

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R042-15

Proposed Amendments to Permanent Regulations

NAC 284.589 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will create consistency between hearings related to the dismissal, suspension or demotion of an employee, hearings related to the involuntary transfer of an employee and hearings related to a claim of reprisal or retaliation due to the disclosure of improper governmental action. Because employee preparation for, and his or her attendance at such hearings, is necessary so that the hearing officer can gather information from both parties, this change will mandate the approval of administrative leave for these purposes. The appearance of witnesses at such hearings will be allowable for all types of hearings listed above.

Currently, the regulation allows under certain circumstances, the granting of administrative leave for the attendance of an employee and any witnesses at all hearings related to the dismissal, suspension or demotion of an employee. With the amendment to subsection 4(f), the granting of administrative leave for these hearings will continue to be allowable for witnesses to attend such hearings. Also, the granting of administrative leave will be allowable for witnesses to attend hearings related to the involuntary transfer of an employee, as well as hearings related to a claim of reprisal or retaliation due to the disclosure of improper governmental action. It is important that the granting of administrative leave to witnesses remain allowable rather than mandatory so agencies are not faced with potential staffing shortages and can ensure proper staffing levels.

The granting of administrative leave for an appellant to attend hearings related to his or her dismissal, suspension or demotion will now be required rather than allowable, as outlined below in the explanation of the change to subsection 6.

Subsection 6 of NAC 284.589 currently requires the granting of 8 hours of administrative leave for an employee to prepare for hearings related to his or her dismissal, suspension or demotion, as well as hearings related to his or her involuntary transfer. The change to this subsection will also require the granting of 8 hours of administrative leave for an employee to prepare for hearings related to a claim of reprisal or retaliation due to the disclosure of improper governmental action.

As explained above related to the change to subsection 4(f), the granting of administrative leave for the appearance of an employee as an appellant at a hearing related to his or her dismissal, suspension, demotion, involuntary transfer, or a claim of reprisal or retaliation due to the disclosure of improper governmental action is placed in subsection 6(e) and will be required, rather than allowable.

NAC 284.589 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;

(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; *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 281.641*, NRS 284.390 ~~by a hearing officer of the Division of Human Resource Management.~~ and *NAC 284.6561*, or *NRS 284.376* and *NAC 284.394*.

(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 all hearings regarding *the following:*

(1) ~~the~~ A suspension, demotion or dismissal of the employee as provided in *NAC 284.6561* ~~;~~;

(2) *An involuntary transfer as provided in NRS 284.376 and NAC 284.394; or*

(3) *Reprisal or retaliatory action against an employee who discloses improper governmental actions as provided in NRS 281.641.*

(e) ~~Up to 8 hours for preparation for all hearings regarding an involuntary transfer of the employee.~~ *His or her appearance as an appellant at a hearing conducted pursuant to NRS 284.641, NRS 284.390 and NAC 284.6561, or NRS 284.376 and NAC 284.394.*

(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*)

NAC 284.394 is hereby amended to read as follows:

<p>Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will create consistency in NAC 284.394, which pertains to transfers initiated by appointing authorities, also referred to as involuntary transfers, and NAC 284.6561, which pertains to hearings regarding a dismissal, suspension or demotion. This change was</p>
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identified as necessary during the drafting process of changes proposed to be made to NAC 284.589.

NAC 284.589 currently requires, under certain circumstances, the granting of administrative leave to an employee so that he or she can appear at a hearing regarding his or her dismissal, suspension or a demotion. A proposed amendment to NAC 284.589 will require the granting of administrative leave for an employee to appear at his or her hearing related to an involuntary transfer, as well as a claim of reprisal or retaliation based on the disclosure of improper governmental action.

Also, NAC 284.589 currently requires, under certain circumstances, that 8 hours of administrative leave be granted to an employee so that he or she can *prepare* for a hearing regarding an involuntary transfer, a dismissal, a suspension or a demotion. The proposed amendment to NAC 284.589 will require the granting of 8 hours administrative leave for an employee to prepare for his or her hearing related to a claim of reprisal or retaliation based on the disclosure of improper governmental action.

