

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R026-11

NAC 284.658 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with Assembly Bill 354 which addressed the Employee-Management Committee. This change clarifies that the grievance process should not be used if another complaint process is provided by state or federal law to hear the employee's issue.

NAC 284.658 "Grievance" defined. (NRS 284.065, 284.155, 284.384)

1. As used in NAC 284.341 and 284.658 to 284.697, inclusive, and NAC 284.692, 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. 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 NAC 284.692, the term "grievance" does not include any grievance for which a hearing is provided by NRS 284.165, 284.376 or 284.390 *or which a complaint process is otherwise provided for by state or federal law or regulation.*

[Personnel Div., Rule XV part § A, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep't of Personnel, 8-28-85; 10-18-89; 8-1-91; 3-27-92; R082-00, 8-2-2000; A by Personnel Comm'n by R023-05, 10-31-2005)

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

Explanation of Proposed Change: This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments to Assembly Bill 354 which addressed the Employee-Management Committee. This regulation allows for a resolution conference to be held as part of the grievance process. The resolution conference will be held if either party requests it within 30 days after the agency's top administrator renders a decision or 10 working days prior to a scheduled Employee-Management Committee hearing on the issue. The regulation stipulates that the conference is designed to be an informal proceeding between the two parties with the assistance of a neutral facilitator.

NEW SECTION: *Resolution conference.*

1. If an employee is not satisfied with the decision rendered by the highest administrator in the department, or if the administrator believes additional discussion may produce resolution, either party may request a resolution conference. A resolution conference may be

requested within 30 days after receiving the decision from the administrator and up to 10 working days prior to a scheduled hearing before the Employee-Management Committee.

2. A resolution conference shall be conducted by a neutral facilitator, not otherwise affiliated with either party.

3. This process is an informal proceeding between the two parties, the appointing authority or his or her designee and the employee, who meet together to discuss the grievance and possible resolutions. Each party may be accompanied by a person of his or her choice.

4. If, after reaching a resolution, the agreement between the parties fails, the grievance shall be forwarded to the Employee-Management Committee for consideration.

NAC 284.695 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments to Assembly Bill 354. This proposed amendment clarifies what areas fall outside of the Employee-Management Committee's (EMC) jurisdiction. An issue does not fall within the EMC's jurisdiction if another hearing process is provided through State or federal regulation or statute.

NAC 284.695 Submission of grievance to Employee-Management Committee. (NRS 284.065, 284.155, 284.384) 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 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 ~~for does not fall within its jurisdiction~~; *another hearing process is provided in NRS 284.165, 284.245, 284.3629, 284.376, 284.390; or a complaint can be filed in accordance with NAC 284.696.*

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.

[Personnel Div., Rule XV § A part subsec. 6, eff. 8-11-73; A 6-9-74; 7-3-76; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89; 10-18-89; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 3-27-92; 11-12-93; 3-23-94; 11-16-95; R118-09, 5-5-2011)

NAC 284.6955 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments to Assembly Bill 354. This proposed amendment removes the hearing procedures of the Employee-Management Committee from regulation to allow for hearings to follow a less formal process. The process for conducting Employee-Management Committee hearings will be established by rules adopted by the Employee-Management Committee pursuant to NRS 284.071.

NAC 284.6955 Hearing before Employee-Management Committee: Procedure. (NRS 284.065, 284.155, 284.384) 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.

(Added to NAC by Personnel Comm'n, eff. 8-1-91; A by Dep't of Personnel, 11-16-95)

NAC 284.696 is hereby amended to read as follows:

Explanation of Proposed Change: This regulation is proposed jointly by the Department of Personnel and the employee associations. The language was developed in conjunction with amendments to Assembly Bill 354. This proposed regulation change removes the provision allowing for unlawful discrimination complaints to be filed with the Employee-Management Committee. There are other internal and external processes for filing these types of complaints that are more appropriate than the EMC.

NAC 284.696 Unlawful discrimination. (NRS 284.065, 284.155, 284.384)

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 the procedure for the adjustment of a grievance contained in NAC 284.658 to 284.6957, inclusive; 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.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 9-16-92; 11-16-95; R023-05, 10-31-2005)