

# **PROPOSED REGULATION OF THE PERSONNEL COMMISSION**

**LCB File No. R043-15**

## **NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON PROPOSED PERMANENT REGULATIONS**

The Division of Human Resource Management, 100 N. Stewart Street, Carson City, Nevada, telephone number (775) 684-0148, is proposing the amendments and repeal of regulations pertaining to Chapter 284 of Nevada Administrative Code for permanent adoption. A workshop has been set for 9:00 a.m. on Wednesday, August 12, 2015, at the Legislative Counsel Bureau, Room 2135, 401 S. Carson St., Carson City, Nevada and by video conference at the Grant Sawyer Building, Room 4412E, 555 E. Washington Ave., Las Vegas, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following topics that may be addressed in the proposed regulations:

<b><u>NAC #</u></b>	<b><u>Regulation Leadline</u></b>
284.462	Restoration of promoted employee to former position.
NEW	“Reassignment” defined.
284.177	Rate of pay: Effect of reemployment.
284.6014	Eligibility of employee with permanent disability for reemployment.
284.094	“Reclassification” defined.
284.439	Reports of appointments.
284.611	Separation for physical, mental or emotional disorder.
NEW	Reassignment: Process for placement of a permanent classified employee with a disability as part of the accommodation process.
284.120	Adoption by reference of federal law, regulations and manual regarding persons with disabilities.
284.658	“Grievance” defined.
284.678	Submission, form and contents of grievance; informal discussions.
284.695	Submission of grievance to Employee-Management Committee.

- 284.6955                      Hearing before Employee-Management Committee: Procedure.
- 284.6957                      Hearing before Employee-Management Committee: Continuance.
- 284.697                        When resolution of grievance becomes binding.

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the Division of Human Resource Management at 100 N. Stewart Street, Suite 200, Carson City, Nevada, telephone number (775) 684-0148, or 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-2663. A reasonable fee for copying may be charged. The agency's small business impact statement is attached.

This Notice of Workshop to Solicit Comments on Proposed Permanent Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

CARSON CITY

Blasdel Building, 209 E. Musser St.  
NV State Library and Archives, 100 N. Stewart St.  
Legislative Counsel Bureau (LCB), 401 S. Carson St.  
LCB website: [www.leg.state.nv.us](http://www.leg.state.nv.us)  
Division of Human Resource Management  
website: [www.hr.nv.gov](http://www.hr.nv.gov)  
Nevada Public Notice  
website: [www.notice.nv.gov](http://www.notice.nv.gov)

LAS VEGAS

Grant Sawyer State Office Building,  
555 Washington Ave.

In addition, this Notice of Workshop to Solicit Comments on Proposed Permanent Regulations has been sent to:

ALL STATE AGENCIES

ALL NEVADA COUNTY PUBLIC LIBRARIES

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**NOTE:**        We are pleased to make reasonable accommodations for individuals with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Division of Human Resource Management, in writing, at 100 N. Stewart Street, Suite 200, Carson City, Nevada 89701-4204 or call Carrie Lee at (775) 684-0135, no later than five working days before the meeting.

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## Proposed Permanent Regulation Amendments

### VERSION #1

**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session amends NRS 284.300 requiring the Personnel Commission to adopt regulations regarding an employee who fails to attain permanent status in the position to which the appointee was promoted, i.e., didn't pass his or her trial period, or who is dismissed for cause other than misconduct or delinquency on the appointee's part, i.e., laid off, from the position to which the employee was promoted.

This amendment, proposed by the Division of Human Resource Management, makes NAC 284.462 consistent with the revisions to NRS 284.300, changes eligibility for restoration to those employees who have completed an initial probationary period, defines "seniority" for the purposes of restoration, and clarifies that placement into a vacant position at the same or lower grade will be in the agency in which the employee was employed prior to promotion. Additionally, the amendment addresses what happens to an employee when he or she is displaced by another employee with greater seniority.

**NAC 284.462 Restoration of promoted employee to former position.** (NRS 284.065, 284.155, 284.290)

1. For the purposes of this section only ~~["promotion"]~~ :

(a) **"Promotion"** means any movement into a vacant position which has a higher grade than the position previously occupied by a classified employee who has ~~[served 6 months of continuous (full time equivalent) service.]~~ **completed an initial probationary period.**

(b) **"Seniority," for the purposes of paragraph (a) of subsection 2, means the total number of years of continuous full-time equivalent service, as defined in NAC 284.0525, up to the effective date of the action. When calculating the total number of years of full-time equivalent service, no reductions will be made for periods of paid or unpaid leave or due to periods of below standard performance. If seniority is otherwise equal, seniority must be determined by lot.**

2. An employee promoted pursuant to subsection 1 who fails to attain permanent status in the position to which he or she was promoted or who is dismissed for a cause other than misconduct or delinquency on his or her part from the position to which he or she was promoted, either during the probationary period or at its conclusion, must be ~~[restored to the position from which he or she was promoted.]~~ :

(a) **Restored to the position from which the appointee was promoted unless the position has been filled by an employee with greater seniority;**

(b) **Placed in a position in the agency from which the appointee promoted other than the position from which he or she was promoted and for which a vacancy exists in the class held immediately before the promotion; or**

(c) **If no position described in paragraph (a) or (b) exists:**

(1) **Appointed to a position in the agency from which the appointee promoted and for which a vacancy exists in a job class equal to or lower than the class held immediately before the promotion; or**

(2) **Placed on an appropriate reemployment list,**

➡ **and for which the employee meets the minimum qualifications.**

3. If an employee fails to attain permanent status and is restored to his or her former position **or will be placed into a vacant position**, the appointing authority which is effecting the ~~restoration~~ **action** must give written notice to the agency from which the employee was promoted at least 30 calendar days before the effective date. The agency which is taking **the** action ~~to restore the employee to his or her former position~~ is liable for the payment of the employee during this 30-day period unless the agency ~~to which the employee is being restored~~ **receiving the employee** agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if ~~a report of separation or notice of intent to restore an employee to his or her former position has been~~ **notice of the action has been** provided to the employee and filed with the Division of Human Resource Management on or before the last day of his or her probationary period, even though the ~~separation or restoration~~ **action** takes place after the last day of the probationary period.

4. ~~A demotion~~ **Rejection** from probationary status ~~in a higher class to the former lower level class, may not be appealed.~~ **from the position to which promoted cannot be appealed or grieved.**

5. **If a restored employee displaces an employee with less seniority pursuant to paragraph (a) of subsection 2, the displaced employee shall be placed, in the following order unless the employee waives his or her rights:**

**(a) In a vacant position in the same job class within his or her agency;**

**(b) In a vacant position in a comparable class within his or her agency for which the employee meets the minimum qualifications;**

**(c) In a vacant position in a class with a lower grade closest grade to the grade most recently held for which the employee meets the minimum qualifications; or**

**(d) If neither (a), (b), nor (c) is available and the employee has attained permanent status with the state, the employee will be placed on appropriate reemployment lists.**

~~Personnel Div., Rule VIII § C subsec. 4, eff. 8-11-73; A 4-14-76~~—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89)

## **VERSION #2**

**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session amends NRS 284.300 requiring the Personnel Commission to adopt regulations regarding an employee who fails to attain permanent status in the position to which the appointee was promoted, i.e., didn't pass his or her trial period, or who is dismissed for cause other than misconduct or delinquency on the appointee's part, i.e., laid off, from the position to which the employee was promoted.

