

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R139-22

September 13, 2022

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

AUTHORITY: §§ 1-5, NRS 284.065, 284.155 and 284.384.

A REGULATION relating to the State Personnel System; revising the procedure for the adjustment of a grievance or complaint by the Employee-Management Committee; revising certain requirements relating to a hearing before the Committee; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Personnel Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations which provide for the adjustment of certain grievances and complaints filed by public employees. (NRS 284.384) In general, existing regulations prescribe a four-step process for the adjustment of grievances, whereby an employee: (1) submits a grievance to his or her immediate supervisor; (2) forwards the grievance to the head of the major division of the department in which he or she works, if the employee is not satisfied with the decision rendered by his or her immediate supervisor; (3) files the grievance with the highest administrator of the department in which he or she works, if the employee is not satisfied with the decision rendered by the head of the division; and (4) requests consideration of the grievance or complaint by the Employee-Management Committee, if the employee is not satisfied with the decision rendered by the highest administrator of the department. (NAC 284.678-284.695) Existing regulations also authorize the submission to the Committee of complaints related to the rights of certain employees to request break times and places to express breast milk. (NAC 284.5243, 284.6951) Existing regulations authorize, but do not require, either party to a grievance or complaint submitted to the Committee to request a resolution conference to discuss the grievance or complaint and possible resolutions before a scheduled hearing. If such a request is made, existing regulations require both parties to participate in the resolution conference. (NAC 284.6952)

Sections 1-3 of this regulation make participation by the parties to a grievance or complaint in a resolution conference a prerequisite to requesting consideration of the grievance or complaint by the Committee. **Section 1** of this regulation also replaces the requirement that the Committee answer a request for a hearing or hold such a hearing within 45 working days after the receipt of a request with a requirement that the Committee perform these duties within 6 months after the date on which a request is received. **Section 4** of this regulation revises the procedure for a hearing before the Committee by: (1) removing the requirement that each party

submit to the Clerk of the Committee 12 copies of certain documents and materials; (2) authorizing each party to submit such documents and materials in paper or electronic form; and (3) prohibiting such documents and materials from exceeding 50 pages in length.

Section 1. NAC 284.695 is hereby amended to read as follows:

284.695 If ~~an employee is not satisfied with the decision rendered by the highest administrator in the department pursuant to NAC 284.690,~~ *the parties are unable to reach an agreement for the resolution of a grievance at a resolution conference held pursuant to NAC 284.6952 or the parties reach an agreement for the resolution of the grievance at such a conference, but the employee subsequently notifies the Committee that the agreement has failed,* the employee may request consideration of the grievance by the Committee pursuant to its rules. ~~The employee must submit the request to the Committee within 10 working days following his or her receipt of the decision from the highest administrator.~~ The request must include all appropriate documentation, a citation of the statutes and regulations pertinent to the grievance, if any, the specific points of disagreement or contention and supporting evidence. The Committee ~~will,~~ *shall*, within ~~45 working days~~ *6 months* after the ~~receipt of~~ *date on which* the ~~employee's~~ *Committee receives the* request:

1. Answer the request without a hearing if the case is based upon the Committee's previous decisions or does not fall within its jurisdiction; or

2. Hold a hearing to determine the proper disposition of the request. If a hearing is held, the Committee ~~will,~~ *shall*:

(a) Except as otherwise provided in paragraph (b), provide at least 21 working days' written notice to all parties concerned.

(b) Provide notice to the employee by:

(1) Sending a written notification by certified mail, return receipt requested, at least 21 working days before the hearing; or

(2) Personally delivering a written notification to the employee at least 5 working days before the hearing, if the Chair approves of such notice.

(c) Render a decision within 45 days after the closure of the hearing.

Sec. 2. NAC 284.6951 is hereby amended to read as follows:

284.6951 1. If ~~†~~

~~—(a) An employee is not satisfied with the response of the department or agency to a request made pursuant to NAC 284.5243, including, without limitation, a reasonable alternative selected in accordance with subsection 2 of NRS 281.755;~~

~~—(b) The department or agency fails to respond to a request made pursuant to NAC 284.5243;~~

~~or~~

~~—(c) The employee alleges that the employee was retaliated against in violation of subsection 3 of NRS 281.755;~~

~~→~~ *the parties are unable to reach an agreement for the resolution of a complaint at a resolution conference held pursuant to NAC 284.6952 or the parties reach an agreement for the resolution of the complaint at such a conference, but the employee subsequently notifies the Committee that the agreement has failed*, the employee may request consideration of a complaint by the Committee pursuant to its rules and this section.

