

**PROPOSED REGULATION OF THE
HUMAN RESOURCES COMMISSION**

LCB File No. R165-24

July 18, 2024

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

AUTHORITY: § 1, NRS 284.065 and 608.0198; § 2, NRS 284.065, 284.155, 284.175, 284.345 and 608.0198; § 3, NRS 284.065, 284.155, 284.345, 284.350 and 608.0198; § 4, NRS 284.065, 284.155, 284.345, 284.355 and 608.0198; § 5, NRS 284.065, 284.155, 284.345, 284.360 and 608.0198; § 6, NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626 and 608.0198; § 7, NRS 284.065 and 613.222.

A REGULATION relating to state human resources; providing, under certain circumstances, for certain leave, compensatory time and accommodation if a state employee or a family or household member of a state employee is a victim of an act which constitutes sexual assault; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Assembly Bill No. 163 (A.B. 163) of the 2023 Legislative Session requires employers to provide certain hours of leave to an employee who: (1) has been employed by the employer for at least 90 days; and (2) is a victim of an act which constitutes sexual assault, or such an employee whose family or household member is a victim of an act which constitutes sexual assault and the employee is not the alleged perpetrator. (NRS 608.0198, as amended by section 1 of Assembly Bill No. 163, chapter 207, Statutes of Nevada 2023, at page 1230) A.B. 163 also requires employers to provide reasonable accommodations which will not create an undue hardship for an employee who is a victim of an act which constitutes sexual assault or whose family or household member is a victim of an act which constitutes sexual assault. (NRS 613.222, as amended by section 3 of Assembly Bill No. 163, chapter 207, Statutes of Nevada 2023, at page 1232)

Existing law requires the Human Resources Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations necessary to carry out provisions of law relating to the Human Resources System, including regulations for attendance and leave with or without pay for state employees. (NRS 284.065, 284.345) To conform to the requirements of A.B. 163, **sections 2-5** of this regulation provide that an appointing authority shall, under certain circumstances, grant or approve, as applicable, a request by a state employee who is a victim of an act which constitutes sexual assault or whose family or household member is a victim of such an act for: (1) compensatory time; (2) annual leave; (3) sick leave; or (4) leave without pay. (NAC 284.2508, 284.539, 284.554, 284.578)

Section 6 of this regulation provides that if a state employee who is a victim of an act which constitutes sexual assault, or whose family or household member is a victim of such an act, is absent from work and meets the eligibility requirements pursuant to the Family and Medical Leave Act, any amount of time that state employee is absent from work during that period will be designated as leave pursuant to the Act. **Section 7** of this regulation provides that the appointing authority of a state employee who is a victim of an act which constitutes sexual assault or whose family or household member is a victim of an act which constitutes sexual assault, and the state employee is not the alleged perpetrator, shall, upon the request of the state employee, provide reasonable accommodation to the state employee.

Section 1 of this regulation defines the term “sexual assault.”

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

“Sexual assault” has the meaning ascribed to it in NRS 200.366.

Sec. 2. NAC 284.2508 is hereby amended to read as follows:

284.2508 1. At the direction of the appointing authority, compensatory time must be used within a reasonable time after it is accrued.

2. Unless it would cause an undue hardship to the agency, a request for the use of compensatory time may not be unreasonably denied if the request is made at least 2 weeks in advance of the first date on which the employee wishes to use his or her compensatory time.

3. Unless it would cause an employee to forfeit an amount of annual leave pursuant to subsection 2 of NRS 284.350, an employee must, to the extent possible, exhaust his or her compensatory time before using his or her available annual leave.

4. An appointing authority shall approve a request for compensatory time of an employee who is a victim of an act which constitutes domestic violence *or sexual assault* or whose family or household member is a victim of an act which constitutes domestic violence ~~§~~ *or sexual assault*, and the employee is not the alleged perpetrator if:

(a) The employee has been employed in public service for at least 90 days;

(b) The employee has accrued the amount of compensatory time necessary to cover the time requested; and

(c) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence *or sexual assault* occurred.

