

**NOTICE OF INTENT TO ACT UPON A REGULATION**  
**Notice of Hearing for the Permanent Adoption and Amendment**  
**of Regulations of the**  
**Department of Administration**  
**Division of Human Resource Management**

The Personnel Commission will hold a public hearing at 9:00 a.m. on June 8, 2018, at the Legislative Counsel Building, Room 3138, 401 South Carson Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations will not result in an increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.

<b><u>LCB File:</u></b>	<b><u>Section:</u></b>	<b><u>NAC:</u></b>	<b><u>Leadline or Description</u></b>
<b>R098-17</b>	Sec. 1	NEW	Letter of instruction: Use and administration.
	Sec. 2	NAC 284.458	Rejection of probationary employees.
	Sec. 3	NAC 284.692	Agreement for extension of time to file grievance or complaint, or take required action.
	Sec. 4	Section 19 of LCB File No. R033-17	Removal of ineligible grievance or complaint from procedure.
<b>R119-17</b>	Sec. 1	NAC 284.888	Request for employee to submit to screening test: Interpretation of grounds; completion of required form.
<b>R121-17</b>	Sec. 1	NAC 284.358	Types of lists and priority for use.
	Sec. 2	NAC 284.360	Reemployment lists; certification or waiver of lists.
	Sec. 3	NAC 284.361	Use of lists and consideration of eligible persons.
	Sec. 4	NAC 284.618	Layoffs: Voluntary demotions.
<b>R150-17</b>	Sec. 1	NEW	Procedure to request hearing to determine reasonableness of dismissal, demotion or suspension.
	Sec. 2	NAC 284.589	Administrative leave with pay.
	Sec. 3	NAC 284.642	Suspensions and demotions.
	Sec. 4	NAC 284.656	Notice.
	Sec. 5	NAC 284.6561	Hearing.
	Sec. 6	NAC 284.778	Request for hearing and other communications.
<b>R151-17</b>	Sec. 1	NAC 284.5385	Annual leave: Leave without pay; catastrophic leave; receipt of benefits for temporary total disability.
	Sec. 2	NAC 284.544	Sick leave: Leave without pay; catastrophic leave; receipt of benefits for temporary total disability; computation.

- Sec. 3        NAC 284.5775    Temporary total disability: Use of sick leave, compensatory time, annual leave and catastrophic leave; leave of absence without pay.
- Sec. 4        NAC 284.882     Administration of screening tests.

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Administration, Division of Human Resource Management, 209 East Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Division of Human Resource Management on or before June 8, 2018. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted and amended will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted and amended will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada, and 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption and amendment of any regulation, the agency, if requested to do so by an interested person, either before adoption and amendment, or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and amendment, and incorporate therein its reason for overruling the consideration urged against its adoption and amendment.

This notice of hearing has been posted at the following locations:

**Carson City**

Blasdel Building, 209 East Musser Street  
Nevada State Library & Archives Building, 100 North Stewart Street  
Legislative Counsel Bureau, 401 South Carson Street

**Las Vegas**

Grant Sawyer Building, 555 East Washington Avenue

**Websites**

Legislative Counsel Bureau website: [www.leg.state.nv.us](http://www.leg.state.nv.us)  
Nevada Public Notice website: <http://notice.nv.gov>

Division of Human Resource Management website: [www.hr.nv.gov](http://www.hr.nv.gov)

**REGULATIONS PROPOSED  
FOR PERMANENT ADOPTION AND AMENDMENT**

**LCB File No. R098-17**

**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 must 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 document that is in written or electronic form and that:***
  - (a) A supervisor of an employee may provide to the employee as a coaching or performance management tool to:***
    - (1) Address the job performance or behavior of the employee; and***
    - (2) Provide evidence of the job performance or behavior expected of the employee; and***
  - (b) Is not part of the formal disciplinary process.***
- 2. A letter of instruction must include at least the following elements:***
  - (a) A brief statement identifying the deficiency or area of concern in the job performance or behavior of the employee;***
  - (b) An outline of the expectations of the supervisor of the employee relating to the job performance or behavior of the employee;***
  - (c) Instructions or a recommended course of action for overcoming the deficiency or area of concern and a description of any additional training that will be provided to the employee; and***
  - (d) A time frame for the completion of any recommended action items and for the proposed improvement in the job performance or behavior of the employee.***
- 3. A letter of instruction must not include any reference to disciplinary action or consequences for failure to comply with the expectations of the supervisor of the employee relating to the job performance or behavior of the employee.***
- 4. The supervisor of the employee and the employee must meet to discuss the expectations of the supervisor relating to the job performance or behavior of the employee outlined in the letter of instruction.***
- 5. The supervisor of the employee shall retain a copy of the letter of instruction in the supervisor’s working file for the employee. The supervisor must attach any written response by the employee to the letter of instruction. These documents must not be retained in the permanent personnel file of the employee unless they are attached to documentation of a subsequent disciplinary action taken against the employee as documentation of a***

*nondisciplinary action that was taken before a specified disciplinary action was taken against the employee.*

**Sec. 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 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~~ *A probationary* employee rejected pursuant to this subsection has no appeal rights ~~or rights to file a grievance using the procedure set forth in NAC 284.658 to 284.6957, inclusive, concerning the decision by the appointing authority to reject the probationary employee.~~

2. ~~An~~ *A permanent* employee who is serving a trial period may not ~~use~~ :

(a) *File a grievance using* the grievance procedure set forth in NAC 284.658 to 284.6957, inclusive, ~~to appeal~~ *concerning the decision by the appointing authority to reject the permanent employee during his or her trial period; or*

(b) *Appeal* the decision by the appointing authority to reject the *permanent* employee during his or her ~~probationary~~ *trial* period.

