

**ADOPTED REGULATION OF THE  
PERSONNEL COMMISSION**

**LCB File No. R096-03**

§§ 1,2, and 4-16 effective October 30, 2003

§3 effective January 1, 2004

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

AUTHORITY: §§1, 3, 7, 12 and 15, NRS 284.155; §2, NRS 284.155, 284.335 and 284.380; §4, NRS 284.155, 284.175 and 284.345; §5, NRS 284.155 and 284.325; §6, NRS 284.155, 284.335 and 284.340; §§8 and 14, 284.155 and 284.175; §9, NRS 284.155 and 284.350; §10, NRS 284.155 and 284.345; §11, NRS 284.155 and 284.355; §13, NRS 284.155, 284.345 and 284.380.

**Section 1.** Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

**Sec. 2. 1.** *For the purposes of calculating an employee's seniority for NAC 284.614, 284.618 and 284.630:*

*(a) The total number of years of continuous full-time equivalent service up to the effective date of the layoff must be included.*

*(b) Except as otherwise provided in subsection 2, the sum of the calculation made pursuant to paragraph (a) must be reduced by the following periods if those periods occurred during the 3 years immediately preceding the effective date of the layoff:*

*(1) For a nonexempt employee, any combination of leave without pay and catastrophic leave in excess of 240 hours in a year;*

*(2) For an exempt classified employee or exempt unclassified employee, any combination of leave without pay and catastrophic leave in excess of 30 working days in a year; and*

*(3) Any time covered by a report on performance which rated the employee below standard except that no report on performance may be considered for the time covered within 75 calendar days before the notification of layoff was issued.*

*2. For the purposes of the reduction in the calculation of seniority required by paragraph (b) of subsection 1:*

*(a) The reduction may not include:*

*(1) A leave of absence without pay during a fiscal emergency of the State or an agency pursuant to NAC 284.580;*

*(2) A leave of absence without pay for a work-related injury or illness pursuant to NRS 281.390; or*

*(3) A military leave of absence pursuant to NRS 284.359.*

*(b) As set forth in subparagraphs (1) and (2) of paragraph (b) of subsection 1, an employee whose base hours are more than 80 hours biweekly must be allotted additional leave without pay and catastrophic leave in proportion to the base hours for his pay class designation.*

*3. Except as otherwise provided in subsection 4, if seniority is otherwise equal, seniority must be determined in the following order:*

*(a) Total time within the occupational group;*

*(b) Total time within the department; and*

*(c) By lot.*

*4. For the purposes of reemployment, if seniority is otherwise equal, seniority must be determined by lot.*

**Sec. 3.** *1. Within 6 months after an employee is initially appointed to state service, the employee shall attend a certified class concerning the prevention of sexual harassment.*

*2. At least once every 2 years after his initial appointment to state service, an employee shall attend a certified refresher class or training concerning the prevention of sexual harassment.*

*3. An appointing authority may require an employee to retake any part or all of the classes or training required by subsections 1 and 2, or to participate in any additional classes or training deemed necessary by the appointing authority.*

*4. The appointing authority shall retain the proof of completion by an employee of a class or training required by this section.*

*5. The Department of Personnel will certify the classes and training concerning the prevention of sexual harassment required by this section.*

**Sec. 4.** NAC 284.255 is hereby amended to read as follows:

284.255 1. For the purpose of this section, “holiday pay” means payment for a holiday at a nonexempt employee’s normal rate of pay plus the differential rate of pay for the shift, when applicable, or compensatory time at a straight-time rate.

2. Except as otherwise provided in paragraph (c) of subsection 3 and subsections 5 and 7, a full-time nonexempt employee whose base hours are 40 hours per week or 80 hours biweekly is entitled to receive 8 hours of holiday pay for any holiday that he is in paid status during any portion of his shift immediately preceding the holiday.

3. Except as otherwise provided in subsections 5 and 7:

(a) A full-time nonexempt employee whose base hours exceed 40 hours per week or 80 hours biweekly and who is in paid status during any portion of his shift immediately preceding a holiday is entitled to receive holiday pay equal to the pay he receives for his average workday.

