

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R026-11

November 9, 2011

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

AUTHORITY: §§1-7, 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 284.695 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. *Deny the request if the case is based on a grievance for which a hearing is provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390;*

2. 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.]~~ 3. 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.

Sec. 4. 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. 5. NAC 284.6957 is hereby amended to read as follows:

284.6957 1. A party may request a continuance of a hearing to determine the proper disposition of a grievance pursuant to NAC 284.695 by submitting a request for a continuance to the Chairman of the Committee or his designated representative at least 12 working days before the scheduled hearing, unless the party received personal notice of the hearing less than 21 working days before the hearing pursuant to subsection ~~[2]~~ 3 of NAC 284.695, in which case he may request a continuance as long as the request is made at least 4 working days before the scheduled hearing.

2. The Committee may grant a request for a continuance if good cause is shown.

Sec. 6. 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. 7. 1. This section and section 4 of this regulation become effective upon filing with the Secretary of State.

2. Sections 1, 2, 3, 5 and 6 of this regulation become effective upon filing with the Secretary of State or on January 1, 2012, whichever is later.