

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R076-15

January 7, 2016

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

AUTHORITY: §§1-5, NRS 284.065, 284.155 and 284.384.

A REGULATION relating to state personnel; requiring the Division of Human Resource Management of the Department of Administration to take certain actions if the Division determines that a request for the adjustment of a grievance is not eligible for the procedure for the adjustment of a grievance set forth in NAC 284.658 to 284.6957, inclusive; revising the definition of “grievance” for the purposes of that procedure; revising certain provisions governing the submission of a request for the adjustment of a grievance; revising certain procedures for a hearing before the Employee-Management Committee; authorizing a party to request that a grievance be held in abeyance; authorizing the Chair of the Committee or a designated member of the Committee to grant such a request or a request for a continuance; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Personnel Commission to adopt regulations which provide for the adjustment of grievances for which a hearing is not provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390. (NRS 284.384) For the purposes of this requirement, existing law defines “grievance” as an act, omission or occurrence which an employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement. (NRS 284.384) The Commission has adopted regulations which provide a procedure for the adjustment of these grievances and **sections 1-5** of this regulation amend that procedure. (NAC 284.658-284.6957)

Section 1 of this regulation provides that if the Division of Human Resource Management of the Department of Administration determines that a request for the adjustment of a grievance is not eligible for the procedure for the adjustment of a grievance set forth in NAC 284.658 to 284.6957, inclusive, the Division must remove the request from that procedure. **Section 1** also requires the Division to: (1) notify the parties of the determination and the removal; and (2) provide the parties with certain information relating to the grievance. **Section 1**

specifies that the person who submitted the request may appeal the determination to the Employee-Management Committee.

Existing regulations define “grievance” to apply only to permanent employees because NRS 284.384 indicates that the definition applies only to employees who have “attained permanent status.” (NAC 284.658) **Section 2** of this regulation amends the definition of “grievance” to clarify that the definition applies only to permanent “classified” employees because the Commission has consistently concluded that only classified employees may attain permanent status as required by NRS 284.384. (NRS 284.384; NAC 284.076, 284.078, 284.439)

Existing regulations provide that an employee must submit a request for the adjustment of a grievance to his or her immediate supervisor “within 20 working days after the date of the origin of the grievance or the date the employee learns of the problem.” (NAC 284.678) **Section 3** of this regulation changes the phrase “date of the origin of the grievance” to “date of the event leading to the grievance” for consistency with other references in the provision.

Existing regulations set forth certain procedures for providing testimony and other evidence for a hearing before the Employee-Management Committee. (NAC 284.6955) **Section 4** of this regulation revises these procedures. Specifically, **section 4**: (1) requires each party to submit copies of documents and materials to the Clerk of the Committee rather than to the Chair of the Committee or the designated representative of the Chair; (2) increases the number of copies required to be submitted and revises the time for submitting the copies to the Clerk; (3) clarifies that certain actions may be taken by a member of the Committee who is designated by the Chair of the Committee; (4) establishes certain requirements regarding documents which contain confidential information; and (5) authorizes the Committee to receive testimony from a witness by telephone or videoconference under certain circumstances.

Existing regulations authorize a party to request a continuance of a hearing to determine the proper disposition of a grievance before the Employee-Management Committee. (NAC 284.6957) **Section 5** of this regulation additionally authorizes a party to request that a grievance be held in abeyance. Existing regulations authorize the Committee to grant a request for a continuance if good cause is shown. (NAC 284.6957) **Section 5** revises this provision to instead authorize the Chair of the Committee or a member of the Committee designated by the Chair to grant such a request for a continuance or a request to have a grievance held in abeyance if good cause is shown.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

1. If the Division of Human Resource Management determines that a request for the adjustment of a grievance is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in

subsection 1 of NAC 284.658 or because a hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390, the Division must, as soon as practicable:

(a) Remove the request from the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive; and

(b) Provide to the person who submitted the request and the agency in which the grievance arose:

(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive, and an explanation for that determination;

(2) Notice that the Division has removed the request from the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive;

(3) If applicable, information relating to the appropriate procedure for resolving the person's concern; and

(4) Information relating to the person's right to appeal the determination to the Committee.

2. If the Division of Human Resource Management determines that a request for the adjustment of a grievance is not eligible for the procedure for the adjustment of grievances set forth in NRS 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.

Sec. 2. NAC 284.658 is hereby amended to read as follows:

284.658 1. As used in NAC 284.341 and 284.658 to 284.697, inclusive, *and section 1 of this regulation*, a “grievance” means an act, omission or occurrence which a permanent

classified employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement or a contested report on performance. The act, omission or occurrence must be established with factual information including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved.

2. For the purposes of NAC 284.341 and 284.658 to 284.697, inclusive, *and section 1 of this regulation*, the term “grievance” does not include any grievance for which a hearing is provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390.

Sec. 3. NAC 284.678 is hereby amended to read as follows:

284.678 1. Except as otherwise provided in subsections 3 and 4 and NAC 284.692, an employee who feels aggrieved and wishes to file a formal grievance must submit the grievance in writing to his or her immediate supervisor on the official form, or in a letter if the official form is not available, within 20 working days after the date of the ~~the origin of~~ *event leading to* the grievance or the date the employee learns of the ~~the problem~~ *event leading to the grievance*. The parties should make every effort to resolve the grievance through informal discussions within these 20 working days.

