

LCB File No. R063-09

PROPOSED REGULATION OF THE
PERSONNEL COMMISSION

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

Sec. 11. NAC 284.656 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment changes NAC 284.656 to focus primarily on giving an employee notice of a disciplinary action and adds additional procedural detail. For clarity purposes, information on the pre-disciplinary hearing has been moved to a new section.

NAC 284.656 Notice *of disciplinary action* ~~[and hearing]~~. (NRS 284.065, 284.155, 284.383, 284.385, 284.390)

1. Except as otherwise provided in subsection 2, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, the following procedure must be followed ~~[unless waived in writing by the employee]:~~

(a) The employee must be given at least 10 working days' written notice of the proposed action ~~[. The notice must be]~~ on the form provided by the Department of Personnel.

(b) The form should ~~[and may]~~ be given in person ~~[or]~~ *but may be delivered* by mail. If it is mailed, the notice must be mailed to the employee's last known address by registered or certified mail, return receipt requested. The date stamped on the receipt by the postal service is the date of delivery. If the notice is returned without a return receipt signed by the employee, the employee's date of receipt shall be deemed to be the third day after the date of the mailing.

~~[(b)]~~ (c) The notice must:

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

(2) Inform the employee that a *pre-disciplinary* hearing has been scheduled on his behalf and specify the date, time and place of the hearing.

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

~~[(e) The hearing must be scheduled to take place no earlier than 7 working days after the written notice of the proposed action is delivered or deemed received pursuant to paragraph (a). The hearing may not be scheduled on a day which is not a regular working day for the employee.~~

~~—(d) If the appointing authority or his designated representative and the employee agree, the date of the hearing may be changed.~~

~~—(e)]~~ (d) The notice of the proposed action must be signed by the appointing authority or his designated representative *before it is given to the employee* .

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

~~[(f) The employee may examine, at any time after receiving the notice and before the hearing, all materials which are to be used by the person conducting the hearing. The employee is entitled to receive upon request a total of up to 8 hours of administrative leave with pay to prepare for the hearings regarding his suspension, demotion or dismissal.~~

~~—(g)]~~ (f) If the employee does not understand the reasons for the proposed action or the procedures *related to disciplinary actions, including his rights to notice, hearing, and appeal*, the employee may seek an explanation from the appointing authority or another person in the agency familiar with the procedure.

~~[(h) The employee may respond both orally and in writing to the appointing authority or his designated representative at the hearing.~~

~~—(i) The appointing authority or his designated representative shall conduct the hearing. The designated representative must be a person with authority to recommend a final decision to the appointing authority. He may not render the final decision.~~

~~—(j) The employee must be:~~

~~—— (1) Given a copy of the finding or recommendation, if any, resulting from the hearing; and~~

~~—— (2) Informed, in writing, of the appointing authority's decision regarding the proposed action on or before the effective date of the action.~~

~~—(k) The employee may waive his right to a hearing in writing. If the employee waives his right to the hearing, he may not be dismissed, suspended, or demoted before the proposed effective date. The waiver does not waive the employee's right to an appeal after the action is taken.~~

~~—(l) This process is an informal proceeding between the two parties, the appointing authority or his designated representative and the employee, who meet together to discuss the proposed action. Witnesses are not permitted to attend, but each party may be accompanied by a person of his choice.]~~

2. The procedure specified in subsection 1 need not be followed before dismissing or suspending a permanent employee if the circumstances give the appointing authority a reasonable cause to believe that the retention of an employee on active duty poses a threat to life, limb or property or may be seriously detrimental to the interests of the State.

3. If the circumstances set forth in subsection 2 are present, the appointing authority may temporarily assign the employee to duties in which those circumstances do not exist or, if the temporary assignment is not feasible:

(a) Immediately place the employee on administrative leave with pay until the procedure set forth in subsection 1 has been followed; or

(b) Immediately suspend or dismiss the employee. In this case the appointing authority, his designated representative, or the employee's supervisor shall attempt to inform the employee before the action is taken of the charges against him and provide the employee with an opportunity to rebut the charges. The procedure set forth in subsection 1 must be followed as soon as practicable after the immediate suspension or dismissal.

Sec. 12. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

<p>Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, adds a new section containing language that was previously included in NAC 284.656 regarding the pre-disciplinary hearing. It also adds brief information about the employee's rights to appeal a suspension, demotion or termination to a Department of Personnel hearings officer. This will help eliminate confusion about the various hearings involved in this process.</p>

NEW. Hearings related to disciplinary action.

1. Pursuant to NAC 284.656, if an appointing authority proposes that a permanent employee be dismissed, suspended or demoted, a pre-disciplinary hearing must be scheduled on his behalf unless waived in writing by the employee.

(a) The appointing authority or his designated representative shall conduct the hearing. The designated representative must be a person with authority to recommend a final decision to the appointing authority. The appointing authority shall render the final decision.

(b) The hearing must be scheduled to take place no earlier than 7 working days after the written notice of the proposed action is delivered or deemed received pursuant to paragraph (b) of NAC 284.656.

(c) The hearing may not be scheduled on a day which is not a regular working day for the employee.

(d) If the appointing authority or his designated representative and the employee agree, the date of the hearing may be changed.

(e) The employee may examine, at any time after receiving the notice and before the hearing, all materials which are to be used by the person conducting the hearing. The employee is entitled to administrative leave with pay as provided in NAC 284.589 to prepare for the hearings regarding his suspension, demotion or dismissal.

(f) The employee may respond both orally and in writing to the appointing authority or his designated representative at the hearing.

(g) The employee must be:

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

(2) Informed, in writing, of the appointing authority's decision regarding the proposed action on or before the effective date of the action.

(h) The employee may waive his right to a hearing in writing. If the employee waives his right to the hearing, he may not be dismissed, suspended, or demoted before the proposed effective date. The waiver does not waive the employee's right to an appeal after the action is taken.

(i) This process is an informal proceeding between the two parties, the appointing authority or his designated representative and the employee, who meet together to discuss the proposed action. Witnesses are not permitted to attend, but each party may be accompanied by a person of his choice.

(j) In situations where an employee is immediately suspended or dismissed pursuant to NAC 284.656, the hearing must be scheduled as soon as practicable after the immediate suspension or dismissal.

2. Pursuant to NRS 284.390, within 10 working days after the effective date of his dismissal, demotion or suspension an employee who has been dismissed, demoted or suspended may request a hearing before the hearings officer of the Department. This request must be in writing and addressed to the Department or may be submitted on the form provided by the Department.