

**REVISED PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R163-18

October 19, 2018

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

AUTHORITY: §1, NRS 284.065, 284.155 and 284.375; §§2 and 3, NRS 284.065; §4, NRS 284.065, 284.155, 284.290 and 284.300; §5, NRS 281.145, 284.065, 284.155, 284.290 and 284.345.

A REGULATION relating to the State Personnel System; requiring a permanent employee who voluntarily transfers to certain classes to serve a trial period; requiring certain permanent employees who voluntarily transfer to certain classes to be restored to his or her former position or to be otherwise placed in another position or on a reemployment list; revising the definition of the term “eligible person”; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Personnel Commission to adopt: (1) regulations to carry out the provisions governing the State Personnel System; and (2) a code of regulations for the classified service. (NRS 284.065, 284.155)

Existing regulations set forth when a probationary or trial period applies to certain employees. (NAC 284.444) **Section 4** of this regulation requires a permanent employee who voluntarily transfers to any vacant position in the same class or a comparable class to serve a trial period. **Section 5** of this regulation makes conforming changes. Existing regulations define “trial period” to mean the 6-month or 1-year probationary period served by a permanent employee who has been promoted to a vacant position. (NAC 284.108) **Section 3** of this regulation makes conforming changes by applying the probationary period to a permanent employee who has been promoted to or who voluntarily transferred to a vacant position.

Existing law authorizes transfers to be made from one position to another position within the same grade under certain circumstances. (NRS 284.375) Existing regulations authorize an employee to request a transfer to certain positions that are in the same class or a comparable class as the employee’s current class. (NAC 284.390) **Section 1** of this regulation requires a permanent employee who voluntarily transfers to any vacant position in the same class or a

comparable class and who fails to complete his or her trial period or who voluntarily reverts back to his or her former class to be restored to his or her former position or to be otherwise placed in another position or on a reemployment list. **Section 1** additionally requires written notice to be given to the agency from which the employee voluntarily transferred in such situations.

Existing law requires the Commission to adopt regulations requiring that an appointee who is promoted to a position and fails to attain a permanent status in the position to which the appointee was promoted must be restored to the position from which the appointee was promoted unless the position has been filled by an employee with greater seniority. (NRS 284.300) Existing regulations, adopted pursuant to existing law, provide such requirements. (NAC 284.462) **Section 1** clarifies that the provisions of **section 1** do not apply to existing regulations as **section 1** applies to a permanent employee who voluntarily transfers to any vacant position while existing regulations apply to an employee who is promoted to a position.

Existing regulations provide the types of lists of eligible persons and the required priority for such lists, with the following lists receiving first priority: (1) reemployment lists; (2) lists of certain persons with disabilities; (3) transfer lists; and (4) divisional promotional lists. (NAC 284.358) Existing regulations define “eligible person” as any person who applies, is eligible, competes and successfully passes all phases of an examination and is placed on an appropriate eligible list. (NAC 284.058) **Section 2** of this regulation revises the definition of the term “eligible person,” in part, to include any person who is eligible to be placed on a: (1) reemployment list; (2) list of certain persons with disabilities; (3) transfer list; or (4) divisional promotional list.

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

1. If a permanent employee voluntarily transfers and the permanent employee fails to complete his or her trial period in the position to which he or she voluntarily transferred or voluntarily chooses to revert to his or her previous position, the permanent employee must, in the following order, be:

(a) Restored to the position from which the employee voluntarily transferred, if that position is vacant;

(b) If the position from which the employee voluntarily transferred is not vacant, appointed to another position in the agency from which the employee voluntarily transferred:

(1) For which a vacancy exists; and

(2) Which is in the same class as the position held by the employee immediately before he or she voluntarily transferred;

(c) If the position from which the employee voluntarily transferred is not vacant and a position described in paragraph (b) does not exist, appointed to a position in the agency from which the employee voluntarily transferred:

(1) For which a vacancy exists;

(2) Within a comparable class to the class of the position held by the employee immediately before he or she voluntarily transferred; and

(3) For which the employee meets the minimum qualifications;

(d) If the position from which the employee voluntarily transferred is not vacant and a position described in paragraph (b) or (c) does not exist, appointed to a position in the agency from which the employee voluntarily transferred:

(1) For which a vacancy exists;

(2) Within a class lower than the class of the position held by the employee immediately before he or she voluntarily transferred; and

(3) For which the employee meets the minimum qualifications; or

(e) If the position from which the employee voluntarily transferred is not vacant and a position described in paragraph (b), (c) or (d) does not exist, placed on the reemployment list for other classes:

(1) Which are equal to or lower than the class of the position held by the employee immediately before he or she voluntarily transferred; and

(2) For which the employee meets the minimum qualifications.

2. If an employee fails to complete the trial period and is restored to his or her former position or otherwise placed pursuant to subsection 1, the appointing authority which takes such action must give written notice to the agency from which the employee voluntarily transferred at least 30 calendar days before the effective date of the action. The agency which is taking the action is liable for the payment of the employee during this 30-day period unless the agency receiving the employee agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if notice of the action has been provided to the employee and filed with the Division of Human Resource Management on or before the last day of his or her trial period, even though the action takes place after the last day of the trial period.