This amendment, proposed by the Division of Human Resource Management, makes NAC 284.462 consistent with the revisions to NRS 284.300, changes eligibility for restoration to those employees who have completed an initial probationary period, includes the process for calculating seniority for restoration, and clarifies that placement into a vacant position at the same or lower grade will be in the agency in which the employee was employed prior to promotion. Additionally, the amendment addresses what happens to an employee when he or she is displaced by another employee with greater seniority.

**NAC 284.462 Restoration of promoted employee to former position.** (NRS 284.065, 284.155, 284.290)

1. For the purposes of this section only “promotion” means any movement into a vacant position which has a higher grade than the position previously occupied by a classified employee who has ~~[-served 6 months of continuous (full-time equivalent) service-]~~ *completed an initial probationary period.*

2. An employee promoted pursuant to subsection 1 who fails to attain permanent status in the position to which he or she was promoted or who is dismissed for a cause other than misconduct or delinquency on his or her part from the position to which he or she was promoted, either during the probationary period or at its conclusion, must be ~~[-restored to the position from which he or she was promoted-]~~ :

*(a) Restored to the position from which the appointee was promoted unless the position has been filled by an employee with greater seniority;*

*(b) Placed in a position in the agency from which the appointee promoted other than the position from which he or she was promoted and for which a vacancy exists in the class held immediately before the promotion; or*

*(c) If no position described in paragraph (a) or (b) exists:*

*(1) Appointed to a position in the agency from which the appointee promoted and for which a vacancy exists in a job class equal to or lower than the class held immediately before the promotion; or*

*(2) Placed on an appropriate reemployment list,*

*↪ and for which the employee meets the minimum qualifications.*

3. *For the purposes of calculating an employee’s seniority for paragraph (a) of subsection 2:*

*(a) Except as otherwise provided in this section, the total number of years of continuous full-time equivalent service up to the effective date of the restoration must be included.*

*(b) Except as otherwise provided in subsection 4, the sum of the calculation made pursuant to paragraph (a) or, if applicable, subsection 7 must be reduced by the following periods if those periods occurred during the 36 months immediately preceding the date of the notification of restoration:*

*(1) For a nonexempt employee, any combination of leave without pay and catastrophic leave in excess of 240 hours in the period preceding the date of the notification of restoration equal to 12 months of full-time equivalent service;*

*(2) For an exempt classified employee or exempt unclassified employee, any combination of leave without pay and catastrophic leave in excess of 30 working days in the period preceding the date of the notification of restoration equal to 12 months of full-time equivalent service; and*

*(3) Any time covered by a report on performance which rated the employee below standard, excluding evaluations received within 75 calendar days before the notification of restoration.*

4. *For the purposes of the reduction in the calculation of seniority required by paragraph (b) of subsection 3:*

*(a) The reduction may not include:*

*(1) A leave of absence without pay during a fiscal emergency of the State or an agency pursuant to NAC 284.580;*

(2) A leave of absence without pay for a work-related injury or illness pursuant to NRS 281.390; or

(3) A military leave of absence pursuant to NRS 284.359.

(b) As set forth in subparagraphs (1) and (2) of paragraph (b) of subsection 3, an employee whose base hours are more than 80 hours biweekly must be allotted additional leave without pay and catastrophic leave in proportion to the base hours for his or her pay class designation.

5. For the purposes of calculating seniority for restoration, if seniority is otherwise equal, seniority must be determined in the following order:

(a) Total time within the occupational group;

(b) Total time within the department; and

(c) By lot.

6. For the purposes of calculating seniority for reemployment, if seniority is otherwise equal, seniority must be determined by lot.

7. A department may request from the Commission approval to calculate the number of years of continuous full-time equivalent service of an employee of the department by doubling the time spent by the employee in his or her present occupational group as categorized by NRS 284.171 and adding that amount to the time spent by the employee in all former occupational groups up to the date of restoration. If the Commission approves the request of the department to calculate the number of years of service pursuant to this section, the department shall use this method to calculate the number of years of service:

(a) Only to determine which employees will receive a restoration notice and not for the placement of those employees on the reemployment list; and

(b) Until the department seeks from and is granted approval by the Commission to revert to the method of calculating the number of years of service set forth in paragraph (a) of subsection 3.

~~[3.]~~ 8. If an employee fails to attain permanent status and is restored to his or her former position **or will be placed into a vacant position**, the appointing authority which is effecting the ~~[restoration]~~ **action** must give written notice to the agency from which the employee was promoted at least 30 calendar days before the effective date. The agency which is taking **the** action ~~[to restore the employee to his or her former position]~~ is liable for the payment of the employee during this 30-day period unless the agency ~~[to which the employee is being restored]~~ **receiving the employee** agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if ~~[a report of separation or notice of intent to restore an employee to his or her former position has been]~~ **notice of the action has been** provided to the employee and filed with the Division of Human Resource Management on or before the last day of his or her probationary period, even though the ~~[separation or restoration]~~ **action** takes place after the last day of the probationary period.

~~[4.]~~ 9. ~~[A demotion]~~ **Rejection** from probationary status ~~[in a higher class to the former lower level class, may not be appealed.]~~ **from the position to which promoted cannot be appealed or grieved.**

10. If a restored employee displaces an employee with less seniority pursuant to paragraph (a) of subsection 2, the displaced employee shall be placed, in the following order unless the employee waives his or her rights:

- (a) In a vacant position in the same job class within his or her agency;*
- (b) In a vacant position in a comparable class within his or her agency for which the employee meets the minimum qualifications;*
- (c) In a vacant position in a class with a lower grade closest grade to the grade most recently held for which the employee meets the minimum qualifications; or*
- (d) If neither (a), (b), nor (c) is available and the employee has attained permanent status with the state, the employee will be placed on appropriate reemployment lists.*

~~{Personnel Div., Rule VIII § C subsec. 4, eff. 8-11-73; A 4-14-76}~~ (NAC A by Dep't of Personnel, 10-26-84; 7-21-89)

### **VERSION #3**

**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session amends NRS 284.300 requiring the Personnel Commission to adopt regulations regarding an employee who fails to attain permanent status in the position to which the appointee was promoted, i.e., didn't pass his or her trial period, or who is dismissed for cause other than misconduct or delinquency on the appointee's part, i.e., laid off, from the position to which the employee was promoted.

This amendment, proposed by the Division of Human Resource Management, makes NAC 284.462 consistent with the revisions to NRS 284.300, changes eligibility for restoration to those employees who have completed an initial probationary period, includes the process for calculating seniority for restoration, and clarifies that placement into a vacant position at the same or lower grade will be in the agency in which the employee was employed prior to promotion. Additionally, the amendment addresses what happens to an employee when he or she is displaced by another employee with greater seniority.

