

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Adoption and Amendment
of Regulations of the
Department of Administration
Division of Human Resource Management

The Personnel Commission will hold a public hearing at 9:00 a.m. on March 2, 2018, at the Legislative Counsel Building, Room 3138, 401 South Carson Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations will not result in an increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.

<u>LCB File:</u>	<u>Section:</u>	<u>NAC:</u>	<u>Leadline or Description</u>
R098-17	Sec. 1.	NEW	Letter of instruction: Use and administration.
	Sec. 2.	NAC 284.458	Rejection of probationary employees.
	Sec. 3.	NAC 284.692	Agreement for extension of time to file grievance or complaint, or take required action.
	Sec. 4.	Section 19 of LCB File No. R033-17	Removal of ineligible grievance or complaint from procedure.
R118-17	Sec. 1.		Amends Chapter 284 to add sections 2 and 3.
	Sec. 2.	NEW	Report of suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license.
	Sec. 3.	NEW	Report of arrest, charge, or conviction of an offense.
	Sec. 4.	NAC 284.646	Dismissals.
	Sec. 5.	NAC 284.650	Causes for disciplinary action.
	Sec. 6.	NAC 284.653	Driving under the influence; unlawful acts involving controlled substance.
	Sec. 7.	NAC 284.890	Transportation of employee to and from location of screening test.
R119-17	Sec. 1.	NAC 284.888	Request for employee to submit to screening test: Interpretation of grounds; completion of required form.
R121-17	Sec. 1.	NAC 284.358	Types of lists and priority for use.
	Sec. 2.	NAC 284.360	Reemployment lists; certification or waiver of lists.

	Sec. 3.	NAC 284.361	Use of lists and consideration of eligible persons.
	Sec. 4.	NAC 284.618	Layoffs: Voluntary demotions.
R151-17	Sec. 1.	NAC 284.5385	Annual leave: Leave without pay; catastrophic leave; receipt of benefits for temporary total disability.
	Sec. 2.	NAC 284.544	Leave without pay; catastrophic leave; receipt of benefits for temporary total disability; computation.
	Sec. 3.	NAC 284.5775	Temporary total disability: Use of sick leave, compensatory time, annual leave and catastrophic leave; leave of absence without pay.
	Sec. 4.	NAC 284.882	Administration of screening tests.

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Administration, Division of Human Resource Management, 209 East Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Division of Human Resource Management on or before March 2, 2018. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted and amended will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted and amended will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada, and 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption and amendment of any regulation, the agency, if requested to do so by an interested person, either before adoption and amendment, or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and amendment, and incorporate therein its reason for overruling the consideration urged against its adoption and amendment.

This notice of hearing has been posted at the following locations:

Carson City

Bladel Building, 209 East Musser Street
Nevada State Library & Archives Building, 100 North Stewart Street
Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Grant Sawyer Building, 555 East Washington Avenue

Websites

Legislative Counsel Bureau website: www.leg.state.nv.us

Nevada Public Notice website: <http://notice.nv.gov>

Division of Human Resource Management website: www.hr.nv.gov

**REGULATIONS PROPOSED
FOR PERMANENT ADOPTION AND AMENDMENT**

LCB File No. R098-17

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, amends NAC 284 by adding a new section to place a commonly used coaching tool, letter of instruction, into regulation. While “letter of instruction” is the commonly used term, it may take the form of a memorandum or other written documentation provided to an employee.

The new regulation explains how a letter of instruction is to be used and clarifies that it is not part of the disciplinary process. The regulation outlines what a letter of instruction must contain, and that it must not contain any threat of disciplinary action or consequences. Also included is the requirement for a discussion about the contents of the letter of instruction between the supervisor and employee, and the retention of a letter of instruction is addressed.

NEW Letter of instruction: Use and administration.

- 1. A letter of instruction is a document that is in written or electronic form and that:***
 - (a) A supervisor of an employee may provide to the employee as a coaching or performance management tool to:***
 - (1) Address the job performance or behavior of the employee; and***
 - (2) Provide evidence of the job performance or behavior expected of the employee; and***
 - (b) Is not part of the formal disciplinary process.***
- 2. A letter of instruction must include at least the following elements:***
 - (a) A brief statement identifying the deficiency or area of concern in the job performance or behavior of the employee;***
 - (b) An outline of the expectations of the supervisor of the employee relating to the job performance or behavior of the employee;***
 - (c) Instructions or a recommended course of action for overcoming the deficiency or area of concern and a description of any additional training that will be provided to the employee; and***
 - (d) A time frame for the completion of any recommended action items and for the proposed improvement in the job performance or behavior of the employee.***
- 3. A letter of instruction must not include any reference to disciplinary action or consequences for failure to comply with the expectations of the supervisor of the employee relating to the job performance or behavior of the employee.***
- 4. The supervisor of the employee and the employee must meet to discuss the expectations of the supervisor relating to the job performance or behavior of the employee outlined in the letter of instruction.***
- 5. The supervisor of the employee shall retain a copy of the letter of instruction in the supervisor’s working file for the employee. The supervisor must attach any written response by the employee to the letter of instruction. These documents must not be retained in the permanent personnel file of the employee unless they are attached to documentation of a subsequent disciplinary action taken against the employee as documentation of a***

nondisciplinary action that was taken before a specified disciplinary action was taken against the employee.

