

Chapter 284 of NAC

LCB File No. T031-09

**ADOPTED TEMPORARY REGULATION OF  
THE PERSONNEL COMMISSION**

Filed with the Secretary of State on April 6, 2009

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

*NEW. Return to work of employees who have tested positive for alcohol and/or drugs while on duty.*

1. An employee who tests positive for drugs and/or alcohol while on duty, and whose offense does not result in termination pursuant to NAC 284.646 or NAC 284.650, may be required to:

*(a) Provide his appointing authority with documentation from his Licensed Substance Abuse Treatment Provider or other provider of health care with training and experience in substance abuse treatment, which verifies that the employee is able to return to duty and perform the essential functions of his job; and/or*

*(b) Submit to and pass a return to duty drug and/or alcohol test as determined by the appointing authority.*

2. The employee is responsible for the cost of any return to duty testing.

3. An employee who fails to pass a return to duty test is subject to disciplinary action up to and including termination at the discretion of the appointing authority.

**Sec. 2.** NAC 284.882 is hereby amended to read as follows:

**NAC 284.882 Administration of screening tests. (NRS 284.065, 284.155, 284.407)** 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 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, 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 *the conforming products list of evidential breath measurement devices as outlined in the Federal Register for the National Highway Traffic Safety Administration.* ~~[NRS 484.3882 and NAC 484.660.]~~

**Sec. 3. NAC 284.888 is hereby amended to read as follows:**

**NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (NRS 284.065, 284.155, 284.407)**

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 other 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 REGULATION  
LCB FILE NO. T031-09**

The Personnel Commission adopted temporary regulations assigned LCB File No. T031-09, which pertain to chapter 284 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

**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 notice of intent to act upon a regulation were sent by U.S. Mail and 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
Legislative Building 401 S. Carson St Carson City, NV 89710	Nevada State Library and Archives 100 Stewart St Carson City, NV 89701
Capitol Building Main Floor	Nevada Department of Transportation 1263 S. Stewart Street Carson City, NV 89712

As a result of comments received at the workshop: No comments were received. (A copy of the minutes from the workshop is attached.)

**2. The number of persons who:**

- (a) Attended each hearing:** Personnel Commission meeting (hearing), 64 attendees
- (b) Testified at each hearing:** Personnel Commission meeting (hearing), 1 testified
- (c) Submitted written comments:** 0 comments

**3. 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.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.** There were no comments made at the Personnel Commission meeting in opposition to the proposed amendments.

**5. 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.

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

No increased cost is anticipated to the Department of Personnel with the enforcement of this regulation.

**7. 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 State, federal, or other governmental agency regulations.

**8. 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.

**9. 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.

**10. 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.