

**APPROVED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R018-19

Filed June 8, 2020

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

AUTHORITY: §1, NRS 284.065, 284.155 and 284.343; §2, NRS 284.065, 284.155, 284.335, 284.4068 and 284.407.

A REGULATION relating to state employees; revising provisions relating to the training of supervisory and managerial personnel; revising provisions relating to access to certain confidential personnel records; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Personnel Commission to adopt regulations to carry out the provisions relating to the State Personnel System. (NRS 284.065) Existing law additionally requires the Commission to adopt a code of regulations for the classified service of this State. (NRS 284.155)

Existing law requires the Commission to adopt regulations for training certain employees in the state service. (NRS 284.343) Existing regulations require an employee who has been appointed to a supervisory position or managerial position to attend training classes in the following areas: (1) equal employment opportunity; (2) interviewing and hiring; (3) alcohol and drug testing; (4) progressive disciplinary procedures; and (5) handling grievances. (NAC 284.498) **Section 1** of this regulation requires an employee who has been appointed to a supervisory position or managerial position to also attend training classes in the following areas: (1) unlawful discrimination and sexual harassment; and (2) certain federal acts and the development of essential functions of positions.

Existing regulations provide that any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management of the Department of Administration relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential. (NAC 284.718) **Section 2** of this regulation authorizes certain persons to access such information.

Existing law provides that an employee who has been dismissed, demoted or suspended may request in writing a hearing before the hearing officer of the Commission within 10 working days after the effective date of the employee’s dismissal, demotion or suspension. Upon verification that such a request for a hearing has been made, the appointing authority of the employee shall produce and allow the employee or his or her representative to inspect or receive

a copy of any document concerning the internal administrative investigation of the employee. (NRS 284.390) **Section 2** amends existing regulations to comply with existing law.

Section 1. NAC 284.498 is hereby amended to read as follows:

284.498 1. Except as otherwise provided in this section:

(a) Within 6 months after an agency initially appoints an employee to a supervisory position or managerial position, the employee shall attend a training class concerning work performance standards and the evaluation of the performance of employees.

(b) Within 12 months after an agency appoints an employee to a supervisory position or managerial position, the employee shall attend at least one training class which has been approved by the Division of Human Resource Management in each of the following areas:

(1) *The following:*

(I) Equal employment opportunity; *and*

(II) *Unlawful discrimination and sexual harassment;*

(2) Interviewing and hiring;

(3) Alcohol and drug testing;

(4) Progressive disciplinary procedures; ~~and~~

(5) Handling grievances ~~+~~; *and*

(6) *The following:*

(I) *Title I of the American with Disabilities Act of 1990, 42 U.S.C. §§ 12111-12117;*

(II) *The ADA Amendments Act of 2008, Public Law 110-325;*

(III) *The development of essential functions of positions that are described to each candidate and considered by the appointing authority pursuant to NAC 284.441; and*

(IV) *The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq.*

2. Every 3 years, a supervisor or managerial employee shall complete training which is approved by the Division of Human Resource Management in each of the topic areas described in subsection 1.

3. The appointing authority, at its discretion, may accept, in lieu of the training required by subsection 1, supervisory or managerial training classes in each of the topic areas described in subsection 1 which are approved by the Division of Human Resource Management and taken by the employee during the 3 years immediately preceding the employee's appointment.

4. In addition to the training otherwise required by this section, the Division of Human Resource Management or an appointing authority may require a supervisor or managerial employee to retake any part or all of the training required by this section, or to participate in any additional training or other classes deemed necessary by the Division of Human Resource Management or appointing authority.

5. As used in this section:

(a) "Managerial position" means a position which is held by an employee who:

- (1) Formally evaluates supervisors;
- (2) Is involved in the hiring and firing of subordinate staff;
- (3) Determines organizational structure within a component of the organization; and
- (4) Develops, monitors and implements policies to accomplish long-range goals.

(b) "Supervisory position" means a position which is held by an employee who:

- (1) Formally evaluates staff;
- (2) Is involved in the hiring and firing of subordinate staff; and
- (3) Establishes policies which affect the performance or behavior of subordinate staff.

Sec. 2. NAC 284.726 is hereby amended to read as follows:

284.726 1. Except as otherwise provided in this subsection and subsections 2 and ~~10~~ **11**, 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 subsection ~~10~~ **11** and 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 an appointing authority or his or her designated representative and the Administrator or his or her designated representative.

3. Except as otherwise provided in subsection ~~10~~ **11**, access to an employee's 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.
- (c) An appointing authority or his or her designated representative.
- (d) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (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.

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

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

4. The portion of an employee's record of employment that concerns the health, medical condition or disability of the employee or a member of his or her immediate family must be kept in a locked cabinet, separate from any other portion of the employee's record of employment.

5. Except as otherwise provided in subsection ~~H0~~ **11**, 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.

6. ***Except as otherwise provided in subsection 11, access to 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 is limited to:***

- (a) An appointing authority.***
- (b) A designated representative of the agency with 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.

7. Except as otherwise provided in subsection ~~10~~ **11**, 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~~ **with** 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.

~~7~~ **8**. Except as otherwise provided in subsection ~~10~~ **11**, 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 ~~+~~ **and who requests a hearing pursuant to NRS 284.390.**
- (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.

~~8~~ **9**. 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~~ **10**. Upon request, the Division of Human Resource Management will provide the home address of any employee maintained by the Division of Human Resource Management in the

employee's record of employment to the 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.~~ **11.** 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.