

**REVISED PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R164-18

October 12, 2018

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

AUTHORITY: §§1-3, NRS 284.065, 284.155 and 284.175; §4, NRS 284.065, 284.155 and 284.250; §5, NRS 284.065, 284.155, 284.250 and 284.295; §6, NRS 284.065, 284.155 and 284.305.

A REGULATION relating to the State Personnel System; revising provisions governing the adjustment of steps within a pay grade; revising provisions governing lists of eligible persons for appointment to a position; revising certain provisions concerning the refusal of consideration of certain eligible persons; revising provisions concerning the underfilling of a position; 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 law requires the Administrator of the Division of Human Resource Management of the Department of Administration to prepare a pay plan for all employees in the classified service that: (1) must include ranges for each class, grade or group of positions in the classified service; and (2) requires each employee in the classified service to be paid at one of the rates set forth in the pay plan for the class in which the employee is employed. Existing law also requires the Commission to adopt regulations to carry out this pay plan. (NRS 284.175) Existing regulations authorize the Division to approve an adjustment of steps within a pay grade to: (1) allow an appointing authority flexibility in adjusting the rate of pay for a position in certain situations; (2) maintain an equitable relationship in the status of steps among certain employees; and (3) maintain an appropriate differential between the base pay of a supervisor and the base pay of an employee. Before the Division may approve such an adjustment, the appointing authority must submit a request on a certain form that provides certain information. (NAC 284.204) **Section 2** of this regulation removes maintaining an appropriate differential between the base pay of a supervisor and the base pay of an employee as a reason for the Division to approve an adjustment of steps within a pay grade. Existing regulations provide the procedure that governs the rate of pay which must be paid if an employee is promoted. (NAC 284.172) **Section 1** of this regulation makes existing regulations subject to **section 2**, thereby allowing an

appointing authority to request an adjustment of steps for an employee that is receiving a promotion.

Existing law requires the Commission to adopt regulations for the establishment of eligible lists for appointment and promotion, with such lists containing the names of successful applicants. (NRS 284.250) Existing regulations require the Division, upon receiving a request for eligible candidates for a class, to provide, if possible, the following lists in the following order: (1) a reemployment list; (2) any available reassignment lists of certain employees with a disability; (3) any available lists of persons with disabilities who are eligible for temporary limited appointments; (4) any available transfer lists of employees who are entitled to transfer to a position; or (5) if no such lists exist, certify the names of eligible persons on ranked or unranked lists or waive the lists. The Division may certify a list of eligible persons on an unranked list or waive the list for certain classes. (NAC 284.360) **Section 4** of this regulation authorizes the Division also to certify such a list or waive the list for a class which is determined to be appropriate by the Administrator of the Division.

Existing regulations authorize an appointing authority to refuse to consider an eligible person for a class of employment if the eligible person has been subject to a suspension, demotion or termination as a result of a disciplinary action that occurred in the preceding 12 months. This 12-month period begins, in a contested case, on the date the hearing officer issues a final decision upholding the suspension, demotion or termination. (NAC 284.374) **Section 5** of this regulation sets forth that the 12-month period begins, in a contested case, on the date the hearing officer or any reviewing court issues a final decision upholding the suspension, demotion or termination. Existing regulations further require the names of eligible persons to be removed from active lists for certain causes. (NAC 284.374) **Section 5** authorizes the names of eligible persons to be removed from active lists for certain causes.

Existing law authorizes the Commission to adopt regulations which provide for filling positions in the classified service without competition in certain cases. (NRS 284.305) Existing regulations provide for underfilling a position, which is the filling of a position with an employee who holds a position in a lower classification, as a way to fill a position without competition. (NAC 284.110, 284.437) **Section 6** of this regulation allows for the underfilling of a position at any level with such underfilling being accomplished at either the discretion of the appointing authority or, in certain situations, with the approval of the Administrator or his or her designee. **Section 3** of this regulation makes conforming changes.

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

284.172 1. ~~The~~ *Except as otherwise provided in NAC 284.204, 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.

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

284.204 1. ~~The~~ *Subject to the provisions of subsection 2, 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}~~ *the Division of Human Resource Management may approve* an adjustment of steps pursuant to ~~{this section,}~~ *subsection 1*, 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 ~~{}~~ *pursuant to subsection 1*, 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}~~

5. *If an adjustment of steps is revoked pursuant to subsection 4, the* employee must be placed at the step he or she would have received if he or she had not received the adjustment.

Sec. 3. NAC 284.206 is hereby amended to read as follows:

284.206 1. The Division of Human Resource Management may approve a special adjustment to the pay of an employee pursuant to this section. A request for a special adjustment to pay may be initiated by an employee, the appointing authority or the Division of Human Resource Management. A special adjustment to pay does not constitute a promotion.

2. An employee may receive a special adjustment to pay equivalent to 5 percent of the employee's base rate of pay during any period in which:

(a) The employee works out of his or her class on a continuing basis and performs essentially all the duties and responsibilities of a position classified at a higher grade. To receive the increase, the employee must be assigned duties and responsibilities of the higher grade which are clearly demonstrated in the class specification and carry out the duties and responsibilities for at least 16 consecutive workdays before the increase becomes effective. The adjustment to pay pursuant to this paragraph is effective retroactively, commencing on the date on which the employee assumed the additional duties and responsibilities. The adjustment to pay must not continue for more than 6 months in any 12-month period unless:

(1) The employee is underfilling a position pursuant to NAC 284.437 . ~~and recruitment has failed to produce a sufficient number of applicants on the appropriate list.~~

(2) The duties and responsibilities that the employee has been carrying out have been assumed from one or more positions that have not been authorized to be filled because of a hiring freeze or fiscal emergency. A hiring freeze or fiscal emergency must be certified by the Chief of the Budget Division or, in the case of an agency that does not receive money from the State General Fund or the Nevada System of Higher Education, certified by the administrator of that agency or the System.