2. If the employee submits a letter, it must include:

- (a) His or her name;
- (b) His or her most recent date of hire;
- (c) His or her position;
- (d) His or her department, division and section;

- (e) His or her mailing address;
- (f) His or her business telephone number;
- (g) A statement that he or she is filing a formal grievance;
- (h) The date, time and place of the event *leading to the grievance* or the date the employee learns of the event leading to the grievance;
- (i) A concise statement of the grievance;
- (j) A detailed description of the grievance, including the names of other persons involved in the event, if any;
- (k) A proposed solution of the grievance;
- (l) His or her signature; and
- (m) The date he or she signed the statement.

3. Except as otherwise provided in NAC 284.692, if a grievance relates to a contested report on performance, an employee must file a grievance that identifies the specific points of contention, if such specificity is provided, not later than 10 working days after the date the employee receives a decision regarding the review conducted by the appointing authority pursuant to NAC 284.470. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of a reviewing officer or appointing authority to respond to a request for a review within the time required by NAC 284.470, an employee must file a grievance not later than 10 working days after the date on which the time for such a response expired.

4. A grievance filed pursuant to subsection 3 must be filed with:
- (a) The person who is at the next appropriate level of the grievance process; or
 - (b) If the person who is at the next appropriate level of the grievance process is the reviewing officer or other person who prepared or reviewed the report on performance, the person who is at

the next appropriate level of the grievance process above such reviewing officer or other person who prepared or reviewed the report on performance.

5. A grievance regarding a report on performance must be filed with the highest administrator in the department pursuant to NAC 284.690 before being submitted to the Committee pursuant to NAC 284.695.

Sec. 4. NAC 284.6955 is hereby amended to read as follows:

284.6955 If a hearing is held to determine the proper disposition of a grievance pursuant to NAC 284.695, the following procedure must be followed:

1. Each party shall submit to the ~~{Chair}~~ *Clerk* of the Committee ~~{or his or her designated representative-10}~~ *12* copies of the set of documents and materials to be presented at the hearing or any rescheduled hearing. These copies must be submitted not less than ~~{12}~~ *15* working days before the scheduled date of the hearing. The ~~{Chair or his or her designated representative}~~ *Clerk of the Committee* shall forward one copy of the set of the documents and materials of each party to the other party.

2. If the employee fails to comply with subsection 1, the Chair or ~~{his or her designated representative}~~ *a member of the Committee designated by the Chair* may reschedule the hearing to the next time designated for such hearings, but in no case earlier than 20 working days after the originally scheduled date of the hearing. If the employer fails to comply with subsection 1, the Chair or ~~{his or her designated representative}~~ *a member of the Committee designated by the Chair* may reschedule the hearing at his or her discretion. If the employee fails to comply with the provisions of subsection 1 for a rescheduled hearing, the grievance must be dismissed with prejudice unless he or she can show in writing to the Committee's satisfaction that the reason for noncompliance was beyond his or her control.

3. Each document or material offered in evidence must be marked as follows:

(a) Documents or materials presented by the employee must be marked at the bottom of the page as “Exhibit____” indicated by consecutive Arabic numerals, beginning with the number “1.”

(b) Documents or materials presented by the employer must be marked at the bottom of the page as “Exhibit____” indicated by consecutive letters of the English alphabet, beginning with the letter “A.” If the employer offers more than 26 exhibits, the 27th exhibit must be marked as “Exhibit AA,” the 28th exhibit as “Exhibit BB,” and so forth.

4. All evidence offered at the hearing must be relevant and bear upon the grievance.

5. Each person who provides a statement at the hearing shall state his or her name, address, and occupation for the record.

6. It is the responsibility of each party to arrange for the appearance of all necessary witnesses. The Committee may request additional witnesses or information as it deems necessary.

7. *If a subpoena is issued for a document and the person named in the subpoena determines that the document contains confidential information, the person must provide to the Committee by the date specified in the subpoena:*

(a) Two copies of the original document, submitted under seal, and

(b) One copy of the document with the confidential information redacted.

8. *For good cause shown, the Committee may take testimony from a person by telephone or video conference whether or not the person is at a location designated on the agenda as a location for the hearing.*

9. Upon proper recognition by the Chair or ~~his or her designated representative,~~ *the member of the Committee designated to act as the Chair during the hearing,* any member of the Committee may ask a question of a party or witness at any time during the hearing.

Sec. 5. NAC 284.6957 is hereby amended to read as follows:

284.6957 1. A party may request a continuance of a hearing to determine the proper disposition of a grievance pursuant to NAC 284.695 ~~by submitting a request for a continuance~~ *or request to have a grievance held in abeyance. The party must submit the request* to the ~~Chair~~ *Clerk* of the Committee ~~for his or her designated representative~~ at least 12 working days before the scheduled hearing, unless the party received personal notice of the hearing less than 21 working days before the hearing pursuant to subsection 2 of NAC 284.695, in which case he or she may request a continuance as long as the request is made at least 4 working days before the scheduled hearing.

2. The ~~Committee~~ *Chair or a member of the Committee designated by the Chair* may grant a request for a continuance *or a request to have a grievance held in abeyance* if good cause is shown.