - (3) *A suspension, demotion or dismissal of the employee as provided in NRS 284.390 and at a predisciplinary review as provided in NAC 284.6561.*
2. *An appointing authority or the Division of Human Resource Management shall grant administrative leave with pay to an employee for a purpose set forth in paragraph (h), (i) or (j) of subsection 4 of NAC 284.589 if:*
- (a) *The employee requests the administrative leave for a period of time that is reasonably needed to testify at the hearing or meeting;*
 - (b) *The employee requests the administrative leave at least 2 weeks before the leave is needed, unless such notice is impractical; and*
 - (c) *The absence of the employee will not cause an undue hardship to the operations of the appointing authority or adversely impact the provision of services to clients or to the public.*

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will delete language from the regulation related to the removal of an appeal from the process which will be placed in a separate new regulation, which is explained below. This will allow the addition of other circumstances when it would be appropriate to remove an appeal that has been improperly filed from the procedure.

Additionally, language related to the removal of a grievance from the procedure was also removed and placed into NAC 284.693, which is explained below.

NAC 284.458 Rejection of probationary employees; rejection of permanent employees on trial period; ~~removal of ineligible request for adjustment of grievance or appeal from procedure~~; satisfactory completion of probation. (NRS 284.065, 284.155, 284.290)

1. During a probationary period, a probationary employee may be rejected for any lawful reason, as determined by his or her appointing authority. A probationary employee rejected pursuant to this subsection has no appeal rights or rights to file a grievance using the procedure set forth in NAC 284.658 to 284.6957, inclusive, concerning the decision by the appointing authority to reject the probationary employee.

2. A permanent employee who is serving a trial period may not:
- (a) File a grievance using the grievance procedure set forth in NAC 284.658 to 284.6957, inclusive, concerning the decision by the appointing authority to reject the permanent employee during his or her trial period; or
 - (b) Appeal the decision by the appointing authority to reject the permanent employee during his or her trial period.

~~3. If the Division of Human Resource Management determines pursuant to subsection 1 or 2 that a request for the adjustment of a grievance is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, or that a request for an appeal of a decision by the appointing authority is not eligible for appeal, the Division must:~~

~~(a) Remove the request from the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive, or from the appeal process, as applicable; and~~

~~(b) Provide to the person who submitted the request and the appointing authority in which the rejection arose:~~

~~(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive, or for the appeal process, and an explanation of that determination; and~~

~~(2) Notice that the Division has removed the request from the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive, or from the appeal process, as applicable.~~

~~4.] 3. A probationary period does not create a contractual relationship between the employee and employer.~~

~~[5.] 4. If a report of separation is not received by the employee or the Division of Human Resource Management by the close of business on the last day of the probationary period, the employee is considered to have satisfactorily completed the probationary period and acquired permanent status.~~

[Personnel Div., Rule VIII § C subsecs. 1-3, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 10-26-84; 10-18-89; 11-12-93; 11-16-95; A by Personnel Comm’n by R098-17, 6-26-2018)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, places language related to the removal of an appeal from the process in NAC 284.458 into a separate regulation. This will allow additional reasons for the removal of an appeal from the process to be included.

The first additional reason for removal of an appeal from the process is that the person is not a classified employee. Recently, an appeal was filed by a contract employee of Nevada System of Higher Education. The cost charged to the Division to determine that this appeal was improperly filed was over \$1,000. The Division did not have the authority to remove such an appeal at the time, and this amendment is intended to increase efficiency in cost and time.

Additional reasons for removal of an appeal from the process is if an employee has not attained permanent status, or has attained permanent status and did not submit the appeal timely or accompanied by the written notification of the appointing authority’s decision regarding the proposed action, if written notification was provided. Again, if an appeal is not filed in complete accordance with the requirements, the removal of an appeal from the process at this stage will lead to increased efficiency in cost and time.

NEW Removal of ineligible request for appeal from process; notice.

1. If the Division of Human Resource Management determines that a request for an appeal of a decision by the appointing authority is not eligible for appeal:

(a) Pursuant to subsection 1 or 2 of NAC 284.458;

(b) Because the person is not a classified employee; or

(c) Because the appeal was not filed in accordance with the provisions of NAC 284.6562,

→ the Division must take the actions described in subsection 2.

