

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R027-11

NAC 284.642 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments made to Assembly Bill 179 which addressed the progressive discipline process. The change provides for an impartial investigation to be conducted before a permanent employee is demoted or suspended without pay. This change is consistent with common practice in most agencies. The amendment allows the employee to waive the investigation, in writing, if he or she agrees with the allegation. Representatives from the American Federation of State, County and Municipal Employee, Local 4041 have stated that there have been times when employees have admitted to the allegation and find that having the discipline delayed based on a pending investigation is needlessly stressful.

NAC 284.642 Suspensions and demotions. (NRS 284.065, 284.155, 284.383, 284.385)

1. If other forms of disciplinary or corrective action have proved ineffective, or if the seriousness of the offense or condition warrants, an employee may be:

(a) Suspended without pay for a period not to exceed 30 calendar days for any cause set forth in this chapter; or

(b) Demoted for any cause set forth in this chapter.

2. If an appointing authority determines that a permanent employee be demoted or suspended without pay, the appointing authority shall first ensure that an impartial fact-finding investigation has been conducted to determine that evidence exists to support the discipline.

3. If an employee agrees, in writing, with the allegation on which the demotion or suspension is based, the investigation can be waived.

~~4.~~ 4. An exempt classified employee may only be suspended without pay in increments of one or more full workweeks.

~~5.~~ 5. The rights and procedures set forth in NAC 284.656 and sections 2 and 3 of LCB File No. R063-09 apply to any disciplinary action taken pursuant to this section.

[Personnel Div., Rule XII § B, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 3-23-94; R147-01, 1-22-2002; A by Personnel Comm'n by R147-06, 12-7-2006; R063-09, 11-25-09)

NAC 284.646 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments made to Assembly Bill 179 which addressed the progressive discipline process. This change provides for an impartial investigation to be conducted before a permanent employee is dismissed. The change is **consistent** with common practice in most agencies. The amendment allows the employee to waive the investigation, in writing, if he or she agrees with the allegation. Representatives from the American Federation of State, County and Municipal Employee, Local 4041 have stated that there have been times when employees have admitted to the allegation and find that having the discipline delayed based on a pending investigation is needlessly stressful.

NAC 284.646 Dismissals. (NRS 284.065, 284.155, 284.383, 284.385)

1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:

(a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause; or
(b) The seriousness of the offense or condition warrants such dismissal.

2. An appointing authority may immediately dismiss an employee for the following causes, unless the conduct is authorized pursuant to a rule or policy adopted by the agency with which the employee is employed:

(a) Intentionally viewing or distributing pornographic material at the premises of the workplace, including, without limitation, intentionally viewing or distributing pornographic material on any computer owned by the State, unless such viewing or distributing is a requirement of the employee's position.

(b) Unauthorized release or use of confidential information.

(c) Participation in sexual conduct on the premises of the workplace, including, without limitation, participation in sexual conduct in a vehicle that is owned by the State.

(d) Absence without approved leave for 3 consecutive days during which the employee is scheduled to work.

(e) The suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law.

(f) Threatening another person with a deadly weapon during any time in which the employee is:

(1) On the premises of the workplace; or

(2) Conducting state business or otherwise performing any duties of employment.

(g) Stealing or misappropriating any property that is owned by the State or located on state property.

3. If an appointing authority determines that a permanent employee be dismissed, the appointing authority shall first ensure that an impartial fact-finding investigation has been conducted to determine that evidence exists to support the discipline.

4. *If an employee agrees, in writing, with the allegation on which the dismissal is based, the investigation can be waived.*

~~[3.]~~ 5. The rights and procedures set forth in NAC 284.656 and sections 2 and 3 of LCB File No. R063-09 apply to any dismissal made pursuant to this section.

~~[4.]~~ 6. As used in this section:

(a) “Material” has the meaning ascribed to it in NRS 201.2581.

(b) “Nudity” has the meaning ascribed to it in NRS 201.261.

(c) “Pornographic material” means material that, all or in part, contains any description or representation of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of adults and is without serious literary, artistic, political or scientific value.

(d) “Sado-masochistic abuse” has the meaning ascribed to it in NRS 201.262.

(e) “Sexual excitement” has the meaning ascribed to it in NRS 201.264.

[Personnel Div., Rule XII § C, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 10-26-84; R147-06, 12-7-2006; R063-09, 11-25-09)

NAC 284.742 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments made to Assembly Bill 179 which addressed the progressive discipline process. This proposed regulation change requires each agency to have a policy, commonly referred to as “Prohibitions and Penalties”, approved by the Personnel Commission which outlines prohibited acts and the corresponding levels of discipline. The majority of agencies have these policies in place. It requires that employees be made aware of the policy and any significant changes that occur. It also requires the use of progressive discipline, but allows for higher levels of discipline when the seriousness of the offense warrants it.

NAC 284.742 Appointing authorities authorized to define conflicting activities: *Use of disciplinary measures; progressive discipline.* (NRS 284.065, 284.155, 284.383)

1. Each appointing authority ~~[may determine and describe in writing, subject to the approval of the Commission, those specific activities which, for employees under his jurisdiction, are considered inconsistent, incompatible or in conflict with their duties as employees]~~ *shall provide its employees with a policy approved by the Commission that explains prohibited acts, activities that are considered inconsistent, incompatible or in conflict with their duties, possible violations and penalties, and a fair and equitable process for taking disciplinary action against a state employee. Employees must be notified and provided with a copy of the policy when significant change occurs.*

2. The appointing authority shall ~~[provide a copy to each employee.~~

~~—3.—In making this determination, the appointing authority shall]~~ consider the prohibitions described in NAC 284.650 and NAC 284.746 to 284.762, inclusive, *in its policy.*

3. *By general policy, an appointing authority shall use a process of progressive discipline for administering disciplinary actions to a permanent employee.*

4. *Higher levels of discipline may occur, regardless of previous discipline, if the seriousness of the offense warrants it.*

[Personnel Div., Rule XI § A part subsec. 2, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 10-26-84)