For the purposes of this paragraph:

(1) The average workday of a nonexempt employee is determined by dividing the total base hours of work per year by 2,088 and multiplying the quotient by 8.

(2) A fireman assigned to a 24-hour shift shall be deemed to work 56 hours per week and 2,912 hours per year.

(b) A part-time nonexempt employee is entitled to receive holiday pay ~~for any portion of that holiday~~ when he is in paid status during any portion of his shift immediately preceding the holiday if a holiday occurs on a *normally* scheduled workday ~~of the employee~~. *Except as otherwise provided in this paragraph, if* such an employee is not required to work his normally scheduled workday on the holiday, the amount of holiday pay must equal the amount that he would have been paid if there had not been a holiday ~~of~~, *but may not exceed the equivalent of his pay for 8 hours of work.*

(c) A:

(1) Full-time nonexempt employee with an innovative workweek agreement may earn additional holiday pay on an hour-for-hour basis for any hours he works in excess of the holiday pay provided in paragraph (a) and in subsection 2, not to exceed the number of hours in his established workday as set forth in his innovative workweek agreement.

(2) Part-time nonexempt employee may earn ~~additional~~ holiday pay on an hour-for-hour basis for any hours he works on a holiday, not to exceed ~~8 hours~~ *the number of hours in his established workday.*

4. If a holiday occurs on the regularly scheduled workday of a nonexempt employee and his normal schedule of work is more than 8 hours, he must be in paid status or be placed on leave without pay for any difference between his holiday pay and his normal work schedule. An appointing authority may adjust the work schedule of such an employee for the week during which the holiday occurs in lieu of placing the employee on paid leave or leave without pay.

5. A nonexempt employee who is scheduled to work on a holiday, who does not work on that holiday and who fails to report his absence to his supervisor or a designated representative as required by NAC 284.590 is not eligible to receive holiday pay.

6. A nonexempt employee whose employment begins on a holiday is eligible to receive holiday pay pursuant to subsections 2 and 3 ~~§~~ if he is in paid status during his scheduled shift.

7. A nonexempt employee whose employment is terminated:

(a) The day immediately preceding a holiday is not entitled to receive holiday pay for that holiday.

(b) ~~On~~ *Except as otherwise provided in paragraph (c) of subsection 3, on* a holiday on which he is working must be paid holiday pay for the actual hours he works on the holiday. If a nonexempt employee gives notice that he is terminating his employment on a holiday and he is not scheduled to work on the holiday, the last day on which he works or is in paid status is his date of termination.

8. The agency that lists a nonexempt employee as an “employee of record” on a holiday is responsible for the payment of holiday pay for that holiday to that employee. For the purposes of this subsection, an “employee of record” is a person employed by the state agency that is required to claim the person as an employee of the agency.

9. The salary of an exempt classified or exempt unclassified employee is not affected by a holiday.

**Sec. 5.** NAC 284.414 is hereby amended to read as follows:

284.414 1. A temporary appointment must not exceed 6 months in any 12-month period unless the appointment is authorized ~~[as a]~~ :

(a) *As a* replacement for an employee who is ~~[receiving]~~ :

(1) *Receiving* benefits for temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS ~~[ ]~~ ; *or*

(2) *On a leave of absence for active military service pursuant to NRS 281.145.*

(b) *To allow an employee to perform duties below the journey level while he is studying or training for advancement to an entry level professional class.*

↪ The appointing authority shall indicate the probable duration of employment on its request for certification. Upon receipt of this request, the Department *of Personnel* will certify the names of eligible persons from the appropriate eligible list who have noted that they will accept employment for the duration of the employment indicated.

2. Service under a temporary appointment immediately preceding appointment to a permanent position must be credited towards annual leave and merit pay increases. Sick leave may be earned for each month of service pursuant to NRS 284.355.

3. A special temporary appointment to a position within the University and Community College System of Nevada may not be used to fill regularly budgeted positions. Such appointments may be made without regard to the rules on certification or appointment and may be made on forms and under procedures prescribed by the University and Community College System of Nevada and approved by the Department ~~[ ]~~ *of Personnel*. Time served under a

special temporary appointment pursuant to this subsection may be credited towards annual leave, sick leave or merit pay increases if the temporary appointment is immediately followed by a probationary or a permanent appointment.