**NAC 284.462 Restoration of promoted employee to former position.** (NRS 284.065, 284.155, 284.290)

1. For the purposes of this section only "promotion" means any movement into a vacant position which has a higher grade than the position previously occupied by a classified employee who has ~~{served 6 months of continuous (full-time equivalent) service.}~~ ***completed an initial probationary period.***

2. An employee promoted pursuant to subsection 1 who fails to attain permanent status in the position to which he or she was promoted or who is dismissed for a cause other than misconduct or delinquency on his or her part from the position to which he or she was promoted, either during the probationary period or at its conclusion, must be ~~{restored to the position from which he or she was promoted.}~~ :

***(a) Restored to the position from which the appointee was promoted unless the position has been filled by an employee with greater seniority;***

***(b) Placed in a position in the agency from which the appointee promoted other than the position from which he or she was promoted and for which a vacancy exists in the class held immediately before the promotion; or***

***(c) If no position described in paragraph (a) or (b) exists:***



(1) Appointed to a position in the agency from which the appointee promoted and for which a vacancy exists in a job class equal to or lower than the class held immediately before the promotion; or

(2) Placed on an appropriate reemployment list,

↪ and for which the employee meets the minimum qualifications.

3. For the purposes of calculating an employee's seniority for paragraph (a) of subsection 2:

(a) Except as otherwise provided in this section, the total number of years of continuous full-time equivalent service up to the effective date of the restoration must be included.

(b) Except as otherwise provided in subsection 4, the sum of the calculation made pursuant to paragraph (a) or, if applicable, subsection 7 must be reduced by the following periods if those periods occurred during the 36 months immediately preceding the date of the notification of restoration:

(1) For a nonexempt employee, any combination of leave without pay and catastrophic leave in excess of 240 hours in the period preceding the date of the notification of restoration equal to 12 months of full-time equivalent service;

(2) For an exempt classified employee or exempt unclassified employee, any combination of leave without pay and catastrophic leave in excess of 30 working days in the period preceding the date of the notification of restoration equal to 12 months of full-time equivalent service; and

(3) Any time covered by a report on performance which rated the employee below standard, excluding evaluations received within 75 calendar days before the notification of restoration.

4. For the purposes of the reduction in the calculation of seniority required by paragraph (b) of subsection 3:

(a) The reduction may not include:

(1) A leave of absence without pay during a fiscal emergency of the State or an agency pursuant to NAC 284.580;

(2) A leave of absence without pay for a work-related injury or illness pursuant to NRS 281.390; or

(3) A military leave of absence pursuant to NRS 284.359.

(b) As set forth in subparagraphs (1) and (2) of paragraph (b) of subsection 3, an employee whose base hours are more than 80 hours biweekly must be allotted additional leave without pay and catastrophic leave in proportion to the base hours for his or her pay class designation.

5. For the purposes of calculating seniority for restoration, if seniority is otherwise equal, seniority must be determined in the following order:

(a) Total time within the occupational group;

(b) Total time within the department; and

(c) By lot.

6. For the purposes of calculating seniority for reemployment, if seniority is otherwise equal, seniority must be determined by lot.

~~[3-]~~ 7. If an employee fails to attain permanent status and is restored to his or her former position **or will be placed into a vacant position**, the appointing authority which is effecting the ~~[restoration]~~ **action** must give written notice to the agency from which the employee was



promoted at least 30 calendar days before the effective date. The agency which is taking *the* action ~~[to restore the employee to his or her former position]~~ is liable for the payment of the employee during this 30-day period unless the agency ~~[to which the employee is being restored]~~ *receiving the employee* agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if ~~[a report of separation or notice of intent to restore an employee to his or her former position has been]~~ *notice of the action has been* provided to the employee and filed with the Division of Human Resource Management on or before the last day of his or her probationary period, even though the ~~[separation or restoration]~~ *action* takes place after the last day of the probationary period.

~~[4.]~~ **8.** ~~[A demotion]~~ *Rejection* from probationary status ~~[in a higher class to the former lower level class, may not be appealed.]~~ *from the position to which promoted cannot be appealed or grieved.*

*9. If a restored employee displaces an employee with less seniority pursuant to paragraph (a) of subsection 2, the displaced employee shall be placed, in the following order unless the employee waives his or her rights:*

*(a) In a vacant position in the same job class within his or her agency;*

*(b) In a vacant position in a comparable class within his or her agency for which the employee meets the minimum qualifications;*

*(c) In a vacant position in a class with a lower grade closest grade to the grade most recently held for which the employee meets the minimum qualifications; or*

*(d) If neither (a), (b), nor (c) is available and the employee has attained permanent status with the state, the employee will be placed on appropriate reemployment lists.*

~~[Personnel Div., Rule VIII § C subsec. 4, eff. 8-11-73; A 4-14-76]~~—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89)

**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session allows the Personnel Commission to adopt regulations for the non-competitive appointment of an employee with a disability. As a result, several amendments have been proposed which are intended to bring the State's reasonable accommodation process into closer alignment with the Americans with Disabilities Act's (ADA) provisions.

The Division of Human Resource Management proposes a new section to define the term "reassignment" for the purposes of accommodation of a permanent classified employee. The amendment specifically applies to classified employees; however, the State's reassignment obligation under the ADA applies to all employees including those in unclassified and non-classified positions.

**NEW: "Reassignment" defined.**

*"Reassignment" means the noncompetitive placement, subject to the appointing authority's approval, of a permanent employee, as a reasonable accommodation, to a position within the same grade or, if a position in the same grade is not available, to a position in a class with a lower grade for which the employee meets the minimum qualifications and can perform the essential functions.*



**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session allows the Personnel Commission to adopt regulations for the non-competitive appointment of an employee with a disability. As a result, several amendments have been proposed which are intended to bring the State's reasonable accommodation process into closer alignment with the Americans with Disabilities Act's (ADA) provisions.

The Division of Human Resource Management proposes an amendment to this section to establish that if an employee is reassigned to a position with a grade lower than the employee's current grade, the employee's rate of pay must be placed at the step within the grade which most closely corresponds to the employee's current base rate of pay.

**NAC 284.177 Rate of pay: Effect of reemployment *or reassignment*. (NRS 284.065, 284.155, 284.175)**

1. Except as otherwise provided in this section, if a person is reemployed *or reassigned*, he or she must be placed at the step which most closely corresponds to the base rate of pay which he or she held at the time of his or her layoff ~~for~~, separation *or reassignment*.

2. Except as otherwise provided in subsection 3, an exception to subsection 1 may be made if the conditions in NAC 284.204 exist, or if money is not available as certified by the Chief of the Budget Division or, in the case of an agency that is not funded from the State General Fund or the Nevada System of Higher Education, as certified by the administrator of that agency or the System. If an exception to subsection 1 is made pursuant to this subsection because the agency does not have sufficient money available, the employee retains the right of reemployment *or reassignment*.

3. If a person who is eligible for military reemployment is reemployed, the provisions of subsection 1 apply except that the period of the military service must be included in calculating the step at which he or she will be placed.

(Added to NAC by Personnel Comm'n by R133-12, eff. 10-4-2013)

**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session allows the Personnel Commission to adopt regulations for the non-competitive appointment of an employee with a disability. As a result, several amendments have been proposed which are intended to bring the State's reasonable accommodation process into closer alignment with the Americans with Disabilities Act's (ADA) provisions.

The amendment, proposed by the Division of Human Resource Management, established that an appointing authority must attempt to reassign an employee with a workers' compensation injury or illness prior to the employee becoming eligible for reemployment.

