

**PROPOSED REGULATION OF
THE HUMAN RESOURCES COMMISSION**

LCB File No. R134-22

September 19, 2023

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

AUTHORITY: § 1, NRS 284.065, as amended by section 72 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3562, 284.155; § 2, NRS 284.065, as amended by section 72 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3562, NRS 284.155 and 284.245, as amended by section 87 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3569.

A REGULATION relating to the Human Resources System of the State; revising provisions relating to the reclassification of positions in the classified service of the State; revising provisions governing the review of certain actions related to certifying certain applicants and eligible persons; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Administrator of the Division of the Human Resource Management of the Department of Administration to prepare, maintain and revise a master classification plan for all positions in the classified service of the State, based upon similarity of duties and responsibilities. Existing law also: (1) authorizes the Administrator to make changes in the classification of positions under certain circumstances; and (2) provides that the classification plan and changes therein are subject to approval by the Human Resources Commission. (NRS 284.160, as amended by section 80 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3565) Finally, existing law requires the Human Resources Commission to adopt a code of regulations for the classified service. (NRS 284.155)

Existing regulations provide for the reclassification of a position to a different class if a significant change in the duties and responsibilities assigned to the position has occurred or may occur. Under existing regulations, a position that has a significant change cannot be reclassified to a higher grade if the incumbent does not meet the minimum qualifications for the higher level position. (NAC 284.126) **Section 1** of this regulation revises this prohibition to provide instead that a position that has a significant change cannot be reclassified to a higher grade if the incumbent does not meet the minimum qualifications for the higher level position or is unable to meet such qualifications as an underfill within 1 year after the effective date of the reclassification decision.

Under existing regulations, an employee who does not meet the minimum qualifications to reclassify his or her position is not eligible for promotion. (NAC 284.126) **Section 1** instead provides that an employee is not eligible for promotion unless the employee meets the minimum

qualifications to reclassify his or her position or is able to meet such qualifications as an underfill within 1 year after the effective date of the reclassification decision.

Existing regulations authorize the Division to investigate the classification of an existing position on its own initiative. (NAC 284.130) **Section 1** provides that a position may be reclassified absent a significant change in the duties and responsibilities assigned to the position upon a determination by the Division that: (1) the position is incorrectly classified; or (2) the duties and responsibilities assigned to the position are more consistent with the duties and responsibilities assigned to a position in a different class.

In general, existing regulations require that an appointment to or within the classified service of the State be made from a certified list of eligible persons. (NAC 284.329-284.3745) Existing regulations authorize the Administrator to refuse to examine certain applicants for employment or refuse to certify an eligible person for inclusion on a list under certain circumstances. (NAC 284.374) Existing regulations: (1) authorize an applicant affected by such a refusal to request a review of the action; and (2) prescribe procedures for the review of an action. (NAC 284.3745) **Section 2** of this regulation requires certain actions relating to a review to be calculated using calendar days instead of working days.

Section 1. NAC 284.126 is hereby amended to read as follows:

284.126 1. For the purposes of this section:

(a) “Agency human resources officer” means the Director of Personnel within the Nevada System of Higher Education or any person holding a position in the classified service with the title of Human Resources Officer.

(b) “Significant change” means a change in the duties and responsibilities assigned to a position in a class that:

- (1) Is outside of the scope of the class as described by the class specification;
- (2) Is not part of the scope of responsibility of the position; and
- (3) Results in the preponderance of duties and responsibilities being allocated to a different class.

2. If an appointing authority or an employee proposes the creation of a new class, a reclassification of a position to a different class or the reallocation of an existing class based upon a gradual accumulation of duties and responsibilities which results in a significant change

and is intended to be permanent, the Division of Human Resource Management or agency human resources officer must be notified on the appropriate form. If the creation, reclassification or reallocation is approved, the Division of Human Resource Management will allocate the position to one of the existing classes in the classification plan or to a new, revised or reallocated class as appropriate.

