

**ADOPTED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R024-05

Effective October 31, 2005

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

AUTHORITY: §§1-5, NRS 284.065; §6, NRS 284.065, 284.155 and 284.295; §§7 and 8, NRS 284.065, 284.155 and 284.250; §9, NRS 284.065, 284.155 and 284.407; §10, NRS 284.065, 284.155, 284.335 and 284.407.

A REGULATION relating to the State Personnel System; providing for certain designations in the classification plan of a class of employment which has historically had less than a specified number of applicants for promotion available from within the state service; revising the definitions of “entry level” and “journey level”; expanding the types of information which are confidential and are maintained by the Department of Personnel or the personnel office of an agency; and providing other matters properly relating thereto.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *“Trainee level” means the level of performance within an occupational specialty at which an employee is in the process of acquiring the knowledge, skills and abilities to perform at the journey level.*

Sec. 3. *For the purposes of NAC 284.295, 284.360 and 284.367, a class may be designated in the classification plan as a class for which applicants for promotion are not normally available if the class has historically had less than five applicants for promotion available from within the state service.*

Sec. 4. NAC 284.063 is hereby amended to read as follows:

284.063 “Entry level” means ~~the lowest class within a class series. Where a trainee level exists, the~~ *a class in which supervision is not a required duty or responsibility of the positions allocated to the class. The* term includes ~~both the trainee and the next higher level.~~ *any trainee level and the journey level.*

Sec. 5. NAC 284.069 is hereby amended to read as follows:

284.069 “Journey level” means the level of performance within an occupational specialty that requires ~~independent action, analysis and interpretation.~~ *a degree of knowledge and proficiency sufficient to perform work independently with little or no additional training.*

Sec. 6. NAC 284.295 is hereby amended to read as follows:

- 284.295 1. The Department of Personnel will determine the type of recruitment based on:
- (a) The number of current or anticipated vacancies;
 - (b) The anticipated number of applicants; and
 - (c) The recommendations or requests of the appointing authority.
2. Except as otherwise provided in subsection 3, a recruitment must be restricted to one or a combination of these groups in the following order of priority:
- (a) Applicants for promotion from within the division where the vacancy exists.
 - (b) Applicants for promotion from within the department where the vacancy exists.
 - (c) Applicants for promotion from throughout state service.
 - (d) Applicants for appointment from open competition.
- ↪ If a recruitment includes more than one promotional group, any group with a higher priority must be included and receive preference.
3. Recruitment may be open competitive, or limited to or combined with any one or more of the promotional groups listed in subsection 2 if:

(a) The appointing authority certifies in writing to the Department of Personnel that, in accordance with the provisions of NAC 284.297, it is in the best interest of the agency to expand the recruitment to allow other groups to compete equally; or

(b) The class is designated in the classification plan as:

(1) Entry level because it is not a normal progression from another class; or

(2) ~~One~~ A class for which applicants for promotion are not normally available.

4. The provisions of this section do not prohibit the Department of Personnel or its designee from conducting a recruitment in anticipation of a vacancy.

Sec. 7. NAC 284.360 is hereby amended to read as follows:

284.360 1. Upon receipt of the appropriate form from an appointing authority for a list of eligible candidates in a specific class, the Department of Personnel will verify the availability of a reemployment list for that class. If a reemployment list is available, the Department of Personnel will provide the reemployment list to the appointing authority. Eligible persons who appear on reemployment lists are ranked in order of seniority. Except as otherwise provided in subsection 2 of NAC 284.6017, placement on a reemployment list will be determined using the criteria governing the determination of seniority for layoff pursuant to NAC 284.632.

2. If there is no reemployment list available, the Department of Personnel will, in accordance with subsections 3 and 4, certify the names of eligible persons on ranked or unranked lists, or waive the list.

3. The names of eligible persons on ranked lists will appear in the order of the total rating which they earned in the examination, including preferences for veterans and residents.

4. The Department of Personnel may certify a list of eligible applicants who are not ranked, or may waive the list, for:

- (a) A class that is grade 20 or below;
- (b) A class designated in the classification plan as entry level; or
- (c) A class *designated in the classification plan as a class for* which applicants for promotion are not normally available.

5. Eligible persons who have requested a transfer and persons with disabilities who are eligible for temporary limited appointments pursuant to NAC 284.364 will be certified on the same list as other eligible persons and may be considered at the option of the appointing authority.

6. Only an eligible person who has indicated his willingness to accept the location of the vacancy and the other conditions of employment will be certified.

Sec. 8. NAC 284.367 is hereby amended to read as follows:

284.367 1. If a promotional list of eligible persons is used to fill a vacancy after the initial recruitment:

(a) The recruitment which created the list must have been open to employees of the appointing authority which requests the list; and

(b) The order of names must be changed to reflect the priority prescribed by NAC 284.358.

2. Certification may be made from the names highest on the list after promotional or promotional and open lists for the class are combined if either of the following occurs:

(a) The appointing authority certifies in writing to the Department of Personnel that, in accordance with the provisions of NAC 284.297, it is in the best interest of the agency to expand the certification to allow eligible persons from other groups to be considered on the basis of merit.