**Sec. 6.** 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. *A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee.*

4. When a report on performance is given which reports the overall rating of performance of an employee as substandard ~~[, it]~~ :

(a) *The report* 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.] ; and~~

(b) *An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard or disciplinary action is taken against the employee.*

5. Except as otherwise provided in subsection ~~[5.]~~ 6, 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]~~ *The employee* must complete and sign the appropriate section on the report on performance and return the report to his supervisor for forwarding to the *reviewing officer or* 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 ~~[;]~~ , *and return the response to his supervisor.* 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.]~~ 6. If an employee is unavailable for a discussion of the report on performance pursuant to subsection ~~[4]~~ 5 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]~~ *Within 10 working days after the date on which the employee receives the report:*

(a) *The employee* must complete and sign the appropriate section on the report *on performance* 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.]~~ *or reviewing officer.*

(b) 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]~~ , *and* 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,]~~ *paragraph*, 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.]~~ 7. A copy of each report on performance must be *provided to the employee and* filed with the Department of Personnel. *If any written comments are added to a report on performance after a copy of the report has been provided to the employee pursuant to this subsection, a copy of the revised report which includes the written comments must be provided to the employee.*

~~[7.]~~ 8. An employee and his appointing authority may agree in writing to extend one or more of the periods prescribed in subsection ~~[4 or 5.]~~ *5 or 6.*

~~[8.]~~ 9. 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. 7.** NAC 284.52315 is hereby amended to read as follows:

284.52315 “Child” means a person who is:

1. A biological, adopted or foster child, a stepchild, a legal ward or the child of a person with the daily responsibility of caring for and financially supporting that child; and
2. Except as otherwise provided in NAC 284.5235 ~~[,]~~ *and 284.562*, under 18 years of age or is 18 years of age or older and incapable of caring for himself because of a mental or physical disability.

**Sec. 8.** NAC 284.525 is hereby amended to read as follows:

284.525 ~~{By mutual agreement,}~~ *Except with respect to a leave of absence without pay during a fiscal emergency of the State or an agency pursuant to NAC 284.580, an appointing authority and an employee may reduce the employee's working hours to less than full- time ~~{}~~ by mutual agreement.*

**Sec. 9.** NAC 284.5405 is hereby amended to read as follows:

284.5405 1. Except as otherwise provided in this section, any employee who returns to state service following a separation is eligible to accrue annual leave based on his total service with the State after he has completed 3 years of continuous service. The employee must requalify after each break in service.

2. An employee who is rehired within 1 year after being laid off accrues annual leave at a rate based on his total state service. He may use his annual leave immediately upon accruing it if he has completed 6 months of employment.

3. An employee with a permanent disability arising from a disability related to work who is reemployed following a separation from state service within 1 year after the date on which he sustained the permanent disability as determined pursuant to NAC 284.6013 accrues annual leave at a rate based on his total state service. He may use his annual leave immediately upon accruing it if he has completed 6 months of employment.

4. An employee who is rehired within 1 year after being laid off is entitled to buy back the balance of the annual leave for which he received payment in a lump sum on the date of the layoff. The rate of pay at which he is rehired applies to the buying back of annual leave.

5. An employee with a permanent disability arising from a disability related to work who is reemployed following a separation from state service within 1 year after the date on which he

sustained the permanent disability as determined pursuant to NAC 284.6013 is entitled to buy back the balance of the annual leave for which he received payment in a lump sum at the time of separation. The rate of pay at which he is reemployed applies to the buying back of annual leave.

6. If an employee who was laid off before completing 6 months of employment is rehired within 1 year ~~of~~ *after* his layoff, the amount of the unpaid annual leave he had earned before the layoff must be restored to him.

7. If a person eligible for military reemployment is reemployed, he accrues annual leave at the rate which he would have earned if he had not left state service.

8. If an employee is appointed without a break in service from a position under one appointing authority to a position under another appointing authority, the balance of his annual leave is charged to the agency to which he is appointed.

