

**ADOPTED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R025-13

Effective October 23, 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 284.250.

A REGULATION relating to state personnel; revising provisions governing eligibility lists for state employment; and providing other matters properly relating thereto.

Section 1. NAC 284.361 is hereby amended to read as follows:

284.361 When using lists of persons who are eligible and considering eligible persons who have been certified, the following conditions apply:

1. When a reemployment list is certified:

(a) Eligible persons who are available for appointment and who are certified on reemployment lists, other than seasonal reemployment lists, must be hired in the order in which they appear unless the appointing authority, upon submitting written justification, obtains the written concurrence of the Governor to deviate from the order of priority or to hire from another list. The appointing authority must make the written justification available for examination by affected persons or their designated representatives.

(b) A person must accept or refuse an offer of reemployment:

(1) If the offer of reemployment is sent by mail to the person, within 6 calendar days after the postmarked date appearing on the envelope in which the offer was mailed; or

(2) If the offer is an oral offer of reemployment, within 3 business days after the oral offer has been made.

2. The appointing authority may request selective certification for a particular position if the normal method of certification does not provide candidates qualified to perform the duties of the position satisfactorily. Where selective certification is necessary, the appointing authority shall furnish in writing the special requirements peculiar to the position and his or her reasons therefor. If the facts and reasons justify such a method of selection, the Division of Human Resource Management may certify the highest ranking eligible persons who possess the special qualifications.

3. Certification of only eligible persons who are the same sex will not be made unless there is clear evidence that the duties assigned could be performed efficiently only by the sex specified.

4. When using ranked lists other than those for reemployment, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with *at least 5* persons in the first ~~five~~ *10* ranks to determine their availability and qualifications. The names on each type of list must be considered before names from the next succeeding list. If there are fewer than ~~five~~ *10* ranks with persons who are available for appointment on a given list and the appointing authority requests a full complement of ~~five~~ *10* ranks, the name or names at the top of the next succeeding list must be combined with those on the preceding list to establish ~~five~~ *10* eligible ranks with persons who are available for appointment. Except as otherwise provided in subsection 6, all competitive appointments from ranked lists must be made from the persons who:

(a) Are in a rank of persons who received the ~~five~~ 10 highest scores on the examination;
and

(b) Are available for appointment.

5. If the list is unranked or waived, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least five eligible persons he or she deems most qualified based upon a review of their respective qualifications as they relate to the position or class, or with all of the eligible persons if there are five or less. Except as otherwise provided in subsection 1, any eligible person who is certified from an unranked or waived list may be appointed.

6. If persons from fewer than five ranks of eligible persons are willing to accept appointment:

(a) The appointing authority may make an appointment from among those remaining available eligible persons.

(b) Certification and appointment may be made from other appropriate lists, including lists of higher grades as determined by the Division of Human Resource Management. The names from other lists will follow those which have been certified, if any, from the original lists.

(c) A new recruitment may be conducted.

(d) A provisional appointment may be made only if the requirements of NAC 284.406 are met.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File #R025-13

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

State departments and agencies have requested this amendment to in order to expand the candidate pool to fill vacancies. This amendment requires agencies to interview at least 5 eligible persons in the first 10 ranks of a list of eligible persons. This change will allow a greater number of individuals the opportunity to be selected for an interview for a vacancy, as well as provide agencies with a larger candidate pool from which to choose, allowing the best hiring decision possible to be made.

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
209 E. Musser Street
Carson City, NV 89701

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

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

Capitol Building
Main Floor
Carson City, NV 89701

Legislative Building
401 S. Carson Street
Carson City, NV 89701

Gaming Control Board
1919 College Parkway
Carson City, NV 89701

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

A Regulation Workshop was conducted by the Division of Human Resource Management on July 17, 2013 and a public hearing was held by the Nevada Personnel Commission on October 10, 2013.

Comments from the workshop and hearing can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or calling (775) 684-0105.