2. Upon making a determination pursuant to subsection 1 that a request for an appeal of a decision by the appointing authority is not eligible for appeal, the Division must, as soon as practicable:

(a) Remove the request from the appeal process, as applicable; and

(b) Provide to the person who submitted the request and the appointing authority in which the rejection arose:

(1) Notice that the Division has determined that the request is not eligible for the appeal process, and an explanation of that determination; and

(2) Notice that the Division has removed the request from the appeal process, as applicable.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, includes the requirement that an appointing authority or his or her designee request the removal of a grievance from the procedure that he or she believes is improperly filed. Also, the amendment to subparagraph (a) of subsection 1 will allow the Division to remove an employee's grievance if a request for a review of a report on performance was not requested as required by NAC 284.470. Finally, the reference to NAC 284.458 as a basis for the removal of a grievance has been removed, as the language is now included in this regulation.

NAC 284.693 Removal of ineligible request for adjustment of grievance or complaint from procedure; notice; appeal. (NRS 281.755, 284.065, 284.155, 284.384)

1. ~~If except as otherwise provided in NAC 284.458, if~~ **Before the Division of Human Resource Management may approve the removal of a grievance or a complaint, the appointing authority or his or her designee must submit a request on a form prescribed by the Division of Human Resource Management to the Division of Human Resource Management. Upon receiving such a request, if** the Division of Human Resource Management determines that a request for the adjustment of:

(a) A grievance is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, **pursuant to subsection 1 or 2 of NAC 284.458, because the person who submitted the request failed to request a review of his or her report on performance pursuant to NAC 284.470**, because the person who submitted the request is not a person described in subsection 2 of NAC 284.658 or because a hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390; or

(b) A complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in paragraph (a) of subsection 4 of NRS 281.755,

→ the Division must take the actions described in subsection 2.

2. ~~If except as otherwise provided in NAC 284.458, upon~~ **Upon** making a determination pursuant to subsection 1 that a request for the adjustment of a grievance or complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, the Division must, as soon as practicable:

(a) Remove the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive; and

(b) Provide to the person who submitted the request and the agency in which the grievance or complaint arose:

(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, and an explanation for that determination;

(2) Notice that the Division has removed the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive;

(3) If applicable, information relating to the appropriate procedure for resolving the person's concern; and

(4) Information relating to the person's right to appeal the determination to the Committee.

3. If the Division of Human Resource Management determines that a request for the adjustment of a grievance or complaint is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.

(Added to NAC by Personnel Comm'n by R076-15, eff. 4-4-2016; A by R033-17, 10-31-2017; R098-17, 6-26-2018)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, is intended to clarify that the shift defined in "qualifying shift" is a shift that meets the criteria included in the definition. Historically, the Division has considered the application of "shift" to be at least 8 hours which does not include those hours considered to be overtime.

NAC 284.210 Differential rate of pay for qualifying shift. (NRS 284.065, 284.155, 284.175)

1. As used in this section:

(a) "Differential rate of pay" means an adjustment in pay equivalent to an additional 5 percent of an employee's normal rate of pay.

(b) "Qualifying shift" means a period of work of *at least* 8 hours ~~for more,~~ *of regular time, exclusive of overtime*, of which 4 hours must fall between the hours of 6 p.m. and 7 a.m. The term includes, without limitation, a period of work of 8 hours that is reduced to 7 hours because of a change of time to daylight saving time.

2. An employee is eligible for the differential rate of pay if he or she works in a unit which provides services requiring multiple shifts within a 24-hour period and is:

(a) A nonexempt employee in the classified service who works:

(1) A qualifying shift; or

(2) Any shift of at least 8 hours that is other than a qualifying shift plus 4 or more hours between 6 p.m. and 7 a.m. In such cases, an employee must receive the differential rate of pay for only the hours worked between 6 p.m. and 7 a.m.

(b) An exempt classified employee assigned to a qualifying shift. In such cases, an employee must receive the differential rate of pay for all his or her regularly scheduled hours of employment on that workday.

3. If an employee is assigned to a qualifying shift when he or she is on paid leave or a holiday occurs, he or she must receive the differential rate of pay for that shift.

4. Except as otherwise provided in subsection 3, if a nonexempt employee in the classified service is assigned to a qualifying shift and the employee is not in paid status for the entire period of that shift, the employee must receive the differential rate of pay for the portion of the shift in which he or she is in paid status.

5. A nonexempt employee in the classified service who works overtime pursuant to NRS 284.180 in conjunction with a qualifying shift must be paid overtime at the differential rate of pay.

