

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R033-17

August 11, 2017

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

AUTHORITY: §§1-4, NRS 284.065 and 284.384, as amended by section 3 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1428; §§5 and 7, NRS 284.065 and 284.155; §6, NRS 284.065; §§8-16, NRS 284.065, 284.155 and 284.384, as amended by section 3 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1428.

A REGULATION relating to the State Personnel System; requiring an appointing authority to take certain actions if rest periods of an employee provide insufficient time to express breast milk as needed; requiring certain departments or agencies to establish a procedure for an employee to request break times and a place to express breast milk; revising the procedure for the adjustment of a grievance to include complaints; establishing the definition of “complaint” for the purposes of that procedure; setting forth the procedure for an employee to file such a complaint with the Employee-Management Committee; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Assembly Bill No. 113 of the 2017 Legislative Session amended existing law to: (1) require, with limited exceptions, each public employer in this State, other than the Department of Corrections, to provide reasonable break times and a clean, private place for an employee who is a nursing mother to express breast milk; and (2) authorize certain public employees employed by the Executive Department of State Government to file a complaint with the Employee-Management Committee for certain violations of this law. (Section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427)

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 certain provisions of the laws of this State. (NRS 284.384) The Commission has adopted regulations which provide a procedure for the adjustment of these grievances. A.B. 113 also requires the Commission to adopt regulations which provide for the adjustment of complaints filed by certain public employees concerning violations of the law requiring certain public employers to provide reasonable break times and a place for such an employee who is a nursing mother to express breast milk. (NRS 284.384, as amended by section 3 of Assembly Bill No. 113, chapter 271,

Statutes of Nevada 2017, at page 1428) Accordingly, **sections 3-6 and 8-15** of this regulation amend that procedure to provide for the adjustment of such complaints.

Section 2 of this regulation requires, with limited exceptions, an appointing authority to either approve the use of accrued annual leave, accrued compensatory time or leave without pay or authorize an employee to modify her work schedule to make up the difference, if any, between the normal rest periods the appointing authority is required to provide to the employee and the time the employee uses to express breast milk and for rest periods other than rest periods used to express breast milk.

Section 3 requires, with limited exceptions, each department or agency of the Executive Department of State Government to: (1) develop a procedure for an employee who is the mother of a child under 1 year of age to request reasonable break times and a place for the employee to express breast milk as needed; (2) make every effort to address the needs of such an employee; and (3) respond to such a request within 5 working days after the request is deemed received by the department or agency.

Section 4 sets forth the process for an employee to request consideration of a complaint by the Employee-Management Committee if: (1) the employee is not satisfied with the response of the department or agency to a request made pursuant to **section 3**; (2) the department or agency fails to respond to a request made pursuant to **section 3**; or (3) the employee alleges that the employee was retaliated against because the employee had taken break times or used the designated space to express breast milk, or had taken any action to enforce the requirement to be allowed to do so.

Section 16 of this regulation expands the applicability of existing regulations which provide 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 existing regulations, the Division must remove the request from that procedure to include a request for the adjustment of a complaint. (Section 1 of Adopted Reg. of the Personnel Comm'n, LCB File No. R076-15)

Section 1. Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 1. *Except as otherwise provided by section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427, the appointing authority of an employee who is the mother of a child under 1 year of age shall:*

(a) Authorize the employee to take reasonable break times to express breast milk as needed; and

(b) Provide a place, other than a bathroom, that is reasonably free from dirt or pollution, protected from the view of others and free from intrusion by others.

2. If an employee described in subsection 1 determines that the normal rest periods of the employee do not provide sufficient time to express breast milk as needed, the appointing authority of the employee shall, except as otherwise provided by section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427:

(a) Approve the use of accrued annual leave, accrued compensatory time or leave without pay to make up the difference, if any, between the normal rest periods of the employee and the time the employee uses:

(1) To express breast milk; and

(2) For rest periods other than rest periods used to express breast milk; or

(b) Authorize the employee to modify her work schedule to make up the difference, if any, between the normal rest periods of the employee and the time the employee uses:

(1) To express breast milk; and

(2) For rest periods other than rest periods used to express breast milk.

