

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R143-05

September 23, 2005

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

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

A REGULATION relating to the State Personnel System; revising the provisions governing separations from service; and providing other matters properly relating thereto.

Section 1. NAC 284.076 is hereby amended to read as follows:

284.076 “Permanent employee” means an employee who has successfully completed the probationary period for any class he has held during continuous classified service. The term does not include a person who:

1. Is reemployed after having been laid off and is serving a new probationary period as required by subsection ~~6~~ 8 of NAC 284.630; or
2. Is reemployed pursuant to NAC 284.6014 after having sustained a permanent disability and is serving a new probationary period as required by subsection 2 of NAC 284.6018.

Sec. 2. 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 284.321 or, if the employee has been laid off, reemployment pursuant to subsection ~~5~~ 7 of NAC 284.630.
2. An appointing authority need not consider an eligible person more than three times from a recruitment. Consideration of an applicant for other than full-time permanent positions must not be counted 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 interviewing the next candidate or making its selection. The employee has 3 working days after being notified that he has been removed from consideration pursuant to this subsection to notify the appointing authority of any discrepancy in the information in his

personnel file which led to the removal of the employee from consideration. The appointing authority may not make its selection:

(a) If the employee does not notify the appointing authority of a discrepancy, until after the end of the period pursuant to which the employee may notify the appointing authority of a discrepancy; or

(b) If the employee notifies the appointing authority of a discrepancy, until after the appointing authority determines whether the removal of the employee from consideration pursuant to this subsection was appropriate.

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. 3. NAC 284.444 is hereby amended to read as follows:

284.444 1. A probationary employee who transfers:

(a) Within the same class must serve the remaining portion of the probationary period.

(b) From one class to another class must serve a new probationary period.

2. An employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period. Except for those unclassified employees who transfer pursuant to subsection 2 of NAC 284.398, the status of a permanent employee may not be attained until the satisfactory completion of the probationary period.

3. An employee who is reinstated must serve a new probationary period unless it is waived in writing by the appointing authority. If an appointing authority waives the probationary period, the status of the appointment of the employee is permanent.

4. A probationary employee who is reappointed must serve a new probationary period.

5. A permanent employee who is reappointed to a class:

(a) At a higher grade level must serve a trial period unless it is waived by the appointing authority.

(b) At the same grade level or a lower grade level is not required to serve a probationary period.

6. An employee who is laid off, but who is reemployed within 1 year, must serve a new probationary period if he is reemployed in a different class or in a different department than that from which he was laid off and he is subject to the provisions of subsection ~~6~~ 8 of NAC 284.630.

7. A person with a permanent disability arising from a disability related to work who is reemployed in a different class or option than his regular position must serve a new probationary period as required by NAC 284.6018.

8. A person who is entitled to reemployment because of his military service is entitled to return to the status of appointment held at the time of his separation from the state service for military purposes. If the employee did not complete the probationary period, he will only be required to complete the remaining portion thereof.

9. Promotion to a vacant position requires a new probationary period. Promotions which result from reclassification are governed by NAC 284.134 and 284.138.

10. Except as otherwise provided in subsection 11:

(a) No probationary period will be required if a permanent employee is demoted.

(b) A new probationary period will be required if a probationary employee is demoted.

11. An employee who is restored to his former position pursuant to NAC 284.462 following a promotional appointment must serve the portion of his probationary period which was remaining at the time of his promotion.

Sec. 4. NAC 284.602 is hereby amended to read as follows:

284.602 1. ~~[An employee who desires to resign may do so by notifying the appointing authority in writing of the reason for the resignation and its effective date.~~
~~—2.— The employee must attempt to submit his resignation at least 2 weeks before he leaves.~~
~~—3.]~~ *Unless the appointing authority and employee agree to a shorter period of time, an employee who wishes to resign shall submit his resignation in writing at least 2 weeks before he resigns and notify the appointing authority of the reason for and the effective date of the resignation. If an employee fails to comply with this subsection, the appointing authority may note the insufficient notice in the employee's file.*

2. The appointing authority shall report and the employee shall acknowledge the resignation to the Department of Personnel on a form provided by the Department of Personnel. The form must contain a statement of the employee's right to revoke his resignation pursuant to NRS 284.381.

Sec. 5. 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 must:

(a) Verify with the employee's physician *or by an independent medical evaluation paid for by the appointing authority* that the condition does not , *or is not expected to*, respond to treatment or *that* 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) Make a request to the Administrator of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation ~~[for the use of]~~ *to obtain* 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,]~~ *provider*, to evaluate the employee's condition ~~[as it relates to his job, to suggest possible restructuring of the job]~~ 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 *pursuant to this section* 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]~~ *A referral has been made to the Public Employees' Retirement System and the employee has been determined to be* 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. 6. NAC 284.614 is hereby amended to read as follows:

284.614 1. Except as otherwise provided in NAC 284.425, 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 director of the department shall determine in what geographical location, class series, class and option the reductions in staff will have the least detrimental effect on the operations of the department and shall specify layoffs accordingly. In the Department of ~~[Human Resources]~~ *Health and Human Services* and the ~~[University and Community College System of Nevada,]~~ *Nevada System of Higher Education*, the administrator of a division ~~[,]~~ *may be designated to make these determinations* 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 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 seniority ~~[.]~~ *pursuant to NAC 284.632.*

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

(e) ~~[For the purposes of this subsection, an]~~ *An* appointing authority may consider ~~[whether positions are full-time or part-time and limit]~~ *limiting* 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 284.361.

