

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R066-09

August 24, 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 may 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.