

Chapter 284 of NAC

LCB File No. T006-07

**ADOPTED TEMPORARY REGULATION OF THE  
PERSONNEL COMMISSION**

Filed with the Secretary of State on January 8, 2007

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

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel, expands the circumstances under which an appointing authority may designate specialized experience necessary to perform the duties of a position. The designation of specialized experience may occur, as permitted now, at the time of recruitment or when the appointing authority determines there will be such a need in the future. The specialized experience requirement is subject to approval by the Department of Personnel.

The intent of this amendment is to ensure that when a position's duties have changed over time and recruitment has not occurred specialized experience requirements are recognized in the event of a layoff. Approved designations of specialized experience requested in anticipation of future vacancies will only be recognized if the request was received by the Department of Personnel at least 75 calendar days prior to the notification of layoff. This is the same time period referenced in subsection 1 of NAC 284.632 relating to the use of performance evaluation ratings when calculating seniority for layoffs. This amendment is intended to address the concerns of departments and employees as the Department of Personnel moves toward the development of classes and class series that are more broad and generic than in the past.

**NAC 284.361 Use of lists and consideration of eligible persons. (NRS 284.065, 284.155, 284.250)** 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 the normal method of certification does not provide candidates qualified to perform the duties of the position satisfactorily.~~ *If the normal method of certification will not provide candidates*

*qualified to perform the duties of a position satisfactorily, the appointing authority may request selective certification:*

- (a) At the time a recruitment or a list of eligible persons is requested; or*
- (b) In anticipation of future vacancies.*

Where selective certification is necessary, the appointing authority shall furnish in writing the special requirements peculiar to the position and his reasons therefor ~~[--If]~~ *to the Department of Personnel which will determine if* the facts and reasons justify such ~~[a method of selection, the Department of Personnel]~~ *selective certification. If approved at the time a recruitment or a list is requested, the Department of Personnel may certify the highest ranking eligible persons who possess the special qualifications and the qualifications can be considered as provided in subsection 1(e) of NAC 284.614 and in subsection 4 of NAC 284.618. For selective certification requested in anticipation of future vacancies and approved, the qualifications can be considered as provided in subsection 1(e) of NAC 284.614 and in subsection 4 of NAC 284.618, if the request for selective certification was received by the Department of Personnel at least 75 days prior to the notification date of layoff.*

3. 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. 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, 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. 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. 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:**

**Explanation of Proposed Change:** The Department of Employment, Training and Rehabilitation has proposed that more flexibility be granted in order to reinstate former permanent employees whose last appointment was not one in which they gained permanent status. As a result, the Department of Personnel had proposed amending this section to allow reinstatements beyond 2-years with the approval of the Department of Personnel. Additionally, it is the Department's intent to change the interpretation of this section to allow for an individual to be reinstated even if the most recent appointment held was not that of permanent status. This change allows State agencies to immediately fill vacancies with individuals with the knowledge, skills and abilities to perform the job. This is particularly important due to expected retirements within the next five to ten years.

**NAC 284.386 Reinstatement of former permanent employee. (NRS 284.065, 284.155, 284.305)**

1. ~~[Except as otherwise provided in subsection 2, an]~~ *An* appointing authority may reinstate ~~[a former permanent employee]~~ *an individual who has held permanent status within state employment* 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. *If an individual has terminated from state employment for more than two years, reinstatement requires 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, 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:**

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel, removes the two-year limitation to reinstatement as is consistent with the changes proposed to NAC 284.386.

**NAC 284.611 Separation for physical, mental or emotional disorder. (NRS 284.065, 284.155, 284.355)**

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 workers' 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.

**NOTICE OF ADOPTION OF TEMPORARY REGULATION**  
**LCB File No. T006-07**

The Personnel Commission adopted temporary regulations assigned LCB File No. T006-07 which pertain to chapter 284 of the Nevada Administrative Code on December 1, 2006.

**INFORMATIONAL STATEMENT**

The following statement is submitted for amendments to Nevada Administrative Code (NAC) 284:

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 October 18, 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 October 18, 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 November 3, 2006, a workshop was held. Shelley Blotter, Chief, Technical Services Division, Department of Personnel, explained the purpose of the workshop, and 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 newly proposed temporary regulations. These regulations will be considered for adoption by the Personnel Commission at their December 1, 2006, meeting. The meeting will be held in Las Vegas at the Department of Transportation, Building B, Training Room, and will be video-conferenced to the Department of Transportation, Room 301, in Carson City. If the regulations are adopted, they will go into effect when filed with the Secretary of State which will be approximately within one week of the Personnel Commission meeting. They will remain in effect until November of 2007 or they may be adopted as permanent regulations anytime after July 1, 2007.

