

**PROPOSED REGULATION OF THE
HUMAN RESOURCES COMMISSION**

LCB File No. R171-24

July 17, 2024

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

AUTHORITY: §§ 1-8, NRS 284.065.

A REGULATION relating to state human resources management; replacing certain terminology relating to “personnel” in existing regulations with terminology relating to “human resources” to conform with existing law; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Senate Bill No. 431 (S.B. 431) of the 2023 Legislative Session changed the names of: (1) the Personnel Commission, within the Division of Human Resource Management of the Department of Administration, to the Human Resources Commission; and (2) the State Personnel System to the State Human Resources System. (NRS 284.022, as amended by section 70 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3562, NRS 284.030, as amended by section 71 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3562) S.B. 431 also made certain conforming changes to existing law to replace the term “personnel” with “human resources” throughout the provisions of the Nevada Revised Statutes relating to the Commission and the System. (Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3544)

Sections 1-8 of this regulation make similar changes to terminology in existing regulations for conformity with the Nevada Revised Statutes, including replacing references to: (1) the “personnel management system” with the “human resources management system”; (2) the “personnel office” of a department or agency with the “human resources office” of a department or agency; (3) the “personnel file” of an employee with the “human resources file” of an employee; (4) a “personnel action” with a “human resources action”; (5) a “personnel representative” with a “human resources representative”; and (6) “personnel documents” with “human resources documents.”

Section 1. NAC 284.114 is hereby amended to read as follows:

284.114 1. The Division of Human Resource Management is responsible for establishing, coordinating and evaluating an affirmative action program for this State.

2. The Division of Human Resource Management will cooperate and consult with agencies to:

(a) Identify barriers in the ~~personnel~~ *human resources* management system which may adversely affect the ability of applicants and employees to reach their full employment potential without regard to race, sex, sexual orientation, gender identity or expression, religion, color, national origin, age, genetic information, disability or whether or not the person is a domestic partner.

(b) Coordinate programs to remove barriers to equal employment opportunity while ensuring the effectiveness of the merit system and the opportunity for persons to enter the system and progress in it to the extent of their merit.

Sec. 2. NAC 284.204 is hereby amended to read as follows:

284.204 1. Subject to the provisions of subsection 2, the Division of Human Resource Management may approve an adjustment of steps within the same grade to:

(a) Allow an appointing authority the flexibility to adjust the rate of pay for a position that will be filled by a person from a pool of eligible persons who are applying for the position on an open competitive basis in order to:

(1) Meet a difficult recruiting problem in which an effort to recruit a person for a position or class has failed to produce at least five eligible persons who are available to work, or the recruitment for the position or class has been deemed historically difficult. Such an adjustment of steps may be approved by the Division of Human Resource Management for a class for a period of 1 year.

(2) Employ a person whose education or experience is superior to those of another eligible person and who exceeds the minimum qualifications of the class. Any experience or education

which is considered by the appointing authority pursuant to this subparagraph must be given a greater weight for those areas which are directly related to the position than general education and experience.

(b) Maintain an equitable relationship in the status of steps among the employees of the appointing authority if a disparity exists. An adjustment will not be granted pursuant to this section if the disparity in steps is:

(1) Among employees of different departments or agencies; or

(2) A result of:

(I) The length of service of employees;

(II) An adjustment in pay which was attained in a former class; or

(III) An adjustment in pay for an employee who resides in a particular geographical area.

2. Before the Division of Human Resource Management may approve an adjustment of steps pursuant to subsection 1, the appointing authority must submit a request on a form prescribed by the Division of Human Resource Management to the Division of Human Resource Management which:

(a) Specifies the qualifying conditions and justification for the request; and

(b) Certifies that the appointing authority has, where applicable:

(1) Considered the requirements for the pay required to meet the need described in subparagraph (1) of paragraph (a) of subsection 1;

(2) Considered the qualifications of any other eligible person who is available for work for the purposes of subparagraph (2) of paragraph (a) of subsection 1;

(3) Ensured that the adjustment is feasible on the basis of its fiscal effects; and

(4) Prepared and maintained an accurate record of the consideration of the factors listed in this section.

3. If an adjustment of steps is approved by the Division of Human Resource Management pursuant to subsection 1, the effective date of such an adjustment is the date on which a request that complies with subsection 2 is received by the Division of Human Resource Management or the ~~personnel~~ *human resources* office of the department or agency at which the employee who is receiving the adjustment is employed. If a request for an adjustment of steps is delayed because an administrative or clerical error prevented the delivery of the request, the effective date must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment must not exceed 6 months from the date on which the Division of Human Resource Management receives the request.

