

**SECOND REVISED PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R118-17

July 6, 2018

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

AUTHORITY: §§1-5, NRS 284.065, 284.155, 284.383 and 284.385; §6, NRS 284.065, 284.155, 284.383, 284.385 and 284.407; §7, NRS 284.065, 284.155 and 284.407.

A REGULATION relating to the State Personnel System; revising provisions relating to disciplinary actions; revising provisions relating to transporting an employee to and from a screening test; 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 to carry out the provisions governing the State Personnel System. (NRS 284.065) Existing law further requires the Commission to adopt a code of regulations for the classified service of the State of Nevada. (NRS 284.155) The classified service of the State of Nevada is comprised of all positions in the public service that are lawfully designated as being in the classified service. (NRS 284.150)

Existing law requires the Commission to adopt regulations that set forth a system for administering disciplinary measures against a state employee in which, except in cases of serious violations of law or regulations, less severe measures are first used, after which more severe measures are applied if the less severe measures did not work. (NRS 284.383) Existing law authorizes an appointing authority to: (1) dismiss or demote any permanent classified employee; and (2) suspend without pay, for disciplinary purposes, a permanent employee for a period not to exceed 30 days. (NRS 284.385) Existing regulations set forth various situations when appropriate disciplinary or corrective action may be taken. (NAC 284.650) Existing regulations additionally set forth the system for administering disciplinary measures by detailing when a warning, written reprimand, suspension or demotion of an employee may occur. (NAC 284.638, 284.642) Existing regulations further set forth when an appointing authority may dismiss an employee. (NAC 284.646)

Section 2 of this regulation requires an employee to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or a driver’s license to his or her appointing authority within 5 working days after it occurs if such a license, certificate or permit is required for the employee’s position. **Section 3** of this regulation requires an employee or a designated representative of the employee to report being arrested for, charged with or convicted of any offense to his or her appointing authority within 5 working days after it

occurs if such an arrest, charge or conviction makes the employee temporarily or permanently unable to perform the duties of his or her position. **Section 3** further provides that the employee must make such a report even if the employee: (1) is not absent from work as a result of the arrest, charge or conviction; or (2) is absent from work as a result of the arrest, charge or conviction and the absence is either authorized by the employee's appointing authority or unauthorized. **Sections 2 and 3** authorize, if the employee fails to make the required report within 5 working days: (1) the appointing authority to immediately dismiss the employee; or (2) appropriate disciplinary or corrective action to be taken against the employee. **Sections 4 and 5** of this regulation make conforming changes.

Existing regulations authorize an appointing authority to immediately dismiss an employee if: (1) the appointing authority has reasonable cause to believe that retaining the employee on active duty poses a threat to life, limb or property or may be seriously detrimental to the interests of the State; and (2) temporarily assigning the employee to different duties is not feasible. Existing regulations provides that before immediately dismissing such an employee, the appointing authority, his or her designated representative or the employee's supervisor shall: (1) attempt to inform the employee before the dismissal occurs of the charges against the employee; and (2) provide the employee with an opportunity to rebut the charges. Procedural notice and hearing requirements must be followed as soon as practicable after the immediate dismissal of the employee occurs. (NAC 284.6563) **Section 4** sets forth that an appointing authority may immediately dismiss an employee for certain causes pursuant to the standards and procedures set forth in existing regulations.

Existing law requires the Commission to adopt such regulations as are necessary to carry out the provisions governing the use of alcohol or drugs by employees. (NRS 284.407) Existing regulations require an employee to report to his or her appointing authority within 5 working days after it occurs a conviction of: (1) driving under the influence of intoxicating liquor or a controlled substance while the employee was driving a state vehicle or a privately owned vehicle on state business; or (2) unlawfully manufacturing, distributing, dispensing, possessing or using a controlled substance on the premises of a workplace or on state business. If the employee fails to report such a conviction, he or she must be dismissed. (NAC 284.653) **Section 6** of this regulation requires an employee to report being arrested for, charged with or convicted of such offenses to his or her appointing authority within 5 working days after it occurs if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her job. **Section 6** further clarifies that the appointing authority shall immediately dismiss the employee for failing to report such an arrest, charge or conviction.