Sec. 3. NAC 284.539 is hereby amended to read as follows:

284.539 1. Except as otherwise provided by the Family and Medical Leave Act, an appointing authority shall determine the time when annual leave is taken after considering the needs of the agency and the seniority and wishes of the employee. Annual leave may not be granted in excess of the accumulated annual leave.

2. A written request for annual leave that is submitted by an employee within a reasonable time before the date upon which the annual leave is requested to commence must be approved or denied by the appointing authority, in writing, before the date upon which the annual leave is requested to commence or within 15 days after the appointing authority receives the request, whichever is sooner.

3. Except as otherwise provided in subsection 7, the appointing authority may deny a request for annual leave for good and sufficient reason. The appointing authority may not prohibit an employee from using at least 5 consecutive days of annual leave in any calendar year.

4. An employee shall request annual leave at least 30 days in advance if the need for leave is foreseeable and the annual leave is to be taken in conjunction with a planned leave of absence without pay.

5. An employee who has accumulated both annual leave and compensatory time off, and who may lose annual leave at the end of the calendar year, may elect to use the annual leave

instead of the compensatory time for approved leave. In all other instances, compensatory time must, as far as practicable, be exhausted before annual leave is used.

6. An employee who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may use his or her accrued annual leave pursuant to NAC 284.5775.

7. An appointing authority shall approve a request for annual leave of an employee who is a victim of an act which constitutes domestic violence *or sexual assault* or whose family or household member is a victim of an act which constitutes domestic violence ~~H~~ *or sexual assault*, and the employee is not the alleged perpetrator if:

(a) In accordance with NRS 284.350, the employee has been employed in public service for at least 6 months;

(b) The employee has accrued the amount of annual leave necessary to cover the time requested; and

(c) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence *or sexual assault* occurred.

Sec. 4. NAC 284.554 is hereby amended to read as follows:

284.554 1. An employee is entitled to use sick leave if the employee:

(a) Is unable to perform the duties of his or her position because he or she is sick, injured or physically incapacitated due to a medical condition;

(b) Is physically incapacitated due to pregnancy or childbirth and is therefore unable to perform the duties of the employee's position;

(c) Is quarantined;

- (d) Is receiving required medical, psychological, optometric or dental service or examination;
- (e) Is receiving counseling through an employee assistance program for a condition which would otherwise qualify pursuant to the provisions of this section;
- (f) Has an illness, death or other authorized medical need in his or her immediate family and he or she complies with the requirements of NAC 284.558 or 284.562; or
- (g) Meets the requirements set forth in subsection 2.

2. An appointing authority shall approve a request for sick leave of an employee who is a victim of an act which constitutes domestic violence *or sexual assault* or whose family or household member is a victim of an act which constitutes domestic violence ~~H~~ *or sexual assault*, and the employee is not the alleged perpetrator if:

- (a) The employee has been employed in public service for at least 90 days;
- (b) The employee has accrued the amount of sick leave necessary to cover the time requested; and
- (c) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence *or sexual assault* occurred.

Sec. 5. NAC 284.578 is hereby amended to read as follows:

284.578 1. Except as otherwise provided in NRS 284.360, an appointing authority may grant a leave of absence without pay to an employee for not more than 1 year for any satisfactory reason.

2. The Commission may grant leaves of absence without pay in excess of 1 year for purposes deemed beneficial to the public service.

