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STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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MEMORANDUM
HR#55-19

November 1, 2019

TO: DHRM Listserv Recipients
Nevada County Libraries
State Library and Archives

FROM: Peter Long, Administrator *Peter Long*
Division of Human Resource Management

SUBJECT: NOTICE OF PUBLIC HEARING – Amendment of Regulations that Pertain to
NAC 284

The regulation changes included with this memorandum are being proposed for adoption at the December 6, 2019 meeting of the Personnel Commission. This meeting will be held at 9:00 a.m. at the Legislative Counsel Bureau, Room 3137, 401 S. Carson Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 4401, 555 E. Washington Avenue, Las Vegas, Nevada.

Please circulate and post the attached Notice of Hearing along with the text of the proposed regulations.

PL:mg

Attachments

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Amendment
of Regulations of the
Personnel Commission

The Personnel Commission will hold a public hearing at 9:00 a.m. on December 6, 2019, at the Legislative Counsel Bureau, Room 3137, 401 S. Carson Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 4401, 555 E. Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations will not result in an increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.

<u>LCB File:</u>	<u>Section:</u>	<u>NAC:</u>	<u>Leadline or Description</u>
R015-19	Sec. 1	284.361	Use of lists and consideration of certified eligible persons: Applicable conditions.
	Sec. 2	284.405	Reassignment of employee with disability who is unable to perform essential functions of position with or without reasonable accommodation.
	Sec. 3	284.586	Civil leave with pay to vote.
R016-19	Sec. 1	284.589	Administrative leave with pay.
R019-19	Sec. 1	284.242	Overtime: Authorization.

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Administration, Division of Human Resource Management, 209 East Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Michelle Garton. Written submissions must be received by the Division of Human Resource Management on or before December 6, 2019. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted and amended will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted and amended will be available at the Division of Human Resource

Management, 100 North Stewart Street, Suite 200, Carson City, Nevada, and 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption and amendment of any regulation, the agency, if requested to do so by an interested person, either before adoption and amendment, or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and amendment, and incorporate therein its reason for overruling the consideration urged against its adoption and amendment.

This notice of hearing has been posted at the following locations:

Carson City

Bladel Building, 209 East Musser Street

Nevada State Library & Archives Building, 100 North Stewart Street

Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Grant Sawyer Building, 555 East Washington Avenue

Websites

Legislative Counsel Bureau website: www.leg.state.nv.us

Nevada Public Notice website: <http://notice.nv.gov>

Division of Human Resource Management website: www.hr.nv.gov

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R015-19

Section 1: NAC 284.361 Use of lists and consideration of certified eligible persons: Applicable conditions.

This amendment makes conforming changes based on the amendment to NAC 284.405 in Section 2 of this LCB File.

Section 2: NAC 284.405 Reassignment of employee with disability who is unable to perform essential functions of position with or without reasonable accommodation.

This amendment, proposed by the Division of Human Resource Management, will require that an employee who is proceeding through the reassignment process must be made aware in writing by his or her agency of the consequences of exhausting his or her reassignment rights pursuant to the new subsection 11 of the regulation.

Section 3: NAC 284.586 Civil leave with pay to vote.

This amendment, proposed by the Department of Employment, Training and Rehabilitation, will require civil leave to be granted to an employee during early voting or on election day and requires that a request for such leave be made on the day before the leave is to be taken.

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R015-19

September 10, 2019

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

AUTHORITY: §§1 and 2, NRS 284.065, 284.155 and 284.305; §3, NRS 284.065, 284.155 and 284.345.

