

**REVISED ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R147-06

Effective December 7, 2006

**(Note: Sections 5 and 12 have been removed from this regulation
and are now located in R169-06)**

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

AUTHORITY: §§1-5, NRS 284.065; §§6 and 7, NRS 284.065, 284.155, 284.383 and 284.385; §8, NRS 284.065, 284.155 and 284.383; §9, NRS 284.065, 284.155, 284.383, 284.385 and 284.407; §10, NRS 284.065 and 284.155.

A REGULATION relating to the State Personnel System; authorizing appointing authorities to immediately dismiss employees under certain circumstances; revising the grounds for disciplinary action against employees; authorizing appointing authorities to impose certain disciplinary actions against employees for certain criminal offenses involving driving under the influence of an intoxicating liquor or controlled substance; authorizing appointing authorities to dismiss employees who engage in sexual harassment; and providing other matters properly relating thereto.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“Premises of the workplace” means any building, office, vehicle or location, or any part thereof, specifically intended to serve as a place where work is performed by an employee during the course of a workday, including, without limitation, irregular shifts, or any other building, office, vehicle or location at or in which an employee is authorized to perform work by the agency with which he is employed. The term includes parking lots, garages or vehicle depots that are owned or leased by the State. The term does not include a location that constitutes an employee’s usual and customary living quarters, except when the*

living quarters are also used to care for children pursuant to a state program or as otherwise authorized by the State.

Sec. 3. “Sexual conduct” means:

- 1. Ordinary sexual intercourse;*
- 2. Anal intercourse;*
- 3. Fellatio, cunnilingus or other oral-genital contact;*
- 4. Physical contact by a person with the genitals or pubic area of another person for the purpose of arousing or gratifying the sexual desire of either person;*
- 5. Penetration, however slight, by a person of an object into the genital or anal opening of the body of another person for the purpose of arousing or gratifying the sexual desire of either person; or*
- 6. Masturbation or the lewd exhibition of genitals.*

Sec. 4. “Sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other speech, or physical conduct of a sexual nature when:

- 1. Submission to such speech or conduct is made either explicitly or implicitly a term or condition of a person’s employment;*
- 2. Submission to or the rejection of such speech or conduct by a person is used as the basis for employment decisions affecting that person; or*
- 3. Such speech or conduct has the purpose or effect of unreasonably interfering with a person’s work performance or creating an intimidating, hostile or offensive working environment.*

Sec. 5. NAC 284.010 is hereby amended to read as follows:

284.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 284.022 to 284.112, inclusive, ***and sections 2, 3 and 4 of this regulation*** have the meanings ascribed to them in those sections.

Sec. 6. NAC 284.642 is hereby amended to read as follows:

284.642 1. If ~~[a written reprimand is not effective,]~~ ***other forms of disciplinary or corrective action have proved ineffective,*** or if the seriousness of the offense or condition warrants, an employee may be ~~[suspended]~~ :

(a) ***Suspended*** without pay ~~[by the appointing authority]~~ for a period not to exceed 30 calendar days for any cause ~~for causes listed in NAC 284.650. The rights and procedures contained in NAC 284.656 apply to a suspension ordered pursuant to this section.] set forth in this chapter; or~~

(b) ***Demoted for any cause set forth in this chapter.***

2. An exempt classified employee may only be suspended without pay in increments of one or more full workweeks.

3. ***The rights and procedures set forth in NAC 284.656 apply to any disciplinary action taken pursuant to this section.***

Sec. 7. NAC 284.646 is hereby amended to read as follows:

284.646 1. ~~If other forms of disciplinary or corrective action have proved ineffective or when the seriousness of the offense or condition warrants, the]~~ ***An*** appointing authority may ~~[demote or dismiss the]~~ ***dismiss an*** employee for any cause ~~for causes listed]~~ ***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.*

3. The rights and procedures ~~[contained]~~ *set forth* in NAC 284.656 apply to ~~[a disciplinary action taken]~~ *any dismissal made* pursuant to this section.

