

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R044-15

September 8, 2015

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

AUTHORITY: §1, NRS 284.065, 284.155, 284.4066, as amended by section 9 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049, NRS 284.4068, as amended by section 10 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1050, and NRS 284.407; §2, NRS 284.065, 284.155, 284.4065, as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049, and NRS 284.407; §3, NRS 284.065.

A REGULATION relating to state employees; revising provisions concerning certain screening tests to detect the presence of a controlled substance; revising provisions concerning certain screening tests to detect the presence of a controlled substance, alcohol or other drug; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, an appointing authority is not allowed to hire an applicant for a position of employment that affects the public safety unless the applicant submits to a screening test to detect the general presence of a controlled substance. The appointing authority is required to consider the results of a screening test in determining whether to hire an applicant. If the results of an applicant's screening test indicate the presence of a controlled substance, the appointing authority is required to provide those results to the Administrator of the Division of Human Resource Management of the Department of Administration. (NRS 284.4066, as amended by section 9 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, p. 1049) Existing law also provides that certain information concerning employees and applicants for employment is confidential and enumerates the persons that are entitled to have access to various categories of such information. (NRS 284.4068, as amended by section 10 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, p. 1050) **Section 1** of this regulation clarifies that access to information concerning the results of a screening test of an applicant for a position of employment that affects the public safety is limited to the appointing authority or a designated representative of the appointing authority, the Administrator or his or her designated representative and the other persons set forth in statute.

Under existing law, an appointing authority is authorized, under certain circumstances, to request an employee to submit to a screening test to detect the general presence of alcohol, a controlled substance or any other drug which could impair the employee's ability to perform the

duties of employment safely and efficiently. (NRS 284.4065) Senate Bill No. 62 of the 2015 Legislative Session authorizes an appointing authority to request an employee to submit to such a test if the employee has or is involved in a work-related accident or injury. Senate Bill No. 62 also requires the Personnel Commission to define the term “work-related accident or injury.” (NRS 284.4065, as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, p.1049) **Section 2** of this regulation provides the definition. **Section 2** also eliminates, as duplicative of statute, a provision of existing regulation that authorizes the request of a screening test from an employee who receives medical treatment following an accident on the premises of the workplace.

Section 1. NAC 284.726 is hereby amended to read as follows:

284.726 1. Except as otherwise provided in this subsection ~~1~~ *and subsection 2*, 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 *NRS 284.4068, as amended by section 10 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1050, access to information concerning the results of an applicant’s screening test which indicate the presence of a controlled substance is limited to the appointing authority or his or her designated representative and the Administrator or his or her designated representative.*

3. *Except as otherwise provided in* subsections ~~3 and 4~~ *4 and 5*, 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.

~~13.1~~ 4. 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 ~~19.1~~ 10, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.

~~14.1~~ 5. Except as otherwise provided in subsection ~~19.1~~ 10, 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.

~~15.1~~ 6. Except as otherwise provided in subsection ~~19.1~~ 10, 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.

~~16.1~~ 7. Except as otherwise provided in subsection ~~19.1~~ 10, access to any notes, records, recordings, findings or other information obtained from an internal study conducted by an agency that directly relate to an employee's performance or conduct is limited to:

- (a) The employee.
- (b) The appointing authority or a designated representative of the agency by which the employee is employed.
- (c) Persons who are authorized pursuant to any state or federal law or an order of a court.
- (d) The Governor or a designated representative of the Governor.

~~17.1~~ 8. 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.

~~18.1~~ 9. 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.

~~19.1~~ 10. 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.

Sec. 2. NAC 284.888 is hereby amended to read as follows:

284.888 1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his or her duties safely and efficiently include, but are not limited to:

(a) Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;

(b) The odor of alcohol or a controlled substance on the breath of the employee;

(c) Observation of the employee consuming alcohol; *or*

(d) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source. ~~1.5 or~~

~~—(e) The occurrence of any accident while the employee is on the premises of the workplace for which the employee receives medical treatment.~~

2. Except as otherwise provided in subsection 3, before requiring an employee to submit to a screening test, the supervisor of the employee must complete a form provided by the Division of Human Resource Management.

3. The provisions of subsection 2 do not apply if an appointing authority requests an employee to submit to a screening test pursuant to paragraph (b) of subsection 2 of NRS 284.4065. ~~As used in~~

4. *For the purposes of* subsection 2 of NRS 284.4065 ~~["substantial"]~~, *as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049:*

(a) *"Substantial damage to property"* includes, but is not limited to:

~~(a)~~ (1) The operation of a motor vehicle in such a manner as to cause more than \$500 worth of property damage; or

~~(b)~~ (2) The operation of a motor vehicle in such a manner as to cause two property accidents within a 1-year period.

(b) *"Work-related accident or injury" means an accident or injury that occurs in the course of employment or that involves an employee on the premises of the workplace.*

Sec. 3. 1. This section and section 1 of this regulation become effective upon filing with the Secretary of State.

2. Section 2 of this regulation becomes effective on January 1, 2016.