

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R175-18

September 10, 2018

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

AUTHORITY: §§1-3, NRS 284.065 and 284.155; §4, NRS 284.065, 284.155, 284.355 and 284.407; §5, NRS 284.065, 284.155, 284.335, 284.4068 and 284.407.

A REGULATION relating to state employees; revising provisions relating to confidential personnel records; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This regulation changes references to an employee's file of employment to refer instead to a record of employment. Existing regulations provide that certain types of information which are maintained by the Division of Human Resource Management of the Department of Administration or the personnel office of an agency are confidential. (NAC 284.718) **Section 4** of this regulation expands the scope of the confidentiality of certain types of information maintained by the Division or a state agency by eliminating references to specific entities who received, used or were the source of the information. **Section 4**: (1) revises the information in a record of employment that is confidential under existing regulations; (2) provides that a recording used in the process of interviewing an applicant for employment is confidential; and (3) provides that any notes, recordings, findings or other information obtained from an internal administrative investigation are confidential.

Existing regulations limit access to certain information in an employee's record of employment. (NAC 284.726) **Section 5** of this regulation expands access to such information from the employing appointing authority to any appointing authority or his or her designated representative. **Section 5** limits access to any notes, recordings, findings or other information obtained from an internal administrative investigation to: (1) the employee who is the subject of the investigation; (2) the appointing authority or a designated representative of the agency by which the employee is employed; and (3) certain other authorized persons. **Section 5** also: (1) removes a requirement that certain health-related information concerning an employee or a member of his or her immediate family must be kept separate from the employee's record of employment in a locked cabinet; and (2) revises who is authorized to access certain health-related information and information concerning an employee's usage or balance of annual leave and sick leave. **Section 5** revises the governmental entities to which the Division may provide the home address of an employee. **Section 5** additionally authorizes the Administrator of the Division, the appointing authority or a designated representative to release confidential records under his or her control to the United States Equal Employment Opportunity Commission.

Section 1. NAC 284.374 is hereby amended to read as follows:

284.374 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 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}~~ *record of employment* 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.

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~~ *record* 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~~ *record* 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~~ *record* of employment will not include an overall 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. 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 to the employee. 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 the report to the supervisor for forwarding to the appointing authority or 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, identify any specific point of contention, if the report provides such specificity, and mail the response to the supervisor. 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 day after the date on which the report or request is postmarked.

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~~ *record* 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 fails to respond to a request for review from an employee 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.

Sec. 3. NAC 284.602 is hereby amended to read as follows:

284.602 1. Unless the appointing authority and employee agree to a shorter period of time, an employee who wishes to resign shall submit his or her resignation in writing at least 2 weeks before resigning and notify the appointing authority of the reason for and the effective date of the resignation. If an employee fails to comply with this subsection, the appointing authority may note the insufficient notice in the employee's ~~{file.}~~ *record of employment*.

2. The employee shall report and the appointing authority shall acknowledge the resignation to the Division of Human Resource Management on a form provided by the Division of Human Resource Management. The form must contain a statement of the employee's right to revoke the resignation pursuant to NRS 284.381.

Sec. 4. NAC 284.718 is hereby amended to read as follows:

284.718 1. The following types of information, which are maintained by the Division of Human Resource Management or the ~~{personnel office of an}~~ agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished ~~{to the Division of Human Resource Management}~~ on the condition that the source remain confidential;

(b) Any document which is used ~~{by the Division of Human Resource Management or an agency}~~ in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any *recording or* document which is used ~~{by the Division of Human Resource Management or an agency}~~ in the process of interviewing an applicant, including, without limitation, a document containing interview questions, evaluation tools used for rating applicants

and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by an employee assistance program offered by the State of Nevada;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person's application or relating to his or her status as an eligible person; and

(j) Information in the ~~{file or}~~ record of employment of a current or former employee which relates to : ~~{the employee's:}~~

(1) ~~{Performance;}~~ *The employee's performance;*

(2) ~~{Conduct;}~~ *The employee's conduct,* including any disciplinary actions taken against the employee;

(3) ~~{Usage;}~~ *The employee's usage* or balance of his or her annual leave and sick leave;

(4) ~~{Race;}~~ *The employee's race,* ethnic identity or affiliation, sex, *sexual orientation, gender identity or expression,* genetic information, disability or date of birth;

(5) ~~{Home;}~~ *The employee's personal* telephone number; ~~{or}~~

(6) ~~{Social;}~~ *The employee's* security number ~~{;}~~ ;

