

**PROPOSED REGULATION OF THE DIRECTOR  
OF THE DEPARTMENT OF PERSONNEL**

**LCB File No. R015-02**

March 7, 2002

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

AUTHORITY: §1, NRS 284.155, 284.175 and 284.345; §§2 and 3, NRS 284.155 and 284.175.

**Section 1.** Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

*1. An employee may enter into a written agreement to trade shifts with another employee who is employed by the same state agency if each employee who enters into the agreement:*

*(a) Does so solely at his option as described in 29 C.F.R. § 553.31;*

*(b) Performs work in the same class; and*

*(c) Obtains approval to enter into the agreement from the appointing authority of the state agency that employs him.*

*2. If an employee who enters into an agreement pursuant to subsection 1 is unable to work the shift that he agreed to work, he is responsible for entering into a written agreement to trade shifts with another employee who satisfies the requirements of subsection 1 to ensure that the shift is worked. Except as otherwise provided in subsection 5, if the employee is unable to enter into an agreement with an employee who satisfies the requirements of subsection 1 to work the shift that he agreed to work, the state agency that employs the employee who was originally scheduled to work that shift before any agreements to trade shifts were entered into pursuant to this subsection or subsection 1 shall:*

*(a) Reduce that employee's accrued annual leave or accrued compensatory time by the number of hours in the shift; or*

*(b) If that employee does not have annual leave or compensatory time available, place the employee on leave without pay for the number of hours in the shift, unless that employee works the shift he was originally scheduled to work.*

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*3. Except as otherwise provided in subsection 5, if an employee works a shift for another employee as provided in an agreement entered into pursuant to subsection 1 or 2, the state agency that employs the employees shall pay each employee as if he had worked his regularly scheduled hours of employment on that workday.*

*4. The state agency that employs an employee who works a shift for another employee as provided in an agreement entered into pursuant to subsection 1 or 2 may exclude the hours worked by the employee pursuant to the agreement from the calculation of the hours for which the employee is entitled to receive:*

*(a) Credit for overtime work pursuant to NRS 284.180; and*

*(b) Any other additional pay or benefits required to be paid by this chapter or chapter 284 of NRS.*

*5. If an employee who enters into an agreement pursuant to subsection 1 is unable to work the shift that he agreed to work because on the date that the shift occurs he no longer satisfies the requirements of subsection 1 and the other employee who is a party to the agreement has already worked the shift which he agreed to work pursuant to that agreement or another employee has worked that shift as provided in an agreement entered into pursuant to subsection 2, the state agency shall:*

*(a) Reduce the pay of the employee who no longer satisfies the requirements of subsection 1 by the number of hours in the shift that was worked for him; and*

*(b) If the hours worked by the other employee pursuant to the original agreement or as provided in an agreement entered into pursuant to subsection 2 were excluded from the calculation described in subsection 3, include those hours in the calculation of the hours for which that employee is entitled to receive:*

*(1) Credit for overtime work pursuant to NRS 284.180; and*

*(2) Any other additional pay or benefits required to be paid by this chapter or chapter 284 of NRS.*

*6. The appointing authority shall maintain accurate records of each agreement entered into by its employees pursuant to subsection 1 or 2.*

**Sec. 2.** NAC 284.204 is hereby amended to read as follows:

284.204 1. The department of personnel may approve an adjustment of steps within the same grade to:

(a) Allow an appointing authority the flexibility to adjust the rate of pay for a position that will be filled by a person from a pool of eligible persons who are applying for the position on an open competitive basis in order to:

(1) Meet a difficult recruiting problem in which an effort to recruit a person for a position or class has failed to produce at least five eligible persons who are available to work, or the recruitment for the position or class has been deemed historically difficult. Such an adjustment of steps may be approved by the department of personnel for a class for a period of 1 year.

(2) Employ a person whose education or experience is superior to those of another eligible person and who exceeds the minimum qualifications of the class. Any experience or education

which is considered by the appointing authority pursuant to this subparagraph must be given a greater weight for those areas which are directly related to the position than general education and experience.

(b) Maintain an equitable relationship in the status of steps among the employees of the appointing authority if a disparity exists. An adjustment will not be granted pursuant to this section if the disparity in steps is:

(1) Among employees of different agencies; or

(2) A result of:

(I) The length of service of employees;

(II) An adjustment in pay which was attained in a former class; or

(III) An adjustment in pay for an employee who resides in a particular geographical area.

