

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R038-03

Effective October 30, 2003

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

AUTHORITY: §§1 and 2, NRS 284.155, 284.175, 284.335, 284.338 and 284.340; §3, NRS 284.155; §§4 and 5, NRS 284.155 and 284.175; §6, NRS 284.155, 284.175 and 284.345; §7, NRS 284.155, 284.175 and 284.177; §8, NRS 284.155 and 284.335; §9, NRS 284.155 and 284.345; §10, NRS 284.155 and 284.345.

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

“Reviewing officer” means:

- 1. The supervisor of the person who prepared a report on performance of an employee; or*
- 2. Such other person designated by the appointing authority,*

↪ who reviews the report on performance upon the request of the employee pursuant to paragraph (b) of subsection 4 of NAC 284.470.

Sec. 2. NAC 284.010 is hereby amended to read as follows:

284.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 284.022 to 284.112, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

Sec. 3. NAC 284.073 is hereby amended to read as follows:

284.073 “Occupational study” means a classification study of a group of positions ~~in~~ *or* related classes and class series, *or any combination thereof*, which is initiated by the Department of Personnel and subsequently approved by the Commission.

Sec. 4. 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 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.

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.

5. In effecting a reclassification pursuant to subsection 2 or 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.

6. The establishment of a new class ~~[.]~~ or reallocation of a class ~~[or a class series based on]~~ *in* an occupational study ~~[conducted by the Department of Personnel,]~~ *which results in a fiscal*

cost becomes effective when the funding is provided by the Legislature in the biennial operating budget for this state.

7. From the date ~~{that}~~ *on which* the Department of Personnel formally announces the beginning of an occupational study until the date ~~{that}~~ *on which* the occupational study ~~{is funded by the Legislature:}~~ *becomes effective:*

(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. 5. NAC 284.170 is hereby amended to read as follows:

284.170 1. Except as otherwise provided in NAC 284.204 regarding adjustment of steps within the same grade and NAC 284.206 regarding special adjustments to pay, the following provisions govern the grade and the step at which an employee must be paid at the time of employment:

(a) If the employment is an initial appointment, the employee's base rate of pay must be set at step 1 of the grade of the position's class.

(b) If the employment is a reinstatement to a position which is:

(1) At the same grade as that of the employee's former position, he must be paid at or below the step which he held in his former position.

(2) At a lower grade than the employee's former position, he must be paid at or below the step in the lower grade which most closely corresponds to the base rate of pay of his former position.

(3) A result of the reallocation of the entire class because of a reclassification or a general pay increase, he must be paid at or below the step in the new grade which most closely corresponds to the base rate of pay of his former grade.

2. The following provisions govern the rate of pay which must be paid if an employee is promoted:

(a) The employee must be placed at the lowest step in the higher grade that meets one of the following requirements:

(1) If the employee moves one or two grades above his former grade, he must be placed at the same step in the new grade as the step he held in his former grade.

(2) If the employee moves three or more grades above his former grade, the employee must be placed:

(I) At a step which is equivalent to an increase of two steps above the step he held in his former grade; or

(II) At the lowest step of the new grade,

↪ whichever pay is higher and in accordance with the provisions of subsection 8.

(b) A special adjustment to an employee's pay for performing supervisory duties which is granted in accordance with paragraph (c) of subsection ~~H~~2 of NAC 284.206 is the present level of pay for the purpose of calculating a promotional increase authorized by paragraph (a) only if the employee has received the special adjustment to his pay for more than 6 months of continuous full-time service.

(c) If an employee has been demoted, he may not receive a promotional increase in pay that is greater than the increase which he would have otherwise been entitled to receive had he not been demoted.

(d) This subsection does not apply when an employee is reemployed or reappointed to his former grade within 1 year after holding that grade.