9. If a nonclassified employee, an unclassified employee of the University and Community College System of Nevada, or an employee included in the *State* Personnel System pursuant to NRS 284.022 is appointed without a break in service to the classified or unclassified service, ~~the annual leave which he has accrued is transferable. This~~ *his annual leave must be recomputed to reflect the amount that would have accrued to him as a classified or unclassified employee less any annual leave which he used during his nonclassified, University, or governmental agency employment and the remaining balance will be transferred to the new appointment. The amount of annual leave transferred by the employee pursuant to this subsection* may not exceed ~~the amount remaining to the employee's credit and is subject to~~ the maximum amount which is permitted by the classified or unclassified rate of accrual ~~as set forth in NRS 284.350 and NAC 284.538~~. The agency to which the employee is appointed is not responsible for payment of any annual leave in excess of the amount which is transferable. It is the

~~[transferring employee's]~~ responsibility *of the employee who is transferring annual leave* to seek payment of any excess amount of annual leave remaining to his credit from his former employer.

**Sec. 10.** NAC 284.580 is hereby amended to read as follows:

284.580 1. ~~[Except as otherwise provided in subsection 5, upon the request of an employee.]~~ *Upon the request of* an appointing authority, *the Department of Administration* may ~~[grant]~~ *authorize the appointing authority to place a nonexempt employee on* a leave of absence without pay for a fiscal emergency of the State *or an agency* during any period for which the Governor has declared that the State *or an agency* will experience a shortfall in revenue or for any other reason is in a state of fiscal emergency.

2. *All employees in the same classification must be treated equitably with respect to being placed on a leave of absence without pay pursuant to this section unless an employee volunteers to be placed on such a leave of absence.*

3. The appointing authority shall reduce the pay of an employee ~~[to whom]~~ *who is placed on* a leave of absence ~~[is granted]~~ *without pay* pursuant to subsection 1 by an amount equal to the pay that the employee would otherwise receive for the hours for which the leave is approved.

~~[3:]~~ 4. The hours for which payment is withheld pursuant to subsection ~~[2:]~~ 3:

(a) Must be treated as hours in paid status for the purposes of NAC 284.182, 284.255, 284.282, 284.448, 284.538, 284.5385, 284.544 and 284.614.

(b) Must not be considered as time worked in calculating overtime.

~~[4.—After]~~ 5. *Regardless of whether an employee volunteers to be placed on a leave of absence pursuant to subsection 1, after* notifying the employee in writing and allowing a reasonable period for the employee to return to work, an appointing authority:

(a) Shall revoke ~~[any leave approved]~~ *the placement of any employee on a leave of absence without pay* pursuant to subsection 1 upon a declaration by the Governor that the fiscal emergency no longer exists.

(b) May revoke *the placement of any employee on* any leave ~~[approved]~~ *of absence without pay* pursuant to subsection 1 for any other bona fide reason.

~~[5.—An appointing authority shall not approve leave pursuant to subsection 1 that consists of any partial working days for an exempt classified employee or exempt unclassified employee.~~

~~—6.—As used in subsection 5, “partial working day” means any portion of a day that is less than the full regular working day of the employee to whom this subsection is being applied.]~~

**Sec. 11.** NAC 284.5811 is hereby amended to read as follows:

284.5811 1. The entitlement for family and medical leave for an eligible employee is limited to a total of 12 weeks during a rolling 12-month period.

2. To calculate ~~[the hours of service needed for eligibility under]~~ *eligibility for leave pursuant to* the Family and Medical Leave Act, *each hour that an employee is in* paid ~~[leave]~~ *status in the 12-month period immediately preceding the leave* must be considered as time worked.

