

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R144-05

Effective December 29, 2005

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

AUTHORITY: §1, NRS 284.065; §2, NRS 284.065, 284.155 and 284.295; §3, NRS 284.065, 284.155, 284.250 and 284.295; §4, NRS 284.065, 284.155, 284.340 and 284.384.

A REGULATION relating to the State Personnel System; providing that an appointing authority is not required to consider for employment purposes an eligible person who is unable to perform the essential functions of the position with or without a reasonable accommodation; authorizing an appointing authority to consider certain information concerning the performance of an employee for a report on performance; and providing other matters properly relating thereto.

Section 1. NAC 284.097 is hereby amended to read as follows:

284.097 “Reviewing officer” means:

1. The supervisor of the person who prepared a report on performance of an employee; or
2. Such other person designated by the appointing authority,

↪ who reviews the report on performance upon the request of the employee pursuant to paragraph (b) of subsection ~~[4]~~ 5 of NAC 284.470.

Sec. 2. NAC 284.313 is hereby amended to read as follows:

284.313 1. Except as otherwise provided in this subsection, competition in a recruitment is limited to applicants who meet the minimum qualifications and other criteria or conditions for the class or position as specified in the publicized job announcement. The publicized job announcement may provide for the consideration of applicants who do not currently meet those minimum qualifications but who will do so by the time their names are placed on an eligible list.

2. It is the responsibility of an applicant to apply for any recruitment for which he is interested. Future vacancies may be filled from the results of appropriate prior recruitments.

3. Each applicant must submit an application as specified in the publicized job announcement. The application must be received not later than 5 p.m. on the ~~[final date specified in the publicized job announcement.]~~ *closing date, as determined by the Department of Personnel.*

4. The incomplete or improper completion of an application that affects the ability of the Department of Personnel to determine the qualifications of the applicant, including the failure to designate the locations where the applicant will work and other criteria or conditions, is cause for the rejection of the applicant.

5. If a recruitment produces a sufficient number of applicants, the Department of Personnel may, as an additional phase of the process of examination, approve the obtaining of supplemental information from each applicant to assess his qualifications if the publicized job announcement includes notice that such supplemental information may be required. Only those applicants who are considered the most qualified, based on this assessment, may continue in the competition.

6. Except as otherwise provided in subsection 8, competition in a promotional recruitment is limited to current state employees who:

(a) Have served at least 6 months of continuous full-time equivalent service in a probationary, special disabled, emergency, provisional or permanent status, or any combination of these, in the classified service.

(b) Are working in the division, department or state service which is specified in the publicized job announcement.

7. An employee who competes in a promotional recruitment may be at a higher grade, the same grade or a lower grade than the grade of the class for which the recruitment is being conducted. Depending on the grade of the employee, an appointment resulting from a promotional recruitment may be a voluntary demotion, a lateral transfer or a promotion.

8. A former incumbent of a seasonal position who was separated from state service with the status of a permanent employee may apply for a promotional recruitment up to 1 year after the day of separation even though he is not currently employed. The prior appointment must have been in the division, department or state service which is specified in the publicized job announcement.

9. Applications and accompanying documents are the property of the Department of Personnel.

Sec. 3. 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 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 need not consider an otherwise eligible person who cannot perform the essential functions of the position with or without reasonable accommodation.*

4. 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.]~~ 5. 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.]~~ 6. 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. 4. NAC 284.470 is hereby amended to read as follows:

284.470 1. A person shall not complete a report on performance unless he has completed the training provided or approved by the Director concerning the preparation of a report on performance.

2. A report on performance must be prepared on the form prescribed by the Department of Personnel.

3. A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee. *If a report on performance is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard.*

4. *If any information that would have affected the rating of performance of an employee during a period of evaluation becomes available after the date on which the report on performance of the employee is filed for that period, the information may be included in the*

report on performance for the current period of evaluation and taken into consideration in determining the rating of performance for the current period of evaluation.

5. When a report on performance is given which reports the overall rating of performance of an employee as substandard:

(a) The report must contain a written notice that such reports affect both merit pay increases and the employee's eligibility for longevity pay; and

(b) An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard or disciplinary action is taken against the employee.

~~{5.}~~ 6. Except as otherwise provided in subsection ~~{6.}~~ 7, the preparation of each report on performance must include a discussion between the employee and his immediate supervisor.

Within 10 working days after the discussion takes place:

(a) The employee must complete and sign the appropriate section on the report on performance and return the report to his supervisor for forwarding to the reviewing officer or appointing authority.

(b) If the employee disagrees with the report on performance and requests a review, he must respond to the report in writing, identify the specific points of disagreement, if such specificity is provided, and return the response to his supervisor. The reviewing officer shall respond to the employee in writing within 10 working days after the supervisor receives the request.

~~{6.}~~ 7. If an employee is unavailable for a discussion of the report on performance pursuant to subsection ~~{5.}~~ 6 because of an extended absence, the immediate supervisor of the employee

shall cause the report to be mailed to the employee. Within 10 working days after the date on which the employee receives the report:

(a) The employee must complete and sign the appropriate section on the report on performance and mail the report to his supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee disagrees with the report on performance and requests a review, he must respond to the report in writing, identify any specific point of disagreement, if the report provides such specificity, and mail his response to his supervisor. The reviewing officer shall respond to the employee in writing within 10 working days after the supervisor receives the request for review from the employee. For the purposes of this paragraph, a report on performance or request for review is deemed to have been received on the third day after the date on which the report or request is postmarked.

