

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R042-15

§§1, 2, 4 and 5 become effective December 21, 2015;
§3 becomes effective January 1, 2016

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

AUTHORITY: §1, NRS 284.065, 284.155 and 284.375; §2, NRS 284.065, 284.155, 284.345, 284.383, 284.385, as amended by section 4 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1046, and NRS 284.390; §3, NRS 284.065, 284.155, 284.383, 284.385, as amended by section 4 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1046, and NRS 284.390; §4, NRS 284.065, 284.155, 284.376 and 284.390; §5, NRS 284.385, as amended by section 4 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1046, and section 11 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1050.

A REGULATION relating to state employees; revising provisions concerning the granting of administrative leave with pay in connection with certain employment-related hearings; revising provisions governing delivery of notice to an employee that he or she is to be dismissed, demoted or suspended; revising provisions governing written documents directed to hearing officers in connection with certain employment-related hearings; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a state employee is entitled to a hearing before a hearing officer of the Personnel Commission in connection with certain actions taken by his or her state employer. If any reprisal or retaliatory action is taken against a state employee who discloses information concerning improper governmental action, the employee is entitled to a hearing for a determination of whether the action taken was a reprisal or retaliatory action. (NRS 281.641) Existing law provides that a permanent classified state employee who has been involuntarily transferred from his or her current position to another position within the same grade is entitled to a hearing to determine whether the transfer was made for the purpose of harassing the employee. (NRS 284.376) Existing law also provides that a permanent classified state employee who has been dismissed, demoted or suspended is entitled to a hearing to determine the reasonableness of that action. (NRS 284.390)

Existing regulations require or authorize an appointing authority to grant leave with pay to an employee to appear as a party or witness at certain employment-related hearings or to prepare for

such an appearance. (NAC 284.589) **Section 2** of this regulation establishes consistency with respect to the granting of leave with pay to employees in connection with those hearings. Existing regulations require an appointing authority to grant an employee up to 8 hours of leave with pay to prepare for a hearing regarding his or her involuntary transfer, dismissal, demotion or suspension. **Section 2** extends this provision to apply to hearings concerning the employee's claim of reprisal or retaliatory action. Finally, **section 2** requires an appointing authority to grant leave with pay to an employee to attend as a party any hearing concerning the employee's claim of reprisal or retaliatory action, involuntary transfer, dismissal, demotion or suspension. **Section 1** of this regulation makes a conforming change.

Under existing law, a permanent classified state employee who is to be dismissed, involuntarily demoted or suspended by his or her appointing authority must be given written notice of the proposed action in advance. Before the enactment of Senate Bill No. 62 of the 2015 Legislative Session, the notice could be given to the employee only in person or by registered or certified mail. Senate Bill No. 62 instead requires the Personnel Commission to adopt regulations setting forth the procedures for notifying the employee. (NRS 284.385, as amended by section 4 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1046) **Section 3** of this regulation authorizes the notice to be given to an employee by means of any delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received. **Section 3** also provides that the required notice must not be given by electronic mail, the use of social media or other electronic means.

Under existing regulations governing hearings concerning employee claims of reprisal or retaliatory action for disclosure of information concerning improper governmental action, involuntary transfer, dismissal, demotion or suspension, a copy of any written communication directed to a hearing officer must be sent to the Hearing Clerk of the Division of Human Resource Management of the Department of Administration. (NAC 284.778) **Section 4** of this regulation requires instead that the copy be sent to the clerk assigned to the hearing officer.

Section 1. NAC 284.394 is hereby amended to read as follows:

284.394 1. Except as otherwise provided in subsection 2, an appointing authority may, after giving 5 working days' notice, transfer for the convenience of this State any employee to another position in:

- (a) The same class; or
- (b) A comparable class with the approval of the Division of Human Resource Management.

2. The notice required by subsection 1 need not be given if the transfer does not exceed 10 working days. If a bona fide or justifiable emergency exists, a transfer may be made immediately with the prior approval of the Division of Human Resource Management.

