

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB FILE NO. R018-19I

**The following document is the initial draft regulation proposed
by the agency submitted on 07/01/2019**

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

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will include a training class on the Americans with Disabilities Act, developing essential functions of positions, and the Family and Medical Leave Act for supervisors and managers. Also included in the amendment is the addition of a component regarding sexual harassment and discrimination to the equal employment opportunity course. Requiring training in these areas will help supervisory and managerial employees become more comfortable handling related issues.

NAC 284.498 Training of supervisory and managerial employees. (NRS 284.065, 284.155, 284.343)

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) Equal employment opportunity ~~+~~ *and sexual harassment and discrimination;*
- (2) Interviewing and hiring;
- (3) Alcohol and drug testing;
- (4) Progressive disciplinary procedures; ~~and~~
- (5) Handling grievances ~~+~~; *and*

(6) Title I of the Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008, development of essential functions of positions, and the Family and Medical Leave Act of 1993 as amended.

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.

[Personnel Div., Rule X part § F, eff. 1-18-82]—(NAC A by Dep't of Personnel, 10-26-84; 5-27-86; 10-18-89; 3-23-94; R197-99, 1-26-2000; A by Personnel Comm'n by R182-03, 1-27-2004; R057-10, 10-15-2010; R139-12, 10-4-2013)

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

Explanation of Proposed Change: Amendments included in LCB File No. R175-18, approved by the Legislative Commission on January 30, 2019, broadened access to confidential records among State of Nevada agencies. This amendment, proposed by the Division of Human Resource Management, will ease the sharing of information related to sexual harassment and discrimination investigations between agencies. The addition of subsection 6 will give the Administrator the discretion to decide what information is appropriate to be released in each specific circumstance.

Paragraph (a) of the new subsection 8 is amended to clarify that in order for an employee access to any notes, records, recordings, findings or other information obtained from an internal administrative investigation conducted pursuant to NRS 284.387, he or she must have filed an appeal of the disciplinary action as prescribed by NRS 284.390.

NAC 284.726 Access to confidential records. (NRS 284.065, 284.155, 284.335, 284.4066, 284.4068, 284.407)

1. Except as otherwise provided in this subsection and subsections 2 and ~~H0~~ **II**, 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 ~~H0~~ **II** 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 ~~H0~~ **II**, 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 ~~10.1~~ **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 notes, records or findings of an investigation relating to sexual harassment or discrimination, or both, requires the approval of the Administrator or his or her designee, and is limited to:

- (a) An appointing authority.**
- (b) Persons who are authorized pursuant to any state or federal law or an order of a court.**
- (c) The Governor or a designated representative of the Governor.**

~~16.1~~ **7.** Except as otherwise provided in subsection ~~10.1~~ **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 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.

~~17.1~~ **8.** Except as otherwise provided in subsection ~~10.1~~ **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, **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.

~~18.1~~ **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.

~~19.1~~ **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.

~~110.1~~ **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.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 9-30-88; 7-21-89; 8-14-90; 7-6-92; 3-23-94; R042-99, 9-27-99; R082-00, 8-2-2000; R058-01, 9-6-2001; R147-01, 1-22-2002; A by Personnel Comm'n by R068-03, 10-30-2003; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009, R059-10, 10-15-2010; R137-12 & R045-13, 10-23-2013; R044-15; 12-21-2015; R175-18, 1-30-2019)