

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R147-06

August 10, 2006

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

AUTHORITY: §§1-4 and 6, NRS 284.065; §§5, 7 and 8, NRS 284.065, 284.155, 284.383 and 284.385; §9, NRS 284.065, 284.155 and 284.383; §10, NRS 284.065, 284.155, 284.383, 284.385 and 284.407; §11, NRS 284.065 and 284.155; §12, NRS 284.065, 284.155 and 284.407.

A REGULATION relating to the State Personnel System; requiring employees to report certain arrests and convictions to appointing authorities; authorizing appointing authorities to immediately dismiss employees under certain circumstances; revising the grounds for disciplinary action against employees; authorizing appointing authorities to impose certain disciplinary actions against employees for certain criminal offenses involving driving under the influence of an intoxicating liquor or controlled substance; authorizing appointing authorities to dismiss employees who engage in sexual harassment; and providing other matters properly relating thereto.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *“Premises of the workplace” means any building, office, vehicle or location, or any part thereof, 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, or any other building, office, vehicle or location at or in which an employee is authorized to perform work by the agency with which he is employed. The term includes parking lots, garages or vehicle depots that are owned or leased by the State. The term does not include a location that constitutes an employee’s usual and customary living quarters, except when the*

living quarters are also used to care for children pursuant to a state program or as otherwise authorized by the State.

Sec. 3. *“Sexual conduct” means:*

- 1. Ordinary sexual intercourse;*
- 2. Anal intercourse;*
- 3. Fellatio, cunnilingus or other oral-genital contact;*
- 4. Physical contact by a person with the genitals or pubic area of another person for the purpose of arousing or gratifying the sexual desire of either person;*
- 5. Penetration, however slight, by a person of an object into the genital or anal opening of the body of another person for the purpose of arousing or gratifying the sexual desire of either person; or*
- 6. Masturbation or the lewd exhibition of genitals.*

Sec. 4. *“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other speech, or physical conduct of a sexual nature when:*

- 1. Submission to such speech or conduct is made either explicitly or implicitly a term or condition of a person’s employment;*
- 2. 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*
- 3. 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.*

Sec. 5. *1. Except as otherwise provided in this subsection, if an employee has been arrested for or convicted of a criminal offense which is a misdemeanor, gross misdemeanor or*

felony, the employee must report such arrest or conviction to his appointing authority within 5 working days after the arrest or conviction. An employee is not required to report to his appointing authority a violation of a traffic law pursuant to chapter 484 of NRS that he committed unless a driver's license is a requirement of the employee's position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position.

2. The appointing authority shall determine whether the continued employment of an employee as the result of a conviction reported pursuant to subsection 1 has an adverse impact on the State of Nevada.

3. The appointing authority may immediately dismiss an employee if:

(a) The employee fails to make a report required pursuant to subsection 1; or

(b) The appointing authority determines pursuant to subsection 2 that the continued employment of the employee has an adverse impact on the State of Nevada.

4. The rights and procedures set forth in NAC 284.656 apply to any dismissal made pursuant to this section.

Sec. 6. NAC 284.010 is hereby amended to read as follows:

284.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 284.022 to 284.112, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 7. NAC 284.642 is hereby amended to read as follows:

284.642 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 for any cause ~~[or causes listed]~~ *set forth* in NAC 284.650 ~~[-. The rights and procedures contained in NAC 284.656 apply to a suspension ordered pursuant to this section.];~~

or

(b) *Demoted for any cause set forth 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 set forth in NAC 284.656 apply to any disciplinary action taken pursuant to this section.*

Sec. 8. NAC 284.646 is hereby amended to read as follows:

284.646 1. ~~[If other forms of disciplinary or corrective action have proved ineffective or when the seriousness of the offense or condition warrants, the]~~ An appointing authority may ~~[demote or dismiss the]~~ *dismiss an* employee for any cause ~~[or causes listed]~~ *set forth* in NAC 284.650 ~~[.]~~ *if:*

(a) *The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause; or*

(b) *The seriousness of the offense or condition warrants such dismissal.*

2. *An appointing authority may immediately dismiss an employee for the following causes, unless the conduct is authorized pursuant to a rule or policy adopted by the agency with which the employee is employed:*

(a) *Intentionally viewing or distributing pornographic material at the premises of the workplace, including, without limitation, intentionally viewing or distributing pornographic*

material on any computer owned by the State, unless such viewing or distributing is a requirement of the employee's position.