3. A transfer pursuant to this section must not be made to harass or discipline an employee.

4. A permanent employee who is required to transfer to a different geographical location and who declines the transfer has the same rights provided in NAC 284.630 as an employee who is laid off.

5. If an employee requests a hearing to appeal an involuntary transfer pursuant to NRS 284.376, the appointing authority may temporarily assign the employee, on a per diem basis, to transfer pending disposition of the appeal. ~~[The employee may request leave pursuant to NAC 284.589 to prepare for the hearing relating to the involuntary transfer.]~~

6. As used in this section, “geographical location” has the meaning ascribed to it in NAC 284.612.

Sec. 2. NAC 284.589 is hereby amended to read as follows:

284.589 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;

(d) For up to 2 hours to donate blood;

(e) 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 ~~H~~, *as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049*; 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 5, 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) His or her appearance as an aggrieved employee or a witness at a hearing of the Committee.

(f) His or her appearance as ~~an appellant or~~ a witness at a hearing ~~conducted pursuant to NRS 284.390 by a hearing officer of the Division of Human Resource Management.~~ *regarding a matter described in subparagraph (1), (2) or (3) of paragraph (e) of subsection 6.*

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

5. 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 ~~fall hearings~~ *any hearing described in paragraph (e).*

(e) The appearance of the employee as a party at a hearing regarding ~~at~~ :

(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 NAC 284.6561.

~~{(e) Up to 8 hours for preparation for all hearings regarding an involuntary transfer of the employee.}~~

Sec. 3. NAC 284.656 is hereby amended to read as follows:

284.656 Except as otherwise provided in NAC 284.6563, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure for providing notice of the proposed action must be followed:

1. The employee must be given at least 10 working days' written notice of the proposed action on the form provided by the Division of Human Resource Management.
2. The notice may be given in person or by ~~{mail.}~~ *means of any delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received.* If ~~{it is mailed.}~~ the notice *is sent by means of a delivery service, the notice* must be ~~{mailed}~~ *sent* to the employee's last known address . ~~{by registered or certified mail, return receipt requested. The date stamped on the receipt by the postal service is the date of delivery.}~~ *The notice must not be given by electronic mail, the use of social media or other electronic means.* If the notice is returned without ~~{a return receipt signed}~~ *having been received* by the employee, the employee's date of receipt shall be deemed to be the third day after the date ~~{of the mailing.}~~ *the notice was sent.*
3. The notice must:
 - (a) Specify the proposed date on which the action is effective.
 - (b) Inform the employee that a hearing has been scheduled on his or her behalf in the manner prescribed in NAC 284.6561 and specify the date, time and place of the hearing.
 - (c) Specify the charges, the reasons for them and the cause of action contained in NAC 284.646 or 284.650 on which the proposed action is based.

4. The notice of the proposed action must be signed by the appointing authority or his or her designated representative before the notice is given to the employee.

5. Upon its receipt, the employee must be asked to sign the notice. If he or she refuses to sign the notice, the refusal must be noted on the notice. The employee's signature is not an admission by him or her of any of the allegations set forth in the notice.

6. If the employee does not understand the reasons for the proposed action or the procedures related to disciplinary actions, including, without limitation, the right to notice, a hearing and an appeal, the employee may seek an explanation from the appointing authority or another person in the agency familiar with the procedure.

7. As used in this section, "social media" includes, without limitation, any electronic service or account or electronic content, including, without limitation, any video, photograph, blog, video blog, podcast, instant message, text message, electronic mail program or service, online service or Internet website profile.

Sec. 4. NAC 284.778 is hereby amended to read as follows:

284.778 1. A request for an appeal must be addressed to the Administrator and submitted on the form provided by the Division of Human Resource Management.

2. A copy of any written communication directed to a hearing officer must be sent to the ~~Hearing Clerk of the Division of Human Resource Management.~~ *clerk assigned to the hearing officer.*

3. A party shall not communicate with a hearing officer regarding the merits of a case:

(a) Except in the presence of all parties to the hearing; or

(b) Unless all parties to the hearing are notified of the communication in advance.

4. Unless otherwise agreed upon in writing by all parties, an offer or demand of settlement made by a party must not be disclosed to or proposed by a hearing officer before the issuance of a final decision by the hearing officer.

