

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R017-21

September 14, 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 suspected harassment or discrimination based on sex or gender; 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 suspected harassment or 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~~ *sex- or gender-based* 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}~~ *an investigation regarding suspected* harassment or ~~{other}~~ discrimination ~~{investigation.}~~ *, including, without limitation, harassment or discrimination based on sex or gender.*