3. Except as otherwise provided in this subsection and paragraph (b) of subsection 1 of NAC 284.618, an employee who is demoted must be paid at a step within the grade of the class to which he was demoted as follows:

(a) If the employee has attained permanent status in the class from which he was demoted and the demotion is instituted at the employee's request or is acceptable to the employee, the appointing authority shall pay him at a step in the grade of the class to which he was demoted which is:

(1) Equal to his present base rate of pay; or

(2) Equivalent to a decrease of not more than one step from his base rate of pay in the position from which he was demoted. Except as otherwise provided in paragraph (b), if the base rate of pay in the position from which he was demoted does not fall within the grade of the class to which he was demoted, the employee must be paid at a step in the grade of the class to which he was demoted which is equal to:

(I) The step he would have received if he had not been promoted to the position from which he was demoted; or

(II) The step he would have received if he had been employed in that class from the inception of his employment with the State of Nevada.

(b) An exception to subparagraph (2) of paragraph (a) may be granted by the appointing authority to pay an employee at a rate that does not fall within the grade of the class to which he is demoted if the appointing authority determines that the demotion is in the best interest of the employee and the State of Nevada. If such an exception is granted:

(1) The employee's base rate of pay will be limited to three grade levels above the grade of the class to which he is demoted or his base rate of pay in the position from which he was demoted, whichever is less.

(2) The employee's base rate of pay in the position to which he was demoted will be frozen until it falls within the grade of the class to which he was demoted or for a maximum of 2 years after the date he was demoted, making the employee ineligible for any merit pay increases, cost of living adjustments or adjustments for a class of employees that has been approved by the Legislature.

(3) If the employee's frozen base rate of pay does not fall within the grade of the class to which he was demoted within the 2-year period, his base rate of pay will be adjusted to the highest step within the grade of the class to which he was demoted.

(c) If an employee accepts a promotion and is demoted before attaining permanent status in the class, he must be paid at a step in the grade of the class to which he was demoted which is equivalent to the base rate of pay to which he would have been entitled had he not been promoted.

(d) If the demotion is instituted by the appointing authority for disciplinary reasons and is not covered by paragraph (b), the appointing authority shall determine the step in the grade of the class to which the employee was demoted at which the employee will be paid.

(e) If an employee is demoted during his probationary period in state service, the appointing authority may pay the demoted employee at any step in the grade of the class to which the employee was demoted that is not greater than his base rate of pay before the demotion.

4. Except as otherwise provided in NAC 284.204, if an employee transfers to a position in the same or a related class, he must be placed at the corresponding step in the same grade that he held before the transfer. Any exception to this subsection must be:

(a) Based on the provisions of NAC 284.204; or

(b) Approved by the Department of Personnel based upon a written request and justification for the exception submitted by the appointing authority.

5. If an employee is reappointed to a position which is in:

(a) The grade which he currently holds, he retains his step.

(b) A higher grade and the appointment occurs within 1 year after the date on which he last held the grade, he must be placed at the step which he last held in that grade.

(c) A higher grade and the reappointment occurs more than 1 year after he held that grade, his pay must be calculated pursuant to the provisions relating to promotion in subsection 2.

↪ Any exception to this subsection must be approved by the Department of Personnel based upon a written request and justification for the exception submitted by the appointing authority.

6. Except as otherwise provided in subsection 7, if a person is reemployed at:

(a) The same grade, he must be placed at the step which he last held in that grade.

(b) A lower grade, he must be placed at a step which most closely corresponds to the base rate of pay which he held at the time of his layoff or separation.

(c) A higher grade and the appointment occurs within 1 year after the date on which he last held the grade, he must be placed at the step which he last held in that grade.

↪ An exception to this subsection may be made if the conditions in NAC 284.204 exist, or if money is not available as certified by the Chief of the Budget Division of the Department of Administration or, in the case of an agency that is not funded from the State General Fund or the

University and Community College System of Nevada, as certified by the administrator of that agency or the System. If an exception is made pursuant to this subsection because the agency does not have sufficient money available, the employee retains his right of reemployment.

7. If a person who is eligible for military reemployment is reemployed, the period of his military service must be included in calculating the step at which he will be placed.

