

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R150-17

January 30, 2018

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

AUTHORITY: §1, NRS 284.065, 284.155, 284.385 and 284.390; §2, NRS 284.065, 284.155 and 284.345; §3, NRS 284.065, 284.155, 284.383, 284.385 and 284.390; §4, NRS 284.065, 284.155 and 284.383; §5, NRS 284.065, 284.155, 284.383 and 284.385; §6, NRS 284.065, 284.155 and 284.390.

A REGULATION relating to the State Personnel System; revising provisions governing hearings related to the dismissal, suspension or demotion of certain state employees; 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)

Existing law and regulations provide certain hearings before and after disciplinary actions are taken against a permanent employee. (NRS 284.390; NAC 284.6561) Specifically, existing regulations require an appointing authority or a designated representative of the appointing authority to conduct a predeprivation hearing before the appointing authority dismisses, suspends or demotes a permanent employee. (NAC 284.6561) Existing law authorizes a permanent employee who has been dismissed, demoted or suspended to request a postdeprivation hearing before the hearing officer of the Commission to determine the reasonableness of the dismissal, demotion or suspension of the employee. (NRS 284.390)

Because the term “hearing” is used to refer to both the predeprivation hearing and the postdeprivation hearing, to avoid confusion, **section 5** of this regulation replaces the term “hearing” with the phrase “predisciplinary review” when that phrase is used to refer to a predeprivation hearing conducted by the appointing authority or a designated representative of the appointing authority. The term “hearing” will continue to be used when referring to a postdeprivation hearing conducted by a hearing officer of the Commission.

Section 5 also provides that: (1) the employee will be given the opportunity at the predisciplinary review to rebut the allegations against the employee and provide mitigating information; and (2) for purposes of notifying the employee of the appointing authority’s

decision regarding the proposed disciplinary action, the effective date of the action is the first day that the disciplinary action takes effect.

The provision of existing regulations authorizing a permanent employee to request a postdeprivation hearing conducted by a hearing officer is: (1) now set forth in **section 1** of this regulation to separate the requirements for the predeprivation process from the requirements for requesting a postdeprivation hearing; and (2) revised to indicate that the postdeprivation hearing is conducted by a hearing officer of the Commission rather than a hearing officer of the Division.

Existing regulations set forth provisions governing the granting of administrative leave with pay to employees in the public service. (NAC 284.589) **Section 2** of this regulation specifies that the provisions requiring an appointing authority to grant administrative leave with pay to an employee to prepare for his or her appearance at certain employment-related hearings also apply to an employee who prepares for his or her appearance at a predisciplinary review.

Sections 3 and 4 of this regulation make conforming changes.

Existing regulations provide the manner in which a request for an appeal in a case relating to a dismissal, suspension, demotion, involuntary transfer or an appeal filed pursuant to NRS 281.641 must be addressed and submitted. (NAC 284.774, 284.778) **Section 6** of this regulation specifies that such a request is a request for a hearing on the appeal rather than a request for an appeal.

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

1. A permanent employee who has been dismissed, demoted or suspended may request a hearing before the hearing officer of the Commission, pursuant to NRS 284.390, within 10 working days after the effective date of his or her dismissal, demotion or suspension. For the purpose of determining the time limit for making such a request, the effective date of the dismissal, demotion or suspension is the first day that the disciplinary action takes effect.

2. Except as otherwise provided in subsection 3, such a request must be:

(a) Addressed and submitted as required pursuant to NAC 284.778; and

(b) Accompanied by the written notification of the appointing authority's decision regarding the proposed action provided to the employee pursuant to subsection 7 of NAC 284.6561.

3. If the appointing authority failed to provide the notification required pursuant to subsection 7 of NAC 284.6561 or the disciplinary action imposed was an immediate suspension or dismissal pursuant to the standards and procedures set forth in NAC 284.6563, the written notification of the appointing authority's decision regarding the proposed action need not accompany the request for a hearing.

Sec. 2. NAC 284.589 is hereby amended to read as follows:

284.589 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; 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, an employee who filed a complaint described in NAC 284.658 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 *predisciplinary 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 *at a predisciplinary review as provided in* NAC 284.6561.

Sec. 3. NAC 284.642 is hereby amended to read as follows:

284.642 1. If other forms of disciplinary or corrective action have proved ineffective, or if the seriousness of the offense or condition warrants, an employee may be:

(a) Suspended without pay for a period not to exceed 30 calendar days for any cause set forth in this chapter; or

(b) Demoted for any cause set forth in this chapter.

2. An exempt classified employee may only be suspended without pay in increments of one or more full workweeks.

3. The rights and procedures set forth in NAC 284.655 to 284.6563, inclusive, *and section 1 of this regulation* apply to any disciplinary action taken pursuant to this section.

Sec. 4. NAC 284.656 is hereby amended to read as follows:

284.656 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~~ *predisciplinary 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~~ *predisciplinary 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 *predisciplinary review and a hearing* ~~and an~~ *on the* 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.

Sec. 5. NAC 284.6561 is hereby amended to read as follows:

284.6561 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~~ *predisciplinary review* before the proposed action must be followed:

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

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

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

7. The employee must be:

(a) Given a copy of the finding or recommendation, if any, resulting from the ~~hearing;~~ *predisciplinary review*; 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.}~~

Sec. 6. NAC 284.778 is hereby amended to read as follows:

284.778 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.

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.