Sec. 2. NAC 284.458 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management (Division), addresses the rejection from probation and trial status, and that an affected employee may not file an appeal or grievance as a result of a rejection.

The amendment will also provide the authority to the Administrator of the Division or his or her designee to remove a request for an appeal hearing or a grievance from the grievance process when filed by an employee as a result of a rejection from probation or a trial period.

NAC 284.458 Rejection of probationary employees. (NRS 284.065, 284.155, 284.290)

1. During a probationary period, ~~an~~ *a probationary* employee may be rejected for any lawful reason, as determined by his or her appointing authority. ~~An~~ *A probationary* employee rejected pursuant to this subsection has no appeal rights ~~or rights to file a grievance using the procedure set forth in NAC 284.658 to 284.6957, inclusive, concerning the decision by the appointing authority to reject the probationary employee.~~

2. ~~An~~ *A permanent* employee who is serving a trial period may not ~~use~~ :

(a) *File a grievance using* the grievance procedure set forth in NAC 284.658 to 284.6957, inclusive, ~~to appeal~~ *concerning the decision by the appointing authority to reject the permanent employee during his or her trial period; or*

(b) *Appeal* the decision by the appointing authority to reject the *permanent* employee during his or her ~~probationary~~ *trial* period.

3. *If the Division of Human Resource Management determines pursuant to subsection 1 or 2 that a request for the adjustment of a grievance is not eligible for the procedure set forth NAC 284.658 to 284.6957, inclusive, or that a request for an appeal of a decision by the appointing authority is not eligible for appeal, the Division must:*

(a) *Remove the request from the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive, or from the appeal process, as applicable; and*

(b) *Provide to the person who submitted the request and the appointing authority in which the rejection arose:*

(1) *Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive, or for the appeal process, and an explanation of that determination; and*

(2) *Notice that the Division has removed the request from the procedure for the adjustment of grievances set forth in NAC 284.658 to 284.6957, inclusive, or from the appeal process, as applicable.*

4. A probationary period does not create a contractual relationship between the employee and employer.

~~4~~ 5. If a report of separation is not received by the employee or the Division of Human Resource Management by the close of business on the last day of the probationary period, the employee is considered to have satisfactorily completed the probationary period and acquired permanent status.

[Personnel Div., Rule VIII § C subsecs. 1-3, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 10-18-89; 11-12-93; 11-16-95)

Sec. 3. NAC 284.692 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Employment, Training and Rehabilitation, would allow for an exception to the mutual agreement requirement for an extension of time to file a grievance or take required action under certain circumstances, such as extended leave, which would be granted or denied by the Division of Human Resource Management.

An exception to the mutual agreement requirement is also allowable if an employee has also filed a charge with an equal employment opportunity (EEO) unit, such as an agency EEO unit, the Division of Human Resource Management's Sexual Harassment and Discrimination Unit, the Nevada Equal Rights Commission, or the federal Equal Employment Opportunity Commission. An extension related to this may be necessary to allow time for the completion of an investigation of the charge.

If the employee ultimately submits his or her grievance to the Employee-Management Committee (EMC), the EMC would have the ability to review an exception to the mutual agreement requirement at a hearing.

NAC 284.692 Agreement for extension of time to file grievance *or complaint*, or take required action. (NRS 284.065, 284.155, 284.384)

1. Except as otherwise provided in subsection ~~3~~ 5, the time limit for filing a grievance and for taking any other action required by either party at any step in the grievance procedure may be extended by the mutual agreement of the employee who may file the grievance and the appointing authority or his or her designated representative. An agreement to an extension of time entered into pursuant to this subsection must be made in writing and authorized by both the employee and the appointing authority or his or her designated representative.

2. The time limit for filing a complaint and for taking any other action required by either party in the complaint procedure may be extended by the mutual agreement of the employee who may file the complaint and the appointing authority or his or her designated representative. An agreement to an extension of time entered into pursuant to this subsection must be made in writing and authorized by both the employee and the appointing authority or his or her designated representative.

3. ~~The~~ *An appointing authority or a designated representative of the appointing authority may unilaterally extend the time limit for filing a grievance or taking any other action at any step in the grievance procedure if the appointing authority reasonably believes that circumstances prevented a good faith attempt to resolve the grievance at any step in the grievance procedure and those circumstances are documented. Such documented circumstances may include, without limitation, that:*

(a) The employee is on a leave of absence;

(b) The employee is otherwise absent from work because of:

(1) A physical, mental or emotional disorder;

(2) A short-term or long-term disability event; or

(3) An extended hospital stay or a stay in or treatment from a long-term care facility or another facility, including, without limitation, treatment received through an employee assistance program; or

(c) There is an investigation pending of a report or complaint of alleged unlawful discrimination by an entity set forth in paragraph (a) or (c) of subsection 1 of NAC 284.696.

4. If a grievance is submitted to the Committee, the Committee may review any extension of time provided pursuant to subsection 3.

5. Except as otherwise provided in subsection 4, the provisions of this section do not apply to a grievance that has been submitted to the Committee.

