

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R138-12

Effective October 4, 2013

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

AUTHORITY: §§1 and 2, NRS 284.065, 284.155 and 284.407.

A REGULATION relating to state personnel; revising provisions relating to the use of alcohol or controlled substances by state employees; and providing other matters properly relating thereto.

Section 1. NAC 284.884 is hereby amended to read as follows:

284.884 1. An employee must not have a concentration of alcohol in his or her blood or breath greater than ~~+.01~~.02 gram by weight of alcohol per 100 milliliters of his or her blood or per 210 liters of his or her breath while on duty. Disciplinary action may be taken by the appointing authority in accordance with the provisions of NAC 284.638 to 284.6563, inclusive, if a screening test indicates that the concentration of alcohol in the blood or breath of the employee is greater than ~~+.01~~.02 gram by weight of alcohol per 100 milliliters of his or her blood or per 210 liters of his or her breath while on duty.

2. A positive result on a screening test of a person's breath must be confirmed by a second screening test. The second screening test must be conducted immediately after receipt of the positive result of the first screening test.

Sec. 2. NAC 284.893 is hereby amended to read as follows:

284.893 1. The appointing authority of an employee who tests positive for the presence of alcohol or a controlled substance while on duty and who, as a result, is subject to disciplinary

action pursuant to NAC 284.646 or 284.650 but is not terminated shall , *before allowing the employee to return to work*, require the employee to:

(a) Provide to the appointing authority documentation from a counselor who is licensed or certified pursuant to chapter 641C of NRS or another health care provider who has 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 or her job.

(b) Submit to a screening test.

2. The employee is responsible for the cost of any:

(a) Counseling services the employee receives to verify that the employee is able to return to duty and perform the essential functions of his or her job and any documentation of those services; and

(b) Screening test,

↪ required pursuant to subsection 1.

3. An employee who fails or refuses to submit to a screening test required pursuant to subsection 1 is subject to disciplinary action, including, without limitation, termination, at the discretion of the employee's appointing authority.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File #R138-12

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

This amendment is necessary to reduce confusion by the state's drug and alcohol testing vendor subcontractors that has lead to violations of the confirmatory provision in subsection 2 of NAC 284.884. **This amendment** brings the state standard into alignment with the federal standard established by the United States Department of Transportation, Federal Motor Carrier Safety Administration.

Additionally, the amendment to NAC 284.893 is needed to clarify that the requirements in the regulation must be met prior to an employee's return to work following a positive test result.

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, e-mailed 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 – 1
- (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:

Carrie Hughes, Personnel Analyst
State of Nevada Human Resource Management Division
209 E. Musser St., Room 101
Carson City, NV 89701
(775) 684-0111
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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 will bring the State's standard into alignment with the federal standard established by the United States Department of Transportation, Federal Motor Carrier Safety Administration which will prevent confusion by the State's contracted vendors.

Section 2 clarifies the requirement outlined in the regulation which must be met prior to an employee's return to work.

The Personnel Commission unanimously adopted all sections.

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. The regulations only impact classified employees in Executive Branch departments and the Nevada System of Higher Education.

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 these regulations.

Pertinent Testimony from Regulation Workshop Held June 18, 2012

Kimberley King: Although we don't support a higher use of alcohol, it will be helpful to have this be consistent with the federal.

Shelley Blotter: No further comments were made.

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

Carrie Hughes, Personnel Analyst, Department of Administration, DHRM: Stated that in Item X. F. LCB File No. R138-12, Section 1 the Office of Risk Management and the DHRM were proposing a permanent amendment to NAC 284.884 that would raise the maximum allowable concentration of alcohol in the blood or breath of an employee from .01 to .02. She stated that this change would bring the state standard into alignment with the federal standard established by the United States Department of Transportation, Federal Motor Carrier Safety Administration.

She added using this standard should prevent confusion by vendors that could lead to violations of the confirmatory provision in subsection 2 of this regulation. She referred to Section 2 and stated that the DHRM was proposing an amendment to NAC 284.893 to clarify that the requirements in the regulation must be met prior to an employee's return to work following a positive test result.

F. LCB File No. R138-12

Sec. 1 NAC 284.884 – Maximum allowable concentrations of alcohol in blood or breath of employee; confirmation of positive result on screening test of breath

Sec. 2 NAC 284.893 – Return to work of employee who tests positive for alcohol or controlled substance while on duty

MOTION: Moved to approve revisions to NAC 284.884 and NAC 284.893 as identified in LCB File No. R138-12

BY: Commissioner Brust

SECOND: Commissioner Read

VOTE: The vote was unanimous in favor of the motion