

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R102-15

November 3, 2015

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

AUTHORITY: §§1-5, NRS 284.065, 284.155, 284.290 and 284.300, as amended by Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1045.

A REGULATION relating to the State Personnel System; revising provisions governing the employment, promotion, dismissal, demotion or suspension of state employees; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 1 of Senate Bill No. 62 of the 78th Legislative Session requires the Personnel Commission to adopt regulations to be effective on January 1, 2016, requiring that a classified employee who is promoted but fails to attain permanent status in the promoted position must be: (1) restored to the position from which he or she was promoted unless doing so would displace another employee with greater seniority; (2) placed in a comparable position for which a vacancy exists; or (3) if no such positions exist, appointed to an equal or lower position for which a vacancy exists or placed on an appropriate reemployment list. (NRS 284.300, as amended by section 1 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, page 1045) **Section 4** of this regulation carries out section 1 of Senate Bill No. 62, including prescribing the manner for calculating seniority for purposes of displacement. **Section 4** further provides that any employee with less seniority who is displaced by the restored employee must be placed: (1) in a vacant position in the agency in the same or a comparable class; (2) in a vacant position in the agency in a class with a lower grade that is closest to the grade most recently held by the employee; or (3) if no such vacant positions exist, on an appropriate reemployment list. **Sections 1-3** of this regulation make conforming changes.

Section 1. NAC 284.088 is hereby amended to read as follows:

284.088 “Promotion” means an advancement to a position in a class which has a higher grade than the class previously held. ~~¶The term does not include the restoration of a promoted employee to his or her former position pursuant to NAC 284.462.¶~~

Sec. 2. NAC 284.182 is hereby amended to read as follows:

284.182 1. An employee receives a new pay progression date if he or she is:

- (a) Promoted to a position that results in an increase of two grades or more; or
- (b) Reinstated.

2. An employee who is:

- (a) Promoted to a position that results in an increase of one grade;
- (b) In a position that is reclassified to a higher class as a result of an individual classification study or an occupational study;

- (c) Transferred to a position without receiving an increase in grade;
- (d) Reappointed to a position at a grade that he or she formerly held;
- (e) Reemployed and has remained continuously employed; or
- (f) Demoted,

↪ retains the pay progression date held before the action described in paragraphs (a) to (f), inclusive, occurred.

3. If a person who is eligible for military reemployment is reemployed, he or she retains the pay progression date held when separated from this State for his or her service in the military.

4. If an employee was promoted but is being restored to his or her former position *or class* pursuant to the provisions of NAC 284.462, the date of appointment and pay progression date of the former position must be restored. *If, pursuant to subparagraph (1) of paragraph (c) of subsection 2 of NAC 284.462, the employee is placed in a position in a class equal to or lower than the class of the position held by the employee immediately before the promotion, the pay progression date of the former position must be restored.*

5. Except as otherwise provided in this subsection and subsection 6, an employee's pay progression date must be adjusted:

(a) To equal 1 year of full-time equivalent service for an employee who changes from full-time employment to part-time employment or from part-time employment to full-time employment; or

(b) On a day-for-day basis for the amount of time the employee:

(1) Was separated from state service if the employee is reemployed within 1 year after the date on which he or she was laid off or received a seasonal separation.

(2) Was separated from state service if the employee is a person with a permanent disability arising from a work-related injury or occupational disease who is reemployed within 1 year after the date on which he or she sustained the permanent disability as determined pursuant to NAC 284.6013.

(3) Was on leave without pay, or on catastrophic leave, if the employee is:

(I) A nonexempt employee and the leave without pay or catastrophic leave was in excess of 240 hours; or

(II) An exempt classified employee and the leave without pay or catastrophic leave was in excess of 30 working days,

↳ in a year, except for leave without pay for a work-related injury or illness pursuant to NRS 281.390 or on a military leave of absence pursuant to NRS 284.359 or a leave of absence without pay during a fiscal emergency pursuant to NAC 284.580. An employee whose base hours are more than 80 hours biweekly must be allotted additional leave without pay and catastrophic leave in proportion to the base hours for his or her pay class designation. As used in this

subparagraph, “year” means a period equal to 12 months of full-time equivalent service measured backward from the employee’s pay progression date.