2. ~~†The~~ *An employee who wishes to request consideration of a complaint by the Committee pursuant to subsection 1* must submit the complaint, on a form provided by the Division of Human Resource Management, to the Committee . ~~†within 10 working days~~ following:

~~—(a) Receipt of the response from the department or agency to the request made pursuant to NAC 284.5243;~~

~~—(b) The passage of 8 working days after the request is deemed to have been received by the department or agency; or~~

~~—(c) The date of the alleged retaliation.~~

~~—3.—~~ **Such a** complaint ~~{submitted pursuant to subsection 2}~~ must include the specific points of disagreement or contention and supporting evidence.

~~{4.}~~ **3.** The Committee shall, within ~~{28 working days}~~ **6 months** after the receipt of a request for consideration of a complaint submitted by an employee pursuant to subsection 2:

(a) Answer the request without a hearing if the case is based upon the Committee's previous decisions or does not fall within its jurisdiction; or

(b) Hold a hearing to determine the proper disposition of the request. If a hearing is held, the Committee shall:

(1) Except as otherwise provided in subparagraph (2), provide at least 21 working days' written notice to all parties concerned.

(2) Provide notice to the employee by:

(I) Sending a written notification by certified mail, return receipt requested, at least 21 working days before the hearing; or

(II) Personally delivering a written notification to the employee at least 5 working days before the hearing, if the Chair of the Committee approves of such notice.

(3) Render a decision within 10 days after the closure of the hearing.

~~{5.}~~ **4.** For the purpose of determining placement on the agenda for consideration by the Committee at a meeting, a complaint has priority over a grievance.

Sec. 3. NAC 284.6952 is hereby amended to read as follows:

284.6952 1. If an employee is not satisfied with the decision rendered by the highest administrator of the department pursuant to NAC 284.690 , ~~and submits a request for consideration of the grievance by the Committee pursuant to NAC 284.695,~~ the employee ~~for the highest administrator or his or her designee~~ may request a resolution conference to meet informally in the presence of a neutral facilitator to discuss the grievance and possible resolutions.

2. If ~~an~~ :

(a) An employee is not satisfied with the response of the department or agency pursuant to NAC 284.5243 ~~and submits a request for consideration of a complaint by the Committee pursuant to NAC 284.6951,~~ , including, without limitation, a reasonable alternative selected in accordance with subsection 2 of NRS 281.755;

(b) The department or agency fails to respond to a request made pursuant to NAC 284.5243; or

(c) The employee alleges that the employee was retaliated against in violation of NRS 281.775,

↳ the employee ~~for the department or agency or a designee thereof~~ may request a resolution conference to meet informally in the presence of a neutral facilitator to discuss the complaint and possible resolutions.

3. ~~Except as otherwise provided in this subsection, a request for a resolution conference may be submitted to the Division at any time after the employee submits his or her request for consideration of the grievance or complaint by the Committee. If the Committee has notified the parties of the date on which it will hold a hearing to consider the grievance or complaint, the~~

~~request for a resolution conference may not be submitted less than 15 working days before that date.~~

~~—4.]~~ If ~~{either party}~~ *an employee* requests a resolution conference ~~{}~~ *pursuant to subsection 1 or 2*, the Division shall ~~{appoint}~~ :

(a) Appoint a neutral facilitator to conduct the resolution conference and require both parties to participate. The facilitator must not be affiliated with either party.

