

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R007-11

July 19, 2011

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

AUTHORITY: §§1-8, NRS 284.340 and 284.384.

A REGULATION relating to state personnel; revising the review process for reports on performance that are contested by employees; and providing other matters properly relating thereto.

Section 1. NAC 284.206 is hereby amended to read as follows:

284.206 1. The Department of Personnel may approve a special adjustment to the pay of an employee pursuant to this section. A request for a special adjustment to pay may be initiated by an employee, the appointing authority or the Department of Personnel. A special adjustment to pay does not constitute a promotion.

2. An employee may receive a special adjustment to pay equivalent to 5 percent of the employee's base rate of pay during any period in which:

(a) The employee works out of his class on a continuing basis and performs essentially all the duties and responsibilities of a position classified at a higher grade. To receive the increase, the employee must be assigned duties and responsibilities of the higher grade which are clearly demonstrated in the class specification and carry out the duties and responsibilities for at least 16 consecutive workdays before the increase becomes effective. The adjustment to pay pursuant to this paragraph is effective retroactively, commencing on the date on which the employee

assumed the additional duties and responsibilities. The adjustment to pay must not continue for more than 6 months in any 12-month period unless:

(1) The employee is underfilling a position pursuant to NAC 284.437 and recruitment has failed to produce a sufficient number of applicants on the appropriate list.

(2) The duties and responsibilities that the employee has been carrying out have been assumed from one or more positions that have not been authorized to be filled because of a hiring freeze or fiscal emergency. A hiring freeze or fiscal emergency must be certified by the Chief of the Budget Division of the Department of Administration or, in the case of an agency that does not receive money from the State General Fund or the Nevada System of Higher Education, certified by the administrator of that agency or the System.

(3) The appointing authority submits a written request to the Director of the Department of Personnel accompanied by documentation justifying an extension of the 6-month period and certifies that money is available to pay for the continuation of the special adjustment to pay. The Director may authorize the continuation of the special adjustment to pay after receiving the request and documentation and determining that the extension of the 6-month period is a business necessity and in the best interest of the State.

(b) The employee is required to use bilingual skills or sign language for the deaf at least 10 percent of his work time.

(c) The employee is supervising other employees of the same or a higher grade if the supervision:

(1) Is not part of the supervision or management responsibilities for a program that is provided for in the class specification; and

(2) Includes, without limitation, selection, work assignment, training, work review, *reports on* performance ~~[evaluation]~~ and discipline of employees.

(d) The employee is required regularly to perform custodial work and clean up human bodily waste in a medical, clinical or inpatient facility.

(e) Except as otherwise provided in this paragraph, the employee is conducting a formal training program for employees. The training program must:

- (1) Be conducted weekly;
- (2) Consist of training on the job and in the classroom or training only in the classroom;
- (3) Include a test to determine the employees' progress in the program; and
- (4) Result in the award of a certificate of completion or advancement in a class series to the journey level.

↪ If an adjustment to pay is granted pursuant to this paragraph, the adjustment begins when the employee starts conducting the training program and ends when the training program is completed. An adjustment will not be granted if the duty to conduct training is clearly set forth in the class specification. Informal orientation given to new employees will not be considered for this special adjustment.

(f) The employee, if employed as a law enforcement officer, is assigned to motorcycle duty.

(g) The employee, if employed by the Department of Corrections, is responsible for the supervision of a group of inmates assigned to a work area of an institution and who is responsible for implementing security procedures, including, without limitation:

- (1) Securing the work area from inmates who are not authorized to enter the work area;
- (2) Accounting for all inmates who have been assigned to the work area; and
- (3) Accounting for all materials, tools and equipment in the work area.

↪ The adjustment to pay pursuant to this paragraph will be granted only if such duties are not provided for in the class specification.

(h) The employee is authorized by the Legislature to receive such an adjustment to his pay.

3. An employee may receive a special adjustment to pay if he occupies a position in which the duties have been recognized through the classification process as being at a higher level, but who does not meet the minimum qualifications for the class. The special adjustment to the employee's pay must be equivalent to 2.5 percent of the employee's base rate of pay if the employee performs duties classified one grade higher than his current position, or 5 percent of the employee's base rate of pay if the employee performs duties classified two or more grades higher than his current position. A special adjustment to an employee's pay made pursuant to this subsection may continue in effect from the date on which the position questionnaire is received:

(a) Until the employee meets the minimum qualifications and is promoted;

(b) For 1 year after the effective date of the special adjustment to pay; or

(c) Until the date the higher level duties are removed,

↪ whichever occurs first.

4. Except as otherwise provided in paragraph (a) of subsection 2, any special adjustment to pay made pursuant to subsection 2 must be revoked when the conditions justifying it cease to exist.

5. Except as otherwise provided in this section, the effective date of a special adjustment to pay is the date on which the written request is received by the Department of Personnel or the personnel office of the agency at which the employee who is receiving the special adjustment to pay is employed. If the request for the special adjustment to pay is delayed because an administrative or clerical error prevented its delivery, the effective date of the special adjustment

to pay must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment to pay must not exceed 6 months from the date on which the Department of Personnel receives the written request.

