

**PROPOSED REGULATION OF THE
DEPARTMENT OF PERSONNEL**

LCB File No. R013-07

July 23, 2007

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

AUTHORITY: NRS §§1-4, NRS 284.065, 284.155, 284.250, 284.305 and 284.355.

A REGULATION relating to the Department of Personnel; specifying the circumstances under which an appointing authority may request selective certification for positions; authorizing an appointing authority to consider the special qualifications for a position approved for selective certification for the purposes of layoffs in certain circumstances; providing for reinstatement of certain former state employees; and providing other matters properly relating thereto.

Section 1. NAC 284.361 is hereby amended to read as follows:

284.361 When using lists of persons who are eligible and considering eligible persons who have been certified, the following conditions apply:

1. When a reemployment list is certified:

(a) Eligible persons who are available for appointment and who are certified on reemployment lists, other than seasonal reemployment lists, must be hired in the order in which they appear unless the appointing authority, upon submitting written justification, obtains the written concurrence of the Governor to deviate from the order of priority or to hire from another list. The appointing authority must make the written justification available for examination by affected persons or their designated representatives.

(b) A person must accept or refuse an offer of reemployment:

(1) If the offer of reemployment is sent by mail to the person, within 6 calendar days after the postmarked date appearing on the envelope in which the offer was mailed; or

(2) If the offer is an oral offer of reemployment, within 3 business days after the oral offer has been made.

2. ~~["The appointing authority may request selective certification for a particular position if"]~~ *If the appointing authority determines that* the normal method of certification ~~["does"]~~ *will* not provide candidates qualified to perform the duties of ~~["the"]~~ *a* position satisfactorily ~~["Where selective certification is necessary,"]~~ *, the appointing authority may request selective certification for the position:*

(a) At the time at which a recruitment or a list of eligible persons is requested for the position; or

(b) In anticipation of future vacancies in the position.

3. *To request selective certification for a position,* the appointing authority shall furnish in writing *to the Department of Personnel* the special requirements peculiar to the position and ~~["his reasons therefor. If"]~~ *the reasons for requesting selective certification for the position. If the Department of Personnel determines that* the facts and reasons justify ~~["such a method of selection,"]~~ *selective certification,* the Department of Personnel ~~["may certify the highest ranking eligible persons who possess the special qualifications. —3."]~~ *will approve the requested selective certification.*

4. *If the Department of Personnel approves a request for selective certification for a position at the time at which a recruitment or a list of eligible persons is requested for the position by an appointing authority:*

(a) The Department of Personnel may certify the highest ranking eligible persons who possess the special qualifications for the position; and

(b) The appointing authority may consider the special qualifications for the position for the purposes of paragraph (e) of subsection 1 of NAC 284.614 and subsection 4 of NAC 284.618.

5. If the Department of Personnel approves a request from an appointing authority for selective certification for a position that has been made in anticipation of future vacancies in the position, and if the request for selective certification was received at least 75 days before the notification date of a layoff, the appointing authority may consider the special qualifications for the position for the purposes of paragraph (e) of subsection 1 of NAC 284.614 and subsection 4 of NAC 284.618.

6. Certification of only eligible persons who are the same sex will not be made unless there is clear evidence that the duties assigned could be performed efficiently only by the sex specified.

~~[4.]~~ 7. When using ranked lists other than those for reemployment, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with persons in the first five ranks to determine their availability and qualifications. The names on each type of list must be considered before names from the next succeeding list. If there are fewer than five ranks with persons who are available for appointment on a given list and the appointing authority requests a full complement of five ranks, the name or names at the top of the next succeeding list must be combined with those on the preceding list to establish five eligible ranks with persons who are available for appointment. Except as otherwise provided in subsection ~~[6.]~~ 9, all competitive appointments from ranked lists must be made from the persons who:

(a) Are in a rank of persons who received the five highest scores on the examination; and

(b) Are available for appointment.

~~{5.}~~ 8. If the list is unranked or waived, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least five eligible persons he deems most qualified based upon a review of their respective qualifications as they relate to the position or class, or with all of the eligible persons if there are five or less. Except as otherwise provided in subsection 1, any eligible person who is certified from an unranked or waived list may be appointed.

~~{6.}~~ 9. If persons from fewer than five ranks of eligible persons are willing to accept appointment:

(a) The appointing authority may make an appointment from among those remaining available eligible persons.

(b) Certification and appointment may be made from other appropriate lists, including lists of higher grades as determined by the Department of Personnel. The names from other lists will follow those which have been certified, if any, from the original lists.

(c) A new recruitment may be conducted.

(d) A provisional appointment may be made only if the requirements of NAC 284.406 are met.

Sec. 2. NAC 284.386 is hereby amended to read as follows:

284.386 1. Except as otherwise provided in subsection ~~{2.}~~ 4, an appointing authority may reinstate a ~~{former permanent employee within}~~ *person who has held permanent status in state employment and who was not dismissed from state employment pursuant to NAC 284.646:*

(a) *Within* a 2-year period following his termination from state employment ~~if the employee was separated without prejudice. A separation without prejudice must be determined by the appointing authority using the standards contained in NRS 284.240.~~; *or*

(b) *After the 2-year period following his termination from state employment, with the approval of the Department of Personnel.*

2. ~~If an employee is laid off and is entitled to have his name appear on a reemployment list pursuant to NAC 284.630, the appointing authority may reinstate the employee within 2 years after the date on which his right to reemployment expires.~~

~~3.~~ The grade of the class to which a person is reinstated may only exceed the current grade of the class he formerly held or a comparable class if that class has been reallocated.