(Added to NAC by Personnel Comm'n by R023-05, eff. 10-31-2005; R033-17, 10-31-2017)

Sec. 4. Section 19 of LCB File No. R033-17, which was adopted by the Personnel Commission and filed with the Secretary of State on October 31, 2017, is hereby amended to read as follows:

Sec. 19. Section 1 of LCB File No. R076-15, which was adopted by the Personnel Commission and filed with the Secretary of State on April 4, 2016, is hereby amended to read as follows:

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Legislative Counsel Bureau, makes conforming changes based on the amendments in other sections of this LCB File.

At the Personnel Commission meeting on March 2, 2018, the Division of Human Resource Management will recommend changing the reference to NAC 284.384 in subsection 1 of the following regulation to NAC 284.458. The Legislative Counsel Bureau referenced the incorrect regulation, and is in agreement that the citation should be NAC 284.458, as it is in subsection 2 of the regulation.

Section 19 of LCB File No. R033-17 Removal of ineligible grievance or complaint from procedure.

1. ~~¶¶~~ *Except as otherwise provided in NAC 284.384, if* the Division of Human Resource Management determines that a request for the adjustment of:

(a) A grievance is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in subsection 2 of NAC 284.658 or because a hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390; or

(b) A complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in paragraph (a) of subsection 4 of section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427,

↳ the Division must take the actions described in subsection 2.

2. ~~¶upon~~ *Except as otherwise provided in NAC 284.458, upon* making a determination pursuant to subsection 1 that a request for the adjustment of a grievance or complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, the Division must, as soon as practicable:

(a) Remove the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive; and

(b) Provide to the person who submitted the request and the agency in which the grievance or complaint arose:

(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, and an explanation for that determination;

(2) Notice that the Division has removed the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive;

(3) If applicable, information relating to the appropriate procedure for resolving the person's concern; and

(4) Information relating to the person's right to appeal the determination to the Committee.

3. If the Division of Human Resource Management determines that a request for the adjustment of a grievance or complaint is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.

(Added to NAC by Personnel Comm'n by R076-15, eff. 4-4-2016; R033-17, 10-31-2017)

LCB File No. R118-17

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.

<p>Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, amends NAC 284 by adding a new section to require an employee to report within 5 working days the suspension, revocation or cancellation of a license, certificate or permit which is a requirement of the position. Subparagraph (e) of subsection 2 of NAC 284.646 allows for the immediate dismissal of an employee who has had such a license, certificate or permit suspended, revoked or cancelled.</p>
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NEW Report of suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license.

1. An employee must report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license to his or her appointing authority within 5 working days after the suspension, revocation or cancellation occurs 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.

2. If an employee fails to make the report required pursuant to subsection 1:

(a) The appointing authority may immediately dismiss the employee pursuant to subsection 2 of NAC 284.646; or

(b) Appropriate disciplinary or corrective action may be taken against the employee pursuant to NAC 284.650.

Sec. 3.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, amends NAC 284 by adding a new section to require an employee to report being arrested for, charged with or convicted of an offense that either temporarily or permanently results in the employee not being able to perform the duties of his or her position.

This regulation is proposed due to situations where off duty behavior has resulted in an employee not being able to perform his or her duties. It is important for an appointing authority to know of an arrest, charge, or conviction in order to make a determination if the employee can no longer serve in his or her position, may need to be placed on leave, or take any other action to protect the public that is served.

NEW Report of arrest, charge, or conviction of an offense.

1. An employee or a designated representative of the employee must report being arrested for, charged with or convicted of any offense, including, without limitation, being arrested for, charged with or convicted of an offense that took place during working or nonworking hours, to his or her appointing authority within 5 working days after the arrest, charge or conviction occurs if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position.

2. An employee must make the report required pursuant to subsection 1 in every situation where the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position, even if the employee:

(a) Is not absent from work as a result of an arrest, charge or conviction; or

(b) Uses the leave of absence that he or she has accrued as a result of an arrest, charge or conviction.

3. Except as otherwise provided in subsection 6 of NAC 284.653, if an employee fails to make the report required pursuant to subsection 1:

(a) The appointing authority may immediately dismiss the employee pursuant to subsection 2 of NAC 284.646; or

(b) Appropriate disciplinary or corrective action may be taken against the employee pursuant to NAC 284.650.

Sec. 4. NAC 284.646 is hereby amended to read as follows:

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment allows an appointing authority to immediately dismiss or discipline an employee in accordance with Sections 2 and 3 of this LCB File.

NAC 284.646 Dismissals. (NRS 284.065, 284.155, 284.383, 284.385, 284.390)

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 *pursuant to the standards and procedures set forth in NAC 284.6563* 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 ~~†~~ ;

(h) Failure to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license pursuant to section 2 of this regulation 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; or

(i) Failure to report being arrested for, charged with or convicted of any offense pursuant to section 3 of this regulation if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position.

3. The rights and procedures set forth in NAC 284.655 to 284.6563, inclusive, 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.

[Personnel Div., Rule XII § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; A by Personnel Comm'n by R147-06, 12-7-2006; R063-09, 11-25-2009; R027-11, 12-30-2011)

Sec. 5. NAC 284.650 is hereby amended to read as follows:

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment allows an appointing authority discipline an employee in accordance with sections 2 and 3 of this LCB File.