2. If a permanent employee must be laid off for one of the reasons set forth in subsection 1, the appointing authority ~~[of the employee]~~ shall notify the employee that ~~[the employee]~~ *he* may choose to:

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

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

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

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

4. For the purposes of this section, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

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

284.618 1. In lieu of being laid off, a permanent employee may choose to be voluntarily demoted *to a vacant position or displace an employee* 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 *to his current position* during current continuous service ~~[and may displace an employee therein but only]~~ if he cannot be demoted pursuant to paragraph (a).

↪ For the purposes of this subsection, divisions of the Department of *Health and Human Resources Services* and the ~~[University and Community College System of Nevada are considered]~~ *Nevada System of Higher Education shall be deemed to be* 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 284.361.

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.]~~ *movement to a lower class.*

7. A current employee who elects to displace another employee has priority over former employees already on reemployment lists.

8. The pay of the employee who is taking a voluntary demotion cannot exceed the highest step for the class to which the employee is being demoted. If the current pay falls within the lower rate range, no reduction in pay may occur unless money is not available as certified by the Chief of the Budget Division of the Department of Administration or, in the case of an agency which is not supported from the State General Fund, as certified by the administrator of that agency.

Sec. 8. NAC 284.626 is hereby amended to read as follows:

284.626 All permanent employees to be laid off must be given written notice of the layoff at least 30 calendar days before the effective date of the layoff. A copy of the *seniority calculations and* layoff ~~[computations and a copy of the]~~ notice must be sent to the Department of Personnel. The notice must specifically list the positions and locations where ~~[that]~~ *the* employee has a current right to displace another employee, if those positions and locations are known at the time of notification.

Sec. 9. NAC 284.630 is hereby amended to read as follows:

284.630 1. ~~[The names]~~ *Names* of permanent employees who have received ~~[their notices of]~~ a layoff *notice* will be placed on the statewide reemployment list for the class and option of the position involved in the layoff, in order of seniority. ~~[If applicable, the names will be integrated with the names of employees who are eligible for reemployment pursuant to NAC 284.6014. The agency and the employee shall provide the necessary information for~~

~~reemployment on the form prescribed by the Department of Personnel for the employee to be placed on the reemployment list.~~

~~—2. The names}~~

2. *Names* of permanent employees who have received ~~[their notices of]~~ a layoff *notice* will also be placed on the statewide reemployment list for other classes for which they qualify ~~[.]~~ *at or below the class held at the time of layoff*, in order of seniority . ~~[but behind those identified in subsection 1, if those classes do not respectively exceed the level of the class from which the employee was laid off. If applicable, the names will be integrated with the names of employees who are eligible for reemployment pursuant to NAC 284.6014.~~

~~—3. It is the affected employee's responsibility to demonstrate his interest in, and qualifications for, the classes for which reemployment is sought]~~

3. *The employee shall provide an employment application and a list of classes and options he is seeking for reemployment to the Department of Personnel* within 30 days after ~~[the date set for]~~ his layoff ~~[.]~~ *date. The agency shall provide the seniority calculations to the Department of Personnel.*

4. *Names of permanent employees who have received a layoff notice will be integrated with employees who are eligible for reemployment pursuant to NAC 284.6014.*

5. Part-time employees ~~[are not entitled to]~~ *must not* be reemployed in full-time positions , and full-time employees ~~[are not entitled to]~~ *must not* be reemployed in part-time positions.

~~[4.]~~ 6. Seniority must be projected and counted up to the ~~[established]~~ layoff date, or transfer date if the provisions of subsection 4 of NAC 284.394 apply. Seniority determines ranking on all reemployment lists ~~[. The amount of seniority]~~ *and* will not be recalculated unless the ~~[holder]~~ *employee* is affected by a subsequent layoff.

~~{5.}~~ 7. Each person on the list retains *reemployment* eligibility for ~~{appointment therefrom for}~~ 1 year ~~{from}~~ *after* the *layoff* date . ~~{he was laid off.}~~ Except as otherwise provided in this section, reemployment rights are exhausted when a person accepts or declines an offer of employment in the class or a comparable class with the same grade ~~{from}~~ *in* the department and geographical location ~~{from which he was laid off.}~~ *of the layoff*. Any exception to this provision ~~{may be made only if}~~ *must be* approved by the Department of Personnel. When a person accepts a position at a grade lower than that held at the time of layoff, his name will be removed from all reemployment lists that are equal to or below the grade accepted.

~~{6.}~~ 8. A permanent employee who has been laid off and is being reemployed in the department, class and option from which he was laid off must have his permanent status restored. A permanent employee who is reemployed in a different class or in a different department ~~{than from which laid off shall}~~ *must* serve a new probationary period. If the employee does not complete the probationary period, his name must be restored to the appropriate reemployment list for any remaining part of the year following the *layoff* date . ~~{on which he was laid off.}~~ When the right to reemployment expires, the person affected retains his right to reinstatement or reappointment pursuant to NAC 284.386 or 284.404 . ~~{, respectively.}~~

Sec. 10. NAC 284.632 is hereby amended to read as follows:

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

(a) 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 36 months immediately preceding the 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;]~~ *the period preceding the layoff equal to 12 months of full-time equivalent service;*

(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;]~~ *the period preceding the layoff equal to 12 months of full-time equivalent service;* 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.],~~ *excluding evaluations received within 75 calendar days before the notification of layoff.*

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}~~ *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 occupational 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.}~~