~~[2. An appointing authority may, in his discretion, reappoint a demoted employee to his former class.]~~

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.*

Sec. 8. NAC 284.650 is hereby amended to read as follows:

284.650 Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.
2. Disgraceful personal conduct which impairs the performance of a job or causes discredit to the agency.

3. The employee of any institution administering a security program, in the considered judgment of the appointing authority, violates or endangers the security of the institution.
4. Discourteous treatment of the public or fellow employees while on duty.
5. Incompetence or inefficiency.
6. Insubordination or willful disobedience.
7. Inexcusable neglect of duty.
8. Fraud in securing appointment.
9. Prohibited political activity.
10. Dishonesty.
11. Abuse, damage to or waste of public equipment, property or supplies because of inexcusable negligence or willful acts.
12. Drug or alcohol abuse as described in NRS 284.4062 and NAC 284.884.
13. Conviction of any criminal act involving moral turpitude.
14. Being under the influence of intoxicants, a controlled substance without a medical doctor's prescription or any other illegally used substances while on duty. ~~[and performing a function that does not involve the operation of a motor vehicle.]~~
15. Unauthorized absence from duty or abuse of leave privileges.
16. Violation of any rule of the Commission.
17. Falsification of any records.
18. Misrepresentation of official capacity or authority.
19. ~~[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 specification of class 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.~~

—**20.]** Violation of any safety rule adopted or enforced by the employee's appointing authority.

[21.] 20. Carrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his appointing authority. ~~[As used in this subsection, "workplace" means any building, office, or location specifically intended to serve as a place where work is performed by an employee during the course of a workday, including, without limitation, irregular shifts. The term does not include parking lots, garages or vehicle depots, unless those areas constitute an employee's usual and customary work site, or locations that serve as both living quarters and work sites, except when the living quarters are also used to care for children pursuant to a state program or as otherwise authorized by the State.~~

—**22.] 21.** Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.

22. *Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning sexual harassment.*

23. *Failure to participate in an administrative investigation authorized by the employee's appointing authority.*

Sec. 9. NAC 284.653 is hereby amended to read as follows:

284.653 1. An employee [who] is subject to any disciplinary action set forth in subsection 2, as determined by the appointing authority, if the employee is convicted of [driving] 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 484.379 ; or [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 . [, and the offense occurred while he was driving a state vehicle, or a privately owned vehicle on state business, or who is convicted of the]

(b) The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance [at his place of work] on the premises of the workplace or on state business . [, is subject to the following disciplinary action as determined by the appointing authority:]

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 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.

[2.] 3. An employee who is suspended or demoted pursuant to subsection **[§ must agree] 2** **must:**

(a) **Agree** to be evaluated through the Employee Assistance Program ; and **[§ must complete any rehabilitation]**

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

4. If **[he] an employee** fails to complete the program **[, he must be dismissed]**.

—3.] 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.

[4.] 6. An employee must report a conviction of any offense described in this section to his appointing authority within 5 working days after it occurs. If he fails to make that report, he must be dismissed.

Sec. 10. NAC 284.771 is hereby amended to read as follows:

284.771 1. Sexual harassment violates the policy of this State and is a form of unlawful discrimination based on sex under state and federal law. An employee shall not engage in sexual harassment against another employee, an applicant for employment, or any other person in the workplace.

2. Sexual harassment is a very serious disciplinary infraction. An appointing authority may impose harsh disciplinary sanctions on , **or dismiss**, persons who commit sexual harassment, **[even on] including, without limitation**, first-time offenders. **[The appointing authority, in determining the appropriate level of discipline and the hearing officer, in reviewing the propriety of the level of discipline selected by the appointing authority, must consider the principles of progressive discipline as set forth in NRS 284.383.]**

- 3. As used in this section, “sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other speech, or physical conduct of a sexual nature when:
- (a) Submission to such speech or conduct is made either explicitly or implicitly a term or condition of a person’s employment;
- (b) Submission to or the rejection of such speech or conduct by a person is used as the basis for employment decisions affecting that person; or
- (c) Such speech or conduct has the purpose or effect of unreasonably interfering with a person’s work performance or creating an intimidating, hostile or offensive working environment.]