8. An employee who has been continuously employed without a break in service may not have his step set below:

(a) Step 4 of any grade if his date of hire is before April 26, 1973; or

(b) Step 3 of any grade if his date of hire is before May 3, 1975, but on or after April 26, 1973, except for disciplinary reasons which result in demotion.

9. Except as otherwise provided in this subsection, if a nonclassified or unclassified employee or an employee included in the personnel system pursuant to the provisions of NRS 284.022 is appointed without a break in service to the classified service, he may, at the discretion of the appointing authority:

(a) Be paid at a step which corresponds to or is below his rate of pay as a nonclassified or unclassified employee if it is within the grade of the class to which he is appointed;

(b) Be paid at the first step in the new grade to which he is appointed; or

(c) Receive a special adjustment to his pay pursuant to subsection 1 of NAC 284.204 or NAC 284.206.

↪ An exception to this subsection may be made if a nonclassified or unclassified employee who was an employee of the Legislative Branch of State Government employed at the conclusion of a regular session of the Legislature pursuant to NRS 284.3775 transfers to state service.

10. An employee who was previously employed in the classified service and is appointed pursuant to the provisions of subsection 9 may not be paid at a step and grade which is greater than he received at the time he left the classified service, unless he has held the unclassified or nonclassified position for more than 1 year.

11. As used in this section, “present level of pay” means a rate of pay that is equal to the amount that is assigned to the step within the grade which is closest to, but does not exceed, the employee’s pay after a special adjustment to pay pursuant to the provisions of NAC 284.206.

Sec. 6. NAC 284.206 is hereby amended to read as follows:

284.206 1. The Department of Personnel may approve a special adjustment to *the pay of an employee pursuant to this section. A request for a special adjustment to pay may be initiated by an employee, the appointing authority or the Department of Personnel. A special adjustment to pay does not constitute a promotion.*

2. *An employee may receive a special adjustment to pay* equivalent to 5 percent of the employee’s base rate of pay ~~[to recognize conditionally:~~

~~—(a) An employee who]~~ *during any period in which:*

(a) *The employee* works out of his class on a continuing basis and ~~[who]~~ performs essentially all the duties and responsibilities of a position classified at a higher grade. To receive the increase, the employee must ~~[-~~

~~—(1) Be]~~ *be* assigned duties and responsibilities of the higher grade which are clearly demonstrated in the class specification ~~[-and~~

~~—(2) Carry]~~ *and carry* out the duties and responsibilities for at least 16 consecutive workdays before the increase becomes effective.

↪ The adjustment to pay pursuant to this paragraph is effective retroactively, commencing on the date on which the employee assumed the additional duties and responsibilities. The adjustment to pay must not continue for more than 6 months in any 12-month period unless ~~the person~~:

(1) The employee is underfilling a position pursuant to NAC 284.437 and recruitment has failed to produce a sufficient number of applicants on the appropriate list. ~~If the employee will be required to carry out the assigned duties and responsibilities of the higher grade for 1 year or less, the appointing authority may request a temporary reclassification pursuant to NAC 284.132.~~

~~—(b) An~~

(2) The duties and responsibilities that the employee has been carrying out have been assumed from one or more positions that have not been authorized to be filled because of a hiring freeze or fiscal emergency. A hiring freeze or fiscal emergency must be certified by the Chief of the Budget Division of the Department of Administration or, in the case of an agency that does not receive money from the State General Fund or the University and Community College System of Nevada, certified by the administrator of that agency or the System.

(3) The appointing authority submits a written request to the Director of the Department of Personnel accompanied by documentation justifying an extension of the 6-month period and certifies that money is available to pay for the continuation of the special adjustment to pay. The Director may authorize the continuation of the special adjustment to pay after receiving the request and documentation and determining that the extension of the 6-month period is a business necessity and in the best interest of the State.

(b) The employee is required to use bilingual skills or sign language for the deaf at least 10 percent of his work time.

(c) ~~[An]~~ *The* employee *is* supervising other employees of the same or a higher grade if the supervision:

(1) Is not part of the supervision or management responsibilities for a program that is provided for in the class specification; and

(2) Includes, without limitation, selection, work assignment, training, work review, performance evaluation and discipline of employees.

