

**PROPOSED REGULATION OF THE
DEPARTMENT OF PERSONNEL**

LCB FILE NO. R063-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 03/28/2018**

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, outlines when an employment candidate or employee has refused to submit to a screening test.

Subsection 1 defines terminology used in the section. Subsection 2 outlines what situations would constitute an employment candidate or an employee having refused to submit to an alcohol or drug screening test. Subsection 3 outlines the consequences of an employment candidate's refusal to submit to a screening test. Subsection 4 provides that an employee who refuses to submit to a screening test is subject to disciplinary action.

NEW Refusal to submit to a screening test: Reasons an applicant or employee shall be deemed to have refused a test; potential consequences of a refusal to submit to a screening test.

1. As used in this section:

(a) "Collection site" means a location where specimens are collected;

(b) "Collector" means a person trained to instruct and assist an applicant or employee in providing a specimen;

(c) "Medical Review Officer" means a licensed physician who reviews, verifies, and reports specimen test results;

(d) "Specimen" means breath or fluid collected from an applicant or employee for the purpose of a screening test.

2. An applicant or employee is considered to have refused to submit to a screening test when the applicant or employee:

(a) Provides oral or written notice that he or she refuses to take the requested screening test;

(b) Fails to appear at the collection site for a screening test within a reasonable time after being directed to do so by the appointing authority, absent extenuating circumstances;

(c) Fails to remain at the collection site until the collection process is complete, absent extenuating circumstances;

(d) Fails to provide a specimen;

(e) Fails to provide a sufficient amount of specimen when directed, and it has been determined, through a required medical evaluation, that there was no legitimate medical explanation for the failure;

(f) Fails to undergo a medical examination or evaluation, as directed by the appointing authority;

(g) Fails to cooperate with any part of the testing process including refusal to sign required forms;

(h) Brings materials to the collection site for the purpose of adulterating, substituting, or diluting the specimen;

(i) Attempts to adulterate, substitute, or dilute the specimen;

(j) Wears a prosthetic or other device that could be used to interfere with the collection process; or

(k) Admits to the collector or Medical Review Officer that he or she has adulterated or substituted the specimen.

3. An applicant for a position affecting public safety who refuses or is deemed to have refused a screening test required pursuant to NRS 284.4066 shall be subject to revocation of the offer of employment.

4. An employee who refuses or is deemed to have refused to submit to a screening test required pursuant to NRS 284.4065 or subsection 1 of NAC 284.893 is subject to disciplinary action, including, without limitation, dismissal, at the discretion of the employee's appointing authority.

Sec. 2. NAC 284.578 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS

613, in part, to make it unlawful for an employer to discharge, discipline, discriminate against in any manner, deny promotion, or threaten such action against, any employee who has requested accommodations, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against them at the employee's workplace.

This amendment, proposed by the Division of Human Resource Management, makes a conforming change to use the same language proposed in NAC 284.576 and currently used in NAC 284.2508, 284.539, and 284.554 for the same provision of leave due to an act of domestic violence.

NAC 284.578 Leave of absence without pay. (NRS 284.065, 284.155, 284.345, 284.360)

1. Except as otherwise provided in NRS 284.360, an appointing authority may grant a leave of absence without pay to an employee for not more than 1 year for any satisfactory reason.

2. The Commission may grant leaves of absence without pay in excess of 1 year for purposes deemed beneficial to the public service.

3. An appointing authority may require an employee on leave of absence without pay to submit every 2 weeks a statement of his or her intent to return to work.

4. If the reason for granting the leave no longer exists, the appointing authority may revoke the leave after notifying the employee in writing and allowing, so far as is practicable, not less than 5 working days after the date of notification for the employee to return to work.

5. An employee shall request leave without pay at least 30 days in advance of when the need for the leave is foreseeable, if practicable.

6. An employee may not use leave without pay in lieu of sick leave or annual leave without approval of the appointing authority.

7. An employee who is using leave pursuant to the Family and Medical Leave Act may not use leave without pay until the employee has exhausted all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave that the employee is eligible to use based on the nature of the absence, as required by NAC 284.5811.

8. An appointing authority shall grant leave without pay, upon request, to an employee who is a victim of an act which constitutes domestic violence or whose family or household member

is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator if:

(a) The employee has been employed in public service for at least 90 days; and

(b) The combination of all leave taken by the employee for this purpose ~~[, including, without limitation, sick leave, annual leave, compensatory time and leave without pay,]~~ does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence occurred.

[Personnel Div., Rule VII § E subsecs. 1-4, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 3-23-94; 10-27-97; A by Personnel Comm'n by R145-05, 12-29-2005; R060-09, 11-25-2009; R037-17, 1-1-2018)

Sec. 3. NAC 284.893 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, removes subsection 3 from NAC 284.893 because it is now being included as subsection 4 of the new regulation included in section 1 of this document.

NAC 284.893 Return to work of employee who tests positive for alcohol or controlled substance while on duty. (NRS 284.065, 284.155, 284.407)

1. The appointing authority of an employee who tests positive for the presence of alcohol or a controlled substance while on duty and who, as a result, is subject to disciplinary action pursuant to NAC 284.646 or 284.650 but is not terminated shall, before allowing the employee to return to work, require the employee to:

(a) Provide to the appointing authority documentation from a counselor who is licensed or certified pursuant to chapter 641C of NRS or another health care provider who has training or experience in substance abuse counseling, which verifies that the employee is able to return to duty and perform the essential functions of his or her job.

(b) Submit to a screening test.

2. The employee is responsible for the cost of any:

(a) Counseling services the employee receives to verify that the employee is able to return to duty and perform the essential functions of his or her job and any documentation of those services; and

(b) Screening test,

↪ required pursuant to subsection 1.

~~{3. An employee who fails or refuses to submit to a screening test required pursuant to subsection 1 is subject to disciplinary action, including, without limitation, termination, at the discretion of the employee's appointing authority.}~~

(Added to NAC by Personnel Comm'n by R066-09, eff. 10-27-2009; A by R195-09, 4-20-2010; R138-12, 10-4-2013)