

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R069-02

Effective August 14, 2002

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

AUTHORITY: §1, NRS 284.155; §2, NRS 284.175; §§3 and 4, NRS 284.250; §5, NRS 284.335; §§6 and 8, NRS 284.345; §7, NRS 284.3626.

Section 1. NAC 284.126 is hereby amended to read as follows:

284.126 1. For the purposes of this section:

(a) “Agency personnel officer” means the director of personnel within the University and Community College System of Nevada or any person holding a position in the classified service with the title of personnel officer.

(b) “Significant change” means a change in the duties and responsibilities assigned to a position in a class that:

- (1) Is outside of the scope of the class as described by the class specification;
- (2) Is not part of the scope of responsibility of the position; and
- (3) Results in the preponderance of duties and responsibilities being allocated to a different class.

2. If an appointing authority or an employee proposes the creation of a new class, a reclassification of a position to a different class or the reallocation of an existing class based upon a gradual accumulation of duties and responsibilities which results in a significant change and is intended to be permanent, the department of personnel or agency personnel officer must be notified on the appropriate form. If the creation, reclassification or reallocation is approved,

the department of personnel will allocate the position to one of the existing classes in the classification plan or to a new, revised or reallocated class as appropriate.

3. The effective date *of the classification decision* will be the date on which form NPD-19 is received by the department of personnel or agency personnel officer unless information ~~[concerning the qualifications of the incumbent or information which]~~ *that* substantially affects the decision concerning the creation, reclassification or reallocation is received after this date. In that case, the effective date will be the date on which the appropriate information necessary to make the decision is received. *However, the subsequent receipt of an application or examination score that confirms the qualifications of an incumbent will not have a bearing on the effective date.* If the form was prepared but delayed due to an administrative or clerical error, the effective date must be determined by the appointing authority and must be based upon the date on which the form should reasonably have been submitted to the department of personnel or agency personnel officer. In no case, however, may a retroactive adjustment because of an administrative or clerical error exceed 6 months after the date of receipt.

~~[3.]~~ 4. If an agency makes or anticipates making a significant change in the duties for a position or the agency anticipates a reorganization which will require the reclassification of an existing position, the reallocation of an existing class or the creation of a new class, it shall advise the budget division of the department of administration or, in the case of the University and Community College System of Nevada, the budget division of the applicable institution. The proposed change may not be required of an employee nor be submitted to the department of personnel until funding for it is approved. If the change is approved by the department of personnel, the effective date will be determined by the budget division.

~~[4.]~~ 5. In effecting a reclassification pursuant to subsection 2 or ~~[3.]~~ 4, the appointing authority must review and take into consideration the organizational structure and the qualifications of the incumbent before assigning new duties to a position which are intended to be permanent. No position will be reclassified to a higher grade through the individual classification process if the incumbent does not meet the minimum qualifications for the higher level position. If an employee does not meet the minimum qualifications to reclassify his position, he is not eligible for promotion, but may be eligible for a special adjustment to his pay pursuant to NAC 284.206.

~~[5.]~~ 6. The establishment of a new class, or reallocation of a class or a class series based on an occupational study conducted by the department of personnel, becomes effective when the funding is provided by the legislature in the biennial operating budget for this state.

~~[6.]~~ 7. From the date that the department of personnel formally announces the beginning of an occupational study until the date that the occupational study is funded by the legislature:

- (a) An existing position in the occupational study that has a significant change may only be reclassified to an existing class.
- (b) An existing class in the occupational study must not be reallocated to a different grade.
- (c) A new position may be allocated to an existing class or a new class as determined by the department of personnel.

Sec. 2. NAC 284.210 is hereby amended to read as follows:

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

(a) “Differential rate of pay” means an adjustment in pay equivalent to an additional 5 percent of an employee’s normal rate of pay.

(b) “Qualifying shift” means a period of work of ~~[at least]~~ 8 hours ~~[, of which 4 hours must]~~ *or more, of which 4 hours must* fall between the hours of 6 p.m. and 7 a.m.

