

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R134-12

Effective October 4, 2013

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

AUTHORITY: §1, NRS 284.065, 284.155 and 284.175.

A REGULATION relating to state personnel; revising provisions relating to the adjustment of steps within the same grade; and providing other matters properly relating thereto.

Section 1. NAC 284.204 is hereby amended to read as follows:

284.204 1. The Division of Human Resource Management may approve an adjustment of steps within the same grade to:

(a) Allow an appointing authority the flexibility to adjust the rate of pay for a position that will be filled by a person from a pool of eligible persons who are applying for the position on an open competitive basis in order to:

(1) Meet a difficult recruiting problem in which an effort to recruit a person for a position or class has failed to produce at least five eligible persons who are available to work, or the recruitment for the position or class has been deemed historically difficult. Such an adjustment of steps may be approved by the Division of Human Resource Management for a class for a period of 1 year.

(2) Employ a person whose education or experience is superior to those of another eligible person and who exceeds the minimum qualifications of the class. Any experience or education which is considered by the appointing authority pursuant to this subparagraph must be given a

greater weight for those areas which are directly related to the position than general education and experience.

(b) Maintain an equitable relationship in the status of steps among the employees of the appointing authority if a disparity exists. An adjustment will not be granted pursuant to this section if the disparity in steps is:

(1) Among employees of different agencies; or

(2) A result of:

(I) The length of service of employees;

(II) An adjustment in pay which was attained in a former class; or

(III) An adjustment in pay for an employee who resides in a particular geographical

area.

(c) Maintain an appropriate differential, ~~as determined by the appointing authority,~~ *not to exceed two steps*, between the base rate of pay of a supervisor and the base rate of pay of an employee who is in the direct line of authority of the supervisor. An adjustment may be granted pursuant to this paragraph if, before the adjustment, the base rate of pay of the employee is the same or greater than the base rate of pay of the supervisor.

2. Before granting an adjustment of steps pursuant to this section, the appointing authority must submit a request on a form prescribed by the Division of Human Resource Management to the Division of Human Resource Management which:

(a) Specifies the qualifying conditions and justification for the request; and

(b) Certifies that the appointing authority has, where applicable:

(1) Considered the requirements for the pay required to meet the need described in subparagraph (1) of paragraph (a) of subsection 1;

(2) Considered the qualifications of any other eligible person who is available for work for the purposes of subparagraph (2) of paragraph (a) of subsection 1;

(3) Ensured that the adjustment is feasible on the basis of its fiscal effects;

(4) Ensured that the adjustment will not cause inequity between current employees which would require adjustments in the steps of those employees which are not feasible on the basis of the fiscal effects of such adjustments; and

(5) Prepared and maintained an accurate record of the consideration of the factors listed in this section.

3. If an adjustment of steps pursuant to this section is approved by the Division of Human Resource Management, the effective date of such an adjustment is the date on which a request that complies with subsection 2 is received by the Division of Human Resource Management or the personnel office of the agency at which the employee who is receiving the adjustment is employed. If a request for an adjustment of steps is delayed because an administrative or clerical error prevented the delivery of the request, the effective date must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment must not exceed 6 months from the date on which the Division of Human Resource Management receives the request.

4. An adjustment of steps which is made pursuant to subparagraph (1) of paragraph (a) of subsection 1 may be revoked when:

(a) The recruiting problem which caused the adjustment was due to the geographical location of the position; and

(b) The employee transfers to an area where a recruiting problem does not exist.

↳ The employee must be placed at the step he or she would have received if he or she had not received the adjustment.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File #R134-12

1. A clear and concise explanation of the need for the adopted regulation.

This regulation is necessary to ensure that all state agencies grant equity adjustments in the same manner. Prior to this amendment an equity adjustment could be granted to a supervisor in order to maintain an appropriate differential in pay between the supervisor and his or her highest paid subordinate up to the highest step in the supervisor's pay grade. This amendment limits such equity adjustment to no more than 2 steps above the highest level subordinates pay. In addition to ensuring consistency, the change promotes fiscal responsibility by state agencies.