3. As used in this section, “normal rest periods” means the rest periods required pursuant to NAC 284.524.

Sec. 3. 1. *Except as otherwise provided by section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427, each department or agency of the Executive Department of State Government shall:*

(a) Develop a procedure for an employee who is the mother of a child under 1 year of age to request reasonable break times and a place for the employee to express breast milk as needed; and

(b) Make every effort to address the needs of such an employee including attempting to contact and consult with an employee who is on leave at the time the request is received, including, without limitation, leave granted pursuant to the Family and Medical Leave Act.

2. A request made pursuant to this section is deemed to be received by a department or agency:

(a) On the date on which the employee or her chosen representative personally delivers the request, transmits it by facsimile machine or submits it by electronic mail.

(b) If the employee mails the request, 3 days after:

(1) The date on which the request was postmarked; or

(2) The date on the return receipt if sent by certified mail.

3. The department or agency shall respond to a request made pursuant to this section within 5 working days after the request is deemed to have been received by the department or agency.

Sec. 4. 1. If:

(a) An employee is not satisfied with the response of the department or agency to a request made pursuant to section 3 of this regulation, including, without limitation, a reasonable alternative selected in accordance with subsection 2 of section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427;

(b) The department or agency fails to respond to a request made pursuant to section 3 of this regulation; or

(c) The employee alleges that the employee was retaliated against in violation of subsection 3 of section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427,

↳ *the employee may request consideration of a complaint by the Committee pursuant to its rules.*

2. The employee must submit the complaint, on a form provided by the Division of Human Resource Management, to the Committee within 10 working days following:

(a) Receipt of the response from the department or agency to the request made pursuant to section 3 of this regulation;

(b) The passage of 8 working days after the request is deemed to have been received by the department or agency; or

(c) The date of the alleged retaliation.

3. The complaint submitted pursuant to subsection 2 must include the specific points of disagreement or contention and supporting evidence.

4. The Committee shall, within 28 working days after the receipt of a request for consideration of a complaint submitted by an employee pursuant to subsection 2:

(a) Answer the request without a hearing if the case is based upon the Committee's previous decisions or does not fall within its jurisdiction; or

(b) Hold a hearing to determine the proper disposition of the request. If a hearing is held, the Committee shall:

(1) Except as otherwise provided in subparagraph (2), provide at least 21 working days' written notice to all parties concerned.

(2) Provide notice to the employee by:

(I) Sending a written notification by certified mail, return receipt requested, at least 21 working days before the hearing; or

(II) Personally delivering a written notification to the employee at least 5 working days before the hearing, if the Chair of the Committee approves of such notice.

(3) Render a decision within 10 days after the closure of the hearing.

4. For the purpose of determining placement on the agenda for consideration by the Committee at a meeting, a complaint has priority over a grievance.

Sec. 5. NAC 284.0735 is hereby amended to read as follows:

284.0735 “Organizational climate study” means an independent study conducted by the Division of Human Resource Management to assess and evaluate the culture, effectiveness of management, employee morale and internal communication of an organization through a variety of methods, including, without limitation:

1. Surveys;
2. Interviews, including, without limitation, exit interviews;
3. Review of policies, procedures and internal communications;
4. Review of issues related to recruitment;
5. Review of data relating to employees, including, without limitation, statistics relating to turnover; ~~and~~

6. Review of grievances filed by employees ~~H~~; *and*

7. Review of complaints described in NAC 284.658 which are filed by employees.

Sec. 6. NAC 284.112 is hereby amended to read as follows:

284.112 “Working day,” for the purpose of a grievance, *a complaint described in NAC 284.658* or an appeal, means Monday to Friday, inclusive, excluding holidays.

Sec. 7. NAC 284.523 is hereby amended to read as follows:

284.523 As used in NAC 284.523 to 284.598, inclusive, *and section 2 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 284.5231 to 284.52375, inclusive, have the meanings ascribed to them in those sections.

