

LCB File No. R182-03

**PROPOSED REGULATION OF THE
DEPARTMENT OF PERSONNEL**

**NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED PERMANENT REGULATIONS AND
NOTICE OF HEARING
FOR THE ADOPTION, AMENDMENT OR REPEAL OF
PERMANENT REGULATIONS OF THE STATE PERSONNEL DEPARTMENT**

Workshop Notice: The Department of Personnel, 209 East Musser Street, Carson City, Nevada, telephone number (775) 684-0119, is proposing the permanent adoption, amendment or repeal of regulations pertaining to Chapter 284 of the Nevada Administrative Code.

A workshop has been set for 9:00 a.m. on November 6, 2003, at the Department of Transportation, 1263 S. Stewart Street, Room 302, Carson City, Nevada and via videoconference at the Department of Transportation, District I Office, 123 E. Washington Avenue, Training Room B, Las Vegas, Nevada.

REGULATIONS PROPOSED FOR PERMANENT ADOPTION	NAC REGULATION
“Year” defined	NEW SECTION
File No. R096-03 Determining seniority for the purposes of layoff.	NEW SECTION
“Dating relationship” defined	284.0533
“Employee” defined	284.062
“Permanent employee” defined	284.076
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REPEALED REGULATIONS

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A copy of all materials relating to the proposed regulations is included with this announcement. Additional copies may be obtained at the workshop or by contacting the Department of Personnel offices at 209 East Musser Street, Room 300, Carson City, Nevada, telephone number (775) 684-0119, or 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-2900. A reasonable fee for copying may be charged.

Hearing Notice: The Personnel Commission will hold a public hearing at 9:00 a.m. **on December 19, 2003**, in Las Vegas at the Grant Sawyer Building, 555 East Washington Avenue, Room 4412. A videoconference link will also be available at the Legislative Building, 401 South Carson Street, Room 4100, Carson City, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, and repeal of permanent regulations. If no person, who is directly affected by the proposed action, appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations should not result in any increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.
- A statement of the need for and the purpose of the proposed regulations precede the text of each regulation included in the attached document.

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to Shelley Blotter, Department of Personnel, 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204. **Written submissions must be received by the Department of Personnel on or before November 26, 2003.**

A copy of this notice and the regulations to be adopted, amended, or repealed will be on file at the State Library and Archives, 100 Stewart Street, Carson City, Nevada for inspection by members of the public during business hours. Additional copies of the notice and the regulations to be adopted, amended, or repealed will be available at the Department of Personnel, 209 East Musser Street, Room 300, Carson City, Nevada, or at the Department of Personnel, 555 East Washington Avenue, Las Vegas, Nevada, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of each regulation will include the entire text of any section of the Nevada Administrative Code that is proposed for adoption, amendment, or repeal. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principle reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

The notice of the Workshop and Hearing has been posted at the following locations:

CARSON CITY

Blasdel Building, 209 East Musser Street
Nevada State Library and Archives, 100 Stewart St.
Capitol Building, Main Floor
Legislative Building, 401 South Carson Street
NDOT, Room 302, 1263 South Stewart Street

LAS VEGAS

Grant Sawyer State Office Building
555 East Washington Avenue

NDOT, Training Room B, 123 E. Washington Ave.

ALL STATE AGENCIES

ALL NEVADA COUNTY PUBLIC LIBRARIES

NOTE: We are pleased to make reasonable accommodations for individuals with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Department of Personnel, in writing, at 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204, or call Debra Berry at (775) 684-0110, no later than five working days prior to the meeting.

LCB File No. R182-03

**PROPOSED REGULATION OF THE
DEPARTMENT OF PERSONNEL**

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

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies the term “year”.

NEW SECTION “Year” defined. *As used in NAC 284.182, NAC 284.448, and Section 2 of LCB File No. R096-03, a “year” means the period of time beginning on the employee’s pay progression date to his next scheduled pay progression date.*

Sec. 2. Section 2 of LCB file No. R096-03 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel and the Department of Human Resources, allows for an exception to be made by the Personnel Commission to the method of calculating years of service for determining seniority for the purposes of layoff. If granted, the department will be required to use the method of calculating seniority described in subsection 5 until such time as the department is granted permission to revert to the method described in paragraph (a) of subsection 1.

Section 2 of LCB File No. R096-03 Determining seniority for the purposes of layoff.