NAC 284.650 Causes for disciplinary action. (NRS 284.065, 284.155, 284.383)

Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.
2. Disgraceful personal conduct which impairs the performance of a job or causes discredit to the agency.
3. The employee of any institution administering a security program, in the considered judgment of the appointing authority, violates or endangers the security of the institution.
4. Discourteous treatment of the public or fellow employees while on duty.
5. Incompetence or inefficiency.
6. Insubordination or willful disobedience.
7. Inexcusable neglect of duty.
8. Fraud in securing appointment.
9. Prohibited political activity.
10. Dishonesty.
11. Abuse, damage to or waste of public equipment, property or supplies because of inexcusable negligence or willful acts.
12. Drug or alcohol abuse as described in NRS 284.4062 and NAC 284.884.
13. Conviction of any criminal act involving moral turpitude.
14. Being under the influence of intoxicants, a controlled substance without a medical doctor's prescription or any other illegally used substances while on duty.
15. Unauthorized absence from duty or abuse of leave privileges.
16. Violation of any rule of the Commission.
17. Falsification of any records.
18. Misrepresentation of official capacity or authority.
19. Violation of any safety rule adopted or enforced by the employee's appointing authority.
20. Carrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his or her appointing authority.
21. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.
22. Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning sexual harassment.
23. Failure to participate in an administrative investigation authorized by the employee's appointing authority.
24. *Failure to report the suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license pursuant to section 2 of this*

regulation 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.

25. Failure to report being arrested for, charged with or convicted of any offense pursuant to section 3 of this regulation if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position.

[Personnel Div., Rule XII § D, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 7-22-87; 12-26-91; 7-1-94; 11-16-95; R031-98, 4-17-98; A by Personnel Comm'n by R065-98, 7-24-98; R147-06, 12-7-2006)

Sec. 6. NAC 284.653 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, requires an employee to report being arrested for, charged with, or convicted of an offense related to drugs or alcohol. Additionally, the amendment includes that an employee is required to report arrests, charges, or convictions for an offense that occurred during his or her personal time away from the workplace if the arrest, charge, or conviction results in the employee's inability to temporarily or permanently perform the duties of his or her position.

NAC 284.653 Driving under the influence; unlawful acts involving controlled substance. (NRS 284.065, 284.155, 284.383, 284.385, 284.407)

1. An employee is subject to any disciplinary action set forth in subsection 2, as determined by the appointing authority, if the employee is convicted of any of the following offenses:

(a) If the offense occurred while the employee was driving a state vehicle, or a privately owned vehicle on state business:

(1) Driving under the influence in violation of NRS 484C.110; or

(2) Any offense resulting from an incident in which the employee was:

(I) Originally charged with driving under the influence; or

(II) Charged with any other offense for which driving under the influence is an element of the offense.

(b) The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance on the premises of the workplace or on state business.

2. An appointing authority may impose the following disciplinary actions if an employee is convicted of an offense set forth in subsection 1:

(a) For the first offense:

(1) Dismissal;

(2) Demotion, if permitted by the organizational structure of the agency for which he or she is employed;

(3) Suspension for 30 calendar days; or

(4) Suspension for 30 calendar days and demotion.

(b) For the second offense within 5 years, dismissal.

3. An employee who is suspended or demoted pursuant to subsection 2 must:

(a) Agree to be evaluated through an employee assistance program; and

(b) Complete any program of treatment recommended by the evaluation.

4. If an employee fails to complete the program of treatment, the appointing authority must dismiss the employee.

5. Pursuant to NRS 193.105, an employee who is convicted of violating any state or federal law prohibiting the sale of a controlled substance must be dismissed.

6. An employee must report ~~a conviction~~ *being arrested for, charged with or convicted of* any offense described in this section , *including, without limitation, being arrested for, charged with or convicted of an offense that took place during working or nonworking hours*, to his or her appointing authority within 5 working days after it occurs ~~if the arrest, charge or conviction results in the employee being temporarily or permanently unable to perform the duties of his or her position.~~ If the employee fails to make ~~that~~ *such a* report, ~~he or she must be dismissed.~~ *the appointing authority shall immediately dismiss the employee.*

(Added to NAC by Dep't of Personnel, eff. 7-22-87; A 4-20-90; 3-27-92; A by Personnel Comm'n by R147-06, 12-7-2006; R141-07, 1-30-2008)

Sec. 7. NAC 284.890 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will provide agencies flexibility in assuring that an employee is safely transported from the test location when he or she will not be returning to the workplace due to the end of a work day, a positive test result, or no immediate test result. The addition to the regulation allowing an employee to make his or her own transportation arrangements is intended to provide an employee with an additional option. It is not the intent to remove the agency's responsibility to ensure the employee's transportation. The amendment also allows an agency, as needed, to respond to an obvious medical crisis that happens prior to or during transportation of the employee following the test.

NAC 284.890 Transportation of employee to and from location of screening test. (NRS 284.065, 284.155, 284.407)

1. If an employee is required to submit to a screening test, the appointing authority shall provide transportation for the employee to the location of the test.