**NAC 284.6014 Eligibility of employee with permanent disability for reemployment. (NRS 284.065, 284.155, 284.305)**

1. An employee is eligible for reemployment under this section if:

(a) He or she is a permanent employee;

(b) He or she would otherwise have continued in his or her regular position;

(c) He or she is unable to perform the essential functions of his or her regular position, even with reasonable accommodation, because he or she has a permanent disability arising from a work-related injury or occupational disease;

*(d) The employee's appointing authority in consultation with the Division of Human Resource Management has determined that the employee cannot be reassigned;*

~~[(d)]~~ (e) The Risk Management Division receives notification from the insurer certifying that the employee has a medical condition which, in the opinion of the medical adviser to the insurer, will result in a permanent partial disability;

~~[(e)]~~ (f) The Risk Management Division receives notification from the insurer certifying that the employee has permanent physical restrictions as a result of the permanent disability and that he or she is eligible for vocational rehabilitation benefits;

~~[(f)]~~ (g) The Risk Management Division receives notification from the insurer certifying that the employee's claim for benefits from the insurer is not being contested through the hearing and appeal process provided pursuant to chapters 616A to 617, inclusive, of NRS; and

~~[(g)]~~ (h) He or she submits to the Division of Human Resource Management a completed job development form supplied by the Division of Human Resource Management not later than 30 days after the date on which he or she sustained the permanent disability.

2. A person is entitled to reemployment under this section only within the department that employed him or her at the time he or she sustained the permanent disability. Such entitlement to reemployment applies to the class and option of his or her regular position and to any class for which the employee qualifies that does not exceed the grade level of his or her regular position.

3. A person is entitled to reemployment under this section only in a full-time position if his or her regular position was on a full-time basis. A person whose regular position was on a part-time, seasonal or intermittent basis only is entitled to reemployment on the same basis as his or her regular position. A person who is entitled to reemployment on a full-time basis may be reemployed on either a full-time or part-time basis, as appropriate, based on his or her permanent physical restrictions as certified by the insurer.

4. The employee, his or her appointing authority and his or her vocational rehabilitation counselor shall provide any necessary information for job development and reemployment on the forms prescribed by the Division of Human Resource Management.

(Added to NAC by Dep't of Personnel, eff. 3-1-96; A by R197-99, 1-26-2000; A by Personnel Comm'n by R142-05, 12-29-2005)

**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session allows the Personnel Commission to adopt regulations for the non-competitive appointment of an employee with a disability. As a result, several amendments have been proposed to bring the State's reasonable accommodation process into closer alignment with the Americans with Disabilities Act's (ADA) provisions.

The following amendment, proposed by the Division of Human Resource Management, removes the word "reassignment" because it will now be a defined term as a part of the reasonable accommodation process.

**NAC 284.094 "Reclassification" defined. (NRS 284.065)** "Reclassification" means a ~~reassignment or~~ change in **the** allocation of a position by:

1. Raising it to a class with a higher grade;

2. Reducing it to a class with a lower grade; or
3. Moving it to another class at the same grade on the basis of significant changes in kind, difficulty or responsibility of the work performed.

~~[Personnel Div., Rule 1 § D subsec. 23, eff. 8-11-73; renumbered as subsec. 24, 4-14-76]~~

(NAC A by Dep't of Personnel, 10-26-84)

**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session allows the Personnel Commission to adopt regulations for the non-competitive appointment of an employee with a disability. As a result, several amendments have been proposed to bring the State's reasonable accommodation process into closer alignment with the Americans with Disabilities Act's (ADA) provisions.

The amendment to this section, proposed by the Division of Human Resource Management, is necessary because the word "reassignment" will become a defined term describing a new appointment type. This type of appointment should be included in the reports of appointment pursuant to NRS 284.121.

**NAC 284.439 Reports of appointments. (NRS 284.065, 284.121, 284.155)** Reports of appointments made pursuant to NRS 284.121 must include the type of position, the type of appointment, and the employee's status of appointment as follows:

1. The type of classified position must be:
  - (a) Permanent;
  - (b) Special project;
  - (c) Temporary;
  - (d) Seasonal; or
  - (e) Intermittent.
2. The type of appointment to a classified position must be:
  - (a) Demotion;
  - (b) Reemployment;
  - (c) Transfer;
  - (d) Reappointment;
  - (e) Promotion;
  - (f) Reinstatement; ~~for~~
  - (g) New hire ~~for~~; or
  - (h) Reassignment.**
3. The status of appointment in a classified position must be:
  - (a) Probationary for a nonpermanent employee;
  - (b) Permanent;
  - (c) Trial period for a permanent employee;
  - (d) Provisional;
  - (e) Emergency;
  - (f) Temporary; or
  - (g) Special disabled.
4. In the unclassified service, the type of position, type of appointment and status of appointment are each "unclassified."

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 8-1-91; 7-6-92; A by Personnel Comm'n by R183-03, 1-27-2004)—(Substituted in revision for NAC 284.383)

**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session allows the Personnel Commission to adopt regulations for the non-competitive appointment of an employee with a disability. As a result several amendments have been proposed which are intended to bring the State's reasonable accommodation process into closer alignment with the Americans with Disabilities Act's (ADA) provisions.

The following amendment, proposed by the Division of Human Resource Management, is based upon S.B. 62 of the 2015 Legislative Session. The amendment clarifies that reassignment is the final type of reasonable accommodation that must be attempted prior to separating an employee due to "a physical, mental or emotional disorder".

**NAC 284.611 Separation for physical, mental or emotional disorder. (NRS 284.065, 284.155, 284.355, 284.383, 284.385, 284.390)**

1. Before separating an employee because of a physical, mental or emotional disorder which results in the inability of the employee to perform the essential functions of his or her job, the appointing authority must:

(a) Verify with the employee's physician or by an independent medical evaluation paid for by the appointing authority that the condition does not, or is not expected to, respond to treatment or that an extended absence from work will be required;

(b) Determine whether reasonable accommodation can be made to enable the employee to perform the essential functions of his or her job **to include:**

***(1) Reassignment, if the employee's appointing authority has determined that there is no reasonable accommodation that will allow the employee to remain in his or her current position or all other reasonable accommodation would impose an undue hardship as defined in 29 CFR § 1630.2.***

(c) Make a request to the Administrator of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation to obtain the services provided by that Division, or if the employee is receiving worker's compensation, request the services of the rehabilitation provider, to evaluate the employee's condition and to provide any rehabilitative services possible; and

(d) Ensure that all reasonable efforts have been made to retain the employee.

2. A separation pursuant to this section is only justified when:

(a) The information obtained through the procedures specified in subsection 1 supports the decision to separate;

(b) The employee is not on sick leave or other approved leave; and

(c) A referral has been made to the Public Employees' Retirement System and the employee has been determined to be ineligible for, or has refused, disability retirement.

3. A permanent employee separated pursuant to this section is entitled to the same rights and privileges afforded permanent employees who are dismissed for disciplinary reasons. The procedures contained in NAC **284.656, 284.6561 and** 284.6563 must be followed, and he or she may appeal the separation to the hearing officer.