Because the granting of administrative leave for these purposes will now be outlined in NAC 284.589, it is unnecessary to include in NAC 284.394 that an employee has the ability to request such leave.

The Division of Human Resource Management intends to include an informational note, such as the example below, in the *Rules for State Personnel Administration* publication explaining that administrative leave must be granted, under certain circumstances, to an employee to prepare for and attend a hearing regarding an appeal of his or her involuntary transfer. The informational note will ensure that it is clear that administrative leave may still be requested for this type of appeal hearing, and will direct individuals to the administrative leave regulation, NAC 284.589.

INFORMATIONAL NOTE: NAC 284.589 provides for, under certain circumstances, 8 hours of administrative leave to prepare for a hearing requested to appeal an involuntary transfer, as well as administrative leave to attend such hearings.

NAC 284.394 Transfers initiated by appointing authorities. (NRS 284.065, 284.155, 284.375)

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.

[Personnel Div., Rule VI § D subsec. 5, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 10-18-89; A by Personnel Comm’n by R183-03, 1-27-2004)

NAC 284.778 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, improves efficiency and creates added flexibility in the process of employee appeals. At its January 10, 2014 meeting, the Personnel Commission selected the Hearings and Appeals Division of the Department of Administration to act as the primary hearing officers for employee appeals beginning July 1, 2014. Also selected was one contracted hearing officer to hear employee appeals when a conflict of interest exists.

Prior July 1, 2014, all employee appeal hearings were heard by contracted hearing officers, and the Hearing Clerk of the Division of Human Resource Management served as the clerk to each of them. The Hearings and Appeals Division directly employs clerks who are assigned to the hearing officers of that Division. It is much more efficient for written communications to be sent directly to either the hearing officer or his or her assigned clerk of the Hearings and Appeals Division, rather than these communications being routed through the Division of Human Resource Management.

The amendment to this regulation also creates added flexibility to the process by broadening the contact for written communications to a “general” hearing clerk, rather than a hearing clerk specific to the Division of Human Resource Management. This will allow the regulation to apply to all types of hearing officers the Personnel Commission may select to hear employee appeals.

NAC 284.778 Request for hearing and other communications. (NRS 281.641, 284.065, 284.155, 284.376, 284.390)

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 *directly* to ~~{the Hearing Clerk of the Division of Human Resource Management.}~~ *that hearing officer or to the clerk assigned to him or her.*

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.

[Personnel Div., Hearings Procedures § (A) subsec. (1), eff. 11-28-65; A 6-9-74]—(NAC A by Dep't of Personnel, 10-26-84; A by Personnel Comm'n by R192-09, 6-30-2010, eff. 7-1-2010; R011-11, 10-26-2011)

NAC 284.656 is hereby amended to read as follows:

Explanation of Proposed Change: S.B. 62 of the 2015 Legislative Session amends NRS 284.385, which is related to the dismissal, involuntary demotion and suspension of State of Nevada employees in the classified service. The requirement for delivery in person or by mail in subsection 3 of NRS 284.385 has been removed. Language has been added to the statute requiring that regulations be adopted setting forth the procedures for properly notifying a classified employee of dismissal, involuntary demotion or suspension.

This amendment, proposed by the Division of Human Resource Management, will provide increased speed of delivery and reliability by modernizing methods by which agencies may provide notice of the disciplinary actions listed above. The amendment will allow agencies to use alternative carriers to the U.S. Postal Service, such as Federal Express or United Parcel Service, as long as the carrier provides proof that the notice was sent and that it was delivered.

NAC 284.656 Notice. (NRS 284.065, 284.155, 284.383, 284.385, 284.390) 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~~ *a delivery service that provides proof of both the date the notice was sent and the date the notice was delivered.* If ~~it is mailed,~~ *the notice is sent,* 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.~~ If the notice is returned ~~without a return receipt signed by the employee,~~ the employee's date of receipt shall be deemed to be the third day after the ~~date of the mailing.~~ *date 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.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 7-21-89; 8-1-91; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 11-12-93; 11-16-95; 11-16-95; A by Personnel Comm'n by R063-09, 11-25-2009)