~~[7.]~~ 8. A copy of each report on performance must be provided to the employee and filed with the Department of Personnel. If any written comments are added to a report on performance after a copy of the report has been provided to the employee pursuant to this subsection ~~[, a]~~:

(a) A copy of the revised report which includes the written comments must be provided to the employee ~~[~~:

~~8.]~~; and

(b) *The employee may respond, in writing, to the additional comments in the revised report not later than 10 working days after he receives a copy of the revised report and submit the response to the Department of Personnel for inclusion in his file of employment.*

9. An employee and his appointing authority may agree in writing to extend one or more of the periods prescribed in subsection ~~[5 or 6]~~.

~~9.1~~ 6 or 7.

10. If a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R144-05

The Personnel Commission adopted regulations assigned LCB File No. R144-05 which pertain to chapter 284 of the Nevada Administrative Code on November 8, 2005.

Notice date: 9/16/2005
Hearing date: 11/8/2005

Date of adoption by agency: 11/8/2005
Filing date: 12/29/2005

INFORMATIONAL STATEMENT

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

On September 16, 2005, a "Notice of Workshop" to solicit comments on proposed regulations and "Notice of Hearing" for the adoption and amendment of regulations was 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 the Legislative Counsel Bureau. Also on September 16, 2005, 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 posted on the Department's website and also sent to all employee organizations, all Nevada county public libraries, all requesting parties, and members of the Personnel Commission.

On October 11, 2005, a workshop was held. Shelley Blotter, Chief, Technical Services Division, Department of Personnel, explained the purpose of the workshop and the process by which the proposed regulations would be reviewed and adopted. Ms. Blotter read the explanation of change for each of the sections and solicited comments.

Due to lack of audio communication with Las Vegas, the videoconference did not occur. Ms. Blotter stated that we would accept written comments from participants in the Las Vegas location.

- a. The following summarizes the comments made at the workshop regarding the proposed regulations:

There were no comments, questions, opposition, or discussion on NAC 284.313 and 284.374. At the workshop, NAC 284.116 was removed from consideration.

NAC 284.470, Preparation, filing and discussion of reports; duties of employees; requests for review; grievances.

Scott Sisco, Director, Cultural Affairs stated he is a member of the Employee Management Committee and the Committee has had issues related to this regulation come before them. Mr. Sisco requested the following amendments to subsections 3 and 4:

3. A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee. *If the report is not filed on or before the required date, the performance of the employee shall be deemed to be standard **and the employee shall be granted merit step increases and/or longevity pay where a standard or higher rating would have resulted in such an action normally being taken.***
4. *An evaluation may be filed for a previous review period when information becomes available after the evaluation period that would have affected the rating. This subsequent evaluation does not affect the pay or benefits received during the previous evaluation period.*

Mr. Sisco stated what he would prefer to say on 3 is actually the following:

“A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee. *If the report is not filed on or before the required date, the performance of the employee shall be deem to be standard **for the purposes of pay.***”

He went on to say that he didn't think this would be possible because of the way statute is written.

Kareen Masters, Deputy Director, Health & Human Services, stated Health & Human Services does evaluate employees based on when the information becomes available. She suggested perhaps there needs to be clarification, i.e., information that was either on performance that occurred during the rating period or which came to light, or was confirmed will be included in performance evaluations. On subsection 8, she stated we could find ourselves in a loop, the employee comments and then the supervisor or appointing authority feels the need to provide additional comments. It needs to be clear that if the employee disagreed with comments, they already have access to the grievance process and could appeal those comments.

For clarification, Ms. Blotter summarized her understanding of the intent as: an agency should be able record something new that was discovered in this review period. We do not need to go back and change the previous evaluation.

Ms. Blotter asked if we were able to develop language that we could go ahead and comment on those things in this review period, talking about something that

happened in a previous review period, would this be satisfactory? Mr. Sisco said it would.

Mr. Sisco stated that item #8, “employee must be allowed 10 working days to respond to the additional written comments” came from a grievance where a supervisor rated an employee at a certain rating and the employee responded in agreement. Later the evaluation went to the appointing authority and the appointing authority wrote on the evaluation that he/she disagreed, the evaluation should have been below standard and then it went to Personnel Records. It came to the EMC because it was quite a while later until the employee saw it and found out what had happened and the EMC felt strongly that if there was going to be something such as this put on someone’s evaluation, they should have time to respond. He agrees with the 10 working days and getting it on time.

Regulations presented at the workshop are attached for reference.

2. The number of persons who:

(a) Attended the hearing: 42 in Carson City and 3 in Las Vegas

(b) Testified at the hearing: 1

(c) Submitted written comments: 4. A summary of the workshop is available upon request from the Department of Personnel, 209 East Musser Street, Room 101, Carson City, Nevada, 89701-4204.

3. A description of how comments were solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

The regulations do not affect businesses; therefore, their comments were not solicited.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Changes were made to proposed regulations based on written comments received, comments at the workshop, and based on the pre-adoption review by the Legislative Counsel Bureau.

5. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

These regulations do not have a direct economic effect on any business or on the public.

6. The estimated cost to the agency for enforcement of the regulations:

Enforcement of these regulations should not result in any increased cost to the Department of Personnel.

7. **A description of any regulations of other State or governmental agencies which the regulations overlap or duplicate and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, provide the name of the regulating federal agency.**

There is no duplication or overlapping created by these regulations.

8. **If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, provide a summary of such provisions.**

These regulations are not more stringent than a federal regulation.

9. **If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

These regulations do not provide new or increase existing fees; therefore, no monies will be collected or used.