

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 10, 2021, at the Nevada State Library and Archives Building, Room 110, 100 N. Stewart Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 1400, 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>
R015-21	Sec. 1	284.5811	Family and medical leave: Maximum amount in 12-month period; eligibility; use.
R016-21	Sec. 1	NEW	“Sex- or gender-based harassment” defined.
	Sec. 2	284.010	Definitions.
	Sec. 3	284.496	Classes and training concerning prevention of sex- or gender-based harassment.
	Sec. 4	284.498	Training of supervisory and managerial employees.
	Sec. 5	284.650	Causes for disciplinary or corrective action.
	Sec. 6	284.696	Unlawful discrimination.
	Sec. 7	284.718	Confidential records.
	Sec. 8	284.726	Access to confidential records.
	Sec. 9	284.771	Sex- or gender-based harassment.
	Sec. 10	284.0995	“Sexual harassment” defined.
R017-21	Sec. 1	NEW	Appeal of determination to release confidential records.
	Sec. 2	284.718	Confidential records.
	Sec. 3	284.726	Access to confidential records.

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 10, 2021. 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

Blasdel 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. R017-21

Senate Bill 51 of the 2021 Legislative Session (SB 51) amends Chapter 284 of the Nevada Revised Statutes to create the Sex- and Gender-based Harassment and Discrimination Investigation Unit and places into law various requirements of the Division of Human Resource Management and agency appointing authorities. The following regulation amendments result from this addition to law.

Section 1: NEW Appeal of determination to release confidential records.

SB 51 allows the Administrator of the Division of Human Resource Management to make a decision to release any information related to a report of sex- or gender-based harassment or discrimination. This amendment codifies the process an employee must use to appeal the disclosure of any information related to a report of sex- or gender-based harassment or discrimination.

Section 2: NAC 284.718 Confidential records.

This amendment includes the exceptions provided in Senate Bill 51 when the release of information related to a report of sex- or gender-based harassment or discrimination is allowable.

Section 3: NAC 284.726 Access to confidential records.

This amendment incorporates the exception provided in Senate Bill 51 that allows the Administrator of the Division of Human Resource Management to release any information related to a report of sex- or gender-based harassment or discrimination.

**REVISED PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R017-21

October 21, 2021

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

AUTHORITY: §§ 1-3, NRS 284.065 and section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913.

A REGULATION relating to state employees; revising provisions relating to the disclosure of certain information relating to an investigation of a complaint filed by an employee of the Executive Department of State Government regarding sexual harassment or other discrimination; prescribing the requirements for a written appeal of a decision to order the disclosure of such information; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing regulations make confidential certain information in the record of employment of an employee of the Executive Department of State Government and any notes, records, recordings or findings of an investigation relating to sexual harassment or discrimination. (NAC 284.718) Existing regulations authorize only certain persons to access certain notes, records, recordings, findings or certain other information obtained from an investigation. (NAC 284.726) Senate Bill No. 51 of the 2021 Legislative Session makes confidential a complaint filed by an employee of the Executive Department of State Government regarding suspected harassment or discrimination based on sex or gender and information relating to such a complaint. Senate Bill No. 51 also prohibits the disclosure of such information unless the disclosure is: (1) ordered by the Administrator of the Division of Human Resource Management of the Department of Administration, his or her designee or a court of competent jurisdiction; or (2) necessary to file a claim authorized by law that is based on the same facts and circumstances as those identified in the complaint. (Section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913) **Sections 2 and 3** of this regulation make conforming changes related to the provisions of Senate Bill No. 51 by authorizing the disclosure of certain information relating to an investigation of a complaint regarding sexual harassment or other discrimination in the circumstances where such disclosure is authorized by that bill.

Senate Bill No. 51 of the 2021 Legislative Session also: (1) requires that if the Administrator or his or her designee decides to order the disclosure of any such information which may be used to identify certain persons, the Administrator or designee must notify the person before ordering the disclosure; and (2) authorizes a person who receives such notice to

file an appeal of the decision with the Personnel Commission. (Section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913) **Section 1** of this regulation requires such an appeal to: (1) be in writing; (2) be submitted to the Administrator for transmittal to the Personnel Commission; and (3) set forth the specific reasons the appellant disagrees with the decision of the Administrator or his or her designee.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

An appeal filed pursuant to subsection 7 of section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913, must:

- 1. Be in writing;*
- 2. Be submitted to the Administrator for transmittal to the Commission; and*
- 3. Set forth the specific reasons the appellant disagrees with the decision of the Administrator or his or her designee.*

Sec. 2. NAC 284.718 is hereby amended to read as follows:

284.718 *Except as otherwise provided in section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913:*

1. The following types of information, which are maintained by the Division of Human Resource Management or the agency, are confidential:
 - (a) Information relating to salaries paid in other than governmental employment which is furnished on the condition that the source remain confidential;
 - (b) Any document which is used 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 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 record of employment of a current or former employee which relates to:

(1) The employee's performance;

(2) The employee's conduct, including any disciplinary actions taken against the employee;

(3) The employee's usage or balance of his or her annual leave and sick leave;

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

(5) The employee's personal telephone number;

(6) The employee's social 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 home address be listed as confidential, the employee's record of employment must be so designated and list his or her 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 relating to sexual harassment or discrimination, or both, and any findings of such an investigation 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 are confidential.

Sec. 3. NAC 284.726 is hereby amended to read as follows:

284.726 1. Except as otherwise provided in this subsection and subsections 2 and 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 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 subsections 11 and 12, 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 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 **H** and *section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913*, 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 subsections 11 and 12 **H** and *section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913*, 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 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.

8. Except as otherwise provided in subsections 11 and 12, *and section 5 of Senate Bill No. 51, chapter 321, Statutes of Nevada 2021, at page 1913*, 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.

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.

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.

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.

12. 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.

Steve Sisolak
Governor



Laura E. Freed
Director

Matthew Tuma
Deputy Director

Frank Richardson
Administrator

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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. This regulation only impacts 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.

Frank Richardson

Frank Richardson, Administrator

6/8/2021

Date