

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R125-21

February 1, 2022

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, 284.340, 284.383 and 284.384; § 2, NRS 281.755, 284.065 and 284.384; §§ 3 and 4, NRS 284.065, 284.155, 284.383, 284.385 and 284.390; § 5, NRS 281.755, 284.065, 284.155 and 284.384.

A REGULATION relating to the State Personnel System; increasing the number of days after which certain communications sent by mail are deemed to have been received; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

On October 1, 2021, the United States Postal Service implemented new service standards, which expanded the delivery day range for certain mail from 1-3 days to 1-5 days. (39 C.F.R. Part 121) Existing regulations deem certain communications sent by mail to have been received 3 days after the date on which such communications were postmarked or sent. (NAC 284.470, 284.5243, 284.656, 284.6561, 284.680) In accordance with the new service standards implemented by the United States Postal Service, this regulation increases, from 3 days to 6 days, the number of days after which certain reports, requests and notices sent by mail are deemed to have been received.

Section 1. NAC 284.470 is hereby amended to read as follows:

284.470 1. A person shall not complete a report on performance unless he or she has completed the training provided or approved by the Administrator concerning the preparation of a report on performance.

2. A report on performance must be prepared on the form prescribed by the Division of Human Resource Management.

3. A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee.

4. If a report on performance is filed on or before the times specified in NRS 284.340, the overall rating of performance of the employee will be reflected in the employee's record of employment and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194.

5. If a report on performance is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard for the purpose of determining the salary of the employee and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194. If an untimely report on performance:

(a) Is filed thereafter, the employee's record of employment will be updated to reflect the overall rating of performance of the employee as reported, but that rating will not affect any merit pay increase to which the employee is otherwise entitled.

(b) Is not filed thereafter, the employee's record of employment will not include an overall rating of performance of the employee for that period of evaluation.

6. If the performance of an employee falls below standard, his or her supervisor shall inform the employee promptly and specifically of the deficiencies in the performance of the employee regardless of whether a report on performance of the employee is completed or filed.

7. If any information that would have affected the rating of performance of an employee during a period of evaluation becomes available after the date on which the report on performance of the employee is filed for that period, the information may be included in the report on performance for the current period of evaluation and taken into consideration in determining the rating of performance for the current period of evaluation.

8. When a report on performance is given which reports the overall rating of performance of an employee as substandard:

(a) The report must contain a written notice that such reports affect merit pay increases; and

(b) An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard or disciplinary action is taken against the employee.

9. Except as otherwise provided in subsection 10, the preparation of each report on performance must include a discussion between the employee and his or her immediate supervisor. Within 10 working days after the discussion takes place:

(a) The employee must complete and sign the appropriate section on the report on performance and return the report to the supervisor for forwarding to the reviewing officer or appointing authority.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify the specific points of contention, if such specificity is provided, and return the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the contested report on performance and render a final decision to the employee within 10 working days after receiving the recommendation.

10. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 9 because of an extended absence, the immediate supervisor of the employee shall cause the report to be mailed to the employee. Within 10 working days after the date on which the employee receives the report:

(a) The employee must complete and sign the appropriate section on the report on performance and mail the report to the supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify any specific point of contention, if the report provides such specificity, and mail the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the report on performance and render a final decision to the employee within 10 working days after receiving the recommendation. For the purposes of this paragraph, a report on performance or request for review is deemed to have been received on the ~~third~~ *sixth* day after the date on which the report or request is postmarked.

11. A copy of each report on performance and, if applicable, any written response to such a report requested by an employee pursuant to subsection 9 or 10 must be provided to the employee and filed with the Division of Human Resource Management.

12. If any written comments are added to a report on performance after a copy of the report has been provided to the employee pursuant to subsection 11:

(a) A copy of the revised report which includes the written comments must be provided to the employee; and

(b) The employee may respond, in writing, to the additional comments in the revised report not later than 10 working days after receiving a copy of the revised report and submit the response to the Division of Human Resource Management for inclusion in his or her record of employment.

13. An employee and his or her appointing authority or the designee of the appointing authority may agree in writing to extend one or more of the periods prescribed in subsection 9 or 10.

14. If a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

Sec. 2. NAC 284.5243 is hereby amended to read as follows:

284.5243 1. Except as otherwise provided by NRS 281.755, each department or agency of the Executive Department of State Government shall:

(a) Develop a procedure for an employee who is the mother of a child under 1 year of age to request reasonable break times and a place for the employee to express breast milk as needed; and

(b) Make every effort to address the needs of such an employee including attempting to contact and consult with an employee who is on leave at the time the request is received, including, without limitation, leave granted pursuant to the Family and Medical Leave Act.

2. A request made pursuant to this section is deemed to be received by a department or agency:

(a) On the date on which the employee or her chosen representative personally delivers the request, transmits it by facsimile machine or submits it by electronic mail.

(b) If the employee mails the request, ~~3~~ 6 days after:

(1) The date on which the request was postmarked; or

(2) The date on the return receipt if sent by certified mail.

3. The department or agency shall respond to a request made pursuant to this section within 5 working days after the request is deemed to have been received by the department or agency.

