

**ADOPTED REGULATION OF THE  
PERSONNEL COMMISSION**

**LCB File No. R021-11**

Effective October 31, 2011

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

AUTHORITY: §§1 and 2, NRS 284.065, 284.345 and Senate Bill No. 505, chapter 374, Statutes of Nevada 2011, at page 2207.

A REGULATION relating to state personnel; providing requirements concerning unpaid furlough leave; and providing other matters properly relating thereto.

**Section 1.** Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

*1. The total number of hours of furlough leave required to be taken in a fiscal year by an employee who is initially appointed to state service after the commencement of the fiscal year is:*

*(a) For a full-time employee, the equivalent of 4 hours of furlough leave for each full month remaining in the fiscal year.*

*(b) For a part-time employee, the equivalent of the portion of 4 hours of furlough leave for each full month remaining in the fiscal year that is proportional to the average number of hours worked by the part-time employee.*

*↪ If such an employee is appointed on a day other than the first day of a month, the month in which the employee is appointed is not included in the calculation set forth in this subsection.*

*2. An appointing authority may establish a policy that defines the minimum increment of furlough leave required to be taken at any one time by an employee of the appointing authority*

*if the appointing authority determines that the minimum increment is necessary based on business necessity. The policy may provide different increments for employees in different divisions, locations or work groups based on business necessity. The appointing authority shall disseminate the policy to each employee under its authority who is required to take furlough leave.*

*3. To the extent practicable, an employee who is required to take furlough leave and his or her supervisor shall jointly determine in advance a schedule pursuant to which the employee will take furlough leave. If, because of business necessity, such a schedule cannot be mutually agreed upon, a supervisor may direct an employee to take furlough leave on a specific day or at a specific time, or both.*

*4. Movement of an employee from one position to another position must not alter the amount of furlough leave required to be taken by the employee.*

*5. The amount of furlough leave that an employee is required to take must not be offset by any savings realized as a result of a delay in filling the position that the employee holds.*

*6. An appointing authority shall not require or allow an employee to take more than 12 hours of furlough leave in a workweek.*

*7. Unless approved in advance by the Director of the Department of Personnel and the Director of the Department of Administration or their designated representatives or, in the case of employees of the Nevada System of Higher Education, by the chief financial officer of the applicable institution, an appointing authority shall not require or allow an employee to work additional time during the same workweek in which the employee takes furlough leave if the additional time would be:*

*(a) Overtime for which the employee would be entitled to be compensated; or*

*(b) Added regular time for work as a part-time employee.*

*8. An employee who leaves state service will not be reimbursed for any furlough leave taken.*

*9. Any furlough leave taken by an employee must be considered time worked for the purpose of calculating the employee's eligibility to take leave under the federal Family and Medical Leave Act. Any furlough leave that is taken during the time in which an employee takes leave that qualifies under the Family and Medical Leave Act will not be counted against the amount of leave which an employee is entitled to take under the Family and Medical Leave Act.*

*10. As used in this section, "furlough leave" means the unpaid leave required to be taken pursuant to the provisions of Senate Bill No. 505, chapter 374, Statutes of Nevada 2011, at page 2207.*

**Sec. 2.** This regulation becomes effective on October 31, 2011, and expires by limitation on June 30, 2013.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
NRS 233B.066  
**LCB File #R021-11**

The following statement is submitted for amendments to Nevada Administrative Code (NAC) 284.

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulations, notices of workshop, and notices of intent to act upon a regulation were sent by email to persons who were known to have an interest in the subject of proposed personnel regulation changes as well as any person who had specifically requested such notice. These documents were also made available on the website of the Department of Personnel (DOP), <http://dop.nv.gov/>, mailed to all county libraries in Nevada and posted at the following locations:

Department of Personnel	Grant Sawyer State Office Bldg.
Blasdel Building	555 E. Washington Blvd
209 E. Musser St	Suite 4401
Carson City, NV 89701	Las Vegas, NV 89101
Nevada State Library and Archives	Capitol Building
100 Stewart St	Main Floor
Carson City, NV 89701	Carson City, NV 89701
Legislative Building	Gaming Control Board
401 S. Carson St	1919 College Parkway
Carson City, NV 89701	Carson City, NV 89701

Attached are excerpts from the minutes from the workshop that apply to these regulations.

