

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066**  
**Informational Statement**  
**LCB File No. R097-16**

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

Senate Bill 62 of the 2015 Legislative Session amended NRS 284.305 and 284.379 to allow the Personnel Commission to adopt regulations for the non-competitive appointment of an employee with a disability. As a result, several new regulations and amendments have been proposed which are intended to bring the State's reasonable accommodation process into closer alignment with the Americans with Disabilities Act's (ADA) provisions.

The amendments included in this LCB File are related to the "reassignment" of an employee who can no longer perform the essential functions of his or her position with or without reasonable accommodation. Prior to these amendments, reassignment was primarily considered within the employee's current agency. After consultation with the Attorney General's Office, it has been determined that when reassignment is appropriate, positions across State service should be considered in conjunction with input from the employee through the interactive process. These regulations establish a process to first look for vacant or soon to be vacant positions at the same grade level and then for a position at a lower grade level.

**2. A 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.**

On August 31, 2016, copies of the proposed regulation amendments 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 via Listserv. These documents were also made available on the Division of Human Resource Management's website, the Nevada Public Notice website, the Legislative Counsel Bureau's website, and mailed to all county libraries in Nevada, and posted at the following locations:

Blasdel Building  
209 E. Musser Street  
Carson City, NV

Legislative Counsel Bureau  
401 S. Carson Street  
Carson City, NV

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

Grant Sawyer Office Building  
555 E. Washington Avenue  
Las Vegas, NV

Nevada State Capitol Building  
101 N. Carson Street  
Carson City, NV

A regulation workshop was conducted by the Division of Human Resource Management on August 12, 2015.

Comment was received from the then Deputy Director of the Department of Health and Human Services (DHHS representative), suggesting that in the new regulation regarding the “reassignment” process that the language “minimum qualifications” should be changed to “qualified” to allow for a “broader connotation” to address additional aspects that may make an individual disqualified for a position. After review of 29 CFR § 1630.2 (the ADA federal regulations), it was determined that the word “qualified,” as with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.” While the first part of the definition appears to fit the intent, the second part (i.e., “and, with or without reasonable accommodation, can perform the essential functions of such position”) does not match the intent of the terminology “minimum qualifications” and therefore it was not changed.

The DHHS representative commented that an employee demoting and then later promoting with retention of a higher step should not be allowed, and suggested that reassignment be added to the exception in subsection 1(d) of NAC 284.172 regarding retention of an employee’s step. As a result of this comment, Section 3 of this file was added.

The DHHS representative further commented that the provisions for reemployment of people with permanent disabilities relating to workers’ compensation may be moot or duplicative due to the proposed regulation changes relating to reassignment. Additionally, the then Personnel Officer of the Department of Transportation (NDOT representative) commented that it would be preferable to have the same process with the ADA and workers’ compensation. A representative of the Division expressed concern with limiting the reassignment process to the workers’ compensation process which requires that any reemployment (as part of the workers’ compensation process) could not result in the employee being reemployed at a pay grade lower than 80% of the employee’s current pay grade. The intent of the ADA is to try and get the employee back to work at the same grade or if that is not possible, as close as possible. Mirroring the workers’ compensation process would eliminate that option to look for positions at pay grades below 80% of the employee’s current pay grade so it was determined that both processes are necessary.

The DHHS representative suggested that language be added to clarify that vacant positions would be those that the agency intends to fill, as it is common for agencies to hold positions vacant to obtain salary savings. The Division will place individuals that are eligible for reassignment on lists for positions in which an agency wishes to fill or maybe surveyed to determine if the agency has a vacant position in which they are going to fill.

The DHHS representative expressed concern regarding requiring an employee to go to his or her health care provider repeatedly and suggested the Division or the Division of Risk Management (due to their responsibility for fitness for duty evaluations) take responsibility

for reviewing medical documentation. This process is best handled through the interactive process between the employee and the agency with the vacant position therefore the proposed regulation was not modified to include this suggestion.

