

LCB File No. T043-03

**PROPOSED TEMPORARY REGULATION OF THE
DEPARTMENT OF PERSONNEL**

**NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED TEMPORARY REGULATIONS AND
NOTICE OF HEARING
FOR THE ADOPTION, AMENDMENT OR REPEAL OF
TEMPORARY 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 temporary adoption, amendment or repeal of regulations pertaining to Chapter 284 of the Nevada Administrative Code.

A workshop has been set for 10:00 a.m. on June 9, 2003, at the Nevada Department of Transportation, Room 302, 1263 South Stewart Street, Carson City, Nevada and via video conference at the Nevada Department of Transportation, Training Room A, 123 East Washington Avenue, Las Vegas, Nevada.

Action - Newly proposed rules for temporary adoption

NAC REGULATION

Calculation of eligibility; Substitution of paid leave for unpaid leave under the Family and Medical Leave Act	New Section
Compensation for dangerous duty	284.208
Temporary appointments	284.414
Standards for performance of work	284.468
Workweeks and workdays: periods for rest and meals	284.524
Layoffs: Procedure	284.614
Layoffs: Voluntary demotions	284.618
Confidential records	284.718
Access to confidential records	284.726

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 June 27, 2003, in Carson City at the Department of Transportation, Room 302, 1263 South Stewart Street. A video conference link will also be available at the Department of Transportation, Training Room A, 123 East Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, and repeal of temporary 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 precedes 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 Phil Hauck, 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 June 6, 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 Street
Capitol Building, Main Floor
NDOT, Room 302, 1263 South Stewart Street

LAS VEGAS

Grant Sawyer State Office Building
555 East Washington Avenue
NDOT, Training Room A, 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. T043-03

**PROPOSED TEMPORARY REGULATION OF THE
DEPARTMENT OF PERSONNEL**

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

Explanation of Proposed New Section: This section is being proposed by the Department of Personnel to clarify current practices and ensure standard administration of the Family and Medical Leave Act (FMLA). This section:

1. Clarifies the current practice of counting the time an employee is in “paid status” for determining hours of service. The term “paid status” is defined in NAC 284.0742 and does not include the time an employee is on catastrophic leave or on leave of absence due to fiscal emergency. The FMLA only requires an employer to determine if the employee has actually worked 1250 hours in the 12 months preceding the FMLA leave. This method of calculation provides a greater benefit to employees.
2. Requires that an employee exhaust all forms of paid leave time concurrently with leave designated under FMLA prior to using leave without pay. An employee must meet the eligibility requirements for annual leave, catastrophic leave, or holiday pay prior to using these types of leave. Compensatory time cannot be used concurrently with FMLA as it is a form of overtime.
3. Clarifies that holidays occurring on an employee’s normal workday while the employee is on FMLA will be counted toward an employee’s 12-week entitlement.

This section would become effective on July 7, 2003, the first day of pay period 3.

New Section *Calculation of eligibility; Substitution of paid leave for unpaid leave under the Family and Medical Leave Act.*

1. *For purposes of calculating eligibility for leave under the Family and Medical Leave Act, all hours an employee is in paid status in the 12-months preceding the leave will be considered time worked.*
2. *Except for leave time for a work related injury or illness as provided for in subsection 3, an employee must exhaust all forms of paid leave prior to using leave without pay for absences that are designated as leave under the Family and Medical Leave Act or are being prospectively designated as leave under the Family and Medical Leave Act pending appropriate medical documentation and approval. The following types of paid leave will run concurrently with leave under the Family and Medical Leave Act:*
 - (a) Sick leave; and*
 - (b) Family sick leave; and if otherwise eligible,*

- (c) *Annual leave;*
- (d) *Catastrophic leave; and*
- (e) *Holiday pay*

- 3. *If an employee meets the eligibility requirements of the Family and Medical Leave Act and is absent due to a work related injury or illness the:*
 - (a) *Time the employee is absent from work will be designated as leave time under the Family and Medical Leave Act; and*
 - (b) *Employee may elect to use paid leave time for the portion of time that he is not being compensated for the work related disability.*

Sec. 2 NAC 284.208 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, replaces similar language that was removed during rules simplification. This amendment does not change the intent or the current application of the regulation.

NAC 284.208 Compensation for dangerous duty. (NRS 284.175)

- 1. 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.

The compensation applies only when the dangerous duties are not an inherent and regular part of the job. These duties may appear in the class specification, but must not be performed with sufficient regularity to constitute an element in fixing the grade of the position.
- 2. Except as otherwise provided in this subsection, 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.

Sec. 3. NAC 284.414 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Transportation, allows a department to extend the period of a temporary appointment if it is replacing an employee who is on leave of absence for active military service.

NAC 284.414 Temporary appointments. (NRS 284.155, 284.175, 284.325)

1. A temporary appointment must not exceed 6 months in any 12-month period unless the appointment is authorized as a replacement for an employee who is ~~receiving~~ :
(a) Receiving benefits for temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS ; *or*
(b) On leave of absence for active military service.
The appointing authority shall indicate the probable duration of employment on its request for certification. Upon receipt of this request, the department 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. 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. 4. NAC 284.486 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, requires that work performance standards be prepared on a form authorized by the department of personnel.

NAC 284.468 Standards for performance of work.