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R147-06

The Personnel Commission adopted regulations assigned LCB File No. R147-06 which pertain to chapter 284 of the Nevada Administrative Code on December 1, 2006. Please be advised that Sections 5 and 12 of the regulation (pertaining to notification concerning arrests) previously adopted by the Commission on August 11, 2006, have been removed from this regulation for separate consideration.

INFORMATIONAL STATEMENT

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

On June 15, 2006, the proposed regulations were forwarded to the Legislative Counsel Bureau Legal Division for pre-adoption review. On June 21, 2006, a "Notice of Workshop" to solicit comments on proposed regulations and "Notice of Hearing" for the adoption or amendment of regulations were posted conspicuously in public buildings. On the same day, copies of the notices and the text of the proposed regulations were filed with the Nevada State Library. Also on June 21, 2006, all State agencies were notified by memorandum of the proposed actions. Copies of the notices with the text of the proposed regulations were included with the memorandum for dissemination among State employees. Copies of the notices and text of the proposed regulations were also sent to the State of Nevada Employees Association, the main public library in each county, all requesting parties, and members of the Personnel Commission.

On July 13, 2006, a workshop was held. Shelley Blotter, Chief, Technical Services Division, Department of Personnel, explained the purpose of the workshop, the process by which the proposed regulations would be reviewed and adopted. Ms. Blotter read the explanation of change for the new and amended sections and solicited comments.

- a. The following summarizes the comments made at the workshop regarding the proposed regulations:

Ms. Blotter stated that the purpose of the workshop was to solicit comments from effected parties with regard to the regulations proposed for permanent adoption. These regulations would be considered for adoption by the Personnel Commission at their August 11, 2006, meeting. The meeting was held in Carson City at the Legislative Building and videoconferenced to Las Vegas. It was explained that if the regulations were adopted; they would go into effect when filed with the Secretary of State which would be approximately 40 days after the Personnel Commission meeting.

Based on the rejection of these regulations by the Legislative Commission, they were again heard at the December 1, 2006 Personnel Commission meeting with newly drafted

language in section 5 for permanent adoption. Section 5 was subsequently rejected by the Personnel Commission.

Also at the July 2006 workshop, Ms. Blotter stated she would read the explanation of change for each section and allow time for comment. Any comments received would be summarized for the Personnel Commission and will be provided to them prior to the meeting for their consideration.

New Section Report of arrests, convictions and plea agreements.

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, requires employees to report his arrest, conviction or plea agreement to a misdemeanor or felony or traffic offense to his appointing authority. The appointing authority shall determine if the arrest, conviction, or plea agreement has any bearing on the employee's employment and if so, may dismiss the employee.

Mr. Phil Brittenham, DMV, stated he opposes the language and particularly the requirement to report an arrest with regard to traffic offenses and misdemeanors before any guilt is established. He also stated he sees this as an overwhelming added requirement for reporting, documentation, and record keeping. He thinks it is vague in terms of what would allow an appointing authority to dismiss an employee before establishing guilt. Simply not reporting to appointing authority would be a pretty weak case and it is fraught with danger for the State and would be opportunities for employees to litigate issues with the State based on the loss of their jobs just because of some connection with an arrest. He said it didn't really make a lot of sense to him.

Ms. Blotter commented that a number of individuals have approached the department informally to express concern regarding the traffic portion. Ms. Blotter stated that they would be amenable to removing that portion of the proposed regulation. She asked if that solves the problem for those opposing this language. In regards to the arrest portion some research was done and in checking with Douglas County it was found this is not uncommon.

Ruth Edsall, DETR, stated she would like to echo Phil's sentiments. But primarily the arrest portion does not appear to be appropriate. She has obtained feedback from their executive staff all of who agreed that arrest is not the basis they would use for an employment decision nor would they like to see that in the regulations.

