

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R060-16

Effective June 28, 2016

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.

Legislative Counsel’s Digest:

Existing law requires the Personnel Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations relating to the payment of employees in the classified service. (NRS 284.065, 284.155, 284.175) Existing regulations authorize the Division to approve an adjustment of steps, or specific rates of pay within the same grade, to maintain an equitable relationship in the status of steps among the employees of an appointing authority if a disparity exists. Existing regulations further provide that such an adjustment will not be granted if the disparity in steps is among employees of different agencies. (NAC 284.204) This regulation expands that prohibition against granting an adjustment of steps to include a disparity in steps among employees of different departments. “Department” is defined in existing regulations to mean: (1) an agency in the Executive Branch of State Government which is designated as a department by statute; (2) the Nevada System of Higher Education; and (3) any state board or commission which employs classified workers. (NAC 284.055) Additionally, this regulation removes the requirement that an appointing authority ensure in its request to the Division for such an adjustment of steps that the requested adjustment will not create an 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. Finally, this regulation revises the basis for revoking an adjustment of steps which was made to meet a difficult recruiting problem to include revoking such an adjustment if the employee who is receiving the adjustment moves from one position to another position in a different department or agency than the department or agency in which in the employee is currently employed and a similar recruiting problem does not exist in the new department or agency.

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 *departments or* 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, 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)}~~ (4) 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 *department or* 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}~~ *moves from one position to another position in either a different area {where} within the department or agency in which the employee is currently employed or a different department or agency than the department or agency in which the employee is currently employed, and a similar recruiting problem does not exist { } in the new area, department or agency.*

↳ 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 No. R060-16

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

The amendments included in this LCB File are intended to improve the ability of an appointing authority to hire employees with the appropriate qualifications. The removal of the requirement for an appointing authority to ensure that an adjustment will not create an inequity is intended to allow departments or agencies to address a difficult recruiting problem or hire persons with superior education or experience, without being required to adjust the pay of a number of other employees, which may not be fiscally feasible.

The amendments provide an appointing authority a clear method for revoking an adjustment of steps which was made to meet a difficult recruiting problem. When an employee who is receiving the adjustment moves from one position to another position in a different area, and a similar recruiting problem does not exist in the new area, the appointing authority may revoke the adjustment of steps. For example, an appointing authority may revoke an adjustment of steps when an employee transfers from Elko, where a difficult recruiting problem exists, to Reno, where no difficult recruiting problem exists.

The addition of “departments” in subsection 1 of NAC 284.204 emphasizes that a pay adjustment to resolve an equity issue is intended to be among positions in a particular department or agency, and not among employees of different departments or agencies.

2. A 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.

On May 10, 2016, copies of the proposed regulation amendments 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 via Listserv. These documents were also made available on the Division of Human Resource Management’s website, the Nevada Public Notice website, the Legislative Counsel Bureau’s website, and mailed to all county libraries in Nevada, and posted at the following locations:

Blasdel Building
209 E. Musser Street
Carson City, NV

Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV

Nevada State Capitol Building
101 N. Carson Street
Carson City, NV

A regulation workshop was conducted by the Division of Human Resource Management on January 27, 2016, and a public hearing was held by the Nevada Personnel Commission on June 10, 2016.

During the workshop, comment was received from the Chief Deputy, Nevada Secretary of State, expressing concern regarding revoking an adjustment of steps. Comment was also received from the Personnel Manager, Nevada Department of Transportation, expressing concerns that the amendments create inequity, apply only to an initial appointment, and may create a problem with morale. Written comment was received from the Office of the Secretary of State. As a result of the comments, changes were made to the regulation language.

At the public hearing, no comment was received.

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

3. **The number of persons who:**
 - (a) **Attended each hearing:** - 30
 - (b) **Testified at each hearing:** - 1
 - (c) **Submitted written comments:** - 0

4. **Following is a list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3(b):**

**Michelle Garton, Supervisory Personnel Analyst
State of Nevada
Department of Administration
Division of Human Resource Management
100 N. Stewart Street
Carson City, NV 89701
(775) 684-0136
mgarton@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. Written minutes and comments from the workshop and public hearing can be obtained as instructed in the response to question #2.

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.**

Opposition to the regulation was received at the workshop, and the language was changed as a result.

There was no opposition to the regulation at the Personnel Commission hearing.

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**
 - (a) **Both adverse and beneficial effects; and**
 - (b) **Both immediate and long-term effects.**

This regulation does not have a direct economic effect on either a regulated business or the public.

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 proposed 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.**

This regulation does not overlap or duplicate any State or federal regulations.

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 regulation does not include any provisions that are covered by any federal regulations.

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.