~~4.~~ 3. Except as otherwise provided in subsection ~~3.~~ 2, a person may not be reinstated to underfill a position allocated at grade 30 or higher if that position is allocated at a higher grade than the position the person formerly held.

~~5.~~ 4. A reinstatement to a similar class requires the approval by the Department of Personnel before the appointing authority may make a commitment to reinstate.

~~6.~~ 5. It is the responsibility of a person seeking reinstatement to make his interest known by providing a new application to the appointing authority.

~~7.~~ 6. The person must meet the current minimum qualifications for the class for which the reinstatement is sought.

Sec. 3. NAC 284.611 is hereby amended to read as follows:

284.611 1. Before separating an employee because of a physical, mental or emotional disorder which results in the inability of the employee to perform the essential functions of his job, the appointing authority must:

(a) Verify with the employee's physician or by an independent medical evaluation paid for by the appointing authority that the condition does not, or is not expected to, respond to treatment or that an extended absence from work will be required;

(b) Determine whether reasonable accommodation can be made to enable the employee to perform the essential functions of his job;

(c) Make a request to the Administrator of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation to obtain the services provided by that Division, or if the employee is receiving worker's compensation, request the services of the rehabilitation provider, to evaluate the employee's condition and to provide any rehabilitative services possible; and

(d) Ensure that all reasonable efforts have been made to retain the employee.

2. A separation pursuant to this section is only justified when:

(a) The information obtained through the procedures specified in subsection 1 supports the decision to separate;

(b) The employee is not on sick leave or other approved leave; and

(c) A referral has been made to the Public Employees' Retirement System and the employee has been determined to be ineligible for, or has refused, disability retirement.

3. A permanent employee separated pursuant to this section is entitled to the same rights and privileges afforded permanent employees who are dismissed for disciplinary reasons. The procedures contained in NAC 284.656 must be followed, and he may appeal his separation to the hearing officer.

4. A permanent employee who is separated because of a physical, mental or emotional disorder is eligible for reinstatement pursuant to NAC 284.386 if he recovers from the disorder ~~[within 2 years]~~ after his termination.

Sec. 4. NAC 284.614 is hereby amended to read as follows:

284.614 1. Except as otherwise provided in NAC 284.425, if it becomes necessary for a classified employee to be laid off because of a shortage of work or money, the abolition of a position, or some other material change in duties or organization:

(a) The director of the department shall determine in what geographical location, class series, class and option the reductions in staff will have the least detrimental effect on the operations of the department and shall specify layoffs accordingly. In the Department of Health and Human Services and the Nevada System of Higher Education, the administrator of a division may be designated to make these determinations with the approval of the director of the department.

(b) Within the department, geographical location, class series, class and option selected, all employees of the department who are not permanent must be separated from service before any permanent employees in the following order:

- (1) Emergency employees.
- (2) Temporary employees.
- (3) Provisional employees.
- (4) Probationary employees.

(c) If additional reductions are necessary, permanent employees must be laid off on the basis of seniority pursuant to NAC 284.632.

(d) In the department, geographical location, class series, class and option where layoffs are to take place, those employees with the least seniority must be laid off, transferred as set forth in subsection 2 or voluntarily demoted as set forth in NAC 284.618.

(e) An appointing authority may consider limiting layoffs to employees in full-time or part-time positions. Similar considerations may be given to and limitations placed on positions ~~requiring~~ *for which* selective certification *is approved* pursuant to NAC 284.361.

2. If a permanent employee must be laid off for one of the reasons set forth in subsection 1, the appointing authority shall notify the employee that he may choose to:

(a) Transfer within his department, class and option into the position of the employee in his department, class and option with the least seniority;

(b) Be voluntarily demoted as set forth in NAC 284.618; or

(c) Exercise his reemployment rights as set forth in NAC 284.630.

3. Within 3 working days after an employee has been notified of his choices pursuant to subsection 2, he must designate in writing to the appointing authority the choice he will exercise.

4. For the purposes of this section, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

Sec. 5. NAC 284.618 is hereby amended to read as follows:

284.618 1. In lieu of being laid off, a permanent employee may choose to be voluntarily demoted to a vacant position or displace an employee within the department and geographical location where employed to one of the next lower classes:

(a) Within his current class series and option; or

(b) Within the class series and option from which he was appointed to his current position during current continuous service if he cannot be demoted pursuant to paragraph (a).

↪ For the purposes of this subsection, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

2. No employee in a higher class may displace an employee in a lower class who has more seniority. If an employee chooses to displace another, he must displace the member of the next lower class who has the least seniority. If that member has more seniority, the displacing employee must descend further in the class series.

3. The employees displaced reestablish the layoff class.

4. An employee may choose to displace another only if he meets the minimum qualifications for the class, option and position. For the purposes of this subsection, qualifications for a position may be different from those of the class and option only when selective certification is ~~required~~ *approved* pursuant to ~~subsection 2~~ *subsections 2 to 5, inclusive*, of NAC 284.361.

5. Full-time, part-time and seasonal employees must be treated separately and can only displace like employees.

6. Displacement is always a movement to a class at a lower grade.

7. A current employee who elects to displace another employee has priority over former employees already on reemployment lists.

8. The pay of the employee who is taking a voluntary demotion cannot exceed the highest step for the class to which the employee is being demoted. If the current pay falls within the lower rate range, no reduction in pay may occur unless money is not available as certified by the Chief of the Budget Division of the Department of Administration or, in the case of an agency which is not supported from the State General Fund, as certified by the administrator of that agency.