

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R066-09

Effective October 27, 2009

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

AUTHORITY: §§1-4, NRS 284.065, 284.155 and 284.407.

A REGULATION relating to the State Personnel System; revising provisions governing screening tests for use of alcohol and drugs; and providing other matters properly relating thereto.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

1. The appointing authority of an employee who tests positive for the presence of alcohol or a controlled substance while on duty and who, as a result, is subject to disciplinary action pursuant to NAC 284.646 or 284.650 but is not terminated shall require the employee to:

(a) Provide to the appointing authority documentation from a counselor who is licensed or certified pursuant to chapter 641C of NRS or another health care provider who has training or experience in substance abuse counseling, which verifies that the employee is able to return to duty and perform the essential functions of his or her job.

(b) Submit to a screening test.

2. The employee is responsible for the cost of any screening test required pursuant to subsection 1.

3. An employee who fails or refuses to submit to a screening test required pursuant to subsection 1 is subject to disciplinary action, including, without limitation, termination, at the discretion of the employee's appointing authority.

Sec. 2. NAC 284.880 is hereby amended to read as follows:

284.880 As used in NAC 284.880 to 284.894, inclusive, *and section 1 of this regulation*, unless the context otherwise requires:

1. "Employee" has the meaning ascribed to it in subsection 1 of NRS 284.4061.
2. "Screening test" has the meaning ascribed to it in subsection 2 of NRS 284.4061.

Sec. 3. NAC 284.882 is hereby amended to read as follows:

284.882 A screening test to detect the general presence of:

1. A controlled substance must comply with the standards and procedures established by the United States Department of Health and Human Services which are hereby adopted by reference. A copy of the standards and procedures is available, without charge, from the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace ~~[, 5600 Fishers Lane, Parklawn Building, 13A-54,]~~ *Programs, 1 Choke Cherry Road*, Rockville, Maryland 20857.

2. Alcohol by testing a person's breath must be conducted ~~[by an operator certified in accordance with NAC 484.640]~~ using a breath-testing device certified in accordance with ~~[NRS 484.3882 and NAC 484.660.]~~ *the "Conforming Products List of Evidential Breath Alcohol Measurement Devices" published in the Federal Register by the National Highway Traffic Safety Administration of the United States Department of Transportation.*

Sec. 4. NAC 284.888 is hereby amended to read as follows:

284.888 1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his duties safely and efficiently include, but are not limited to:

- (a) The operation of a motor vehicle by the employee in any manner that causes bodily harm;
- (b) Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;
- (c) The odor of *alcohol or a controlled substance on* the breath of the employee ; ~~and a decline in job performance that is not otherwise normally explainable;~~
- (d) Observation of the employee consuming alcohol ; ~~and a resulting decline in job performance that is not otherwise normally explainable;~~ or
- (e) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source.

2. Pursuant to subsection 2 of NRS 284.4065, “substantial damage to property” includes, but is not limited to:

- (a) The operation of a motor vehicle in such a manner as to cause more than \$2,500 worth of property damage; or
- (b) The operation of a motor vehicle in such a manner as to cause two property accidents within a 1-year period.

3. Before requiring an employee to submit to a screening test, a supervisor must complete a form provided by the Department of Personnel.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R066-09**

The Personnel Commission adopted regulations which pertain to chapter 284 of the Nevada Administrative Code on September 25, 2009.

INFORMATIONAL STATEMENT

The following statement is submitted for amendments to Nevada Administrative Code (NAC) 284.

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulation, notice of workshop, and notices of intent to act upon a regulation were sent by email to persons who were known to have an interest in the subject of proposed personnel regulation changes as well as any person who had specifically requested such notice. These documents were also made available on the website of the Department of Personnel (DOP), <http://dop.nv.gov/>, mailed to all county libraries in Nevada and posted at the following locations:

Department of Personnel Blasdel Building 209 E. Musser St Carson City, NV 89701	Grant Sawyer State Office Bldg. 555 E. Washington Blvd Suite 4401 Las Vegas, NV 89101
Nevada State Library and Archives 100 Stewart St Carson City, NV 89701	Capitol Building Main Floor Carson City, NV 89701
Legislative Building 401 S. Carson St Carson City, NV 89701	Gaming Control Board 1919 College Parkway Carson City, NV 89701

Attached are excerpts from the minutes from the workshop that apply to these changes.

A public hearing by the Nevada Personnel Commission was held on September 25, 2009. Personnel Commissioner Mitch Brust commented that he was concerned with some of the language in the regulation change. He stated that leaving the return to work provisions of the regulations as optional instead of mandatory could lead to the differential treatment of employees. Carrie Hughes of the Department of Personnel said that the original draft of the regulation made the return to work provisions mandatory, but some agencies objected. She stated that the Department, however, would support making the provisions mandatory. Based on a question from Commissioner Brust, Kimberley King from the Department of Transportation explained that NDOT had required return to work procedures for CDL drivers who test positive for drugs or alcohol. Ron Cuzze of the Nevada State Law Enforcement Officers Association wanted the regulation to be changed to allow other law enforcement agencies other than the Nevada Highway Patrol to be allowed to do breath

alcohol testing. Kareen Masters stated that if the return to work provisions were to be made mandatory, the regulation needed to clearly state that the employee was responsible for all costs.

The number of persons who:

- (a) **Attended each hearing:** September 25, 2009, Personnel Commission meeting (hearing), 49 attendees
- (b) **Testified at each hearing:** September 25, 2009, Personnel Commission meeting, 3 testified
- (c) **Submitted written comments:** None

- 2. A description of how comment was solicited from businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were not solicited, as the regulation does not affect businesses.

- 3. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The regulation was adopted with the change recommended by Commissioner Mitch Brust, making the return to work provisions mandatory instead of up to the agency's discretion. The Commission was concerned that any other changes would need to be sent to workshop for further discussion.

- 4. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

This regulation does not have a direct economic effect on either a regulated business or the public.

- 5. The estimated cost to the agency for enforcement of the adopted regulation:**

No direct cost is anticipated to the Department of Personnel for the enforcement of this regulation. Indirect costs will result from updating forms and informational manuals as well as providing additional consultation to agencies and employees.

- 6. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

This regulation does not overlap or duplicate any other State or governmental agency regulation.

- 7. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

This regulation does not include any provisions that are more stringent than any federal regulation.

- 8. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

No fees are associated with this regulation.

- 9. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

This regulation is specific to State government agencies and has no impact on small business.