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

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

**Explanation of Proposed Change:** The Department of Employment, Training and Rehabilitation has proposed that more flexibility be granted in order to reinstate former permanent employees whose last appointment was not one in which they gained permanent status. As a result, the Department of Personnel had proposed amending this section to remove the 2-year limitation for reinstatement of a former permanent employee. Additionally, it is the Department's intent to change the interpretation of this section to allow for an individual to be reinstated even if the most recent appointment held was not that of permanent status. This change allows State agencies to immediately fill vacancies with individuals with the knowledge, skills and abilities to perform the job. This is particularly important due to expected retirements within the next five to ten years.

Ruth Edsall, DETR, stated DETR sought an interpretation of this regulation that will allow them to reinstate someone whose most recent appointment was not permanent. She just wanted to state for the record, she still feels the regulation as it is currently written allows for that interpretation, but she does appreciate the flexibility the department showed by removing the 2-year limitation. Mrs. Edsall stated she was not certain that removing the 2-year limitation makes any difference for their purposes, but going on record with the interpretation that as long as the person was at one time permanent they can be reinstated even if they had just briefly been temporary in some other position sounds fine.

Shelley Blotter, Personnel, stated prior to the workshop the employee association representative Gary Wolff called the Department of Personnel to indicate he didn't believe his members would be in support of removing the 2-year limitation.

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

**Sec. 2. NAC 284.611 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel removes the two-year limitation to reinstatement to make this section consistent with the changes proposed to NAC 284.386.

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

**Sec. 3. NAC 284.612 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel, allows an appointing authority to consider a position that was recruited for using a selective criteria or where the class specification or work performance standards clearly document the requirement of specific knowledge, skills and abilities to be treated as an “option” for the purposes of layoff and re-employment. It is the intent of this amendment that when work performance standards are treated as an option, only those standards that were in place prior to the need to layoff employees will be considered as legitimate documentation for these purposes. This amendment is necessary to address the use of more broad and generic class specifications rather than more narrowly defined classes.

Shelley Blotter, Personnel, stated that there have been discussions within the Department of Personnel and the Department is prepared to offer another version to the proposed amendment. Conceptually, the Department is trying to ensure that if a class has previously been specific to a certain set of skills and over time that position evolves and those skills are no longer appropriate for that particular position, the agency would not be tied back to the initial selective criteria. During the IT occupational group study, a number of specific classes were combined into more generic series. As a result, there were some questions as to whether an agency would be able to fill or keep an employee that has the appropriate skills in the event of a lay-off or if they needed to re-employ someone.

Ruth Edsall, DETR, stated she is not opposed conceptually to this change, but she thinks that the language that has been submitted is not appropriate. The layoff rules exist to provide a framework for equitable treatment of the people that would be affected by a layoff. The original definition, of course is still there, which defines an “option” for a class approved by the Personnel Commission. In the Personnel Commission approval process, there is some public information that is imparted and approved and there is a process we go through so that people recognize that there are “options”; when we do a layoff, we do it by “option” which is a recognized sub-classification. This new language does not provide for a clear early identification of a position that would perform duties designated as an “option.” It would allow an agency to circumvent the process. While she appreciates the changes, she believes that a little work needs to be done. Perhaps there are some alternatives such as a process that identifies the “option” through the work performance standards or selective certification. Thus, the agency could request an exception to the order of layoff based on the documentation that exists in the file and not arbitrarily circumvent the order of lay-off. Ms. Edsall indicated that she was not sure what the language means when it says “positions that have been filled using selective criteria or where the class specification or the established work performance standards...are treated as an option.” She stated that she is not apposed to the concept, just apposed to this language.

Shelley Blotter, Personnel, stated that the Department of Personnel just wanted to propose this idea in concept, and if it is generally acceptable, then modify the language to make it more palatable. The latest version of the amendment substitutes the language “work experience, or specific knowledge, skills and abilities” with “experience required for the position.” Selective criteria are expressed as an experience requirement and not as a knowledge, skills and abilities.

Hazel Brandon, DOIT, requested clarification between “options” and “specialties.”