[Personnel Div., Rule III § I, eff. 8-11-73; A 7-3-76]—(NAC A by Dep't of Personnel, eff. 12-17-87; 7-21-89; 3-23-94; 10-27-97; R031-98, 4-17-98; A by Personnel Comm'n by R065-98, 7-24-98; A by Dep't of Personnel by R098-99, 9-27-99; R147-01, 1-22-2002; A by Personnel Comm'n by R069-02, 8-14-2002; R022-05, 10-31-2005; R077-11, 12-30-2011; R008-12, 5-30-2012)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, revises language related to how a non-exempt employee is paid if he or she transfers to a different agency the day before or the day of a holiday recognized by the State of Nevada. This regulation was amended in subsection 8 as part of a rule simplification process in LCB File No. R147-01. The language has proven to be ambiguous as many questions have been raised regarding which agency is responsible to pay a non-exempt employee if he or she transfers the day before or the day of a holiday. The intent is to clarify which agency is responsible by reverting to the language in the regulation prior to 2002 (R147-01).

NAC 284.255 Holidays: Holiday pay. (NRS 284.065, 284.155, 284.175, 284.180, 284.345)

1. For the purpose of this section, “holiday pay” means payment for a holiday at a nonexempt employee’s normal rate of pay plus the differential rate of pay for the shift, when applicable, or compensatory time at a straight-time rate.

2. Except as otherwise provided in paragraph (c) of subsection 3 and subsections 5 and 7, a full-time nonexempt employee whose base hours are 40 hours per week or 80 hours biweekly is entitled to receive 8 hours of holiday pay for any holiday that he or she is in paid status during any portion of his or her shift immediately preceding the holiday.

3. Except as otherwise provided in subsections 5 and 7:

(a) A full-time nonexempt employee whose base hours exceed 40 hours per week or 80 hours biweekly and who is in paid status during any portion of his or her shift immediately preceding a holiday is entitled to receive holiday pay equal to the pay he or she receives for his or her average workday. For the purposes of this paragraph:

(1) The average workday of a nonexempt employee is determined by dividing the total base hours of work per year by 2,088 and multiplying the quotient by 8.

(2) A firefighter assigned to a 24-hour shift shall be deemed to work 56 hours per week and 2,912 hours per year.

(b) A part-time nonexempt employee is entitled to receive holiday pay when he or she is in paid status during any portion of his or her shift immediately preceding the holiday if a holiday occurs on a normally scheduled workday of the employee. Except as otherwise provided in this paragraph, if such an employee is not required to work his or her normally scheduled workday on the holiday, the amount of holiday pay must equal the amount that he or she would have been paid if there had not been a holiday, but may not exceed the equivalent of his or her pay for 8 hours of work.

(c) A:

(1) Full-time nonexempt employee with an innovative workweek agreement may earn additional holiday pay on an hour-for-hour basis for any hours he or she works in excess of the holiday pay provided in paragraph (a) and in subsection 2, not to exceed the number of hours in his or her established workday as set forth in his or her innovative workweek agreement.

(2) Part-time nonexempt employee may earn holiday pay on an hour-for-hour basis for any hours he or she works on a holiday, not to exceed the number of hours in his or her established workday.

4. If a holiday occurs on the regularly scheduled workday of a nonexempt employee and his or her normal schedule of work is more than 8 hours, he or she must be in paid status or be placed on leave without pay for any difference between his or her holiday pay and his or her normal work schedule. An appointing authority may adjust the work schedule of such an employee for the week during which the holiday occurs in lieu of placing the employee on paid leave or leave without pay.

5. A nonexempt employee who is scheduled to work on a holiday shall report any absence from duty and the reason therefor to his or her supervisor or designated representative as prescribed in writing by the agency. An employee who does not work on that holiday and who fails to report his or her absence to his or her supervisor or a designated representative pursuant to this subsection is not eligible to receive holiday pay.

6. A nonexempt employee whose employment begins on a holiday is eligible to receive holiday pay pursuant to subsections 2 and 3 if he or she is in paid status during his or her scheduled shift.

7. A nonexempt employee whose employment is terminated:

(a) The day immediately preceding a holiday is not entitled to receive holiday pay for that holiday.

(b) Except as otherwise provided in paragraph (c) of subsection 3, on a holiday on which he or she is working must be paid holiday pay for the actual hours he or she works on the holiday. If a nonexempt employee gives notice that he or she is terminating his or her employment on a holiday and he or she is not scheduled to work on the holiday, the last day on which he or she works or is in paid status is his or her date of termination.

