

**ADOPTED REGULATION OF THE  
PERSONNEL COMMISSION**

**LCB File No. R068-03**

Effective October 30, 2003

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

AUTHORITY: §1, NRS 284.175; §2, NRS 284.155 and 284.335; §3, NRS 284.155 and 284.345; §4, NRS 284.155, 284.3626 and 284.407; §5, NRS 284.155, 284.335, 284.3626 and 284.407.

**Section 1.** NAC 284.208 is hereby amended to read as follows:

284.208 1. ~~Only~~ *Except as otherwise provided in subsection 3, only* the following groups, under the conditions described, are entitled to receive pay for dangerous duty:

- (a) Employees engaged in scuba or skin diving.
- (b) Employees who perform duties at a height of more than 16 feet above the floor in a building or 16 feet above ground level outside of a building if the work is performed on portable equipment or outside of a railed or protected area.
- (c) All employees, except pilots, for time spent in single engine aircraft or helicopters when required to do so by the employer.
- (d) Employees required to handle or use explosives.

2. Except as otherwise provided in this subsection ~~1~~ *and subsection 3*, an employee who performs any dangerous duty must receive additional pay equal to 10 percent of his normal rate of pay for each hour in which he performs any dangerous duty. An exempt classified employee who performs any dangerous duty for any portion of a workday must receive the additional pay for all his regularly scheduled hours of employment on that workday.

*3. An employee described in subsection 1 is not entitled to receive pay for dangerous duty if the duties that he performs are an inherent and regular part of the duties assigned to the class of which the employee is a member. These duties need not appear in the class specification of the employee. Compensation for the performance of those duties may be made only if the duties performed by the employee would not be required of the class as a whole.*

**Sec. 2.** NAC 284.468 is hereby amended to read as follows:

284.468 1. A standard for the performance of work is a written statement *prepared on a form prescribed by the Department of Personnel* of the principal assignments and responsibilities of an employee and the results expected by both the supervisor and subordinate when the subordinate's job is 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 standards, but the employee must be involved in the initial establishment and the periodic updating of the standards for his position.

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

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

**Sec. 3.** NAC 284.524 is hereby amended to read as follows:

284.524 1. The workweek for state employees is 40 hours, except that workweeks of a different number of hours may be established to meet the needs of different state agencies in compliance with the provisions of NRS 281.100, 281.110 and 284.180. The workday for a full-time state employee who works a standard or nonstandard work schedule consists of two work periods separated by a 1/2- to 1-hour meal period. Insofar as practicable, the meal period must

occur in the middle of the work shift. A rest period of 15 minutes must be granted for each 4-hour period of work and, insofar as practicable, must occur in the middle of the period of work.

2. Except as otherwise provided in subsections 3 and 4, an appointing authority shall provide a meal period and rest period to an employee who has an innovative work schedule during each workday as follows:

(a) A 1/2- to 1-hour meal period must be provided during each period of work that exceeds 5 hours. Insofar as practicable, the meal period must occur in the middle of the work shift.

(b) A rest period of 15 minutes must be provided for each 4-hour period of work and, insofar as practicable, must occur in the middle of the period of work.

3. The requirement to relieve an employee for a 1/2- to 1-hour meal period does not apply to an employee who receives a paid meal period.

4. The requirement for a rest period does not apply to an employee of:

(a) A correctional institution who ~~is~~

~~— (1) Works] works~~ directly with the inmates at the institution . ~~is; and~~

~~— (2) Works a straight 8-hour work shift.]~~

(b) The Division of Mental Health and Developmental Services of the Department of Human Resources who:

(1) Maintains or monitors the equipment in a heat plant which operates 24 hours a day;  
and

(2) Works a straight 8-hour work shift.

**Sec. 4.** NAC 284.718 is hereby amended to read as follows:

284.718 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) Materials used in examinations, including suggested answers for oral examinations;
- (e) Records and files maintained by the employee assistance program;
- (f) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;
- (g) 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;
- (h) Any information contained on a person's application or relating to his status as an eligible person; and
- (i) Information in ~~an employee's~~ *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) *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.*

**Sec. 5.** NAC 284.726 is hereby amended to read as follows:

284.726 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 (f) to (i), 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 ~~[of the Department of Personnel]~~ 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. ~~[Access]~~ *Except as otherwise provided in subsection 6, 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 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. 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. 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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R068-03**

The Personnel Commission adopted regulations assigned LCB File No. R068-03 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.