2. Description of how public comment was solicited, a summary of public response, and an explanation of 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 Division of Human Resource Management website, emailed to all county libraries in Nevada, and posted at the following locations:

Blasdel Building	Grant Sawyer State Office Bldg.
209 E. Musser Street	555 E. Washington Blvd.
Carson City, NV 89701	Las Vegas, NV 89101
Nevada State Library and Archives	Capitol Building
100 Stewart Street	Main Floor
Carson City, NV 89701	Carson City, NV 89701
Legislative Building	Gaming Control Board
401 S. Carson Street	1919 College Parkway
Carson City, NV 89701	Carson City, NV 89701

Attached are pertinent minutes from the workshop and the Personnel Commission meeting.

A Regulation Workshop was conducted by the Division of Human Resource Management on June 18, 2012 and a public hearing was held by the Nevada Personnel Commission on December 7, 2012.

3. The number of persons who:

- (a) Attended each hearing:** December 7, 2012 – 45
- (b) Testified at each hearing:** December 7, 2012 – 2
- (c) Submitted written comments:** 0

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:

Ron Cuzze, President
State of Nevada Law Enforcement Officers Association
(702) 736-4460
rcuzze@earthlink.net

Peter Long, Deputy Administrator
State of Nevada Human Resource Management Division
209 E. Musser St., Room 101
Carson City, NV 89701
(775) 684-0103
plong@admin.nv.gov

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

Comments were not solicited from businesses, as the regulation does not affect businesses. Comments were solicited from effected parties including employees and employee associations. No written comments were received. Comments from the workshop can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or calling (775) 684-0105.

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

The regulation changes in this file are a result of a comprehensive examination conducted by the Division in response to the Governor's request for State agencies to review regulations that are subject to its enforcement.

Initially, meetings were held with State agencies to solicit input regarding which regulations were problematic and/or hampered efficient business. Subsequently, a regulation workshop was held to gain additional input from all interested parties, including employee associations. Based upon the input received, changes were made to the proposed regulations.

Section 1 limits the adjustment of steps made to a supervisor's pay for equity purposes to no more than 2 steps above his or her subordinate.

One individual requested clarification of the change, and agreed with the change. The Personnel Commission unanimously adopted the recommended regulation change in Section 1.

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

(a) Estimated economic effect on the businesses which they are to regulate.

(b) Estimated economic effect on the public which they are to regulate.

These regulations do not have a direct economic effect on either a regulated business or the public. It only impacts Executive Branch departments and the Nevada System of Higher Education classified employees.

8. The estimated cost to the agency for enforcement of the proposed regulation:

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

9. 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.

10. 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.

11. 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.

Pertinent Testimony from Regulation Workshop Held June 18, 2012

Kimberley King: Proposed that section 12, 284.204(1)c be removed. Merit increases are earned by employees for their performance on the job. The employee is of progressively greater value to the State for their experiences on the job. Classification is what determines what the supervisor should get paid. So you're already compensating the supervisor based on the classification of their position at a greater grade. Why should the supervisor actually get paid just for supervising an employee who has been of progressively greater value to the State for all those years?

Peter Long: Didn't have problem with that recommendation. This was proposed six or seven years ago, possibly by DPS. This proposed amendment is an attempt limit the number steps to a

two step differential. Some agencies have increased someone from a step 1 to a step 10 using this particular regulation.

John Scarborough: We're fine with the amendment of adding the not to exceed two steps, but we would be against deleting the provision altogether. We want the flexibility to do this if we needed to.

Priscilla Maloney: AFSCME is in agreement with Mr. Scarborough's comments. It is recognized that the State is trying to control costs wherever they can, but it would be preferable to maintain this provision with a cap of 2-steps. It does give an appointing authority some flexibility to do the things they may feel they need to do in either a recruitment or an adjustment.

Amy Davey: Questioned whether this particular section is used to make an adjustment where something is out of alignment and a supervisor may not be making more than the employee they supervise?

Peter Long: That is correct. There are times where, as Ms. King noted, that a new supervisor makes less than a subordinate who has been with the State longer. This allows them to adjust the supervisor's steps to be compensated more than his/her subordinate.

Amy Davey: In that case, I would like to see this language stay to allow for some flexibility to make those changes. In one of our divisions this situation has already occurred because of the occupational study that didn't go through two legislative sessions ago; a supervisor is making less than their employee.