2. After the employee submits to the screening test, the appointing authority , *as appropriate*, shall ~~provide~~ :

(a) *Provide* transportation for the employee to his or her home ~~if~~ ;

(b) *Assist the employee in arranging for a person chosen by the employee to provide transportation for the employee; or*

(c) *Arrange for emergency medical assistance if the appointing authority or any other person, before or during the transportation of the employee to his or her home, reasonably believes, based on objective facts, that the employee needs emergency medical assistance.*

(Added to NAC by Dep't of Personnel, eff. 12-26-91)

LCB File No. R119-17

Section 1. NAC 284.888 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will clarify that the requirements outlined in subsection 1 of NRS 284.4065 (e.g., inform the employee in writing "whether the test will be for alcohol or drugs, or

both”) do not apply to the situations outlined in subsection 2 of NRS 284.4065 (e.g., “has or is involved in a work-related accident or injury”).

In 2015, the Nevada Legislature amended certain sections of existing law by changing the word “accident” to “crash,” and the amendment to subparagraph (a) of subsection 4 of this regulation makes a conforming change.

NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (NRS 284.065, 284.155, 284.407)

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.

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.

4. For the purposes of subsection 2 of NRS 284.4065 : ~~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:

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

(2) The operation of a motor vehicle in such a manner as to cause two *crashes which cause damage to* 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.

(Added to NAC by Dep’t of Personnel, eff. 12-26-91; A by Personnel Comm’n by R066-09, 10-27-2009; R193-09, 4-20-2010; R010-11, 10-26-2011; R044-15, 1-1-2016)

LCB File No. R121-17

Section 1. NAC 284.358 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management (the Division) initially proposed a new regulation to require an appointing authority to contact the Division prior to filling any vacancy. The regulation also explained the order of possible lists that would be provided. In conjunction with the Legislative Counsel Bureau, the Division proposes the following amendment. This amendment will require an appointing authority to follow the order of lists included in subsection 1, including prioritizing the use of a reassignment list after a reemployment list.

Finally, this amendment includes the requirement for an appointing authority to contact the Division to determine if lists of eligible persons exist according to subparagraphs (a), (b) and (c) of paragraph 1 of the regulation, prior to filling any vacancy.

NAC 284.358 Types of lists and priority for use. (NRS 284.065, 284.155, 284.250, 284.327)

1. The types of lists of eligible persons and, unless otherwise provided in this chapter or chapter 284 of NRS, the required priority for their use are as follows:

(a) Reemployment lists.

(b) *Reassignment lists.*

(c) Lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327, as amended by section 1 of Assembly Bill No. 192, chapter 189, Statutes of Nevada 2017, at page 1016.

~~(e)~~ (d) Transfer lists, at the option of the appointing authority.

~~(d)~~ (e) Divisional promotional lists.

~~(e)~~ (f) Departmental promotional lists.

~~(f)~~ (g) Statewide promotional lists.

~~(g)~~ (h) Lists of persons determined to be eligible from open competitive recruitments.

~~(h)~~ (i) Lists of eligible persons of comparable classes.

2. The names on each list must be used as prescribed in NAC 284.361.

3. *Before filling a vacancy, an appointing authority shall contact the Division of Human Resource Management by telephone or electronic mail to determine if eligible persons are available for appointment through the lists referred to in paragraphs (a), (b) and (c) of subsection 1 before using any list referred to in paragraphs (d) to (i), inclusive, of subsection 1.*

4. The open and promotional lists referred to in paragraphs ~~(d)~~ (e) to ~~(h)~~ (i), inclusive, of subsection 1 must be:

(a) Based on the type of recruitment prescribed by the Division of Human Resource Management; and

(b) Described in the publicized job announcement.

↪ The establishment of any other type of list from the initial recruitment must be in accordance with NAC 284.367.

[Personnel Div., Rule V § A, eff. 8-11-73]—(NAC A by Dep't of Personnel, 4-20-90; 7-6-92; A by Personnel Comm'n by R183-03, 1-27-2004; R034-17, 1-1-2018)

Sec. 2. NAC 284.360 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management (the Division) initially proposed a new regulation to require an appointing authority to contact the Division prior to filling any vacancy. The regulation also explained the order of possible lists that would be provided. In conjunction with the Legislative Counsel Bureau, the Division of Human Resource proposes the following amendment. This amendment will specifically require the Division of Human Resource Management to certify and provide each list to the appointing authority in accordance with the priority set forth in the amendment to NAC 284.358 in section 1 of this LCB File.

This amendment also incorporates the required use of a reassignment list, if available.

NAC 284.360 Reemployment lists; certification or waiver of lists. (NRS 284.065, 284.155, 284.250)

1. ~~Upon receipt of the appropriate form from~~ *After being contacted by* an appointing authority ~~for a list of~~ *pursuant to subsection 3 of NAC 284.358 regarding the availability of* eligible candidates in a specific class, the Division of Human Resource Management must verify the availability of a reemployment list for that class. If a reemployment list is available, the Division of Human Resource Management must certify and 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 must 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 Division of Human Resource Management must certify and provide to the appointing authority any available reassignment lists pursuant to section 4 of LCB File No. R097-16.*

3. *If there are no reassignment lists available,* the Division of Human Resource Management must certify and provide to the appointing authority any available lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327, as amended by section 1 of Assembly Bill No. 192, chapter 189, Statutes of Nevada 2017, at page 1016.

~~3.1~~ 4. If there are no available lists of persons with disabilities who are eligible for temporary limited appointments pursuant to NRS 284.327, as amended by section 1 of Assembly Bill No. 192, chapter 189, Statutes of Nevada 2017, at page 1016, the Division of Human Resource Management must certify and provide to the appointing authority any available transfer lists of employees who are entitled to transfer to a position pursuant to NRS 284.3775.