4. A permanent employee who is separated because of a physical, mental or emotional disorder is eligible for reinstatement pursuant to NAC 284.386 if he or she recovers from the disorder.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-1-91; 12-26-91; 7-6-92; R197-99, 1-26-2000; A by Personnel Comm'n by R182-03, 1-27-2004; R143-05, 12-29-2005; R063-09, 11-25-2009, **R009-14, 6-23-14**)

**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session allows the Personnel Commission to adopt regulations for the non-competitive appointment of an employee with a disability. As a result, several amendments have been proposed which are intended to bring the State's reasonable accommodation process into closer alignment with the Americans with Disabilities Act's (ADA) provisions.

The Division of Human Resource Management proposes a new section to establish a method of retaining a qualified employee with a disability who is no longer able to perform the essential functions of his or her current position by noncompetitively placing him or her into another position within the State. The amendment specifically applies to classified employees; however, the State's reassignment obligation under the ADA applies to all employees including those in unclassified and non-classified positions.

The newly proposed section describes the reassignment process that will be used when a permanent classified employee can no longer perform the essential functions of his or her position with or without reasonable accommodation. As part of the interactive process, the Division will work with the State agency of the employee to determine if a vacant or soon to be vacant position is available and if the employee meets the minimum qualifications. The Equal Employment Opportunity Commission in its own posted Policy on Reasonable Accommodations outlines that when considering reassignment, they consider positions currently vacant and positions which they have "reason to believe will become vacant within 60 days from the date the search is initiated."

An offer of appointment to such a position at the employee's same grade level and within the same occupational group within the employee's agency will be made first. If no such position is available, then an offer of placement at the same grade level in the current agency will be made. Then, the search will be broadened into different agencies. If no position is available at the employee's current grade, the search is expanded into looking for the position with the closest grade to the employee's current grade. And, if multiple positions exist with the closest grade to the employee's current grade in the employee's current agency, another agency or multiple agencies, consideration of the position(s) in the employee's current agency will be made first.

During the search for positions in the same grade, both within and outside the employee's current agency, an effort will be made to place the employee in a position within the same occupational group due to the impact on both potential layoff seniority calculations and to minimize any impact on the employee's career path.



The term “agency” has been defined to clarify that both departments as defined in regulation and other organizations such as boards, commissions and elected officials shall participate in the interactive process.

**NEW: Reassignment: Process for placement of a permanent classified employee with a disability as part of the accommodation process.**

*1. As part of the reasonable accommodation process required by the Americans with Disabilities Act and as adopted by reference in NAC 284.120, the Division of Human Resource Management will support the accommodation process of a permanent classified employee with a disability by assisting the employee’s appointing authority, in identifying vacant or soon to be vacant positions for which the employee meets the minimum qualifications. The employee shall be referred to such positions until the employee ends his or her participation in the process, a position is offered, or it is determined that no other positions are available. An employee shall be referred to positions outside of his or her geographical location, however an employee not participating in the process or refusing an offer of a position outside of his or her geographical location shall not affect his or her reassignment rights pursuant to this section.*

*If a vacant or soon to be vacant position:*

*(a) At the employee’s current grade and within the current position’s occupational group is identified within the employee’s agency, the appointing authority, or the designated representative of the appointing authority, will, through the interactive process, determine if the employee can perform the essential functions of the position.*

*(b) Is not identified pursuant to paragraph (a) of subsection 1, but a position at the employee’s current grade not in the current position’s occupational group is identified within the employee’s agency, the appointing authority, or the designated representative of the appointing authority, will, through the interactive process, determine if the employee can perform the essential functions of the position.*

*(c) Is not identified pursuant to paragraph (b) of subsection 1, but a position at the employee’s current grade within the current position’s occupational group is identified by the Division of Human Resource Management within another agency, the appointing authority of the position, or the designated representative of the appointing authority, will, through the interactive process, determine if the employee can perform the essential functions of the position.*

*(d) Is not identified pursuant to paragraph (c) of subsection 1, but a position at the employee’s current grade not within the current position’s occupational group is identified by the Division of Human Resource Management within another agency, the appointing authority of the position, or the designated representative of the appointing authority, will, through the interactive process, determine if the employee can perform the essential functions of the position.*

*(e) Is not identified pursuant to paragraph (d) of subsection 1, the employee’s appointing authority, or the designated representative of the appointing authority, shall determine if a position in a class with a lower grade is available within the employee’s agency and shall*

*work with the Division of Human Resource Management to determine if a position in a class with a lower grade is available within another agency.*

*(1) If such a position is determined to be available, the appointing authority of that position, or the designated representative of the appointing authority, will, through the interactive process, determine if the employee can perform the essential functions of the position;*

*(2) If multiple positions with different grades are determined to be available within the employee's current agency, within another agency or within multiple agencies, the employee shall be referred, in the following order, to positions:*

*(I) With the grade closest to the employee's current grade.*

*(II) Within the employee's current agency.*

*(III) Within another agency.*

*The appointing authority of the position, or the designated representative of the appointing authority, will, through the interactive process, determine if the employee can perform the essential functions of the position.*

*□ For the purposes of this section, with the approval of the appointing authority of the position, or the designated representative of the appointing authority, the employee shall be offered the position unless the appointing authority can demonstrate that such an appointment would be an undue hardship.*

*2. If a vacant or soon to be vacant position at the employee's current grade is not identified within the employee's agency but a position at a lower grade is identified in the employee's agency and the appointing authority, or designated representative of the appointing authority, determines the employee can perform the essential functions of the position, the appointing authority, or designated representative of the appointing authority, may offer the employee the position and the employee may choose to accept the offered position. For a period of 60 days following such an appointment, the employee will be able to exercise his or her reassignment rights as outlined in this subsection.*

*3. As used in this section:*

*(a) "Soon to be vacant" means that the Division of Human Resource Management has been made aware of an imminent vacancy, and the employee is able and available to fill the position within 30 days of the position becoming open;*

*(b) "Agency" means a department as defined pursuant to NAC 284.055 or another entity of the Executive Branch of State Government which employs classified workers to include offices of elected officials. For the purposes of this section, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be agencies; and*

*(c) "Geographical location" means:*

*(I) Clark, Lincoln, Nye and Esmeralda Counties;*

*(II) Carson City, Lyon, Churchill, Storey, Douglas, Mineral and Washoe Counties;*

*(III) Pershing, Humboldt, Elko, Lander, Eureka and White Pine Counties; or*

*(IV) Any city located outside of this State.*

**4. The reassignment of an employee as an accommodation under this section will take precedence over all other types of appointment and use of lists including those in NAC 284.358.**

**Explanation of Proposed Change:** S.B. 62 of the 2015 Legislative Session allows the Personnel Commission to adopt regulations for the non-competitive appointment of an employee with a disability. As a result, several amendments have been proposed which are intended to bring the State's reasonable accommodation process into closer alignment with the Americans with Disabilities Act's (ADA) provisions.

This amendment, proposed by the Division of Human Resource Management, is contingent upon the adoption the newly proposed section, which is included above, establishing a process for the placement of a permanent, classified employee with a disability as part of the accommodation process required by the American's with Disabilities Act. That newly proposed regulation references NAC 284.120, which identifies resources an individual can reference to find the meaning of specific terms used in NAC 284, which are related used to persons with disabilities.