A REGULATION relating to state personnel; revising provisions relating to the reassignment of certain state employees; revising provisions relating to the granting of civil leave with pay for voting; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Personnel Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations that provide for filling positions in the classified service without competition by the appointment of current employees with disabilities to certain positions if the employee becomes unable to perform the essential functions of his or her position with or without reasonable accommodation. (NRS 284.305) Existing regulation sets forth the process for the reassignment of such an employee, including that the employee will continue to be referred to vacant positions for which the employee meets the minimum qualifications until the reassignment rights of the employee are exhausted. (NAC 284.405) **Section 2** of this regulation requires that before the commencement of the reassignment process the appointing authority notify the employee in writing that the employee will continue to be referred to such positions until the exhaustion of the employee’s reassignment rights. **Section 1** of this regulation makes conforming changes.

Existing law entitles a registered voter to leave his or her place of employment to vote if it is impracticable for the voter to vote before or after his or her hours of employment. (NRS 293.463) Existing regulation requires that civil leave with pay be granted to an employee of the Executive Department of the State Government for this purpose if the request for such leave is submitted before the day of the election. (NAC 284.586) Under existing law, early voting by personal appearance is authorized before election day. (NRS 293.356-293.361) **Section 3** of this regulation clarifies that the civil leave with pay for voting for employees of the Executive Department must be granted during the period of early voting or on day of an election and changes the deadline for submission of a request for such leave from before election day to before the date on which the employee wishes to take the leave.

Section 1. NAC 284.361 is hereby amended to read as follows:

284.361 When using lists of persons who are eligible and considering eligible persons who have been certified, the following conditions apply:

1. When a reemployment list is certified, persons who are available for appointment and who are certified on reemployment lists, other than seasonal reemployment lists, must be hired in the order in which they appear unless the appointing authority, upon submitting written justification, obtains the written concurrence of the Governor to deviate from the order of priority or to hire from another list. The appointing authority must make the written justification available for examination by affected persons or their designated representatives.

2. The Division of Human Resource Management shall integrate the name of a person who is eligible for reassignment pursuant to subsection ~~2~~ 3 or ~~4~~ 5 of NAC 284.405 with the names of employees who are placed on a reassignment list pursuant to subsection ~~3~~ 4 or ~~5~~ 6 of NAC 284.405 whenever there is a reassignment list certified to the agency that employed the person in his or her regular position.

3. A person must accept or refuse an offer of employment:

(a) If the offer of employment is sent by mail to the person, within 6 calendar days after the postmarked date appearing on the envelope in which the offer was mailed; or

(b) If the offer is an oral offer of employment, within 3 business days after the oral offer has been made.

4. The appointing authority may request selective certification for a particular position if the normal method of certification does not provide candidates qualified to perform the duties of the position satisfactorily. Where selective certification is necessary, the appointing authority shall furnish in writing the special requirements peculiar to the position and his or her reasons therefor. If the facts and reasons justify such a method of selection, the Division of Human

Resource Management may certify the highest ranking eligible persons who possess the special qualifications.

5. Certification of only eligible persons who are the same sex must not be made unless there is clear evidence that the duties assigned could be performed efficiently only by the sex specified.

6. When using ranked lists other than those for reemployment, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least 5 persons in the first 10 ranks to determine their availability and qualifications. The names on each type of list must be considered before names from the next succeeding list. If there are fewer than 10 ranks with persons who are available for appointment on a given list and the appointing authority requests a full complement of 10 ranks, the name or names at the top of the next succeeding list must be combined with those on the preceding list to establish 10 eligible ranks with persons who are available for appointment. Except as otherwise provided in subsection 8, all competitive appointments from ranked lists must be made from the persons who:

- (a) Are in a rank of persons who received the 10 highest scores on the examination; and
- (b) Are available for appointment.

7. If the list is unranked or waived, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least five eligible persons he or she deems most qualified based upon a review of their respective qualifications as they relate to the position or class, or with all of the eligible persons if there are five or less. Except as otherwise provided in subsection 1, any eligible person who is certified from an unranked or waived list may be appointed.

8. If persons from fewer than five ranks of eligible persons are willing to accept appointment:

(a) The appointing authority may make an appointment from among those remaining available eligible persons.

(b) Certification and appointment may be made from other appropriate lists, including lists of higher grades as determined by the Division of Human Resource Management. The names from other lists must follow those which have been certified, if any, from the original lists.