Sec. 5. 1. This section and sections 1, 2 and 4 of this regulation become effective on December 21, 2015.

2. Section 3 of this regulation becomes effective on January 1, 2016.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066

Informational Statement LCB File No. R042-15

1. A clear and concise explanation of the need for the adopted regulation.

Employee preparation for, and attendance at, hearings related to the his or her disciplinary action (dismissal, demotion, termination), involuntary transfer and hearings related to a claim of reprisal or retaliation due to the disclosure of improper governmental action, is vital to the process. The amendment to the second section included in this LCB file will ensure that an appointing authority grants administrative leave for these purposes. The amendment to the first section in this LCB file makes a conforming change based on the second section.

The amendment to the third section is necessary due to the passage and approval of Senate Bill 62 of the 2015 Legislative Session. This amendment will provide increased speed of delivery and reliability by modernizing methods by which agencies may provide notice of the disciplinary actions listed above. The use of social media and electronic methods for this type of notification is disallowed.

The Personnel Commission selected the Hearings Division of the Department of Administration to act as the primary hearing officers for employee appeals, effective July 1, 2014. Prior to this, contracted hearing officers acted as the primary hearing officers for these purposes. The amendment in Section 4 is necessary as the Division's staff no longer provides these services.

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

On November 4, 2015, copies of the proposed regulation amendments 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 via Listserv. These documents were also made available on the Division of Human Resource Management's website, the Nevada Public Notice website, the Legislative Counsel Bureau's website, e-mailed to all county libraries in Nevada, and posted at the following locations:

Blasdel Building
209 E. Musser Street
Carson City, NV

Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV

Nevada State Library and Archives
100 N. Stewart Street
Carson City, NV

Gaming Control Board
1919 College Parkway
Carson City, NV

Nevada State Capitol Building
101 N. Carson Street
Carson City, NV

Grant Sawyer Office Building
555 E. Washington Avenue
Las Vegas, NV

A regulation workshop was conducted by the Division of Human Resource Management on June 25, 2015, and a public hearing was held by the Nevada Personnel Commission on December 4, 2015.

There were no comments related to these regulation amendments at the regulation workshop or the public hearing.

Written minutes from the regulation workshop and public hearing can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or calling (775) 684-0105.

3. **The number of persons who:**
 - (a) **Attended each hearing:** December 4, 2015 – 35
 - (b) **Testified at each hearing:** December 4, 2015 – 1
 - (c) **Submitted written comments:** 0
4. **Following is a list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3(b):**

Michelle Garton, Supervisory Personnel Analyst
State of Nevada
Department of Administration
Division of Human Resource Management
100 N. Stewart Street, Suite 200
Carson City, NV 89701
(775) 684-0136
mgarton@admin.nv.gov

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

Comments were not solicited from businesses, as the regulation does not affect businesses. Comments were solicited from effected parties including employees and employee associations. Written minutes from the workshop and public hearing can be obtained as instructed in the response to question #2. No written comments were received.

- 6. 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 Division of Human Resource Management received a question related to the option of social media and electronic methods for providing notification to an employee of his or her disciplinary action. The intent of the change to NRS 284.385 included in Senate Bill 62 of the 2015 Legislative Session was to allow for more modern methods of sending the employee notification, such as UPS or FedEx, rather than limiting the options to just the United States Postal Service. The intent was not to allow for social media or electronic methods for this type of notification. Prior to the hearing, the Division included language in NAC 284.656 to clarify that social media and electronic methods of notification is disallowed, which was distributed to the members of the Commission prior to the hearing. Copies of the changes were also available for the public at each location where the meeting was held.

- 7. 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.

This regulation does not have a direct economic effect on either a regulated business or the public.

- 8. The estimated cost to the agency for enforcement of the proposed regulation:**

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

- 9. A description of any regulations of other State or governmental agencies which the proposed 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.**

The regulations do not overlap or duplicate any State or federal regulations.

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

The regulations do not include any provisions that are covered by any federal regulations.

- 11. 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.