

LCB File No. R147-06

**PROPOSED REGULATION OF THE
DEPARTMENT OF PERSONNEL**

**NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED REGULATIONS AND
NOTICE OF HEARING
FOR THE AMENDMENT OF
REGULATIONS OF THE STATE PERSONNEL DEPARTMENT**

Workshop Notice: The Department of Personnel, 209 East Musser Street, Carson City, Nevada, telephone number (775) 684-0119, is proposing the adoption of regulations pertaining to Chapter 284 of the Nevada Administrative Code.

A workshop has been set for 9:30 a.m. on July 13, 2006, at the Legislative Building, 401 South Carson Street, Room 2134 in Carson City, Nevada. A videoconference link will also be available at the Grant Sawyer Building, 555 East Washington Avenue, Room 4406 in Las Vegas, Nevada.

Action – Regulations Proposed for Permanent Adoption	NAC REGULATION
Report of Convictions	New
Suspensions NAC 284.642	
Demotions and dismissals	NAC 284.646
Causes for Disciplinary Action	NAC 284.650
Driving under the influence; unlawful acts involving controlled substance	NAC 284.653
Sexual Harassment	NAC 284.771

A copy of all materials relating to the proposed regulations is included with this announcement. Additional copies may be obtained at the workshop or by contacting the Department of Personnel offices at 209 East Musser Street, Room 300, Carson City, Nevada, telephone number (775) 684-0119, or 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-2900. A reasonable fee for copying may be charged.

Hearing Notice: The Personnel Commission will hold a public hearing at 9:00 a.m. on August 11, 2006, in Carson City at the Legislative Building, 401 South Carson Street, Room 4100. A videoconference link will also be available in Las Vegas at the Grant Sawyer Building, 555 East Washington Avenue, Room 4412. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations. 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.

- 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.
- A statement of the need for and the purpose of the proposed regulations precedes the text of each regulation included in the attached document.

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 Shelley Blotter, Department of Personnel, 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204.

Written submissions must be received by the Department of Personnel on or before July 21, 2006. A copy of this notice and the regulations to be adopted will be on file at the State Library and Archives, 100 Stewart Street, Carson City, Nevada for inspection by members of the public during business hours. Additional copies of the notice and the regulations to be adopted will be available at the Department of Personnel, 209 East Musser Street, Room 300, Carson City, Nevada, or at the Department of Personnel, 555 East Washington Avenue, 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. The text of each regulation will include the entire text of any section of the Nevada Administrative Code that is proposed for adoption. Copies 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 of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principle reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

The notice of the Workshop and Hearing has been posted at the following locations:

CARSON CITY

Blasdel Building, 209 East Musser Street
 Nevada State Library and Archives, 100 Stewart St.
 Capitol Building, Main Floor
 Legislative Building, 401 South Carson Street

Department of Personnel Web Site www.dop.nv.gov

ALL STATE AGENCIES

ALL NEVADA COUNTY PUBLIC LIBRARIES

LAS VEGAS

Grant Sawyer State Office Building
 555 East Washington Avenue

NOTE: We are pleased to make reasonable accommodations for individuals with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Department of Personnel, in writing, at 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204, or call Debra Berry at (775) 684-0110, no later than five working days prior to the meeting.

**PROPOSED REGULATION OF THE
DEPARTMENT OF PERSONNEL**

**PROPOSED PERMANENT REGULATION CHANGES
PERTAINING TO NAC 284**

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, requires employees to report his arrest, conviction or plea agreement to a misdemeanor or felony or traffic offense to his appointing authority. The appointing authority shall determine if the arrest, conviction, or plea agreement has any bearing on the employee's employment and if so, may dismiss the employee.

