

LCB File No. R065-09

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

(This regulation was previously adopted as T019-09)

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

Sec. 15. NAC 284.718 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It recognizes that there can exist a clear connection between an employee's leave balances and his medical history as it relates to protections provided by the Family Medical Leave Act and the Americans with Disabilities Act. Classifying leave balances as confidential employee information will insure that State employees applying for other jobs within State service are not eliminated from consideration through potentially discriminatory practices resulting from the release of leave usage information.

NAC 284.718 Confidential records. (NRS 284.065, 284.155, 284.407)

1. The following types of information, which are maintained by the Department of Personnel or the personnel office of an agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished to the Department of Personnel on the condition that the source remain confidential;

(b) Any document which is used by the Department of Personnel or an agency in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any document which is used by the Department of Personnel or an agency in the process of interviewing an applicant, including, without limitation, a document containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by the Employee Assistance Program;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person's application or relating to his status as an eligible person; and

(j) Information in the file or record of employment of a current or former employee which relates to his:

(1) Performance;

- (2) Conduct, including any disciplinary actions taken against him;
- (3) Race, ethnic identity or affiliation, sex, disability or date of birth;
- (4) Home telephone number; ~~{or}~~
- (5) *Annual leave and sick leave usage and balances; or*
- (6) Social security number.

2. If the employee has requested that his personal mailing address be listed as confidential, his file must be so designated and list his business address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

- (a) The employee dies; or
- (b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation conducted by the Department of Personnel relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential.

Sec. 16. NAC 284.726 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It recognizes that there can exist a clear connection between an employee's leave balances and his medical history as it relates to protections provided by the Family Medical Leave Act and the Americans with Disabilities Act. This amendment balances the employee's right to confidentiality with the employer's record keeping requirements.

NAC 284.726 Access to confidential records. (NRS 284.065, 284.155, 284.335, 284.407)

1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph 2 of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in subsection 3, access to an employee's file of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

- (a) The employee.
- (b) The employee's representative when a signed authorization from the employee is presented or is in his employment file.
- (c) The appointing authority or a designated representative of the agency by which the employee is employed.
- (d) The Director or his designated representative.

(e) An appointing authority, or his designated representative, who is considering the employee for employment in his agency.

(f) Persons who are authorized pursuant to any state or federal law or an order of a court.

(g) The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.

(h) Persons who are involved in processing records for the transaction of business within and between state agencies.

(i) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

3. Information concerning the health, medical condition or disability of an employee or a member of his immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection ~~6~~ 7, access to such information is limited to the employee, his current supervisor, and the appointing authority or his designated representative.

4. *Except as otherwise provided in subsection 7, access to annual leave and sick leave usage and balances is limited to the employee, his current supervisor, and the appointing authority or his designated representative.*

5. Except as otherwise provided by specific statute, records maintained by the Employee Assistance Program must not be released without written permission signed by the employee to whom the records pertain.

~~5.~~ 6. Upon request, the Department of Personnel will provide the personal mailing address of any employee on file with the Department to the State Controller's Office and the Internal Revenue Service.

~~6.~~ 7. The Director or the appointing authority, or his designated representative, shall authorize the release of any confidential records under his control which are requested by the Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission or a court. If the Director or his designated representative determines that the release of any confidential record is not necessary for those purposes, the decision may be appealed.