

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R043-15

Effective December 21, 2015

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

AUTHORITY: §§1-4, NRS 284.065 and section 5 of Assembly Bill No. 436, chapter 461,
Statutes of Nevada 2015, at page 2688.

A REGULATION relating to state employees; repealing provisions governing longevity pay;
and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Before the passage of Assembly Bill No. 436 of the 2015 Legislative Session, existing law provided for a plan to encourage continuity of service for state employees by means of periodic cash payments commonly referred to as "longevity pay." Under the plan, each employee with 8 years or more of continuous state service was entitled to a semiannual payment which began at \$75 and increased annually after that for each year of continuous service to a maximum semiannual payment of \$1,175. (NRS 284.177) Section 5 of Assembly Bill No. 436 repealed the statutory provisions governing longevity pay. (Chapter 461, Statutes of Nevada 2015, at page 2688) **Section 4** of this regulation repeals the provisions of existing regulations governing longevity pay. **Sections 1-3** of this regulation make conforming changes.

Section 1. NAC 284.398 is hereby amended to read as follows:

284.398 1. An unclassified employee who has less than 4 months of service and whose appointment was immediately preceded by an appointment in the classified service in which the person was a permanent employee may transfer back into the classified service under the same conditions and with the same benefits as classified employees, except that the duties and compensation of the position to which the person is transferred must be similar, as determined by the Division of Human Resource Management, to either the unclassified position or to a previously held classified position.

2. Employees of any governmental agency which is acquired for administration by the State pursuant to NRS 284.022 may transfer into the classified service or unclassified service with the rights and benefits authorized by the Legislature.

3. An employee who transfers into the classified service:

(a) Must complete an application and meet the minimum qualifications for the class of the position to which he or she is transferring;

(b) Must have his or her date of transfer and appointment to the classified position effective immediately following the last day of employment in the unclassified or nonclassified position unless he or she was employed as a legislative employee at the conclusion of a regular session of the Legislature to whom subsection ~~6~~ 8 of NRS 284.3775 , *as amended by section 2 of Senate Bill No. 510, chapter 355, Statutes of Nevada 2015, at page 1993*, applies; and

(c) May retain the credits which he or she has earned for annual and sick leave . ~~and longevity.~~

Sec. 2. NAC 284.470 is hereby amended to read as follows:

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

2. A report on performance must be prepared on the form prescribed by the Division of Human Resource Management.

3. A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee. If a report on performance is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard.

4. If the performance of an employee falls below standard, his or her supervisor shall inform the employee promptly and specifically of the deficiencies in the performance of the employee regardless of whether a report on performance of the employee is completed or filed.

5. If any information that would have affected the rating of performance of an employee during a period of evaluation becomes available after the date on which the report on performance of the employee is filed for that period, the information may be included in the report on performance for the current period of evaluation and taken into consideration in determining the rating of performance for the current period of evaluation.

6. When a report on performance is given which reports the overall rating of performance of an employee as substandard:

(a) The report must contain a written notice that such reports affect ~~both~~ merit pay increases ; ~~and the employee's eligibility for longevity pay;~~ and

(b) An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard or disciplinary action is taken against the employee.

7. Except as otherwise provided in subsection 8, the preparation of each report on performance must include a discussion between the employee and his or her immediate supervisor. Within 10 working days after the discussion takes place:

(a) The employee must complete and sign the appropriate section on the report on performance and return the report to the supervisor for forwarding to the reviewing officer or appointing authority.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify the specific points of contention, if such specificity is provided, and return the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the contested report on performance and render a final decision to the employee within 10 working days after receiving the recommendation.

8. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 7 because of an extended absence, the immediate supervisor of the employee shall cause the report to be mailed to the employee. Within 10 working days after the date on which the employee receives the report:

(a) The employee must complete and sign the appropriate section on the report on performance and mail the report to the supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify any specific point of contention, if the report provides such specificity, and mail the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must

submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the report on performance and render a final decision to the employee within 10 working days after receiving the recommendation. For the purposes of this paragraph, 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.

9. A copy of each report on performance and, if applicable, any written response to such a report requested by an employee pursuant to subsection 7 or 8 must be provided to the employee and filed with the Division of Human Resource Management.

10. If any written comments are added to a report on performance after a copy of the report has been provided to the employee pursuant to subsection 9:

(a) A copy of the revised report which includes the written comments must be provided to the employee; and

(b) The employee may respond, in writing, to the additional comments in the revised report not later than 10 working days after receiving a copy of the revised report and submit the response to the Division of Human Resource Management for inclusion in his or her file of employment.