(c) A new recruitment may be conducted.

(d) A provisional appointment may be made only if the requirements of NAC 284.406 are met.

Sec. 2. NAC 284.405 is hereby amended to read as follows:

284.405 1. The Division of Human Resource Management shall assist an appointing authority with the reassignment of an employee with a disability who is unable to perform the essential functions of his or her position with or without reasonable accommodation by identifying any vacant or soon to be vacant positions for which the employee meets the minimum qualifications. Those vacant or soon to be vacant positions may include positions that are outside of the geographical location of the employee. A refusal by the employee of an offer of a position that is outside of the geographical location of the employee will not affect the employee's reassignment rights pursuant to this section. ~~The~~

2. Before an appointing authority commences the reassignment of an employee pursuant to this section, the appointing authority shall notify the employee in writing that the employee will continue to be referred to positions pursuant to this section until the reassignment rights of the employee are exhausted in accordance with subsection ~~10.~~

~~2.1~~ 11.

3. The appointing authority of the employee shall, through the interactive process, determine if a vacant or soon to be vacant position at the employee's current grade exists within the employee's agency. If such a position is identified and the employee meets the minimum qualifications, as determined by the Division of Human Resource Management pursuant to NAC 284.317, and is able to perform the essential functions of the position with or without reasonable accommodation, the appointing authority shall offer the employee the position unless the appointing authority demonstrates that such an appointment would cause an undue hardship to the appointing authority.

~~13.1~~ 4. If the appointing authority of the employee is not able to reassign the employee pursuant to subsection ~~12.1~~ 3, the appointing authority of the employee shall notify the Division of Human Resource Management. For at least 30 days after receipt of the notification, the Division of Human Resource Management shall place the employee on reassignment lists for any vacant or soon to be vacant positions being filled at the grade of the current position of the employee if the employee meets the minimum qualifications for the positions and has expressed an interest in those positions. If such a position is determined to be available and it is determined through the interactive process that the employee is able to perform the essential functions of the position with or without reasonable accommodation, the employee must be offered the position unless it is demonstrated that such an appointment would cause an undue hardship.

~~14.1~~ 5. If reassignment is not available pursuant to subsection ~~12 or 3.1~~ 3 or 4, the appointing authority of the employee shall, through the interactive process, determine if a vacant or soon to be vacant position below the grade of the current position of the employee exists within the employee's agency. If such a position is identified and the employee meets the minimum

qualifications, as determined by the Division of Human Resource Management pursuant to NAC 284.317, and is able to perform the essential functions of the position with or without reasonable accommodation, the appointing authority shall:

- (a) Consider the employee for any such positions in the order of the grade of the positions beginning with the grade closest to the grade of the current position of the employee if multiple positions with different grades are determined to be available within the employee's agency; and
- (b) Offer the employee such a position unless the appointing authority demonstrates that such an appointment would cause an undue hardship to the appointing authority.

~~15.1~~ **6.** If reassignment is not available pursuant to subsection ~~12.1~~ 3 ~~10.4.1~~, 4 or 5, the appointing authority of the employee shall notify the Division of Human Resource Management. For at least 30 days after receipt of the notification, the Division of Human Resource Management shall place the employee on reassignment lists for vacant or soon to be vacant positions being filled at or below the grade of the current position of the employee if the employee meets the minimum qualifications for the positions and has expressed an interest in those positions. If such a position is determined to be available and it is determined through the interactive process that the employee is able to perform the essential functions of the position with or without reasonable accommodation, the employee must be offered the position unless it is demonstrated that such an appointment would cause an undue hardship.

~~16.1~~ **7.** The appointing authority of an employee to whom subsection 1 applies may offer the employee a position in the employee's agency below the grade of the current position of the employee if:

- (a) A vacant or soon to be vacant position at the grade of the current position of the employee is not identified within the employee's agency;

(b) The employee meets the minimum qualifications of the position as determined by the Division of Human Resource Management pursuant to NAC 284.317; and

(c) It is determined that the employee is able to perform the essential functions of the position with or without reasonable accommodation unless it is demonstrated that such an appointment would cause an undue hardship.

