

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R137-12

Effective October 23, 2013

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

AUTHORITY: §§1 and 2, NRS 284.065 and 284.155; §§3 and 4, NRS 284.065, 284.155 and 284.335.

A REGULATION relating to state personnel; revising provisions relating to the confidentiality of employee information; 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:

“Organizational climate study” means an independent study conducted by the Division of Human Resource Management to assess and evaluate the culture, effectiveness of management, employee morale and internal communication of an organization through a variety of methods, including, without limitation:

- 1. Surveys;*
- 2. Interviews, including, without limitation, exit interviews;*
- 3. Review of policies, procedures and internal communications;*
- 4. Review of issues related to recruitment;*
- 5. Review of data relating to employees, including, without limitation, statistics relating to turnover; and*
- 6. Review of grievances filed by employees.*

Sec. 2. NAC 284.010 is hereby amended to read as follows:

284.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 284.021 to 284.1125, inclusive, *and section 1 of this regulation* have the meanings ascribed to them in those sections.

Sec. 3. NAC 284.718 is hereby amended to read as follows:

284.718 1. The following types of information, which are maintained by the Division of Human Resource Management or the personnel office of an agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished to the Division of Human Resource Management on the condition that the source remain confidential;

(b) Any document which is used by the Division of Human Resource Management or an agency in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any document which is used by the Division of Human Resource Management or an agency in the process of interviewing an applicant, including, without limitation, a document containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by an employee assistance program offered by the State of Nevada;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person's application or relating to his or her status as an eligible person; and

(j) Information in the file or record of employment of a current or former employee which relates to the employee's:

(1) Performance;

(2) Conduct, including any disciplinary actions taken against the employee;

(3) Usage or balance of his or her annual leave and sick leave;

(4) Race, ethnic identity or affiliation, sex, genetic information, disability or date of birth;

(5) Home telephone number; or

(6) Social security number.

2. If the employee has requested that his or her personal mailing address be listed as confidential, the employee's file must be so designated and list his or her business address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

(a) The employee dies; or

(b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his or her immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential.

6. Any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct are confidential.

Sec. 4. NAC 284.726 is hereby amended to read as follows:

284.726 1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph 2 of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in subsections 3 and 4, access to an employee's file of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

- (a) The employee.
- (b) The employee's representative when a signed authorization from the employee is presented or is in his or her employment file.
- (c) The appointing authority or a designated representative of the agency by which the employee is employed.

(d) The Administrator or a designated representative.

(e) An appointing authority, or a designated representative, who is considering the employee for employment in the agency.

(f) Persons who are authorized pursuant to any state or federal law or an order of a court.

(g) The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.

(h) Persons who are involved in processing records for the transaction of business within and between state agencies.

(i) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

3. Information concerning the health, medical condition or disability of an employee or a member of his or her immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection ~~7.1~~ 8, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.

4. Except as otherwise provided in subsection ~~7.1~~ 8, access to information concerning the employee's usage or balance of annual leave and sick leave is limited to the employee, the employee's immediate supervisor and the employee's appointing authority or the designated representative of the appointing authority.

5. *Except as otherwise provided in subsection 8, access to any notes, records, recordings, findings or other information obtained from an organizational climate study that directly relate to an employee's performance or conduct is limited to:*

(a) The employee.

(b) The Administrator or a designated representative of the Administrator.

(c) The appointing authority or a designated representative of the agency with which the employee is employed.

(d) Persons who are authorized pursuant to any state or federal law or an order of a court.

(e) The Governor or a designated representative of the Governor.

6. Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

~~16.1~~ 7. Upon request, the Division of Human Resource Management will provide the personal mailing address of any employee on file with the Division of Human Resource Management to the State Controller's Office and the Internal Revenue Service.

~~17.1~~ 8. The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission or a court.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File # R137-12

1. A clear and concise explanation of the need for the adopted regulation.

Over the past several years, the Human Resource Management Division has undertaken the process of organizational climate studies as a tool to identify issues within an agency and to assist management in developing strategies to resolve problems. In order for the organizational climate studies to be productive and successful and so that individuals will feel comfortable in participating, two regulations related to confidential records and access to confidential records are being amended and a new section defining “organization climate study” was adopted.

To preserve the confidentiality of information gathered during an organizational climate study that directly relates to an employee’s performance or conduct, NAC 284.718 was expanded to include such information.

The amendment to NAC 284.726 is necessary to ensure that only the individuals specified have access to information gathered during an organizational climate study that directly relates to an employee’s performance or conduct.

2. Description of how public comment was solicited, a summary of public response, and an explanation of 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, emailed to all county libraries in Nevada, and posted at the following locations:

Blasdel Building
209 E. Musser Street
Carson City, NV 89701

Grant Sawyer State Office Bldg.
555 E. Washington Blvd.
Las Vegas, NV 89101

Nevada State Library and Archives
100 Stewart Street
Carson City, NV 89701

Capitol Building
Main Floor
Carson City, NV 89701

Legislative Building
401 S. Carson Street
Carson City, NV 89701

Gaming Control Board
1919 College Parkway
Carson City, NV 89701

Attached are pertinent comments from the workshop and the Personnel Commission meeting.