3. *Except as otherwise provided in subsection 4, an employee who meets the requirements for eligibility for leave pursuant to the Family and Medical Leave Act must exhaust his accrued sick leave, accrued annual leave, catastrophic leave and holiday pay before he may use leave of absence without pay for leave granted pursuant to the Family and Medical Leave Act. Such accrued sick leave, accrued annual leave, catastrophic leave and holiday pay runs concurrently with the leave granted pursuant to the Family and Medical Leave Act if the*

*employee is otherwise eligible for that sick leave, annual leave, catastrophic leave or holiday pay.*

*4. If an employee is absent from work as the result of a work-related injury or illness and he meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:*

*(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and*

*(b) The employee may elect to use paid leave for the portion of time that he is not being compensated for the work-related injury or illness.*

*5. Any leave granted pursuant to this section must be supported by medical documentation and approved by the appointing authority.*

*6. As used in this section, a “rolling 12-month period” means the 12-month period as measured backward from the date an employee uses any family and medical leave.*

**Sec. 12.** NAC 284.612 is hereby amended to read as follows:

284.612 For the purposes of NAC 284.612 to 284.630, inclusive:

1. “Geographical location” means:

(a) Clark, Lincoln, Nye and Esmeralda counties;

(b) Carson City, Lyon, Churchill, Storey, Douglas, Mineral and Washoe counties;

(c) Pershing, Humboldt, Elko, Lander, Eureka and White Pine counties; or

(d) Any city located outside of this state.

2. “Option” means a clearly identified subclassification mentioned in the class specification approved by the Commission.

~~[3. “Seniority” is computed from the total time spent during currently continuous state service by doubling the time spent in the present occupational group as defined in NRS 284.171, and adding it to the time spent in all former occupational groups. If seniority is otherwise equal, a choice must be made in the following order:~~

~~—(a) Based on total time within the occupational group;~~

~~—(b) Based on total time within the department; and~~

~~—(c) By lot.~~

~~For reemployment, ties are broken by lot.]~~

**Sec. 13.** NAC 284.614 is hereby amended to read as follows:

284.614 1. Except as otherwise provided in NAC 284.438, if it becomes necessary for a classified employee to be laid off because of a shortage of work or money, the abolition of a position, or some other material change in duties or organization:

(a) The ~~[administrator]~~ *director* of the department shall determine in what geographical location, class series, class and option the reductions in staff will have the least detrimental effect on the operations of the department and shall specify layoffs accordingly. In the Department of Human Resources and the University and Community College System of Nevada, the administrator of a division, with the approval of the director of the department, shall determine in what geographical location, class series, class and option the reduction of staff will have the least detrimental effect on operations and shall specify the layoffs accordingly.

(b) Within the department, and within the geographical location, class series, class and option selected, all employees of the department who are not permanent must be ~~[laid-off]~~ *separated from service* before any permanent employees in the following order:

(1) Emergency employees.

- (2) Temporary employees.
- (3) Provisional employees.
- (4) Probationary employees.

(c) If additional reductions are necessary, permanent employees must be laid off on the basis of ~~[performance and seniority. In computing seniority, the time covered by a report on performance which rated an employee “below standard” or “unacceptable” during the 4 years immediately preceding the notification of layoff must not be included, except that no report may be considered for the time covered within 75 calendar days before the notification of layoff was issued. Except as otherwise provided in this paragraph, the time covered by a report of substandard performance commences on the date on which the report was filed with the director and ends on the date recorded on the employee’s subsequent report on performance as the date on which his performance improved to standard or better. If the subsequent report on performance is not filed within the 90-day period required by subsection 4 of NRS 284.340, the employee’s performance shall be deemed standard effective on the date on which the subsequent report on performance was due.]~~ *seniority.*

(d) In the department and within the geographical location, class series, class and option where layoffs are to take place, those employees with the least seniority must be laid off ~~[ ]~~, *transferred as set forth in subsection 2 or voluntarily demoted as set forth in NAC 284.618.*

(e) For the purposes of this subsection, an appointing authority may consider whether positions are full- time or part- time and limit layoffs to full-time or part-time employees. Similar considerations may be given to and limitations placed on positions requiring selective certification pursuant to NAC 284.378.