(3) The appointing authority submits a written request to the Administrator accompanied by documentation justifying an extension of the 6-month period and certifies that money is available to pay for the continuation of the special adjustment to pay. The Administrator may authorize the continuation of the special adjustment to pay after receiving the request and

documentation and determining that the extension of the 6-month period is a business necessity and in the best interest of the State.

(b) The employee is required to use bilingual skills or sign language for persons who are deaf at least 10 percent of his or her work time.

(c) The employee is supervising other employees of the same or a higher grade if the supervision:

(1) Is not part of the supervision or management responsibilities for a program that is provided for in the class specification; and

(2) Includes, without limitation, selection, work assignment, training, work review, reports on performance and discipline of employees.

(d) The employee is required regularly to perform custodial work and clean up human bodily waste in a medical, clinical or inpatient facility.

(e) Except as otherwise provided in this paragraph, the employee is conducting a formal training program for employees. The training program must:

(1) Be conducted weekly;

(2) Consist of training on the job and in the classroom or training only in the classroom;

(3) Include a test to determine the employees' progress in the program; and

(4) Result in the award of a certificate of completion or advancement in a class series to the journey level.

↪ If an adjustment to pay is granted pursuant to this paragraph, the adjustment begins when the employee starts conducting the training program and ends when the training program is completed. An adjustment will not be granted if the duty to conduct training is clearly set forth in

the class specification. Informal orientation given to new employees will not be considered for this special adjustment.

(f) The employee, if employed as a law enforcement officer, is assigned to motorcycle duty.

(g) The employee, if employed by the Department of Corrections, is responsible for the supervision of a group of inmates assigned to a work area of an institution and who is responsible for implementing security procedures, including, without limitation:

(1) Securing the work area from inmates who are not authorized to enter the work area;

(2) Accounting for all inmates who have been assigned to the work area; and

(3) Accounting for all materials, tools and equipment in the work area.

↪ The adjustment to pay pursuant to this paragraph will be granted only if such duties are not provided for in the class specification.

(h) The employee is authorized by the Legislature to receive such an adjustment to his or her pay.

3. An employee may receive a special adjustment to pay if he or she occupies a position in which the duties have been recognized through the classification process as being at a higher level, but who does not meet the minimum qualifications for the class. The special adjustment to the employee's pay must be equivalent to 2.5 percent of the employee's base rate of pay if the employee performs duties classified one grade higher than his or her current position, or 5 percent of the employee's base rate of pay if the employee performs duties classified two or more grades higher than his or her current position. A special adjustment to an employee's pay made pursuant to this subsection may continue in effect from the date on which the position questionnaire is received:

(a) Until the employee meets the minimum qualifications and is promoted;

(b) For 1 year after the effective date of the special adjustment to pay; or

(c) Until the date the higher level duties are removed,

↳ whichever occurs first.

4. Except as otherwise provided in paragraph (a) of subsection 2, any special adjustment to pay made pursuant to subsection 2 must be revoked when the conditions justifying it cease to exist.

5. Except as otherwise provided in this section, the effective date of a special adjustment to pay is the date on which the written request is received by the Division of Human Resource Management or the personnel office of the agency at which the employee who is receiving the special adjustment to pay is employed. If the request for the special adjustment to pay is delayed because an administrative or clerical error prevented its delivery, the effective date of the special adjustment to pay 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 to pay must not exceed 6 months from the date on which the Division of Human Resource Management receives the written request.

Sec. 4. NAC 284.360 is hereby amended to read as follows:

284.360 1. After being contacted by an appointing authority pursuant to subsection 3 of NAC 284.358 regarding the availability 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 reassignment lists pursuant to NAC 284.405.

3. If there are no reassignment lists 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.

4. 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.

5. If no list described in subsection 1, 2 or 3 is available, the Division of Human Resource Management must, upon request of the appointing authority and in accordance with subsections 6 and 7 ~~certify~~ :

(a) Certify the names of eligible persons on ranked or unranked lists described in paragraphs (e) to (i), inclusive, of subsection 1 of NAC 284.358 ~~or waive~~ ; *or*

(b) Waive the list.

6. 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.

7. The Division of Human Resource Management may certify a list of eligible ~~applicants~~ *persons* 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; ~~or~~

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

(d) A class determined to be appropriate by the Administrator.

8. 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.

Sec. 5. NAC 284.374 is hereby amended to read as follows:

284.374 1. The names of eligible persons ~~will~~ *may* 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; ~~or~~

(b) Expiration of the term of eligibility; ~~or~~

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

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

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

(f) Any of the causes listed in NRS 284.240 pursuant to which the Administrator may refuse to examine *an applicant* or *, after examination, may refuse to* certify an eligible person; or ~~if~~ ~~the~~

(g) If the eligible person is an employee *who* has been laid off ~~or~~ *and placed on the statewide reemployment list*, 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* 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 *for the person* has not otherwise expired, his or her name may be reactivated.

Sec. 6. NAC 284.437 is hereby amended to read as follows:

~~284.437 1. {Except as provided in subsection 4, before 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.~~

~~—2.— Except as otherwise provided in subsection 4, if a position is approved to 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.~~

~~—5.} *The appointing authority may underfill a position at or below the journey level at the discretion of the appointing authority.*~~

2. The appointing authority may underfill a position above the journey level upon written approval of the Administrator or his or her designee.

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~~ :

(a) The position the employee currently holds ; or ~~in~~

(b) In the case of a former employee, the current grade of the position the person formerly held.