

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R063-09

Effective November 25, 2009

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

AUTHORITY: §§1-8, NRS 284.065, 284.155, 284.383, 284.385 and 284.390.

A REGULATION relating to the State Personnel System; revising provisions governing certain notice and hearings for dismissals, suspensions and demotions of permanent employees; 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 and 3 of this regulation.

Sec. 2. *Except as otherwise provided in section 3 of this regulation, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure for a hearing before the proposed action must be followed:*

1. A hearing must be scheduled on the employee's behalf unless waived in writing by the employee pursuant to subsection 2. The hearing must be scheduled to take place not earlier than 7 working days after the written notice of the proposed action is delivered or deemed received pursuant to subsection 2 of NAC 284.656. The hearing must not be scheduled on a day which is not a regular working day for the employee. If the appointing authority or his or her designated representative and the employee agree, the date of the hearing may be changed.

2. The employee may waive the right to a hearing before the proposed action in writing. If the employee makes such a waiver, the employee may not be dismissed, suspended or demoted

before the proposed effective date. The waiver does not waive the employee's right to an appeal after the action is taken.

3. The appointing authority or his or her designated representative shall conduct the hearing. The designated representative must be a person with the authority to recommend a final decision to the appointing authority. The appointing authority shall render the final decision.

4. At any time after receiving the notice and before the hearing, the employee may examine all materials that are to be used by the person conducting the hearing. The employee is entitled to administrative leave with pay as provided in NAC 284.589 to prepare for the hearings regarding his or her suspension, demotion or dismissal.

5. This process is an informal proceeding between the two parties, the appointing authority and his or her designated representative and the employee, who meet together to discuss the proposed action. Witnesses are not allowed to attend, but each party may be accompanied by a person of his choice.

6. The employee may respond both orally and in writing to the appointing authority or his or her designated representative at the hearing.

7. The employee must be:

*(a) Given a copy of the finding or recommendation, if any, resulting from the hearing; and
(b) Informed, in writing, of the appointing authority's decision regarding the proposed action on or before the effective date of the action.*

8. An employee who has been dismissed, demoted or suspended may request a hearing before the hearings officer of the Department of Personnel pursuant to NRS 284.390 within 10 working days after the effective date of his or her dismissal, demotion or suspension. Such

a request must be in writing and addressed to the Department of Personnel or may be submitted on the form provided by the Department of Personnel.

Sec. 3. 1. The procedures specified in NAC 284.656 and section 2 of this regulation need not be followed before dismissing or suspending a permanent employee if the circumstances give the appointing authority a reasonable cause to believe that the retention of an employee on active duty poses a threat to life, limb or property or may be seriously detrimental to the interests of the State.

2. If the circumstances set forth in subsection 1 are present, the appointing authority may temporarily assign the employee to duties in which those circumstances do not exist or, if the temporary assignment is not feasible:

(a) Immediately place the employee on administrative leave with pay until the procedures set forth in specified in NAC 284.656 and section 2 of this regulation have been followed; or

(b) Immediately suspend or dismiss the employee. In this case the appointing authority, his designated representative, or the employee's supervisor shall attempt to inform the employee before the action is taken of the charges against him and provide the employee with an opportunity to rebut the charges. The procedures set forth in specified in NAC 284.656 and section 2 of this regulation must be followed as soon as practicable after the immediate suspension or dismissal.

Sec. 4. NAC 284.589 is hereby amended to read as follows:

284.589 1. An appointing authority may grant administrative leave with pay to an employee:

(a) To relieve the employee of his duties during the active investigation of a suspected criminal violation or the investigation of alleged wrongdoing;

(b) For up to 30 days when the appointing authority initiates the leave to obtain the results of an examination concerning the ability of the employee to perform the essential functions of his position;

(c) For up to 30 days to remove the employee from the workplace when he has committed or threatened to commit an act of violence;

(d) For up to 2 hours to donate blood; or

(e) To relieve the employee of his duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065.

2. The appointing authority, upon approval of the Risk Management Division of the Department of Administration, may extend administrative leave with pay granted to an employee for a purpose set forth in paragraph (b) or (c) of subsection 1.

3. Except as otherwise provided in subsection 4, an appointing authority or the Department of Personnel may grant administrative leave with pay to an employee for any of the following purposes:

(a) His participation in, or attendance at, activities which are directly or indirectly related to the employee's job or his employment with the State but which do not require him to participate or attend in his official capacity as a state employee.