3. *If the Division of Human Resource Management determines pursuant to subsection 1 or 2 that a request for the adjustment of a grievance is not eligible for the procedure set forth NAC 284.658 to 284.6957, inclusive, or that a request for an appeal of a decision by the appointing authority is not eligible for appeal, the Division must:*

(a) *Remove the request from the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive, or from the appeal process, as applicable; and*

(b) *Provide to the person who submitted the request and the appointing authority in which the rejection 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, or for the appeal process, and an explanation of that determination; and*

(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, or from the appeal process, as applicable.*

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)

**Sec. 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 complaint*, or take required action. (NRS 284.065, 284.155, 284.384)**

1. Except as otherwise provided in subsection ~~3~~ 5, 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. 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.

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~~ *An appointing authority or a designated representative of the appointing authority may unilaterally extend the time limit for filing a grievance or taking any other action at any step in the grievance procedure if the appointing authority reasonably believes that circumstances prevented a good faith attempt to resolve the grievance at any step in the grievance procedure and those circumstances are documented. Such documented circumstances may include, without limitation, that:*

*(a) The employee is on a leave of absence;*

*(b) The employee is otherwise absent from work because of:*

*(1) A physical, mental or emotional disorder;*

*(2) A short-term or long-term disability event; or*

*(3) An extended hospital stay or a stay in or treatment from a long-term care facility or another facility, including, without limitation, treatment received through an employee assistance program; or*

*(c) There is an investigation pending of a report or complaint of alleged unlawful discrimination by an entity set forth in paragraph (a) or (c) of subsection 1 of NAC 284.696.*

*4. If a grievance is submitted to the Committee, the Committee may review any extension of time provided pursuant to subsection 3.*

*5. Except as otherwise provided in subsection 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; R033-17, 10-31-2017)

**Sec. 4. Section 19 of LCB File No. R033-17, which was adopted by the Personnel Commission and filed with the Secretary of State on October 31, 2017, is hereby amended to read as follows:**

**Sec. 19. 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:**

**Explanation of Proposed Change:** This amendment, proposed by the Legislative Counsel Bureau, makes conforming changes based on the amendments in other sections of this LCB File.

At the Personnel Commission meeting on June 8, 2018, the Division of Human Resource Management will recommend changing the reference to NAC 284.384 in subsection 1 of the following regulation to NAC 284.458. The Legislative Counsel Bureau referenced the incorrect regulation, and is in agreement that the citation should be NAC 284.458, as it is in subsection 2 of the regulation.

**Section 19 of LCB File No. R033-17 Removal of ineligible grievance or complaint from procedure.**

1. ~~¶¶~~ *Except as otherwise provided in NAC 284.384, if* the Division of Human Resource Management determines that a request for the adjustment of:

(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 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; 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 Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427,

↳ the Division must take the actions described in subsection 2.

2. ~~¶upon~~ *Except as otherwise provided in NAC 284.458, 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.

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.

(Added to NAC by Personnel Comm'n by R076-15, eff. 4-4-2016; R033-17, 10-31-2017)

### **LCB File No. R119-17**

#### **Section 1. NAC 284.888 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, will clarify that the requirements outlined in subsection 1 of NRS 284.4065 (e.g., inform the employee in writing "whether the test will be for alcohol or drugs, or both") do not apply to the situations outlined in subsection 2 of NRS 284.4065 (e.g., "has or is involved in a work-related accident or injury").

In 2015, the Nevada Legislature amended certain sections of existing law by changing the word "accident" to "crash," and the amendment to subparagraph (a) of subsection 4 of this regulation makes a conforming change.

#### **NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (NRS 284.065, 284.155, 284.407)**

1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his or her duties safely and efficiently include, but are not limited to:

(a) Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;

(b) The odor of alcohol or a controlled substance on the breath of the employee;

(c) Observation of the employee consuming alcohol; or

(d) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source.

2. Except as otherwise provided in subsection 3, before requiring an employee to submit to a screening test, the supervisor of the employee must complete a form provided by the Division of Human Resource Management.

3. The provisions of subsection 2 do not apply if an appointing authority requests an employee to submit to a screening test pursuant to ~~paragraph (b) of~~ subsection 2 of NRS 284.4065.



4. For the purposes of subsection 2 of NRS 284.4065 : ~~[-, as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049:]~~

(a) “Substantial damage to property” includes, but is not limited to:

(1) The operation of a motor vehicle in such a manner as to cause more than \$500 worth of property damage; or

(2) The operation of a motor vehicle in such a manner as to cause two *crashes which cause damage to* property ~~[accidents]~~ within a 1-year period.

(b) “Work-related accident or injury” means an accident or injury that occurs in the course of employment or that involves an employee on the premises of the workplace.

(Added to NAC by Dep’t of Personnel, eff. 12-26-91; A by Personnel Comm’n by R066-09, 10-27-2009; R193-09, 4-20-2010; R010-11, 10-26-2011; R044-15, 1-1-2016)

### LCB File No. R121-17

**Section 1. NAC 284.358 is hereby amended to read as follows:**

**Explanation of Proposed Change:** The Division of Human Resource Management (the Division) initially proposed a new regulation to require an appointing authority to contact the Division prior to filling any vacancy. The regulation also explained the order of possible lists that would be provided. In conjunction with the Legislative Counsel Bureau, the Division proposes the following amendment. This amendment will require an appointing authority to follow the order of lists included in subsection 1, including prioritizing the use of a reassignment list after a reemployment list.

Finally, this amendment includes the requirement for an appointing authority to contact the Division to determine if lists of eligible persons exist according to subparagraphs (a), (b) and (c) of paragraph 1 of the regulation, prior to filling any vacancy.

**NAC 284.358 Types of lists and priority for use. (NRS 284.065, 284.155, 284.250, 284.327)**

1. The types of lists of eligible persons and, unless otherwise provided in this chapter or chapter 284 of NRS, the required priority for their use are as follows:

(a) Reemployment lists.

(b) *Reassignment lists.*

(c) Lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327, as amended by section 1 of Assembly Bill No. 192, chapter 189, Statutes of Nevada 2017, at page 1016.

~~[(e)]~~ (d) Transfer lists, at the option of the appointing authority.

~~[(d)]~~ (e) Divisional promotional lists.

~~[(e)]~~ (f) Departmental promotional lists.

