

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R069-02

June 14, 2002

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 284.155; §2, NRS 284.175; §§3 and 4, NRS 284.250; §5, NRS 284.335; §§6 and 8, NRS 284.345; §7, NRS 284.3626.

Section 1. NAC 284.126 is hereby amended to read as follows:

284.126 1. For the purposes of this section:

(a) “Agency personnel officer” means the director of personnel within the University and Community College System of Nevada or any person holding a position in the classified service with the title of personnel officer.

(b) “Significant change” means a change in the duties and responsibilities assigned to a position in a class that:

- (1) Is outside of the scope of the class as described by the class specification;
- (2) Is not part of the scope of responsibility of the position; and
- (3) Results in the preponderance of duties and responsibilities being allocated to a different class.

2. If an appointing authority or an employee proposes the creation of a new class, a reclassification of a position to a different class or the reallocation of an existing class based upon a gradual accumulation of duties and responsibilities which results in a significant change and is intended to be permanent, the department of personnel or agency personnel officer must be notified on the appropriate form. If the creation, reclassification or reallocation is approved,

the department of personnel will allocate the position to one of the existing classes in the classification plan or to a new, revised or reallocated class as appropriate.

3. The effective date *of the creation, reclassification or reallocation* will be the date on which form NPD-19 is received by the department of personnel or agency personnel officer unless information ~~[concerning the qualifications of the incumbent or information which]~~ *that* substantially affects the decision concerning the creation, reclassification or reallocation is received after this date. In that case, the effective date will be the date on which the appropriate information necessary to make the decision is received. *However, the subsequent receipt of an application or examination score that confirms the qualifications of an incumbent will not have a bearing on the effective date.* If the form was prepared but delayed due to an administrative or clerical error, the effective date must be determined by the appointing authority and must be based upon the date on which the form should reasonably have been submitted to the department of personnel or agency personnel officer. In no case, however, may a retroactive adjustment because of an administrative or clerical error exceed 6 months after the date of receipt.

~~[3.]~~ 4. If an agency makes or anticipates making a significant change in the duties for a position or the agency anticipates a reorganization which will require the reclassification of an existing position, the reallocation of an existing class or the creation of a new class, it shall advise the budget division of the department of administration or, in the case of the University and Community College System of Nevada, the budget division of the applicable institution. The proposed change may not be required of an employee nor be submitted to the department of personnel until funding for it is approved. If the change is approved by the department of personnel, the effective date will be determined by the budget division.

~~[4.]~~ 5. In effecting a reclassification pursuant to subsection 2 or ~~[3.]~~ 4, the appointing authority must review and take into consideration the organizational structure and the qualifications of the incumbent before assigning new duties to a position which are intended to be permanent. No position will be reclassified to a higher grade through the individual classification process if the incumbent does not meet the minimum qualifications for the higher level position. If an employee does not meet the minimum qualifications to reclassify his position, he is not eligible for promotion, but may be eligible for a special adjustment to his pay pursuant to NAC 284.206.

~~[5.]~~ 6. The establishment of a new class, or reallocation of a class or a class series based on an occupational study conducted by the department of personnel, becomes effective when the funding is provided by the legislature in the biennial operating budget for this state.

~~[6.]~~ 7. From the date that the department of personnel formally announces the beginning of an occupational study until the date that the occupational study is funded by the legislature:

- (a) An existing position in the occupational study that has a significant change may only be reclassified to an existing class.
- (b) An existing class in the occupational study must not be reallocated to a different grade.
- (c) A new position may be allocated to an existing class or a new class as determined by the department of personnel.

Sec. 2. NAC 284.210 is hereby amended to read as follows:

284.210 1. As used in this section ~~[, “qualifying”]~~ :

(a) “*Day shift*” means a period of work of ~~[at least]~~ 8 hours ~~[, of which 4 hours must]~~ *or more in which at least half of the hours assigned* fall between the hours of ~~[6 p.m. and 7 a.m.]~~ *8 a.m. and 5 p.m.*

(b) *“Differential rate of pay” means an adjustment in pay equivalent to an additional 5 percent of an employee’s normal rate of pay.*

(c) *“Second shift” means a period of work of 8 hours or more in which at least half of the hours assigned fall between the hours of 3 p.m. and 12 a.m.*

(d) *“Third shift” means a period of work of 8 hours or more in which at least half of the hours assigned fall between the hours of 12 a.m. and 9 a.m.*

2. ~~Except as otherwise provided in this section, an employee must receive compensation equivalent to 5 percent of his normal rate of pay for all hours worked within a shift if the employee works a qualifying shift. If an~~ *To be eligible to receive a differential rate of pay for hours worked, an employee must be assigned to a work unit that has a regularly scheduled second shift or a regularly scheduled third shift.*

