

LCB File No. R066-09

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

(This regulation was previously adopted as T031-09)

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

Sec. 17. NAC 284.882 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It expands the options available to agencies for breath alcohol testing by including the designated subcontractor under the statewide drug testing contract. This procedure is consistent with other breath alcohol testing that is done for CDL positions in State government. Further if the agency suspects that the employee may be under the influence of more than one substance (i.e., alcohol and drugs), they can run both tests at one location rather than making two separate trips for comprehensive testing. Finally, this regulation change will better uphold the intent of NRS 284.4067 which states in part, testing to detect the general presence of alcohol or of a controlled substance, must be administered in such a manner as to protect the person tested from any unnecessary embarrassment. This change does not remove the ability to use NHP for breath alcohol testing or the ability to conduct a blood alcohol test where testing via breath is not feasible.

NAC 284.882 Administration of screening tests. (NRS 284.065, 284.155, 284.407) A screening test to detect the general presence of:

1. A controlled substance must comply with the standards and procedures established by the *United States* Department of Health and Human Services which are hereby adopted by reference. A copy of the standards and procedures is available, without charge, from the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace ~~[, 5600 Fishers Lane, Parklawn Building, 13A-54, Rockville, Maryland 20857].~~

2. Alcohol by testing a person's breath must be conducted ~~[by an operator certified in accordance with NAC 484.640]~~ using a breath-testing device certified in accordance with *the conforming products list of evidential breath measurement devices as outlined in the Federal Register for the National Highway Traffic Safety Administration.* ~~[NRS 484.3882 and NAC 484.660.]~~

Sec. 18. NAC 284.888 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It is intended to bring this regulation in line with NRS 284.4062 as well as the State’s position on having a drug and alcohol free workplace. NRS 284.4062 states that an employee who consumes or is under the influence of alcohol while on duty is subject to disciplinary action. This language will better uphold the intent of the law.

NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (NRS 284.065, 284.155, 284.407)

1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his duties safely and efficiently include, but are not limited to:

- (a) The operation of a motor vehicle by the employee in any manner that causes bodily harm;
- (b) Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;
- (c) The odor of *alcohol or other controlled substance* on the breath of the employee ~~{and a decline in job performance that is not otherwise normally explainable};~~
- (d) Observation of the employee consuming alcohol ~~{and a resulting decline in job performance that is not otherwise normally explainable};~~ or
- (e) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source.

2. Pursuant to subsection 2 of NRS 284.4065, “substantial damage to property” includes, but is not limited to:

- (a) The operation of a motor vehicle in such a manner as to cause more than \$2,500 worth of property damage; or
- (b) The operation of a motor vehicle in such a manner as to cause two property accidents within a 1-year period.

3. Before requiring an employee to submit to a screening test, a supervisor must complete a form provided by the Department of Personnel.

Sec. 19. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

Explanation of Proposed Change: This new section was previously approved as a temporary regulation and is now recommended for permanent adoption. Proposed by the Department of Transportation in concert with the Department of Personnel, it provides appointing authorities with an objective way to determine if it is appropriate for an employee to return to work after testing positive while on duty for drugs and/or alcohol. Currently, unless the employee is covered under a federally mandated program for drug testing or if the offense warranted termination, an employee who tests positive for drugs and/or alcohol is returned to duty with no requirement to provide documentation that they are able to safely perform their job. This regulation would require the employee to provide a release to return to work from their Licensed Substance Abuse Treatment Provider or other approved health care provider stating that the employee is able to return to duty and to pass a return to duty drug and/or alcohol test. This will

help ensure that employees do not return to work under the influence of drugs and/or alcohol. An employee who is using drugs and/or alcohol or has them in their system poses a safety risk to themselves, other employees and the public and could also make mistakes that can have far reaching effects. Employees working for the State of Nevada are providing a service to the citizens of Nevada; as such, we should ensure that an employee is substance free and able to perform the essential functions of their job before returning them to duty.

NEW. Return to work of employees who have tested positive for alcohol and/or drugs while on duty.

1. An employee who tests positive for drugs and/or alcohol while on duty, and whose offense does not result in termination pursuant to NAC 284.646 or NAC 284.650, may be required to:

(a) Provide his appointing authority with documentation from his Licensed Substance Abuse Treatment Provider or other approved health care provider with training or experience in substance abuse counseling, which verifies that the employee is able to return to duty and perform the essential functions of his job; and/or

(b) Submit to and pass a return to duty drug and/or alcohol test as determined by the appointing authority.

2. The employee is responsible for the cost of any return to duty testing.

3. An employee who fails to pass a return to duty test is subject to disciplinary action up to and including termination at the discretion of the appointing authority.