2. ~~[Except as otherwise provided in this section, an 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 a qualifying shift. If an]~~ *An employee is eligible for the differential rate of pay if he works in a unit which provides services requiring multiple shifts within a 24-hour period and he is:*

(a) *A nonexempt employee in the classified service who works:*

(1) *A qualifying shift; or*

(2) *Any shift of at least 8 hours that is other than a qualifying shift plus 4 or more hours between 6 p.m. and 7 a.m. In such cases, an employee must receive the differential rate of pay for only the hours worked between 6 p.m. and 7 a.m.*

(b) *An exempt classified employee* ~~[works a qualifying shift for any portion of a workday, he]~~ *assigned to a qualifying shift. In such cases, an employee* must receive ~~[such compensation]~~ *the differential rate of pay* for all his regularly scheduled hours of employment on that workday.

3. 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 eligible for]~~ *A nonexempt employee in the classified service who works overtime pursuant to NRS 284.180 in conjunction with a qualifying shift must be paid* 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.]~~

Sec. 3. NAC 284.374 is hereby amended to read as follows:

284.374 1. The names of eligible persons will be removed from the active lists for any of the following causes:

(a) Appointment after certification to fill a full-time permanent position in the class for which the examination was given.

(b) Expiration of the term of eligibility.

(c) Separation of a person who is eligible for promotion from the state service.

(d) Failure by an eligible person to respond within the required time to an inquiry of availability.

(e) A statement by the eligible person that he is not willing to accept any type of appointment from the eligible list.

(f) Any of the causes listed in NRS 284.240, NAC 284.314 or subsection 5 of NAC 284.630.

2. An appointing authority may refuse to consider an eligible person who has been *previously* considered by the appointing authority three times from the same list for the same class. Certification to other than full-time permanent positions will not be counted as a certification for the purposes of this subsection.

3. *An appointing authority may refuse to consider an eligible person who has been subject to a suspension, demotion or termination as a result of an upheld or uncontested disciplinary action in the preceding 12 months. The 12-month period begins on the effective*

date of the uncontested action, or if it is contested, on the date the hearing officer issues his final decision upholding a suspension, demotion or termination.

4. An appointing authority shall refuse to consider an eligible person whose appointment to a position will violate NRS 281.210, NAC 284.375 or a policy approved by the commission pursuant to NAC 284.375.

~~[4.]~~ 5. An eligible person whose name has been removed from an active list may request that his name be reactivated by stating his reasons for the request. If the department of personnel determines that the reasons are justified, and the person's term of eligibility has not otherwise expired, his name may be reactivated.

Sec. 4. NAC 284.378 is hereby amended to read as follows:

284.378 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 who receives a written offer of reemployment must accept or refuse the offer within 3 business days after the offer is received. If an offer of reemployment is mailed to a person, he must accept or refuse the offer within 6 days after the date of the postmark on the

letter containing the offer. The failure to accept the offer within the prescribed time constitutes a refusal of the offer.

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. Where selective certification is necessary, the appointing authority must furnish in writing the special requirements peculiar to the position and his reasons therefor. If the facts and reasons justify such a method of selection, the department of personnel may certify the highest ranking eligible persons who possess the special qualifications. ~~[Determination of special qualifications may require circularization of eligible persons before certification can be made.]~~

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. ~~[Authorization for selective certification will be made on an individual basis and, with the exception of clerical positions requiring typing, shorthand, or word processing, database or spreadsheet skills, subsequently reported to the commission at their next regular meeting. —5.—]~~ When using ranked lists other than those for reemployment, the appointing authority

must attempt to communicate, as provided in NAC 284.382, 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 ~~7.1~~ 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.

~~6.1~~ 5. If the list is unranked or waived, the appointing authority must attempt to communicate, as provided in NAC 284.382, 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.

~~7.1~~ 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. 5. NAC 284.470 is hereby amended to read as follows:

284.470 1. A person shall not complete a report on performance unless he has completed the training provided or approved by the director concerning the preparation of a report on performance.