~~[(f)]~~ (g) Statewide promotional lists.

~~[(g)]~~ (h) Lists of persons determined to be eligible from open competitive recruitments.

~~[(h)]~~ (i) Lists of eligible persons of comparable classes.

2. The names on each list must be used as prescribed in NAC 284.361.

3. *Before filling a vacancy, an appointing authority shall contact the Division of Human Resource Management by telephone or electronic mail to determine if eligible persons are*

*available for appointment through the lists referred to in paragraphs (a), (b) and (c) of subsection 1 before using any list referred to in paragraphs (d) to (i), inclusive, of subsection 1.*

4. The open and promotional lists referred to in paragraphs ~~[(d)]~~ (e) to ~~[(h)]~~ (i), inclusive, of subsection 1 must be:

(a) Based on the type of recruitment prescribed by the Division of Human Resource Management; and

(b) Described in the publicized job announcement.

↪ The establishment of any other type of list from the initial recruitment must be in accordance with NAC 284.367.

[Personnel Div., Rule V § A, eff. 8-11-73]—(NAC A by Dep't of Personnel, 4-20-90; 7-6-92; A by Personnel Comm'n by R183-03, 1-27-2004; R034-17, 1-1-2018)

**Sec. 2. NAC 284.360 is hereby amended to read as follows:**

**Explanation of Proposed Change:** The Division of Human Resource Management (the Division) initially proposed a new regulation to require an appointing authority to contact the Division prior to filling any vacancy. The regulation also explained the order of possible lists that would be provided. In conjunction with the Legislative Counsel Bureau, the Division of Human Resource proposes the following amendment. This amendment will specifically require the Division of Human Resource Management to certify and provide each list to the appointing authority in accordance with the priority set forth in the amendment to NAC 284.358 in section 1 of this LCB File.

This amendment also incorporates the required use of a reassignment list, if available.

**NAC 284.360 Reemployment lists; certification or waiver of lists. (NRS 284.065, 284.155, 284.250)**

1. ~~[(Upon receipt of the appropriate form from)]~~ *After being contacted by* an appointing authority ~~[(for a list of)]~~ *pursuant to subsection 3 of NAC 284.358 regarding the availability of* eligible candidates in a specific class, the Division of Human Resource Management must verify the availability of a reemployment list for that class. If a reemployment list is available, the Division of Human Resource Management must certify and provide the reemployment list to the appointing authority. Eligible persons who appear on reemployment lists are ranked in order of seniority. Except as otherwise provided in subsection 2 of NAC 284.6017, placement on a reemployment list must be determined using the criteria governing the determination of seniority for layoff pursuant to NAC 284.632.

2. If there is no reemployment list available, *the Division of Human Resource Management must certify and provide to the appointing authority any available reassignment lists pursuant to section 4 of LCB File No. R097-16.*

3. *If there are no reassignment lists available,* the Division of Human Resource Management must certify and provide to the appointing authority any available lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327, as amended by section 1 of Assembly Bill No. 192, chapter 189, Statutes of Nevada 2017, at page 1016.

~~[(3)]~~ 4. If there are no available lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327, as amended by section 1 of Assembly Bill No. 192, chapter 189, Statutes of Nevada 2017, at page 1016, the Division of Human

Resource Management must certify and provide to the appointing authority any available transfer lists of employees who are entitled to transfer to a position pursuant to NRS 284.3775.

~~4.1~~ **5.** If no list described in subsection 1, ~~2~~ *or 3* is available, the Division of Human Resource Management must, upon request of the appointing authority and in accordance with subsections ~~5 and 6,~~ **6 and 7**, certify the names of eligible persons on ranked or unranked lists described in paragraphs ~~(d)~~ **(e)** to ~~(h)~~ **(i)**, inclusive, of subsection 1 of NAC 284.358, or waive the list.

~~5.1~~ **6.** The names of eligible persons on ranked lists must appear in the order of the total rating which they earned in the examination, including preferences for veterans and residents.

~~6.1~~ **7.** The Division of Human Resource Management may certify a list of eligible applicants who are not ranked, or may waive the list, for:

- (a) A class that is grade 20 or below;
- (b) A class designated in the classification plan as entry level; or
- (c) A class designated in the classification plan as a class for which applicants for promotion are not normally available.

~~7.1~~ **8.** Only an eligible person who has indicated the willingness to accept the location of the vacancy and the other conditions of employment may be certified.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A by Personnel Comm'n by R183-03, 1-27-2004; R024-05, 10-31-2005; R034-17, 1-1-2018)

**Sec. 3. NAC 284.361 is hereby amended to read as follows:**

**Explanation of Proposed Change:** The Division of Human Resource Management (the Division) initially proposed a new regulation to require an appointing authority to contact the Division prior to filling any vacancy. The regulation also explained the order of possible lists that would be provided. In conjunction with the Legislative Counsel Bureau, the Division proposes the following amendment. This amendment requires the Division to integrate the name of an employee who is eligible for reassignment within that agency into the reassignment list.

**NAC 284.361 Use of lists and consideration of eligible persons. (NRS 284.065, 284.155, 284.250)** When using lists of persons who are eligible and considering eligible persons who have been certified, the following conditions apply:

1. When a reemployment list is certified, persons who are available for appointment and who are certified on reemployment lists, other than seasonal reemployment lists, must be hired in the order in which they appear unless the appointing authority, upon submitting written justification, obtains the written concurrence of the Governor to deviate from the order of priority or to hire from another list. The appointing authority must make the written justification available for examination by affected persons or their designated representatives.

2. *The Division of Human Resource Management shall integrate the name of a person who is eligible for reassignment pursuant to subsection 2 or 4 of section 4 of LCB File No. R097-16 with the names of employees who are placed on a reassignment list pursuant to subsection 3 or 5 of section 4 of LCB File No. R097-16 whenever there is a reassignment list certified to the agency that employed the person in his or her regular position.*

3. A person must accept or refuse an offer of employment:

- (a) If the offer of employment is sent by mail to the person, within 6 calendar days after the postmarked date appearing on the envelope in which the offer was mailed; or

(b) If the offer is an oral offer of employment, within 3 business days after the oral offer has been made.

