

**PROPOSED REGULATION OF THE
DEPARTMENT OF PERSONNEL**

LCB File No. R146-01

November 19, 2001

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

AUTHORITY: §1, NRS 284.345; §§2, 3, 5, and 6, 10-13, NRS 284.155; §§4, 7, NRS 284.175; §§8 and 9, NRS 284.155 and 284.3626.

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

A permanent or probationary employee who performs active military service in the Armed Forces of the United States or any other category of persons designated by the President of the United States or the governor of this state, including, without limitation, the Commissioned Corps of the Public Health Service, in time of war or emergency, is entitled to leave with reduced pay pursuant to this section for the period of such service. The pay that such an employee is entitled to receive pursuant to this section is the difference between the pay he would have otherwise received as a state employee and his pay for active military service. If his pay for active military service is greater than the pay he would have otherwise received as a state employee, the employee will not receive any additional pay pursuant to this section while he is in active military service.

Sec. 2. NAC 284.132 is hereby amended to read as follows:

284.132 1. An appointing authority, an employee or the department of personnel may request a temporary classification which allows the classification of a position for a temporary period of 1 year or less. Each appointment which is designated as temporary must have specific

criteria established which justify the grade of the position and the projected date of expiration of the period. A position which no longer meets this criteria will revert back to the class from which it was reclassified. This method of classification is subject to the following conditions:

(a) Temporary classifications must meet the allocation standards and the criteria established for the class before this method may be used. The classification must be approved by the department of personnel before the appointment.

(b) An employee who is appointed to a temporary class must sign the payroll document. This signature acknowledges that the employee understands the conditions of the reclassification and its projected date of expiration.

2. If the employee meets the minimum qualifications for the temporary classification, he:

(a) Retains his status of appointment; and

(b) Must complete the remaining portion of the probationary period currently being served, if any, based on the requirements of the new class.

FLUSH An incumbent who has reverted to his previous class is entitled to the step, pay progression date and status of appointment he would have attained if he had not been appointed to the temporary class.

3. An employee who is promoted pursuant to this section must receive a new pay progression date if his promotion results in an increase of at least two grades. The rate of compensation for the employee will be determined in accordance with the provisions of NAC 284.170 governing compensation on promotion.

4. In case of a layoff, the temporarily assigned employee's class of layoff is his former class. The time served in the temporary class is counted for seniority purposes if it was in the same occupational ~~class,~~ *group*, as provided in NRS 284.171.

Sec. 3. NAC 284.194 is hereby amended to read as follows:

284.194 1. An employee whose last rating of performance was standard or better and who has not attained the top step of his grade must receive an increase in his salary based on merit of one step on his pay progression date and each year thereafter of employment equivalent to full-time service until he reaches the top of the grade unless he receives a subsequent rating of performance which is substandard.

2. An employee whose last rating of performance was substandard is not eligible for an increase in his salary based upon merit. Such an employee is only entitled to receive an increase in salary based on merit on the date designated and recorded on a subsequent report on performance as the date on which his overall performance improved to standard or better. If a subsequent report on performance is not filed with the director within ~~[30 days after the date]~~ *the 90-day period* required by subsection 4 of NRS 284.340, the employee's performance will be deemed standard and he will be entitled to the increase effective on the date the report on performance was due. The date a report is received by the director or an employee of the department of personnel is the date it is filed.

3. If an increase in salary based on merit is withheld as provided in subsection 2, the employee's pay progression date must not be affected.

4. Except as otherwise provided in NAC 284.202, no retroactive payment of an increase in salary based on merit may be given.

Sec. 4. NAC 284.206 is hereby amended to read as follows:

284.206 1. The department of personnel may approve a special adjustment to a salary equivalent to 5 percent of the employee's regular hourly rate to recognize conditionally:

(a) An employee who works out of his class on a continuing basis and who performs essentially all the duties and responsibilities of a position classified at a higher grade. To receive the increase, the employee must:

(1) Be assigned duties and responsibilities of the higher grade which are clearly demonstrated in the class specification; and

(2) Carry out the duties for at least 16 consecutive workdays before the increase becomes effective.

