

**ADOPTED REGULATION OF THE  
PERSONNEL COMMISSION**

**LCB File No. R141-07**

Effective January 30, 2008

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

AUTHORITY: §1, NRS 284.250; §2, NRS 284.065, 284.155 and 284.175; §§3 and 4, NRS 284.065 and 284.290; §5, NRS 284.065, 284.345 and 284.355; §6, NRS 284.345; §§7-9, NRS 284.065 and 284.4062.

A REGULATION relating to the State Personnel System; eliminating the option for certain candidates for a class to retake an examination or to integrate their previous scores if a material change in the qualification requirements for the class occurs; revising certain provisions concerning employees who take a military leave of absence; expanding the employee assistance programs available to employees; and providing other matters properly relating thereto.

**Section 1.** NAC 284.370 is hereby amended to read as follows:

284.370 1. The names of eligible persons on current lists may be integrated onto subsequent lists for the same class if there has been no material change in the qualification requirements. If the list is a ranked list, the names of eligible persons will be integrated according to the final scores of those eligible persons.

2. ~~If a material change occurs, eligible persons from other current lists for the same class may be offered the choice of retaking the examination or integrating their previous score, but only if they also meet any new qualification requirements. The decision to retake the examination cannot be reversed once any phase of the new examination has been taken. The results of the most recent examination will prevail.~~

~~—3.]~~ As used in this section, “material change” includes, without limitation, a change in the minimum qualifications for the class or the subject matter, scope or weights of various phases of the examination.

**Sec. 2.** NAC 284.4375 is hereby amended to read as follows:

284.4375 1. For the purposes of this section, “automatic advancement” or “automatically advanced” means the progression of an employee to the authorized grade of the position, but not exceeding the journey level. Automatic advancement occurs without recruitment and may occur without examination. It is based upon the employee’s:

- (a) Meeting minimum qualifications;
- (b) Satisfactory performance; and
- (c) Endorsement by his appointing authority.

2. In determining the status of an employee who has been automatically advanced:

(a) The provisions in subsection 2 of NAC 284.170, governing an employee’s pay on promotion, apply.

(b) If the employee had attained permanent status in the class from which he was automatically advanced, he retains that status in the new class.

(c) If the employee had not attained permanent status in the class from which he was automatically advanced, he must remain in probationary status in the new class until he has worked in that class for a period equal to the remaining portion of the probationary period that is required for the new class.

*3. An employee returning from a military leave of absence pursuant to NRS 284.359 to a position that provides for automatic advancement must successfully complete the probationary period for the position before receiving automatic advancement. Automatic advancement must*

*be granted to the employee as of the date on which permanent status would have been granted if the employee had not taken a military leave of absence.*

**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 8 of NAC 284.630.

7. A person with a permanent disability arising from a work-related injury or occupational disease 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~~ *on a military leave of absence pursuant to NRS 284.359* is entitled to return to the status of appointment held at the time ~~of his separation from the state service for military purposes.~~ *he commenced the military leave of absence.* If the employee did not complete the probationary period, he will only be required to complete the remaining portion thereof. *Upon his successful completion of the probationary period, permanent status must be granted to the employee as of the date on which permanent status would have been granted if the employee had not taken a military leave of absence.*

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 284.448 is hereby amended to read as follows:

284.448 The following types of leave or temporary status do not count toward the completion of any probationary period:

1. Authorized military leave for active service ~~[H]~~, *as set forth in subsection 8 of NAC 284.444.*
2. Authorized military leave for training beyond the 15 paid working days in any 1 calendar year ~~[H]~~, *as set forth in subsection 8 of NAC 284.444.*
3. Except as otherwise provided in NAC 284.580, any leave without pay and catastrophic leave, combined, in excess of 240 hours or, in the case of an exempt classified employee, 30 working days, in a year if the regular work schedule of the employee is 80 hours or less biweekly. If the regular work schedule of an employee is more than 80 hours biweekly, the employee must be allotted additional leave without pay and catastrophic leave in proportion to the number of hours his regular work schedule exceeds 80 hours biweekly. As used in this subsection, “year” means a period equal to 12 months of full-time equivalent service measured backward from the employee’s pay progression date.
4. Time which is served in a temporary position pursuant to NAC 284.414.
5. Any hours worked which exceed 40 in a week.

**Sec. 5.** NAC 284.554 is hereby amended to read as follows:

284.554 An employee is entitled to use sick leave if:

1. He is unable to perform the duties of his position because he is sick, injured or physically incapacitated due to a medical condition;
2. The employee is physically incapacitated due to pregnancy or childbirth and is therefore unable to perform the duties of the employee’s position;
3. He is quarantined;
4. He is receiving required medical, psychological, optometric or dental service or examination;

5. He is receiving counseling through ~~[the Employee Assistance Program]~~ *an employee assistance program* for a condition which would otherwise qualify pursuant to the provisions of this section; or

6. There is an illness, death or other authorized medical need in his immediate family and he complies with the requirements of NAC 284.558 or 284.562.