**NAC 284.120 Adoption by reference of federal law, regulations and manual regarding persons with disabilities. (NRS 284.065)**

1. For the purposes of determining the meaning of "essential functions of a position," **"interactive process,"** "person with a disability," "qualified person with a disability" and "reasonable accommodation," the Division of Human Resource Management hereby adopts by reference and will refer to:

- (a) The Americans with Disabilities Act of 1990 (Public Law 101-336).
- (b) The ADA Amendments Act of 2008 (Public Law 110-325).
- (c) The provisions of 29 C.F.R. Part 1630.
- (d) The **Technical Assistance Manual** for the Americans with Disabilities Act.

2. A copy of the materials adopted by reference pursuant to this section may be obtained at no charge from the United States Equal Employment Opportunity Commission Clearinghouse, by mail at P.O. Box 541, Annapolis Junction, Maryland 20701, by telephone at (800) 669-3362 or TDD (800) 800-3302 or at the Internet address:

**<http://www.eeoc.gov/eeoc/publications/index.cfm>.**

(Added to NAC by Dep't of Personnel, eff. 7-6-92; A 10-27-97; R082-00, 8-2-2000; A by Personnel Comm'n by R059-09, 10-27-2009)

**Explanation of Proposed Change:** The language in NAC 284.658 serves to define what a grievance is and what it is not. These amendments, proposed by the Division of Human Resource Management, will improve the efficiency of the formal grievance process by streamlining the handling of grievances that are filed by employees who are not eligible to use the process pursuant to subsection 1, or grievances that do not meet the definition of a grievance, pursuant to subsection 2.

Based on the current regulations, a grievance that is filed by an employee ineligible to use the formal grievance process or that does not meet the definition of a grievance may proceed through

the entire grievance process, up to and including a meeting of the Employee-Management Committee (EMC). This creates unnecessary work and does not resolve the employee's concern.

The first amendment simply clarifies that the grievance process is available to permanent employees who are in the classified service.

The second amendment provides the Division with the authority to remove any grievance from the grievance process that is filed by an employee not eligible to file a grievance or where there is a different hearing process for the resolution of the employee's concern. By eliminating the requirement of an agency to respond to an inappropriately filed grievance, the agency can focus on providing responses necessary through the appropriate process as outlined in subsection 2.

Agency human resource staff review grievances as they are filed and, with this amendment, will be able to request that the Division of Human Resource Management remove the grievance from the formal process when it has been filed by an ineligible employee or in the incorrect venue. The agency will be responsible for informing the employee that he or she is not eligible to use the grievance process and/or the grievance is in the wrong venue. The agency is also responsible for providing the employee with detailed information related to the appropriate process for the resolution of the employee's concern. This will expedite a request by an employee for a hearing otherwise provided pursuant to subsection 2, should he or she choose to do so. This is very important because the hearings listed in subsection 2 have deadlines, some as short as 5 or 10 working days.

**NAC 284.658 "Grievance" defined. (NRS 284.065, 284.155, 284.340, 284.384)**

1. As used in NAC 284.341 and 284.658 to 284.697, inclusive, a "grievance" means an act, omission or occurrence which a permanent *classified* employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement or a contested report on performance. The act, omission or occurrence must be established with factual information including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved.

2. For the purposes of NAC 284.341 and 284.658 to 284.697, inclusive, the term "grievance" does not include any grievance for which a hearing is provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390.

*3. The Division of Human Resource Management will remove from consideration and adjustment any grievance filed by an ineligible employee pursuant to subsection 1, or for which a hearing is provided pursuant to subsection 2 and NRS 284.384.*

~~{Personnel Div., Rule XV part § A, eff. 8-11-73; A 6-9-74; 2-5-82}~~ (NAC A by Dep't of Personnel, 8-28-85; 10-18-89; 8-1-91; 3-27-92; R082-00, 8-2-2000; A by Personnel Comm'n by R023-05, 10-31-2005; R007-11, 10-26-2011; R026-11, 12-30-2011, eff. 1-1-2012)

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, will create consistency throughout NAC 284.678 by using the term "date of the event" to describe when the cause of the grievance occurred. The date the grievable event occurred, or date the employee learns of the problem, drives the timeframes required by subsection 1. The methods for which a grievance may be filed are also described in subsection

1, which are to use the official form, or to write a letter when the official form is not available. The official grievance form uses the term “event date,” and “event date” is also used in subsection 2 which lists the information required when the official form is not available and a grievance is filed using a letter.

**NAC 284.678 Submission, form and contents of grievance; informal discussions.  
(NRS 284.065, 284.155, 284.340, 284.384)**

1. Except as otherwise provided in subsections 3 and 4 and NAC 284.692, an employee who feels aggrieved and wishes to file a formal grievance must submit the grievance in writing to his or her immediate supervisor on the official form, or in a letter if the official form is not available, within 20 working days after the ~~[date of the origin]~~ **date of the event** of the grievance or the date the employee learns of the problem. The parties should make every effort to resolve the grievance through informal discussions within these 20 working days.

2. If the employee submits a letter, it must include:

- (a) His or her name;
- (b) His or her most recent date of hire;
- (c) His or her position;
- (d) His or her department, division and section;
- (e) His or her mailing address;
- (f) His or her business telephone number;
- (g) A statement that he or she is filing a formal grievance;
- (h) The date, time and place of the event or the date the employee learns of the event leading to the grievance;
- (i) A concise statement of the grievance;
- (j) A detailed description of the grievance, including the names of other persons involved in the event, if any;
- (k) A proposed solution of the grievance;
- (l) His or her signature; and
- (m) The date he or she signed the statement.

3. Except as otherwise provided in NAC 284.692, if a grievance relates to a contested report on performance, an employee must file a grievance that identifies the specific points of contention, if such specificity is provided, not later than 10 working days after the date the employee receives a decision regarding the review conducted by the appointing authority pursuant to NAC 284.470. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of a reviewing officer or appointing authority to respond to a request for a review within the time required by NAC 284.470, an employee must file a grievance not later than 10 working days after the date on which the time for such a response expired.

4. A grievance filed pursuant to subsection 3 must be filed with:

- (a) The person who is at the next appropriate level of the grievance process; or
- (b) If the person who is at the next appropriate level of the grievance process is the reviewing officer or other person who prepared or reviewed the report on performance, the person who is at the next appropriate level of the grievance process above such reviewing officer or other person who prepared or reviewed the report on performance.

5. A grievance regarding a report on performance must be filed with the highest administrator in the department pursuant to NAC 284.690 before being submitted to the Committee pursuant to NAC 284.695.

~~[Personnel Div., Rule XV § A part subsec. 1, eff. 8-11-73; A 6-9-74; 2-5-82]~~—(NAC A by Dep't of Personnel, 10-26-84; 10-18-89; 3-23-94; R197-99, 1-26-2000; A by Personnel Comm'n by R023-05, 10-31-2005; R191-09, 4-20-2010; R007-11, 10-26-2011)

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, will reduce time and expense associated with meetings of the Employee-Management Committee (Committee or EMC), related to grievances that are outside of its jurisdiction or based on one of its previous decisions.

Much staff time and expense is required related to meetings of the Committee to handle requests for consideration of grievances submitted. For example, the State of Nevada employees required to dedicate time to EMC meetings include Committee members, agency staff, staff of the Attorney General's Office, the grievant, and a representative, if chosen, who may also be a State employee. Also necessary is the dedicated time of two Clerks to the Committee, employed by the Division of Human Resource Management, to schedule, coordinate, and attend Committee meetings in Carson City and Las Vegas. Additionally, preparation time and time and expense related to travel is also necessary for these employees related to meetings of the EMC.