~~13-1~~ 4. The appointing authority may request selective certification for a particular position if the normal method of certification does not provide candidates qualified to perform the duties of the position satisfactorily. Where selective certification is necessary, the appointing authority shall furnish in writing the special requirements peculiar to the position and his or her reasons therefor. If the facts and reasons justify such a method of selection, the Division of Human Resource Management may certify the highest ranking eligible persons who possess the special qualifications.

~~14-1~~ 5. Certification of only eligible persons who are the same sex must not be made unless there is clear evidence that the duties assigned could be performed efficiently only by the sex specified.

~~15-1~~ 6. When using ranked lists other than those for reemployment, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least 5 persons in the first 10 ranks to determine their availability and qualifications. The names on each type of list must be considered before names from the next succeeding list. If there are fewer than 10 ranks with persons who are available for appointment on a given list and the appointing authority requests a full complement of 10 ranks, the name or names at the top of the next succeeding list must be combined with those on the preceding list to establish 10 eligible ranks with persons who are available for appointment. Except as otherwise provided in subsection ~~17-1~~ 8, all competitive appointments from ranked lists must be made from the persons who:

- (a) Are in a rank of persons who received the 10 highest scores on the examination; and
- (b) Are available for appointment.

~~16-1~~ 7. If the list is unranked or waived, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least five eligible persons he or she deems most qualified based upon a review of their respective qualifications as they relate to the position or class, or with all of the eligible persons if there are five or less. Except as otherwise provided in subsection 1, any eligible person who is certified from an unranked or waived list may be appointed.

~~17-1~~ 8. If persons from fewer than five ranks of eligible persons are willing to accept appointment:

(a) The appointing authority may make an appointment from among those remaining available eligible persons.

(b) Certification and appointment may be made from other appropriate lists, including lists of higher grades as determined by the Division of Human Resource Management. The names from other lists must follow those which have been certified, if any, from the original lists.

(c) A new recruitment may be conducted.

(d) A provisional appointment may be made only if the requirements of NAC 284.406 are met.

[Personnel Div., Rule V § F, eff. 8-11-73; A 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89; 11-16-95; 11-16-95; R082-00, 8-2-2000; A by Personnel Comm'n by R069-02, 8-14-2002; R183-03, 1-27-2004; R025-13, 10-23-2013; R034-17, 1-1-2018)—(Substituted in revision for NAC 284.378)

**Sec. 4. NAC 284.618 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment simply makes a conforming change based on the changes in numbering of subsections in NAC 284.361.

**NAC 284.618 Layoffs: Voluntary demotions. (NRS 284.065, 284.155, 284.175, 284.380)**

1. In lieu of being laid off, a permanent employee may choose to be voluntarily demoted to a vacant position or displace an employee within the department and geographical location where employed to one of the next lower classes:

(a) Within his or her current class series and option; or

(b) Within the class series and option from which he or she was appointed to his or her current position during current continuous service if he or she cannot be demoted pursuant to paragraph (a).

↪ For the purposes of this subsection, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

2. No employee in a higher class may displace an employee in a lower class who has more seniority. If an employee chooses to displace another, he or she must displace the member of the next lower class who has the least seniority. If that member has more seniority, the displacing employee must descend further in the class series.

3. The employees displaced reestablish the layoff class.

4. An employee may choose to displace another only if he or she meets the minimum qualifications for the class, option and position. For the purposes of this subsection, qualifications for a position may be different from those of the class and option only when selective certification is required pursuant to subsection ~~3~~ 4 of NAC 284.361.

5. Full-time, part-time and seasonal employees must be treated separately and can only displace like employees.

6. Displacement is always a movement to a class at a lower grade.

7. A current employee who elects to displace another employee has priority over former employees already on reemployment lists.

8. The pay of the employee who is taking a voluntary demotion cannot exceed the highest step for the class to which the employee is being demoted. If the current pay falls within the lower rate range, no reduction in pay may occur unless money is not available as certified by the Chief of the Budget Division or, in the case of an agency which is not supported from the State General Fund, as certified by the administrator of that agency.

[Personnel Div., Rule XIII § B subsec. 2, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 10-26-84; 7-21-89; 8-1-91; R146-01, 1-18-2002; A by Personnel Comm'n by R096-03, 10-30-2003; R143-05, 12-29-2005; R034-17, 1-1-2018)

**LCB File No. R150-17**

**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, will place procedures and requirements related to requesting a hearing to determine the reasonableness of a dismissal, demotion or suspension into a separate regulation. Removing this language from NAC 284.6561 will ensure that it is clear that these procedures are to be used specifically when requesting a hearing pursuant to NRS 284.390.

The amendment also clarifies that the effective date of the discipline is the *first* day the discipline takes effect. In the case of a dismissal or demotion, there is only one clear effective date of the discipline. In order to apply one clear effective date of discipline in the case of a suspension, it is necessary to use the first date of the suspension as the effective date. This will clarify that an employee who receives a suspension has the same rights to appeal, 10 working days, as an employee who is dismissed or demoted.

This amendment also adds the requirement that the written notification of an appointing authority's decision regarding proposed disciplinary action must accompany such a request.

***NEW Procedure to request hearing to determine reasonableness of dismissal, demotion or suspension.***

***1. A permanent employee who has been dismissed, demoted or suspended may request a hearing before the hearing officer of the Commission, pursuant to NRS 284.390, within 10 working days after the effective date of his or her dismissal, demotion or suspension. For the purpose of determining the time limit for making such a request, the effective date of the dismissal, demotion or suspension is the first day that the disciplinary action takes effect.***

***2. Except as otherwise provided in subsection 3, such a request must be:***

***(a) Addressed and submitted as required pursuant to NAC 284.778; and***

***(b) Accompanied by the written notification of the appointing authority's decision regarding the proposed action provided to the employee pursuant to subsection 7 of NAC 284.6561.***

***3. If the appointing authority failed to provide the notification required pursuant to subsection 7 of NAC 284.6561 or the disciplinary action imposed was an immediate suspension or dismissal pursuant to the standards and procedures set forth in NAC 284.6563, the written notification of the appointing authority's decision regarding the proposed action need not accompany the request for a hearing.***

**Sec. 2. NAC 284.589 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, makes a conforming change based on the proposed amendment to NAC 284.6561, included below. This amendment will ensure that 8 hours of administrative leave is provided for preparation for a "pre-disciplinary review," as that phrase is proposed to replace the word "hearing" in NAC 284.6561. The word "hearing" will now refer to hearings to determine the reasonableness of dismissal, demotion or suspension, as provided in NRS 284.390.