Dan Stockwell, DOIT, stated that it is good that at least there is something that says class option, specialty, or specific experience. Mr. Stockwell stated he had experience with a layoff three years ago in the Department of Information Technology. They were told to layoff three people, and as they went through the process, they discovered no one really knew what to do or how to do it. Many of the scenarios he was faced with could have been prevented and feels lucky that is didn't get worse.

Peter Long, Personnel, stated he agrees with Ms. Edsall, we need to balance the needs of the agency vs. protecting the employee that is going to be laid off and not only in a layoff situation but a re-employment situation. We have been pretty strict on re-employment and not allowing an agency to use selective criteria to circumvent getting an employee that they may not want. So, the Department of Personnel thought by documenting it on the work performance standards, it would at least be something more than what we have now.

Shelley Blotter, Personnel, stated what was envisioned, is that work performance standards would be revisited every time duties change and also every year when that person is receiving their performance evaluation. So, the specialized experience required for the position would be something that is in front of the employees and management on a regular basis and not something that is a surprise when a layoff occurs.

Kareen Masters, DHHS, stated she appreciates that the language has been revised, but it is still too ambiguous. She had not proposed amending NAC 284.612, but instead, she had recommended amending NAC 284.614 and NAC 284.618, in the subsections relating to selective criteria. These sections require the Department of Personnel to approve the selective criteria that is requested by an agency. She stated that these issues don't just have to do with layoffs, it has to do with bumping rights and re-employment rights. There can be a job that requires specific experience that shouldn't preclude other people from bumping into that job. The other thing she would like to emphasize is this issue goes beyond the IT positions. What she would like on the record is that there would be a change to address those layoff regulations because it was not addressed on the class specification. She doesn't believe that the full ramifications of layoff regulations was taken into account on the IT occupational group study.

Shelley Blotter, Personnel, stated that she acknowledges this issue goes beyond the IT positions. This classification study is merely the one that brought it up most recently. It is something that maybe we should have addressed previously, but we are trying to address it now. Mrs. Blotter stated she is concerned that there would be a bottleneck created, due to the sheer volume, if the Department of Personnel is asked to review for appropriateness selective criteria every time the work performance standards change.

Peter Long, Personnel, stated with the number of employees in State service, he doesn't believe there would be the manpower sufficient to review work performance standards on a daily basis. Currently on selective criteria, Department of Personnel doesn't really determine if it is appropriate for the position; it is the agency's responsibility since they know what the jobs are

and what is required to perform that job. Personnel is looking to ensure the selective is not something outside of the class or increasing the minimum qualifications.

Mark Anastas, Personnel, stated he agrees with Mr. Long's statements.

Peter Long, Personnel, stated he agrees with Ms. Masters that there does need to be some type of oversight, and it would be appropriate if we could delegate that responsibility to the personnel staff in the agency. Then on the ones they have problems with, the Department of Personnel could review it for them.

Kareen Masters, DHHS, stated she hopes the intent isn't for every work performance standard in State service to have a selective.

Shelley Blotter, Personnel, stated we are trying to anticipate and document so everyone knows in advance the requirements of the position, and it would not be something the agency layers on after they figure out they have a layoff.

Kareen Masters, DHHS, stated a memo at the time a selective needs to be added, that is identified by Position Control Number establishes a history file. The memo could request approval for selective criteria next time this position is recruited for or an action needs to be taken on this position. It's then signed off and in that history file by position control number so there is document and there was an outside body that had oversight.

Dan Stockwell, DOIT, stated he supports that because it gives you a road map and something fall back on.

Shelley Blotter, Personnel, stated if we went back to the procedure of a selective, do we really need to change anything because we already allow for that? It would require the agencies to be more proactive in getting the selective criteria in and not waiting for the next recruitment.

Kareen Masters, DHHS, stated the current language refers to NAC 284.361 and that maybe the language needs to be tweaked so it is clearer.

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

Shelley Blotter, Personnel, stated all these comments will be taken into consideration and there will be a meeting with Mr. Long and Mr. Anastas. Then they will go ahead and send the revised language to everyone to be reviewed and plan on taking it to the December meeting.

2. **The number of persons who:**

- (a) Attended the hearing: 40 in Carson City and 17 in Las Vegas
- (b) Testified at the hearing: 2 at the 12-1-06 meeting
- (c) Submitted written comments: 1

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, the section that we recommended for change was changed from NAC 284.612 to NAC 284.361. Additionally, section 2 (NAC 284.386) was adopted with modified language requiring that reinstatements made after an employee has been gone more than 2 years would require the approval of the Department of Personnel.

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.