**Sec. 6.** NAC 284.589 is hereby amended to read as follows:

284.589 1. An appointing authority may grant administrative leave with pay to an employee:

(a) To relieve the employee of his duties during the active investigation of a suspected criminal violation or the investigation of alleged wrongdoing;

(b) For up to 30 days when the appointing authority initiates the leave to obtain the results of an examination concerning the ability of the employee to perform the essential functions of his position;

(c) For up to 30 days to remove the employee from the workplace when he has committed or threatened to commit an act of violence;

(d) For up to 2 hours to donate blood; or

(e) To relieve the employee of his duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065.

2. The appointing authority, upon approval of the Risk Management Division of the Department of Administration, may extend administrative leave with pay granted to an employee for a purpose set forth in paragraph (b) or (c) of subsection 1.

3. Except as otherwise provided in subsection 4, an appointing authority or the Department of Personnel may grant administrative leave with pay to an employee for any of the following purposes:

(a) His participation in, or attendance at, activities which are directly or indirectly related to the employee's job or his employment with the State but which do not require him to participate or attend in his official capacity as a state employee.

(b) Closure of the employee's office or work site caused by a natural disaster or other similar adverse condition when the employee is scheduled and expected to be at work. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

(c) His appearance as an aggrieved employee or a witness at a hearing of the Committee.

(d) His appearance as an appellant or a witness at a hearing conducted pursuant to NRS 284.390 by a hearing officer of the Department of Personnel.

(e) His appearance to provide testimony at a meeting of the Commission.

4. An appointing authority or the Department of Personnel shall grant administrative leave with pay to an employee for a purpose set forth in paragraph (c), (d) or (e) of subsection 3 if:

(a) The employee requests the administrative leave for a period of time that is reasonably needed for him to testify at the hearing or meeting;

(b) The employee requests the administrative leave at least 2 weeks before the leave is needed, unless such notice is impractical; and

(c) The absence of the employee will not cause an undue hardship to the operations of his appointing authority or adversely impact the provision of services to clients or to the public.

5. An appointing authority shall grant administrative leave with pay to an employee for any of the following purposes:

(a) The initial appointment and one follow-up appointment if the employee receives counseling through ~~the Employee Assistance Program.~~ *an employee assistance program.*

(b) His attendance at a health fair which has been authorized by the Board of the Public Employees' Benefits Program.

(c) His participation in an official capacity as a member of a committee or board created by statute on which he serves as a representative of state employees. Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board.

(d) Up to 8 hours for preparation for hearings regarding his suspension, demotion or dismissal as provided in subsection 1 of NAC 284.656.

(e) Up to 8 hours for preparation for hearings regarding his involuntary transfer.

**Sec. 7.** NAC 284.653 is hereby amended to read as follows:

284.653 1. An employee is subject to any disciplinary action set forth in subsection 2, as determined by the appointing authority, if the employee is convicted of any of the following offenses:

(a) If the offense occurred while the employee was driving a state vehicle, or a privately owned vehicle on state business:

(1) Driving under the influence in violation of NRS 484.379; or

(2) Any offense resulting from an incident in which the employee was:

(I) Originally charged with driving under the influence; or



(II) Charged with any other offense for which driving under the influence is an element of the offense.

(b) The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance on the premises of the workplace or on state business.

2. An appointing authority may impose the following disciplinary actions if an employee is convicted of an offense set forth in subsection 1:

(a) For the first offense:

(1) Dismissal;

(2) Demotion, if permitted by the organizational structure of the agency for which he is employed;

(3) Suspension for 30 calendar days; or

(4) Suspension for 30 calendar days and demotion.

(b) For the second offense within 5 years, dismissal.

3. An employee who is suspended or demoted pursuant to subsection 2 must:

(a) Agree to be evaluated through ~~the Employee Assistance Program;~~ *an employee assistance program;* and

(b) Complete any program of treatment recommended by the evaluation.

4. If an employee fails to complete the program of treatment, the appointing authority must dismiss the employee.

5. Pursuant to NRS 193.105, an employee who is convicted of violating any state or federal law prohibiting the sale of a controlled substance must be dismissed.

6. An employee must report a conviction of any offense described in this section to his appointing authority within 5 working days after it occurs. If he fails to make that report, he must be dismissed.

