

# PROPOSED REGULATION OF THE PERSONNEL COMMISSION

## LCB File No. R124-19

January 16, 2020

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

AUTHORITY: §1, NRS 284.065, 284.155, 284.335, 284.4066, 284.4068 and 284.407.

A REGULATION relating to state employees; revising provisions relating to the confidentiality of certain employee information; and providing other matters properly relating thereto.

### **Legislative Counsel's Digest:**

Existing regulations: (1) provide that certain information concerning employees and applicants for employment is confidential; and (2) enumerate the persons that are entitled to have access to various categories of such information. (NAC 284.718, 284.726) Existing regulations require the Administrator of the Division of Human Resource Management of the Department of Administration or the appointing authority, or a designated representative, to authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Personnel Commission, the Committee on Catastrophic Leave, the Nevada Equal Rights Commission, the United States Equal Employment Opportunity Commission or a court. (NAC 284.726) This regulation additionally requires the appointing authority, or a designated representative, to authorize the release of any confidential records under his or her control which are requested by the Division for the purpose of conducting a sexual harassment or other discrimination investigation.

**Section 1.** 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, 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 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~~ *subsections* 10 ~~+~~ *and 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 10, 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~~ *subsections* 10 ~~and~~ *and 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.

7. Except as otherwise provided in ~~subsection~~ *subsections* 10 ~~and~~ *and 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.

(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. 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. 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. 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.

***11. The appointing authority or a designated representative of the agency with which the employee is employed shall authorize the release of any confidential records under his or her control which are requested by the Division of Human Resource Management for the purpose of conducting a sexual harassment or other discrimination investigation.***