

**PROPOSED REGULATION OF THE  
PERSONNEL COMMISSION**

**LCB FILE NO. R164-18I**

**The following document is the initial draft regulation proposed  
by the agency submitted on 06/22/2018**

**Section 1. NAC 284.172 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, allows an appointing authority to request an accelerated rate under NAC 284.204 for an employee that is receiving a promotion.

**NAC 284.172 Rate of pay: Effect of promotion. (NRS 284.065, 284.155, 284.175)**

1. The following provisions govern the rate of pay which must be paid if an employee is promoted:

(a) The employee must be placed at the lowest step in the higher grade that meets one of the following requirements:

(1) If the employee moves one or two grades above his or her former grade, he or she must be placed at the same step in the new grade as the step held in his or her former grade.

(2) If the employee moves three or more grades above his or her former grade, the employee must be placed:

(I) At a step which is equivalent to an increase of two steps above the step held in his or her former grade; or

(II) At the lowest step of the new grade,

↪ whichever pay is higher and in accordance with the provisions of NAC 284.179.

(b) A special adjustment to an employee's pay for performing supervisory duties which is granted in accordance with paragraph (c) of subsection 2 of NAC 284.206 is the present level of pay for the purpose of calculating a promotional increase authorized by paragraph (a) only if the employee has received the special adjustment to his or her pay for more than 6 months of continuous full-time service.

(c) If an employee has been demoted, he or she may not, within 1 year after the demotion, receive a promotional increase in pay that is greater than the increase which he or she would have otherwise been entitled to receive had he or she not been demoted unless the Administrator approves the promotional increase.

(d) This subsection does not apply when an employee is reemployed or reappointed to his or her former grade within 1 year after holding that grade.

2. As used in this section, "present level of pay" means a rate of pay that is equal to the amount that is assigned to the step within the grade which is closest to, but does not exceed, the employee's pay after a special adjustment to pay pursuant to the provisions of NAC 284.206.

***3. The provisions of sections 1 and 2 do not preclude an appointing authority's ability to request an accelerated salary in accordance with the requirements of NAC 284.204.***

(Added to NAC by Personnel Comm'n by R133-12, eff. 10-4-2013; A by R064-14, 10-24-2014)

**Sec. 2. NAC 284.204 is hereby amended to read as follows:**

**Explanation of Change:** This amendment, proposed by the Division of Human Resource Management, removes subparagraph (c) of subsection 1, which requires maintenance of an appropriate differential, not to exceed two steps, between the base rate of pay of a supervisor and the base rate of pay of an employee of that supervisor. The intent of this amendment is to maintain equity and consistency across State agencies.

**NAC 284.204 Adjustment of steps within same grade: Conditions for approval; request; effective date; revocation. (NRS 284.065, 284.155, 284.175)**

1. The Division of Human Resource Management may approve an adjustment of steps within the same grade to:

(a) Allow an appointing authority the flexibility to adjust the rate of pay for a position that will be filled by a person from a pool of eligible persons who are applying for the position on an open competitive basis in order to:

(1) Meet a difficult recruiting problem in which an effort to recruit a person for a position or class has failed to produce at least five eligible persons who are available to work, or the recruitment for the position or class has been deemed historically difficult. Such an adjustment of steps may be approved by the Division of Human Resource Management for a class for a period of 1 year.

(2) Employ a person whose education or experience is superior to those of another eligible person and who exceeds the minimum qualifications of the class. Any experience or education which is considered by the appointing authority pursuant to this subparagraph must be given a greater weight for those areas which are directly related to the position than general education and experience.

(b) Maintain an equitable relationship in the status of steps among the employees of the appointing authority if a disparity exists. An adjustment will not be granted pursuant to this section if the disparity in steps is:

(1) Among employees of different departments or agencies; or

(2) A result of:

(I) The length of service of employees;

(II) An adjustment in pay which was attained in a former class; or

(III) An adjustment in pay for an employee who resides in a particular geographical area.

~~{(c) Maintain an appropriate differential, not to exceed two steps, between the base rate of pay of a supervisor and the base rate of pay of an employee who is in the direct line of authority of the supervisor. An adjustment may be granted pursuant to this paragraph if, before the adjustment, the base rate of pay of the employee is the same or greater than the base rate of pay of the supervisor.}~~

2. Before granting an adjustment of steps pursuant to this section, the appointing authority must submit a request on a form prescribed by the Division of Human Resource Management to the Division of Human Resource Management which:

(a) Specifies the qualifying conditions and justification for the request; and

(b) Certifies that the appointing authority has, where applicable:

(1) Considered the requirements for the pay required to meet the need described in subparagraph (1) of paragraph (a) of subsection 1;

(2) Considered the qualifications of any other eligible person who is available for work for the purposes of subparagraph (2) of paragraph (a) of subsection 1;

(3) Ensured that the adjustment is feasible on the basis of its fiscal effects; and

(4) Prepared and maintained an accurate record of the consideration of the factors listed in this section.