(b) Unauthorized release or use of confidential information.

(c) Participation in sexual conduct on the premises of the workplace, including, without limitation, participation in sexual conduct in a vehicle that is owned by the State.

(d) Absence without approved leave for 3 consecutive days during which the employee is scheduled to work.

(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 class specifications 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 another person with a deadly weapon during any time in which the employee is:

(1) On the premises of the workplace; or

(2) Conducting state business or otherwise performing any duties of employment.

(g) Stealing or misappropriating any property that is owned by the State or located on state property.

3. The rights and procedures ~~[contained]~~ *set forth* in NAC 284.656 apply to ~~[a disciplinary action taken]~~ *any dismissal made* pursuant to this section.

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

4. As used in this section:

(a) “Material” has the meaning ascribed to it in NRS 201.2581.

(b) “Nudity” has the meaning ascribed to it in NRS 201.261.

(c) “Pornographic material” means material that, all or in part, contains any description or representation of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of adults and is without serious literary, artistic, political or scientific value.

(d) “Sado-masochistic abuse” has the meaning ascribed to it in NRS 201.262.

(e) “Sexual excitement” has the meaning ascribed to it in NRS 201.264.

Sec. 9. NAC 284.650 is hereby amended to read as follows:

284.650 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.]~~ **20.** 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.]~~ **21.** 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.

22. *Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning sexual harassment.*

23. *Failure to participate in an administrative investigation authorized by the employee’s appointing authority.*

Sec. 10. NAC 284.653 is hereby amended to read as follows:

284.653 1. An employee ~~[who]~~ *is subject to any disciplinary action set forth in subsection 2, as determined by the appointing authority, if the employee* is convicted of ~~[driving]~~ *any of the following offenses:*

(a) If the offense occurred while the employee was driving a state vehicle, or a privately owned vehicle on state business:

(1) Driving under the influence in violation of NRS 484.379 ; or ~~[of]~~

(2) Any offense resulting from an incident in which the employee was:

(I) Originally charged with driving under the influence; or

(II) *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]~~

(b) *The* unlawful manufacture, distribution, dispensing, possession or use of a controlled substance ~~[at his place of work]~~ *on the premises of the workplace* or on state business . ~~[, is subject to the following disciplinary action as determined by the appointing authority:]~~

2. An appointing authority may impose the following disciplinary actions if an employee is convicted of an offense set forth in subsection 1:

(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.]~~ *3.* An employee who is suspended or demoted pursuant to subsection ~~[1 must agree]~~ *2 must:*

(a) *Agree* to be evaluated through the Employee Assistance Program ; and ~~[must complete any rehabilitation]~~

(b) *Complete any* program *of treatment* recommended by the evaluation.

4. If ~~[he]~~ *an employee* fails to complete the program ~~[, he must be dismissed.~~
~~—3.]~~ *of treatment, the appointing authority must dismiss the employee.*

5. 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.]~~ 6. 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.

Sec. 11. NAC 284.771 is hereby amended to read as follows:

284.771 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 on , *or dismiss*, persons who commit sexual harassment, ~~[even on]~~ *including, without limitation*, 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.]~~

Sec. 12. NAC 284.884 is hereby amended to read as follows:

284.884 1. An employee must not have a concentration of alcohol in his blood or breath greater than .01 gram by weight of alcohol per 100 milliliters of his blood or per 210 liters of his breath while on duty. Disciplinary action may be taken by the appointing authority in accordance with the provisions of NAC 284.638 to 284.656, inclusive, *and section 5 of this regulation*, if a screening test indicates that the concentration of alcohol in the blood or breath of the employee is greater than .01 gram by weight of alcohol per 100 milliliters of his blood or per 210 liters of his breath while on duty.

2. A positive result on a screening test of a person's breath must be confirmed by a second screening test. The second screening test must be conducted immediately after receipt of the positive result of the first screening test.