~~4.1~~ 5. If no list described in subsection 1, ~~or~~ 2 or 3 is available, the Division of Human Resource Management must, upon request of the appointing authority and in accordance with subsections ~~5 and 6,~~ 6 and 7, certify the names of eligible persons on ranked or unranked lists described in paragraphs ~~(d)~~ (e) to ~~(h)~~ (i), inclusive, of subsection 1 of NAC 284.358, or waive the list.

~~5.1~~ 6. The names of eligible persons on ranked lists must appear in the order of the total rating which they earned in the examination, including preferences for veterans and residents.

~~6.1~~ 7. The Division of Human Resource Management 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.

~~7.1~~ 8. Only an eligible person who has indicated the willingness to accept the location of the vacancy and the other conditions of employment may be certified.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A by Personnel Comm'n by R183-03, 1-27-2004; R024-05, 10-31-2005; R034-17, 1-1-2018)

Sec. 3. NAC 284.361 is hereby amended to read as follows:

<p>Explanation of Proposed Change: The Division of Human Resource Management (the Division) initially proposed a new regulation to require an appointing authority to contact the Division prior to filling any vacancy. The regulation also explained the order of possible lists that</p>
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would be provided. In conjunction with the Legislative Counsel Bureau, the Division proposes the following amendment. This amendment requires the Division to integrate the name of an employee who is eligible for reassignment within that agency into the reassignment list.

NAC 284.361 Use of lists and consideration of eligible persons. (NRS 284.065, 284.155, 284.250) When using lists of persons who are eligible and considering eligible persons who have been certified, the following conditions apply:

1. When a reemployment list is certified, persons who are available for appointment and who are certified on reemployment lists, other than seasonal reemployment lists, must be hired in the order in which they appear unless the appointing authority, upon submitting written justification, obtains the written concurrence of the Governor to deviate from the order of priority or to hire from another list. The appointing authority must make the written justification available for examination by affected persons or their designated representatives.

2. *The Division of Human Resource Management shall integrate the name of a person who is eligible for reassignment pursuant to subsection 2 or 4 of section 4 of LCB File No. R097-16 with the names of employees who are placed on a reassignment list pursuant to subsection 3 or 5 of section 4 of LCB File No. R097-16 whenever there is a reassignment list certified to the agency that employed the person in his or her regular position.*

3. A person must accept or refuse an offer of employment:

(a) If the offer of employment is sent by mail to the person, within 6 calendar days after the postmarked date appearing on the envelope in which the offer was mailed; or

(b) If the offer is an oral offer of employment, within 3 business days after the oral offer has been made.

~~3~~ 4. The appointing authority may request selective certification for a particular position if the normal method of certification does not provide candidates qualified to perform the duties of the position satisfactorily. Where selective certification is necessary, the appointing authority shall furnish in writing the special requirements peculiar to the position and his or her reasons therefor. If the facts and reasons justify such a method of selection, the Division of Human Resource Management may certify the highest ranking eligible persons who possess the special qualifications.

~~4~~ 5. Certification of only eligible persons who are the same sex must not be made unless there is clear evidence that the duties assigned could be performed efficiently only by the sex specified.

~~5~~ 6. When using ranked lists other than those for reemployment, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least 5 persons in the first 10 ranks to determine their availability and qualifications. The names on each type of list must be considered before names from the next succeeding list. If there are fewer than 10 ranks with persons who are available for appointment on a given list and the appointing authority requests a full complement of 10 ranks, the name or names at the top of the next succeeding list must be combined with those on the preceding list to establish 10 eligible ranks with persons who are available for appointment. Except as otherwise provided in subsection ~~7~~ 8, all competitive appointments from ranked lists must be made from the persons who:

(a) Are in a rank of persons who received the 10 highest scores on the examination; and

(b) Are available for appointment.

~~6~~ 7. If the list is unranked or waived, the appointing authority shall attempt to communicate, as provided in NAC 284.373, with at least five eligible persons he or she deems most qualified based upon a review of their respective qualifications as they relate to the position

or class, or with all of the eligible persons if there are five or less. Except as otherwise provided in subsection 1, any eligible person who is certified from an unranked or waived list may be appointed.

~~7~~ 8. If persons from fewer than five ranks of eligible persons are willing to accept appointment:

(a) The appointing authority may make an appointment from among those remaining available eligible persons.

(b) Certification and appointment may be made from other appropriate lists, including lists of higher grades as determined by the Division of Human Resource Management. The names from other lists must follow those which have been certified, if any, from the original lists.

(c) A new recruitment may be conducted.

(d) A provisional appointment may be made only if the requirements of NAC 284.406 are met.

[Personnel Div., Rule V § F, eff. 8-11-73; A 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89; 11-16-95; 11-16-95; R082-00, 8-2-2000; A by Personnel Comm'n by R069-02, 8-14-2002; R183-03, 1-27-2004; R025-13, 10-23-2013; R034-17, 1-1-2018)—(Substituted in revision for NAC 284.378)

Sec. 4. NAC 284.618 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment simply makes a conforming change based on the changes in numbering of subsections in NAC 284.361.