*(c) Maintain an appropriate differential, as determined by the appointing authority, between the base rate of pay of a supervisor and the base rate of pay of an employee who is in the direct line of authority of the supervisor. An adjustment may be granted pursuant to this paragraph if, before the adjustment, the base rate of pay of the employee is the same or greater than the base rate of pay of the supervisor.*

2. Before granting an adjustment of steps pursuant to this section, the appointing authority must submit a request on a form prescribed by the department of personnel to the department of personnel which:

(a) Specifies the qualifying conditions and justification for the request; and

(b) Certifies that the appointing authority has, where applicable:

(1) Considered the requirements for the pay required to meet the need described in subparagraph (1) of paragraph (a) of subsection 1;

(2) Considered the qualifications of any other eligible person who is available for work for the purposes of subparagraph (2) of paragraph (a) of subsection 1;

(3) Ensured that the adjustment is feasible on the basis of its fiscal effects;

(4) Ensured that the adjustment will not cause inequity between current employees which would require adjustments in the steps of those employees which are not feasible on the basis of the fiscal effects of such adjustments; and

(5) Prepared and maintained an accurate record of the consideration of the factors listed in this section.

3. If an adjustment of steps pursuant to this section is approved by the department of personnel, the effective date of such an adjustment is the date on which a request that complies with subsection 2 is received by the department of personnel or the personnel office of the agency at which the employee who is receiving the adjustment is employed. If a request for an adjustment of steps is delayed because an administrative or clerical error prevented the delivery of the request, the effective date must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment must not exceed 6 months from the date on which the department of personnel receives the request.

4. An adjustment of steps which is made pursuant to subparagraph (1) of paragraph (a) of subsection 1 may be revoked when:

(a) The recruiting problem which caused the adjustment was due to the geographical location of the position; and

(b) The employee transfers to an area where a recruiting problem does not exist.

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**Sec. 3.** NAC 284.210 is hereby amended to read as follows:

284.210 1. As used in this section ~~[, “qualifying shift”]~~:

(a) *“Day shift” means a period of work in which at least half of the hours assigned fall between the hours of 8 a.m. and 5 p.m.*

(b) *“Qualifying shift” means a ~~[period of work]~~ second shift or a third shift of at least 8 hours, of which 4 hours must fall between the hours of 6 p.m. and 7 a.m. The term does not include overtime worked between the hours of 6 p.m. and 7 a.m. if the overtime is worked by an employee who works a day shift and who is required to work that overtime.*

(c) *“Second shift” means a period of work in which at least half of the hours assigned fall between the hours of 3 p.m. and midnight.*

(d) *“Third shift” means a period of work in which at least half of the hours assigned fall between the hours of midnight and 9 a.m.*

2. ~~[Except as otherwise provided in this section, an]~~ A *nonexempt* employee must receive compensation equivalent to 5 percent of his normal rate of pay for all hours worked ~~[within a shift if the employee works]~~ *during* a qualifying shift. ~~[If an]~~

3. An exempt classified employee *or an exempt unclassified employee must receive compensation equivalent to 5 percent of his normal rate of pay for all his regularly scheduled hours of employment on a workday if the employee* works a qualifying shift for any portion of ~~[a workday, he must receive such compensation for all his regularly scheduled hours of employment on that workday.~~

~~—3.] that workday.~~

4. If an employee is assigned to a qualifying shift when he is on *paid* leave or a holiday occurs, he must receive the differential rate of pay for that shift [-

~~—4.— Any hours exceeding the qualifying 8-hour shift are] set forth in subsection 2 or 3, as applicable.~~

5. A nonexempt employee who is assigned to a qualifying shift and who works overtime in conjunction with, immediately preceding or immediately following the qualifying shift is eligible *to be paid* for overtime at the differential rate of pay [for that shift if the hours are worked by an employee other than an exempt classified employee, in conjunction with, immediately before or following the shift.

~~—5.— A qualifying shift, including, without limitation, the times at which the shift started and ended, must be clearly designated on the employee's time sheet and approved by the employee's supervisor.] set forth in subsection 2 or 3, as applicable.~~