Regulation Workshops were conducted by the Division of Human Resource Management on June 18, 2012 and July 17, 2013, and a public hearing was held by the Nevada Personnel Commission on October 10, 2013.

- 3. The number of persons who:**
 - (a) Attended each hearing:** October 10, 2013 – 53
 - (b) Testified at each hearing:** October 10, 2013 – 2
 - (c) Submitted written comments:** 0

- 4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

Michelle Garton, Supervisory Personnel Analyst
State of Nevada Human Resource Management Division
209 E. Musser St., Room 101
Carson City, NV 89701
(775) 684-0136
mgarton@admin.nv.gov

Kareen Masters, Deputy Director
State of Nevada Department of Health & Human Services
4126 Technology Way
Carson City, NV 89706
(775) 684-4000
kmasters@dhhs.nv.gov

- 5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

Comments were not solicited from businesses, as the regulation does not affect businesses. Comments were solicited from effected parties including employees and employee associations. No written comments were received. Comments from the workshop can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or calling (775) 684-0105.

- 6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Based upon comments received during the 6/12/12 workshop from Priscilla Maloney, representing the American Federal of State, County and Municipal Employees, a new section defining “organizational climate studies” was added.

At the workshop conducted on 7/17/13, Ron Cuzze, representing the Nevada State Law Enforcement Officers’ Association, requested that the employees’ association have access

to the study results. This request has not been included in the proposed amendments. The Division believes that if employees wish to share this information with their association, they may do so if it relates to the employee's own performance. Associations should not automatically have the right to review the study results. These studies are intended to be used as a management tool to make improvements in the work environment and employees should be encouraged to participate in the process without fear that outside parties will review the results.

Testimony was heard at the hearing and all sections of the regulation were unanimously adopted by the Personnel Commission.

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public.**
 - (a) **Estimated economic effect on the businesses which they are to regulate.**
 - (b) **Estimated economic effect on the public which they are to regulate.**

These regulations do not have a direct economic effect on either a regulated business or the public. They only impact the classified service of Executive Branch departments and the Nevada System of Higher Education.

8. **The estimated cost to the agency for enforcement of the proposed regulation:**

There is no additional cost to the agency for enforcement of these regulations.

9. **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.

10. **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.

11. **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.

Pertinent Testimony from Regulation Workshop Held June 18, 2012

Priscilla Maloney, American Federation of State, County and Municipal Employees: We would just like to know what a climate study is. If there is some sort of defined written explanation of what a climate study is we'd like to know that.

Mark Evans, Supervisory Personnel Analyst, Human Resource Management Division: Climate survey would be similar to an employee satisfaction survey. We have started offering those to several agencies, and what we would like to keep confidential would be comments that specifically say things like "Mark Evans is a total jerk"; anything that could be identified back to the person. Those type of things where we think that reflect on an individual's performance, basically. So by name, it shouldn't be out there.

Shelley Blotter, Deputy Administrator, Human Resource Management: She asked if there were additional comments.

Kareen Masters, Deputy Director, Dept. Health and Human Services: Maybe just some clarification. So again, it says information gathered during an organizational climate survey that directly reflects on an individual. Performance will be limited to the employee. Again, which employee? I mean, sometimes climate surveys are conducted because an employee raises a particular issue, so the department is doing a survey of other people in the work unit. So that could be interpreted as the employee that made the complaint versus I think what the intent is, the employee that was the subject of whatever the comment might be. And again, I'm kind of maybe thinking through the process. If it's confidential, does that mean that it can't be documented in a performance evaluation or some type of letter of an instruction to an employee? So maybe kind of thinking through, really, if you gather information, what do you want to be able to do with it and are you precluding yourself from doing something with it?

Mark Evans: I think the intent would be it would still be usable in those other types of confidential documents. So performance appraisal or discipline would be acceptable. So we just need to clarify that.

Amy Davey, Personnel Analyst, Human Resource Management Division: I wonder if you want to use the word "study" instead of "survey" just because it may be part of an overall study versus, when we think of a survey, we think of that particular tool that used, and there may be other elements to a study that don't involve a survey.

Mark Evans: Good point.

Pertinent Testimony from Regulation Workshop Held July 17, 2013

Christine Ripley, Personnel Analyst, Human Resource Management Division: Stated that the next three proposed regulations related to working on an organizational climate study and confidential records. She stated that HRM referred to two of these proposed regulations in a previous workshop. She noted during the pre-adoption review process the definition of an organizational climate study came into question. She stated the HRM was proposing a new

section which would define the term "organizational climate study" as it is used in NAC 284.718 and 284.726. She said the term organizational climate study refers to an independent study conducted by the HRM to assess and evaluate the organization's culture, overall management, effectiveness, employee morale and internal communications. She noted that these studies were performed at the request of the department director and were meant to be used as a management tool to resolve issues within their organization.