1. ~~For~~ *Except as provided for in subsection 5, for* 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) *and subsection 5* 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. The reduction in the calculation of seniority required by paragraph (b) of subsection 1:

(a) May not include a:

(1) Leave of absence without pay during a fiscal emergency of the State pursuant to NAC 284.580;

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

(3) Military leave of absence pursuant to NRS 284.359.

(b) For the purposes of the reduction in the calculation of seniority required by 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.

5. A department may request from the Personnel Commission an exception to paragraph (a) of subsection 1, to determine the employee's years of service. If granted, years of service shall be computed from the total time spent during continuous full-time equivalent 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 up to the date of layoff. This exception only applies to determining which employee will receive a layoff notice and does not apply to placement on the reemployment list. The exception granted will determine the method of calculating seniority until such time the department seeks and is granted permission to revert to the method described in paragraph (a) of subsection 1.

Sec. 3. NAC 284.182 is hereby amended to read as follows:

<p>Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies the "year" that will be used when determining if an employee's pay progression date should be adjusted.</p>
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NAC 284.182 Adjustment and retention of pay progression date; restoration of date of appointment and pay progression date. (NRS 284.155, 284.175)

- 1. An employee receives a new pay progression date if he is:
 - (a) Promoted to a position that results in an increase of two grades or more; or
 - (b) Reinstated.
- 2. An employee retains his pay progression date if he is:
 - (a) Promoted to a position that results in an increase of one grade;
 - (b) In a position that is reclassified to a higher class as a result of an individual classification study or an occupational study;
 - (c) Transferred to a position without receiving an increase in grade;
 - (d) Reappointed to a position at a grade that he formerly held;
 - (e) Reemployed and has remained continuously employed; or
 - (f) Demoted.
- 3. If a person who is eligible for military reemployment is reemployed, he retains the pay progression date held when he separated from this state for his service in the military.
- 4. If an employee was promoted but is being restored to his former position pursuant to the provisions of NAC 284.462, the date of appointment and pay progression date of the former position must be restored.
- 5. Except as otherwise provided in this subsection, an employee's pay progression date must be adjusted:
 - (a) To equal 1 year of full-time equivalent service for an employee who changes from full-time employment to part-time employment or from part-time employment to full-time employment; or

(b) On a day-for-day basis for the amount of time that he was unemployed if the employee:

(1) Is reemployed following a separation from state service within 1 year after the date on which he was laid off or received a seasonal separation;

(2) Is a person 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; or

(3) Is:

(I) A nonexempt employee who is on leave without pay or on catastrophic leave in excess of 240 hours; or

(II) An exempt classified employee on leave without pay or on catastrophic leave in excess of 30 working days, in a year, *as defined in section 1 of this regulation*, except for leave without pay for a work-related injury or illness pursuant to NRS 281.390 or on a military leave of absence pursuant to NRS 284.359 or a leave of absence without pay during a fiscal emergency pursuant to NAC 284.580. 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.

Sec. 4. NAC 284.196 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, makes a minor correction to subsection 1. The subsections are separate ideas and there does not need to be an exception in subsection 1 for subsection 2.

NAC 284.196 Merit pay increase: Credit for service under certain circumstances. (NRS 284.175)

1. ~~[Except as otherwise provided in subsection 2, service]~~ *Service* in any provisional, temporary, special disabled or emergency status that is immediately followed by probationary or permanent status must be credited toward eligibility for a merit pay increase.

2. Service in a seasonal position must be credited toward eligibility for a merit pay increase. An incumbent in such a seasonal position must complete 1 year of full-time equivalent service before he is eligible for a merit pay increase.

Sec. 5. NAC 284.208 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the University of Nevada, Las Vegas, provides for dangerous duty pay for employees performing maintenance or abatement on asbestos containing materials in a “hazard work zone” as recognized by standards set by the environmental protection agency or occupational safety and health administration.

NAC 284.208 Compensation for dangerous duty. (NRS 284.175)

1. 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.

(e) Employees performing maintenance or abatement on asbestos containing materials in a “hazard work zone” as recognized by standards set by the environmental protection agency or occupational safety and health administration.

2. Except as otherwise provided in this subsection 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. 6. NAC 284.374 is hereby amended to read as follows:

Explanation of Proposed Change: The amendments in subsections 1 and 2 are proposed by the Department of Personnel to clarify the existing regulation.