(d) ~~[An employee who]~~ *The employee* is required regularly to perform custodial work and clean up human bodily waste in a medical, clinical or inpatient facility.

(e) Except as otherwise provided in this paragraph, ~~[an employee who conducts]~~ *the employee is conducting* a formal training program for employees. The training program must:

(1) Be conducted weekly;

(2) Consist of training on the job and in the classroom or training only in the classroom;

(3) Include a test to determine the employees' progress in the program; and

(4) Result in the award of a certificate of completion or advancement in a class series to the journey level.

↪ If an adjustment to pay is granted pursuant to this paragraph, the adjustment begins when the employee starts conducting the training program and ends when the training program is completed. An adjustment will not be granted if the duty to conduct training is clearly set forth in the class specification. Informal orientation given to new employees will not be considered for this special adjustment.

(f) ~~[A]~~ *The employee, if employed as a* law enforcement officer, ~~[who]~~ is assigned to motorcycle duty.

(g) ~~[An employee of]~~ *The employee, if employed by* the Department of Corrections, ~~[who]~~ is responsible for the supervision of a group of inmates assigned to a work area of an institution and who is responsible for implementing security procedures, including, without limitation:

- (1) Securing the work area from inmates who are not authorized to enter the work area;
- (2) Accounting for all inmates who have been assigned to the work area; and
- (3) Accounting for all materials, tools and equipment in the work area.

↳ The adjustment to pay pursuant to this paragraph will be granted only if such duties are not provided for in the class specification.

(h) ~~[An employee who]~~ *The employee* is authorized by the Legislature to receive such an adjustment to his pay.

~~[2. The Department of Personnel may approve]~~

3. *An employee may receive* a special adjustment to ~~[the pay of an employee who]~~ *pay if he* occupies a position in which the duties have been recognized through the classification process as being at a higher level, but who does not meet the minimum qualifications for the class. The special adjustment to the employee's pay must be equivalent to 2.5 percent of the employee's base rate of pay if the employee performs duties classified one grade higher than his current position, or 5 percent of the employee's base rate of pay if the employee performs duties classified two or more grades higher than his current position. A special adjustment to an employee's pay made pursuant to this subsection may continue in effect from the date on which the position questionnaire is received:

- (a) Until the employee meets the minimum qualifications and is promoted;
- (b) For 1 year after the effective date of the special adjustment to pay; or
- (c) Until the date the higher level duties are removed,

↳ whichever occurs first.

~~{3. A request for a special adjustment to pay made pursuant to this section may be initiated by an employee, the appointing authority or the Department of Personnel.~~

~~—4. A special adjustment to pay authorized by this section does not constitute a promotion.~~

~~—5. Any]~~

4. Except as otherwise provided in paragraph (a) of subsection 2, any special adjustment to pay made pursuant to subsection ~~{H}~~ 2 must be revoked when the conditions justifying it cease to exist.

~~{6.}~~ 5. Except as otherwise provided in this section, the effective date of a special adjustment to pay is the date on which the written request is received by the Department of Personnel or the personnel office of the agency at which the employee who is receiving the special adjustment to pay is employed. If the request for the special adjustment to pay is delayed because an administrative or clerical error prevented its delivery, the effective date of the special adjustment to pay 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 to pay must not exceed 6 months from the date on which the Department of Personnel receives the written request.

Sec. 7. NAC 284.228 is hereby amended to read as follows:

284.228 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.

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 , *accrued annual leave or accrued compensatory time* 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. 8. NAC 284.284 is hereby amended to read as follows:

284.284 1. An employee who was eligible for longevity pay and who separated from state service before July 1, 1981, and returns to state service retains his eligibility for longevity pay.

2. For the purposes of this section, the employee will receive the same semiannual rate of payment that he received at the time of his separation from service. However, the employee may not receive any semiannual increases until he has again served the same number of ~~[full-time equivalent]~~ years without a break in service that he had served at the time of his separation from service plus 1 year.