NAC 284.618 Layoffs: Voluntary demotions. (NRS 284.065, 284.155, 284.175, 284.380)

1. In lieu of being laid off, a permanent employee may choose to be voluntarily demoted to a vacant position or displace an employee within the department and geographical location where employed to one of the next lower classes:

(a) Within his or her current class series and option; or

(b) Within the class series and option from which he or she was appointed to his or her current position during current continuous service if he or she cannot be demoted pursuant to paragraph (a).

↪ For the purposes of this subsection, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

2. No employee in a higher class may displace an employee in a lower class who has more seniority. If an employee chooses to displace another, he or she must displace the member of the next lower class who has the least seniority. If that member has more seniority, the displacing employee must descend further in the class series.

3. The employees displaced reestablish the layoff class.

4. An employee may choose to displace another only if he or she meets the minimum qualifications for the class, option and position. For the purposes of this subsection, qualifications for a position may be different from those of the class and option only when selective certification is required pursuant to subsection ~~3~~ 4 of NAC 284.361.

5. Full-time, part-time and seasonal employees must be treated separately and can only displace like employees.

6. Displacement is always a movement to a class at a lower grade.

7. A current employee who elects to displace another employee has priority over former employees already on reemployment lists.

8. The pay of the employee who is taking a voluntary demotion cannot exceed the highest step for the class to which the employee is being demoted. If the current pay falls within the lower rate range, no reduction in pay may occur unless money is not available as certified by the Chief of the Budget Division or, in the case of an agency which is not supported from the State General Fund, as certified by the administrator of that agency.

[Personnel Div., Rule XIII § B subsec. 2, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 10-26-84; 7-21-89; 8-1-91; R146-01, 1-18-2002; A by Personnel Comm'n by R096-03, 10-30-2003; R143-05, 12-29-2005; R034-17, 1-1-2018)

LCB File No. R151-17

Section 1. NAC 284.5385 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management (the Division) initially proposed an amendment to NAC 284.544 in order to conform the regulation to current language in NAC 284.5775. Similar language was removed in 2005 as “unnecessary and redundant Family and Medical Leave Act language.” However, the current language when read on its face appears to be in conflict with NAC 284.5775, subsection 5 of NRS 281.390 and current State of Nevada workers’ compensation practice.

The Legislative Counsel Bureau handled the amendment differently by incorporating the reference to NAC 284.5775, and moving language related to an employee who does not have enough leave to make up the difference between his or her pay and benefits for temporary total disability, from NAC 284.544 and 284.5385, to NAC 284.5775.

NAC 284.5385 Annual leave: Leave without pay; catastrophic leave; receipt of benefits for temporary total disability. (NRS 284.065, 284.155, 284.345, 284.350)

1. Except as otherwise provided in NAC 284.580, an employee does not accrue annual leave during the time he or she is on leave *of absence* without pay or on catastrophic leave.

2. A person who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS and makes the election provided in ~~†~~

~~—(a) Subsection 1 or 3 of NRS 281.390~~ *subparagraph (1), (2) or (3) of paragraph (a) of subsection 1 of NAC 284.5775* is entitled to accrue annual leave during the period he or she is receiving those benefits and is being paid an amount of ~~{sick}~~ *paid* leave equal to the difference between his or her normal pay and the benefits received.

~~{(b) Subsection 5 of NRS 281.390 must be placed on leave of absence without pay, unless the employee is on family and medical leave because a serious health condition prevents him or her from performing one or more of the essential functions of his or her position. Such an employee may, while on such leave, elect to use his or her accrued annual leave in lieu of being placed on leave of absence without pay.~~

~~—3.— An employee who does not have enough sick leave to make up the difference between his or her normal pay and the benefits for a temporary total disability must be placed on leave of absence without pay for the time he or she is receiving such benefits and the balance of time not covered by sick leave or other paid leave.~~ The employee accrues annual leave only for the time he or she is in paid status, excluding overtime.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 12-17-87; 7-14-88; 7-21-89; 8-1-91; 3-27-92; 9-16-92; 11-12-93; 3-23-94; 7-1-94; 11-16-95; R147-01, 1-22-2002; A by Personnel Comm'n by R145-05, 12-29-2005)

Sec. 2. NAC 284.544 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management (the Division) initially proposed an amendment to NAC 284.544 in order to conform the regulation to current language in NAC 284.5775. Similar language was removed in 2005 as “unnecessary and redundant Family and Medical Leave Act language.” However, the current language when read on its face appears to be in conflict with NAC 284.5775, subsection 5 of NRS 281.390 and current State of Nevada workers’ compensation practice.

The Legislative Counsel Bureau handled the amendment differently by incorporating the reference to NAC 284.5775, and moving language related to an employee who does not have enough leave to make up the difference between his or her pay and benefits for temporary total disability, from NAC 284.544 and 284.5385, to NAC 284.5775.

NAC 284.544 Sick leave: Leave without pay; catastrophic leave; receipt of benefits for temporary total disability; computation. (NRS 284.065, 284.155, 284.345, 284.355)

1. Except as otherwise provided in NAC 284.580, an employee does not accrue sick leave during the time he or she is on leave *of absence* without pay or on catastrophic leave.