New Section *Report of convictions.*

1. *An employee must report an arrest, conviction, or plea agreement to any misdemeanor or felony or for the conviction of or plea agreement to any traffic offense to his appointing authority within 5 working days after it occurs. If he fails to make that report, he may be immediately dismissed.*
2. *The appointing authority shall determine if the arrest, conviction or plea agreement of an employee reported under subsection 1 has an adverse impact on the employment by the State of the employee, and if an adverse impact is found, the appointing authority may immediately dismiss the employee.*
3. *The rights and procedures contained in NAC 284.656 apply to a dismissal pursuant to this section.*

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, groups together disciplinary actions related to suspensions and demotions.

NAC 284.642 Suspensions and Demotions. (NRS 284.065, 284.155, 284.383, 284.385)

1. If ~~[a written reprimand is not effective]~~ *other forms of disciplinary or corrective action have proved ineffective*, or if the seriousness of the offense or condition warrants, an employee may be ~~[suspended]~~ :
 - (a) *Suspended* without pay ~~[by the appointing authority]~~ for a period not to exceed 30 calendar days ; ~~or [for any cause or causes listed in NAC 284.650. The rights and procedures contained in NAC 284.656 apply to a suspension ordered pursuant to this section.]~~
 - (b) *Demoted for any cause or causes listed in NAC 284.650.*
2. An exempt classified employee may only be suspended without pay in increments of one or more full workweeks.
3. *The rights and procedures contained in NAC 284.656 apply to a disciplinary action taken pursuant to this section.*

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, allows for immediate termination for certain offenses committed by an employee. These types of activities compromise the services provided by the State and place the State at an increased risk for legal and monetary claims.

NAC 284.646 ~~[Demotions and]~~ Dismissals. (NRS 284.065, 284.155, 284.383, 284.385)

1. ~~[If other forms of disciplinary or corrective action have proved ineffective or when]~~ *If provided for in the rules adopted or enforced by the agency or* the seriousness of the offense or condition warrants, the appointing authority may ~~[demote or]~~ dismiss the employee for any cause or causes listed in NAC 284.650.

2. *The following offenses are grounds for immediate dismissal:*

- (a) Viewing or distributing pornography on state computers;*
- (b) Unauthorized release or use of confidential information;*
- (c) Participation in sexual intercourse or oral sex in a state vehicle or while on state premises, other than employees residing on state property;*
- (d) Absence without approved leave for 3 consecutive scheduled workdays;*
- (e) The suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or specification of class for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law;*
- (f) Threatening others with a deadly weapon while in the workplace; or*
- (g) Theft or misappropriation of state property or property on state premises.*

3. The rights and procedures contained in NAC 284.656 apply to ~~[a disciplinary]~~ action taken pursuant to this section.

~~[2. An appointing authority may, in his discretion, reappoint a demoted employee to his former class.]~~

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, provides additional categories of serious infractions that are subject to disciplinary action. An appointing authority may, based on the facts of the situation, initiate progressive discipline under this section.

NAC 284.650 Causes for disciplinary action. (NRS 284.065, 284.155, 284.383) Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.
2. Disgraceful personal conduct which impairs the performance of a job or causes discredit to the agency.
3. The employee of any institution administering a security program, in the considered judgment of the appointing authority, violates or endangers the security of the institution.
4. Discourteous treatment of the public or fellow employees while on duty.

