

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R027-11

Effective December 30, 2011

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

AUTHORITY: §1, NRS 284.065, 284.155 and 284.387, as amended by section 3 of Assembly Bill No. 179, chapter 272, Statutes of Nevada 2011, at page 1496; §§2 and 3, NRS 284.065, 284.155, 284.383 and 284.385, as amended by sections 1.5 and 2, respectively, of Assembly Bill No. 179, chapter 272, Statutes of Nevada 2011, at page 1495; §4, NRS 284.065, 284.155 and 284.383, as amended by section 1.5 of Assembly Bill No. 179, chapter 272, Statutes of Nevada 2011, at page 1495.

A REGULATION relating to the State Personnel System; revising provisions relating to disciplinary actions; 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. Except as otherwise provided in subsection 2, before an appointing authority may dismiss, suspend or demote a permanent employee, the appointing authority must first ensure that an impartial fact-finding investigation has been conducted to determine that evidence exists to justify the dismissal, suspension or demotion.

2. The investigation described in subsection 1 may be waived if the employee agrees in writing with the allegations on which the dismissal, suspension or demotion is based.

Sec. 2. NAC 284.642 is hereby amended to read as follows:

284.642 1. If other forms of disciplinary or corrective action have proved ineffective, or if the seriousness of the offense or condition warrants, an employee may be:

(a) Suspended without pay for a period not to exceed 30 calendar days for any cause set forth in this chapter; or

(b) Demoted for any cause set forth in this chapter.

2. An exempt classified employee may only be suspended without pay in increments of one or more full workweeks.

3. The rights and procedures set forth in NAC 284.656 and sections 2 and 3 of LCB File No. R063-09 *and section 1 of this regulation* apply to any disciplinary action taken pursuant to this section.

Sec. 3. NAC 284.646 is hereby amended to read as follows:

284.646 1. An appointing authority may dismiss an employee for any cause set forth in NAC 284.650 if:

(a) The agency with which the employee is employed has adopted any rules or policies which authorize the dismissal of an employee for such a cause; or

(b) The seriousness of the offense or condition warrants such dismissal.

2. An appointing authority may immediately dismiss an employee for the following causes, unless the conduct is authorized pursuant to a rule or policy adopted by the agency with which the employee is employed:

(a) Intentionally viewing or distributing pornographic material at the premises of the workplace, including, without limitation, intentionally viewing or distributing pornographic material on any computer owned by the State, unless such viewing or distributing is a requirement of the employee's position.

(b) Unauthorized release or use of confidential information.

(c) Participation in sexual conduct on the premises of the workplace, including, without limitation, participation in sexual conduct in a vehicle that is owned by the State.

(d) Absence without approved leave for 3 consecutive days during which the employee is scheduled to work.

(e) The suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license if the possession of the professional or occupational license, certificate or permit or driver's license is a requirement of the position at the time of appointment as stated in the standards of work performance, essential functions or class specifications for the position, or in other documentation provided to the employee at the time of appointment, or required thereafter pursuant to federal or state law.

(f) Threatening another person with a deadly weapon during any time in which the employee is:

(1) On the premises of the workplace; or

(2) Conducting state business or otherwise performing any duties of employment.

(g) Stealing or misappropriating any property that is owned by the State or located on state property.

3. The rights and procedures set forth in NAC 284.656 and sections 2 and 3 of LCB File No. R063-09 *and section 1 of this regulation* apply to any dismissal made pursuant to this section.

4. As used in this section:

(a) "Material" has the meaning ascribed to it in NRS 201.2581.

(b) "Nudity" has the meaning ascribed to it in NRS 201.261.

(c) "Pornographic material" means material that, all or in part, contains any description or representation of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which

predominantly appeals to the prurient, shameful or morbid interest of adults and is without serious literary, artistic, political or scientific value.

(d) “Sado-masochistic abuse” has the meaning ascribed to it in NRS 201.262.

(e) “Sexual excitement” has the meaning ascribed to it in NRS 201.264.

Sec. 4. NAC 284.742 is hereby amended to read as follows:

284.742 1. Each appointing authority ~~may~~ **shall** determine, ~~and describe in writing,~~ subject to the approval of the Commission, those specific activities which, for employees under ~~his~~ **its** jurisdiction, are ~~considered~~ **prohibited** as inconsistent, incompatible or in conflict with their duties as employees. ***The appointing authority shall identify those activities in the policy established by the appointing authority pursuant to NRS 284.383, as amended by section 1.5 of Assembly Bill No. 179, chapter 272, Statutes of Nevada 2011, at page 1495.***

2. ~~The~~ ***If an*** appointing authority ***revises the policy described in subsection 1, the appointing authority*** shall provide a copy ***of the revised policy*** to each employee.

3. ~~In making this determination, the appointing authority shall consider the prohibitions described in NAC 284.650 and 284.746 to 284.762, inclusive.~~ ***An appointing authority shall include in the policy described in subsection 1 an explanation of the process of progressive discipline as administered by the appointing authority. The process must conform to the provisions of NRS 284.383 and NAC 284.638 to 238.656, inclusive, and sections 2 and 3 of LCB File No. R063-09 and section 1 of this regulation.***

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB File #R027-11**

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
Nevada State Library and Archives 100 Stewart St Carson City, NV 89701	Capitol Building Main Floor Carson City, NV 89701
Legislative Building 401 S. Carson St Carson City, NV 89701	Gaming Control Board 1919 College Parkway Carson City, NV 89701

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 – 8; December 9, 2011 – 4
- (c) **Submitted written comments:** 1

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.

Public comments related to the proposed changes were primarily requests for clarification. A representative from Health and Human Services asked if existing Prohibition and Penalties would meet the requirements of NAC 284.742. The response was that they would as long as they included an explanation of the progressive disciplinary process.

There were also questions about what constituted an “impartial investigation” and if the person needed to be outside the employee’s chain of command. The intent of the proposed regulation was not to require someone outside of the chain of command to conduct the impartial investigation. The agency would need to insure that an objective party reviewed the facts related to the disciplinary matter and to determine if the discipline was warranted. Agencies could clarify their process for an impartial investigation through internal policies and not need to be done by changing the regulation.

The proposed 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.

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.