

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R036-17

October 25, 2017

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

AUTHORITY: §§1-3, NRS 284.065, 284.155 and 284.295, sections 2 and 3 of Assembly Bill No. 384, chapter 340, Statutes of Nevada 2017, at pages 2096-97.

A REGULATION relating to the State Personnel System; repealing certain provisions relating to consideration of the criminal history of an applicant for employment in the State Personnel System; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Administrator of the Division of Human Resource Management of the Department of Administration may refuse to examine an applicant or refuse to certify a person on a list of eligible persons for employment in the classified service of the State if the person has been found guilty of certain crimes. (NRS 284.240) During the 2017 Legislative Session, the Legislature enacted Assembly Bill No. 384 to provide that generally the criminal history of an applicant or other qualified person under consideration for a position in the unclassified or classified service of the State may be considered only after the earliest of: (1) the final interview conducted in person; (2) the appointing authority has extended to the applicant a conditional offer of employment; or (3) if applicable, the applicant has been certified by the Administrator. (Sections 2 and 3 of Assembly Bill No. 384, chapter 340, Statutes of Nevada 2017, at pages 2096-97) Pursuant to A. B. 384, such provisions become effective on January 1, 2018. **Section 2** of this regulation repeals existing regulations which require the Division to consider the criminal history of an applicant when reviewing his or her application for employment with the State rather than at the later periods set forth in A. B. 384. (NAC 284.321) **Section 1** of this regulation makes a conforming change. (NAC 284.374) **Section 3** of this regulation provides that this regulation becomes effective on January 1, 2018, or upon filing with the Secretary of State, whichever occurs later.

Section 1. NAC 284.374 is hereby amended to read as follows:

284.374 1. The names of eligible persons will be removed from the active lists for any of the following causes:

(a) Appointment after certification to fill a full-time permanent position in the class for which the examination was given.

(b) Expiration of the term of eligibility.

(c) Separation of a person who is eligible for promotion from the state service.

(d) Failure by an eligible person to respond within the required time to an inquiry of availability.

(e) A statement by the eligible person that he or she is not willing to accept any type of appointment from the eligible list.

(f) Any of the causes listed in NRS 284.240, *as amended by section 4 of Assembly Bill No. 384, chapter 340, Statutes of Nevada 2017, at page 2098*, pursuant to which the Administrator may refuse to examine or certify an eligible person ~~[- failure to disclose convictions as required by NAC 284.321]~~ or, if the employee has been laid off, reemployment pursuant to subsection 7 of NAC 284.630.

2. An appointing authority need not consider an eligible person more than one time from a recruitment. Consideration of an applicant for other than full-time permanent positions must not be counted for the purposes of this subsection.

3. An appointing authority need not consider an otherwise eligible person who cannot perform the essential functions of the position with or without reasonable accommodation.

4. An appointing authority may refuse to consider an eligible person who has been subject to a suspension, demotion or termination as a result of an upheld or uncontested disciplinary action in the preceding 12 months. The 12-month period begins on the effective date of the uncontested action or, if it is contested, on the date the hearing officer issues a final decision upholding a suspension, demotion or termination. If an employee is removed from consideration

pursuant to this subsection, the appointing authority must notify the employee of that fact in writing before interviewing the next candidate or making its selection. The employee has 3 working days after being notified that he or she has been removed from consideration pursuant to this subsection to notify the appointing authority of any discrepancy in the information in his or her personnel file which led to the removal of the employee from consideration. The appointing authority may not make its selection:

(a) If the employee does not notify the appointing authority of a discrepancy, until after the end of the period pursuant to which the employee may notify the appointing authority of a discrepancy; or

(b) If the employee notifies the appointing authority of a discrepancy, until after the appointing authority determines whether the removal of the employee from consideration pursuant to this subsection was appropriate.

5. An appointing authority shall refuse to consider an eligible person whose appointment to a position will violate NRS 281.210, NAC 284.375 or a policy approved by the Commission pursuant to NAC 284.375.

6. An eligible person whose name has been removed from an active list may request that his or her name be reactivated by stating his or her reasons for the request. If the Division of Human Resource Management determines that the reasons are justified, and the person's term of eligibility has not otherwise expired, his or her name may be reactivated.

Sec. 2. NAC 284.321 is hereby repealed.

Sec. 3. This regulation becomes effective on January 1, 2018, or upon filing with the Secretary of State, whichever occurs later.

TEXT OF REPEALED SECTION

284.321 Convictions: Disclosure; factors for consideration. (NRS 284.065, 284.155, 284.295)

1. Any applicant who has a record of a criminal conviction as an adult shall so indicate on his or her application. The application must be accompanied by a complete explanation of the conviction. The failure of the applicant to authorize the release of the information which relates to the conviction of a crime is cause for rejection of the applicant.

2. Any applicant who has a record of conviction for any moving traffic violations within the previous 5 years shall so indicate on his or her application, including the dates and nature of the violations and the fines imposed.

3. The Division of Human Resource Management or its designated representative, in determining whether to accept or refuse the application for a class, position or state service, will consider the type of position, the relevant statutory provisions, the intervening amount of time since the offense, the applicant's age at the time of the offense and, if applicable, the applicant's conduct during incarceration and any parole or probation, the reports from parole or probation officers concerning the applicant's record of employment while on parole or probation and related factors.

4. All relevant public records must be made available to the appointing authority upon its request.