

# PROPOSED REGULATION OF THE PERSONNEL COMMISSION

## LCB File No. R057-18

May 29, 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, 284.340 and 284.384.

A REGULATION relating to state employees; revising certain requirements concerning reports on performance; limiting the circumstances under which an employee may appeal a contested report on performance; and providing other matters properly relating thereto.

### **Legislative Counsel's Digest:**

Existing law requires each appointing authority to periodically file a report with the Administrator of the Division of Human Resource Management of the Department of Administration on the performance of certain employees. (NRS 284.340) Existing regulations require the immediate supervisor of an employee to mail such a report to the employee if the employee is unavailable to discuss the report because of an extended absence. Existing regulations also require such an employee who contests the report on performance and requests a review to respond to the report in writing and return the response to the supervisor. (NAC 284.470) **Section 2** of this regulation expands the methods by which a supervisor may transmit such a report to an unavailable employee and by which an unavailable employee may transmit a response from only mail to other reasonable methods of delivery except social media.

Existing regulations define “reviewing officer” to mean a person who reviews a report on performance upon request of an employee who is: (1) the supervisor of the person who prepared the report on performance of an employee; or (2) such other person designated by the appointing authority. (NAC 284.097) **Section 1** of this regulation expands this definition to authorize an appointing authority to be a reviewing officer who reviews a report on performance upon request of an employee. **Section 2** clarifies that a supervisor is required to forward a response to a report to the reviewing officer.

Existing regulations define “rating of performance” to mean the overall rating of an employee’s performance which is included in the report on performance of an employee. (NAC 284.0915) **Section 2** removes redundant references to “overall” with respect to a rating of performance without altering any substantive requirements.

Existing regulations authorize a permanent employee to appeal a contested report on performance through a prescribed procedure for the adjustment of a grievance. (NAC 284.478) **Sections 2-5** of this regulation limit such appeals only to circumstances where the employee receives a rating of performance on his or her report of performance of substandard.

**Section 1.** NAC 284.097 is hereby amended to read as follows:

284.097 “Reviewing officer” means:

1. The supervisor of the person who prepared a report on performance of an employee; or
2. ~~{Such}~~ *The appointing authority or such* other person designated by the appointing authority,  
↳ who reviews the report on performance upon the request of the employee pursuant to paragraph (b) of subsection 9 *or paragraph (b) of subsection 10* of NAC 284.470.

**Sec. 2.** NAC 284.470 is hereby amended to read as follows:

284.470 1. A person shall not complete a report on performance unless he or she has completed the training provided or approved by the Administrator concerning the preparation of a report on performance.

2. A report on performance must be prepared on the form prescribed by the Division of Human Resource Management.

3. A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee.

4. If a report on performance is filed on or before the times specified in NRS 284.340, the ~~{overall}~~ rating of performance of the employee will be reflected in the employee’s file of employment and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194.

5. If a report on performance is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard for the purpose of determining the salary of the employee and the employee will receive a merit pay increase if he or she is

otherwise eligible for the increase pursuant to NAC 284.194. If an untimely report on performance:

(a) Is filed thereafter, the employee's file of employment will be updated to reflect the ~~overall~~ rating of performance of the employee as reported, but that rating will not affect any merit pay increase to which the employee is otherwise entitled.

(b) Is not filed thereafter, the employee's file of employment will not include ~~an overall~~ a rating of performance of the employee for that period of evaluation.

6. If the performance of an employee falls below standard, his or her supervisor shall inform the employee promptly and specifically of the deficiencies in the performance of the employee regardless of whether a report on performance of the employee is completed or filed.

7. If any information that would have affected the rating of performance of an employee during a period of evaluation becomes available after the date on which the report on performance of the employee is filed for that period, the information may be included in the report on performance for the current period of evaluation and taken into consideration in determining the rating of performance for the current period of evaluation.

8. When a report on performance is given which reports the ~~overall~~ rating of performance of an employee as substandard:

(a) The report must contain a written notice that such reports affect merit pay increases; and

(b) An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard or disciplinary action is taken against the employee.

9. Except as otherwise provided in subsection 10, the preparation of each report on performance must include a discussion between the employee and his or her immediate supervisor. Within 10 working days after the discussion takes place:

(a) The employee must complete and sign the appropriate section on the report on performance and return the report to the supervisor for forwarding to the ~~reviewing officer or~~ appointing authority.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify the specific points of contention, if such specificity is provided, and return the response to the supervisor ~~+~~ *for forwarding to the reviewing officer.* Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the contested report on performance and render a final decision to the employee within 10 working days after receiving the recommendation.

10. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 9 because of an extended absence, the immediate supervisor of the employee shall cause the report to be ~~mailed~~ *sent* to the employee ~~+~~ *by any reasonable means of delivery but not including social media.* Within 10 working days after the date on which the employee receives the report:

(a) The employee must complete and sign the appropriate section on the report on performance and ~~mail~~ send the report *by any reasonable means of delivery but not including social media* to the supervisor for forwarding to the appointing authority. ~~for reviewing officer.~~

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing. ~~;~~ *The response must* identify any specific point of contention, if the report provides such specificity. ~~;~~ ~~and mail the~~ *The employee must send the* response to the supervisor ~~;~~ *by any reasonable means of delivery but not including social media for forwarding to the reviewing officer.* Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the report on performance and render a final decision to the employee within 10 working days after receiving the recommendation. For the purposes of this paragraph, a report on performance or request for review is deemed to have been received on the ~~third~~ :

*(1) Third* day after the date on which the report or request is postmarked ~~;~~ ; *or*

*(2) Date on which the report or request is sent by any other reasonable means of delivery.*

11. A copy of each report on performance and, if applicable, any written response to such a report requested by an employee pursuant to subsection 9 or 10 must be provided to the employee and filed with the Division of Human Resource Management.

12. If any written comments are added to a report on performance after a copy of the report has been provided to the employee pursuant to subsection 11:

(a) A copy of the revised report which includes the written comments must be provided to the employee; and

(b) The employee may respond, in writing, to the additional comments in the revised report not later than 10 working days after receiving a copy of the revised report and submit the response to the Division of Human Resource Management for inclusion in his or her file of employment.

13. An employee and his or her appointing authority or the designee of the appointing authority may agree in writing to extend one or more of the periods prescribed in subsection 9 or 10.

14. If a reviewing officer *or, if the reviewing officer is not the appointing authority, the appointing authority* fails to respond to a request for review from an employee *whose rating of performance is substandard* within the time required by this section, the employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

*15. As used in this section, "social media" :*

*(a) Includes, without limitation, any electronic service or account or electronic content, including, without limitation, any video, photograph, blog, video blog, podcast, instant message or text message.*

*(b) Does not include an electronic mail program or service.*

**Sec. 3.** NAC 284.478 is hereby amended to read as follows:

284.478 Upon completion of the review process conducted pursuant to NAC 284.470, a permanent employee *whose rating of performance in the report on performance remains*

*substandard* may appeal ~~to~~ *the* contested report on performance through the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

**Sec. 4.** NAC 284.658 is hereby amended to read as follows:

284.658 As used in NAC 284.341 and 284.658 to 284.697, inclusive, unless the context otherwise requires:

1. “Complaint” means a written complaint filed by an employee pursuant to NRS 281.755. The term does not include a complaint filed pursuant to paragraph (c) of subsection 1 of NAC 284.696.

2. “Grievance” means an act, omission or occurrence which a permanent classified employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement or a contested report on performance ~~to~~ *with a rating of performance of substandard*. The act, omission or occurrence must be established with factual information including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved. For the purposes of NAC 284.341 and 284.658 to 284.697, inclusive, the term “grievance” does not include any grievance for which a hearing is provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390.

**Sec. 5.** NAC 284.693 is hereby amended to read as follows:

284.693 1. ~~If the~~ *The* Division of Human Resource Management *must take the actions described in subsection 2 if the Division* determines that a request for the adjustment of:

(a) A grievance is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because ~~the~~ :

(1) *The* person who submitted the request is not a person described in subsection 2 of NAC 284.658 ;

(2) *The grievance is related to a report of performance with a rating of performance other than substandard;* or ~~because a~~

(3) *A* hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 . ~~is or~~

(b) A complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in paragraph (a) of subsection 4 of NRS 281.755 . ~~is~~

~~the Division must take the actions described in subsection 2.~~

2. Upon making a determination pursuant to subsection 1 that a request for the adjustment of a grievance or complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, the Division must, as soon as practicable:

(a) Remove the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive; and

(b) Provide to the person who submitted the request and the agency in which the grievance or complaint arose:

(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, and an explanation for that determination;

(2) Notice that the Division has removed the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive;

(3) If applicable, information relating to the appropriate procedure for resolving the person's concern; and

(4) Information relating to the person's right to appeal the determination to the Committee.

3. If the Division of Human Resource Management determines that a request for the adjustment of a grievance or complaint is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.