FLUSH The adjustment in salary must not continue for more than 6 months in any 12-month period unless the person is underfilling a position pursuant to NAC 284.437 and recruitment has failed to produce a sufficient number of applicants on the appropriate list.

(b) An employee required to use bilingual skills or sign language for the deaf at least 10 percent of his work time.

(c) An employee supervising other employees of the same or a higher grade if the supervision is not of a program or function which is provided for in the specification of the class.

(d) An employee of the division of mental health and developmental services of the department of human resources or the division of child and family services of the department of human resources or of the department of corrections which provides mental health services to inpatients, who is required regularly to perform custodial work and clean up human bodily wastes, or, if his principal place of work is located in an assaultive environment as determined by the administrator, to provide medical treatment, maintain buildings, instruct academic courses or provide therapy. The adjustment will be:

(1) Granted only when such duties are not required of the class as a whole; and

(2) Granted only once although the employee performs more than one duty described in this paragraph.

FLUSH Except as otherwise provided in this paragraph, such an employee who is assigned to the unit located in an assaultive environment for 1 or more hours but who is not assigned there permanently must also receive the adjustment for each hour and portion thereof he works in the unit. An excluded classified employee who is assigned to the unit located in an assaultive environment for any portion of a workday but who is not assigned there permanently must receive the adjustment for all of his regularly scheduled hours of employment on that workday.

(e) Except as otherwise provided in this paragraph, an employee who conducts a formal program of training for employees in ~~an occupational~~ a class series. The training 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 employee's progress in the program; and
- (4) Result in the award of a certificate of completion or advancement in a training class series to the journey level.

FLUSH If granted, the adjustment begins when the employee starts conducting the program of training and ends when the 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 in a class series will not be considered for this special adjustment.

(f) A law enforcement officer who is assigned to motorcycle duty.

(g) An employee of the department of corrections who regularly supervises, or is responsible for the supervision of, a group of inmates assigned to a work area of a prison and who is responsible for implementing security procedures, including, without limitation, securing the

work area from inmates who are not authorized to enter, accounting for all inmates who have been assigned to the work area and accounting for all materials, tools and equipment in the work area. This adjustment will be granted only if such duties are not provided for in the class specification.

(h) An employee who is authorized by the legislature to receive such an adjustment to his salary.

2. The department of personnel may approve a special adjustment to the salary of an employee who occupies a position in which the duties have been recognized pursuant to a position questionnaire as being at a higher level, but who does not meet the minimum qualifications for promotion to the new grade. The special adjustment must be equivalent to 2.5 percent of the employee's regular hourly rate if the employee performs duties classified one grade higher than his current position, or 5 percent of the employee's regular hourly rate if the employee performs duties classified two or more grades higher than his current position. A special adjustment made pursuant to this subsection may continue in effect from the date the position is reclassified or 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 salary adjustment; or
- (c) Until the date the higher level duties are removed,

FLUSH

whichever occurs first.

3. A request for a special adjustment to a salary made pursuant to this section may be initiated by an employee, the appointing authority or the department of personnel.

4. A special adjustment authorized by this section does not constitute a promotion.

5. Any special adjustment made pursuant to subsection 1 must be revoked when the conditions justifying it cease to exist.

6. Except as otherwise provided in this section, the effective date of a special adjustment to a salary is the date the appropriate document is received by the department of personnel or the personnel office of the agency at which the employee who is receiving the special adjustment is employed. If a special adjustment to a salary is delayed because an administrative or clerical error prevented the delivery of a prepared document to the department of personnel, the effective date must be determined by the appointing authority and must be based on the date the document should reasonably have been submitted to the department of personnel. A retroactive adjustment must not exceed 6 months from the date the department of personnel receives the document.