11. An employee and his or her appointing authority may agree in writing to extend one or more of the periods prescribed in subsection 7 or 8.

12. 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 284.6957, inclusive.

Sec. 3. NAC 284.580 is hereby amended to read as follows:

284.580 1. Upon the request of an appointing authority, the Department of Administration may authorize the appointing authority to place a nonexempt employee on a leave of absence without pay for a fiscal emergency of the State or an agency during any period for which the Governor has declared that the State or an agency will experience a shortfall in revenue or for any other reason is in a state of fiscal emergency.

2. All employees in the same classification must be treated equitably with respect to being placed on a leave of absence without pay pursuant to this section unless an employee volunteers to be placed on such a leave of absence.

3. The appointing authority shall reduce the pay of an employee who is placed on a leave of absence without pay pursuant to subsection 1 by an amount equal to the pay that the employee would otherwise receive for the hours for which the leave is approved.

4. The hours for which payment is withheld pursuant to subsection 3:

(a) Must be treated as hours in paid status for the purposes of NAC 284.182, 284.255, ~~284.282,~~ 284.448, 284.538, 284.5385, 284.544 and 284.614.

(b) Must not be considered as time worked in calculating overtime.

5. Regardless of whether an employee volunteers to be placed on a leave of absence pursuant to subsection 1, after notifying the employee in writing and allowing a reasonable period for the employee to return to work, an appointing authority:

(a) Shall revoke the placement of any employee on a leave of absence without pay pursuant to subsection 1 upon a declaration by the Governor that the fiscal emergency no longer exists.

(b) May revoke the placement of any employee on any leave of absence without pay pursuant to subsection 1 for any other bona fide reason.

Sec. 4. NAC 284.262, 284.270, 284.274, 284.278, 284.282 and 284.284 are hereby repealed.

TEXT OF REPEALED SECTIONS

284.262 Longevity pay: Eligibility. (NRS 284.065, 284.155, 284.175) Classified and unclassified employees are eligible for longevity pay pursuant to NRS 284.177.

284.270 Longevity pay: Required rating of performance. (NRS 284.065, 284.155, 284.175, 284.335)

1. For an employee to be eligible for longevity pay pursuant to NRS 284.177, he or she must receive a rating of performance of standard or better on his or her most recent report on performance.

2. An employee's performance will be deemed to be standard on the date on which the report on performance was due if:

- (a) The employee's performance was not rated during the previous 12 months; or
- (b) A subsequent report on performance was not filed after the employee received a substandard rating of performance pursuant to the provisions of subsection 4 of NRS 284.340.

284.274 Longevity pay: Dates of payment and eligibility; responsible agency. (NRS 284.065, 284.155, 284.175)

1. After 8 years of continuous service, an employee is eligible for longevity pay in semiannual payments on December 31 and June 30.

2. Except as otherwise provided in NAC 284.282, such employees who are eligible and have not been separated from state service as of these dates will receive longevity pay.

3. An agency is responsible for the payment of longevity pay due an employee if that employee is employed by the agency on the date on which the employee becomes eligible for the semiannual payment.

284.278 Longevity pay: Formulas for calculation. (NRS 284.065, 284.155, 284.175)

1. Except as otherwise provided in subsection 2, longevity pay for nonexempt employees must be calculated based on the following formula:

$$\frac{\begin{array}{l} \text{The number of hours} \\ \text{worked during the 6-month} \\ \text{qualifying period} \end{array}}{\begin{array}{l} \text{Total full-time equivalent} \\ \text{hours for the pay class designation} \\ \text{during the 6-month} \\ \text{qualifying period} \end{array}} \times \text{longevity increment} = \text{longevity payment for the 6-month period}$$

2. Longevity pay for exempt classified employees and exempt unclassified employees must be calculated based on the following formula:

$$\frac{\begin{array}{l} \text{The number of 8-hour days} \\ \text{worked during the 6-month} \\ \text{qualifying period} \end{array}}$$

_____ X longevity increment = longevity payment for the 6-month period
Total full-time equivalent
8-hour days for the pay class designation during
the 6-month qualifying period

3. As used in this section, “hours worked” includes only the base hours for the pay class designation.

284.282 Longevity pay: Particular circumstances. (NRS 284.065, 284.155, 284.175, 284.345, 284.355, 284.362)

1. Except as otherwise provided in NAC 284.580 for a leave of absence without pay during a fiscal emergency, an employee who is on leave without pay or catastrophic leave, or any combination of both, for the entire 6-month period of qualification is not entitled to longevity pay for that period.