6. If the number of total hours of leave without pay or catastrophic leave of a nonexempt employee that exceed 240 hours is less than 1 day of full-time equivalent service for the pay class designation of the employee, an adjustment will not be made for those hours.

7. If an employee is on leave without pay, or on catastrophic leave, on his or her pay progression date, any adjustment to his or her pay progression date will be made after he or she returns to work.

Sec. 3. NAC 284.444 is hereby amended to read as follows:

284.444 1. A probationary employee who transfers:

(a) Within the same class must serve the remaining portion of the probationary period.

(b) From one class to another class must serve a new probationary period.

2. An employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period. Except for those unclassified employees who transfer pursuant to subsection 2 of NAC 284.398, the status of a permanent employee may not be attained until the satisfactory completion of the probationary period.

3. An employee who is reinstated must serve a new probationary period unless it is waived in writing by the appointing authority. If an appointing authority waives the probationary period, the status of the appointment of the employee is permanent.

4. A probationary employee who is reappointed must serve a new probationary period.

5. A permanent employee who is reappointed to a class:

(a) At a higher grade level must serve a trial period unless it is waived by the appointing authority.

(b) At the same grade level or a lower grade level is not required to serve a probationary period.

6. An employee who is laid off, but who is reemployed within 1 year, must serve a new probationary period if reemployed in a different class or in a different department than that from which he or she was laid off, and the employee is subject to the provisions of subsection 8 of NAC 284.630.

7. A person with a permanent disability arising from a work-related injury or occupational disease who is reemployed in a different class or option than his or her regular position must serve a new probationary period as required by NAC 284.6018.

8. A person who is on a military leave of absence pursuant to NRS 284.359 is entitled to return to the status of appointment held at the time he or she commenced the military leave of absence. If the employee did not complete the probationary period, he or she will only be required to complete the remaining portion thereof. Upon successful completion of the probationary period, permanent status must be granted to the employee as of the date on which permanent status would have been granted if the employee had not taken a military leave of absence.

9. Promotion to a vacant position requires a new probationary period. Promotions which result from reclassification are governed by NAC 284.134 and 284.138.

10. Except as otherwise provided in subsection 11:

(a) No probationary period will be required if a permanent employee is demoted.

(b) A new probationary period will be required if a probationary employee is demoted.

11. An employee who is restored to his or her former position *or class* pursuant to NAC 284.462 following a promotional appointment must serve the portion of the ~~probationary~~ *trial*

period which was remaining at the time of the promotion. *No probationary period is required if, pursuant to subparagraph (1) of paragraph (c) of subsection 2 of NAC 284.462, an employee is placed in a position in a class equal to or lower than the class held by the employee immediately before the promotion.*

Sec. 4. NAC 284.462 is hereby amended to read as follows:

284.462 1. For the purposes of this section only, “promotion” means any movement into a vacant position which has a higher grade than the position previously occupied by a classified employee who has ~~iserved 6 months of continuous (full-time equivalent) service.~~ *completed an initial probationary period.*

2. An employee *who is* promoted ~~pursuant to subsection 1 who~~ *and* fails to attain permanent status in the position to which he or she was promoted or who is dismissed for a cause other than misconduct or delinquency on his or her part from the position to which he or she was promoted, either during the probationary period *for that position* or at its conclusion, must *, in the following order,* be ~~restored~~ :

(a) *Restored* to the position from which ~~he or she~~ *the employee* was promoted ~~to~~ *, unless that position is held by an employee with greater seniority;*

(b) *If the position from which the employee was promoted is held by an employee with greater seniority, appointed to another position in the agency from which the employee was promoted:*

- (1) *For which a vacancy exists; and*
- (2) *Which is in the same class as the position held by the employee immediately before the promotion; or*

(c) If the position from which the employee was promoted is held by an employee with greater seniority and a position described in paragraph (b) does not exist:

(1) Appointed to a position in the agency from which the employee was promoted:

(I) For which a vacancy exists;

(II) Within a class equal to or lower than the class of the position held by the employee immediately before the promotion; and

(III) For which the employee meets the minimum qualifications; or

(2) Placed on the reemployment list for other classes for which the employee meets the minimum qualifications.