Sec. 8. 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”}~~ *LCB File No. R076-15 and sections 3 and 4 of this regulation:*

1. *“Complaint” means a written complaint filed by an employee pursuant to section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427.*

2. *“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 *LCB File No. R076-15 and sections 3 and 4 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. 9. NAC 284.662 is hereby amended to read as follows:

284.662 1. An employee filing for a review of a grievance *or complaint* may be assisted or represented by any person of his or her choosing, if the person agrees to act in this capacity, at

any step of the procedure except the initial informal discussion with his or her immediate supervisor.

2. If the assistant is a state employee, he or she may only assist on his or her own time.

3. An employee may not be discriminated against in recruitment, examination, appointment, training, promotion, retention, classification or any other personnel action for informally seeking or formally filing a request to have his or her grievance *or complaint* reviewed, testifying on behalf of another employee, helping another employee prepare a grievance ~~report~~ *or complaint* or acting as a representative of any employee requesting a review of a grievance ~~or~~ *or complaint*.

4. To assist in resolving an employee's grievance ~~or~~ *or complaint*, the resources and consultation available from the Division of Human Resource Management and the personnel offices of the agency must be made available to all parties.

Sec. 10. NAC 284.680 is hereby amended to read as follows:

284.680 *1.* For the purposes of NAC 284.682, 284.686 and 284.690, a grievance is deemed to have been received at each step in the grievance procedure ~~or~~

~~or~~ *on* the date on which the employee or his or her chosen representative personally delivers the grievance, transmits it by facsimile machine or submits it via the Internet using the Employee Incident Tracking System within the Nevada Employee Action and Timekeeping System developed by the Division of Human Resource Management, which is available at <https://nvapps.state.nv.us/NEATS/admin/Home.aep> . ~~or~~

2. For the purposes of section 4 of this regulation, a complaint is deemed to have been received by the Committee on the date on which the employee or the chosen representative of the employee personally delivers the complaint, transmits it by facsimile machine or submits it by electronic mail.

3. If the employee mails the grievance ~~or~~ *or complaint, the grievance or complaint is deemed to have been received* 3 days after:

- (a) The date on which the grievance *or complaint* was postmarked; or
- (b) The date on the return receipt if sent by certified mail.

Sec. 11. NAC 284.692 is hereby amended to read as follows:

284.692 1. Except as otherwise provided in subsection 3, the time limit for filing a grievance and for taking any other action required by either party at any step in the grievance procedure may be extended by the mutual agreement of the employee who may file the grievance and the appointing authority or his or her designated representative.

~~(2.)~~ An agreement to an extension of time entered into pursuant to *this* subsection ~~or~~ must be ~~or~~:

~~—(a) Made~~ *made* in writing ~~on a form prescribed by the Division of Human Resource Management; and~~

~~—(b) Signed by:~~

~~—(1) The~~ *and authorized by both the* employee ~~;~~ *and*

~~—(2) The~~ *and the* appointing authority or his or her designated representative.

2. The time limit for filing a complaint and for taking any other action required by either party in the complaint procedure may be extended by the mutual agreement of the employee who may file the complaint and the appointing authority or his or her designated representative. An agreement to an extension of time entered into pursuant to this subsection must be made in writing and authorized by both the employee and the appointing authority or his or her designated representative.

3. The provisions of this section do not apply to a grievance that has been submitted to the Committee.

Sec. 12. NAC 284.6952 is hereby amended to read as follows:

284.6952 1. If an employee is not satisfied with the decision rendered by the highest administrator of the department pursuant to NAC 284.690 and submits a request for consideration of the grievance by the Committee pursuant to NAC 284.695, the employee or the highest administrator or his or her designee may request a resolution conference to meet informally in the presence of a neutral facilitator to discuss the grievance and possible resolutions.