Existing law authorizes an appointing authority to request an employee to submit to a screening test if the appointing authority reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs which are impairing the employee's ability to perform the employee's duties safely and efficiently. (NRS 284.4065) If an employee is required to submit to a screening test pursuant to existing law, existing regulations require the appointing authority of the employee to provide transportation for the employee: (1) to the location of the test; and (2) after the employee submits to the screening test, to his or her home. (NAC 284.890) **Section 7** of this regulation requires the appointing authority to provide transportation for the employee to the location of the screening test only in certain circumstances. **Section 7** further requires the appointing authority, after an employee submits to

the screening test, to: (1) provide transportation for the employee to his or her home; (2) assist the employee in arranging transportation; or (3) arrange for emergency medical assistance if the appointing authority or any other person reasonably believes that the employee needs emergency medical assistance, whichever is most appropriate.

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

Sec. 2. 1. *An employee must report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license to his or her appointing authority within 5 working days after the suspension, revocation or cancellation occurs if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law.*

2. If an employee fails to make the report required pursuant to subsection 1:

(a) The appointing authority may immediately dismiss the employee pursuant to subsection 2 of NAC 284.646; or

(b) Appropriate disciplinary or corrective action may be taken against the employee pursuant to NAC 284.650.

Sec. 3. 1. *An employee or a designated representative of the employee must report being arrested for, charged with or convicted of any offense, including, without limitation, being arrested for, charged with or convicted of an offense that took place during working or nonworking hours, to his or her appointing authority within 5 working days after the arrest, charge or conviction occurs if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position.*

2. An employee must make the report required pursuant to subsection 1 in every situation where the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position, even if the employee:

(a) Is not absent from work as a result of an arrest, charge or conviction; or

(b) Is absent from work as a result of an arrest, charge or conviction and the absence is:

(1) Authorized by his or her appointing authority; or

(2) Unauthorized.

3. Except as otherwise provided in subsection 6 of NAC 284.653, if an employee fails to make the report required pursuant to subsection 1:

(a) The appointing authority may immediately dismiss the employee pursuant to subsection 2 of NAC 284.646; or

(b) Appropriate disciplinary or corrective action may be taken against the employee pursuant to NAC 284.650.

Sec. 4. NAC 284.646 is hereby amended to read as follows:

284.646 1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:

(a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause; or

(b) The seriousness of the offense or condition warrants such dismissal.

2. An appointing authority may immediately dismiss an employee *pursuant to the standards and procedures set forth in NAC 284.6563* for the following causes, unless the conduct is authorized pursuant to a rule or policy adopted by the agency with which the employee is employed:

(a) Intentionally viewing or distributing pornographic material at the premises of the workplace, including, without limitation, intentionally viewing or distributing pornographic material on any computer owned by the State, unless such viewing or distributing is a requirement of the employee's position ; ~~⊞~~

(b) Unauthorized release or use of confidential information ; ~~⊞~~

(c) Participation in sexual conduct on the premises of the workplace, including, without limitation, participation in sexual conduct in a vehicle that is owned by the State ; ~~⊞~~

(d) Absence without approved leave for 3 consecutive days during which the employee is scheduled to work ; ~~⊞~~

(e) The suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law ; ~~⊞~~

(f) Threatening another person with a deadly weapon during any time in which the employee is:

(1) On the premises of the workplace; or

(2) Conducting state business or otherwise performing any duties of employment ; ~~⊞~~

(g) Stealing or misappropriating any property that is owned by the State or located on state property ~~⊞~~ ;

(h) Failure to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license pursuant to section 2 of this

regulation if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law; or

(i) Failure to report being arrested for, charged with or convicted of any offense pursuant to section 3 of this regulation if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position.

3. The rights and procedures set forth in NAC 284.655 to 284.6563, inclusive, apply to any dismissal made pursuant to this section.

4. As used in this section:

(a) "Material" has the meaning ascribed to it in NRS 201.2581.

(b) "Nudity" has the meaning ascribed to it in NRS 201.261.

(c) "Pornographic material" means material that, all or in part, contains any description or representation of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of adults and is without serious literary, artistic, political or scientific value.

(d) "Sado-masochistic abuse" has the meaning ascribed to it in NRS 201.262.

(e) "Sexual excitement" has the meaning ascribed to it in NRS 201.264.