- 2. ~~[When determining seniority for order of layoff:~~



- ~~—(a) Seniority must be projected and counted up to the established date of layoff.~~
- ~~—(b) Seniority for part-time employment must be prorated to its full-time equivalent.~~
- ~~—(c) If a classified employee enters unclassified service and subsequently reenters classified service, his previous and current classified service is counted.~~
- ~~—(d) Except as otherwise provided in NAC 284.580, any combination of authorized leave without pay and catastrophic leave for more than 240 hours or, in the case of an exempt classified employee, 30 working days, in a year, calculated pursuant to subsection 5 of NAC 284.182, is not counted.~~
- ~~—(e) When an employee was separated from service with this state for any of the reasons that do not result in a break in continuous service as provided in NAC 284.598, the time during the separation is not counted.]~~ *If a permanent employee must be laid off for one of the reasons set forth in subsection 1, the appointing authority of the employee shall notify the employee that the employee may choose to:*

*(a) Transfer within his department, class and option into the position of the employee in his department, class and option with the least seniority;*

*(b) Be voluntarily demoted as set forth in NAC 284.618; or*

*(c) Exercise his reemployment rights as set forth in NAC 284.630.*

*3. Within 3 working days after an employee has been notified of his choices regarding layoff, transfer and voluntary demotion pursuant to subsection 2, the employee must designate in writing to the appointing authority the choice that the employee will exercise.*

**Sec. 14.** NAC 284.618 is hereby amended to read as follows:

284.618 1. In lieu of being laid off, a permanent employee may choose to be voluntarily demoted within the department and geographical location where employed to one of the next lower classes:

(a) Within his current class series and option and may displace an employee therein; or

(b) Within the class series and option from which he was appointed during current continuous service and may displace an employee therein but only if he cannot be demoted pursuant to paragraph (a). ~~If the class series from which he was employed was in a different occupational group, his seniority for the purposes of this paragraph only is based on the time he spent in the former occupational group as provided in subsection 3 of NAC 284.612.~~

~~The choice must be made in writing within 3 working days after notification of layoff.]~~

↪ For the purposes of this ~~[section,]~~ *subsection*, divisions of the Department of Human Resources and the University and Community College System of Nevada are considered departments.

2. No employee in a higher class may displace an employee in a lower class who has more seniority. If an employee chooses to displace another, he must displace the member of the next lower class who has the least seniority. If that member has more seniority, the displacing employee must descend further in the class series.

3. The employees displaced reestablish the layoff class.

4. An employee may choose to displace another only if he meets the minimum qualifications for the class, option ~~[ ]~~ and position from which the other will be displaced. For the purposes of this subsection, qualifications for a position may be different from those of the class and option only when selective certification is required pursuant to subsection 2 of NAC 284.378.

5. Full-time, part-time and seasonal employees must be treated separately and can only displace like employees.
6. Displacement is always a downward movement, never a lateral movement.
7. A current employee who elects to displace another employee has priority over former employees already on reemployment lists.
8. The pay of the ~~[displacing]~~ employee *who is taking a voluntary demotion* cannot exceed the highest step for the ~~[lower class.]~~ *class to which the employee is being demoted*. If the current pay falls within the lower rate range, no reduction in pay may occur unless 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 which is not supported from the State General Fund, as certified by the administrator of that agency.

**Sec. 15.** NAC 284.662 is hereby amended to read as follows:

- 284.662 1. An employee filing for a review of a grievance may be assisted or represented by any person of his choosing, if the person agrees to act in this capacity, at any step of the procedure except the initial informal discussion with his immediate supervisor.
2. If the assistant is a state employee, he may only assist on his own time.
  3. An employee may not be discriminated against in recruitment, examination, appointment, training, promotion, retention, classification ~~[.]~~ or any other personnel action for informally seeking or formally filing a request to have his grievance reviewed, testifying on behalf of another employee, helping another employee prepare a grievance report ~~[.]~~ or acting as a representative of any employee requesting a review of a grievance.

4. To assist in resolving an employee's grievance, the resources and consultation available ~~to~~ *from* the Department of Personnel and the personnel offices of the agency must be made available to all parties.

**Sec. 16.** 1. This section and sections 1, 2 and 4 to 15, inclusive, of this regulation become effective on October 30, 2003.

2. Section 3 of this regulation becomes effective on January 1, 2004.

**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.