2. *If an employee is not satisfied with the response of the department or agency pursuant to section 3 of this regulation and submits a request for consideration of a complaint by the Committee pursuant to section 4 of this regulation, the employee or the department or agency or a designee thereof may request a resolution conference to meet informally in the presence of a neutral facilitator to discuss the complaint and possible resolutions.*

3. Except as otherwise provided in this subsection, a request for a resolution conference may be submitted to the Division at any time after the employee submits his or her request for consideration of the grievance *or complaint* by the Committee. If the Committee has notified the parties of the date on which it will hold a hearing to consider the grievance ~~grievance~~ *or complaint*, the request for a resolution conference may not be submitted less than 15 working days before that date.

~~{3.—Upon receipt of a request for a}~~

4. *If either party requests a resolution conference, the Division shall appoint a neutral facilitator to conduct the resolution conference ~~and~~ and require both parties to participate.* The facilitator must not be affiliated with either party.

~~4.4~~ 5. The submission of a request for a resolution conference does not deprive the Committee of jurisdiction to consider the grievance *or complaint* if:

(a) The parties are unable to reach an agreement for the resolution of the grievance *or complaint* at the resolution conference; ~~or~~

(b) The parties reach an agreement for the resolution of the grievance *or complaint* at the resolution conference, but the employee subsequently notifies the Committee that the agreement has failed ~~and~~; *or*

(c) The Division is unable to arrange a resolution conference as described in subsection 6.

6. *Except as otherwise provided in this subsection, if a party to a complaint submits a request for a resolution conference, the Division shall arrange a resolution conference before the scheduled hearing. If the Division is unable to arrange a resolution conference in the period between the request for the resolution conference and the scheduled hearing, the Division shall provide to the Committee, upon request, the reason that the Division was unable to arrange the resolution conference.*

Sec. 13. 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 ~~and~~ *or of a complaint pursuant to section 4 of this regulation*, the following procedure must be followed:

1. Each party shall submit to the Clerk of the Committee 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 15 working days before the scheduled date of the hearing. The 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 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 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 *or complaint* 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 *or complaint*.

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 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. 14. 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 *or a complaint pursuant to section 4 of this regulation*, or request to have a grievance *or complaint* held in abeyance. The party must submit the request to the Clerk of the Committee 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 ~~H~~ *or pursuant to subsection 4 of section 4 of this regulation*, 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 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 *or complaint* held in abeyance if good cause is shown.

Sec. 15. NAC 284.697 is hereby amended to read as follows:

284.697 1. Except as otherwise provided in subsection 2, the resolution of a grievance *or complaint* is binding when:

(a) There is an agreement between the person filing the grievance *or complaint* and the appointing authority or the designated representative of the employing agency; or

(b) The Committee renders a final decision.

2. The appointing authority or the designated representative of the employing agency shall submit each proposed resolution of a grievance *or complaint* which has a fiscal effect to the Budget Division for a determination of whether the resolution is feasible on the basis of its fiscal effects. The resolution is binding only if it is so found.

Sec. 16. Section 1 of LCB File No. R076-15, which was adopted by the Personnel Commission and filed with the Secretary of State on April 4, 2016, is hereby amended to read as follows:

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 ~~fa~~:

(a) 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 ~~H~~ 2 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 ~~H~~; *or*

(b) A complaint 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 paragraph (a) of subsection 4 of section 2 of Assembly No. 113, chapter 271, Statutes of Nevada 2017, at page 1427,

↳ the Division must ~~as soon as practicable:~~

~~(a)~~ *take the actions described in subsection 2.*

2. Upon making a determination pursuant to subsection 1 that a request for the adjustment of a grievance or complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, the Division must, as soon as practicable:

(a) Remove the request from the procedure for the adjustment of grievances *or complaints* 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 *or complaint* arose:

(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances *or complaints* 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 *or complaints* 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.~~ 3. If the Division of Human Resource Management determines that a request for the adjustment of a grievance *or complaint* is not eligible for the procedure for the adjustment of grievances *or complaints* set forth in NAC 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.