The amendment in subsection 3 is proposed by the State of Nevada Employees Association to ensure that an employee is notified of his removal from consideration of an appointment.

NAC 284.374 Active lists: Removal and reactivation of names; refusal to consider certain persons.

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

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

(b) Expiration of the term of eligibility.

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

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

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

(f) Any of the causes listed in NRS 284.240 *regarding grounds for the director to refuse to examine or certify*, NAC 284.314 *regarding disclosure of convictions* or subsection 5 of NAC 284.630 *regarding reemployment of an employee who has been laid off*.

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

3. An appointing authority may refuse to consider an eligible person who has been subject to a suspension, demotion or termination as a result of an upheld or uncontested disciplinary action in the preceding 12 months. The 12-month period begins on the effective date of the uncontested action, or if it is contested, on the date the hearing officer issues his final decision upholding a suspension, demotion or termination. *If an employee is removed from consideration pursuant*

to this subsection, the appointing authority must notify the employee in writing prior to interviewing candidates and making a selection.

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

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

Sec. 7. NAC 284.448 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies the "year" that will be used when determining if an employee's probationary period should be adjusted.

NAC 284.448 Time not counted toward completion of probationary period. (NRS 284.155, 284.175, 284.290) The following types of leave or temporary status do not count toward the completion of any probationary period:

1. Authorized military leave for active service.
2. Authorized military leave for training beyond the 15 paid working days in any 1 calendar year.
3. Except as otherwise provided in NAC 284.580, any leave without pay and catastrophic leave, combined, in excess of 240 hours or, in the case of an exempt classified employee, 30 working days ~~[, which began during the year following the date of appointment of such an employee]~~ *in a year, as defined in section 1 of this regulation,* if the regular work schedule of the employee is 80 hours or less biweekly. If the regular work schedule of an employee is more than 80 hours biweekly, the employee must be allotted additional leave without pay and catastrophic leave in proportion to the number of hours his regular work schedule exceeds 80 hours biweekly.
4. Time which is served in a temporary position pursuant to NAC 284.414.
5. Any hours worked which exceed 40 in a week.

Sec. 8. NAC 284.498 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, consolidates sections related to supervisory and managerial training requiring 40 hours of initial training and periodic refresher training including alcohol and drug testing, evaluating employee performance, equal employment opportunity, interviewing and hiring, progressive disciplinary procedures, and handling of grievances.

NAC 284.498 Training of supervisory employee. (NRS 284.155, 284.343)

1. ~~[When an]~~ *Within 6 months after an* agency initially appoints an employee to a supervisory *or managerial* position, the employee shall ~~[take]~~ *attend* at least ~~[5 days]~~ *40 hours* of *supervisory or managerial* training ~~[in subjects related to supervisory functions within 6 months after being appointed. The department encourages all training which prepares the employee for that position.]~~ *including alcohol and drug testing, evaluating employee performance, equal employment opportunity, interviewing and hiring, progressive disciplinary procedures, and handling of grievances.* The appointing authority, at its discretion, may accept,

in lieu of the training required by this subsection, supervisory *or managerial* training taken by the employee during the ~~[2]~~ 3 years preceding his appointment.

2. *At least every 3 years after his initial appointment to his supervisory or managerial position, the employee shall attend refresher training concerning alcohol and drug testing, evaluating employee performance, equal employment opportunity, interviewing and hiring, progressive disciplinary procedures, and handling of grievances.*

3. An appointing authority may require a supervisor ~~[to complete the training,]~~ *or managerial employee to* retake any part or all of the *classes or* training ~~[, or take additional training as deemed necessary.]~~ *required by subsection 1 and 2, or to participate in any additional classes or training deemed necessary by the appointing authority.*

~~[3.]~~4. To meet the training requirements of this section, the employee may take training from:

- (a) The employee's agency;
- (b) A formal training program;
- (c) The department; or
- (d) Any combination of paragraphs (a), (b) and (c).

~~[4. The training described in subsection 1 must include training concerning the preparation of a report on performance.]~~

5. When the employee completes the training concerning the preparation of a report on performance, the appointing authority shall send proof of completion to the personnel records section of the department of personnel.