3. The effective date of the classification decision will be the date on which Form NPD-19 is received by the Division of Human Resource Management or agency human resources officer unless information that substantially affects the decision concerning the creation, reclassification or reallocation is received after this date. In that case, the effective date will be the date on which the appropriate information necessary to make the decision is received. However, the subsequent receipt of an application or examination score that confirms the qualifications of an incumbent will not have a bearing on the effective date. If the form was prepared but delayed due to an administrative or clerical error, the effective date must be determined by the appointing authority and must be based upon the date on which the form should reasonably have been submitted to the Division of Human Resource Management or agency human resources officer. In no case, however, may a retroactive adjustment because of an administrative or clerical error exceed 6 months after the date of receipt.

4. If an agency makes or anticipates making a significant change in the duties for a position or the agency anticipates a reorganization which will require the reclassification of an existing position, the reallocation of an existing class or the creation of a new class, it shall advise the Budget Division of the Office of Finance or, in the case of the Nevada System of Higher Education, the budget division of the applicable institution. The proposed change may not be required of an employee nor be submitted to the Division of Human Resource Management until

funding for it is approved. If the change is approved by the Division of Human Resource Management, the effective date will be determined by the Budget Division.

5. In effecting a reclassification pursuant to subsection 2 or 4, the appointing authority must review and take into consideration the organizational structure and the qualifications of the incumbent before assigning new duties to a position which are intended to be permanent. No position will be reclassified to a higher grade through the individual classification process if the incumbent does not meet the minimum qualifications for the higher level position ~~†~~ *or is unable to meet such qualifications as an underfill within 1 year after the effective date of the reclassification decision.* If an employee does not meet the minimum qualifications to reclassify his or her position ~~†~~ *or is unable to meet such qualifications as an underfill within 1 year after the effective date of the reclassification decision,* the employee is not eligible for promotion, but may be eligible for a special adjustment to his or her pay pursuant to NAC 284.206.

6. The establishment of a new class or reallocation of a class in an occupational study which results in a fiscal cost becomes effective when the funding is provided by the Legislature in the biennial operating budget for this State.

7. From the date on which the Division of Human Resource Management formally announces the beginning of an occupational study until the date on which the occupational study becomes effective:

(a) An existing position in the occupational study that has a significant change may only be reclassified to an existing class.

(b) An existing class in the occupational study must not be reallocated to a different grade.

(c) A new position may be allocated to an existing class or a new class as determined by the Division of Human Resource Management.

8. A position may be reclassified absent significant change in the duties and responsibilities assigned to the position upon a determination by the Division of Human Resource Management that:

(a) The position is incorrectly classified; or

(b) The duties and responsibilities assigned to the position are more consistent with the duties and responsibilities assigned to a position in a different class.

Sec. 2. NAC 284.3745 is hereby amended to read as follows:

284.3745 1. An applicant affected by a refusal to evaluate the applicant or an eligible person affected by a refusal to certify the eligible person may request a review of the action by the appointing authority not later than 30 calendar days after the applicant or eligible person receives notification of the refusal to evaluate or the refusal to certify, as applicable.

2. The appointing authority shall conduct the review and return it to the applicant or eligible person within 10 *calendar* days after receipt of the request for review. If the applicant or eligible person is not satisfied with the review by the appointing authority, the applicant or eligible person may request that the appointing authority provide, in accordance with NRS 284.245, a statement of the reasons for the refusal to evaluate or the refusal to certify, as applicable. Such a request must be made within 30 calendar days after receipt of the response by the appointing authority.

3. An applicant or eligible person may, within 30 ~~working~~ *calendar* days after receipt of the statement of the appointing authority provided pursuant to subsection 2, appeal the decision to the Commission. The appeal must:

- (a) Be in writing;
- (b) Be addressed to the Administrator;
- (c) Address the points outlined in the statement issued pursuant to subsection 2 regarding the refusal to evaluate or certify the applicant or eligible person; and
- (d) Indicate the points in the statement with which the applicant or eligible person disagrees and express the reasons for the disagreement.