3. *A nonexempt employee in the classified service must receive the differential rate of pay for all hours worked on that day if he works a second shift or a third shift. A nonexempt employee in the classified service must receive the differential rate of pay for the hours worked between 6 p.m. and 7 a.m. if he works 4 or more hours between 6 p.m. and 7 a.m. in addition to working a day shift.*

4. *An exempt classified employee* ~~works a qualifying shift for any portion of a workday, he~~ *must receive* ~~such compensation~~ *the differential rate of pay* for all his regularly scheduled hours of employment on ~~that workday.~~
~~—3.] a workday if the employee is assigned to a second shift or a third shift.~~

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

~~[4.—Any hours exceeding the qualifying 8-hour shift are eligible for]~~

6. A nonexempt employee in the classified service who works a second shift or a third shift and who works overtime pursuant to NRS 284.180 must be paid overtime at the differential rate of pay . ~~[for that shift if the hours are worked by an employee other than an exempt classified employee, in conjunction with, immediately before or following the shift. —5. A qualifying shift, including, without limitation, the times at which the shift started and ended, must be clearly designated on the employee's time sheet and approved by the employee's supervisor.]~~

Sec. 3. NAC 284.374 is hereby amended to read as follows:

284.374 1. The names of eligible persons will be removed from the active lists for any of the following causes:

(a) Appointment after certification to fill a full-time permanent position in the class for which the examination was given.

(b) Expiration of the term of eligibility.

(c) Separation of a person who is eligible for promotion from the state service.

(d) Failure by an eligible person to respond within the required time to an inquiry of availability.

(e) A statement by the eligible person that he is not willing to accept any type of appointment from the eligible list.

(f) Any of the causes listed in NRS 284.240, NAC 284.314 or subsection 5 of NAC 284.630.

2. An appointing authority may refuse to consider an eligible person who has been *previously* considered by the appointing authority three times from the same list for the same class. Certification to other than full-time permanent positions will not be counted as a certification for the purposes of this subsection.

3. *An appointing authority may refuse to consider an eligible person who has been subject to a written reprimand, suspension, demotion or termination as a result of an upheld or uncontested disciplinary action in the preceding 12 months.*

4. An appointing authority shall refuse to consider an eligible person whose appointment to a position will violate NRS 281.210, NAC 284.375 or a policy approved by the commission pursuant to NAC 284.375.

~~[4.]~~ 5. An eligible person whose name has been removed from an active list may request that his name be reactivated by stating his reasons for the request. If the department of personnel determines that the reasons are justified, and the person's term of eligibility has not otherwise expired, his name may be reactivated.

Sec. 4. NAC 284.378 is hereby amended to read as follows:

284.378 When using lists of persons who are eligible and considering eligible persons who have been certified, the following conditions apply:

1. When a reemployment list is certified:

(a) Eligible persons who are available for appointment and who are certified on reemployment lists, other than seasonal reemployment lists, must be hired in the order in which they appear unless the appointing authority, upon submitting written justification, obtains the written concurrence of the governor to deviate from the order of priority or to hire from another list. The appointing authority must make the written justification available for examination by affected persons or their designated representatives.

(b) A person who receives a written offer of reemployment must accept or refuse the offer within 3 business days after the offer is received. If an offer of reemployment is mailed to a person, he must accept or refuse the offer within 6 days after the date of the postmark on the

letter containing the offer. The failure to accept the offer within the prescribed time constitutes a refusal of the offer.

2. The appointing authority may request selective certification for a particular position if the normal method of certification does not provide candidates qualified to perform the duties of the position satisfactorily. Where selective certification is necessary, the appointing authority must furnish in writing the special requirements peculiar to the position and his reasons therefor. If the facts and reasons justify such a method of selection, the department of personnel may certify the highest ranking eligible persons who possess the special qualifications. ~~[Determination of special qualifications may require circularization of eligible persons before certification can be made.]~~

3. Certification of only eligible persons who are the same sex will not be made unless there is clear evidence that the duties assigned could be performed efficiently only by the sex specified.

