

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R027-11

November 9, 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 ~~[eonsidered]~~ **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.***