~~[6. In addition to the training required by this section, the employee shall take training concerning:~~

~~—(a) A drug-free workplace, which is offered or approved by the department of personnel.~~

~~—(b) Equal employment opportunity. The employee shall take at least 6 hours of training in this subject.]~~

Sec. 9. NAC 284.611 is hereby amended to read as follows:

<p>Explanation of Proposed Change: This amendment, proposed by the Department of Employment, Training and Rehabilitation, clarifies that it is the responsibility of the employee's appointing authority to find a transfer for the employee to a vacant position, when appropriate. In addition, it clarifies that a request under paragraph (c) should be made to the Administrator of the Rehabilitation Division.</p>
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NAC 284.611 Separation for physical, mental or emotional disorder. (NRS 284.155, 284.345)

1. Before separating an employee because of a physical, mental or emotional disorder which results in the inability of the employee to perform the essential functions of his job, the appointing authority shall:

(a) Verify with the employee's physician that the condition does not respond to treatment or an extended absence from work will be required;

(b) Determine whether reasonable accommodation can be made to enable the employee to perform the essential functions of his job *including consideration of a transfer of the employee to a vacant position for which he meets the minimum qualifications;*

(c) Request the services of the *administrator of* rehabilitation division of the department of employment, training and rehabilitation, or if the employee is receiving worker's compensation, the rehabilitation agency of the insurer, to evaluate the employee's condition as it relates to his job, to suggest possible restructuring of the job ~~[or transferring the employee to a vacant position~~

~~for which he meets the minimum qualifications]~~ and to provide any other rehabilitative services possible; and

(d) Ensure that all reasonable efforts have been made to retain the employee.

2. A separation is only justified when:

(a) The information obtained through the procedures specified in subsection 1 supports the decision to separate;

(b) The employee is not on sick leave, annual leave or other approved leave; and

(c) The employee is ineligible for, or has refused, disability retirement.

3. A permanent employee separated pursuant to this section is entitled to the same rights and privileges afforded permanent employees who are dismissed for disciplinary reasons. The procedures contained in NAC 284.656 must be followed, and he may appeal his separation to the hearing officer.

4. A permanent employee who is separated because of a physical, mental or emotional disorder is eligible for reinstatement pursuant to NAC 284.386 if he recovers from the disorder within 2 years after his termination.

Sec. 10. NAC 284.718 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, makes any notes, records, recordings, or findings in the possession of the department of personnel discrimination investigation unit and the investigation findings provided to an appointing authority confidential.

NAC 284.718 Confidential records. (NRS 284.155, 284.407)

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 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.

5. Any notes, records, recordings, or investigation findings in the possession of the department of personnel sexual harassment/discrimination investigation unit and the investigation findings provided to an appointing authority.

Sec. 11. NAC 284.730 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Nevada State Records Committee, makes this section consistent with NRS 239.073, 239.077 and 239.080.

NAC 284.730 Retention of records. All records of the department of personnel will be retained or disposed of in accordance with the records retention and disposal schedule approved by the ~~[state board of examiners.]~~ *committee to approve schedules for the retention and disposition of official state records.*

Sec. 12. NAC 284.502 is hereby repealed:

Explanation of Proposed Change: This section is being repealed and managerial training requirements have been incorporated into NAC 284.498.

NAC 284.502 Training of managerial employees.

~~[1. When an agency initially appoints an employee to a managerial position, that employee shall take at least 5 days of training in subjects related to managerial functions within 1 year after being appointed. The department encourages all training which will prepare the employee for that position. The appointing authority, in its discretion, may accept, in lieu of the training required by this subsection, training taken by the employee during the 2 years preceding his appointment.~~

~~—2. This requirement may be met by successfully completing managerial training in a manner similar to that prescribed for supervisory training.~~

~~—3. In addition to the training required by this section, the employee, if he has not already done so, shall take training concerning:~~

~~—(a) The preparation of a report on performance. If the employee is required to complete this training, the appointing authority shall, upon completion of the training, send proof of completion to the personnel records section of the department of personnel.~~

~~—(b) A drug-free workplace, which is offered or approved by the department of personnel.~~

~~—(c) Equal employment opportunity. The employee shall take at least 6 hours of training in this subject.~~

~~—4. As used in this section, “managerial position” means a position which is categorized as “official” or “administrator” in the classification plan and is held by an employee who:~~

~~—(a) Formally evaluates supervisors;~~

~~—(b) Is involved in the hiring and firing of employees;~~

- ~~—(c) Is accountable for a budget; and~~
- ~~—(d) Establishes policies which affect the performance or behavior of a staff.]~~