3. The number of persons who:

- (a) Attended each hearing:** October 10, 2013 – 53
- (b) Testified at each hearing:** October 10, 2013 – 9
- (c) Submitted written comments:** 2

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:

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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 affected parties including employees and employee associations. The Nevada System of Higher Education, Business Center North submitted written comments in support of the amendment, while the American Federation of State, County and Municipal Employees (ASFCME) submitted written comments in opposition of the proposed amendment. Comments from the workshop and hearing 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.

Requiring agencies to interview at least five eligible persons in the first ten ranks rather than all persons in the first five ranks allows a greater number of individuals an opportunity to be selected from for an interview for a vacancy and would provide agencies with a larger candidate pool allowing the best hiring decision possible.

A regulation workshop was held to gain additional input from all interested parties, including employee associations.

Ron Cuzze, President, NSLEOA opposed this amendment and stated “the hiring and promotion of law enforcement might be different from many other areas.” He felt more candidates on a list would be beneficial with hiring law enforcement professionals; however, it would not help with promotions. He would “oppose it to the end when it came down to promotions.”

Other representatives from agencies such as Business & Industry, Agriculture, and Taxation were all in support of the regulation change.

At the Personnel Commission meeting, Ron Cuzze opposed this amendment stating that the candidate pool should not be expanded because politics could play into which candidate is chosen for the position. Examples of comments in support of the amendment include: the that DMV is in favor of a larger candidate pool, Agency Human Resource Services believes expanding the candidate pool will benefit all organizations, and that the highest test score does not always produce the best qualified candidate.

Testimony was heard at the hearing and the regulation was unanimously adopted by the Personnel Commission.

- 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.**

This regulation does not have a direct economic effect on either a regulated business or the public. It only impacts the classified service of 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 this regulation.

- 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 amendment duplicates.

- 10. 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.

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 July 17, 2013

Peter Long, Deputy Administrator, HRM: Explained that NAC 284.361 proposed by the HRM would require agencies to interview at least five eligible persons in the first ten ranks rather than all persons in the first five ranks. He said that with the change all competitive appointments from ranked lists would be made from available persons in a rank of persons who receive the ten highest scores on the examination rather than in a rank of persons who receive the five highest scores. He indicated that the change would allow a greater number of individuals an opportunity to be selected for an interview for a vacancy in addition to providing agencies with a larger candidate pool allowing the best hiring decisions possible.

He indicated that the reason the HRM was proposing this change was because there had been multiple concerns expressed by agencies and applicants/eligible persons. Agencies had noted that the best candidates were often number six or seven or eight and from eligible applicants, they expressed the view that they were a number six and yet could not get an interview. He stated many times the difference between rank five and six would be one point. He added that the HRM felt that having that arbitrary cut off was not providing agencies with the best resource to get the best candidate. He explained that everyone on the list would have met the minimum qualifications but individual agencies would know best what skill set and other qualifications would be best for a particular position.

He stated another reason for the proposed change which was they had surveyed all the Western states including Arizona, California, Idaho, Oregon, Utah, Washington and Wyoming and noted that none of them used rank lists. The exception was where the appointing authority could request a certain number of ranks and that would be what would be provided. He added that they had also surveyed the local jurisdictions: Clark County - they only used ranked lists for two entities, the fire department and juvenile probation; the City of Las Vegas - they rank based on not absolute scores but a range of scores; Carson City used no rank lists; City of Reno used rank lists; the City of Elko used rank lists but based on the number of applicants the appointing authority wanted; Washoe County did use rank lists; and the Metro Police Department, used rank lists but they were derived from a variety of three kinds of tests and they were required to hire as per the total score.

He stated that the DHRM had a meeting to review the proposed changes and address any concerns. He noted the response was positive from the agency side. He said they received feedback from several associations.

Shelley Blotter, Deputy Administrator, HRM: Encouraged any participants who had comments to make them and they would be passed on to the Personnel Commission and for public record.