3. If an employee voluntarily chooses to revert to his or her previous position and is restored to his or her former position or otherwise placed pursuant to subsection 1, the employee must notify the agency to which the employee voluntarily transferred. The agency to which the employee voluntarily transferred must then give written notice to the agency from which the employee voluntarily transferred at least 30 calendar days before the effective date of the action. The agency which is taking the action is liable for the payment of the employee during this 30-day period unless the agency receiving the employee agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if notice of the action has been filed with the Division of Human Resource Management on or

before the last day of his or her trial period, even though the action takes place after the last day of the trial period.

4. The provisions of this section do not apply to an employee described in NAC 284.462.

5. As used in this section, “voluntarily transfer” means any movement into a vacant position in the same class or a comparable class by a permanent employee, including, without limitation, transfers governed by NAC 284.390.

Sec. 2. NAC 284.058 is hereby amended to read as follows:

284.058 “Eligible person” means any person who ~~{applies, is eligible, competes}~~ *meets the required minimum qualifications* and :

1. Applies, successfully passes all phases of an examination , *when required*, and is placed on an appropriate eligible list ~~†~~ ; *or*

2. Is eligible to be placed on a list described in paragraphs (a) to (d), inclusive, of subsection 1 of NAC 284.358.

Sec. 3. NAC 284.108 is hereby amended to read as follows:

284.108 “Trial period” means the 6-month or 1-year probationary period served by a permanent employee who has been promoted *to or who voluntarily transferred* to a vacant position.

Sec. 4. NAC 284.444 is hereby amended to read as follows:

284.444 1. A probationary employee who transfers:

(a) Within the same class must serve the remaining portion of the probationary period.

(b) From one class to another class must serve a new probationary period.

2. A permanent employee must serve a trial period if he or she voluntarily transfers:

(a) Within the same class; or

(b) From one class to another class and such classes are comparable classes.

3. An employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period. Except for those unclassified employees who transfer pursuant to subsection 2 of NAC 284.398, the status of a permanent employee may not be attained until the satisfactory completion of the probationary period.

~~13.1~~ 4. An employee who is reinstated must serve a new probationary period unless it is waived in writing by the appointing authority. If an appointing authority waives the probationary period, the status of the appointment of the employee is permanent.

~~14.1~~ 5. A probationary employee who is reappointed must serve a new probationary period.

~~15.1~~ 6. A permanent employee who is reappointed to a class:

(a) At a higher grade level must serve a trial period unless it is waived by the appointing authority.

(b) At the same grade level or a lower grade level is not required to serve a ~~probationary~~ *trial* period.

~~16.1~~ 7. An employee who is laid off, but who is reemployed within 1 year, must serve a new probationary period if reemployed in a different class or in a different department than that from which he or she was laid off, and the employee is subject to the provisions of subsection 8 of NAC 284.630.

~~17.1~~ 8. A person with a permanent disability arising from a work-related injury or occupational disease who is reemployed in a different class or option than his or her regular position must serve a new probationary period as required by NAC 284.6018.

~~18.1~~ **9.** A person who is on a military leave of absence pursuant to NRS 284.359 is entitled to return to the status of appointment held at the time he or she commenced the military leave of absence. If the employee did not complete the probationary period, he or she will only be required to complete the remaining portion thereof. Upon successful completion of the probationary period, permanent status must be granted to the employee as of the date on which permanent status would have been granted if the employee had not taken a military leave of absence.

~~19.1~~ **10.** Promotion to a vacant position requires a new probationary *or trial* period. Promotions which result from reclassification are governed by NAC 284.134 and 284.138.

~~110.1~~ **11.** Except as otherwise provided in subsection ~~111.1~~ **12:**

- (a) No probationary period will be required if a permanent employee is demoted.
- (b) A new probationary period will be required if a probationary employee is demoted.

~~111.1~~ **12.** An employee who is restored to his or her former position or class pursuant to NAC 284.462 following a promotional appointment must serve the portion of the trial period which was remaining at the time of the promotion. No probationary period is required if, pursuant to subparagraph (1) of paragraph (c) of subsection 2 of NAC 284.462, an employee is placed in a position in a class equal to or lower than the class held by the employee immediately before the promotion.

Sec. 5. NAC 284.448 is hereby amended to read as follows:

284.448 The following types of leave or temporary status do not count toward the completion of any probationary period:

1. Authorized military leave for active service, as set forth in subsection ~~8~~ 9 of NAC 284.444.
2. Authorized military leave for training beyond the 15 paid working days authorized by NRS 281.145 during a 12-month period, as prescribed in NAC 284.5875.
3. Except as otherwise provided in NAC 284.580, any leave without pay and catastrophic leave, combined, in excess of 240 hours or, in the case of an exempt classified employee, 30 working days, in a year if the regular work schedule of the employee is 80 hours or less biweekly. If the regular work schedule of an employee is more than 80 hours biweekly, the employee must be allotted additional leave without pay and catastrophic leave in proportion to the number of hours his or her regular work schedule exceeds 80 hours biweekly. As used in this subsection, “year” means a period equal to 12 months of full-time equivalent service measured backward from the employee’s pay progression date.
4. Time which is served in a temporary position pursuant to NAC 284.414.
5. Any hours worked which exceed 40 in a week.