

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB FILE NO. R118-17I

**The following document is the initial draft regulation proposed
by the agency submitted on 10/12/2017**

Section 1.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, amends NAC 284 by adding a new section to require an employee to report within 5 working days the suspension, revocation or cancellation of a license, certificate or permit which is a requirement of the position. Subparagraph (e) of subsection 2 of NAC 284.646 allows for the immediate dismissal of an employee who has had such a license, certificate or permit suspended, revoked or cancelled.

NEW Report of suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license.

1. An employee must report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license to his or her appointing authority within 5 working days after it occurs if the possession of such license, certificate or permit is a requirement of the position as stated in the standards of work performance, essential functions, class specifications, in other documentation for the position, or required pursuant to federal or state law.

2. If an employee fails to make the report pursuant to the requirements of subsection 1, he or she may be:

(a) Dismissed immediately in accordance with NAC 284.646; or

(b) Disciplined in accordance with NAC 284.650.

Sec. 2.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, amends NAC 284 by adding a new section to require an employee to report being charged with, arrested for or convicted of an offense that either temporarily or permanently results in the employee not being able to perform the duties of his or her position.

This regulation is proposed due to situations where off duty behavior has resulted in an employee not being able to perform his or her duties. It is important for an appointing authority to know of a charge, arrest, or conviction in order to make a determination if the employee can no longer serve in his or her position, may need to be placed on leave, or take any other action to protect the public that is served. Subparagraph (h) of subsection 2 of NAC 284.646 is recommended to be amended to allow for the immediate dismissal of an employee for failure to report being charged with, arrested for or convicted of such an offense in accordance with this section.

NEW Report of charge, arrest, or conviction of an offense.

1. An employee must report being charged with, arrested for or convicted of any offense, including an offense that took place during working or nonworking hours to his or her appointing authority within 5 working days after it occurs if the charge, arrest or conviction results in the employee's inability to temporarily or permanently perform the duties of his or her position.

2. If an employee fails to report pursuant to the requirements of subsection 1, he or she may be:

(a) Dismissed immediately in accordance with NAC 284.646; or

(b) Disciplined in accordance with NAC 284.650.

Sec. 3.

Explanation of proposed change: Proposed by the Division of Human Resource Management, this amendment allows an appointing authority to immediately dismiss or discipline an employee for failure to report being charged with, arrested for or convicted of an offense in accordance with Section 2 of this regulation.

NAC 284.646 Dismissals. (NRS 284.065, 284.155, 284.383, 284.385, 284.390)

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.

(h) Not reporting being charged with, arrested for or convicted of an offense in accordance with Section 2 of this regulation.

3. The rights and procedures set forth in NAC 284.655 to 284.6563, inclusive, apply to any dismissal made pursuant to this section.

4. 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; A by Personnel Comm’n by R147-06, 12-7-2006; R063-09, 11-25-2009; R027-11, 12-30-2011)

Sec. 4.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, requires an employee to report being charged with, arrested for or convicted of an offense related to drugs or alcohol. Additionally, the amendment includes that an employee is required to report charges, arrests or convictions for an offense that occurred during his or her personal time away from the workplace if the charge, arrest or conviction results in the employee’s inability to temporarily or permanently perform the duties of his or her position.

NAC 284.653 Driving under the influence; unlawful acts involving controlled substance. (NRS 284.065, 284.155, 284.383, 284.385, 284.407)

1. An employee is subject to any disciplinary action set forth in subsection 2, as determined by the appointing authority, if the employee is convicted of any of the following offenses:

(a) If the offense occurred while the employee was driving a state vehicle, or a privately owned vehicle on state business:

(1) Driving under the influence in violation of NRS 484C.110; or

(2) Any offense resulting from an incident in which the employee was:

(I) Originally charged with driving under the influence; or

(II) Charged with any other offense for which driving under the influence is an element of the offense.

(b) The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance on the premises of the workplace or on state business.

2. An appointing authority may impose the following disciplinary actions if an employee is convicted of an offense set forth in subsection 1:

(a) For the first offense:

(1) Dismissal;

(2) Demotion, if permitted by the organizational structure of the agency for which he or she is employed;

(3) Suspension for 30 calendar days; or

(4) Suspension for 30 calendar days and demotion.

(b) For the second offense within 5 years, dismissal.

3. An employee who is suspended or demoted pursuant to subsection 2 must:

(a) Agree to be evaluated through an employee assistance program; and

(b) Complete any program of treatment recommended by the evaluation.

4. If an employee fails to complete the program of treatment, the appointing authority must dismiss the employee.

5. Pursuant to NRS 193.105, an employee who is convicted of violating any state or federal law prohibiting the sale of a controlled substance must be dismissed.

6. An employee must report ~~that~~ *being charged with, an arrest for or conviction of any offense described in this section including a charge, arrest or conviction for an offense that took place during working or nonworking hours* to his or her appointing authority within 5 working days after it occurs *if the charge, arrest or conviction results in the employee's inability to temporarily or permanently perform the duties of his or her position*. If the employee fails to make that report, he or she must be dismissed.

(Added to NAC by Dep't of Personnel, eff. 7-22-87; A 4-20-90; 3-27-92; A by Personnel Comm'n by R147-06, 12-7-2006; R141-07, 1-30-2008)

Sec. 5.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will provide agencies flexibility in assuring that an employee is safely transported from the test location when he or she will not be returning to the workplace due to the end of a work day, a positive test result, or no immediate test result. The addition to the regulation allowing an employee to make his or her own transportation arrangements is intended to provide an employee with an additional option. It is not the intent to remove the agency's responsibility to ensure the employee's transportation. The amendment also allows an agency, as needed, to respond to an obvious medical crisis that happens prior to or during transportation of the employee following the test.

NAC 284.890 Transportation of employee to and from location of screening test. (NRS 284.065, 284.155, 284.407) If an employee is required to submit to a screening test, the appointing authority shall provide transportation for the employee to the location of the test. After the employee submits to the screening test, the appointing authority, *as appropriate*, shall ~~provide transportation for the employee to his or her home~~ :

1. *Provide transportation for the employee to his or her home;*
2. *Assist the employee in arranging for an individual of the employee's choice to provide transportation for the employee; or*
3. *If a reasonable person, prior to or during transportation of the employee to his or her home, believes that the employee is in need of emergency medical assistance he or she will arrange for that assistance.*

(Added to NAC by Dep't of Personnel, eff. 12-26-91)