3. If an employee fails to attain permanent status and is restored to his or her former position ~~or~~ *or otherwise placed pursuant to subsection 2*, the appointing authority which ~~is effecting the restoration~~ *takes such action* must give written notice to the agency from which the employee was promoted at least 30 calendar days before the effective date ~~of the action~~ *of the action*. The agency which is taking *the* action ~~to restore the employee to his or her former position~~ is liable for the payment of the employee during this 30-day period unless the agency ~~to which~~ *receiving* the employee ~~is being restored~~ agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if ~~a report of separation or notice of intent to restore an employee to his or her former position~~ *notice of the action* has been provided to the employee and filed with the Division of Human Resource Management on or before the last day of his or her ~~probationary~~ *trial* period, even though the ~~separation or restoration~~ *action* takes place after the last day of the ~~probationary~~ *trial* period.

4. *If an employee is restored to the position from which he or she was promoted and displaces an employee with less seniority pursuant to paragraph (a) of subsection 2, the*

displaced employee must be placed, in the following order, unless the displaced employee waives his or her rights to be placed pursuant to this subsection:

(a) In a vacant position in the agency with which the displaced employee is employed in the same class;

(b) In a vacant position in the agency with which the displaced employee is employed in a comparable class for which the employee meets the minimum qualifications;

(c) In a vacant position in the agency with which the displaced employee is employed in a class with a lower grade that is closest to the grade most recently held by the employee for which the employee meets the minimum qualifications; or

(d) If a vacant position is not available for the employee pursuant to paragraph (a), (b) or (c) and the employee has attained permanent status with the State, the employee must be placed on the reemployment list for other classes for which the employee meets the minimum qualifications.

5. A demotion from probationary status in a higher class to the former lower level class may not be appealed.

6. *For the purposes of calculating an employee's seniority for paragraph (a) of subsection 2:*

(a) Except as otherwise provided in this section, the total number of years of continuous full-time equivalent service up to the effective date of the rejection from probationary status must be included.

(b) Except as otherwise provided in subsection 7, the sum of the calculation made pursuant to paragraph (a) or, if applicable, subsection 10 must be reduced by the following periods if

those periods occurred during the 36 months immediately preceding the date of the notification of rejection from probationary status:

(1) For a nonexempt employee, any combination of leave without pay and catastrophic leave in excess of 240 hours in the period preceding the date of the notification of rejection from probationary status equal to 12 months of full-time equivalent service;

(2) For an exempt classified employee or exempt unclassified employee, any combination of leave without pay and catastrophic leave in excess of 30 working days in the period preceding the date of the notification of rejection from probationary status equal to 12 months of full-time equivalent service; and

(3) Any time covered by a report on performance which rated the employee below standard, excluding evaluations received within 75 calendar days before the notification of rejection from probationary status.

7. For the purposes of the reduction in the calculation of seniority required by paragraph (b) of subsection 6:

(a) The reduction may not include:

(1) A leave of absence without pay during a fiscal emergency of the State or an agency pursuant to NAC 284.580;

(2) A leave of absence without pay for a work-related injury or illness pursuant to NRS 281.390; or

(3) A military leave of absence pursuant to NRS 284.359.

(b) As set forth in subparagraphs (1) and (2) of paragraph (b) of subsection 6, an employee whose base hours are more than 80 hours biweekly must be allotted additional leave without pay and catastrophic leave in proportion to the base hours for his or her pay class designation.

8. For the purposes of calculating an employee's seniority for paragraph (a) of subsection 2, if seniority is otherwise equal, seniority must be determined in the following order:

(a) Total time within the occupational group;

(b) Total time within the department; and

(c) By lot.

9. For the purposes of calculating seniority for reemployment, if seniority is otherwise equal, seniority must be determined by lot.

10. A department may request from the Commission approval to calculate the number of years of continuous full-time equivalent service of an employee of the department by doubling the time spent by the employee in his or her present occupational group as categorized by NRS 284.171 and adding that amount to the time spent by the employee in all former occupational groups up to the date of rejection from probationary status. If the Commission approves the request of the department to calculate the number of years of service pursuant to this section, the department shall use this method to calculate the number of years of service:

(a) Only to determine whether an employee will be restored to the position from which the employee was promoted and not for the placement of an employee on a reemployment list; and

(b) Until the department seeks from and is granted approval by the Commission to revert to the method of calculating the number of years of service set forth in paragraph (a) of subsection 6.

Sec. 5. This regulation becomes effective on January 1, 2016.