

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R121-17

November 30, 2017

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

AUTHORITY: §§1 and 2, NRS 284.065, 284.155, 284.250, 284.305 and 284.327, as amended by section 1 of Assembly Bill No. 192, chapter 189, Statutes of Nevada 2017, at page 1016; §3, NRS 284.065, 284.155, 284.250 and 284.305; §4, NRS 284.065 and 284.155.

A REGULATION relating to the State Personnel System; revising provisions governing lists of eligible persons for appointment to a position in the classified service; requiring an appointing authority to contact the Division of Human Resource Management of the Department of Administration to determine if eligible persons are available from certain lists before making an appointment from a lower priority list; revising provisions relating to offers of employment made to an eligible person selected from a certified list for employment; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing regulations establish different types of lists of persons eligible for appointment to a position in the classified service and prioritize the use of these lists by appointing authorities. The highest priority is given to reemployment lists, followed by lists of persons with disabilities who are eligible for temporary limited appointments. (NAC 284.358)

The Personnel Commission adopted a regulation which was approved by the Legislative Commission on November 2, 2016, establishing the process for the reassignment of a classified employee with a disability, as a reasonable accommodation, in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. and state law. This regulation requires an appointing authority to attempt to reassign an employee within his or her agency and, if the appointing authority is unable to do so, to contact the Division of Human Resource Management of the Department of Administration to have the employee’s name placed on a reassignment list. The regulation also provides that the reassignment of an employee as a reasonable accommodation takes precedence over all other types of appointments and use of lists, including, without limitation, the lists, other than reemployment lists, currently provided for by regulation. (Section 4 of LCB File No. R097-16) **Section 1** of this regulation requires an appointing authority to prioritize the use of a reassignment list after a reemployment list. **Section 1** also requires appointing authorities to: (1) follow this order of priority, unless otherwise provided in chapter 284 of NRS or chapter 284 of NAC; and (2) contact the Division of Human Resource

Management to determine if eligible persons are available through a reemployment list, reassignment list or list of persons with disabilities who are eligible for temporary limited appointments before the appointing authority may use any lower priority list. If a reassignment list is certified to an agency, **section 3** of this regulation requires the Division of Human Resource Management to integrate the name of an employee who is eligible for reassignment within that agency into the reassignment list.

During the 2017 Legislative Session, the Legislature enacted Assembly Bill No. 192 to require, rather than authorize, appointing authorities to make temporary limited appointments of certified persons with disabilities to positions in government service unless certain limited exceptions apply. (NRS 284.327, as amended by section 1 of Assembly Bill No. 192, chapter 189, Statutes of Nevada 2017, at page 1016) Pursuant to A.B. No. 192, this requirement becomes effective on January 1, 2018. To conform with A.B. No. 192, **section 1** removes language which indicates that such temporary limited appointments are optional rather than mandatory.

Existing regulations provide the procedures that the Division of Human Resource Management is required to follow when providing reemployment lists and other lists of eligible persons to an appointing authority. (NAC 284.360) **Section 2** of this regulation revises those procedures to specifically require the Division of Human Resource Management to certify and provide each list to the appointing authority in accordance with the order of priority set forth in **section 1**. **Section 2** also removes the requirement that eligible persons who have requested a transfer or who have a certified disability and qualify for temporary limited appointments be placed on the same list as other eligible persons and that such persons may be considered at the option of the appointing authority.

Existing regulations require an eligible person selected from a reemployment list to accept or refuse an offer for reemployment within a certain number of days depending upon whether the offer was: (1) sent by mail to the person; or (2) made orally to the person. (NAC 284.361) **Section 3** expands the application of those provisions to all offers for employment that are made to an eligible person selected from any certified list for employment. **Section 4** of this regulation makes conforming changes.

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

284.358 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 ~~1, at the option of the appointing authority.~~

~~(e)~~, as amended by section 1 of Assembly Bill No. 192, chapter 189, Statutes of Nevada
2017, at page 1016.

(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.

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

284.360 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 ~~{will}~~ *must* verify the availability of a reemployment list for that class. If a reemployment list is available, the Division of Human Resource Management ~~{will}~~ *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 ~~{will}~~ *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.*

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.*

5. *If no list described in subsection 1, 2 or 3 is available*, the Division of Human Resource Management ~~{will,}~~ *must, upon request of the appointing authority and* in accordance with subsections ~~{3 and 4,}~~ *6 and 7*, certify the names of eligible persons on ranked or unranked lists ~~{}~~ *described in paragraphs (e) to (i), inclusive, of subsection 1 of NAC 284.358*, or waive the list.

~~{3,}~~ 6. The names of eligible persons on ranked lists ~~{will}~~ *must* appear in the order of the total rating which they earned in the examination, including preferences for veterans and residents.

~~{4,}~~ 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.

~~{5. — Eligible persons who have requested a transfer and persons with disabilities who are eligible for temporary limited appointments pursuant to NAC 284.364 will be certified on the same list as other eligible persons and may be considered at the option of the appointing authority.~~

~~—6,}~~ 8. Only an eligible person who has indicated the willingness to accept the location of the vacancy and the other conditions of employment ~~{will}~~ *may* be certified.

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

284.361 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, ~~the~~
~~—(a) Eligible~~ 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.

~~(b)~~ 2. *The Department 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 ~~reemployment:~~
~~—(1)~~ *employment:*

(a) If the offer of ~~reemployment~~ *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

~~(2)~~ (b) If the offer is an oral offer of ~~reemployment,~~ *employment*, within 3 business days after the oral offer has been made.

~~(2)~~ 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.

~~13.1~~ 5. Certification of only eligible persons who are the same sex ~~will~~ *must* not be made unless there is clear evidence that the duties assigned could be performed efficiently only by the sex specified.

~~14.1~~ 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 ~~16.1~~ 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.

~~15.1~~ 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.

~~16.1~~ 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 ~~will~~ *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.

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

284.618 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 ~~2~~ 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.