2. A person who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS and ~~†~~

~~—(a) Makes~~ *makes* the election provided in *subparagraph (1), (2) or (3) of paragraph (a) of subsection 1* ~~{or 3}~~ of ~~{NRS 281.390}~~ *NAC 284.5775* is entitled to accrue sick leave during the period he or she is receiving those benefits and is being paid an amount of ~~{sick}~~ *paid* leave equal to the difference between his or her normal pay and the benefits received.

~~{(b) Makes the election provided in subsection 5 of NRS 281.390 must be placed on leave of absence without pay, unless the employee elects to use his or her accrued annual leave.~~

~~—3.— An employee who does not have enough sick leave to make up the difference between his or her normal pay and the benefits for temporary total disability must be placed on leave of absence without pay for the time he or she is receiving such benefits and the balance of time not covered by paid leave.~~ The employee accrues sick leave only for the time he or she is in paid status, excluding overtime.

~~{4}~~ **3.** To compute the amount of sick leave to which an employee is entitled, an employee must be considered to work not more than 40 hours each week. If an employee occupies more than one position in different departments, the amount of sick leave to which the employee is entitled must be computed based on not more than 40 hours each week in each position.

~~{5}~~ **4.** The basis for the computation of the amount of sick leave to which an exempt classified employee or exempt unclassified employee is entitled must not exceed the number of hours authorized in the biennial operating budget of this State for his or her position.

(Added to NAC by Dep't of Personnel, eff. 12-17-87; A 7-14-88; 7-21-89; 8-1-91; 9-16-92; 11-12-93; 3-23-94; 7-1-94; 11-16-95; R147-01, 1-22-2002; A by Personnel Comm'n by R145-05, 12-29-2005)

Sec. 3. NAC 284.5775 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management (the Division) initially proposed an amendment to NAC 284.544 in order to conform the regulation to current language in NAC 284.5775. Similar language was removed in 2005 as “unnecessary and redundant Family and Medical Leave Act language.” However, the current language when read on its face appears to be in conflict with NAC 284.5775, subsection 5 of NRS 281.390 and current State of Nevada workers’ compensation practice.

The Legislative Counsel Bureau handled the amendment differently by incorporating the reference to NAC 284.5775, and moving language related to an employee who does not have enough leave to make up the difference between his or her pay and benefits for temporary total disability, from NAC 284.544 and 284.5385, to NAC 284.5775.

NAC 284.5775 Temporary total disability: Use of sick leave, compensatory time, annual leave and catastrophic leave; leave of absence without pay. (NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626)

1. An employee who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may:

~~1-1~~ **(a)** Elect to receive payment for all or part of the difference between his or her normal pay and the benefits received by:

~~1-a~~ **(1)** Using his or her accrued sick leave as provided in subsection 1 or 3 of NRS 281.390;

~~1-b~~ **(2)** Using his or her accrued compensatory time;

~~1-c~~ **(3)** Using his or her accrued annual leave if he or she:

~~1-1~~ **(I)** Is on family and medical leave for a serious health condition that prevents him or her from performing one or more of the essential functions of his or her position; or

~~1-2~~ **(II)** Elected to use his or her accrued sick leave pursuant to NRS 281.390 and has exhausted all of his or her accrued sick leave; or

~~1-d~~ **(4)** Using catastrophic leave if he or she has exhausted all of his or her accrued annual leave, sick leave and compensatory time and his or her request for catastrophic leave has been approved pursuant to NAC 284.576; or

~~1-2~~ **(b)** Elect to be placed on leave of absence without pay in accordance with subsection 5 of NRS 281.390.

2. *An employee who does not have enough paid leave to make up the difference between his or her normal pay and the benefits for a temporary total disability pursuant to paragraph (a) of subsection 1 must be placed on leave of absence without pay for the time he or she is receiving such benefits and the balance of time not covered by paid leave.*

(Added to NAC by Dep't of Personnel by R031-98, eff. 4-17-98; A by R082-00, 8-2-2000)

Sec. 4. NAC 284.882 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will require that a screening test to detect the presence of alcohol by testing an employee's breath be conducted using a breath-testing device appearing on that Internet website maintained by the Office of Drug and Alcohol Policy and Compliance.

NAC 284.882 Administration of screening tests. (NRS 284.065, 284.155, 284.4065, 284.407) A screening test to detect the general presence of:

1. A controlled substance must comply with:

(a) The standards established by the United States Department of Health and Human Services which are hereby adopted by reference. A copy of the standards is available, without charge, from the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace Programs, ~~H Choke Cherry Road,~~ **5600 Fishers Lane**, Rockville, Maryland 20857; and

(b) Any supplementary standards and procedures established by the Commission.

2. Alcohol by testing a person's breath must be conducted using a breath-testing device ~~certified in accordance with the "Conforming Products List of Evidential Breath Alcohol Measurement Devices" published in the Federal Register~~ **approved** by the National Highway Traffic Safety Administration of the United States Department of Transportation ~~and listed on the "Approved Evidential Breath Measurement Devices" webpage on the Internet website maintained by the Office of Drug and Alcohol Policy and Compliance of the United States Department of Transportation pursuant to 49 C.F.R. § 40.229.~~

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A 10-27-97; R082-00, 8-2-2000; A by Personnel Comm'n by R066-09, 10-27-2009; R009-11, 10-26-2011)