

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R098-17

December 20, 2017

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

AUTHORITY:§1, NRS 284.065; §2, NRS 284.065, 284.155 and 284.290; §§3 and 4, NRS 284.065, 284.155 and 284.384.

A REGULATION relating to the State Personnel System; setting forth the contents of and procedure for issuing a letter of instruction to an employee; revising provisions relating to the rights of probationary and permanent employees to appeal and file grievances concerning the rejection of such employees during probationary or trial periods; requiring the Division of Human Resource Management of the Department of Administration to take certain actions if the Division determines that a request to file a grievance or an appeal is not eligible for the applicable procedure; authorizing, under certain circumstances, an appointing authority or a designated representative of the appointing authority to unilaterally extend time for taking certain actions relating to the grievance procedure; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Personnel Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations governing the State Personnel System. (NRS 284.065)

Section 1 of this regulation sets forth the required contents of and the procedure for a supervisor of an employee to issue a letter of instruction to the employee. Such a letter of instruction is generally not part of the formal disciplinary process.

Existing regulations provide that a probationary employee who is rejected during his or her probationary period does not have the right to appeal the rejection. (NAC 284.458) **Section 2** of this regulation provides that a probationary employee who is rejected during his or her probationary period may also not file a grievance to appeal the rejection. Existing regulations provide that an employee who is rejected during his or her trial period may not file a grievance to appeal the rejection. Pursuant to existing regulations, the term trial period means the “6-month or 1-year probationary period served by a permanent employee who has been promoted to a vacant position.” (NAC 284.108, 284.458) **Section 2** provides that a permanent employee who is serving a trial period may also not appeal the rejection. **Section 2** also requires the Division to: (1) notify the person who submitted the request and the appointing authority in which the rejection arose that the request is not eligible for the procedure for the adjustment of grievances

or the appeal process; and (2) remove the request from the applicable procedure. **Section 4** of this regulation makes conforming changes.

Existing regulations provide for an extension of time to file a grievance and to take certain other steps in the grievance procedure if such an extension time is mutually agreed upon by the employee who is authorized to file the grievance and the appointing authority or his or her designated representative. (NAC 284.692) **Section 3** of this regulation authorizes an appointing authority or his or her designated representative to unilaterally extend the time under certain documented circumstances.

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

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:

284.458 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~~ *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.

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

284.692 1. Except as otherwise provided in subsection ~~13~~ 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.

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:

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.