With this amendment, attendance and travel time related to inappropriately filed grievances will be eliminated, and preparation time will be reduced to that of one member of the Committee who has been selected to serve as a representative of management, and one member of the Committee who has been selected as a representative of employees, who will determine whether or not the grievance was appropriately filed, or make a decision based upon a previous decision of the Committee. Any grievance determined to have been appropriately filed and/or not based on a previous decision of the Committee will move forward in the process for consideration by a full hearing of the Committee. Employees who have filed grievances that are determined to be in the incorrect venue or whose grievance was decided based on a decision previously made by the EMC will be notified by the Clerk to the Committee. The employee will be provided with a detailed justification for the determination, and also with detailed information related to the proper process for the resolution of his or her concern, if appropriate. In the event the designated management and employee representatives cannot agree on whether or not the grievance has been appropriately filed and/or a decision has previously been made will advance to a full hearing of the Committee.

**NAC 284.695 Submission of grievance to Employee-Management Committee.** (NRS 284.065, 284.155, 284.340, 284.384) If an employee is not satisfied with the decision rendered by the highest administrator in the department pursuant to NAC 284.690, the employee may request consideration of the grievance by the Committee pursuant to its rules. The employee must submit the request to the Committee within 10 working days following his or her receipt of the decision from the highest administrator. The request must include all appropriate documentation, a citation of the statutes and regulations pertinent to the grievance, if any, the specific points of disagreement or contention and supporting evidence. ~~[The Committee will, within 45 working days after the receipt of the employee's request:~~

~~—1. Answer the request without a hearing if the case is based upon the Committee's previous decisions or does not fall within its jurisdiction; or~~  
~~—2. Hold]~~ **Except as otherwise provided in NAC 284.6957, within 45 working days after the receipt of the employee's request:**

**1. One member of the Committee who has been selected to serve as a representative of management and one member of the Committee who has been selected as a representative**



*of employees will answer the employee's request without a hearing if the case is based upon the Committee's previous decisions or it does not fall within the Committee's jurisdiction; or*

**2. The Committee will schedule** a hearing to determine the proper disposition of the request. If a hearing is ~~held,~~ **scheduled**, the Committee will:

(a) Except as otherwise provided in paragraph (b), provide at least 21 working days' written notice to all parties concerned.

(b) Provide notice to the employee by:

(1) Sending a written notification by certified mail, return receipt requested, at least 21 working days before the hearing; or

(2) Personally delivering a written notification to the employee at least 5 working days before the hearing, if the Chair approves of such notice.

(c) Render a decision within 45 days after the closure of the hearing.

~~{Personnel Div., Rule XV § A part subsec. 6, eff. 8-11-73; A 6-9-74; 7-3-76; 2-5-82}~~—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89; 10-18-89; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 3-27-92; 11-12-93; 3-23-94; 11-16-95; A by Personnel Comm'n by R118-10, 5-5-2011; R007-11, 10-26-2011)

**Explanation of Proposed Change:** The amendments to this regulation, proposed by the Division of Human Resource Management, bring it in to alignment with NRS 241.020(5), reduce administrative burden, reduce time and expense related to certain aspects of the Employee-Management Committee (Committee or EMC), and establishes regulations pursuant to NRS 284.074, which authorizes the Chair or a member of the Committee designated by the Chair to issue and enforce subpoenas.

The first amendment to subsection 1 of this regulation changes the person to whom the required sets of documents shall be submitted. There is an intense level of administrative work that goes into the processing of packets, which has traditionally been handled by the Clerk, and this change will clarify that in the regulation.

The first amendment to subsection 1 of this regulation changes the number of sets of documents, or "packets," required to be submitted by both parties, from 10 to 12. The 10 copies currently required by this regulation do not provide a sufficient number for distribution to each member serving on the EMC, the Deputy Attorney General assigned to the Committee, each party to the grievance, potential witnesses, as well as to having copies available for the public. As such, in preparation for each hearing, the Clerk to the EMC must create 4 additional packets, 2 employer packets and 2 grievant packets, for distribution. Because it is required that the packets are to be bound, it can be time consuming and tedious for the Clerk to the Committee to disassemble, duplicate properly, and reassemble them. Increasing the number of packets from 10 to 12 will place a negligible added burden on each party to a grievance, while greatly reducing the administrative burden on the Clerk to the EMC.

The second amendment to subsection 1 increases the number of days prior to a scheduled meeting of the Committee in which packets are due. Because a list of witnesses is required to be included in the packets by both parties to a grievance, this amendment will reduce administrative pressure by allowing additional time for the Clerk to the Committee to process requests for subpoenas, when necessary. Currently, requests for subpoenas are due to the Committee no later

than 15 days prior to any scheduled hearing (see amendment related to the issuance and enforcement of subpoenas below). This change will bring the two deadlines into alignment.

The amendment to subsection 2 of this regulation clarifies the individuals authorized to reschedule a hearing for non-compliance with this subsection to either the *Chair or a member of the Committee designated by the Chair*. This clarifies that there would not be a representative designated from outside the Committee, for example a Deputy Attorney General, designated to reschedule a hearing as a result of the situations listed in the subsection.

The next amendment to this regulation will allow the Chair or a member of the Committee designated by the Chair, rather than a quorum, to determine whether or not an employee who fails to meet the deadline for his or her packets for a rescheduled hearing will have his or her grievance dismissed with prejudice. This change will reduce the costs and expenses related to a full hearing of the EMC, similar to the explanation of change for amendments to NAC 284.695.

The final amendment to this regulation creates regulations related to the issuance and enforcement of subpoenas requiring attendance of individuals at an EMC hearing, as well as for documents deemed to pertain to the grievance, pursuant to NRS 284.074. This amendment also clarifies that if information is contained in a subpoenaed document is of a confidential nature, the information must be redacted and submitted to the Committee. In addition, an original document, submitted under seal must be submitted to be reviewed by the Committee only if necessary. This amendment also specifies that a request for a subpoena to be issued to an individual or for document must be submitted no later than 15 days prior to a scheduled meeting of the EMC. This provides adequate time for the grievant to serve the subpoena, for the supervisor of a subpoenaed individual to arrange for coverage while he or she is attending the hearing, and for the production and submission of any subpoenaed documents.

**NAC 284.6955 Hearing before Employee-Management Committee: Procedure. (NRS 284.065, 284.155, 284.384)** If a hearing is held to determine the proper disposition of a grievance pursuant to NAC 284.695, the following procedure must be followed:

1. Each party shall submit to the ~~{Chair}~~ *Clerk* of the Committee ~~{or his or her designated representative}~~ *12* copies of the set of documents and materials to be presented at the hearing or any rescheduled hearing. These copies must be submitted not less than ~~{12}~~ *15* working days before the scheduled date of the hearing. ~~{The Chair or his or her designated representative}~~ *The Clerk of the Committee* shall forward one copy of the set of the documents and materials of each party to the other party.