Sec. 5. NAC 284.398 is hereby amended to read as follows:

284.398 1. An unclassified employee who has less than 4 months of service and whose appointment was immediately preceded by an appointment in the classified service in which the person was a permanent employee may transfer back into the classified service under the same conditions and with the same benefits as classified employees, except that the duties and compensation of the position to which the person is transferred must be similar, as determined by the department of personnel, to either the unclassified position or to a previously held classified position.

2. Employees of any governmental agency which is acquired for administration by the state pursuant to NRS 284.022 may transfer into the classified service or unclassified service with the rights and benefits authorized by the legislature.

3. An employee who transfers into the classified service:

(a) Must complete an application and meet the minimum requirements for qualification to the class of the position to which he is transferring;

(b) Must have his date of transfer and appointment to the classified position effective immediately following the last day of employment in the unclassified or nonclassified position ~~of~~ *unless he was employed as a legislative employee at the conclusion of a regular session of the legislature to whom subsection 6 of NRS 284.3775 applies;* and

(c) May retain the credits which he has earned for annual and sick leave and longevity.

4. A transfer of an employee to a similar class requires the approval of the department of personnel.

Sec. 6. NAC 284.442 is hereby amended to read as follows:

284.442 All classes at grade ~~23~~ *20* or higher must be assigned a 1-year (full-time equivalent) probationary period. All classes lower than grade ~~23~~ *20* will be assigned a 6-month (full-time equivalent) probationary period.

Sec. 7. NAC 284.526 is hereby amended to read as follows:

284.526 1. For the purpose of this section, “paid status” means the time an employee is working, is on leave approved pursuant to NAC 284.580 or is on leave with pay, excluding overtime hours or catastrophic leave.

2. A full-time employee working other than a standard work week is entitled to the same number of paid holidays as a full-time employee working the equivalent standard work week.

3. Except as otherwise provided in ~~subsections 11 and 12,~~ *this section,* a full-time employee who works 40 hours per week, does not work on a holiday and is in paid status during any portion of his scheduled shift immediately before the holiday is entitled to receive ~~8 hours~~ *of* holiday pay ~~of~~ *for each hour of his scheduled shift.*

4. Except as otherwise provided in ~~[subsections 11 and 12,]~~ *this section*, a full-time employee who works more than 40 hours per week or 80 hours biweekly, is not scheduled to work on a holiday and is in paid status during any portion of his scheduled shift before the holiday is entitled to receive an amount of holiday pay equal to the pay received for his average workday. The average workday of *such* an employee is determined by dividing the total scheduled hours of work per year by 2,088 and multiplying the quotient by 8. For the purposes of this subsection, a fireman assigned to a 24-hour shift shall be deemed to work 56 hours per week and 2,912 hours per year.

5. Except as otherwise provided in ~~[subsections 11 and 12,]~~ *this section*, an employee who ~~[works any portion of a legal holiday]~~ *is scheduled to work on a legal holiday and who works any portion of such a scheduled shift* is eligible to receive holiday pay in the amount provided in subsection 3 or 4. ~~[An employee who has an established innovative work week agreement is entitled to earn additional holiday pay on an hour-for-hour basis for any hours worked in addition to the period represented by the holiday pay up to the number of hours of his established workday.]~~ Any hours worked by the employee that exceed the number of hours of his ~~[established workday as set forth in his innovative work week agreement]~~ *scheduled shift* do not qualify for additional holiday pay.

6. ~~[An employee who works on a holiday must be in paid status on that holiday for the amount of time which is the difference between the time represented by his holiday pay and his normal work schedule for that holiday. If the employee has not worked enough hours to be in paid status, he must use sick leave, annual leave or compensatory time to make up the difference.]~~

~~—7.]~~ Except as otherwise provided in ~~{subsection 11,}~~ *this section*, an employee who is scheduled to work on a holiday, but does not work, is eligible for holiday pay in the manner provided in subsection 3 or 4.