Sec. 9. NAC 284.468 is hereby amended to read as follows:

284.468 1. A standard for the performance of work is a written statement of the ~~[principal assignments and responsibilities]~~ *results or behavior, or both, expected* of an employee ~~[and the results expected by both the supervisor and subordinate]~~ when the ~~[subordinate's job is]~~ *job elements of the employee's position are* satisfactorily performed under existing working conditions. Standards are required for all classified positions.

2. The appointing authority is responsible for ensuring that each position has standards and that each employee is evaluated using those standards. The supervisor has ~~[the primary]~~ responsibility for establishing the *initial* standards, but the employee must be ~~[involved in the initial establishment and the periodic updating of]~~ *given the opportunity to provide comments when* the standards for his position ~~[.]~~ *are revised.*

3. *The appointing authority has final approval of the standards for a position.*

4. Standards must be reviewed annually and amended when appropriate.

~~[4.]~~ 5. Each employee must be provided with a copy of the standards for his position.

6. *As used in this section, "job elements" means the principal assignments, job tasks, goals, objectives, responsibilities or related factors, or any combination thereof.*

Sec. 10. 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 ~~him~~ *the employee* of his duties during the active investigation of a suspected criminal violation or the investigation of an 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 work environment when he has committed or threatened to commit an act of violence;*

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

~~(e)~~ (e) To relieve ~~him~~ *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 ~~3,~~ 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.

~~[3.]~~ 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 ~~[2.]~~ 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.

~~[4.]~~ 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 the 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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R038-03**

The Personnel Commission adopted regulations assigned LCB File No. R038-03 which pertain to chapter 284 of the Nevada Administrative Code on September 3, 2003.

Notice date: 7/21/2003
Hearing date: 9/03/2003

Date of adoption by agency: 9/03/2003
Filing date: 10/30/2003

INFORMATIONAL STATEMENT

The following statement is submitted for adopted 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 July 31, 2003, copies of the "Notice of Workshop" to solicit comments on proposed regulations and "Notice of Hearing" for the adoption, amendment, and repeal of permanent 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 and the Legislative Counsel Bureau. Also on July 31, 2003, 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 all employees organizations, the main public library in each county, all requesting parties, and members of the Personnel Commission.

a. The following summarizes the comments made at the workshop regarding LCB file No. R038-03.

(1) There weren't any questions, comments, opposition, or discussion on sections: 1, 3, 4, 7, 8, and 9.

(2) Sections 2 and 5 were added by LCB during the pre-adoption review and were received after the workshop. Section 2 incorporates new sections into NAC 284 and section 5 changed a reference to a subsection that was proposed for amendment in another section.

(3) The following sections received comments:

Section 6 NAC 284.206 Special Adjustments to pay: Comments from Phil Brittenham, Personnel Officer for the Department of Motor Vehicles, focused on allowing extensions to the six-month limitation of special adjustments to pay, under certain circumstances. He introduced an amendment to accomplish such

extensions. Gary Wolff, representative for Teamsters Local 14, supported the amendment.

Section 10 NAC 284.589 Administrative leave with pay: Scott Sisco, Interim Director for the Department of Cultural Affairs, expressed concern that a thirty-day period would not be long enough for a treating physician to evaluate an employee's ability to return to work. Gary Wolff had originally requested the 30-day limit, but indicated that he would not object to extending administrative leave beyond 30 days for this type of situation. Both Phil Brittenham and Marilyn Yezek indicated that 30 days was adequate period of time for the evaluation process. Wally Tarantino, attorney, suggested a compromise or at least some language that would allow, under extenuating circumstances, the Department of Administration to extend the 30-day time period.

- b. There weren't any questions, comments, opposition, or discussion at the workshop regarding the sections in LCB file No. R068-03.
- c. The following summarizes the comments made at the workshop regarding LCB file No. R096-03.
 - (1) There weren't any questions, comments, opposition, or discussion on sections: 4, 6, 8, 9, 13, 14, and 15.
 - (2) Section 1 was added by LCB during the pre-adoption review and was received after the workshop. This section incorporates a new section into NAC 284.
 - (3) The following sections received comments:

Section 2, regarding calculating seniority: Gary Wolff, who had requested this method of calculating seniority, thanked the Department for drafting the regulation.