2. If the employee fails to comply with subsection 1, the Chair or ~~{his or her designated representative}~~ *a member of the Committee designated by the Chair* may reschedule the hearing to the next time designated for such hearings, but in no case earlier than 20 working days after the originally scheduled date of the hearing. If the employer fails to comply with subsection 1, the Chair or ~~{his or her designated representative}~~ *a member of the Committee designated by the Chair* may reschedule the hearing at his or her discretion. If the employee fails to comply with the provisions of subsection 1 for a rescheduled hearing, the grievance must be dismissed with prejudice unless he or she can show in writing to the ~~{Committee's}~~ *satisfaction of the Chair or a member of the Committee designated by the Chair* that the reason for noncompliance was beyond his or her control.

3. Each document or material offered in evidence must be marked as follows:

(a) Documents or materials presented by the employee must be marked at the bottom of the page as "Exhibit\_\_\_\_" indicated by consecutive Arabic numerals, beginning with the number "1."

(b) Documents or materials presented by the employer must be marked at the bottom of the page as "Exhibit\_\_\_\_" indicated by consecutive letters of the English alphabet, beginning with the letter "A." If the employer offers more than 26 exhibits, the 27th exhibit must be marked as "Exhibit AA," the 28th exhibit as "Exhibit BB," and so forth.

4. All evidence offered at the hearing must be relevant and bear upon the grievance.

5. Each person who provides a statement at the hearing shall state his or her name, address, and occupation for the record.

6. It is the responsibility of each party to arrange for the appearance of all necessary witnesses. ~~{The Committee may request additional witnesses or information as it deems necessary.}~~ *The Chair or a member of the Committee designated by the Chair, may, upon the request of any party to a hearing held pursuant to NAC 284.695, issue a subpoena requiring the attendance and testimony of a witness at the proceeding or the production of documents.*

*7. The Chair or a member of the Committee designated by the Chair may issue a subpoena requiring the attendance and testimony of a witness as it deems necessary, or a subpoena requiring the production of documents it deems relevant to the grievance being considered. If information contained in a subpoenaed document is determined to be confidential, such information must be redacted. One copy of the original document, submitted under seal, and one copy of the redacted document must be submitted to the Committee by the date specified in the subpoena.*

↪ *A subpoena shall not be served less than 15 days before the scheduled date of the hearing.*

~~{7.}~~ 8. Upon proper recognition by the ~~{Chair or his or her designated representative.}~~ *member of the Committee designated to Chair any hearing,* any member of the Committee may ask a question of a party or witness at any time during the hearing.

(Added to NAC by Personnel Comm'n, eff. 8-1-91; A by Dep't of Personnel, 11-16-95; A by Personnel Comm'n by R026-11, 12-30-2011, eff. 1-1-2012)

**Explanation of Proposed Change:** The amendments to this regulation, proposed by the Division of Human Resource Management, will reduce staff time and expense to the State, and create efficiency in the process related to grievances that have been submitted to the Employee-Management Committee (Committee or EMC) for consideration.

The first change to subsection 1 of this regulation adds language that will allow a grievance to be placed into abeyance. Placing a grievance into abeyance essentially places the grievance on hold when an outside situation is creating or could create a delay in the hearing of the grievance by the Committee. This could be appropriate in a variety of situations. For example, placing a grievance into abeyance would be suitable when an investigation is being conducted, the outcome may impact an employee's grievance. It would also be appropriate in a situation where the grievant will be away from the office for an extended period of time, such as on approved Family and Medical Leave (FMLA), administrative leave or a court proceeding within the court system will be taking place.

The second proposed amendment to subsection 1 of this regulation changes the person to whom a request for a continuance or a request to have a grievance placed into abeyance should be submitted from the Chair of the Committee to the Clerk of the Committee. This change makes is clear that requests of the Committee are to be submitted to the Clerk who, in turn, sends the

requests to the Chair or a member of the Committee designated by the Chair, depending on who will act as the Chair of the Committee for that grievance, as well as to the appropriate parties pursuant to NRS 233B.126. This statute allows the communication between either party to a hearing and those assigned to render a decision or make findings of fact and conclusions of law in a contested case, such as the EMC, only when there has been notice provided and an opportunity for all to participate.

The amendment to subsection 2 of this regulation will reduce staff time and related expenses of scheduling and conducting a full hearing of the EMC to determine if a continuance or the placement of a grievance into abeyance is appropriate. This will allow the Chair or a member of the Committee designated by the Chair to grant continuances or place a grievance into abeyance instead of requiring a decision of the full Committee. This allows decisions to be made more quickly regarding emerging issues.

**NAC 284.6957 Hearing before Employee-Management Committee: Continuance; *abeyance*.** (NRS 284.065, 284.155, 284.384)

1. A party may *make a* request *for* a continuance of a hearing to determine the proper disposition of a grievance pursuant to NAC 284.695 *or to have a grievance held in abeyance* by submitting ~~{a request for a continuance}~~ *such request* to the ~~{Chair}~~ *Clerk* of the Committee ~~{or his or her designated representative}~~ at least 12 working days before the scheduled hearing, unless the party received personal notice of the hearing less than 21 working days before the hearing pursuant to subsection 2 of NAC 284.695, in which case he or she may request a continuance as long as the request is made at least 4 working days before the scheduled hearing.

2. The ~~{Committee}~~ *Chair or a member of the Committee designated by the Chair* may grant a request for a continuance *or place a grievance into abeyance* if good cause is shown.

(Added to NAC by Dep't of Personnel, eff. 3-27-92; A 11-16-95)

**Explanation of Proposed Change:** This amendment, proposed by the Division of Human Resource Management, will bring NAC 284.697 into alignment with amendments proposed to NAC 284.695 and NAC 284.6955, which are also in the Adjustment of Grievances section of NAC 284.

Changes proposed to NAC 284.695 allow for one management member and one employee member, selected as representatives of the Employee-Management Committee, to determine jurisdiction, which serves as a final decision when it is determined that the grievance is based on a previous decision of the Committee or falls outside the Committee's jurisdiction. Changes proposed in NAC 284.6955 allow the Chair or a member of the Committee designated by the Chair to dismiss a grievance with prejudice if the employee fails to submit supporting materials for a rescheduled hearing.

The changes to this regulation will make the resolution of a grievance binding when the resolution is determined by the Chair or a member of the Committee designated by the Chair, the member of the Committee selected to represent management jointly with the member of the Committee selected to represent employees, as well as when it is determined by the Committee.

**NAC 284.697 When resolution of grievance becomes binding. (NRS 284.065, 284.155, 284.384)**

1. Except as otherwise provided in subsection 2, the resolution of a grievance is binding when:

(a) There is an agreement between the person filing the grievance and the appointing authority or the designated representative of the employing agency; or

(b) The Committee renders a final decision~~[-]~~;

*(c) The Chair or a member of the Committee designated by the Chair dismisses a grievance with prejudice as a result of an employee failing to comply with NAC 284.6955; or*

*(d) One member of the Committee who has been selected to serve as a representative of management and one member of the Committee who has been selected as a representative of employees answers the employee's request without a hearing pursuant to NAC 284.695.*

2. The appointing authority or the designated representative of the employing agency shall submit each proposed resolution of a grievance which has a fiscal effect to the Budget Division for a determination of whether the resolution is feasible on the basis of its fiscal effects. The resolution is binding only if it is so found.

(Added to NAC by Dep't of Personnel, eff. 8-28-85; A by Personnel Comm'n by R030-02, 5-2-2002)