Jeanine Lake, SNEA, stated that they also concur with Phil Brittenham. Plus they would like to point out that in Nevada almost anything could be considered a misdemeanor. Throw something from your vehicle and it's a misdemeanor for littering. How and under what guidelines or procedures does the appointing authority determine whether the plea agreement to any misdemeanor or the plea agreement to any traffic offense has an adverse impact on the employment of that person. They feel this is written very vaguely and particularly with regards to plea agreements to any traffic offense and arrests.

Salli Hebert, Department of Cultural Affairs, stated that they agree that the traffic offense should be taken out. Unless license is a requirement of the job and in that case it would be applicable. They are also concerned about the information they would be receiving from individuals that is not pertinent to employment and what would they do with that information. As a Department would they be required to maintain it? Then that would concern safeguarding and creating new records management. It would put an additional requirement on agencies to maintain information that was not needed. There would need to be new regulations. They feel that it would be better if the wording was changed to an employee must report an arrest, conviction or plea agreement to any misdemeanor related to any offense of moral turpitude to his appointing authority within 5 working days after it occurs. Ms. Blotter pointed out that a copy or statement be included related to misdemeanors and felonies when someone applies for employment. Ms. Hebert stated they don't always receive those records and she believes this would be something in addition such as medical having information and being kept separate. Now we have another type of information that would need to be addressed. Ms. Blotter stated this would need to be looked at to see if it needs to be addressed.

Marilyn Yezek, NDOT, Stated they have a concern about arrests but traffic offenses do apply to them and so many of their people, well over half of their staff, are required to drive as an essential function of their job. She stated they are not interested in knowing about someone getting a parking violation. But they do need to know about excessive speed, reckless driving, and things like that. They would like to know about the conviction of a serious traffic offense. Especially for those who have to drive as part of their job and it is really an essential function not clerical staff. Ms. Blotter stated the concern is the court process can take many months in order to get a conviction, and in the meantime, you may have somebody who did something pretty egregious but they haven't been convicted yet. That is why it stated if it were related, then it would have a bearing on your employment. Ms. Yezek said of all the people they have, they really don't get many very serious traffic offenses. Maybe once every couple of years a DUI, but they really do need to know about not just the DUIs but also the reckless driving, the excessive speeding, and those sort of serious violations. In summary it should be serious traffic offense and convictions.

Gary Wolff, Teamsters Union, said it was his understanding that the section on traffic citations was being removed. Ms. Blotter that this has been discussed and the Department would be happy to do this if it is the consensus of the group. Mr. Wolff stated they have no problem with DUIs and serious traffic violations. He stated he opposes giving appointing authority too much leeway on this and he also opposes reporting speeding tickets.

Kareen Masters, Department of Health and Human Services, stated that the arrests shouldn't be removed entirely. There are some precautions in subsection 2 that the appointing authority would have to demonstrate that there is adverse impact before they could take action and the employee would have the right to a hearing if they disagreed with that. She supports an employee making their employer aware of an arrest. She

agrees that the employer does need to be aware of traffic offenses for people who transport clients or children for their job.

Phil Brittenham, DMV, stated the DMV's administrative group discussed this as well and also opposes this language. He stated NDOT could address this within their prohibitions and penalties as opposed to making this a sweeping administrative code. In terms of Douglas County or other counties he did some research online with regard to states and couldn't find a whole lot. The State of Wisconsin prohibits termination for arrests only. He's concerned about State rules being aligned with state governments not smaller jurisdictions. He is also concerned about who decides whether this has an adverse impact or not. Ms. Blotter stated that subsection 1 would allow immediate dismissal so it would not require progressive discipline. Where as if it was in prohibitions and penalties, we would typically see some progressive discipline. This would make it clear to personnel officers that dismissal is an option. The reason why it is a little bit vague and left up to the appointing authority is depending on the situation and impact allowing leeway depending on the job duties. Mr. Brittenham stated this makes a good case against the whole section.

Ruth Edsall, DETR, said the record keeping requirements for applications is different. Ms. Blotter stated that her reference was that some of this information might already be on file at the agency level. But she does agree that record keeping requirements need to be clarified.