Ron Cuzze, President, Nevada State Law Enforcement Officers' Association, (NSLEOA): Noted as Mr. Long had stated there had been a meeting on the proposed changes. He stated that what he was talking about was the hiring and promotion of law enforcement which might be different from many other areas. He said with respect to hiring, they were in agreement and felt the more people on the list the better it would be and gave some examples. He commented that with regard to promotions they were in total disagreement with the proposed changes. He explained they felt if they were not getting the best people in the top five then perhaps they were not asking the right questions. He stated that having the number of ten would make the process open to 'monkey business'. He noted that with regard to the issue of promotions they would oppose it to the end. He indicated that he was representing the NSLEOA. He added that he had members in all 22 state law enforcement agencies.

Peter Long, Deputy Administrator, HRM: Thanked Mr. Cuzze for his participation in the meeting. He referred to one of the concerns raised by Mr. Cuzze in which he had stated that the Department of Public Safety (DPS) was not in agreement in the proposed changes. Mr. Long noted that they had received input from their Director Jim Wright who had said that he and the personnel officer had discussed it and they did not have any issues with the proposed changes.

Amy Davey, Personnel Officer, HRM: Stated that after the meeting she sent out all of the proposed regulation changes to the 14 agencies that they served, the administrators and the directors. She noted that she had received quite a bit of feedback, all positive to this regulation change, in particular Business & Industry (B & I), the Department of Taxation, and the Department of Agriculture. She commented that the feedback reflected a perspective that it did allow management and the agencies more flexibility to find specific skill sets. She added that it allowed employees within the agencies who might already be doing the job or know the work to be in that pool of candidates being considered.

Shannon Chambers, Deputy Director for Business & Industry: Stated that they fully supported the change to the regulation. She stated that she had specific instances of employees that were that number six or seven and doing the job for eight, ten, twelve years and more than qualified and this would allow them to be promoted or obtain a new position. She added that previously they had not been eligible due to their ranking. She thought that the current process was not the best for securing the best employees. She repeated they were fully in support of the change.

Ron Cuzze, President, NSLEOA: Indicated that he agreed with Shannon Chambers. He noted that he agreed it should be the top five.

Shelley Blotter, Deputy Administrator, HRM: Indicated they would move to the next section as there were no more comments.

Peter Long, Deputy Administrator, HRM: Stated that he would like information included into the record. He indicated that Jeanine Nelson (HR Services Manager, UNR) was not able to attend but provided written input and stated they were in support of the revision to NAC

284.361. In addition he had received written input from Jeanine Lake from AFSCME (American Federation of State, County and Municipal Employees) and they had stated that they were in opposition to the proposed revision.

Pertinent Testimony from Personnel Commission Meeting Held October 10, 2013

Dana Carvin: The Human Resource Management Division recommends the permanent adoption of the proposed amendment to NAC 284.361. This amendment allows an appointing authority to interview 5 persons from the top 10 ranks of a list of eligible candidates. A representative from the Nevada State Law Enforcement Officers' Association testified against this amendment at the workshop. Additionally, a representative from the American Federation of State County and Municipal Employees submitted written comments indicating the association's opposition to the amendment. A Personnel Officer representing management of 14 departments and agencies testified in support of the proposed changes, as well as, the Deputy Director of the Department of Business and Industry. The Nevada System of Higher Education, Business Center North submitted a compelling argument why the score ranking due to bonus points such as for Nevada residency may not place the candidate with the best knowledge, skills and abilities in the top 5 ranks.

Chairperson Fox: How many points are awarded for Nevada residency on an eligible list?

Dana Carvin: For Nevada residency, there are 5 points. Commissioner Sanchez: Just out of curiosity, are there any points awarded for Veterans?

Dana Carvin: Yes there are 5 points for being a Veteran and there are also 5 extra points for being a disabled Veteran.

Commissioner Sanchez: Are there any specific periods of service for those Veterans?

Dana Carvin: Yes there is and I apologize I don't have that with me right now, but yes there is.

