

**ADOPTED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R026-11

Effective January 1, 2012

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

AUTHORITY: §§1-5, NRS 284.065, 284.155 and 284.384, as amended by section 1.7 of Assembly Bill No. 354, chapter 484, Statutes of Nevada 2011, at page 3066.

A REGULATION relating to the State Personnel System; revising provisions concerning the adjustment of grievances; 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. If an employee is not satisfied with the decision rendered by the highest administrator of the department pursuant to NAC 284.690 and submits a request for consideration of the grievance by the Committee pursuant to NAC 284.695, the employee or the highest administrator or his or her designee may request a resolution conference to meet informally in the presence of a neutral facilitator to discuss the grievance and possible resolutions.

2. Except as otherwise provided in this subsection, a request for a resolution conference may be submitted to the Division at any time after the employee submits his or her request for consideration of the grievance by the Committee. If the Committee has notified the parties of the date on which it will hold a hearing to consider the grievance, the request for a resolution conference may not be submitted less than 15 working days before that date.

3. Upon receipt of a request for a resolution conference, the Division shall appoint a neutral facilitator to conduct the resolution conference. The facilitator must not be affiliated with either party.

4. The submission of a request for a resolution conference does not deprive the Committee of jurisdiction to consider the grievance if:

(a) The parties are unable to reach an agreement for the resolution of the grievance at the resolution conference; or

(b) The parties reach an agreement for the resolution of the grievance at the resolution conference, but the employee subsequently notifies the Committee that the agreement has failed.

Sec. 2. 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, *and section 1 of this regulation*, 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, *and section 1 of this regulation*, the term “grievance” does not include any grievance for which a hearing is provided by *federal law or* NRS 284.165, *284.245, 284.3629*, 284.376 or 284.390.

Sec. 3. NAC 284.6955 is hereby amended to read as follows:

284.6955 If a hearing is held to determine the proper disposition of a grievance pursuant to NAC 284.695, the following procedure must be followed:

1. Each party shall submit to the Chairman of the Committee or his designated representative 10 copies of the set of documents and materials to be presented at the hearing or any rescheduled hearing. These copies must be submitted not less than 12 working days before the scheduled date of the hearing. The Chairman or his designated representative shall forward one copy of the set of the documents and materials of each party to the other party.

2. If the employee fails to comply with subsection 1, the Chairman or his designated representative may reschedule the hearing to the next time designated for such hearings, but in no case earlier than 20 working days after the originally scheduled date of the hearing. If the employer fails to comply with subsection 1, the Chairman or his designated representative may reschedule the hearing at his discretion. If the employee fails to comply with the provisions of subsection 1 for a rescheduled hearing, his grievance must be dismissed with prejudice unless he can show in writing to the Committee's satisfaction that the reason for noncompliance was beyond his control.

3. Each document or material offered in evidence must be marked as follows:

(a) Documents or materials presented by the employee must be marked at the bottom of the page as "Exhibit____" indicated by consecutive arabic numerals, beginning with the number "1."

(b) Documents or materials presented by the employer must be marked at the bottom of the page as "Exhibit____" indicated by consecutive letters of the English alphabet, beginning with the letter "A." If the employer offers more than 26 exhibits, the 27th exhibit must be marked as "Exhibit AA," the 28th exhibit as "Exhibit BB," and so forth.

4. All evidence offered at the hearing must be relevant and bear upon the grievance.

5. Each person who ~~testifies~~ *provides a statement* at the hearing shall state his name, address, and occupation for the record . ~~before testifying.~~

6. It is the responsibility of each party to arrange for the appearance of all necessary witnesses. The Committee may request additional witnesses or information as it deems necessary.

7. ~~The grievance must be heard in the following order:~~

~~(a) Opening statement for the employee.~~

~~(b) Opening statement for the employer.~~

~~(c) Presentation of employee's case, followed by cross examination.~~

~~(d) Presentation of employer's case, followed by cross examination.~~

~~(e) Closing statement for the employee.~~

~~(f) Closing statement for the employer.~~

~~8.]~~ Upon proper recognition by the Chairman or his designated representative, any member of the Committee may ask a question of a party or witness at any time during the hearing.