2. The payment for longevity pay for a full-time employee will not be prorated pursuant to NAC 284.278 if he or she:

(a) Is an exempt classified employee or exempt unclassified employee and he or she uses an amount of leave without pay or catastrophic leave, or any combination of both, that equals 30 days or less in a calendar year; or

(b) Is a nonexempt employee, the base hours established for his or her pay class designation are 40 hours per week or 80 hours biweekly and he or she uses 240 hours or less of leave without pay or catastrophic leave, or any combination of both, in a calendar year.

3. If the base hours established for a pay class designation exceed 40 hours per week or 80 hours biweekly, an employee in that pay class designation must be allotted leave without pay and catastrophic leave in proportion to his or her base hours and full-time equivalency. The longevity

pay of such an employee will not be prorated unless his or her use of leave without pay and catastrophic leave proportionally exceeds the limits set forth in subsections 2 and 4.

4. A part-time employee must be allotted leave without pay and catastrophic leave in proportion to his or her base hours and the full-time equivalency for his or her pay class designation. The longevity pay of such an employee will not be prorated unless his or her use of leave without pay and catastrophic leave proportionally exceeds the limit set for a full-time employee in his or her pay class designation pursuant to subsection 2.

5. An employee who retires pursuant to the provisions of chapter 286 of NRS or who dies during the 6-month qualifying period is eligible for longevity pay according to the applicable formula in NAC 284.278.

6. An employee who is laid off and is rehired within 1 year after the date of layoff is eligible for the longevity pay he or she would have earned if he or she had not been laid off. The longevity pay must be calculated as if the employee had been on leave without pay pursuant to subsection 2.

7. A person with a permanent disability arising from a work-related injury or occupational disease who is reemployed following a separation from state service within 1 year after the date on which he or she sustained the permanent disability as determined pursuant to NAC 284.6013 is eligible for the longevity pay he or she would have earned if he or she had not been separated from state service. The longevity pay of such an employee must be calculated as if the employee had been on leave without pay pursuant to subsection 2.

8. An employee is eligible to earn service credit for the calculation of longevity pay when he or she is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS and he or she uses accrued sick leave, accrued annual leave or

accrued compensatory time to meet the difference between his or her normal pay and the benefits he or she receives. Such an employee ceases to earn service credit for the calculation of longevity pay when he or she is placed on a leave of absence without pay or catastrophic leave.

9. Service in a seasonal position must be credited toward the calculation of longevity pay if the employee is employed on December 31 and June 30 and if the requirements for eligibility for longevity pay have been met. If an employee in a seasonal position is not on the payroll on those two dates and is reemployed within 12 months, the employee is entitled to receive prorated longevity pay for his or her service during the previous longevity period.

10. If a person is on leave of absence without pay for military service pursuant to NRS 284.359 or is reemployed within 90 days after the military service, the time during which he or she was not in paid status because of his or her military service will be counted as service credit for the calculation of longevity pay. The person is eligible for longevity pay for the time he or she is in paid status in accordance with the provisions of subsection 2.

11. If a nonclassified employee or an employee covered by NRS 284.022 is appointed without a break in service to the classified or unclassified service, the previous time served is counted for the purpose of calculating longevity pay, but the employee is not eligible for any retroactive longevity pay.

284.284 Longevity pay: Return to state service. (NRS 284.065, 284.155, 284.175)

1. An employee who was eligible for longevity pay and who separated from state service before July 1, 1981, and returns to state service retains his or her eligibility for longevity pay.

2. For the purposes of this section, the employee will receive the same semiannual rate of payment that he or she received at the time of his or her separation from service. However, the employee may not receive any semiannual increases until he or she has again served the same

number of years without a break in service that he or she had served at the time of his or her separation from service plus 1 year.

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

LCB File No. R043-15

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

The statutes pertaining to longevity pay were repealed by Assembly Bill 436 of the 2015 Legislative Session, effective June 9, 2015. As such, the regulations related to longevity pay must also be repealed, which this accomplishes.

Required amendments to several other regulations, based on the repeal of the statutes and regulations related to longevity pay, are also included in this LCB file.

In addition, the amendment to the first section of this file is necessary as a result of the passage and approval of Senate Bill 510, which changed the reference to NRS 284.3775.

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. At the public hearing, a representative from the American Federation of State, County and Municipal Employees (AFSCME) Local 4041 stated that his organization remains opposed to the removal of longevity pay for employees. He also stated that they understood that the proposed regulation changes are necessary based on Senate Bill 62 of the 2015 Legislative Session.

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 – 2
 - (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

Kevin Ranft, Labor Representative/Lobbyist
AFSCME Local 4041
504 E. Musser Street, Suite 300
Carson City, NV 89701

- 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.**

No opposition to the regulation was received at the workshop or at the Personnel Commission hearing.

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.