(b) Closure of the employee's office or work site caused by a natural disaster or other similar adverse condition when the employee is scheduled and expected to be at work. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

(c) His appearance as an aggrieved employee or a witness at a hearing of the Committee.

- (d) His appearance as an appellant or a witness at a hearing conducted pursuant to NRS 284.390 by a hearing officer of the Department of Personnel.
- (e) His appearance to provide testimony at a meeting of the Commission.
4. An appointing authority or the Department of Personnel shall grant administrative leave with pay to an employee for a purpose set forth in paragraph (c), (d) or (e) of subsection 3 if:
- (a) The employee requests the administrative leave for a period of time that is reasonably needed for him to testify at the hearing or meeting;
- (b) The employee requests the administrative leave at least 2 weeks before the leave is needed, unless such notice is impractical; and
- (c) The absence of the employee will not cause an undue hardship to the operations of his appointing authority or adversely impact the provision of services to clients or to the public.
5. An appointing authority shall grant administrative leave with pay to an employee for any of the following purposes:
- (a) The initial appointment and one follow-up appointment if the employee receives counseling through an employee assistance program.
- (b) His attendance at a health fair which has been authorized by the Board of the Public Employees' Benefits Program.
- (c) His participation in an official capacity as a member of a committee or board created by statute on which he serves as a representative of state employees. Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board.
- (d) Up to 8 hours for preparation for hearings regarding his suspension, demotion or dismissal as provided in **[subsection 1 of NAC 284.656.] section 2 of this regulation.**

(e) Up to 8 hours for preparation for hearings regarding his involuntary transfer.

Sec. 5. 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 ***and sections 2 and 3 of this regulation*** 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. 6. NAC 284.642 is hereby amended to read as follows:

284.642 1. If other forms of disciplinary or corrective action have proved ineffective, or if the seriousness of the offense or condition warrants, an employee may be:

(a) Suspended without pay for a period not to exceed 30 calendar days for any cause 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 ***and sections 2 and 3 of this regulation*** 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. 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.

3. The rights and procedures set forth in NAC 284.656 ***and sections 2 and 3 of this regulation*** 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.

Sec. 8. NAC 284.656 is hereby amended to read as follows:

284.656 **[1.]** Except as otherwise provided in ***subsection 2,] section 3 of this regulation,*** if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure ***for providing notice of the proposed action*** must be ***[followed unless waived in writing by the employee]***:

—(a):

- 1.** The employee must be given at least 10 working days' written notice of the proposed action **[The notice must be]** on the form provided by the Department of Personnel . **[and]**
- 2.** ***The notice*** may be given in person or by mail. If it is mailed, the notice must be mailed to the employee's last known address by registered or certified mail, return receipt requested. The

date stamped on the receipt by the postal service is the date of delivery. If the notice is returned without a return receipt signed by the employee, the employee's date of receipt shall be deemed to be the third day after the date of the mailing.

[{(b)}] 3. The notice must:

- [{(1)}] (a) Specify the proposed date on which the action is effective.
- [{(2)}] (b) Inform the employee that a hearing has been scheduled on his behalf *in the manner prescribed in section 2 of this regulation* and specify the date, time and place of the hearing.
- [{(3)}] (c) Specify the charges, the reasons for them and the cause of action contained in NAC *284.646 or* 284.650 on which the proposed action is based.

~~[(c)] The hearing must be scheduled to take place no earlier than 7 working days after the written notice of the proposed action is delivered or deemed received pursuant to paragraph (a). The hearing may not be scheduled on a day which is not a regular working day for the employee.~~

~~—(d) If the appointing authority or his designated representative and the employee agree, the date of the hearing may be changed.~~

—(e)] 4. The notice of the proposed action must be signed by the appointing authority or his designated representative ~~as~~ before the notice is given to the employee.

5. Upon its receipt, the employee must be asked to sign the notice. If he refuses to sign the notice, his refusal must be noted on the notice. The employee's signature is not an admission by him of any of the allegations set forth in the notice.