Section 3, regarding sexual harassment prevention training: The comments received in writing and at the workshop focused on whether the Department would be able to provide enough training opportunities to meet the regulatory requirements. Representatives from the Department said that staff had been working to ensure that there would be training opportunities either offered by the Department of Personnel or where possible, through agency trainers. Written comments also asked if training could be completed via video or web-based training modules. It was conveyed that the regulation is not specific to the method of delivery as long as the Department of Personnel certifies that the training meets the requirement.

Section 5, NAC 284.414 Temporary appointments: Ruth Jones asked for clarification regarding the explanation of change.

Section 7, NAC 284.52315 “Child” defined: Discussion centered on the term “children” and that for the purposes of regulation, it was probably unnecessary to define the term since “child” was defined. One correction was being made to this section to make it consistent with our practice of allowing the use of sick leave or catastrophic leave for bereavement purposes when a child dies who is over the age of 18.

Section 10, NAC 284.580 Leave of absence without pay during fiscal emergency of state: It was announced that the language being considered was slightly different than had been previously been sent out. Wally Tarantino questioned whether any thought had been given to adding protective language to ensure that one employee would not be treated more favorably than another.

Section 11, NAC 284.5811 Family and medical leave: Maximum amount in 12-month period: Ruth Jones, Personnel Officer for the Department Employment, Training and Rehabilitation (DETR), thought it would be helpful to insert “as defined in NAC 284.0742” as clarification. She also said she supported the proposed change and it has been DETR’s practice to administer FMLA in this manner. Wally Tarantino expressed concern that compensatory time cannot be used concurrently with FMLA. Shelley Blotter explained that it is against federal law to run compensatory time concurrently with FMLA, but it does not exclude an appointing authority from approving a pay-off of accrued compensatory time.

Two people submitted written comments. An employee objected to FMLA being run concurrently with paid leave. Department of Human Resources requested changes to the language, but supported the concept of running paid leave concurrently with FMLA.

Section 12, NAC 284.612 Layoffs: Definitions: Comments in writing and at the workshop, from the Department of Human Resources, focused on the method of calculating seniority. They wanted the time in the class series to continue being given additional weight. The Department of Corrections opposed statewide transfer rights in relation to layoff.

Section 13, NAC 284.614 Layoffs: Procedures: Marilyn Yezek asked for clarification regarding how intermittent employees are treated for the purposes of layoff.

General comments:

(NAC 284.580) Wally Tarantino expressed concern regarding the impact on an employee’s insurance coverage during a layoff. He also stressed the need for more comprehensive language to afford some protection.

(NAC 284.206) Gary Wolff expressed concern that a temporary reclassification or special salary adjustment, pursuant to NAC 284.206, could be used to qualify a person for a position.

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

2. The number of persons who:

(a) Attended at the hearing: 30 in Las Vegas and 21 in Carson City

(b) Testified at the hearing: 11

(c) Submitted to the agency written comments: Comments were submitted by Karen Masters on behalf of the Department of Human Resources, employee Dorianne Potner, and employee Lynne DeLaParra Whitson

(1) The following summarizes the comments made at the hearing regarding LCB file No. R038-03.

The following sections were adopted without opposition: 1, 2, 3, 4, 5, 7, 8, and 10

The following sections were adopted and received comments:

Section 6, NAC 284.206 Special adjustments to pay: The Department of Personnel and the Department of Motor Vehicles requested an additional amendment at the Personnel Commission meeting. This amendment allows the Director of the Department of Personnel to approve an extension to the time limitation on special adjustments to pay. Such adjustments will only be approved when the Director receives appropriate documentation and it is determined that the extension is a business necessity and in the best interest of the State.

Section 9, NAC 284.468 Standards for performance of work: The Personnel Commission amended this section by adding “job tasks” and “objectives” to the definition of “job elements”.

(2) The following summarizes the comments made at the hearing regarding LCB file No. R068-03.