Clay Thomas, DMV, wanted a couple of things clarified. Such as innocent until proven guilty. He felt there should not be action until the individual is convicted. He also stated some of this would be covered in essential functions.

Robin Freestone, Nevada System of Higher Education, stated they did some research with some peer institutions and found that all of their peer institutions on the west coast have a similar regulation. They agree with Ms. Masters that some appropriate precautions be built in this and they view this as another tool in the employee relation's arena. It doesn't say that anyone will be terminated it gives the appointing authority some latitude and flexibility.

There were no other questions, comments, opposition or discussion on this section.

NAC 284.642 Suspensions and Demotions. (NRS 284.065, 284.155, 284.383, 284.385)

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, group's together disciplinary actions related to suspensions and demotions.

Kathy Sinclair, Division of Welfare and Supportive Services, just wanted to comment about formatting on subsection (b) where it says "for any cause or causes listed in NAC 284.650" her assumption is that statement is referring to both subsections A and B and that it should be moved to below the (b).

There were no other questions, comments, opposition or discussion on this section.

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

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, allows for immediate termination for certain offenses committed by an employee. These types of activities compromise the services provided by the State and place the State at an increased risk for legal and monetary claims.

Before taking comments Ms. Blotter wanted to clarify in subsection 2 these are permissive and not required actions. Meaning if appointing authority wished to they could take immediate action to dismiss but they are not required to.

Gary Wolff, Teamsters 14, opposes subsection 2(a) as pornography is not defined. Needs to address purposeful and not accidental viewing, he wants “solid rules”. He still feels some of this language gives the appointing authority opportunity to abuse this language. Ms. Blotter pointed out the employee would still have the rights of a hearings officer review. So it wouldn’t be final with the appointing authority. Mr. Wolff stated that there are no exceptions for police who have to view pornography all the time. He stated these need to be more narrowly defined.

Salli Hebert, Department of Cultural Affairs, stated they are concerned who defines pornography? If the courts refuse to define it, how does EMC, administrators or an appointing authority define it? She stated they do support the job abandonment after three days. They support the section on theft; they are concerned that no monetary value is listed and they are addressing it in their prohibitions and penalties. They are concerned about the confidential information and what is considered confidential it is subjective and inconsistent.

Kareen Masters, Department of Health and Human Services, stated they wouldn’t want to include accidental viewing. They do not tolerate viewing of pornography on State computers as a department and have terminated employees for that or many have resigned prior to being terminated. She wanted to clarify the threatening others with a deadly weapon while in the work place subsection. They suggest tying the definition of workplace to how it is defined subsection 21 NAC 284.650. She also suggested including while engaged in any work-related activities.

Jeanine Lake, SNEA/AFSME, they feel the language on the use or release of confidential information is too broad. They are also concerned about 2(e) the suspension, revocation or cancellation of a professional or occupational license or certificates. They are concerned about employees being dismissed when the license suspension or revocation could be a mistake or is in an appeal process.

Marilyn Yezek, NDOT, stated that the case of a threat of a deadly weapon in the workplace was their case. The circumstances involved a staff meeting was being held in a restaurant and was considered the workplace because workplace activities were taking

place. That hearing officer decision was overturned by the district court and the immediate termination was upheld.

Phil Brittenham, DMV, he stated the overall language is supported. He does oppose 2(c) and wonders if it really is necessary to include that language. He questions if this actually occurs enough that it need be covered. Ms. Blotter stated in regards to the language in 2(c) she has had the opportunity to read reports from the Sexual Harassment and Discrimination investigations and this does occur often enough in the workplace and needs to be addressed. Some agencies handle this as an immediate dismissal and other agencies interpret this differently.

Gary Wolff, Teamster 14, stated he thinks the wording in regards to an employee residing on state property needs to be clarified. Ms. Blotter states this was added to accommodate families that reside on State property.

Marilyn Yezek, NDOT, asked that language be changed to say “other than employees residing on State property in their assigned residence.”