Commissioner Sanchez: That's fine, I was just curious because I have seen them for Vietnam service, WWII, Korea, Gulf War, etc. I just wanted to make sure that there were defined periods. Fox: So potentially, a Nevada disabled Veteran, let's say he was disabled in the conflict in Afghanistan can have an additional 15 points added to his score as long as he passed all the instruments to get on the eligible list.

Dana Carvin: Yes and that's if they are also a Nevada resident.

Alys Dobel: I just want you to know that the DMV supports this regulation, we like the idea of having a broader candidate pool, a lot of people do not test well, but they interview well and they have excellent skills. We are in total support of this regulation, thank you.

Dana Carvin: Veteran points on the promotional lists are included only once. Testing tools are exams, oral, and training & experience scores. If lists are run divisional, departmental, etc. will

be in order. On a competitive list, the list will be in ranked order. There are different types of exams in the Law Enforcement category and they will be in score order.

Kathleen Kirkland: Currently skilled applicants are being excluded due to limited ranking. This change will allow the agencies the flexibility to choose qualified experienced applicants based on their overall experience and not on their test scores. Agency HR Services has received an overwhelming support on how this regulation will benefit their agencies.

Nancy Corbin: I'm here to support his change, opening this up will allow a more qualified candidate pool. Most people don't test well, and even have a difficult time understanding the application process. It's also known that they have a difficult time determining their skill sets during the on-line application process, due to hitting the wrong key. For this reason, I support this change to give agencies access to a broader applicant pool.

Ron Cuzze: We are primarily concerned about the advancement, the promotional. It's disturbing that points are given for being a veteran, disabled veteran, and a Nevada resident. We don't believe it should be expanded from the top 5 to the top 10. The testing should be fixed, every time you expand this there could be politics involved when choosing the best candidate.

Dana Carvin: It is optional to the agencies to interview the top 10 or they can go with the top 5. If the regulation goes through, they must attempt to communicate with the top 10.

Chairperson Fox: Not circumventing the top 5, just expanding to a top 10.

Commissioner Sanchez: Requesting statistics on the number of individuals testing and their scores, as well as confirming the reliability of the tests. The range of talent is pretty well compressed. I maintain that there is no perfect test. I strongly support this regulation. Dana Carvin: Yes, I can check on that, we can probably do that.

Commissioner Mauger: Mr. Cuzze, I was going through the minutes and you agreed with Shannon Chambers. Shannon wanted the top 10 and you agreed with her. I just wanted to clarify that. By opening up the list, someone who gets along well with the supervisor may have that edge to get that position.

Dennis Perea: I support this regulation we want to get the most qualified candidates into critical positions, many times we end up hiring the least objectionable. I'm glad we can be in a position where we can fill positions with qualified candidates.

Julia Teska: We believe the system works best when we put employees in a position to succeed which gives the organization the best chance to succeed, by creating more flexibility to the lists. We are still talking about the top 10, they still have to qualify, they still have to make that 10 rank. This is a good compromise from opening things up entirely, it this still reduces the chance for abuse and it still creates more flexibility. I'll give an example; I used to be a budget analyst in the state budget office. There are budget analyst positions in all the state agencies. I know there are budget analysts in the Department of Taxation, local government Finance Group has budget analysts, they are reviewing primarily financial statements. My folks are doing resource

administration on a day to day basis those are similar but different skill sets and we have to interview the same top 5 candidates the chances that I'm going to get the person I'm looking for and the they are going to get the person they are looking for are very slim. While they still fit technically in the same job classification, we are looking for different things in those candidates so by having a little more flexibility on the list will give us both a chance to succeed.

Shannon Chambers: I will echo the comments made today. There are definitely flaws in the testing procedure. Opening this up, will allow agencies to get a more qualified applicant pool.

Dave Badger: I'm here in support, having supervised the state exam unit for many years, I was hoping that the exams would cover all aspects on a job and those who would test highly would be the best candidate for the job. It didn't work that way. I found that individuals who tested well were not always the best candidates for the job.