2. A report on performance must be prepared on the form prescribed by the department of personnel.

3. When a report on performance is given which reports the *overall* rating of performance of an employee as substandard, it must contain a written notice that such reports affect both merit pay increases and the employee's eligibility for longevity pay. More frequent reports may be made in the supervisor's discretion.

4. Except as otherwise provided in subsection 5, the preparation of each report on performance must include a discussion between the employee and his immediate supervisor.

Within 10 working days after the discussion takes place:

(a) If the employee agrees with the report on performance, he must complete and sign the appropriate section on the report on performance and return the report to his supervisor for forwarding to the appointing authority; or

(b) If the employee disagrees with the report on performance and requests a review, he must respond to the report in writing and identify the specific points of disagreement, if such specificity is provided. The reviewing officer shall respond to the employee in writing within 10 working days after the supervisor or other person designated by the agency to receive such requests receives the request.

5. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 4 because of an extended absence, the immediate supervisor of the employee shall cause the report to be mailed to the employee. If the employee agrees with the report on

performance, he must complete and sign the appropriate section on the report and mail the report to his supervisor for forwarding to the appointing authority within 10 working days after the date on which the employee received the report. If the employee disagrees with the report on performance and requests a review, he must respond to the report in writing and identify any specific point of disagreement, if the report provides such specificity. The employee must mail his response to his supervisor within 10 working days after the date on which the employee received the report. The reviewing officer shall respond to the employee in writing within 10 working days after the supervisor or other person designated by the agency to receive such a request receives the request for review from the employee. For the purposes of this subsection, a report on performance or request for review is deemed to have been received on the third day after the date on which the report or request is postmarked.

6. A copy of each report on performance must be filed with the department of personnel.

7. An employee and his appointing authority may agree in writing to extend one or more of the periods prescribed in subsection 4 or 5.

8. If a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.695, inclusive.

Sec. 6. NAC 284.540 is hereby amended to read as follows:

284.540 Each appointing authority shall keep accurate records of earned and used ~~annual leave. If the records are not maintained on a computer they must be maintained manually.]~~ *leave unless these records are maintained by a centralized time and attendance system.*

Sec. 7. NAC 284.577 is hereby amended to read as follows:

284.577 ~~[An]~~ *1. Except as otherwise provided in subsection 2, an* employee who has used hours from an account for catastrophic leave may voluntarily repay the account for those hours.

2. An employee who is entitled to catastrophic leave and workers' compensation benefits may not receive more than 100 percent of his pay for the period of his leave. An employee must repay the account for catastrophic leave when the combined benefit of catastrophic leave and workers' compensation exceeds his normal rate of pay.

3. The amount required to repay the hours *from an account for catastrophic leave* must be based on ~~[his]~~ *the employee's normal* rate of pay at the time he used the hours.

Sec. 8. NAC 284.570 is hereby repealed.

TEXT OF REPEALED SECTION

284.570 Sick leave: Records. Each appointing authority shall maintain accurate records of earned and used sick leave. If the records are not maintained on a computer they must be maintained manually.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R090-02

The Personnel Commission adopted regulations assigned LCB File No. R090-02 which pertain to special adjustments to pay (chapter 284 of the Nevada Administrative Code) on July 2, 2002.

Notice date: 5/3/2002
Hearing date: 7/2/2002

Date of adoption by agency: 7/2/2002
Filing date: 8/14/2002

INFORMATIONAL STATEMENT

1. On May 3, 2002, copies of the "Notice of Workshop" to solicit comments on proposed regulations and "Notice of Hearing" for the adoption, amendment and repeal of regulations were posted conspicuously in public buildings and on the Department of Personnel's website. On the same day, copies of the notices and the text of the proposed regulations were filed with the Legislative Counsel Bureau and the Nevada State Library. Also on May 3, 2002, 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.
2. The workshop was held at the Department of Transportation in Carson City and, via video conference, in Las Vegas on May 22, 2002. Twenty-nine people attended the workshop on the proposed regulations.

The explanation of change was read for each of the sections. There were no questions, comments, opposition or discussion on the proposed amendments to NAC 284.126, 284.378, 284.470, 284.540, 284.577, and 284.540.