Clay Thomas, DMV, stated section 2 is permissive which means in every section it is up to the department to make that determination. That being the case we have not set the ground rules because every department can look at it differently. Which goes back to the original comments made by Mr. Wolff about administrators handling situations differently. So it's not definitive in nature as to you do this and your terminated. Taking this one step further, within the departments prohibition and penalties, there is leeway on somethings. However on some of our prohibitions penalties there are no exceptions and it is very definitive you do it you are terminated. Therefore, it relies on the department. Basically, we have set the ground rules of what is acceptable and what is not. The language in 2 is too broad leaving room for interpretation and challenges. Ms. Blotter stated that in regards to 2(c) not covering all situations it has been defined in other locations within NRS or NAC and LCB would be providing a definition which is more encompassing.

There were no other questions, comments, opposition or discussion on this section.

NAC 284.650 Causes for disciplinary action. (NRS 284.065, 284.155, 284.383)

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, provides additional categories of serious infractions that are subject to disciplinary action. An appointing authority may, based on the facts of the situation, initiate progressive discipline under this section.

Ms. Blotter stated that subsections 23, 24, and 25 would be removed from NAC 684.650. However subsection 26 will be retained.

Phil Brittenham, DMV, asked for clarification on subsection 26.Ms. Blotter responded that this allows the opportunity to interview possible witnesses as to whether they know anything in regards to an investigation.

Kareen Masters, Department of Health and Human Services, suggested on subsection 26 to broaden language to include any investigation authorized by the appointing authority. To require employees to participate in the investigative process when investigations involve client abuse.

Gary Wolff, Teamsters 14, he stated he supports this language as it is with regards to subsection 26, but would not support broadening the language.

There were no other questions, comments, opposition or discussion on this section.

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

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, allows for disciplinary action when the final charge is not driving under the influence or another offense for which driving under the influence is an element of the charged, e.g., destruction of property, failure to yield.

Additionally, the language in subsection 4 was removed and a new section is recommended to address the requirement for an employee to report the conviction of a misdemeanor or felony to his appointing authority.

There were no questions, comments, opposition or discussion on this section.

NAC 284.771 Sexual harassment. (NRS 284.065, 284.155)

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies that employees may be terminated from employment if they commit sexual harassment even if it is a first time offense.

Gary Wolff, Teamsters 14, he stated he feels the language is too broad and gives the appointing authority to much authority.

Phil Brittenham, DMV, stated he supports this language.

Salli Hebert, Department of Cultural Affairs, stated they are concerned about the appointing authorities and not applying it consistently.

There were no other questions, comments, opposition or discussion on this section.

Ms. Blotter asking if there were any other questions or comments regarding the proposed regulations.

[Back to 284.646](#)

Clay Thomas, DMV, stated they are concerned that the way that NAC 284.646 is currently written that it could give rise to questions of validity of the regulation.

A summary of the hearing is available upon request from the Department of Personnel, 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204.

2. **The number of persons who:**
 - (a) Attended the hearing: 8-11-06- 88 (55 in Carson City and 33 in Las Vegas)
12-1-06 – 57 (40 in Carson City and 17 in Las Vegas)
 - (b) Testified at the hearing: 9 at the 8-11-06 meeting and 2 at the 12-1-06 meeting
 - (c) Submitted written comments: 2
3. **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

The regulations do not affect businesses; therefore, their comments were not solicited.
4. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Changes were made based on comments received at the workshop, by the LCB during pre-adoption review, and at the Personnel Commission meeting. Subsequently, based on the rejection by the Legislative Commission, changes were made to Section 5 and they were presented for a second time at the December 1, 2006 Personnel Commission Meeting. All sections except for section 5 were approved as presented. Section 12 also needs to be removed as it should only have been adopted if section 5 was approved.
5. **The estimated economic effect of the regulation on the business which it is to regulate and on the public.**

These regulations do not have a direct economic effect on any business or the public.
6. **The estimated cost to the agency for enforcement of the regulations:**

Enforcement of these regulations should not result in any increased cost to the Department of Personnel.
7. **A description of any regulations of other State or governmental agencies which the regulations overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, provide the name of the regulating federal agency.**

These regulations do not duplicate or overlap with other State or government regulations.