At the Personnel Commission meeting on June 8, 2018, the Division of Human Resource Management will recommend changing the “or” in paragraph (d) of subsection 6 to reflect that up to 8 hours of administrative leave shall be granted for preparation for any predisciplinary review, and up to 8 hours of administrative leave shall be granted for any hearing described in paragraph (e) of subsection 6. The intent is that 8 hours of administrative leave will be granted to an employee for each type of meeting, rather than a combination of 8 hours for both types of meetings.

**NAC 284.589 Administrative leave with pay. (NRS 284.065, 284.155, 284.345, 284.383, 284.385, 284.390)**

1. An appointing authority may grant administrative leave with pay to an employee:
  - (a) To relieve the employee of his or her duties during the active investigation of a suspected criminal violation or the investigation of alleged wrongdoing;
  - (b) For up to 30 days when the appointing authority initiates the leave to obtain the results of an examination concerning the ability of the employee to perform the essential functions of his or her position;
  - (c) For up to 30 days to remove the employee from the workplace when he or she has committed or threatened to commit an act of violence;
  - (d) For up to 2 hours to donate blood;
  - (e) To relieve the employee of his or her duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065; or
  - (f) To attend a general employee benefits orientation or an educational session relating to employee benefits, including, without limitation, retirement and deferred compensation.
2. The appointing authority, upon approval of the Risk Management Division, may extend administrative leave with pay granted to an employee for a purpose set forth in paragraph (b) or (c) of subsection 1.
3. If an employee is granted administrative leave with pay pursuant to subsection 1 or 2, the employee must be available:
  - (a) By telephone to the supervisor of the employee; and
  - (b) To report to a work site or another location, as directed by the supervisor of the employee, ↪ during regular business hours.
4. Except as otherwise provided in subsection 5, an appointing authority or the Division of Human Resource Management may grant administrative leave with pay to an employee for any of the following purposes:
  - (a) His or her participation in, or attendance at, activities which are directly or indirectly related to the employee’s job or employment with the State but which do not require him or her to participate or attend in an official capacity as a state employee.
  - (b) His or her safety during an emergency when employees have been authorized by the Governor not to report to work or to leave work before the end of their shifts during the emergency, including, without limitation, emergencies relating to enemy attacks or other hostile actions, natural causes or other catastrophes, except for employees who are designated as essential and notified that they are required to report to work or remain at work.
  - (c) Closure of the employee’s office or work site caused by a natural disaster, pandemic or other similar adverse condition when the employee is scheduled and expected to be at work. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

(d) Closure, as a result of a pandemic, of a school or a center or facility that provides day care services which is attended by the employee's dependent child or the temporary cancellation, as a result of a pandemic, of a program attended by the employee's dependent child. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

(e) His or her appearance as an aggrieved employee, an employee who filed a complaint described in NAC 284.658 or a witness at a hearing of the Committee.

(f) His or her appearance as a witness at a hearing regarding a matter described in subparagraph (1), (2) or (3) of paragraph (e) of subsection 6.

(g) His or her appearance to provide testimony at a meeting of the Commission.

5. An appointing authority or the Division of Human Resource Management shall grant administrative leave with pay to an employee for a purpose set forth in paragraph (e), (f) or (g) of subsection 4 if:

(a) The employee requests the administrative leave for a period of time that is reasonably needed to testify at the hearing or meeting;

(b) The employee requests the administrative leave at least 2 weeks before the leave is needed, unless such notice is impractical; and

(c) The absence of the employee will not cause an undue hardship to the operations of the appointing authority or adversely impact the provision of services to clients or to the public.

6. An appointing authority shall grant administrative leave with pay to an employee for any of the following purposes:

(a) The initial appointment and one follow-up appointment if the employee receives counseling through an employee assistance program, including, without limitation, consultations provided in person or telephonically.

(b) His or her attendance at a health fair or related event coordinated by the Public Employees' Benefits Program.

(c) His or her participation in an official capacity as a member of a committee or board created by statute on which he or she serves as a representative of state employees. Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board.

(d) Up to 8 hours for preparation for any *predisciplinary review or any* hearing described in paragraph (e).

(e) The appearance of the employee as a party at a hearing regarding:

(1) An alleged reprisal or retaliatory action against the employee for disclosing an improper governmental action as provided in NRS 281.641;

(2) An involuntary transfer of the employee as provided in NRS 284.376; or

(3) A suspension, demotion or dismissal of the employee as provided in NRS 284.390 and *at a predisciplinary review as provided in* NAC 284.6561.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 4-20-90; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 9-13-91; 12-26-91; 11-12-93; 3-23-94; 11-16-95; 10-27-97; R042-99, 9-27-99; R058-01, 9-6-2001; A by Personnel Comm'n by R038-03, 10-30-2003; R183-03, 1-27-2004; R145-05, 12-29-2005; R141-07, 1-30-2008; R061-09 & R081-09, 10-27-2009; R063-09, 11-25-2009; R058-10, 10-15-2010; R137-13, 6-23-14; R042-15, 12-21-2015; R033-17, 10-31-2017)



**Sec. 3. NAC 284.642 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Legislative Counsel Bureau, makes a conforming change to include the new regulation in Section 1 of this LCB File in NAC 284.642.