↪ If the employee accepts the position offered pursuant to this subsection, the employee may continue to exercise his or her reassignment rights pursuant to subsections 1 to ~~15~~ 6, inclusive, and subsections ~~17~~ 8 to ~~12~~ 13, inclusive, for a period of 60 days following the appointment.

~~17~~ 8. An employee may not be reassigned to underfill a vacant or soon to be vacant position allocated at grade 30 or higher if that position is allocated at a higher grade than the position the employee currently occupies.

~~18~~ 9. After the reassignment of an employee is made pursuant to this section, the status of appointment of the employee will be determined in accordance with NAC 284.444.

~~19~~ 10. The reassignment of an employee which is made pursuant to this section will take precedence over all other types of appointments and use of lists, including, without limitation, the lists, other than reemployment lists, set forth in NAC 284.358.

~~10~~ 11. Except as otherwise provided in subsection ~~6~~ 7, reassignment rights pursuant to this section are exhausted when an employee:

- (a) Accepts a reassignment at or below the grade of the current position of the employee;
- (b) Accepts a position through a competitive or noncompetitive appointment;
- (c) Notifies the appointing authority in writing that he or she no longer wishes to seek reassignment;

(d) Has not been appointed from any of the lists on which his or her name was included in accordance with this section and the Division of Human Resource Management determines that there are no other positions available;

(e) Refuses a position within his or her geographical location that is at or below the grade of the current position of the employee; or

(f) Accepts reemployment pursuant to NAC 284.6014.

~~11.1~~ **12.** The provisions of this section do not prohibit an employee from accepting another position through a competitive or noncompetitive appointment.

~~12.1~~ **13.** As used in this section:

(a) “Agency” includes:

(1) A department as defined in NAC 284.055;

(2) Any other entity of the Executive Branch of State Government which employs persons in the classified service, including, without limitation, the office of an elected officer;

(3) A division of the Department of Health and Human Services; and

(4) Any division or institution of the Nevada System of Higher Education.

(b) “Geographical location” has the meaning ascribed to it in NAC 284.612.

(c) “Soon to be vacant” means a position in which:

(1) The Division of Human Resource Management is aware will have an imminent vacancy;

(2) A list has not been certified for the position; and

(3) The employee will be able and available to fill the position within 30 days after the position becomes open.

(d) “Undue hardship” has the meaning ascribed to it in 29 C.F.R. § 1630.2.

Sec. 3. NAC 284.586 is hereby amended to read as follows:

284.586 Civil leave with pay must be granted to allow an employee time off to vote *during the period for early voting or on the day of an election* subject to the conditions established in NRS 293.463. If an employee determines he or she will need *such* time off to vote, he or she must submit a request for civil leave with pay to the person authorized to grant such leave before the day ~~{of the election.}~~ *on which the employee wishes to take such leave.*

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October 29, 2019

Regulation Small Business Impact Statement

Section 15 of Article 15 of the Nevada Constitution requires the Legislature to provide for a State merit system governing the employment of employees in the Executive Branch of State government and in 1969 the Legislature provided for such in NRS 284. Additionally, NRS 284.013 provides limitations to which employees of the Executive Branch are covered by NRS 284. NRS 284.065 authorizes the Personnel Commission to adopt regulations to carry out the provisions of this chapter.

Due to the limitations of the Nevada State Constitution and NRS 284, the Division of Human Resource Management staff has determined that the adoption of this proposed regulation does not affect small businesses, impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business. These regulations only impact employees moving into the nonclassified, classified, or unclassified service of the Executive Branch.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small business and that the information contained in this statement was prepared properly and is accurate.

Peter Long
Peter Long, Administrator

October 29, 2019
Date