Amendments to NAC 284.206 were requested by both the State of Nevada Employee's Association and the Department of Human Resources. As the two proposals were in conflict of each other, they were drafted separately. Wally Tarantino, representing 16 employees at Lakes Crossing Center who had filed grievance with the Employee Management Committee, presented some of the concerns these employees had with the proposed regulation change. Mr. Tarantino also expressed concern that an unfavorable working environment would be created if employees in the same classification and having the same duties are not receiving the special adjustment. There were no other questions, comments, opposition or discussion on the two proposals to amend NAC 284.206.

Questions and comments were heard regarding the proposed amendments to NAC 284.210. Robert Chisel testified that NDOT's current shift differential practices encouraged their employees to work overtime and stay on the job during emergencies.

This practice cost their agency very little in comparison to their total payroll. Thor Dyson, Assistant District Engineer for NDOT, and Kathy Naumann, Teamsters Local 14, supported a more liberal shift differential policy in order to encourage employees to work beyond their normal shift in times of emergencies. Several agency representatives asked for clarification regarding shift times, citing specific impact of the proposed changes on their budgets and on their employees.

The only comment received regarding the proposed amendments to NAC 284.374 was from Wally Tarantino. He questioned whether the proposed change would encourage more employees to contest written reprimands and/or file grievances to retain eligibility on promotional lists.

A summary of the public workshop is available upon request from the Department of Personnel, 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204.

On Tuesday, July 2, 2002, a Personnel Commission hearing was held at the Grant Sawyer Building in Las Vegas. Fifty-six people were in attendance in Las Vegas, and 37 were in attendance in Carson City via video conference.

During the hearing, Shelley Blotter, from the Department of Personnel, gave a brief overview of the intent of the proposed regulation changes in LCB File No. R069-02. The Department of Personnel requested that revised language be adopted for sections 1, 2, 3 and 6. The Commission unanimously approved adoption of these sections as revised without objection from the public. Sections 4 and 5 were also unanimously approved for adoption without objection.

The proposed amendments in LCB File No. R090-02 and R091-02 were discussed prior to any action being taken. Scott Mackenzie, Executive Director, State of Nevada Employee's Association spoke in favor of the proposed amendment in LCB File No. R091-02. He stated he was withdrawing the request for nurse and technician classes to continue to receive the special adjustment for working in an assaultive environment indefinitely, but requested that current employees continue to receive the adjustment. Wally Tarantino, attorney, testified that he had recently represented 16 Lakes Crossing Center employees before the Employee Management Committee. He asserted that Lakes Crossing Center is still an assaultive environment and the employees who work there should continue to receive this special adjustment to salary. He also stated that this section, if adopted, would result in inequities between current employees and those hired in the future. Gary Wolff, Teamsters Local 14 and Nevada Highway Patrol Association representative stated he supported Mr. Tarantino's comments. Three employees of Lake's Crossing testified in support of the SNEA proposal.

Kareen Masters, Personnel Officer and Mike Willden, Director, Department of Human Resources, and Carol Brandenburg, Administrator of the Division of Mental Health and Developmental Services, provided testimony in support of the proposed amendment in LCB File No. R090-02. Their testimony included an explanation of why the amendment is appropriate and the approximate number of employees impacted. Six employees from

Desert Willow hospital and Lakes Crossing Center testified on the negative impact of the Department of Human Resources proposed amendment. Commissioner Enus requested that a compromise be reached on the proposed language when the first motion to adopt the Department of Human Resources proposed amendments to NAC 284.206 did not pass. Commissioner Skaggs amended his motion to adopt agenda Item V, section 3 to include all classes impacted by the removal of the special adjustment to pay for working in an assaultive environment in the reviser's note. The revised motion passed 3 to 1, with Commissioner Horgan voting against the motion.

A summary of the hearing is available upon request from the Department of Personnel, 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204.

3. The regulations do not affect businesses; therefore, their comments were not solicited.
4. These regulations do not have a direct economic effect on any business or the public.
5. Enforcement of these regulations should not result in any increased cost to the Department of Personnel.
6. These regulations do not duplicate or overlap with other State or government regulations.