Sec. 2. NAC 284.436 is hereby amended to read as follows:

284.436 1. An intermittent position is a position:

- (a) That is filled by a person who may be called to work at any time;
- (b) That is used to supplement the agency's full-time staff; and
- (c) The compensation of which is separately identified in the budget of the agency.

2. An appointing authority may hire an employee in an intermittent position to supplement the full-time staff of an agency when the staffing needs of the agency fluctuate because of changes in the amount of work.

3. If a position is budgeted as an intermittent position, that position may only be underfilled pursuant to this chapter by an intermittent employee. An intermittent employee may only underfill a position that has been budgeted as an intermittent position.

4. An employee in an intermittent position who has attained permanent status:

(a) Must be given notice of any layoff affecting him not less than 1 week before the layoff; and

(b) Has a right of reemployment if his last *report on* performance ~~[evaluation]~~ was standard or better. The right of reemployment is based on the same formula as that used for other employees except that it extends only to the cost center or division from which his employment was terminated. This right must not operate to the detriment of a permanent full-time employee.

5. As used in this section, “cost center” means an organizational unit or group of organizational units within the Employment Security Division of the Department of Employment, Training and Rehabilitation.

Sec. 3. NAC 284.470 is hereby amended to read as follows:

284.470 1. A person shall not complete a report on performance unless he has completed the training provided or approved by the Director concerning the preparation of a report on performance.

2. A report on performance must be prepared on the form prescribed by the Department of Personnel.

3. A report on performance must be filed at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee. If a report on performance is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard.

4. If any information that would have affected the rating of performance of an employee during a period of evaluation becomes available after the date on which the report on performance of the employee is filed for that period, the information may be included in the report on performance for the current period of evaluation and taken into consideration in determining the rating of performance for the current period of evaluation.

5. When a report on performance is given which reports the overall rating of performance of an employee as substandard:

(a) The report must contain a written notice that such reports affect both merit pay increases and the employee’s eligibility for longevity pay; and

(b) An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard or disciplinary action is taken against the employee.

6. Except as otherwise provided in subsection 7, the preparation of each report on performance must include a discussion between the employee and his immediate supervisor. Within 10 working days after the discussion takes place:

(a) The employee must complete and sign the appropriate section on the report on performance and return the report to his supervisor for forwarding to the reviewing officer or appointing authority.

(b) If the employee ~~[disagrees with]~~ *contests* the report on performance and requests a review, he must respond to the report in writing, identify the specific points of ~~[disagreement,]~~ *contention*, if such specificity is provided, and return the response to his supervisor. ~~[The]~~ *Except as otherwise provided in this paragraph, the* reviewing officer shall respond ~~[to the employee]~~ in writing on a form prescribed by the Department of Personnel within 10 working days after the supervisor receives the request ~~[]~~ *for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the contested report on performance and render a final decision to the employee within 10 working days after receiving the recommendation.*

7. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 6 because of an extended absence, the immediate supervisor of the employee shall

cause the report to be mailed to the employee. Within 10 working days after the date on which the employee receives the report:

(a) The employee must complete and sign the appropriate section on the report on performance and mail the report to his supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee ~~[disagrees with]~~ **contests** the report on performance and requests a review, he must respond to the report in writing, identify any specific point of ~~[disagreement,]~~ **contention**, if the report provides such specificity, and mail his response to his supervisor. ~~[The]~~ ***Except as otherwise provided in this paragraph, the*** reviewing officer shall respond ~~[to the employee]~~ in writing on a form prescribed by the Department of Personnel within 10 working days after the supervisor receives the request for review . ~~[from the employee.]~~ ***If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the report on performance and render a final decision to the employee within 10 working days after receiving the recommendation.*** For the purposes of this paragraph, a report on performance or request for review is deemed to have been received on the third day after the date on which the report or request is postmarked.

8. A copy of each report on performance and, if applicable, any written response to such a report ~~[.]~~ ***requested by an employee pursuant to subsection 6 or 7*** must be provided to the employee and filed with the Department of Personnel.

9. If any written comments are added to a report on performance after a copy of the report has been provided to the employee pursuant to subsection 8:

(a) A copy of the revised report which includes the written comments must be provided to the employee; and

(b) The employee may respond, in writing, to the additional comments in the revised report not later than 10 working days after he receives a copy of the revised report and submit the response to the Department of Personnel for inclusion in his file of employment.

10. An employee and his appointing authority may agree in writing to extend one or more of the periods prescribed in subsection 6 or 7.

11. If a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

Sec. 4. NAC 284.478 is hereby amended to read as follows:

284.478 ~~[A]~~ *Upon completion of the review process conducted pursuant to NAC 284.470, a permanent employee may appeal a ~~[decision of a reviewing officer pursuant to NAC 284.470]~~ **contested report on performance** through the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.*

Sec. 5. NAC 284.658 is hereby amended to read as follows:

284.658 1. As used in NAC 284.341 and 284.658 to 284.697, inclusive, a “grievance” means an act, omission or occurrence which a permanent employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement ~~[]~~ *or a **contested report on performance***. The act, omission or occurrence must be established with

factual information including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved.