The DHHS representative commented that we should not expand what is required under the ADA law as the Equal Employment Opportunity Commission guidance is not law. After consultation with the Attorney General's Office, it has been determined that when reassignment is appropriate positions across State service should be considered.

The DHHS representative asked if requiring employees who are reassigned to serve a probationary period had been considered. The Division has considered this issue and chosen to adopt the State's current rules outlined in NAC 284.444.

The DHHS representative and the NDOT representative expressed concern regarding whether a thorough analysis of whether an employee is disabled within the meaning of the ADA will be done prior to the reassignment process. The Division encourages agency staff to work with their Deputy Attorney General or general counsel to review information provided by the employee and his or her provider of health care to determine if the employee is a qualified individual under the ADA.

The NDOT representative also outlined concern regarding the fact that while with workers' compensation light duty may be offered, the Department of Transportation does not provide light duty for non-industrial injuries. A representative of the Division inquired and the NDOT representative confirmed that the concern was related to the subsection which is now subsection 6 in the new regulation outlining the reassignment process (Section 4). The representative of the Division clarified that the language in that subsection is permissive.

The DHHS representative and the NDOT representative also suggested incorporating into the reassignment process a meeting similar to Risk Management's workers' compensation roundtable meeting. While this process is not in regulation, the Division will be available to assist agencies and employees with the reassignment process.

The NDOT representative concluded her comments by expressing her appreciation for the legislative change and the Division's developing of the reassignment process.

After consideration and consultation with legal counsel, the Division recommended changes be made to the text pre-approved by the Legislative Counsel Bureau, Legal Division. The original language provided to the Division from the Legislative Counsel Bureau conformed to the statutory language in NRS 284.305 as amended by S.B. 62 of the 2015 Legislative Session. However, statutory language in NRS 284.305 regarding an employee needing to have completed a probationary period and allowing appointing authorities to refuse reassignment of an employee without having to meet the ADA standard of undue hardship, do not concur with the federal standard required by the Americans with Disabilities Act and the Equal Employment Opportunity Commission's guidance; therefore the Division provided the Personnel Commission with the proposed regulation which had received pre-adoption review at the Personnel Commission meeting

held on September 30, 2016 but also recommend removing those references in the proposed regulation and the Personnel Commission adopted the regulations with revisions. At the public hearing, comment was received from Dennis Perea, Deputy Director, Department of Employment, Training and Rehabilitation, in support of the proposed regulation amendments.

At the public hearing, staff provided information regarding the intent and need for the regulations.

Written minutes and comments from the regulation workshop and public hearing can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at [sblotter@admin.nv.gov](mailto:sblotter@admin.nv.gov) or by calling (775) 684-0105.

3. **The number of persons who:**
  - (a) **Attended each hearing:** - 37
  - (b) **Testified at each hearing:** - 2
  - (c) **Submitted written comments:** - 0
4. **Following is a list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3(b):**

Carrie Hughes, Personnel Analyst  
State of Nevada  
Department of Administration  
Division of Human Resource Management  
100 N. Stewart Street  
Carson City, NV 89701  
(775) 684-0111  
[cphughes@admin.nv.gov](mailto:cphughes@admin.nv.gov)

Dennis Perea, Deputy Director  
State of Nevada  
Department of Employment, Training and Rehabilitation  
2800 E. St. Louis Avenue  
Las Vegas, NV 89104  
[DAPEREA@nvdetr.org](mailto:DAPEREA@nvdetr.org)

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. Written minutes and comments from the workshop and public hearing can be obtained as instructed in the response to question #2.

- 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.**

There was no opposition to the regulation at the Personnel Commission hearing.

- 7. 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.**

This regulation does not have a direct economic effect on either a regulated business or the public.

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

There is no additional cost to the agency for enforcement of this regulation.

- 9. A description of any regulations of other State or governmental agencies which the proposed 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.**

This regulation does not overlap or duplicate any State or federal regulations.

- 10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

The regulation does not include any provisions that are covered by any federal regulations.

- 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 this regulation.