~~{8.}~~ 7. A full-time employee whose employment begins on a holiday is entitled to receive holiday pay in accordance with subsection 3 or 4 if he is in paid status during his scheduled shift.

~~{9.—A full-time employee whose regular schedule of work is more than 8 hours, but who has the day off because of a holiday, may use annual leave, use compensatory time or have his schedule adjusted for the amount of time in excess of the holiday pay to which he would be entitled pursuant to subsection 3 or 4. An employee who does not elect to use annual leave or compensatory time and whose schedule is not adjusted may, with the approval of the appointing authority, be placed on a leave of absence without pay.~~

~~—10.]~~ 8. An employee working a part-time standard, nonstandard or innovative work week must be paid holiday pay if:

- (a) The holiday falls on a scheduled workday; and
- (b) He is in paid status during his scheduled shift immediately before the holiday or on the holiday if his employment begins on that day.

FLUSH The amount of holiday pay must not exceed 8 hours but must otherwise equal what he would have been paid if there had not been a holiday.

~~{11.}~~ 9. An employee scheduled to work on a holiday who fails to report his absence to his supervisor or a designated representative as required by NAC 284.590 is not entitled to receive compensation for the holiday.

~~{12.}~~ 10. An employee whose employment is terminated:

- (a) The day before the holiday is not entitled to receive compensation for the holiday.

(b) On a holiday on which he is working must be paid an amount for the holiday in proportion to the time he actually worked on the holiday. When an employee gives notice to terminate on a holiday and is not scheduled to work on the holiday, the last day worked or in paid leave status is his date of termination.

~~[13.]~~ **11.** An employee who transfers the day before a holiday becomes an employee of record in the new agency on the holiday and is entitled to receive compensation for the holiday from the new agency. An employee who transfers from an agency at the end of a shift on a holiday is entitled to receive compensation for the holiday from the previous agency.

~~[14.]~~ **12.** An employee whose employment is not full-time employment is entitled to be paid holiday pay as provided in subsection ~~[10.]~~

~~—15.—~~ ~~Subsections 1 to 14, inclusive,]~~ **8.**

13. *The provisions of this section* do not apply to an excluded classified employee or excluded unclassified employee. The salary of an excluded classified employee or excluded unclassified employee must not be reduced solely because a holiday occurs on a scheduled workday of that employee.

Sec. 8. NAC 284.575 is hereby amended to read as follows:

284.575 As used in NRS 284.362:

1. “Lengthy convalescence” means a period of disability which an attending physician expects to exceed 10 *consecutive* weeks.

2. “Life threatening” means a condition which is diagnosed by a physician as creating a substantial risk of death.

Sec. 9. NAC 284.576 is hereby amended to read as follows:

284.576 1. An account for catastrophic leave may be established for an employee when he or a member of his immediate family experiences a catastrophe and the employee has used all of his accrued leave.

2. An employee who is affected by a catastrophe and has used or is about to use all of his leave may request, on the appropriate form, the transfer of leave to an account for catastrophic leave for his personal use after the balance of all of his leave has been used. *Such a request must be accompanied by a statement from a physician on a form provided by the committee on catastrophic leave created pursuant to section 1 of Assembly Bill No. 285 of the 71st session of the Nevada Legislature, chapter 425, Statutes of Nevada 2001, at page 2139 (NRS 284.3627) which substantiates the necessity of the leave.*

3. When a member of the immediate family of an employee is affected by a catastrophe, the appointing authority of the employee may require substantiating evidence that the member of the immediate family requires the employee's attendance before approving the transfer of leave to an account for catastrophic leave for use by the employee. Such evidence may include a statement by an attending physician regarding the status of the catastrophe.