2. For the purposes of NAC 284.341 and 284.658 to 284.697, inclusive, the term “grievance” does not include any grievance for which a hearing is provided by NRS 284.165, 284.376 or 284.390.

Sec. 6. NAC 284.678 is hereby amended to read as follows:

284.678 1. Except as otherwise provided in subsections 3 and 4 and NAC 284.692, an employee who feels aggrieved and wishes to file a formal grievance must submit his grievance in writing to his immediate supervisor on the official form, or in a letter if the official form is not available, within 20 working days after the date of the origin of the grievance or the date the employee learns of the problem. The parties should make every effort to resolve the grievance through informal discussions within these 20 working days.

2. If the employee submits a letter, it must include:

- (a) His name;
- (b) His most recent date of hire;
- (c) His position;
- (d) His department, division and section;
- (e) His mailing address;
- (f) His business telephone number;
- (g) A statement that he is filing a formal grievance;
- (h) The date, time and place of the event or the date the employee learns of the event leading to the grievance;
- (i) A concise statement of his grievance;

(j) A detailed description of his grievance, including the names of other persons involved in the event, if any;

(k) A proposed solution of his grievance;

(l) His signature; and

(m) The date he signed the statement.

3. Except as otherwise provided in NAC 284.692, if a grievance relates to ~~[a decision of a reviewing officer about]~~ a *contested report on* performance , ~~[evaluation,]~~ an employee must file a grievance that identifies the specific points of ~~[disagreement,]~~ *contention*, if such specificity is provided, not later than 10 working days after the date the employee receives ~~[the]~~ a decision ~~[of the reviewing officer.]~~ *regarding the review conducted by the appointing authority pursuant to NAC 284.470*. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of a reviewing officer *or appointing authority* to respond to a request for a review within the time required by NAC 284.470, an employee must file a grievance not later than 10 working days after the date on which the time for such a response expired.

4. A grievance filed pursuant to subsection 3 must be filed with:

(a) The person who is at the next appropriate level of the grievance process; or

(b) If the person who is at the next appropriate level of the grievance process is the reviewing officer or other person who prepared or reviewed the *report on* performance , ~~[evaluation,]~~ the person who is at the next appropriate level of the grievance process *above such reviewing officer or other person who prepared or reviewed the report on* ~~[who did not prepare or review the]~~ performance . ~~[evaluation.]~~

5. A grievance regarding a report on performance must be filed with the highest administrator in the department pursuant to NAC 284.690 before being submitted to the Committee pursuant to NAC 284.695.

Sec. 7. NAC 284.690 is hereby amended to read as follows:

284.690 1. Except as otherwise provided in NAC 284.692:

(a) If the employee has not received satisfactory relief within 10 working days after his grievance is deemed to have been received by the head of the division, he may file his grievance with the highest administrator of the department; and

(b) Within 10 working days after the employee's grievance is deemed to have been received by the highest administrator of the department, the administrator or the designee of the administrator shall:

(1) Gather information regarding the grievance;

(2) Render a decision resolving the grievance, including, without limitation, denying the grievance; and

(3) Notify the employee of the resolution.

2. In rendering a decision concerning a *report on* performance, ~~[evaluation,]~~ an administrator shall address the findings of fact to the specific points of ~~[disagreement]~~ *contention* referred to in the grievance of the employee.

3. Within the established time limitations, including any extensions to those time limitations obtained pursuant to NAC 284.692, the highest administrator may appoint a person or committee composed of managers and employees to assist in the finding of facts and recommending a course of action.

Sec. 8. NAC 284.695 is hereby amended to read as follows:

284.695 If an employee is not satisfied with the decision rendered by the highest administrator in the department pursuant to NAC 284.690, he may request consideration of the grievance by the Committee pursuant to its rules. The employee must submit his request to the Committee within 10 working days following his receipt of the decision from the administrator. The request must include all appropriate documentation, a citation of the statutes and regulations pertinent to the grievance, if any, the specific points of disagreement *or contention* and supporting evidence. The Committee will, within 45 working days after the receipt of the employee's request:

1. Answer the request without a hearing if the case is based upon the Committee's previous decisions or does not fall within its jurisdiction; or

2. Hold a hearing to determine the proper disposition of the request. If a hearing is held, the Committee will:

- (a) Except as otherwise provided in paragraph (b), provide at least 21 working days' written notice to all parties concerned.

- (b) Provide notice to the employee by:

- (1) Sending a written notification by certified mail, return receipt requested, at least 21 working days before the hearing; or

- (2) Personally delivering a written notification to the employee at least 5 working days before the hearing, if the Chairman approves of such notice.

- (c) Render a decision within 45 days after the closure of the hearing.