4. An adjustment of steps which is made pursuant to subparagraph (1) of paragraph (a) of subsection 1 may be revoked when:

(a) The recruiting problem which caused the adjustment was due to the geographical location of the position; and

(b) The employee moves from one position to another position in either a different area within the department or agency in which the employee is currently employed or a different department or agency than the department or agency in which the employee is currently employed, and a similar recruiting problem does not exist in the new area, department or agency.

5. If an adjustment of steps is revoked pursuant to subsection 4, the employee must be placed at the step he or she would have received if he or she had not received the adjustment.

Sec. 3. NAC 284.206 is hereby amended to read as follows:

284.206 1. The Division of Human Resource Management may approve a special adjustment to the pay of an employee pursuant to this section. A request for a special adjustment to pay may be initiated by an employee, the appointing authority or the Division of Human Resource Management. A special adjustment to pay does not constitute a promotion.

2. An employee may receive a special adjustment to pay equivalent to 5 percent of the employee's base rate of pay during any period in which:

(a) The employee works out of his or her class on a continuing basis and performs essentially all the duties and responsibilities of a position classified at a higher grade. To receive the increase, the employee must be assigned duties and responsibilities of the higher grade which are clearly demonstrated in the class specification and carry out the duties and responsibilities for at least 16 consecutive workdays before the increase becomes effective. The adjustment to pay pursuant to this paragraph is effective retroactively, commencing on the date on which the employee assumed the additional duties and responsibilities. The adjustment to pay must not continue for more than 6 months in any 12-month period unless:

(1) The employee is underfilling a position pursuant to NAC 284.437.

(2) The duties and responsibilities that the employee has been carrying out have been assumed from one or more positions that have not been authorized to be filled because of a hiring freeze or fiscal emergency. A hiring freeze or fiscal emergency must be certified by the Chief of the Budget Division or, in the case of an agency that does not receive money from the State General Fund or the Nevada System of Higher Education, certified by the administrator of that agency or the System.

(3) The appointing authority submits a written request to the Administrator accompanied by documentation justifying an extension of the 6-month period and certifies that money is

available to pay for the continuation of the special adjustment to pay. The Administrator may authorize the continuation of the special adjustment to pay after receiving the request and documentation and determining that the extension of the 6-month period is a business necessity and in the best interest of the State.

(b) The employee is required to use bilingual skills or sign language for persons who are deaf at least 10 percent of his or her work time.

(c) The employee is supervising other employees of the same or a higher grade if the supervision:

(1) Is not part of the supervision or management responsibilities for a program that is provided for in the class specification; and

(2) Includes, without limitation, selection, work assignment, training, work review, reports on performance and discipline of employees.

(d) The employee is required regularly to perform custodial work and clean up human bodily waste in a medical, clinical or inpatient facility.

(e) Except as otherwise provided in this paragraph, the employee is conducting a formal training program for employees. The training program must:

(1) Be conducted weekly;

(2) Consist of training on the job and in the classroom or training only in the classroom;

(3) Include a test to determine the employees' progress in the program; and

(4) Result in the award of a certificate of completion or advancement in a class series to the journey level.

↪ If an adjustment to pay is granted pursuant to this paragraph, the adjustment begins when the employee starts conducting the training program and ends when the training program is

completed. An adjustment will not be granted if the duty to conduct training is clearly set forth in the class specification. Informal orientation given to new employees will not be considered for this special adjustment.

(f) The employee, if employed as a law enforcement officer, is assigned to motorcycle duty.

(g) The employee, if employed by the Department of Corrections, is responsible for the supervision of a group of inmates assigned to a work area of an institution and who is responsible for implementing security procedures, including, without limitation:

- (1) Securing the work area from inmates who are not authorized to enter the work area;
- (2) Accounting for all inmates who have been assigned to the work area; and
- (3) Accounting for all materials, tools and equipment in the work area.

↪ The adjustment to pay pursuant to this paragraph will be granted only if such duties are not provided for in the class specification.

(h) The employee is authorized by the Legislature to receive such an adjustment to his or her pay.