3. If an adjustment of steps pursuant to this section is approved by the Division of Human Resource Management, the effective date of such an adjustment is the date on which a request

that complies with subsection 2 is received by the Division of Human Resource Management or the personnel office of the department or agency at which the employee who is receiving the adjustment is employed. If a request for an adjustment of steps is delayed because an administrative or clerical error prevented the delivery of the request, the effective date must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment must not exceed 6 months from the date on which the Division of Human Resource Management receives the request.

4. An adjustment of steps which is made pursuant to subparagraph (1) of paragraph (a) of subsection 1 may be revoked when:

(a) The recruiting problem which caused the adjustment was due to the geographical location of the position; and

(b) The employee moves from one position to another position in either a different area within the department or agency in which the employee is currently employed or a different department or agency than the department or agency in which the employee is currently employed, and a similar recruiting problem does not exist in the new area, department or agency.

↳ The employee must be placed at the step he or she would have received if he or she had not received the adjustment.

(Added to NAC by Dep't of Personnel, eff. 8-14-90; A 7-1-94; R197-99, 1-26-2000; R147-01, 1-22-2002; R015-02, 5-2-2002; A by Personnel Comm'n by R134-12, 10-4-2013; R060-16, 6-28-2016)

### **Sec. 3. NAC 284.360 is hereby amended to read as follows:**

**Explanation of Change:** This amendment will allow the Administrator of the Division of Human Resource Management to make a determination to certify a list of eligible applicants who are not ranked, or to waive the list, in addition to the three options included in subsection 6 of the regulation.

#### **NAC 284.360 Certification and provision of certain lists by Division; certification of eligible persons on ranked or unranked lists or waiver of lists. (NRS 284.065, 284.155, 284.250)**

1. Upon receipt of the appropriate form from an appointing authority for a list of eligible candidates in a specific class, the Division of Human Resource Management must verify the availability of a reemployment list for that class. If a reemployment list is available, the Division of Human Resource Management must certify and provide the reemployment list to the appointing authority. Eligible persons who appear on reemployment lists are ranked in order of seniority. Except as otherwise provided in subsection 2 of NAC 284.6017, placement on a reemployment list must be determined using the criteria governing the determination of seniority for layoff pursuant to NAC 284.632.

2. If there is no reemployment list available, the Division of Human Resource Management must certify and provide to the appointing authority any available lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327.

3. If there are no available lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327, the Division of Human Resource Management

must certify and provide to the appointing authority any available transfer lists of employees who are entitled to transfer to a position pursuant to NRS 284.3775.

4. If no list described in subsection 1 or 2 is available, the Division of Human Resource Management must, upon request of the appointing authority and in accordance with subsections 5 and 6, certify the names of eligible persons on ranked or unranked lists described in paragraphs (d) to (h), inclusive, of subsection 1 of NAC 284.358, or waive the list.

5. The names of eligible persons on ranked lists must appear in the order of the total rating which they earned in the examination, including preferences for veterans and residents.

6. The Division of Human Resource Management may certify a list of eligible applicants who are not ranked, or may waive the list, for:

(a) A class that is grade 20 or below;

(b) A class designated in the classification plan as entry level; ~~for~~

(c) A class designated in the classification plan as a class for which applicants for promotion are not normally available ~~H~~; *or*

*(d) A class determined to be appropriate by the Administrator of the Division of Human Resource Management.*

7. Only an eligible person who has indicated the willingness to accept the location of the vacancy and the other conditions of employment may be certified.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A by Personnel Comm'n by R183-03, 1-27-2004; R024-05, 10-31-2005; R034-17, 12-19-17, eff. 1-1-2018)

#### **Sec. 4. NAC 284.374 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, clarifies that the 12-month period to refuse to consider an eligible person who has been subject to discipline includes decisions by a hearing officer, or decisions by the court on a judicial review, or a decision by the Supreme Court of Nevada.

**NAC 284.374 Active lists: Removal and reactivation of names; no requirement or refusal to consider certain persons. (NRS 284.065, 284.155, 284.250, 284.295)**

1. The names of eligible persons will be removed from the active lists for any of the following causes:

(a) Appointment after certification to fill a full-time permanent position in the class for which the examination was given.

(b) Expiration of the term of eligibility.

(c) Separation of a person who is eligible for promotion from the state service.

(d) Failure by an eligible person to respond within the required time to an inquiry of availability.

(e) A statement by the eligible person that he or she is not willing to accept any type of appointment from the eligible list.

