

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB FILE NO. R098-17I

**The following document is the initial draft regulation proposed
by the agency submitted on 09/19/2017**

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

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, amends NAC 284 by adding a new section to place a commonly used coaching tool, letter of instruction, into regulation. While “letter of instruction” is the commonly used term, it may take the form of a memorandum or other written documentation provided to an employee.

The new regulation explains how a letter of instruction is to be used and clarifies that it is not part of the disciplinary process. The regulation outlines what a letter of instruction should contain, and that it must not contain any threat of disciplinary action or consequences. Also included is the requirement for a discussion about the contents of the letter of instruction between the supervisor and employee, and the retention of a letter of instruction is addressed.

NEW Letter of instruction: Use and administration.

1. A letter of instruction is a letter or memorandum which is in written or electronic format that may be issued to an employee as a coaching or performance management tool to address and document expected job performance and/or behavior and is not part of the formal disciplinary process.

2. The letter of instruction should contain the following elements:

- (a) A brief statement identifying the deficiency or area of concern;*
- (b) An outline of the supervisor’s expectations for the employee’s performance and/or behavior;*
- (c) Instructions or recommended course of action for overcoming the deficiency or area of concern, and/or additional training that will be provided to the employee; and*
- (d) A timeframe for completion of any recommended action items and for the employee’s expected improvement.*

3. A letter of instruction must not include any reference to disciplinary action or consequences.

4. The supervisor and employee must meet to discuss the expected job performance and/or behavior outlined in the letter of instruction.

5. The supervisor will retain a copy of the letter of instruction in the employee’s supervisor’s working file. The supervisor must attach a written response, if submitted by the employee, to the letter of instruction. These documents are not to be retained in the employee’s permanent personnel file unless they are attached to subsequent disciplinary action as documentation of non-disciplinary measures taken prior to disciplinary action.

Section 2. NAC 284.458 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management (Division), addresses the rejection from probation and trial status, and that an affected employee may not file an appeal or grievance as a result of a rejection.

The amendment will also provide the authority to the Administrator of the Division or his or her designee to remove a request for an appeal hearing or a grievance from the grievance process when filed by an employee as a result of a rejection from probation or a trial period.

NAC 284.458 Rejection of probationary *or trial status* employees. (NRS 284.065, 284.155, 284.290)

1. During a probationary period, ~~an~~ *a probationary* employee may be rejected for any lawful reason, as determined by his or her appointing authority. An employee rejected pursuant to this subsection has no appeal *or grievance* rights.

2. ~~An~~ *A permanent* employee who is serving a trial period may not ~~use the grievance procedure set forth in NAC 284.658 to 284.6957, inclusive, to~~ appeal *or grieve* the decision by the appointing authority to reject the employee during his or her probationary period.

3. If the Division of Human Resource Management receives a request for an appeal hearing or a grievance which is determined not eligible pursuant to subsections 1 or 2 of this regulation, the Division Administrator or his or her designee may remove the appeal or grievance.

~~3.~~ *4.* A probationary period does not create a contractual relationship between the employee and employer.

~~4.~~ *5.* If a report of separation is not received by the employee or the Division of Human Resource Management by the close of business on the last day of the probationary period, the employee is considered to have satisfactorily completed the probationary period and acquired permanent status.

[Personnel Div., Rule VIII § C subsecs. 1-3, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 10-26-84; 10-18-89; 11-12-93; 11-16-95)

Section 3. NAC 284.692 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Employment, Training and Rehabilitation, would allow for an exception to the mutual agreement requirement for an extension of time to file a grievance or take required action under certain circumstances, such as extended leave, which would be granted or denied by the Division of Human Resource Management.

An exception to the mutual agreement requirement is also allowable if an employee has also filed a charge with an equal employment opportunity (EEO) unit, such as an agency EEO unit, the Division of Human Resource Management’s Sexual Harassment and Discrimination Unit, the Nevada Equal Rights Commission, or the federal Equal Employment Opportunity Commission. An extension related to this may be necessary to allow time for the completion of an investigation of the charge.

If the employee ultimately submits his or her grievance to the Employee-Management Committee (EMC), the EMC would have the ability to review an exception to the mutual agreement requirement at a hearing.

NAC 284.692 Agreement for extension of time to file grievance or take required action. (NRS 284.065, 284.155, 284.384)

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 subsection 1 must be:

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

(b) Signed by:

(1) The employee; and

(2) The appointing authority or his or her designated representative.

3. An exception to the mutual agreement requirement for grievance extension may be granted to the aggrieved Agency when documented circumstances prevent good faith attempts at grievance resolution at any Step in the process. Such documented circumstances include, but are not limited to, Leaves of Absence, mental, physical or emotional conditions, Short or Long Term Disability events, extended hospital stays or other approved short or long term care facilities stays including EAP treatment programs and facilities and/or a charge under investigation by EEO units, subject to Committee review.

~~3-~~ 4. The provisions of this section do not apply to a grievance that has been submitted to the Committee.

(Added to NAC by Personnel Comm'n by R023-05, eff. 10-31-2005)