A Regulation Workshop was conducted by the Department of Personnel on July 15, 2011 and a public hearing was held by the Nevada Personnel Commission on September 28, 2011.

**2. The number of persons who:**

- (a) **Attended each hearing:** July 15, 2011 – 25; September 28, 2011 – 57
- (b) **Testified at each hearing:** July 15, 2011 – 4; September 28, 2011 – 6
- (c) **Submitted written comments:** None

**3. A description of how comment was solicited from businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were not solicited, as the regulations do not affect businesses.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The proposed language states that an employee and their supervisor “shall jointly determine ...a schedule....to which the employee will take furlough leave.” It also states that due to business necessity, a supervisor can direct an employee to take furlough leave on a specific day and/or time. There was concern that giving an agency the discretion to schedule furlough leave would be an issue. It was explained that there is a grievance process for such situations.

During public workshop, concerns were raised by Department of Transportation, Department of Public Safety, and AFSCME in reference to a proposed 8 hour furlough leave limitation per workweek and a required minimum amount of furlough hours to be taken per quarter. Those concerns were addressed in the current revision – the minimum furlough hours per workweek was changed to 12 hours, the quarterly minimum furlough hours taken was removed and changed to the completion of furloughs hours before the end of the fiscal year and references to “pay period” were changed to “workweek.” Comments made during the Personnel Commission meeting praised those efforts to work with agencies that had 10+ hour shifts, providing more flexibility to comply with the furlough leave.

**5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

These regulations do not have a direct economic effect on either a regulated business or the public.

**6. The estimated cost to the agency for enforcement of the adopted regulation:**

There is no additional cost to the agency for enforcement of these regulations.

**7. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed amendments duplicate.

**8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

These regulations do not include any provisions that are more stringent than any federal regulation.

- 9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

No fees are associated with these regulations.

- 10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

These regulations are specific to State government agencies and has no impact on small businesses.

**SUMMARY OF THE WORKSHOP TO SOLICIT COMMENTS ON THE PROPOSED  
REGULATIONS OF THE STATE DEPARTMENT OF PERSONNEL**

**July 15, 2011**

**CARSON CITY, NEVADA  
And via Video Conferencing in  
LAS VEGAS, NEVADA**

**Attendees in Carson City:**

Teresa Thienhaus, Director, DOP  
Shelley Blotter, Division Administrator, DOP  
Mark Evans, Supervisory Personnel Analyst, DOP  
Peter Long, Division Administrator, DOP  
Denise Woo-Seymour, DOP  
Norma Mallett, DHHS/MHDS  
Amy Davey, DOP  
Angelica Gonzalez, DOP  
Mark Teska, DPS  
Renee Travis, DOA  
Diana Roder, DOE  
Carrie Hughes, DOP  
Conni Valley, DOE  
Kelly Munoz, DOF  
Ron Bratsch, AFSCME  
Priscilla Maloney, AFSCME  
Dave Olsen, DOT  
Jenny Hawkins, DOT  
Salli Herbert, DCA  
Joan Dinning, DOP

**Attendees in Law Vegas:**

Larry Hamilton, UNLV  
Kalora Snyder, CRC  
Brenda Haymore, CRC  
Walter Shupe, CRC  
Sandra Owens, DOP

**Shelley Blotter:** Opened the meeting at 9:00 a.m. and welcomed everyone. She asked everyone in attendance to sign the sign-in sheet and stated the purpose of the workshop was to solicit comments from affected parties for proposed regulations for permanent adoption. These regulations will be considered at a future Personnel Commission Meeting. Our next Personnel Commission Meeting is scheduled for September 28, 2011. If the regulation at that meeting is adopted by the Personnel Commission, it will go into effect when approved by the Legislative Commission and filed with the Secretary of State, which is approximately 40 days after the adoption by the Personnel Commission. At this time, I am going to ask Mark Evans to summarize the changes to the Furlough Regulation and then we will accept comments.

