

LCB File No. T052-03

ADOPTED TEMPORARY REGULATION OF THE
PERSONNEL COMMISSION

Filed with the Secretary of State on June 30, 2003

Section 1. 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.

These duties may appear in the class specification, but the compensation only applies when the dangerous duties are not an inherent and regular part of the duties assigned to the class as a whole.

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. 2. 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. 3. NAC 284.468 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~~H~~, *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. 4. 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. 5. 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 ~~an~~ *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. 6. 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.

(h) Persons involved in the processing of records for the transaction of business within and between state agencies or business authorized by the employee.

3. Information concerning the health, medical condition or disability of an employee or a member of his immediate family must be kept separate from the employee's file in a locked cabinet. ~~[Access]~~ ***Except as otherwise provided 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.

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T052-03**

INFORMATIONAL STATEMENT

On June 27, 2003, the Personnel Commission approved the adoption of the attached temporary amendments to Chapter 284 of NAC. The following is the informational statement concerning these actions as required in 233B.066:

1. On May 21, 2003, copies of the "Notice of Workshop" to solicit comments on proposed regulations and "Notice of Hearing" for the adoption, amendment, and repeal of temporary 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 e-mailed to the Legislative Counsel Bureau. Also on May 21, 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 the State of Nevada Employees Association, the main public library in each county, all requesting parties, and members of the Personnel Commission.
2. The workshop was held at the Department of Transportation in Carson City and via video conference in Las Vegas on June 9, 2003. Twenty-five people attended the workshop on the proposed regulations. The explanation of change was read for each of the sections.

Section 1. NAC 284.208 Dangerous Duty Pay – Rossalyn Hoid asked for clarification of the proposed amendment. The Department of Information Technology has employees that climb microwave towers over 16 feet but the duty is part of their class specification. She asked if these employees would be eligible to receive dangerous duty pay. Carol Thomas said that the duty may appear in the class specification, but if that duty was not inherent to the class then the employee may be eligible for dangerous duty pay. Carol went on to say that she would need to review the class specification and other documentation before making a determination regarding the DOIT positions.

Section 2. NAC 284.414 Temporary Appointments – There were no questions, comments, opposition, or discussion on this section.

Section 3. NAC 284.486 Standards for performance of work - There were no questions, comments, opposition, or discussion on this section.

Section 4. NAC 284.524 Workweeks and workdays; periods for rest and meals. There were no questions, comments, opposition, or discussion on this section.

Section 5. NAC 284.614 Layoffs: Procedure. Gary Wolff stated that the intent of this change is to allow the least senior person in the geographic location the option of transferring to the position of the least senior person statewide in lieu of being laid off or be given the option to be placed on a reemployment list.

Carol Thomas said that she was clear on the intent of the regulation, but she was not sure that the drafted language reflected his intent. She stated that the language would be reviewed again, and if needed, it would be corrected prior to the June 27th Personnel Commission meeting.

Kareen Masters, Personnel Officer for the Department of Human Resources, expressed concerns with sections 5 and 6. She said that the proposed regulations appear to take away the rights of the appointing authority as to where layoffs would occur, would dramatically change current practice, and that seniority calculations would become even more time consuming. For these reasons, the Department of Human Resources could not support the proposed amendments in sections 5 and 6.

Section 6. NAC 284.618 Layoffs: Voluntary Demotions. Comments were incorporated with comments in previous section.

Section 7. NAC 284.718 Confidential records. Karen Masters commented that departments provide information on forms to the Public Employees' Benefits Program and Public Employees' Retirement System. These forms require a Social Security Number as do the NPD-41 and several other forms. She expressed concerned that we need to have an alternative identification number in place prior to making the SSN confidential.

Section 8. NAC 284.726 Access to Confidential Records. There were no questions, comments, opposition, or discussion on this section.

A summary of the public workshop is available upon request from the Department of Personnel, 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204.

Due to comments received at the workshop and after discussion and approval of the requestor, the proposed regulations in sections 5 and 6 regarding layoff were postponed until the September Personnel Commission meeting.

On Friday, June 27, 2003, a Personnel Commission hearing was held at the Department of Transportation in Carson City and Las Vegas. All of the proposed temporary regulations were adopted. Thirty-three people were in attendance in Carson City, and nine were in attendance in Las Vegas via video conference.

During the hearing, Shelley Blotter, from the Department of Personnel, gave a brief overview of each proposed regulation amendment and the intent of the change.

Section 1 NAC 284.208 Dangerous Duty Pay was unanimously approved for temporary adoption without objection.

Section 2 NAC 284.414 Temporary Appointments was unanimously approved for temporary adoption without objection.

Section 3 NAC 284.486 Standards for performance of work was unanimously approved for temporary adoption without objection.

Section 4 NAC 284.524 Workweeks and workdays; periods for rest and meals was unanimously approved for temporary adoption without objection.

Section 5. NAC 284.718 Confidential records was unanimously approved for temporary adoption without objection.

Section 6. NAC 284.726 Access to Confidential Records was unanimously approved for temporary adoption. Discussion of this item included concerns by Commissioners Skaggs and Enus regarding compliance with the Health Information Portability and Accountability Act (HIPAA). Shelley Blotter indicated that since these were employment records and the grievances were heard at employees' request, that a release under HIPAA was not required. Linda Covelli of the State of Nevada Employees Association recommended that the release of information could be placed on the appeal form. The Commission requested that such a release be handled procedurally, if necessary, by making a modification to the appeal form. Shelley Blotter acknowledged that this could be done.

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.

3. The regulations do not affect businesses; therefore, their comments were not solicited.
4. These regulations do not have a direct economic effect on any business or the public.
5. Enforcement of these regulations should not result in any increased cost to the Department of Personnel.
6. These regulations do not duplicate or overlap with other State or government regulations.