5. Incompetence or inefficiency.
6. Insubordination or willful disobedience.
7. Inexcusable neglect of duty.
8. Fraud in securing appointment.
9. Prohibited political activity.
10. Dishonesty.
11. Abuse, damage to or waste of public equipment, property or supplies because of inexcusable negligence or willful acts.
12. Drug or alcohol abuse as described in NRS 284.4062 and NAC 284.884.
13. Conviction of any criminal act involving moral turpitude.
14. Being under the influence of intoxicants, a controlled substance without a medical doctor's prescription or any other illegally used substances while on duty . ~~[and performing a function that does not involve the operation of a motor vehicle.]~~
15. Unauthorized absence from duty or abuse of leave privileges.
16. Violation of any rule of the Commission.
17. Falsification of any records.
18. Misrepresentation of official capacity or authority.
19. The suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or specification of class for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law.
20. Violation of any safety rule adopted or enforced by the employee's appointing authority.
21. Carrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his appointing authority. As used in this subsection, "workplace" means any building, office, or location specifically intended to serve as a place where work is performed by an employee during the course of a workday, including, without limitation, irregular shifts. The term does not include parking lots, garages or vehicle depots, unless those areas constitute an employee's usual and customary work site, or locations that serve as both living quarters and work sites, except when the living quarters are also used to care for children pursuant to a state program or as otherwise authorized by the State.
22. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.
23. *Viewing pornography on state computers.*
24. *Unauthorized release or use of confidential information.*
25. *Participation in sexual intercourse or oral sex in a state vehicle or while on state premises, other than employees residing on state property.*
26. *Failure to participate in an investigation of alleged discrimination including sexual harassment.*

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, allows for disciplinary action when the final charge is not driving under the influence or another offense for which driving under the influence is an element of the charged, e.g., destruction of property, failure to yield.

Additionally, the language in subsection 4 was removed and a new section is recommended to address the requirement for an employee to report the conviction of a misdemeanor or felony to his appointing authority.

NAC 284.653 Driving under the influence; unlawful acts involving controlled substance. (NRS 284.065, 284.155, 284.383, 284.385, 284.407)

1. An employee who is convicted of driving under the influence in violation of NRS 484.379 or ~~[of any other offense for which driving under the influence is an element of the offense]~~ *convicted of another crime or violation resulting from an incident where the employee was originally charged with driving under the influence or charged with any other offense for which driving under the influence is an element of the offense*, and the offense occurred while he was driving a state vehicle, or a privately owned vehicle on state business, or who is convicted of the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance at his place of work or on state business, is subject to the following disciplinary action as determined by the appointing authority:

(a) For the first offense:

(1) Dismissal;

(2) Demotion, if permitted by the organizational structure of the agency for which he is employed;

(3) Suspension for 30 calendar days; or

(4) Suspension for 30 calendar days and demotion.

(b) For the second offense within 5 years, dismissal.

2. An employee who is suspended or demoted pursuant to subsection 1 must agree to be evaluated through the Employee Assistance Program and must complete any rehabilitation program recommended by the evaluation. If he fails to complete the program, he must be dismissed.

3. Pursuant to NRS 193.105, an employee who is convicted of violating any state or federal law prohibiting the sale of a controlled substance must be dismissed.

~~[4. An employee must report a conviction of any offense described in this section to his appointing authority within 5 working days after it occurs. If he fails to make that report, he must be dismissed.]~~

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, clarifies that employees may be terminated from employment if they commit sexual harassment even if it is a first time offense.

NAC 284.771 Sexual harassment. (NRS 284.065, 284.155)

1. Sexual harassment violates the policy of this State and is a form of unlawful discrimination based on sex under state and federal law. An employee shall not engage in sexual harassment against another employee, an applicant for employment, or any other person in the workplace.

2. Sexual harassment is a very serious disciplinary infraction. An appointing authority may impose harsh disciplinary sanctions *or terminate the employment of [on]* persons who commit sexual harassment, even on first-time offenders. ~~[The appointing authority, in determining the appropriate level of discipline and the hearing officer, in reviewing the propriety of the level of discipline selected by the appointing authority, must consider the principles of progressive discipline as set forth in NRS 284.383.]~~

3. As used in this section, “sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other speech, or physical conduct of a sexual nature when:

(a) Submission to such speech or conduct is made either explicitly or implicitly a term or condition of a person’s employment;

(b) Submission to or the rejection of such speech or conduct by a person is used as the basis for employment decisions affecting that person; or

(c) Such speech or conduct has the purpose or effect of unreasonably interfering with a person’s work performance or creating an intimidating, hostile or offensive working environment.