1. A standard for the performance of work is a written statement of the results and/or behavior expected of an employee when his job elements are satisfactorily performed under existing working conditions. Standards are required for all classified positions~~[-],~~ *and must be prepared on the form authorized by the department of personnel.*
2. The appointing authority is responsible for ensuring that each position has standards and that each employee is evaluated using those standards. The supervisor has responsibility for establishing the initial standards, but the employee must be given an opportunity to provide comments when the standards are revised.
3. The appointing authority has final approval of the work performance standards.
4. Standards must be reviewed annually and amended when appropriate.
5. Each employee must be provided with a copy of the standards for his position.
6. As used in this section, “job elements” means principal assignments, goals, responsibilities and/or related factors.

Sec. 5. NAC 284.524 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Corrections, would remove the requirement for the department to provide rest periods without limitation to the length of his shift if the employee has direct contact with inmates in an institution.

NAC 284.524 Workweeks and workdays; periods for rest and meals. (NRS 284.155, 284.345)

1. The workweek for state employees is 40 hours, except that workweeks of a different number of hours may be established to meet the needs of different state agencies in compliance with the provisions of NRS 281.100, 281.110 and 284.180. The workday for a full-time state employee who works a standard or nonstandard work schedule consists of two work periods separated by a 1/2- to 1-hour meal period. Insofar as practicable, the meal period must occur in the middle of the work shift. A rest period of 15 minutes must be granted for each 4-hour period of work and, insofar as practicable, must occur in the middle of the period of work.
2. Except as otherwise provided in subsections 3 and 4, an appointing authority shall provide a meal period and rest period to an employee who has an innovative work schedule during each workday as follows:
 - (a) A 1/2- to 1-hour meal period must be provided during each period of work that exceeds 5 hours. Insofar as practicable, the meal period must occur in the middle of the work shift.
 - (b) A rest period of 15 minutes must be provided for each 4-hour period of work and, insofar as practicable, must occur in the middle of the period of work.
3. The requirement to relieve an employee for a 1/2- to 1-hour meal period does not apply to an employee who receives a paid meal period.
4. The requirement for a rest period does not apply to an employee of:
 - ~~(a) A] a~~ correctional institution who:
 - ~~(1) Works] works~~ directly with the inmates at the institution. ~~]; and~~
 - ~~(2) Works a straight 8-hour work shift.]~~
 - (b) The division of mental health and developmental services of the department of human resources who:
 - (1) Maintains or monitors the equipment in a heat plant which operates 24 hours a day; and
 - (2) Works a straight 8-hour work shift.

Sec. 6. NAC 284.614 is hereby amended to read as follows:

Explanation of Proposed Change: Gary Wolff, Business Agent for Teamsters Local Union No. 14, has requested that when a layoff is required, a permanent employee whose position is affected would be allowed to transfer laterally to a position that is held by an employee who has the least seniority in the department in any geographical location and displace that employee.

NAC 284.614 Layoffs: Procedure. (NRS 284.155, 284.335, 284.380)

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 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 *“does not meet standard”*, “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.
 - (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.
 - (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.

Sec. 7. NAC 284.618 is hereby amended to read as follows:

Explanation of Proposed Change: Gary Wolff, Business Agent for Teamsters Local Union No. 14, has requested that when a layoff is required, a permanent employee would be allowed to voluntarily demote to a position that is held by an employee who has the least seniority in the department in any geographical location and displace that employee.

NAC 284.618 Layoffs: Voluntary demotions. (NRS 284.155, 284.175)

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, 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]~~ *demoted* employee cannot exceed the highest step for the ~~[lower]~~ class *to which he demotes*. 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 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. 8. NAC 284.718 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, ensures that the employment records of current and former employees remain confidential including the employee's or former employee's social security number. Additionally, it ensures that the records obtained or kept by the Committee on Catastrophic Leave regarding a current or former employee's health, medical condition, or disability are 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~~ *a current or former* employee's file or record of employment 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; ~~or~~
 - (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. *The records that are received by or are kept by the committee on catastrophic leave which reveal a current or former employee's health, medical condition, or disability are confidential.*

Sec. 9. NAC 284.726 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, would allow the Committee on Catastrophic Leave to receive confidential information concerning an employee when the information is relevant to the proceeding before them.

NAC 284.726 Access to confidential records. (NRS 284.155, 284.175, 284.335, 284.407)

1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph 2 of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.
2. Except as otherwise provided in subsection 3, access to an employee's file of employment containing any of the items listed in paragraphs (f) to (i), inclusive, of subsection 1 of NAC 284.718 is limited to:
 - (a) The employee.
 - (b) The employee's representative when a signed authorization from the employee is presented or is in his employment file.
 - (c) The appointing authority or a designated representative of the agency by which the employee is employed.
 - (d) The director of the department of personnel or his designated representative.
 - (e) An appointing authority, or his designated representative, who is considering the employee for employment in his agency.
 - (f) Persons who are authorized pursuant to any state or federal law or an order of a court.
 - (g) The state board of examiners if the board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.
3. Information concerning the health, medical condition or disability of an employee or a member of his immediate family must be kept separate from the employee's file in a locked cabinet. ~~[Access]~~ *Except as otherwise provided for in subsection 6, access* to such information is limited to the employee, his current supervisor, and the appointing authority or his designated representative.
4. Except as otherwise provided by specific statute, records maintained by the employee assistance program must not be released without written permission signed by the employee to whom the records pertain.
5. Upon request, the department of personnel will provide the personal mailing address of any employee on file with the department to the state controller's office and the Internal Revenue Service.
6. The director or the appointing authority, or his designated representative, shall authorize the release of any confidential records under his control which are requested by the committee, a hearings officer, the commission, *the committee on catastrophic leave*, the Nevada equal rights commission or a court. If the director or his designated representative determines that the release of any confidential record is not necessary for those purposes, the decision may be appealed.