4. ~~[Authorization for selective certification will be made on an individual basis and, with the exception of clerical positions requiring typing, shorthand, or word processing, database or spreadsheet skills, subsequently reported to the commission at their next regular meeting. —5.—]~~ When using ranked lists other than those for reemployment, the appointing authority

must attempt to communicate, as provided in NAC 284.382, with persons in the first five ranks to determine their availability and qualifications. The names on each type of list must be considered before names from the next succeeding list. If there are fewer than five ranks with persons who are available for appointment on a given list and the appointing authority requests a full complement of five ranks, the name or names at the top of the next succeeding list must be combined with those on the preceding list to establish five eligible ranks with persons who are

available for appointment. Except as otherwise provided in subsection ~~7.1~~ 6, all competitive appointments from ranked lists must be made from the persons who:

- (a) Are in a rank of persons who received the five highest scores on the examination; and
- (b) Are available for appointment.

~~6.1~~ 5. If the list is unranked or waived, the appointing authority must attempt to communicate, as provided in NAC 284.382, with at least five eligible persons he deems most qualified based upon a review of their respective qualifications as they relate to the position or class, or with all of the eligible persons if there are five or less. Except as otherwise provided in subsection 1, any eligible person who is certified from an unranked or waived list may be appointed.

~~7.1~~ 6. If persons from fewer than five ranks of eligible persons are willing to accept appointment:

- (a) The appointing authority may make an appointment from among those remaining available eligible persons.
- (b) Certification and appointment may be made from other appropriate lists, including lists of higher grades as determined by the department of personnel. The names from other lists will follow those which have been certified, if any, from the original lists.
- (c) A new recruitment may be conducted.
- (d) A provisional appointment may be made only if the requirements of NAC 284.406 are met.

Sec. 5. NAC 284.470 is hereby amended to read as follows:

284.470 1. A person shall not complete a report on performance unless he has completed the training provided or approved by the director concerning the preparation of a report on performance.

2. A report on performance must be prepared on the form prescribed by the department of personnel.

3. When a report on performance is given which reports the *overall* rating of performance of an employee as substandard, it must contain a written notice that such reports affect both merit pay increases and the employee's eligibility for longevity pay. More frequent reports may be made in the supervisor's discretion.

4. Except as otherwise provided in subsection 5, the preparation of each report on performance must include a discussion between the employee and his immediate supervisor.

Within 10 working days after the discussion takes place:

(a) If the employee agrees with the report on performance, he must complete and sign the appropriate section on the report on performance and return the report to his supervisor for forwarding to the appointing authority; or

(b) If the employee disagrees with the report on performance and requests a review, he must respond to the report in writing and identify the specific points of disagreement, if such specificity is provided. The reviewing officer shall respond to the employee in writing within 10 working days after the supervisor or other person designated by the agency to receive such requests receives the request.

5. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 4 because of an extended absence, the immediate supervisor of the employee shall cause the report to be mailed to the employee. If the employee agrees with the report on

performance, he must complete and sign the appropriate section on the report and mail the report to his supervisor for forwarding to the appointing authority within 10 working days after the date on which the employee received the report. If the employee disagrees with the report on performance and requests a review, he must respond to the report in writing and identify any specific point of disagreement, if the report provides such specificity. The employee must mail his response to his supervisor within 10 working days after the date on which the employee received the report. The reviewing officer shall respond to the employee in writing within 10 working days after the supervisor or other person designated by the agency to receive such a request receives the request for review from the employee. For the purposes of this subsection, a report on performance or request for review is deemed to have been received on the third day after the date on which the report or request is postmarked.

6. A copy of each report on performance must be filed with the department of personnel.

7. An employee and his appointing authority may agree in writing to extend one or more of the periods prescribed in subsection 4 or 5.

8. If a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.695, inclusive.

Sec. 6. NAC 284.540 is hereby amended to read as follows:

284.540 Each appointing authority shall keep accurate records of earned and used annual leave ~~[-If the records are not maintained on a computer they must be maintained manually.]~~ *and sick leave unless these records are maintained by a centralized time and attendance system.*

Sec. 7. NAC 284.577 is hereby amended to read as follows:

284.577 ~~[An]~~ 1. *Except as otherwise provided in subsection 2, an* employee who has used hours from an account for catastrophic leave may voluntarily repay the account for those hours.

2. *An employee who is entitled to catastrophic leave and workers' compensation benefits may not receive more than 100 percent of his pay for the period of his leave. An employee must repay the account for catastrophic leave when the combined benefit of catastrophic leave and worker's compensation exceeds his normal rate of pay.*

3. The amount required to repay the hours *from an account for catastrophic leave* must be based on ~~[his]~~ *the employee's normal* rate of pay at the time he used the hours.

Sec. 8. NAC 284.570 is hereby repealed.

TEXT OF REPEALED SECTION

284.570 Sick leave: Records. Each appointing authority shall maintain accurate records of earned and used sick leave. If the records are not maintained on a computer they must be maintained manually.