(b) One or more promotional lists exist for a class which otherwise qualifies for open competition because the class is designated in the classification plan as entry level or ~~is one~~ *as a class* which normally has a lack of promotional candidates.

↪ If lists are combined, the names on the list must be in order of merit.

3. At the request of an appointing authority, one or more promotional lists must be established from an existing open competitive list and certified for a vacancy.

4. A list of eligible persons established from a recruitment in which the order of priority was changed must not be certified in that order for a new vacancy unless the appointing authority complies with the provisions of paragraph (a) of subsection 2. These names will be used to establish one or more lists as may be appropriate.

Sec. 9. NAC 284.718 is hereby amended to read as follows:

284.718 1. The following types of information, which are maintained by the Department of Personnel 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 Department of Personnel on the condition that the source remain confidential;

(b) Any document which is used by the Department of Personnel 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 Department of Personnel 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;

~~(e)~~ (f) Records and files maintained by the Employee Assistance Program;

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

~~(g)~~ (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;

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

~~(i)~~ (j) Information in the file or record of employment of a current or former employee which relates to his:

- (1) Performance;
- (2) Conduct, including any disciplinary actions taken against him;
- (3) Race, ethnic identity or affiliation, sex, disability or date of birth;
- (4) Home telephone number; or
- (5) Social security number.

2. If the employee has requested that his personal mailing address be listed as confidential, his file must be so designated and list his 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 immediate family are confidential.

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

Sec. 10. 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 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 subsection 3, access to an employee's file of employment containing any of the items listed in paragraphs ~~[(f) to (i)]~~ (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 employment file.
- (c) The appointing authority or a designated representative of the agency by which the employee is employed.
- (d) The Director or his designated representative.

(e) An appointing authority, or his designated representative, who is considering the employee for employment in his 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 immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection 6, access to such information is limited to the employee, his current supervisor, and the appointing authority or his designated representative.

4. Except as otherwise provided by specific statute, records maintained by the Employee Assistance Program must not be released without written permission signed by the employee to whom the records pertain.

5. Upon request, the Department of Personnel will provide the personal mailing address of any employee on file with the Department to the State Controller's Office and the Internal Revenue Service.

6. The Director or the appointing authority, or his designated representative, shall authorize the release of any confidential records under his control which are requested by the 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. If the Director or his designated representative determines that the release of any confidential record is not necessary for those purposes, the decision may be appealed.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R024-05**

The Department of Personnel adopted regulations assigned LCB File No. R024-05 which pertain to chapter 284 of the Nevada Administrative Code on September 23, 2005.

Notice date: 8/8/2005
Hearing date: 9/23/2005

Date of adoption by agency: 9/23/2005
Filing date: 10/31/2005

INFORMATIONAL STATEMENT

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.

On August 12, 2005, a "Notice of Workshop" to solicit comments on proposed regulations and "Notice of Hearing" for the adoption and amendment of regulations were posted conspicuously in public buildings. On the same day, copies of the notices and the text of the proposed regulations were filed with the Nevada State Library and the Legislative Counsel Bureau. Also on August 12, 2005, all State agencies were notified by memorandum of the proposed actions. Copies of the notices with the text of the proposed regulations were included with the memorandum for dissemination among State employees. Copies of the notices and text of the proposed regulations were posted on the Department's website and also sent to all employee organizations, all Nevada county public libraries, all requesting parties, and members of the Personnel Commission.

On August 29, 2005, a workshop was held. Tracy Walters, Personnel Analyst III, Technical Services Division, Department of Personnel, explained the purpose of the workshop and the process by which the proposed regulations would be reviewed and adopted. Ms. Walters read the explanation of change for each of the sections and solicited comments.

a. The following summarizes the comments made at the workshop regarding the proposed temporary regulations:

Ms. Walters read new language into the record for sections 5 and 11 of the temporary regulations previously approved by the Commission proposed for permanent adoption. There were no comments, questions, opposition, or discussion on any other sections.

Regulations presented at the workshop are attached for reference.

2. The number of persons who:
(a) Attended the hearing: 37 in Carson City and 12 in Las Vegas
(b) Testified at the hearing: 0

(c) Submitted written comments: A summary of the workshop is available upon request from the Department of Personnel, 209 East Musser Street, Room 101, Carson City, Nevada, 89701-4204.

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

The regulations do not affect businesses; therefore, their comments were not solicited.

- 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.**

Sections 5 and 11 of the temporary regulations previously approved by the Commission proposed for permanent adoption had language changes that more closely reflect the intent of the regulation. Sections 5 and 11 were adopted with the language changes. There was no opposition or discussion on the other sections and all were adopted without change to the proposed regulation.

- 5. The estimated economic effect of the regulation on the business which it is to regulate and on the public.**

These regulations do not have a direct economic effect on any business or on the public.

- 6. The estimated cost to the agency for enforcement of the regulations:**

Enforcement of these regulations should not result in any increased cost to the Department of Personnel.

- 7. A description of any regulations of other State or governmental agencies which the regulations overlap or duplicate and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, provide the name of the regulating federal agency.**

There is no duplication or overlapping created by these regulations.

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

These regulations are not more stringent than a 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.**

These regulations do not provide new or increase existing fees; therefore, no monies will be collected or used.