3. An employee may receive a special adjustment to pay if he or she occupies a position in which the duties have been recognized through the classification process as being at a higher level, but who does not meet the minimum qualifications for the class. The special adjustment to the employee's pay must be equivalent to 2.5 percent of the employee's base rate of pay if the employee performs duties classified one grade higher than his or her current position, or 5 percent of the employee's base rate of pay if the employee performs duties classified two or more grades higher than his or her current position. A special adjustment to an employee's pay made pursuant to this subsection may continue in effect from the date on which the position questionnaire is received:

- (a) Until the employee meets the minimum qualifications and is promoted;
- (b) For 1 year after the effective date of the special adjustment to pay; or
- (c) Until the date the higher level duties are removed,

↳ whichever occurs first.

4. Except as otherwise provided in paragraph (a) of subsection 2, any special adjustment to pay made pursuant to subsection 2 must be revoked when the conditions justifying it cease to exist.

5. Except as otherwise provided in this section, the effective date of a special adjustment to pay is the date on which the written request is received by the Division of Human Resource Management or the ~~personnel~~ *human resources* office of the agency at which the employee who is receiving the special adjustment to pay is employed. If the request for the special adjustment to pay is delayed because an administrative or clerical error prevented its delivery, the effective date of the special adjustment to pay must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment to pay must not exceed 6 months from the date on which the Division of Human Resource Management receives the written request.

Sec. 4. NAC 284.480 is hereby amended to read as follows:

284.480 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~~ *human resources* 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. 5. NAC 284.638 is hereby amended to read as follows:

284.638 1. If an employee's conduct comes under one of the causes for action listed in NAC 284.650, the supervisor shall inform the employee promptly and specifically of the conduct.

2. If appropriate and justified, following a discussion of the matter, a reasonable period of time for improvement or correction may be allowed before initiating disciplinary action.

3. In situations where an oral warning does not cause a correction of the condition or where a more severe initial action is warranted, a written reprimand prepared on a form prescribed by the Division of Human Resource Management must be sent to the employee and a copy placed in the employee's ~~personnel folder~~ *human resources file* which is filed with the Division of Human Resource Management.

Sec. 6. NAC 284.662 is hereby amended to read as follows:

284.662 1. An employee filing for a review of a grievance or complaint may be assisted or represented by any person of his or her choosing, if the person agrees to act in this capacity, at any step of the procedure except the initial informal discussion with his or her immediate supervisor.

2. If the assistant is a state employee, he or she may only assist on his or her own time.

3. An employee may not be discriminated against in recruitment, examination, appointment, training, promotion, retention, classification or any other ~~personnel~~ *human resources* action for informally seeking or formally filing a request to have his or her grievance or complaint reviewed, testifying on behalf of another employee, helping another employee prepare a grievance or complaint or acting as a representative of any employee requesting a review of a grievance or complaint.

4. To assist in resolving an employee's grievance or complaint, the resources and consultation available from the Division of Human Resource Management and the ~~personnel~~ *human resources* offices of the agency must be made available to all parties.

Sec. 7. NAC 284.696 is hereby amended to read as follows:

284.696 1. An employee alleging unlawful discrimination based on any pertinent state or federal law or regulation may:

(a) Report the alleged discrimination to:

(1) The division of the Division of Human Resource Management that investigates sex- or gender-based harassment and discrimination;

(2) The Attorney General;

(3) The employee's appointing authority;

(4) An equal employment opportunity officer;

(5) A ~~personnel~~ *human resources* representative of the department in which the employee is employed; or

(6) The office charged with enforcing affirmative action within the appropriate university, state college or community college which is part of the Nevada System of Higher Education;

(b) Except as otherwise provided in NRS 284.384, use the procedure for the adjustment of a grievance contained in NAC 284.658 to 284.6957, inclusive; or

(c) File a complaint, other than a complaint described in NAC 284.658, with:

(1) The Nevada Equal Rights Commission pursuant to NRS 613.405; or

(2) The United States Equal Employment Opportunity Commission.

2. The appointing authority of an employee who has alleged unlawful discrimination shall promptly notify the deputy attorney general or staff counsel assigned to represent the agency of the allegation and the actions which are being undertaken by the agency to address the allegation.

Sec. 8. NAC 284.710 is hereby amended to read as follows:

284.710 Any ~~personnel~~ *human resources* documents effecting changes in an employee's pay and having the identical effective date will be processed in the following order:

1. Merit pay increases.
2. Reclassifications or overall adjustments to the compensation plan.
3. Promotions or demotions.