

**ADOPTED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R010-11

Effective October 26, 2011

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

AUTHORITY: §1, NRS 284.065, 284.155, 284.4065 and 284.407.

A REGULATION relating to state personnel; revising provisions governing screening tests for the use of alcohol and drugs by state employees in certain circumstances; and providing other matters properly relating thereto.

Section 1. NAC 284.888 is hereby amended to read as follows:

284.888 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;
- ~~[(e)]~~ (b) The odor of alcohol or a controlled substance on the breath of the employee;
- ~~[(d)]~~ (c) Observation of the employee consuming alcohol;
- ~~[(e)]~~ (d) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source; or
- ~~[(f)]~~ (e) The occurrence of any accident while the employee is on the premises of the workplace for which the employee receives medical treatment.

2. ~~[Pursuant]~~ *Except as otherwise provided in subsection 3, before requiring an employee to submit to a screening test, the supervisor of the employee must complete a form provided by the Department of Personnel.*

3. *The provisions of subsection 2 do not apply if an appointing authority requests an employee to submit to a screening test pursuant to paragraph (b) of subsection 2 of NRS 284.4065 .* ~~[.]~~ *As used in 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 \$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.]~~

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB File #R010-11

The following statement is submitted for amendments to Nevada Administrative Code (NAC) 284.

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 regulations, notices of workshop, and notices of intent to act upon a regulation were sent by 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	Grant Sawyer State Office Bldg.
Blasdel Building	555 E. Washington Blvd
209 E. Musser St	Suite 4401
Carson City, NV 89701	Las Vegas, NV 89101
Nevada State Library and Archives	Capitol Building
100 Stewart St	Main Floor
Carson City, NV 89701	Carson City, NV 89701
Legislative Building	Gaming Control Board
401 S. Carson St	1919 College Parkway
Carson City, NV 89701	Carson City, NV 89701

Attached are excerpts from the minutes from the workshop that apply to these regulations.

A Regulation Workshop was conducted by the Department of Personnel on June 2, 2011 and a public hearing was held by the Nevada Personnel Commission on September 28, 2011.

2. The number of persons who:

- (a) **Attended each hearing:** June 2, 2011 – 42; September 28, 2011 – 57
- (b) **Testified at each hearing:** June 2, 2011 – 6; September 28, 2011 – 1
- (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 regulations do 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.

Concern was raised by Ron Cuzze, Nevada State Law Enforcement Officers' Association, if an employee would incriminate himself through this proposed process. It was explained that the amended process was just referencing a provision in NRS 284.4065. Clarification was also given in regards to questions about test screening standards, test methods, protocol and procedures. Other comments were in support of the amendment; there was no opposition to the proposed language changes.

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.

These regulations do 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:

There is no additional cost to the agency for enforcement of these regulations.

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.

There are no other state or government agency regulations that the proposed amendments duplicate.

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

These regulations do 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 these regulations.

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?

These regulations are specific to State government agencies and has no impact on small businesses.

**SUMMARY OF THE WORKSHOP TO SOLICIT COMMENTS ON THE PROPOSED
REGULATIONS OF THE STATE DEPARTMENT OF PERSONNEL**

June 2, 2011

CARSON CITY, NEVADA
And via Video Conferencing in
LAS VEGAS, NEVADA

Attendees in Carson City:

Teresa Thienhaus, Director, Department of Personnel
Shelley Blotter, Division Administrator, Department of Personnel
Mark Evans, Supervisory Personnel Analyst, Department of Personnel
Peter Long, Division Administrator, Department of Personnel
Cameron Vandenberg, Attorney General's Office
Adam Drost, Central Payroll Manager, Department of Personnel
Kimberley King, Personnel Officer III, Department of Transportation
Kareen Masters, DHHS
Denise Woo-Seymour, Personnel Analyst II, Department of Personnel
Carrie Hughes, Personnel Analyst, Department of Personnel
Norma Mallett, Personnel Officer III, Department of Health & Human Services-MHDS
Renee Travis, Department of Administration
Valerie Kneefel, Executive Assistant, Department of Personnel
Jamie Pruneau, Rural Services
Sue Dunt, NSHE
Tracy Walters, Health Division
Karen Caterino, Risk Management
Amy Davey, Department of Personnel
Lauren Risinger, DCFS
Patricia Graves, DMV
Deborah White, DMV MVIT
Ron Dreher
Vishnu Subramanian, AFSCME
Ron Bratsch, AFSCME
Kevin Ranft, AFSCME
Catherine Thayer, Attorney General's Office

Attendees in Las Vegas:

Mark Anastas, Division Administrator, Department of Personnel
Renee Feazell, Department of Personnel
Sandra Owen, Department of Personnel
Ron Cuzze, NSLEOA
Jill Pressman, Department of Personnel
Andrea Lamoreaux, Department of Personnel
Molly Koch, NDOC
Brian Boughter, NDOC
Judy Atwood, CRC
Stacey Guerillo, UNLV

Ann McDermott, Attorney General's Office
Jennifer DeRose, Department of Business and Industry
Willette Gerald, DMV-HR
Jeanine Lake, AFSCME Local 4041
Larry Hamilton, UNLV
Matt Garland, NSC

Shelley Blotter: Opened the meeting at 9:00 a.m. and welcomed everyone. She asked everyone in attendance to sign the sign in sheet and stated the purpose of the workshop was to solicit comments from affected parties for proposed permanent regulations. These regulations will be going to Legislative Counsel Bureau for pre adoption and then to the Personnel Commission meeting in August.

Mark Evans: I will be addressing two proposed amendments that pertain to the State's rules on testing for the use of alcohol and drugs. These regulation changes were recently proposed as temporary amendments and are now being presented for permanent adoption.

In Item Q Section 17, the Department of Personnel is proposing a permanent amendment to NAC 284.888. Testing on the basis of circumstances related to a motor vehicle accident as outlined in subsection 2 of NRS 284.4065, does not require following the procedures outlined in subsection 1 or NRS 284.4065. This amendment will bring NAC 284.888 into alignment with NRS 284.4065.

Kimberley King: Indicated that NDOT supports this change.

Karen Caterino: Where Risk can help facilitate in this is that the appointing authority can request and employee to submit to a screening in the event they are in a motor vehicle accident. That individual files for a Workers Compensation claim, the appointing authority can ask for a test. In the case where the motor vehicle accident occurs and they are not seeking medical treatment, asked how agencies would like the testing be completed? Asked if the State could be viewed as the appointing authority?

Sue Dunt: Supported this change. Would like clarification on the protocol set up at the clinics or through workers comp for this type of situation and how to get this testing done in a timely manner.

Ron Cuzze: Paragraph 2, concerned about an employee incriminating himself in any way.

Shelley Blotter: NRS. 284.4065 it already provides for us to do this process and so this is referencing what is already in statute

Kevin Ranft: Is there a standard of screening test that is already established and is it posted?

Mark Evans: All the drug standards are set by the Department of Health and Human Services and they are national standards and alcohol is set by the State. We were allowing if there were other standards for drugs we could include them.

Shelley Blotter: This was to provide for additional drugs that were not included.

Ron Dreher: What kind of testing would be given? Blood, urine, breathe?

Mark Evans: Urine for drugs. .Breath for alcohol. In the case of an accident or if employee was unconscious, it could be blood.

Shelley Blotter: Closed the workshop.