

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R119-17

October 31, 2017

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

AUTHORITY: §1, NRS 284.065, 284.155, 284.4065 and 284.407.

A REGULATION relating to state employees; providing that an appointing authority may request certain employees to submit to a screening test without first having the supervisor of the employee complete a form containing certain information; 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: (1) a code of regulations for the classified service of the State of Nevada; and (2) such regulations as are necessary to carry out the provisions governing the use of alcohol or drugs by employees, who are persons in the classified or unclassified service of the State. (NRS 284.155, 284.4061, 284.407)

Existing law defines a screening test to mean a test of a person’s breath, blood or urine to detect the general presence of alcohol or of a controlled substance or any other drug which could impair that person’s ability to perform the duties of employment safely and efficiently. (NRS 284.4061) Existing law authorizes an appointing authority to request an employee to submit to a screening test if the appointing authority informs the employee in writing: (1) of whether the test will be for alcohol or drugs, or both; (2) that the results of the test are not admissible in any criminal proceeding against the employee; and (3) that the employee may refuse the test, but such refusal may result in the employee’s dismissal or in some other disciplinary action being taken against the employee. (NRS 284.4065) Existing regulations provide that 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 that contains the information that is required by existing law. (NAC 284.888, as amended by section 2 of LCB File No. R044-15, which was adopted by the Personnel Commission and became effective on January 1, 2016)

Existing law further authorizes an appointing authority to request an employee to submit to a screening test without first informing the employee in writing of the above listed information if the employee: (1) is a law enforcement officer and, during the performance of the employee’s duties, the employee discharges a firearm, other than by accident; (2) during the performance of

the employee's duties, drives a motor vehicle in such a manner as to cause bodily injury to the employee or another person or substantial damage to property; or (3) has or is involved in a work-related accident, motor vehicle crash or injury. (NRS 284.4065) Existing regulations provide that the requirement for the supervisor to complete a form provided by the Division of Human Resource Management does not apply if the employee, during the performance of the employee's duties, drives a motor vehicle in such a manner as to cause bodily injury to the employee or another person or substantial damage to property. (NAC 284.888) This regulation provides that the requirement for the supervisor to complete a form provided by the Division of Human Resource Management does not apply if the employee qualifies for one of the three categories set forth in existing law.

In 2015, the Nevada Legislature amended certain sections of existing law by changing the word "accident" to "crash" and by amending the word "accident," in certain situations where the term "accident" is intended to include both a motor vehicle crash and an accidental incident of some other type, by adding "motor vehicle crash." (Senate Bill No. 188, chapter 317, Statutes of Nevada 2015, at page 1621) This regulation makes conforming changes.

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

284.888 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 , *motor vehicle crash* or injury” means an accident , *motor vehicle crash* or injury that occurs in the course of employment or that involves an employee on the premises of the workplace.