**Sec. 8.** NAC 284.718 is hereby amended to read as follows:

284.718 1. The following types of information, which are maintained by the Department of Personnel or the personnel office of an agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished to the Department of Personnel on the condition that the source remain confidential;

(b) Any document which is used by the Department of Personnel or an agency in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any document which is used by the Department of Personnel or an agency in the process of interviewing an applicant, including, without limitation, a document containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by ~~the Employee Assistance Program;~~ *an employee assistance program offered by the State of Nevada;*

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) 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;

(i) Any information contained on a person's application or relating to his status as an eligible person; and

(j) Information in the file or record of employment of a current or former employee which relates to his:

- (1) Performance;
- (2) Conduct, including any disciplinary actions taken against him;
- (3) Race, ethnic identity or affiliation, sex, disability or date of birth;
- (4) Home telephone number; or
- (5) Social security number.

2. If the employee has requested that his personal mailing address be listed as confidential, his file must be so designated and list his business address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

- (a) The employee dies; or
- (b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation conducted by the Department of Personnel relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential.

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

284.726 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 (g) to (j), 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 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 who are involved in processing records for the transaction of business within and between state agencies.

(i) Persons who are involved in processing records for the transaction of business that is 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. Except as otherwise provided 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~~ *an employee assistance program offered by the State of Nevada* 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 created pursuant to NRS 284.3627, 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 PROPOSED REGULATION**  
**LCB File No. R141-07**

The Personnel Commission adopted regulations assigned LCB File No. R141-07 which pertain to chapter 284 of the Nevada Administrative Code.

**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.**

Copies of the proposed regulation, notice of workshop, and notices of intent to act upon a regulation were sent by U.S. Mail and email to persons who were known to have an interest in the subject of proposed personnel regulation changes as well as any person who had specifically requested such notice. These documents were also made available on the website of the Department of Personnel (DOP), <http://dop.nv.gov/>, mailed to all county libraries in Nevada and posted at the following locations:

Department of Personnel  
Blasdel Building  
209 E. Musser St  
Carson City, NV 89701

Grant Sawyer State Office Bldg.  
555 E. Washington Blvd  
Suite 4401  
Las Vegas, NV 89101

Legislative Building  
401 S. Carson St  
Carson City, NV 89710  
Capitol Building  
Main Floor

Nevada State Library and Archives  
100 Stewart St  
Carson City, NV 89701

As a result of comments received at the workshop from interested parties, and the Legislative Counsel Bureau Legal Division, previously proposed changes to NAC 284.126, 284.130, 284.132, 284.470, 284.478, 284.678, and 284.690 that were discussed at the workshop were withdrawn.

Attached are the minutes from the workshop.

A public hearing by the Nevada Personnel Commission was held on December 14, 2007. There were no comments received by the public.

**2. The number of persons who:**

- (a) **Attended each hearing:** December 14, 2007, Personnel Commission meeting (hearing), 65 attendees
- (b) **Testified at each hearing:** December 14, 2007, Personnel Commission meeting, 1 testified
- (c) **Submitted written comments:** None

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

Comments were not solicited, as the regulation does not affect businesses.

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.**

No comments opposed to any of the sections in this regulation were received.

Section 1 repealed subsection 2 of NAC 284.370, which allowed an applicant the option of integrating a previous exam score for a job class after a new examination, had been implemented.

Sections 2, 3, and 4 were all designed to bring the State of Nevada into compliance with the federal Uniformed Services Employment Rights Act (USERRA) relating to rights of employees who have had military leave.

The remaining sections, 5 through 9, were all “clean up” language to clarify that an employee who is using the services of an employee assistance program can use an employee assistance program other than the Employee Assistance Program offered by the State of Nevada.

5. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**
  - (a) Both adverse and beneficial effects; and
  - (b) Both immediate and long-term effects.

This regulation does not have a direct economic effect on either a regulated business or the public.

6. **The estimated cost to the agency for enforcement of the adopted regulation:**

No increased cost is anticipated to the Department of Personnel for the enforcement of this regulation.

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

Changes to NAC 284.4375, 284.444, and 284.448 were proposed in order to comply with the revised federal Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA prohibits an employer from denying any benefit of employment on

the basis of membership in a branch of the US armed forces. It also protects the right of veterans, reservists, and National Guard members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.

The change to NAC 284.4375 clarifies that an employee returning to work following a military leave of absence and is in a position that allows for automatic progression following the completion of any remaining period of probation, is automatically progressed retroactively to the date it would have occurred had it not been for the time spent on a military leave of absence.

The change to NAC 284.444 clarifies that when an employee completes the remaining portion of his probationary period upon his return from military leave, his permanent status is awarded retroactively to the date he would have received it occurred had it not been for the time spent on a military leave of absence.

The change to NAC 284.448 clarifies that while time on military leave is not counted as time served towards completion of a probationary period, it must be granted retroactively once the time served is completed in accordance with subsection 8 of NAC 284.444.

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

This regulation does not include any provisions that are more stringent than any 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.**

No fees are associated with this regulation.

**10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

This regulation is specific to State government agencies and has no impact on small business.