

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R182-03

December 2, 2003

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

AUTHORITY: §§1-3, NRS 284.065, 284.155 and 284.175; §4, NRS 284.065, 284.155 and 284.250; §5, NRS 284.065, 284.155 and 284.290; §§6 and 11, NRS 284.065, 284.155 and 284.343; §7, NRS 284.065, 284.155 and 284.355; §8, NRS 284.065 and 284.155; §9, NRS 284.065; §10, NRS 284.065, 284.155, 284.335 and 284.380.

Section 1. NAC 284.182 is hereby amended to read as follows:

284.182 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 *who is* on leave without pay , or on catastrophic leave , in excess of 30 working days,

↳ in a year, 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. *As used in this subparagraph, “year” means a period equal to 12 months of full-time equivalent service measured backward from the employee’s pay progression date.*

Sec. 2. NAC 284.196 is hereby amended to read as follows:

284.196 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. 3. NAC 284.208 is hereby amended to read as follows:

284.208 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 materials containing asbestos in any area in which personal protective equipment must be worn in compliance with 29 C.F.R. Part 1910, Subpart I.*

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 do not need to appear in the class specification, and 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. 4. NAC 284.374 is hereby amended to read as follows:

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

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

(b) Expiration of the term of eligibility.

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

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

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

(f) Any of the causes listed in NRS 284.240 ~~§~~ *pursuant to which the Director may refuse to examine or certify an eligible person, failure to disclose convictions as required by* NAC

284.314 or , *if the employee has been laid off, reemployment pursuant to* subsection 5 of NAC 284.630.

2. An appointing authority ~~[may refuse to]~~ *need not* consider an eligible person ~~[who has been previously considered by the appointing authority]~~ *more than* three times from ~~[the same list for the same class. Certification to]~~ *a recruitment. Consideration of an applicant for* other than full-time permanent positions ~~[will]~~ *must* 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 of that fact in writing before the appointing authority may interview other candidates or make its 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. 5. NAC 284.448 is hereby amended to read as follows:

284.448 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* 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. *As used in this subsection, “year” means a period equal to 12 months of full-time equivalent service measured backward from the employee’s pay progression date.*
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. 6. NAC 284.498 is hereby amended to read as follows:

284.498 1. ~~[When]~~ *Except as otherwise provided in this section:*

(a) Within 6 months after an agency initially appoints an employee to a supervisory *or managerial* position, the employee shall ~~[take at least 5 days of 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.]~~ *attend a training class concerning the evaluation of the performance of employees.*

(b) Within 12 months after an agency appoints an employee to a supervisory or managerial position, the employee shall attend at least one training class in each of the following areas:

- (1) Equal employment opportunity;*
- (2) Interviewing and hiring;*
- (3) Alcohol and drug testing;*
- (4) Progressive disciplinary procedures; and*
- (5) Handling grievances.*

2. Within 3 years after an agency initially appoints an employee to a supervisory or managerial position, the employee shall attend additional supervisory or managerial training which, when added to the amount of training received pursuant to subsection 1, equals at least 40 hours of training.

3. For every 3-year period after the initial 3-year period, a supervisor or managerial employee shall attend at least 5 days of training to enhance his supervisory or managerial skills. Such training must include at least two of the training classes described in subsection 1. An employee who receives credit for a training class described in subsection 1 for a 3-year period will not receive credit for taking that training class in the next following 3-year period.

4. The appointing authority, at its discretion, may accept, in lieu of the training required by ~~[this subsection,]~~ subsection 1, supervisory or managerial training taken by the employee during the ~~[2 years]~~ 36 months immediately preceding his appointment.

~~[2.—An]~~

5. In addition to the training otherwise required by this section, an appointing authority may require a supervisor ~~[to complete the training,]~~ or managerial employee to retake any part

or all of the training ~~[, or take]~~ *required by this section, or to participate in any* additional training ~~[as]~~ *or other classes* deemed necessary ~~[~~

~~—3.] by the appointing authority.~~

6. 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.]~~

7. *An employee will not receive credit for any supervisory or managerial training taken for the purposes of this section unless:*

(a) For training classes described in subsection 1, the training class is certified by the Department of Personnel; and

(b) For all other classes and training, the class or training is certified or otherwise approved by the appointing authority.

Sec. 7. NAC 284.611 is hereby amended to read as follows:

284.611 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:]~~ ***must:***

(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;

(c) ~~[Request the services]~~ ***Make a request to the Administrator*** of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation ~~[:]~~ ***for the use of the services provided by that Division,*** or if the employee is receiving worker's compensation, ***request the services of*** 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. 8. 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 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 findings of an investigation conducted by the Department of Personnel relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential.

Sec. 9. NAC 284.730 is hereby amended to read as follows:

284.730 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. 10. Section 2 of LCB File No. R096-03, which was adopted by the Personnel Commission and was filed with the Secretary of State on October 30, 2003, is hereby amended to read as follows:

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

(a) ~~[The]~~ *Except as otherwise provided in this section, 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) *or, if applicable, subsection 5* must be reduced by the following periods if those periods occurred during the ~~[3 years]~~ *36 months* immediately preceding the ~~[effective]~~ date of the *notification of* 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.

5. A department may request from the Commission approval to calculate the number of years of continuous full-time equivalent service of an employee of the department by doubling the time spent by the employee in his present occupation group as categorized by NRS 284.171 and adding that amount to the time spent by the employee in all former occupational groups up to the date of layoff. If the Commission approves the request of the department to calculate the number of years of service pursuant to this section, the department shall use this method to calculate the number of years of service:

(a) Only to determine which employees will receive a layoff notice and not for the placement of those employees on the reemployment list; and

(b) Until the department seeks from and is granted approval by the Commission to revert to the method of calculating the number of years of service set forth in paragraph (a) of subsection 1.

6. As used in subparagraphs (1) and (2) of paragraph (b) of subsection 1, “year” means a period equal to 12 months of full-time equivalent service measured backward from the date of the notification of layoff.

Sec. 11. NAC 284.502 is hereby repealed.

TEXT OF REPEALED SECTION

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.