The following sections were adopted without opposition: 2, 3, and 4.

The following sections were adopted and received comments:

Section 1, NAC 284.208 Compensation for dangerous duty: The Department of Personnel requested a language change at the hearing to better describe the intent of the regulation. Commissioner Jim Skaggs requested a written opinion from Senior Deputy Attorney General Jim Spencer regarding subsection 2 and its compliance with the Fair Labor Standards Act and State law.

Section 5, NAC 284.726 Access to confidential records: The Department of Personnel requested a language change at the hearing to better describe the intent of the regulation in paragraph (h) of subsection 2. The LCB approved language would have allowed confidential records to be accessed by “governmental

entities” which could have included subdivisions of the State. This is broader than the language requested. On the other hand, transactions that an employee authorized were limited to a “governmental entity”. This places an undue limitation and would not allow the Department to release wage information for credit checks, etc.

- (3) The following summarizes the comments made at the hearing regarding LCB file No. R096-03.

The following sections were adopted without opposition: 1, 5, 6, 7, 9, 12, 14, and 15.

The following sections were adopted and received comments:

Section 2, a new section in NAC 284 regarding determining seniority for the purposes of layoff: The Department of Personnel requested a language change at the hearing to more accurately capture the intent of the regulation. Representatives from Wildlife and Human Resources testified against the proposed language. Gary Wolff testified on behalf of the regulation.

Section 3, a new section in NAC 284 regarding required training of all state employees: sexual harassment prevention: This section was unanimously adopted with an effective date of January 1, 2004.

Section 4, NAC 284.255 Holidays: Holiday pay: The Department of Personnel requested a language change at the hearing in subparagraph (2) of paragraph (c) of subsection 3 by deleting the word “additional”. The intent is to allow part-time employees to earn holiday pay for hours worked on a holiday even when it may be their regular day off.

Section 8, NAC 284.525 Reduction of hours by mutual agreement: The Department of Personnel requested a language change at the hearing by adding the words “or an agency”. This change was needed to make this section consistent with approved language in section 10, NAC 284.580.

Section 10, NAC 284.580 Leave of absence without pay during fiscal emergency of state: The Department of Personnel requested a language change at the hearing, by adding the word “nonexempt” in subsection 1 to reflect this sections application to only nonexempt employees. Additionally, other language was requested to address concerns expressed at the workshop and also to address fiscal emergencies that may only impact a particular agency. Wally Tarantino, an attorney and labor representative, and Scott McKenzie, State of Nevada Employees’ Association, requested limitations be placed on the amount of time an employee could be furloughed. Their requests for limitations were not adopted.

Section 11, NAC 284.5811 Family and medical leave: maximum amount in 12-month period: The Department of Personnel requested a language change at the hearing in subsection 4 to address concerns by the Department of Human Resources. This change ensures that only workers' compensation injuries or illnesses that meet the definition of a serious health conditions under the FMLA will be counted against an employee's FMLA entitlement. Kareen Masters from the Department of Human Resources requested additional language changes, but they were not adopted.

Section 13, NAC 284.614 Layoffs: Procedure: The discussion on this section focused on the ability of employees to "transfer" on a statewide basis. The Department of Corrections was against this provision. The section was adopted as presented to the Commission.

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.

4. **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.
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. The amendment to NAC 284.206 does allow for a special adjustment to pay to be extended beyond 6 months in a 12-month period. It is unknown at this time the direct economic effect there will be as each request for an extension will be evaluated on a case-by-case basis. The amendment to NAC 284.255 will allow part-time employees to earn holiday pay for hours worked on a holiday up to the number of hours in their normal schedule. It is unknown at this time the direct economic effect of this amendment although there are relatively few employees who would be eligible to receive the additional pay.
6. **The estimated cost to the agency for enforcement of the proposed regulation:** 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 proposed 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.** The amendments to NAC 284.5811 specifies how the State will administer the discretionary portions of the Family and Medical Leave Act (29 C.F.R. Part 825). The Department of Labor, Wage and Hour Division regulate this section of the federal code.