Sec. 3. NAC 284.656 is hereby amended to read as follows:

284.656 Except as otherwise provided in NAC 284.6563, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure for providing notice of the proposed action must be followed:

1. The employee must be given at least 10 working days' written notice of the proposed action on the form provided by the Division of Human Resource Management.

2. The notice may be given in person or by means of any delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received.

If the notice is sent by means of a delivery service, the notice must be sent to the employee's last known address. The notice must not be given by electronic mail, the use of social media or other electronic means. If the notice is returned without having been received by the employee, the employee's date of receipt shall be deemed to be the ~~third~~ *sixth* day after the date the notice was sent.

3. The notice must:

(a) Specify the proposed date on which the action is effective.

(b) Inform the employee that a predisciplinary review has been scheduled on his or her behalf in the manner prescribed in NAC 284.6561 and specify the date, time and place of the predisciplinary review.

(c) Specify the charges, the reasons for them and the cause of action contained in NAC 284.646 or 284.650 on which the proposed action is based.

4. The notice of the proposed action must be signed by the appointing authority or his or her designated representative before the notice is given to the employee.

5. Upon its receipt, the employee must be asked to sign the notice. If he or she refuses to sign the notice, the refusal must be noted on the notice. The employee's signature is not an admission by him or her of any of the allegations set forth in the notice.

6. If the employee does not understand the reasons for the proposed action or the procedures related to disciplinary actions, including, without limitation, the right to notice, a predisciplinary review and a hearing on the appeal, the employee may seek an explanation from the appointing authority or another person in the agency familiar with the procedure.

7. As used in this section, "social media" includes, without limitation, any electronic service or account or electronic content, including, without limitation, any video, photograph, blog, video blog, podcast, instant message, text message, electronic mail program or service, online service or Internet website profile.

Sec. 4. NAC 284.6561 is hereby amended to read as follows:

284.6561 Except as otherwise provided in NAC 284.6563, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure for a predisciplinary review before the proposed action must be followed:

1. A predisciplinary review must be scheduled on the employee's behalf unless waived in writing by the employee pursuant to subsection 2. The predisciplinary review must be scheduled to take place not earlier than 7 working days after the written notice of the proposed action is delivered or deemed received pursuant to subsection 2 of NAC 284.656. The predisciplinary review must not be scheduled on a day which is not a regular working day for the employee. If the appointing authority or his or her designated representative and the employee agree, the date of the predisciplinary review may be changed.

2. The employee may waive the right to a predisciplinary review before the proposed action in writing. If the employee makes such a waiver, the employee may not be dismissed, suspended or demoted before the proposed effective date. The waiver does not waive the employee's right to a hearing after the action is taken.

3. The appointing authority or his or her designated representative shall conduct the predisciplinary review. The designated representative must be a person with the authority to recommend a final decision to the appointing authority. The appointing authority shall render the final decision.

4. At any time after receiving the notice and before the predisciplinary review, the employee may examine all materials that are to be used by the person conducting the predisciplinary review. The employee is entitled to administrative leave with pay as provided in NAC 284.589 to prepare for a predisciplinary review or hearing regarding his or her suspension, demotion or dismissal.

5. This process is an informal proceeding between the two parties, the appointing authority and his or her designated representative and the employee, who meet together to discuss the proposed action. The employee will be given an opportunity to rebut the allegations against the

employee and provide mitigating information. Witnesses are not allowed to attend, but each party may be accompanied by a person of his or her choice.

6. The employee may respond both orally and in writing to the appointing authority or his or her designated representative at the predisciplinary review.

7. The employee must be:

(a) Given a copy of the finding or recommendation, if any, resulting from the predisciplinary review; and

(b) Notified in writing of the appointing authority's decision regarding the proposed action and the reasons therefor on or before the effective date of the action. The effective date of the action is the first day the disciplinary action takes effect.

8. The notice given pursuant to subsection 7 may be given in person or by means of any delivery service that provides a written or electronic record of the date the notice was sent and the date the notice was received. If the notice is sent by means of a delivery service, the notice must be sent to the employee's last known address. The notice must not be given by electronic mail, the use of social media or other electronic means. If the notice is returned without having been received by the employee, the employee's date of receipt shall be deemed to be the ~~third~~ *sixth* day after the date the notice was sent. As used in this subsection, "social media" has the meaning ascribed to it in subsection 7 of NAC 284.656.

Sec. 5. NAC 284.680 is hereby amended to read as follows:

284.680 1. For the purposes of NAC 284.682, 284.686 and 284.690, a grievance is deemed to have been received at each step in the grievance procedure on the date on which the employee or his or her chosen representative personally delivers the grievance, transmits it by facsimile machine or submits it via the Internet using the Employee Incident Tracking System

within the Nevada Employee Action and Timekeeping System developed by the Division of Human Resource Management, which is available at

<https://nvapps.state.nv.us/NEATS/admin/Home.aep>.

2. For the purposes of NAC 284.6951, a complaint is deemed to have been received by the Committee on the date on which the employee or the chosen representative of the employee personally delivers the complaint, transmits it by facsimile machine or submits it by electronic mail.

3. If the employee mails the grievance or complaint, the grievance or complaint is deemed to have been received ~~13~~ 6 days after:

- (a) The date on which the grievance or complaint was postmarked; or
- (b) The date on the return receipt if sent by certified mail.