**Mark Evans:** My name is Mark Evans, and I am a Supervisory Personnel Analyst for the Department of Personnel. Our first regulation concerns unpaid furlough leave and the language

presented today is the same as what was included in the emergency regulation. Senate Bill 505 was passed during the 2011 Legislative Session and it requires all State employees to take 48 hours of furlough leave in both fiscal year 2012 and fiscal year 2013. The regulation requires that employees take a minimum amount of furlough hours by the end of each quarter. Employees can however, exceed the quarterly minimum with management approval as long as they do not exceed the maximum furlough requirement for the fiscal year or take more than 8 hours in a work week.

Part-time employees are required to take a proportional amount of furlough hours, and the regulation does not make a distinction between classified and unclassified employees.

Are there questions or comments?

**Shelley Blotter:** I'll just provide one bit of information before we get started. And that is, at the Personnel Commission Meeting where we adopted the Emergency Regulation, a number of comments were received related to the limitation of eight hours of furlough rather than allowing for the shift length of a 10-hour or 12-hour. So I would like to let you know that I did contact the Employment Security Division, and they did advise that they continue to recommend no more than an 8-hour furlough per week due to the fact that anything greater than that increases the State's risk of paying a partial unemployment benefit. I will be providing this information to our new Director of Department of Administration.

**Ron Bratsch:** I did have concern about the 8-hour work week because a lot of the people that work for the Department of Corrections are working 12-hour shifts, and it really limits when they can take it or they have to take it in conjunction with leave.

If you have a schedule for 12-hours and we have to take eight hours every other month, how are we going to get 12 by September 30th in a two-month period -- or in a three-month period? We get scheduled our furloughs and our furloughs are one every other month, and there's no way that every one of us will get the 12 hours in the required time frame. If we get furlough in August, then October would be the next one. So if we get them in August and October, there's no way we're going to get 12 hours by the end of September.

**Shelley Blotter:** The Department of Corrections has filed an exception request to implement it differently than required by regulation, which is allowed. So that's already been filed to accommodate the schedule that you are referring to.

**Ron Bratsch:** Absolutely. But the rest of the State employees won't have that same availability because over the four-month period, they need 16. How are they going to accomplish the 12? You're forcing them to take them in the first three months: two days and then one in the last three months. So what I am trying to do is make it more fair. Maybe only call it half a year -- have a half-year guideline instead of what you have. Requiring 12 hours per quarter is not really practical.

**Shelley Blotter:** Their department could request the same type of exception to the implementation plan. Again, I am not discounting what you're saying. I'm just providing the

information I know and will take what you're saying under consideration. But there is a vehicle for them to get that same type of usage schedule that Corrections is implementing.

**Ron Bratsch:** Right. And I do understand because I do work for that department. And that's my next point of concern because I do have a grievance on their process. What they've done is they schedule us into a three-day weekend, which is fine, but on July 1st, without my knowledge, they changed my furlough day from my Monday to my Friday and they put me on leave. I have a shift-trade agreement with someone, which conflicts with this, and they just told me to resolve it myself. The way I understand this regulation is they're supposed to work with us. The way I understand the NAC is they're forcing us to take leave where it says leave is suppose to be done like any other leave and none of my other leave that I know of is scheduled. It's on my behalf. So they are putting us in positions of less than any kind of authority for us -- again, a dictatorship kind of stuff. I just wanted to bring that to your attention that they're not being very cooperative with their employees, so if there's a way to tweak whatever they're doing to let them know we do have some say in it. We can't just be scheduled too bad so sad because that's how they're treating us.

**Shelley Blotter:** Okay. Thank you.

**Ron Bratsch:** Thank you.

**Mark Teska:** Good morning. For the record, Mark Teska, Department of Safety. Before I start, I first want to thank Shelley for taking some time earlier this week to clarify some things and go over some of the department's concerns and some of the things I'll be raising this morning. It was very helpful, and she was very accommodating to do that.

I just have a few issues on the Department of Public Safety-level that I'd like to bring forward. The first one obviously is a topic we've already heard about is the no more than eight hours in a single day, and I understand that DETR has provided some documentation that suggests that it really can't be more than that. The only suggestion that the Department of Public Safety would make is that the Personnel Commission maybe request from DETR legal counsel or at least their administration something formal to document their concerns because we have many divisions that have 10-hour shifts. To try to coordinate that with the requirement that they take only eight hours, it requires them to change their shift for the week or use annual or comp-time or things like that, and it becomes a little more cumbersome to try to manage that, so not to belabor it, but we wanted to put it on the record.

