

**PROPOSED REGULATION OF THE  
PERSONNEL COMMISSION**

**LCB FILE NO. R150-17I**

**The following document is the initial draft regulation proposed  
by the agency submitted on 12/14/2017**

**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. 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. The effective date is the first day the disciplinary action takes effect. Such a request must be addressed to the Administrator and submitted on the form provided by the Division of Human Resource Management, and, except as otherwise provided in subsection 2, must be accompanied by the written notification of the appointing authority's decision regarding the proposed action given as required by paragraph b of subsection 7 of NAC 284.6561.*

*2. If the disciplinary action imposed is an immediate suspension or dismissal pursuant to paragraph b of subsection 2 of NAC 284.6563, the written notification of the appointing authority's decision regarding the proposed action need not accompany the request pursuant to subsection 1.*

**Section 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.

**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, as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049; 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 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 *pre-disciplinary 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 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)

### **Section 3. NAC 284.656 is hereby amended to read as follows:**

<p><b>Explanation of Proposed Change:</b> 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</p>
--

“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~~ *pre-disciplinary 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~~ *pre-disciplinary 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 ~~hearing~~ *pre-disciplinary review* and an 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)

**Section 4. 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~~ Pre-disciplinary review.** (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~~ *pre-disciplinary review* before the proposed action must be followed:

1. A ~~hearing~~ *pre-disciplinary review* must be scheduled on the employee's behalf unless waived in writing by the employee pursuant to subsection 2. The ~~hearing~~ *pre-disciplinary 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~~ *pre-disciplinary 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~~ *pre-disciplinary review* may be changed.

2. The employee may waive the right to a ~~hearing~~ *pre-disciplinary 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 after the action is taken.

3. The appointing authority or his or her designated representative shall conduct the ~~hearing~~ *pre-disciplinary 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~~ *pre-disciplinary review*, the employee may examine all materials that are to be used by the person conducting the ~~hearing~~ *pre-disciplinary review*. The employee is entitled to administrative leave with pay as provided in NAC 284.589 to prepare for ~~the hearings~~ *any pre-disciplinary review* 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 the opportunity to rebut the allegations presented*

*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~~ *pre-disciplinary review.*

7. The employee must be:

(a) Given a copy of the finding or recommendation, if any, resulting from the hearing; 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)

**Section 5. NAC 284.778 is hereby amended to read as follows:**

<p><b>Explanation of Proposed Change:</b> 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.</p>
---

**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. *The request must be submitted pursuant to subsection 1 of section 1 of this regulation, or in the case of immediate suspension or dismissal, pursuant to subsection 2 of section 1 of this regulation.*

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; R042-15, 12-21-2015)