~~[(f)] The employee may examine, at any time after receiving the notice and before the hearing, all materials which are to be used by the person conducting the hearing. The employee is entitled~~

~~to receive upon request a total of up to 8 hours of administrative leave with pay to prepare for the hearings regarding his suspension, demotion or dismissal.~~

—(g) 6. If the employee does not understand the reasons for the proposed action or the ~~[procedure,]~~ *procedures related to disciplinary actions, including, without limitation, the right to notice, a hearing and an appeal,* the employee may seek an explanation from the appointing authority or another person in the agency familiar with the procedure.

~~[(h) The employee may respond both orally and in writing to the appointing authority or his designated representative at the hearing.]~~

~~[(i) The appointing authority or his designated representative shall conduct the hearing. The designated representative must be a person with authority to recommend a final decision to the appointing authority. He may not render the final decision.]~~

~~[(j) The employee must be:~~

~~[(1) Given a copy of the finding or recommendation, if any, resulting from the hearing; and
(2) Informed, in writing, of the appointing authority's decision regarding the proposed action on or before the effective date of the action.]~~

~~[(k) The employee may waive his right to a hearing in writing. If the employee waives his right to the hearing, he may not be dismissed, suspended, or demoted before the proposed effective date. The waiver does not waive the employee's right to an appeal after the action is taken.]~~

~~[(l) This process is an informal proceeding between the two parties, the appointing authority or his designated representative and the employee, who meet together to discuss the proposed action. Witnesses are not permitted to attend, but each party may be accompanied by a person of his choice.]~~

- 2. ~~The procedure specified in subsection 1 need not be followed before dismissing or suspending a permanent employee if the circumstances give the appointing authority a reasonable cause to believe that the retention of an employee on active duty poses a threat to life, limb or property or may be seriously detrimental to the interests of the State.~~
- 3. ~~If the circumstances set forth in subsection 2 are present, the appointing authority may temporarily assign the employee to duties in which those circumstances do not exist or, if the temporary assignment is not feasible:~~

 - (a) ~~Immediately place the employee on administrative leave with pay until the procedure set forth in subsection 1 has been followed; or~~
 - (b) ~~Immediately suspend or dismiss the employee. In this case the appointing authority, his designated representative, or the employee's supervisor shall attempt to inform the employee before the action is taken of the charges against him and provide the employee with an opportunity to rebut the charges. The procedure set forth in subsection 1 must be followed as soon as practicable after the immediate suspension or dismissal.}~~

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R063-09

The Personnel Commission adopted regulations assigned LCB File No. R063-09 which pertain to chapter 284 of the Nevada Administrative Code.

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.

Copies of the proposed regulation, notice of workshop, and notices of intent to act upon a regulation were sent by email to persons who were known to have an interest in the subject of proposed personnel regulation changes as well as any person who had specifically requested such notice. These documents were also made available on the website of the Department of Personnel (DOP), <http://dop.nv.gov/>, mailed to all county libraries in Nevada and posted at the following locations:

Department of Personnel Blasdel Building 209 E. Musser St Carson City, NV 89701	Grant Sawyer State Office Bldg. 555 E. Washington Blvd Suite 4401 Las Vegas, NV 89101
Nevada State Library and Archives 100 Stewart St Carson City, NV 89701	Capitol Building Main Floor Carson City, NV 89701
Legislative Building 401 S. Carson St Carson City, NV 89701	Gaming Control Board 1919 College Parkway Carson City, NV 89701

Attached are excerpts from the minutes from the workshop that apply to these changes.

A public hearing by the Nevada Personnel Commission was held on September 25, 2009. There were no comments received from the public.

The number of persons who:

- (a) Attended each hearing:** September 25, 2009, Personnel Commission meeting (hearing), 49 attendees
- (b) Testified at each hearing:** September 25, 2009, Personnel Commission meeting, 0 testified
- (c) Submitted written comments:** None

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

Comments were not solicited, as the regulation does not affect businesses.

- 3. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

No comments opposed to this regulation were received.

- 4. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

This regulation does not have a direct economic effect on either a regulated business or the public.

- 5. The estimated cost to the agency for enforcement of the adopted regulation:**

No direct cost is anticipated to the Department of Personnel for the enforcement of this regulation.

- 6. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

This regulation does not overlap or duplicate any other State or governmental agency regulation.

- 7. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

This regulation does not include any provisions that are more stringent than any federal regulation.

- 8. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

No fees are associated with this regulation.

- 9. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a**

small business? What methods did the agency use in determining the impact of the regulation on a small business?

This regulation is specific to State government agencies and has no impact on small business.