**NAC 284.642 Suspensions and demotions. (NRS 284.065, 284.155, 284.383, 284.385, 284.390)**

1. If other forms of disciplinary or corrective action have proved ineffective, or if the seriousness of the offense or condition warrants, an employee may be:

(a) Suspended without pay for a period not to exceed 30 calendar days for any cause set forth in this chapter; or

(b) Demoted for any cause set forth in this chapter.

2. An exempt classified employee may only be suspended without pay in increments of one or more full workweeks.

3. The rights and procedures set forth in NAC 284.655 to 284.6563, inclusive, *and section Error! Reference source not found. of this regulation* apply to any disciplinary action taken pursuant to this section.

[Personnel Div., Rule XII § B, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 3-23-94; R147-01, 1-22-2002; A by Personnel Comm'n by R147-06, 12-7-2006; R063-09, 11-25-2009; R027-11, 12-30-2011)

**Sec. 4. NAC 284.656 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, makes a conforming change based on the proposed amendment to NAC 284.6561, included below. The phrase “pre-disciplinary review” is proposed to replace the word “hearing” in NAC 284.6561. The word “hearing” will now refer to hearings to determine the reasonableness of dismissal, demotion or suspension, as provided in NRS 284.390.

This amendment is not intended to apply to an appeal of involuntary transfer pursuant to NRS 284.376, or a whistleblower appeal pursuant to NRS 281.641.

**NAC 284.656 Notice. (NRS 284.065, 284.155, 284.383, 284.385, 284.390)** Except as otherwise provided in NAC 284.6563, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure for providing notice of the proposed action must be followed:

1. The employee must be given at least 10 working days' written notice of the proposed action on the form provided by the Division of Human Resource Management.

2. The notice may be given in person or by means of any delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received. If the notice is sent by means of a delivery service, the notice must be sent to the employee's last known address. The notice must not be given by electronic mail, the use of social media or other

electronic means. If the notice is returned without having been received by the employee, the employee's date of receipt shall be deemed to be the third day after the date the notice was sent.

3. The notice must:

(a) Specify the proposed date on which the action is effective.

(b) Inform the employee that a ~~hearing~~ *predisciplinary review* has been scheduled on his or her behalf in the manner prescribed in NAC 284.6561 and specify the date, time and place of the ~~hearing~~ *predisciplinary review*.

(c) Specify the charges, the reasons for them and the cause of action contained in NAC 284.646 or 284.650 on which the proposed action is based.

4. The notice of the proposed action must be signed by the appointing authority or his or her designated representative before the notice is given to the employee.

5. Upon its receipt, the employee must be asked to sign the notice. If he or she refuses to sign the notice, the refusal must be noted on the notice. The employee's signature is not an admission by him or her of any of the allegations set forth in the notice.

6. If the employee does not understand the reasons for the proposed action or the procedures related to disciplinary actions, including, without limitation, the right to notice, a *predisciplinary review and a hearing* ~~and an~~ *on the* appeal, the employee may seek an explanation from the appointing authority or another person in the agency familiar with the procedure.

7. As used in this section, "social media" includes, without limitation, any electronic service or account or electronic content, including, without limitation, any video, photograph, blog, video blog, podcast, instant message, text message, electronic mail program or service, online service or Internet website profile.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 7-21-89; 8-1-91; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 11-12-93; 11-16-95; 11-16-95; A by Personnel Comm'n by R063-09, 11-25-2009; R042-15, 1-1-2016)

**Sec. 5. NAC 284.6561 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, replaces the word "hearing" with the phrase "pre-disciplinary review", to clarify that this informal meeting is different than, and occurs prior to, a hearing to determine the reasonableness of a dismissal, demotion or suspension pursuant to NRS 284.390.

The amendment clarifies that the employee will be given the opportunity to rebut the claims supporting the proposed disciplinary action and provide any mitigating circumstances.

The amendment also clarifies that the effective date of the discipline is the *first* day the discipline takes effect. In the case of a dismissal or demotion, there is only one clear effective date of the discipline. In order to apply one clear effective date of discipline in the case of a suspension, it is necessary to use the first date of the suspension as the effective date. This will clarify that an employee who receives a suspension has the same rights to appeal, 10 working days, as an employee who is dismissed or demoted.

Lastly, subsection 9 of this regulation is proposed to be removed and will now be included as the newly proposed regulation which provides the requirements to file an appeal.

This amendment is not intended to apply to an appeal of involuntary transfer pursuant to NRS 284.376, or a whistleblower appeal pursuant to NRS 281.641.

**NAC 284.6561 Hearing. (NRS 284.065, 284.155, 284.383, 284.385, 284.390)**

Except as otherwise provided in NAC 284.6563, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure for a ~~hearing~~ *predisciplinary review* before the proposed action must be followed:

1. A ~~hearing~~ *predisciplinary review* must be scheduled on the employee's behalf unless waived in writing by the employee pursuant to subsection 2. The ~~hearing~~ *predisciplinary review* must be scheduled to take place not earlier than 7 working days after the written notice of the proposed action is delivered or deemed received pursuant to subsection 2 of NAC 284.656. The ~~hearing~~ *predisciplinary review* must not be scheduled on a day which is not a regular working day for the employee. If the appointing authority or his or her designated representative and the employee agree, the date of the ~~hearing~~ *predisciplinary review* may be changed.

2. The employee may waive the right to a ~~hearing~~ *predisciplinary review* before the proposed action in writing. If the employee makes such a waiver, the employee may not be dismissed, suspended or demoted before the proposed effective date. The waiver does not waive the employee's right to ~~an appeal~~ *a hearing* after the action is taken.

3. The appointing authority or his or her designated representative shall conduct the ~~hearing~~ *predisciplinary review*. The designated representative must be a person with the authority to recommend a final decision to the appointing authority. The appointing authority shall render the final decision.

4. At any time after receiving the notice and before the ~~hearing~~ *predisciplinary review*, the employee may examine all materials that are to be used by the person conducting the ~~hearing~~ *predisciplinary review*. The employee is entitled to administrative leave with pay as provided in NAC 284.589 to prepare for ~~the hearings~~ *a predisciplinary review or hearing* regarding his or her suspension, demotion or dismissal.