She referred to NAC 284.718 – Confidential records and noted that it was proposed by the HRM to have language that would designate any information obtained in the organizational climate study that directly reflected on any specific employee's performance. She added that conduct and performance would remain confidential regardless of the instrument used to gather section information whether it was a meeting, a written statement and/or through another process.

She referred to NAC 284.726 – Access to confidential records and noted that it was proposed by the HRM to add language that would establish which individuals would have access to information gathered as part of an organizational climate study. She stated that access to the information would be limited to: 1) the employee upon whose performance, information obtained in the survey would directly reflect; 2) to the Administrator of HRM or a designated representative; 3) the appointing authority or a designated representative of the agency; 4) persons who were authorized pursuant to any state or federal law or court order; and 5) the governor or a designated representative.

Ron Cuzze, President, NSLEOA: Asked if the information was available to the employee but not the association.

Shelley Blotter: Responded that it was up to the employee to decide with whom they wished to share the information. She added that it did not need to be included in the regulation.

Ron Cuzze: Stated that to avoid problems down the line, they were requesting that the information be available to the associations.

Kareen Masters: Stated that with regard to the new section being created they thought that it should be broader than just a study conducted by the HRM. She added that sometimes their own department would conduct such studies and they would want the same confidentiality provisions to apply to those studies as well.

Kimberley King, Human Resource Manager, NDOT: Stated that if the HRM decided to add associations that they would like representation added as they might be represented by an attorney instead of an association. She stated that she also agreed with Kareen Masters, that NDOT did surveys and they would also like them to be covered.

Pertinent Testimony from Personnel Commission Meeting Held October 10, 2013

Michelle Garton, Supervisory Analyst, Human Resource Management Division: Stated that over the past several years the Human Resource Management Division has undertaken the process of “organizational climate studies” as a tool to identify issues within an agency and to

assist management in developing strategies to resolve problems. In order for the organizational climate studies to be productive and successful, and so that individuals will feel comfortable in participating, two regulations related to confidential records and access to confidential records are proposed to be amended and a new section is proposed to be adopted.

Section 1 defines the term “organizational climate study”. These studies are conducted by the Human Resource Management Division at the request of another department or agency. The Division may use a variety of methods and techniques in the study process.

Section 2 simply incorporates the definition of “organizational climate study” into the General Provisions of NAC 284, which is the section of the regulations that defines specific terminology.

The Division proposes a permanent amendment to NAC 284.718 to ensure that information gathered during an organizational climate study that relates to an employee’s performance or conduct remains confidential.

We also propose a permanent amendment to NAC 284.726 establishing to whom access to the confidential information gathered during an organizational climate study is provided.

Commissioner Mauger: I just have one question on the associations not being able to get the results of the studies. I understand that I’m just wondering if the employee what process they have to use to include the associations, a written authorization, or what that might be.

Michelle Garton: Responded certainly the employee would be provided the information and they can directly distribute it to whomever they would like. Whether it be an association or some outside representative whatever they would like to do with the information they can do it that way.

Commissioner Mauger: so the employee would be the one to include the association, they could not do a written request to the state to forward that information to the association?

Shelley Blotter, Deputy Administrator, HMR: I think they could if they authorize the employee association to be their representative particularly in a grievance if they have designated the association as their representative then they can get that directly. But again, you are right, it is the employee that is the conduit to make that action happen.

Chair Katherine Fox: And just so I’m clear, it’s my understanding that the organizational climate study is are designed to be a management tool when maybe there is an issue related to communications within that particular organization or morale issues or those kinds of things so it’s designed to improve the effectiveness of that particular department.

Shelley Blotter: Yes, it’s precisely the design of this particular study process and the design for it.

Commissioner Sanchez: I have a question, if during the study process a violation of policies and procedures are determined what type of remedy is there?

Shelley Blotter: It would be the typical remedy, these studies aren't meant to go in and dig out and be a "gotcha" to particular employees, but if it was determined that there was inappropriate behavior or actual violations than progressive discipline would apply, prohibitions and penalties would apply, those same types of disciplinary actions could be used.

Chair Katherine Fox: I would imagine that if there was that type of information or allegation that came forward the employee would be first be noticed of an investigative interview and that process would first occur to insure or determine that he was being investigated accurately and thoroughly.

Shelley Blotter: Absolutely and it may actually spawn another full investigation that may have another purpose and mission.

Kareen Masters, Deputy Director Kareen Masters: I would like to testify in support of this particular change and similar changes that are being made under section 5B that have to do with internal studies conducted by departments. I wanted to say that Human Resource Management has conducted these studies in divisions within our department we have found them to be very helpful and I think it is very important that employees feel that sense of confidentiality when they are participating in these studies or internal studies that the department has done.