Sec. 5. NAC 284.650 is hereby amended to read as follows:

284.650 Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.
2. Disgraceful personal conduct which impairs the performance of a job or causes discredit to the agency.
3. The employee of any institution administering a security program, in the considered judgment of the appointing authority, violates or endangers the security of the institution.
4. Discourteous treatment of the public or fellow employees while on duty.
5. Incompetence or inefficiency.
6. Insubordination or willful disobedience.
7. Inexcusable neglect of duty.
8. Fraud in securing appointment.
9. Prohibited political activity.
10. Dishonesty.
11. Abuse, damage to or waste of public equipment, property or supplies because of inexcusable negligence or willful acts.
12. Drug or alcohol abuse as described in NRS 284.4062 and NAC 284.884.
13. Conviction of any criminal act involving moral turpitude.
14. Being under the influence of intoxicants, a controlled substance without a medical doctor's prescription or any other illegally used substances while on duty.
15. Unauthorized absence from duty or abuse of leave privileges.
16. Violation of any rule of the Commission.
17. Falsification of any records.
18. Misrepresentation of official capacity or authority.

19. Violation of any safety rule adopted or enforced by the employee's appointing authority.
20. Carrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his or her appointing authority.
21. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.
22. Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning sexual harassment.
23. Failure to participate in an administrative investigation authorized by the employee's appointing authority.
24. *Failure to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license pursuant to section 2 of this regulation if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law.*
25. *Failure to report being arrested for, charged with or convicted of any offense pursuant to section 3 of this regulation if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position.*

Sec. 6. NAC 284.653 is hereby amended to read as follows:

284.653 1. An employee is subject to any disciplinary action set forth in subsection 2, as determined by the appointing authority, if the employee is convicted of any of the following offenses:

(a) If the offense occurred while the employee was driving a state vehicle, or a privately owned vehicle on state business:

(1) Driving under the influence in violation of NRS 484C.110; or

(2) Any offense resulting from an incident in which the employee was:

(I) Originally charged with driving under the influence; or

(II) Charged with any other offense for which driving under the influence is an element of the offense.

(b) The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance on the premises of the workplace or on state business.

2. An appointing authority may impose the following disciplinary actions if an employee is convicted of an offense set forth in subsection 1:

(a) For the first offense:

(1) Dismissal;

(2) Demotion, if permitted by the organizational structure of the agency for which he or she is employed;

(3) Suspension for 30 calendar days; or

(4) Suspension for 30 calendar days and demotion.

(b) For the second offense within 5 years, dismissal.

3. An employee who is suspended or demoted pursuant to subsection 2 must:

(a) Agree to be evaluated through an employee assistance program; and

(b) Complete any program of treatment recommended by the evaluation.

4. If an employee fails to complete the program of treatment, the appointing authority must dismiss the employee.

5. Pursuant to NRS 193.105, an employee who is convicted of violating any state or federal law prohibiting the sale of a controlled substance must be dismissed.

6. An employee must report ~~{a conviction}~~ *being arrested for, charged with or convicted of* any offense described in this section , *including, without limitation, being arrested for, charged with or convicted of an offense that took place during working or nonworking hours*, to his or her appointing authority within 5 working days after it occurs ~~{}~~ *if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position*. If the employee fails to make ~~{that}~~ *such a* report, ~~{he or she must be dismissed.}~~ *the appointing authority shall immediately dismiss the employee.*

Sec. 7. NAC 284.890 is hereby amended to read as follows:

284.890 *1.* If an *appointing authority requests an* employee ~~{is required}~~ to submit to a screening test ~~{}~~ *based on the reasonable belief of the appointing authority that the employee is under the influence of alcohol or drugs and the employee has not refused to submit to the screening test*, the appointing authority shall provide transportation for the employee to the location of the test.

2. After the employee submits to the screening test, the appointing authority , *based on which of the following is most appropriate*, shall ~~{provide}~~ :

(a) Provide transportation for the employee to his or her home ~~{}~~ ;

(b) Assist the employee in arranging for a person chosen by the employee to provide transportation for the employee; or

(c) Arrange for emergency medical assistance if the appointing authority or any other person, before or during the transportation of the employee to his or her home, reasonably believes, based on objective facts, that the employee needs emergency medical assistance.