Kareen Masters: Supports the proposal to include the not exceed 2-steps language, retaining flexibility in the regulation.

Kimberley King: Requested clarification regarding which position is being referred to in the phrase "to the base rate of pay of his or her former position" as used in Section 2. What if they held a different position and then they changed and they are re-stating to, not the last position, but a previous position? It wasn't clear.

Peter Long: Stated the proposed language in Section 2 is the original language of NAC 284.170 and offered to try to clarify it. The intent of this revision was to keep them equal to what they had been at when they left. Suggestions to clarify the wording were requested.

Kimberley King: Suggested to change the wording to most recently held position with the State just to make it clear.

Peter Long: Offered the wording to say "which most closely corresponds to the base rate of pay of his most recently held position."

Kimberley King: Stated that it was what she was thinking and would be clearer than former position because that could be any former position.

Pertinent Testimony from Personnel Commission Meeting Held Dec. 7, 2012

Peter Long, Deputy Administrator, DHRM: Stated that with reference to LCB File No. R134-12 the change was to limit the amount of pay that could be increased for a supervisor with a subordinate making a higher amount of pay to two steps or 10%. He noted that previously that increase would have been up to the appointing authority. He confirmed that through discussions at the workshops the associations were on board with the changes.

A. LCB File No. R134-12

Sec. 1.NAC 284.204 – Adjustment of steps within same grade

Commissioner Brust: Asked what was the current practice or the rationale to increases with the regard to the section. **Peter Long:** Responded that there currently was no stipulation to take the supervisor's pay away. He said it would be upgraded based on supervising the higher-paid subordinate. He said the issue of taking away the pay was brought up when the regulation was put into effect but there was no agreement to move forward on that. **Commissioner Brust:** Stated that he had noticed in a previous section it had stated that an individual who would receive a special salary adjustment for supervising employees would be able to hold that as a base pay continuing for 6 months. He asked if that was a problem if they were saying this pay must be held for 6 months. **Peter Long:** Stated that it would be held for 6 months or revert to original pay. **Commissioner Brust:** Referred to section 4 of R134-12 and noted recruitment difficulties and then salary adjustment ended with nothing covering the subordinate who would have justified the supervisor's step adjustment. **Peter Long:** Responded that he did not disagree. **Commissioner Brust:** Asked if this was a major issue and did it happen often. **Peter Long:** Responded that their department reviewed all of the equity adjustments and added that they had put into place a new process where they were approved not only by the staff of DHRM but also by the Division Administrator, the Deputy Director of Administration in the Budget Division and added that equity adjustments would also go the Governor's Office. He confirmed that there was a significant level of review. He noted that in the past there had been some situations where it had been abused but this would not reoccur with the new system.

Commissioner Mauger: Referred to 134-12, section 1b and made some enquiries about 133, section 3 and asked if they had an individual who was appointed to go into a supervisor's position and then he noted that it said if they were in there in excess of 6 months then there would be a retroactive adjustment. He asked if the 6 months coincided with 133 in any way. **Peter Long:** Responded no, that both of them were 6 months. He added that the one in section 133 was not in effect because they did not have the plus 5 for supervisory duties. He clarified that that would be if the person had been in that position for 6 months and they had been receiving that amount plus five, which basically would become their base pay for promotional purposes. He stated that R134-12 said that if a mistake was made due to a clerical error then they could retroactivate that adjustment back no more than 6 months so he confirmed the two did not tie together.

Chairperson Fox: Asked if there were further questions or public comment.

Ron Cuzze, President, Nevada State Law Enforcement Officers Association: Referred to 284.204, sub paragraph C regarding a supervisor having subordinates with a higher salary. He said it did not mention if they had multiple subordinates and he gave an example. He asked which subordinate position would be looked at if they were at different levels. **Peter Long**: Responded that they would look at the highest-paid subordinate and the supervisor's pay would be adjusted based on the recommendation to be two steps higher than their highest-paid subordinate and he gave an example.

MOTION: Moved to approve LCB File No. R134-12 specifically NAC 284.204 advising the adjustment of steps within the same grade

BY: Commissioner Read

SECOND: Commissioner Mauger

VOTE: The vote was unanimous in favor of the motion