(f) Any of the causes listed in NRS 284.240 pursuant to which the Administrator may refuse to examine or certify an eligible person or, if the employee has been laid off, reemployment pursuant to subsection 7 of NAC 284.630.

2. An appointing authority need not consider an eligible person more than one time from a recruitment. Consideration of an applicant for other than full-time permanent positions must not be counted for the purposes of this subsection.

3. An appointing authority need not consider an otherwise eligible person who cannot perform the essential functions of the position with or without reasonable accommodation.

4. An appointing authority may refuse to consider an eligible person who has been subject to

a suspension, demotion or termination as a result of an upheld or uncontested disciplinary action in the preceding 12 months. The 12-month period begins on the effective date of the uncontested action or, if it is contested, on the date the hearing officer *or any reviewing court of this State* issues a final decision upholding a suspension, demotion or termination. If an employee is removed from consideration pursuant to this subsection, the appointing authority must notify the employee of that fact in writing before interviewing the next candidate or making its selection. The employee has 3 working days after being notified that he or she has been removed from consideration pursuant to this subsection to notify the appointing authority of any discrepancy in the information in his or her personnel file which led to the removal of the employee from consideration. The appointing authority may not make its selection:

(a) If the employee does not notify the appointing authority of a discrepancy, until after the end of the period pursuant to which the employee may notify the appointing authority of a discrepancy; or

(b) If the employee notifies the appointing authority of a discrepancy, until after the appointing authority determines whether the removal of the employee from consideration pursuant to this subsection was appropriate.

5. An appointing authority shall refuse to consider an eligible person whose appointment to a position will violate NRS 281.210, NAC 284.375 or a policy approved by the Commission pursuant to NAC 284.375.

6. An eligible person whose name has been removed from an active list may request that his or her name be reactivated by stating his or her reasons for the request. If the Division of Human Resource Management determines that the reasons are justified, and the person's term of eligibility has not otherwise expired, his or her name may be reactivated.

[Personnel Div., Rule V § E, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89; 12-26-91; 7-1-94; 8-16-96, eff. 10-1-96; A by Personnel Comm'n by R069-02, 8-14-2002; R182-03, 1-27-2004; R143-05 & R144-05, 12-29-2005; R023-13, 10-23-2013; R036-17, 12-19-2017)

**Sec. 5. NAC 284.437 is hereby amended to read as follows:**

<p><b>Explanation of Change:</b> This amendment, proposed by the Division of Human Resource Management, will allow the underfill of a position at any level in a series. An appointing authority may use his or her discretion to underfill a position at or below the journey level. However, an appointing authority must obtain the approval of the Administrator to underfill those positions above the journey level in the series. This changes the current process which only allows a position to be underfilled at or below the journey level.</p>
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**NAC 284.437 Underfilling of positions. (NRS 284.065, 284.155, 284.305)**

1. ~~{Except as provided in subsection 4, before a}~~ A position may be underfilled ~~{, it must be approved in writing by the Division of Human Resource Management. The Division of Human Resource Management will only approve a position to be underfilled if there are less than five eligible ranks on the appropriate list who are available for appointment.}~~ *at or below the journey level at the discretion of an appointing authority.*

2. ~~{Except as otherwise provided in subsection 4, if a position is approved to}~~ *A position may* be underfilled ~~{, the Division of Human Resource Management will begin a recruitment for the class of the position unless a recruitment within 12 months before the approval failed to produce sufficient applicants on the appropriate list.~~

~~—3. Except as otherwise provided in subsection 4, the position may not continue to be underfilled for more than 30 working days after five or more ranks of eligible persons on the appropriate list who are available for appointment are certified to the appointing authority.~~

~~—4. Subsections 1, 2 and 3 do not apply to the underfilling of a position:~~

~~—(a) If the position is authorized at or below the journey level and an employee fills that position in a class which is a training or intermediate level preparatory to promotion;~~

~~—(b) If an employee's position is reclassified pursuant to NAC 284.138; or~~

~~—(c) If an appointing authority has requested and received approval from the Division of Human Resource Management to underfill a position because money is not available and that fact has been certified by the Chief of the Budget Division or, in the case of an agency which is not funded from the General Fund or the Nevada System of Higher Education, by the administrator of that agency or System.}~~ *above the journey level upon the written approval of the Administrator, or his or her designated representative.*

~~{5.}~~ 3. An employee or former employee may not be selected through noncompetitive means to underfill a position allocated at grade 30 or higher if that position is allocated at a higher grade than the position the employee currently holds or, in the case of a former employee, the current grade of the position the person formerly held.

(Added to NAC by Dep't of Personnel, eff. 8-28-85; A by Personnel Comm'n by R183-03, 1-27-2004)