4. The ~~[approval or denial of the request is at the discretion of the]~~ appointing authority ~~[who shall take]~~ *may approve or deny a request for catastrophic leave, taking* into consideration the nature of the catastrophe and the expected duration of the leave. *The decision of the appointing authority may be appealed to the committee on catastrophic leave pursuant to Section 4 of Assembly Bill No. 285 of the 71st session of the Nevada Legislature, chapter 425, Statutes of Nevada 2001, at page 2140 (NRS 284.3629).*

5. An employee who wishes to donate hours to an account for catastrophic leave for use by another employee who has been approved to receive the donated hours shall notify his

appointing authority on the appropriate form of his intent to donate the leave. The appointing authority of the employee donating the leave shall submit a copy of the form to the appointing authority of the employee receiving the leave. The appointing authority of the recipient shall use the notice to effect a transfer of leave from the account of the donor to the account of the recipient when the recipient needs to use those hours. If more than one notice of intent to donate leave is received by the recipient's appointing authority on behalf of the recipient, the notices must be maintained in chronological order and used, one at a time as needed, according to the date in which they were received.

6. A donor and his appointing authority must be notified on the appropriate form when the donated leave specifically designated for use by another employee has been used or if the amount of leave donated is in excess of the amount approved for use by the recipient. Excess leave must be restored to the account of the donor within 30 working days after the last day on which the recipient was eligible to receive catastrophic leave.

7. The appointing authority shall provide the following information on a calendar year basis or as requested by the director:

(a) Each employee under its authority, identified by a number assigned in accordance with subsection 8, donating or using catastrophic leave, his grade and rate of pay and the number of hours and dollar value of the leave donated, excluding any excess leave restored to the account of a donor, pursuant to subsection 6, or used by the employee;

(b) The period and nature of the disability for each employee using catastrophic leave; and

(c) A comparison of the average dollar value of the accounts for catastrophic leave based on the average rate of pay of the donors and the average dollar value of the leave taken by the recipients.

8. The appointing authority shall assign numbers to employees for the purposes of subsection 7 in a sequential order and in such a manner that ensures the confidentiality of the identity of those employees.

9. Hours donated to an account for catastrophic leave must be donated in increments of 8 hours.

10. As used in this section, “immediate family” has the meaning ascribed to it in NAC 284.562.

Sec. 10. NAC 284.587 is hereby amended to read as follows:

284.587 Civil leave with pay must be granted to an employee who meets the requirements of NRS 284.357, and may also be granted by the appointing authority to an employee whose absence from the job is necessary to meet a ~~public~~ *disaster or* emergency.

Sec. 11. NAC 284.612 is hereby amended to read as follows:

284.612 For the purposes of NAC 284.612 to 284.630, inclusive:

1. “Geographical location” means:
 - (a) Clark, Lincoln, Nye ~~and~~ and Esmeralda counties;
 - (b) Carson City, Lyon, Churchill, Storey, Douglas, Mineral ~~and~~ and Washoe counties;
 - (c) Pershing, Humboldt, Elko, Lander, Eureka ~~and~~ and White Pine counties; *or*
 - (d) Any city located outside of this state.
2. “Option” means a clearly identified subclassification mentioned in the class specification approved by the commission.
3. “Seniority” is computed from the total time spent during currently continuous state service by doubling the time spent in the present occupational ~~class~~ *group* as defined in NRS

284.171, and adding it to the time spent in all former occupational ~~[classes.]~~ *groups*. If seniority is otherwise equal, a choice must be ~~[based first,]~~ *made in the following order:*

- (a) *Based* on total time within the occupational ~~[class; second,]~~ *group;*
- (b) *Based* on total time within the department; and ~~[third, by]~~
- (c) *By* lot.

FLUSH

For reemployment, ties are broken by lot.