(7) Any grievance filed by the employee pursuant to NAC 284.678, any response to the grievance and any other documents related to the grievance, unless a hearing is held to determine the disposition of the grievance pursuant to NAC 284.6955;

(8) Any complaint filed by the employee pursuant to NRS 281.755, any response to the complaint and any other document related to the complaint, unless a hearing is held to determine the disposition of the complaint pursuant to NAC 284.6955;

(9) Any request made pursuant to NAC 284.5243 and any response to the request;

(10) The health, medical condition or disability of the employee or a member of his or her immediate family; or

(11) Any claim for workers' compensation made by the employee and any documentation relating to the claim.

2. If the employee has requested that his or her ~~personal mailing~~ **home** address be listed as confidential, the employee's ~~file~~ **record of employment** must be so designated and list his or her ~~business~~ **mailing** address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

- (a) The employee dies; or
- (b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his or her immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation ~~conducted by the Division of Human Resource Management~~ relating to sexual harassment or discrimination, or both, and

any findings of such an investigation ~~{that are provided to an appointing authority}~~ are confidential.

6. Any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct are confidential.

7. Any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct are confidential.

8. Any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387.

Sec. 5. NAC 284.726 is hereby amended to read as follows:

284.726 1. Except as otherwise provided in this subsection and subsection 2, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph (2) of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in NRS 284.4068, access to information concerning the results of an applicant's screening test which indicate the presence of a controlled substance is limited to the appointing authority or his or her designated representative and the Administrator or his or her designated representative.

3. ~~{Except as otherwise provided in subsections 4 and 5, access}~~ **Access** to an employee's ~~{file}~~ **record** of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

(a) The employee.

(b) The employee's representative when a signed authorization from the employee is presented or is in his or her **record of** employment. ~~{file.}~~

(c) ~~{The}~~ **Any** appointing authority or ~~{a}~~ **his or her** designated representative. ~~{of the agency by which the employee is employed.}~~

(d) ~~{The Administrator or a designated representative.}~~

~~—(e) An appointing authority, or a designated representative, who is considering the employee for employment in the agency.~~

~~—(f) Persons who are authorized pursuant to any state or federal law or an order of a court.~~

~~{(g)}~~ **(e)** The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.

~~{(h)}~~ **(f)** Persons who are involved in processing records for the transaction of business within and between state agencies.

~~{(i)}~~ **(g)** Persons who are involved in processing records for the transaction of business that is authorized by the employee.

4. ~~{Information concerning the health, medical condition or disability of an employee or a member of his or her immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection 10, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.}~~

~~—5.— Except as otherwise provided in subsection 10, access to information concerning the employee’s usage or balance of annual leave and sick leave is limited to the employee, the employee’s immediate supervisor and the employee’s appointing authority or the designated representative of the appointing authority.~~

~~—6.†~~ Except as otherwise provided in subsection ~~H0.†~~ 9, access to any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee’s performance or conduct is limited to:

- (a) The employee.
- (b) The Administrator or a designated representative of the Administrator.
- (c) The appointing authority or a designated representative of the agency with which the employee is employed.
- (d) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (e) The Governor or a designated representative of the Governor.

~~†7.†~~ 5. Except as otherwise provided in subsection ~~H0.†~~ 9, access to any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee’s performance or conduct is limited to:

- (a) The employee.
- (b) The appointing authority or a designated representative of the agency by which the employee is employed.
- (c) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (d) The Governor or a designated representative of the Governor.

~~{8.}~~ 6. *Except as otherwise provided in subsection 9, access to any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387 is limited to:*

(a) The employee who is the subject of the internal administrative investigation.

(b) The appointing authority or a designated representative of the agency by which the employee who is the subject of the internal administrative investigation is employed.

(c) Persons who are authorized pursuant to any state or federal law or an order of a court.

(d) The Governor or a designated representative of the Governor.

7. Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

~~{9.}~~ 8. Upon request, the Division of Human Resource Management will provide the ~~{personal mailing}~~ *home* address of any employee ~~{on file with}~~ *maintained by* the Division of Human Resource Management *in the employee's record of employment* to the ~~{State Controller's Office}~~ *Division of Welfare and Supportive Services of the Department of Health and Human Services, the Department of Employment, Training and Rehabilitation* and the Internal Revenue Service.

~~{10.}~~ 9. The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission, *the United States Equal Employment Opportunity Commission* or a court.