Sec. 4. NAC 284.696 is hereby amended to read as follows:

284.696 1. An employee alleging unlawful discrimination based on any pertinent state or federal law or regulation may:

(a) Report the alleged discrimination to:

(1) The division of the Department of Personnel that investigates sexual harassment and discrimination;

(2) The Attorney General;

(3) The employee's appointing authority;

(4) An equal employment opportunity officer;

- (5) A personnel representative of the department in which the employee is employed; or
 - (6) The office charged with enforcing affirmative action within the appropriate university, state college or community college which is part of the Nevada System of Higher Education;
- (b) ~~Use~~ *Except as otherwise provided in NRS 284.384, use* the procedure for the adjustment of a grievance contained in NAC 284.658 to 284.6957, inclusive ~~§~~, *and section 1 of this regulation;* or
- (c) File a complaint with:
- (1) The Nevada Equal Rights Commission pursuant to NRS 613.405; or
 - (2) The United States Equal Employment Opportunity Commission.
2. The appointing authority of an employee who has alleged unlawful discrimination shall promptly notify the deputy attorney general or staff counsel assigned to represent the agency of the allegation and the actions which are being undertaken by the agency to address the allegation.

Sec. 5. This regulation becomes effective on January 1, 2012.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB File #R026-11**

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 regulations, notices 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 Division of Human Resource Management website at <http://dop.nv.gov/> (formerly The Department of Personnel,) mailed to all county libraries in Nevada and posted at the following locations:

Department of Administration Division of Human Resource Management 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
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Nevada State Library and Archives 100 Stewart St Carson City, NV 89701	Capitol Building Main Floor Carson City, NV 89701
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Legislative Building 401 S. Carson St Carson City, NV 89701	Gaming Control Board 1919 College Parkway Carson City, NV 89701
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Attached are excerpts from the minutes from the workshop and a summary of the Personnel Commission comments that apply to these regulations.

A Regulation Workshop was conducted by the Department of Personnel on June 2, 2011 and a public hearing was held by the Nevada Personnel Commission on December 9, 2011.

2. The number of persons who:

- (a) **Attended each hearing:** June 2, 2011 – 42; December 9, 2011 – 45
- (b) **Testified at each hearing:** June 2, 2011 – 15; December 9, 2011 – 7
- (c) **Submitted written comments:** 2

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 regulations do 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.

Under public comment, agency representatives stated that they did not see the need for the resolution conference or the use of a neutral facilitator. However, Assembly Bill 354 requires that the regulations provide for a resolution conference. Representatives from the employee associations stated that the use of a resolution conference would give the agency and the employee one more opportunity to resolve the issue before the case went to the EMC. Both agency and employee association representatives discussed the possibility of using mediation in place of a resolution conference. Although the State already offers a mediation process, both sides have to agree to hold the mediation. A resolution conference would be held if either side requested it, so calling it mediation would be inaccurate. There was also discussion regarding at what step the resolution conference should be held. Representatives of the employee associations felt strongly that it needed to follow the third step, so that the top decision maker at the agency would be involved.

Several agencies requested that notification of a failed resolution conference agreement require a time frame to avoid, over time, details of the incident becoming vague and the loss of involved personnel.

Section 3 and 5 were removed from the proposed regulation by the Division of Human Resource Management to allow more time for discussion and consensus building between the participating parties that these processes would affect.

Removing sections 3 and 5, the regulation was adopted as written.

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.

These regulations do 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:

There is no additional cost to the agency for enforcement of these regulations. A division's staff member, a Subject Matter Expert, a trained mediator or a Personnel Officer from a state agency other than the employee's own agency could be used as a neutral facilitator.

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.

There are no other state or government agency regulations that the proposed amendments duplicate.

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

These regulations do 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 these regulations.

- 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?**

These regulations are specific to State government agencies and has no impact on small businesses.