Sec. 12. NAC 284.614 is hereby amended to read as follows:

284.614 1. Except as otherwise provided in NAC 284.438, if it becomes necessary for a classified employee to be laid off because of a shortage of work or money, the abolition of a position, or some other material change in duties or organization:

(a) The administrator of the department shall determine in what geographical location, class series, class and option the reductions in staff will have the least detrimental effect on the operations of the department and shall specify layoffs accordingly. In the department of human resources and the University and Community College System of Nevada, the administrator of a division, with the approval of the director of the department, shall determine in what geographical location, class series, class and option the reduction of staff will have the least detrimental effect on operations and shall specify the layoffs accordingly.

(b) Within the department, and within the geographical location, class series, class and option selected, all employees of the department who are not permanent must be laid off before any permanent employees in the following order:

- (1) Emergency employees.
- (2) Temporary employees.
- (3) Provisional employees.

(4) Probationary employees.

(c) If additional reductions are necessary, permanent employees must be laid off on the basis of performance and seniority. In computing seniority, the time covered by a report on performance “below standard” or “unacceptable” made during the last 4 years must not be included, except that no report may be considered for the time covered within 75 calendar days before the notification of layoff was issued. Except as otherwise provided in this paragraph, the time “covered” by a report of substandard performance runs from the date the report was filed with the director until the date recorded on the employee’s subsequent report on performance as the date on which his performance improved to standard or better. If the subsequent report on performance is not filed within ~~[30 days after the date]~~ *the 90-day period* required by subsection 4 of NRS 284.340, the employee’s performance shall be deemed standard effective on the date the report on performance was due.

(d) In the department and within the geographical location, class series, class and option where layoffs are to take place, those employees with the least seniority must be laid off.

(e) For the purposes of this subsection, an appointing authority may consider whether positions are full time or part time and limit layoffs to full-time or part-time employees. Similar considerations may be given to and limitations placed on positions requiring selective certification pursuant to NAC 284.378.

2. When determining seniority for order of layoff:

(a) Seniority must be projected and counted up to the established date of layoff.

(b) Seniority for part-time employment must be prorated to its full-time equivalent.

(c) If a classified employee enters unclassified service and subsequently reenters classified service, his previous and current classified service is counted.

(d) Except as otherwise provided in NAC 284.580, any combination of authorized leave without pay and catastrophic leave for more than 240 hours or, in the case of an excluded classified employee, 30 working days, in a year, calculated pursuant to subsection 6 of NAC 284.182, is not counted.

(e) When an employee was separated from service with this state for any of the reasons that do not result in a break in continuous service as provided in NAC 284.598, the time during the separation is not counted.

Sec. 13. NAC 284.618 is hereby amended to read as follows:

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

(a) Within his current class series and option and may displace an employee therein; or

(b) Within the class series and option from which he was appointed during current continuous service and may displace an employee therein but only if he cannot be demoted pursuant to paragraph (a). If the class series from which he was employed was in a different occupational ~~class~~ *group*, his seniority for the purposes of this paragraph only is based on the time he spent in the former occupational ~~class~~ *group* as provided in subsection 3 of NAC 284.612.

FLUSH The choice must be made in writing within 3 working days after notification of layoff. For the purposes of this section, divisions of the department of human resources and the University and Community College System of Nevada are considered departments.

2. No employee in a higher class may displace an employee in a lower class who has more seniority. If an employee chooses to displace another, he must displace the member of the next

lower class who has the least seniority. If that member has more seniority, the displacing employee must descend further in the class series.

3. The employees displaced reestablish the layoff class.

4. An employee may choose to displace another only if he meets the minimum qualifications for the class, option, and position from which the other will be displaced. For the purposes of this subsection, qualifications for a position may be different from those of the class and option only when selective certification is required pursuant to subsection 2 of NAC 284.378.

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

6. Displacement is always a downward movement, never a lateral movement.

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

8. The salary paid the displacing employee cannot exceed the highest step for the lower class. If the current salary falls within the lower rate range, no reduction in salary may occur unless money is not available as certified by the chief of the budget division or, in the case of an agency which is not supported from the state general fund, as certified by the administrator of that agency.