

**ADOPTED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R009-14

Effective June 23, 2014

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

AUTHORITY: §1, NRS 284.065, 284.155 and 284.305; §2, NRS 284.065, 284.155 and 284.355.

A REGULATION relating to state personnel; revising provisions relating to the reinstatement of an employee; eliminating the 2-year limitation on reinstatement of former permanent state employees under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing regulations, a former permanent employee of the State is eligible for reinstatement as an employee of the State within 2 years following termination if the employee was separated without prejudice or was separated because of a physical, mental or emotional disorder and has recovered from that disorder. (NAC 284.386, 284.611) This regulation eliminates the 2-year limitation.

Section 1. NAC 284.386 is hereby amended to read as follows:

284.386 1. ~~Except as otherwise provided in subsection 2, an~~ *An* appointing authority may reinstate a former permanent employee ~~within a 2-year period~~ following his or her termination from state employment, *including, without limitation, a former permanent employee who was laid off and is entitled to have his or her name appear on a reemployment list pursuant to NAC 284.630*, if the *former permanent* employee was separated without prejudice. A separation without prejudice must be determined by the appointing authority using the standards contained in NRS 284.240.

2. ~~If an employee is laid off and is entitled to have his or her name appear on a reemployment list pursuant to NAC 284.630, the appointing authority may reinstate the employee within 2 years after the date on which his or her right to reemployment expires.~~

~~3.~~ The grade of the class to which a person is reinstated may only exceed the current grade of the class he or she formerly held or a comparable class if that class has been reallocated.

~~4.~~ 3. Except as otherwise provided in subsection ~~3.~~ 2, a person may not be reinstated to underfill a position allocated at grade 30 or higher if that position is allocated at a higher grade than the position the person formerly held.

~~5.~~ 4. A reinstatement to a similar class requires the approval by the Division of Human Resource Management before the appointing authority may make a commitment to reinstate.

~~6.~~ 5. It is the responsibility of a person seeking reinstatement to make his or her interest known by providing a new application to the appointing authority.

~~7.~~ 6. The person must meet the current minimum qualifications for the class for which the reinstatement is sought.

Sec. 2. NAC 284.611 is hereby amended to read as follows:

284.611 1. Before separating an employee because of a physical, mental or emotional disorder which results in the inability of the employee to perform the essential functions of his or her job, the appointing authority must:

(a) Verify with the employee's physician or by an independent medical evaluation paid for by the appointing authority that the condition does not, or is not expected to, respond to treatment or that an extended absence from work will be required;

(b) Determine whether reasonable accommodation can be made to enable the employee to perform the essential functions of his or her job;

(c) Make a request to the Administrator of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation to obtain the services provided by that Division, or if the employee is receiving worker's compensation, request the services of the rehabilitation provider, to evaluate the employee's condition and to provide any rehabilitative services possible; and

(d) Ensure that all reasonable efforts have been made to retain the employee.

2. A separation pursuant to this section is only justified when:

(a) The information obtained through the procedures specified in subsection 1 supports the decision to separate;

(b) The employee is not on sick leave or other approved leave; and

(c) A referral has been made to the Public Employees' Retirement System and the employee has been determined to be ineligible for, or has refused, disability retirement.

3. A permanent employee separated pursuant to this section is entitled to the same rights and privileges afforded permanent employees who are dismissed for disciplinary reasons. The procedures contained in NAC ~~[284.655 to]~~ **284.656, 284.6561 and** 284.6563 ~~[, inclusive,]~~ must be followed, and he or she may appeal the separation to the hearing officer.

4. A permanent employee who is separated because of a physical, mental or emotional disorder is eligible for reinstatement pursuant to NAC 284.386 if he or she recovers from the disorder . ~~[within 2 years after the termination.]~~

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File #R009-14

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

The amendments to the two regulations included in this LCB file will result in a reduction in time needed to fill open positions, as well as, the training time required for an employee to become proficient in his or her position.

Rather than limiting the time available to a former employee to be reinstated to a formerly held or similar position within State service through non-competitive means to 2 years, he or she may now use the reinstatement process for an indefinite period of time.

Similarly, removing the 2-year limitation on a former employee returning to a formerly held or similar position through non-competitive means following a separation from service due to a physical, mental or emotional disorder will allow him or her to use the reinstatement process for an indefinite period of time.

The amendments to these two regulations will make it more desirable for qualified, highly skilled former employees to return to State service.

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; www.hr.nv.gov, the Legislative Counsel Bureau (LCB) website; www.leg.state.nv.us, the Nevada Public Notice website; www.notice.nv.gov, emailed to all county libraries in Nevada, and physically posted at the following locations:

Blasdel Building
209 E. Musser Street
Carson City, NV 89701

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

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

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

A regulation workshop was conducted by the Division of Human Resource Management on January 8, 2014 and a public hearing was held by the Nevada Personnel Commission on April 11, 2014. There were no comments received at the workshop or the public hearing, and no written comments were received.

General comments from the workshop and public 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:** January 8, 2014 – 28; April 11, 2014 - 55
- (b) Testified at each hearing:** January 8, 2014 – 0; April 11, 2014 – 0
- (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:

There were no comments submitted and individuals did not testify.

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 regulations do not affect businesses. Comments were solicited from affected parties including employees and employee associations. Comments from the workshop and Personnel Commission 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.

These regulations were adopted without changing any part of the proposed regulations because no suggestions were received. The Personnel Commission unanimously approved the changes.

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. They only impact the State of Nevada classified service.

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.

The regulations do not overlap any federal or state mandated regulations, but only eliminate the 2-year limitation of employees returning to state service from a separation in service or a separation due to a mental, emotional, or physical disorder.

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

The 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.