~~{5.—The submission of a request for a resolution conference does not deprive the Committee of jurisdiction to consider the grievance or complaint if:~~

~~—(a) The parties are unable to reach an agreement for the resolution of the grievance or complaint at the resolution conference;~~

~~—(b) The parties reach an agreement for the resolution of the grievance or complaint at the resolution conference, but the employee subsequently notifies the Committee that the agreement has failed; or~~

~~—(c) The Division is unable to arrange a resolution conference as described in subsection 6.~~

~~—6.—Except as otherwise provided in this subsection, if a party to a complaint submits a request for a resolution conference, the Division shall arrange a~~

(b) Arrange for the conduct of the resolution conference ~~{before the scheduled hearing. If the Division is unable to arrange a resolution conference in the period between the request for the resolution conference and the scheduled hearing, the Division shall provide to the Committee, upon request, the reason that the Division was unable to arrange the resolution conference.}~~ *as soon as practicable after receipt of the request.*

Sec. 4. NAC 284.6955 is hereby amended to read as follows:

284.6955 If a hearing is held to determine the proper disposition of a grievance pursuant to NAC 284.695 or of a complaint pursuant to NAC 284.6951, the following procedure must be followed:

1. ~~Each~~ *Not less than 15 working days before the scheduled date of the hearing, each party shall submit to the Clerk of the Committee ~~12 copies of~~ the set of documents and materials to be presented at the hearing or any rescheduled hearing. ~~These copies must be submitted not less than 15 working days before the scheduled date of the hearing.~~* The *set of documents and materials:*

(a) May be provided in paper or electronic format; and

(b) Must not exceed 50 pages in length.

2. *Upon receipt of a set of documents and materials submitted pursuant to subsection 1, the Clerk of the Committee shall forward ~~one copy of~~ the set of the documents and materials ~~of each party~~ to the other party.*

~~2.~~ 3. If the employee fails to comply with subsection 1, the Chair or a member of the Committee designated by the Chair may reschedule the hearing to the next time designated for such hearings, but in no case earlier than 20 working days after the originally scheduled date of the hearing. If the employer fails to comply with subsection 1, the Chair or a member of the Committee designated by the Chair may reschedule the hearing at his or her discretion. If the employee fails to comply with the provisions of subsection 1 for a rescheduled hearing, the grievance or complaint must be dismissed with prejudice, unless he or she can show in writing to the Committee's satisfaction that the reason for noncompliance was beyond his or her control.

~~3.~~ 4. Each document or material offered in evidence must be marked as follows:

(a) Documents or materials presented by the employee must be marked at the bottom of the page as “Exhibit_____” indicated by consecutive Arabic numerals, beginning with the number “1.”

(b) Documents or materials presented by the employer must be marked at the bottom of the page as “Exhibit_____” indicated by consecutive letters of the English alphabet, beginning with the letter “A.” If the employer offers more than 26 exhibits, the 27th exhibit must be marked as “Exhibit AA,” the 28th exhibit as “Exhibit BB,” and so forth.

~~14.1~~ 5. All evidence offered at the hearing must be relevant and bear upon the grievance or complaint.

~~15.1~~ 6. Each person who provides a statement at the hearing shall state his or her name, address, and occupation for the record.

~~16.1~~ 7. It is the responsibility of each party to arrange for the appearance of all necessary witnesses. The Committee may request additional witnesses or information as it deems necessary.

~~17.1~~ 8. If a subpoena is issued for a document and the person named in the subpoena determines that the document contains confidential information, the person must provide to the Committee by the date specified in the subpoena:

- (a) Two copies of the original document, submitted under seal; and
- (b) One copy of the document with the confidential information redacted.

~~18.1~~ 9. For good cause shown, the Committee may take testimony from a person by telephone or video conference whether or not the person is at a location designated on the agenda as a location for the hearing.

~~19.1~~ 10. Upon proper recognition by the Chair or the member of the Committee designated to act as the Chair during the hearing, any member of the Committee may ask a question of a party or witness at any time during the hearing.

Sec. 5. NAC 284.6957 is hereby amended to read as follows:

284.6957 1. A party may request a continuance of a hearing to determine the proper disposition of a grievance pursuant to NAC 284.695 or a complaint pursuant to NAC 284.6951, or request to have a grievance or complaint held in abeyance. The party must submit the request to the Clerk of the Committee at least 12 working days before the scheduled hearing, unless the party received personal notice of the hearing less than 21 working days before the hearing pursuant to subsection 2 of NAC 284.695 or pursuant to subsection ~~4~~ 3 of NAC 284.6951, in which case he or she may request a continuance as long as the request is made at least 4 working days before the scheduled hearing.

2. The Chair or a member of the Committee designated by the Chair may grant a request for a continuance or a request to have a grievance or complaint held in abeyance if good cause is shown.