5. This process is an informal proceeding between the two parties, the appointing authority and his or her designated representative and the employee, who meet together to discuss the proposed action. *The employee will be given an opportunity to rebut the allegations against the employee and provide mitigating information.* Witnesses are not allowed to attend, but each party may be accompanied by a person of his or her choice.

6. The employee may respond both orally and in writing to the appointing authority or his or her designated representative at the ~~hearing~~ *predisciplinary review*.

7. The employee must be:

(a) Given a copy of the finding or recommendation, if any, resulting from the ~~hearing~~ *predisciplinary review*; and

(b) Notified in writing of the appointing authority's decision regarding the proposed action and the reasons therefor on or before the effective date of the action. *The effective date of the action is the first day the disciplinary action takes effect.*

8. The notice given pursuant to ~~paragraph (b) of~~ subsection 7 may be given in person or by means of any delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received. If the notice is sent by means of a delivery service, the notice must be sent to the employee's last known address. The notice must not be given by electronic mail, the use of social media or other electronic means. If the notice is returned without

having been received by the employee, the employee's date of receipt shall be deemed to be the third day after the date the notice was sent. As used in this subsection, "social media" has the meaning ascribed to it in subsection 7 of NAC 284.656.

~~{9. An employee who has been dismissed, demoted or suspended may request a hearing before the hearing officer of the Division of Human Resource Management pursuant to NRS 284.390 within 10 working days after the effective date of his or her dismissal, demotion or suspension. Such a request must be addressed to the Administrator and submitted on the form provided by the Division of Human Resource Management.}~~

(Added to NAC by Personnel Comm'n by R063-09, eff. 11-25-2009; A by R011-11, 10-26-2011; R076-16, 11-2-2016)

**Sec. 6. NAC 284.778 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, makes a housekeeping change to the regulation, as suggested by the headline. When an employee submits an appeal of the disciplinary action, he or she is requesting a hearing, which this amendment will clarify. The new requirement that the appointing authority's decision regarding the proposed action given is also included in this amendment.

**NAC 284.778 Request for hearing and other communications. (NRS 281.641, 284.065, 284.155, 284.376, 284.390)**

1. A request for ~~{an appeal}~~ **a hearing** must be addressed to the Administrator and submitted on the form provided by the Division of Human Resource Management.
2. A copy of any written communication directed to a hearing officer must be sent to the clerk assigned to the hearing officer.
3. A party shall not communicate with a hearing officer regarding the merits of a case:
  - (a) Except in the presence of all parties to the hearing; or
  - (b) Unless all parties to the hearing are notified of the communication in advance.
4. Unless otherwise agreed upon in writing by all parties, an offer or demand of settlement made by a party must not be disclosed to or proposed by a hearing officer before the issuance of a final decision by the hearing officer.

[Personnel Div., Hearings Procedures § (A) subsec. (1), eff. 11-28-65; A 6-9-74]—(NAC A by Dep't of Personnel, 10-26-84; A by Personnel Comm'n by R192-09, 6-30-2010, eff. 7-1-2010; R011-11, 10-26-2011)

**LCB File No. R151-17**

**Section 1. NAC 284.5385 is hereby amended to read as follows:**

**Explanation of Proposed Change:** The Division of Human Resource Management (the Division) initially proposed an amendment to NAC 284.544 in order to conform the regulation to current language in NAC 284.5775. Similar language was removed in 2005 as "unnecessary and redundant Family and Medical Leave Act language." However, the current language when read on its face appears to be in conflict with NAC 284.5775, subsection 5 of NRS 281.390 and current State of Nevada workers' compensation practice.

The Legislative Counsel Bureau handled the amendment differently by incorporating the reference to NAC 284.5775, and moving language related to an employee who does not have enough leave to make up the difference between his or her pay and benefits for temporary total disability, from NAC 284.544 and 284.5385, to NAC 284.5775.

**NAC 284.5385 Annual leave: Leave without pay; catastrophic leave; receipt of benefits for temporary total disability. (NRS 284.065, 284.155, 284.345, 284.350)**

1. Except as otherwise provided in NAC 284.580, an employee does not accrue annual leave during the time he or she is on leave *of absence* without pay or on catastrophic leave.

2. A person who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS and makes the election provided in ~~†~~

~~—(a) Subsection 1 or 3 of NRS 281.390~~ *subparagraph (1), (2) or (3) of paragraph (a) of subsection 1 of NAC 284.5775* is entitled to accrue annual leave during the period he or she is receiving those benefits and is being paid an amount of ~~{sick}~~ *paid* leave equal to the difference between his or her normal pay and the benefits received.

~~{(b) Subsection 5 of NRS 281.390 must be placed on leave of absence without pay, unless the employee is on family and medical leave because a serious health condition prevents him or her from performing one or more of the essential functions of his or her position. Such an employee may, while on such leave, elect to use his or her accrued annual leave in lieu of being placed on leave of absence without pay.~~

~~—3.— An employee who does not have enough sick leave to make up the difference between his or her normal pay and the benefits for a temporary total disability must be placed on leave of absence without pay for the time he or she is receiving such benefits and the balance of time not covered by sick leave or other paid leave.†~~ The employee accrues annual leave only for the time he or she is in paid status, excluding overtime.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 12-17-87; 7-14-88; 7-21-89; 8-1-91; 3-27-92; 9-16-92; 11-12-93; 3-23-94; 7-1-94; 11-16-95; R147-01, 1-22-2002; A by Personnel Comm'n by R145-05, 12-29-2005)

**Sec. 2. NAC 284.544 is hereby amended to read as follows:**

**Explanation of Proposed Change:** The Division of Human Resource Management (the Division) initially proposed an amendment to NAC 284.544 in order to conform the regulation to current language in NAC 284.5775. Similar language was removed in 2005 as “unnecessary and redundant Family and Medical Leave Act language.” However, the current language when read on its face appears to be in conflict with NAC 284.5775, subsection 5 of NRS 281.390 and current State of Nevada workers’ compensation practice.