3. An appointing authority may require an employee on leave of absence without pay to submit every 2 weeks a statement of his or her intent to return to work.
4. If the reason for granting the leave no longer exists, the appointing authority may revoke the leave after notifying the employee in writing and allowing, so far as is practicable, not less than 5 working days after the date of notification for the employee to return to work.
5. An employee shall request leave without pay at least 30 days in advance of when the need for the leave is foreseeable, if practicable.
6. An employee may not use leave without pay in lieu of sick leave or annual leave without approval of the appointing authority.
7. An employee who is using leave pursuant to the Family and Medical Leave Act may not use leave without pay until the employee has exhausted all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave that the employee is eligible to use based on the nature of the absence, as required by NAC 284.5811.
8. An appointing authority shall grant leave without pay, upon request, to an employee who is a victim of an act which constitutes domestic violence *or sexual assault* or whose family or household member is a victim of an act which constitutes domestic violence ~~H~~ *or sexual assault*, and the employee is not the alleged perpetrator, if:
 - (a) The employee has been employed in public service for at least 90 days; and
 - (b) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence *or sexual assault* occurred.

Sec. 6. NAC 284.5811 is hereby amended to read as follows:

284.5811 1. Except as otherwise provided in subsection 2, an employee who is entitled to take leave pursuant to the Family and Medical Leave Act is limited to a total of 12 weeks of such leave during a rolling 12-month period. The rolling 12-month period is measured backward from the date an employee uses any leave pursuant to the Family and Medical Leave Act.

2. An employee who is entitled to take leave pursuant to the Family and Medical Leave Act to care for a covered service member is limited to a total of 26 weeks of such leave during a single 12-month period.

3. Except as otherwise provided in subsections 4 and 5, an employee who meets the requirements for eligibility for and who is taking leave pursuant to the Family and Medical Leave Act must exhaust all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave that the employee is eligible to use based on the nature of the absence before using leave without pay. Any accrued sick leave, accrued annual leave, accrued compensatory time, catastrophic leave and holiday pay to which the employee is entitled pursuant to NAC 284.255 runs concurrently with the leave granted pursuant to the Family and Medical Leave Act if the employee is otherwise eligible for that sick leave, annual leave, compensatory time, catastrophic leave or holiday pay.

4. If an employee is absent from work as the result of a work-related injury or illness and meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:

(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and

(b) The employee may elect to use paid leave or leave without pay for the portion of time that he or she is not being compensated for the work-related injury or illness.

5. If an employee is absent from work as the result of a non-work-related injury or illness, the employee is receiving compensation for the injury or illness from a disability benefit plan and the employee meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:

(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and

(b) The employee may use paid leave for the time that the employee is being compensated for the non-work-related injury or illness if the employee has entered into an agreement with the appointing authority to use the paid leave. If the employee and the appointing authority have not entered into such an agreement, the employee may not elect to use and the appointing authority may not require the employee to use paid leave for that time.

6. If an employee who is a victim of an act which constitutes domestic violence *or sexual assault* or whose family or household member is a victim of an act which constitutes domestic violence ~~H~~ *or sexual assault*, and the employee is not the alleged perpetrator, is absent from work and meets the requirements for eligibility pursuant to the Family and Medical Leave Act, any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act.

7. An appointing authority may require an employee to provide medical or other appropriate documentation to support his or her need for leave pursuant to the Family and Medical Leave Act.

Sec. 7. NAC 284.599 is hereby amended to read as follows:

284.599 1. Except as otherwise provided in subsection 2, the appointing authority of an employee who is a victim of an act which constitutes domestic violence *or sexual assault* or

whose family or household member is a victim of an act which constitutes domestic violence **+** *or sexual assault*, and the employee is not the alleged perpetrator, shall, upon the request of the employee, provide reasonable accommodation to the employee.

2. Reasonable accommodation provided pursuant to this section must not cause an undue hardship to the operations of the appointing authority and must be deemed by the appointing authority to ensure the safety of the employee, the workplace, the employer or other employees. Such accommodation may include, without limitation:

- (a) Relocating the employee, including, without limitation, providing a different work area for the employee or changing the location to which the employee reports;
- (b) Modifying the schedule of the employee; or
- (c) Providing the employee a new telephone number for work.

3. For the purposes of this section, a relocation of an employee must not be construed:

- (a) As a transfer as defined in NAC 284.106; or
- (b) To authorize the employee to appeal the relocation using the process for an appeal of a transfer set forth in NRS 284.376.