8. ~~[The agency that lists a nonexempt employee as an “employee of record” on a holiday is responsible for the payment of holiday pay for that holiday to that employee. For the purposes of this subsection, an “employee of record” is a person employed by the state agency that is required to claim the person as an employee of the agency.]~~ *A non-exempt employee who transfers the day before a holiday becomes an employee of record in the new agency on the holiday and is entitled to receive compensation for the holiday from the new agency. An employee who transfers from an agency at the end of a shift on a holiday is entitled to receive compensation for the holiday from the agency from which they are transferring.*

9. The salary of an exempt classified or exempt unclassified employee is not affected by a holiday.

[Personnel Div., Rule VII § B subsec. 2, eff. 8-11-73; A 7-3-76]—(NAC A by Dep’t of Personnel, 10-26-84; 8-28-85; 1-26-87; 9-17-87; 4-19-88; 7-14-88; 7-21-89; 9-13-91; 9-16-92; 11-12-93; 3-23-94; R098-99, 9-27-99; R058-01, 9-6-2001; R147-01, 1-22-2002; A by Personnel Comm’n by R096-03, 10-30-2003; R145-05, 12-29-2005)

Explanation of Proposed Change: This amendment will except positions that affect the health, public safety and welfare of the people of the State of Nevada at an agency that is operational beyond the 40 hour week as required by NRS 281.110 from the requirement to communicate the need for overtime to an employee at least 4 hours in advance.

NAC 284.242 Overtime: Authorization. (NRS 284.065, 284.155, 284.175)

1. If a nonexempt employee is required to work overtime, the overtime must be ~~[authorized]~~ :

(a) Authorized pursuant to subsection 10 of NRS 284.180 ; and ~~[communicated]~~

(b) Communicated to the employee at least 4 hours in advance by the responsible supervisor before being worked, unless an unpredictable emergency prevents prior approval and communication.

2. If a nonexempt employee requests to work overtime, the overtime must be authorized in advance pursuant to subsection 10 of NRS 284.180.

3. Subparagraph (b) of subsection 1 does not apply to any position that affects the health, safety and welfare of the people of the State of Nevada at an agency that maintains a workweek greater than required pursuant to NRS 281.110.

[Personnel Div., Rule III § L subsecs. 4-6, eff. 8-11-73; renumbered as subsecs. 3-5, 10-10-

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will include a training class on the American’s with Disabilities Act, developing essential functions of positions, and the Family and Medical Leave Act for supervisors and managers. Also included in the amendment is the addition of a component regarding sexual harassment and discrimination to the equal employment opportunity course. Requiring training in these areas will help supervisory and managerial employees become more comfortable handling related issues.

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 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) 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) Equal employment opportunity ~~H~~ and sexual harassment and discrimination;
 - (2) Interviewing and hiring;
 - (3) Alcohol and drug testing;
 - (4) Progressive disciplinary procedures; ~~and~~
 - (5) Handling grievances ~~H~~; and
- (6) *Title I of the Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008, development of essential functions of positions, and the Family and Medical Leave Act of 1993 as amended.*
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)

Explanation of Proposed Change: Amendments included in LCB File No. R175-18, approved by the Legislative Commission on January 30, 2019, broadened access to confidential records among State of Nevada agencies. This amendment, proposed by the Division of Human Resource Management, will ease the sharing of information related to sexual harassment and discrimination investigations between agencies. The addition of subsection 6 will give the Administrator the discretion to decide what information is appropriate to be released in each specific circumstance.

Paragraph (a) of the new subsection 8 is amended to clarify that in order for an employee access to any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387, he or she must have filed an appeal of the disciplinary action as prescribed by NRS 284.390.

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 ~~10~~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 ~~10~~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 subsection ~~10~~¹¹, 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 ~~10~~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 subsection 11, access to notes, records or findings of an investigation relating to sexual harassment or discrimination, or both, requires the approval of the Administrator or his or her designee, and is limited to:

- (a) *An appointing authority.*
- (b) *Persons who are authorized pursuant to any state or federal law or an order of a court.*
- (c) *The Governor or a designated representative of the Governor.*

[6.] 7. Except as otherwise provided in subsection [10.] 11, 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 by 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.] 8. Except as otherwise provided in subsection [10.] 11, 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, *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.

[8.] 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.

[9.] 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.

[10.] 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.

[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)

Steve Sisolak
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Deonne E. Contine
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Peter Long
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June 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

June 7, 2019

Date