The other suggestion the Department has is to change the overtime requirement. Currently, the regulation indicates that there cannot be any overtime work in the same pay period as a furlough without obtaining certain exceptions. The Department would suggest that because we have individuals on "no variables," 40-hour variables, and 80-hour variables to try to manage those different schedules becomes very cumbersome even with the exception process. We would suggest that for "no variable" work week and a 40-hour variable week, no overtime in the same pay week. And then for the 80-hour variable, no overtime on the days off within the same pay period. And the reason -- the complication with the 80-hour variable work week is the statute allows the payment of overtime if an individual has an 80-hour variable schedule, if they work in

excess of 8 hours in a day, even if they have not exceeded 80 hours in the pay period, the Agency may pay overtime, and this usually occurs within the Department of Public Safety because of events beyond an employee's control. While there is a possibility for the employee to flex time off or make other arrangements, if the flex time occurs, one, we're sort of forcing an employee to use flex time and then if we reduce a furlough to flex that time they worked over their 8-hour shift during that pay period, it then just pushes back the requirement for them to make up those additional furlough hours which makes it a challenge for scheduling and so on. And the reason that overtime is an issue with the Department of Public Safety is there are certain things that we cannot do on regular time that require overtime. For example, Highway Patrol when they do special events that's done on an overtime basis not during a regular shift of a Trooper. Or if there are call-outs -- if a Trooper pulls over a drunk driver toward the end of their shift, they have to see that all the way through and beyond their control. Or if they see an accident, it just adds to the overtime. And because there are unscheduled events, public safety, the Amtrak crash being an example, it makes it very difficult to manage those especially when you have that exception -- or that pay-period limitation.

So those are the suggestions the Department would make on the overtime.

**Shelley Blotter:** When the furlough was implemented in 2009, there was discussion about Troopers paid when they staff a special event, such as Candy Dance traffic control. I believe I recall that the Troopers received time and one-half for working such an event. I know the organizers reimburse on an overtime rate so it's assumed we would pay the employees on an overtime rate.

If we went with your suggestion in not allowing it on their days off, but an 80-hour variable, then they still wouldn't be able to do those types of special events in their furlough week. They would only be able to do extended hours on a day they had worked and maybe they're participating in something like a DUI checkpoint operation.

**Mark Teska:** that would be true --

**Shelley Blotter:** Okay.

**Mark Teska:** -- But by opening up that second week, it allows greater flexibility for scheduling these events that come up or if there is a major event and having to send resources to that, there's a lot more flexibility.

Another instance that we have is that we receive federal grant funding from various federal agencies that require us -- in order to get the grant money, it has to be overtime; they will not reimburse for straight time for these events. So DUI checkpoints or saturation patrols, in order for those to occur, it has to happen on overtime for those individual Troopers. So having the overtime restriction within the pay period then limits who can be sent and who can staff those events.

Another point that we would like to bring up is the stand-by and call-back. Those are sort of lumped in to the overtime that stand-by and call-back cannot be worked in the same pay period

as a furlough. And we would argue that since stand-by and call-back aren't considered timeworked for overtime purposes that they don't need to be part of that. That in an off-week an individual could still have stand-by. We have call-back for emergencies and, so on, so that would also provide some flexibility for the department.

I believe we have only one other comment that we would make regarding the exception process. The suggestion from the Department of Public Safety is that if the circumstances have not changed from the previous exceptions that were approved that the Department be allowed to essentially just say we would like for those to continue rather than go through the administrative time to fill out new forms and send them through for approval. Many state agencies, not all, have seen a reduction in staffing and to devote that kind of time to that administrative work, we would suggest could be better spent some place else.

**Shelley Blotter:** Thank you. I appreciate you reiterating those concerns, and I will certainly put those into the considerations as we review this before moving forward. On the exception process, I know that these were put in as kind of safety nets to make certain the furlough wasn't being abused, and as we spoke about, the exception process because there were some changes that the Budget Division wanted new documentation, but I will bring this to their attention again.

**Shelley Blotter:**

Well, again, I thank you for your attendance. I know these are concerning issues, and we take your comments seriously. We will be bringing them forward at a future Personnel Commission meeting. Thank you.

**[END OF MEETING]**