The Legislative Counsel Bureau handled the amendment differently by incorporating the reference to NAC 284.5775, and moving language related to an employee who does not have enough leave to make up the difference between his or her pay and benefits for temporary total disability, from NAC 284.544 and 284.5385, to NAC 284.5775.

**NAC 284.544 Sick leave: Leave without pay; catastrophic leave; receipt of benefits for temporary total disability; computation. (NRS 284.065, 284.155, 284.345, 284.355)**

1. Except as otherwise provided in NAC 284.580, an employee does not accrue sick leave during the time he or she is on leave *of absence* without pay or on catastrophic leave.

2. A person who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS and ~~†~~

~~—(a) Makes~~ *makes* the election provided in *subparagraph (1), (2) or (3) of paragraph (a) of subsection 1* ~~for 3~~ of ~~NRS 281.390~~ *NAC 284.5775* is entitled to accrue sick leave during the period he or she is receiving those benefits and is being paid an amount of ~~sick~~ *paid* leave equal to the difference between his or her normal pay and the benefits received.

~~†(b) Makes the election provided in subsection 5 of NRS 281.390 must be placed on leave of absence without pay, unless the employee elects to use his or her accrued annual leave.~~

~~—3. An employee who does not have enough sick leave to make up the difference between his or her normal pay and the benefits for temporary total disability must be placed on leave of absence without pay for the time he or she is receiving such benefits and the balance of time not covered by paid leave.~~ The employee accrues sick leave only for the time he or she is in paid status, excluding overtime.

~~†4.~~ **3.** To compute the amount of sick leave to which an employee is entitled, an employee must be considered to work not more than 40 hours each week. If an employee occupies more than one position in different departments, the amount of sick leave to which the employee is entitled must be computed based on not more than 40 hours each week in each position.

~~†5.~~ **4.** The basis for the computation of the amount of sick leave to which an exempt classified employee or exempt unclassified employee is entitled must not exceed the number of hours authorized in the biennial operating budget of this State for his or her position.

(Added to NAC by Dep't of Personnel, eff. 12-17-87; A 7-14-88; 7-21-89; 8-1-91; 9-16-92; 11-12-93; 3-23-94; 7-1-94; 11-16-95; R147-01, 1-22-2002; A by Personnel Comm'n by R145-05, 12-29-2005)

### Sec. 3. NAC 284.5775 is hereby amended to read as follows:

**Explanation of Proposed Change:** The Division of Human Resource Management (the Division) initially proposed an amendment to NAC 284.544 in order to conform the regulation to current language in NAC 284.5775. Similar language was removed in 2005 as “unnecessary and redundant Family and Medical Leave Act language.” However, the current language when read on its face appears to be in conflict with NAC 284.5775, subsection 5 of NRS 281.390 and current State of Nevada workers’ compensation practice.

The Legislative Counsel Bureau handled the amendment differently by incorporating the reference to NAC 284.5775, and moving language related to an employee who does not have enough leave to make up the difference between his or her pay and benefits for temporary total disability, from NAC 284.544 and 284.5385, to NAC 284.5775.

**NAC 284.5775 Temporary total disability: Use of sick leave, compensatory time, annual leave and catastrophic leave; leave of absence without pay. (NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626)**

**1.** An employee who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may:

~~††~~ **(a)** Elect to receive payment for all or part of the difference between his or her normal pay and the benefits received by:

- ~~1(a)~~ (1) Using his or her accrued sick leave as provided in subsection 1 or 3 of NRS 281.390;
- ~~1(b)~~ (2) Using his or her accrued compensatory time;
- ~~1(c)~~ (3) Using his or her accrued annual leave if he or she:

~~1(d)~~ (I) Is on family and medical leave for a serious health condition that prevents him or her from performing one or more of the essential functions of his or her position; or

~~1(e)~~ (II) Elected to use his or her accrued sick leave pursuant to NRS 281.390 and has exhausted all of his or her accrued sick leave; or

~~1(f)~~ (4) Using catastrophic leave if he or she has exhausted all of his or her accrued annual leave, sick leave and compensatory time and his or her request for catastrophic leave has been approved pursuant to NAC 284.576; or

~~2~~ (b) Elect to be placed on leave of absence without pay in accordance with subsection 5 of NRS 281.390.

*2. An employee who does not have enough paid leave to make up the difference between his or her normal pay and the benefits for a temporary total disability pursuant to paragraph (a) of subsection 1 must be placed on leave of absence without pay for the time he or she is receiving such benefits and the balance of time not covered by paid leave.*

(Added to NAC by Dep't of Personnel by R031-98, eff. 4-17-98; A by R082-00, 8-2-2000)

**Sec. 4. NAC 284.882 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, will require that a screening test to detect the presence of alcohol by testing an employee's breath be conducted using a breath-testing device appearing on that Internet website maintained by the Office of Drug and Alcohol Policy and Compliance.

**NAC 284.882 Administration of screening tests. (NRS 284.065, 284.155, 284.4065, 284.407)** A screening test to detect the general presence of:

1. A controlled substance must comply with:

(a) The standards established by the United States Department of Health and Human Services which are hereby adopted by reference. A copy of the standards is available, without charge, from the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace Programs, ~~1-Choke-Cherry-Road,~~ *5600 Fishers Lane*, Rockville, Maryland 20857; and

(b) Any supplementary standards and procedures established by the Commission.

2. Alcohol by testing a person's breath must be conducted using a breath-testing device ~~certified in accordance with the "Conforming Products List of Evidential Breath Alcohol Measurement Devices" published in the Federal Register~~ *approved* by the National Highway Traffic Safety Administration of the United States Department of Transportation ~~and listed on the "Approved Evidential Breath Measurement Devices" webpage on the Internet website maintained by the Office of Drug and Alcohol Policy and Compliance of the United States Department of Transportation pursuant to 49 C.F.R. § 40.229.~~

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A 10-27-97; R082-00, 8-2-2000; A by Personnel Comm'n by R066-09, 10-27-2009; R009-11, 10-26-2011)