

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R060-09

Effective November 25, 2009

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

AUTHORITY: §§1-5, NRS 284.065, 284.155 and 284.345.

A REGULATION relating to the State Personnel System; revising provisions concerning family and medical leave; and providing other matters properly relating thereto.

Section 1. NAC 284.523 is hereby amended to read as follows:

284.523 As used in NAC 284.523 to 284.598, inclusive, unless the context otherwise requires, the words and terms defined in NAC 284.5231 to ~~[284.5239,]~~ **284.52375**, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. NAC 284.5235 is hereby amended to read as follows:

284.5235 “Immediate family” means:

1. The employee’s parents, spouse, children, regardless of age, brothers, sisters, grandparents, great-grandparents, uncles, aunts, nephews, grandchildren, nieces, great-grandchildren and stepparents . ~~[; and]~~
2. If they are living in the employee’s household, the employee’s father-in-law, mother-in-law, son-in-law, daughter-in-law, grandfather-in-law, grandmother-in-law, great-grandfather-in-law, great-grandmother-in-law, uncle-in-law, aunt-in-law, brother-in-law, sister-in-law, grandson-in-law, granddaughter-in-law, nephew-in-law, niece-in-law, great-grandson-in-law and great-granddaughter-in-law.

3. The employee's next of kin if the employee is entitled to take leave pursuant to the Family and Medical Leave Act to care for a covered servicemember.

Sec. 3. 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 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 ~~he~~ *the employee* has exhausted ~~his~~ *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.

Sec. 4. NAC 284.5811 is hereby amended to read as follows:

284.5811 1. ~~[Aa]~~ *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 servicemember is limited to a total of 26 weeks of such leave during a single 12-month period.*

3. To calculate eligibility for leave pursuant to the Family and Medical Leave Act, each hour that an employee is in paid status in the 12-month period immediately preceding the leave must be considered as time worked.

~~[3.]~~ 4. Except as otherwise provided in subsection ~~[4.]~~ 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 ~~[his]~~ *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 he may use 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.]~~ 5. If an employee is absent from work as the result of a work-related injury or illness and he 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 is not being compensated for the work-related injury or illness.

~~[5.]~~ **6.** An appointing authority may require an employee to provide medical *or other appropriate* documentation to support his need for leave pursuant to the Family and Medical Leave Act. ~~[due to a serious health condition of the employee or of a spouse, parent or child of the employee.]~~

Sec. 5. NAC 284.5232, 284.5233, 284.5234 and 284.5239 are hereby repealed.

TEXT OF REPEALED SECTIONS

284.5232 “Continuing treatment” defined. (NRS 284.065, 284.155, 284.345)

“Continuing treatment” means:

1. Two or more treatments received from a provider of health care if the treatment normally requires a visit to the office of the provider of health care or a nurse or physician assistant who is under the direct supervision of the provider of health care;

2. Two or more treatments received from a provider of health care services, such as a physical therapist, under the orders of, or referred by, a provider of health care;

3. At least one treatment received from a provider of health care which results in a regimen of continuing treatment under the supervision of a provider of health care;

4. The continuing supervision of, but not necessarily active treatment by, a provider of health care because of a long-term or permanent condition for which treatment may not be effective; or

5. Any combination of treatments described in subsections 1 to 4, inclusive.

284.5233 “Eligible employee” defined. (NRS 284.065, 284.155, 284.345) “Eligible employee” means an employee who is eligible for family and medical leave.

284.5234 “Family and medical leave” defined. (NRS 284.065, 284.155, 284.345) “Family and medical leave” means any paid leave or leave of absence without pay which is granted to an eligible employee:

1. For the birth of a child of the employee and the care of that child if the leave is taken during the 12 months immediately following the date of the birth of that child;

2. For the placement of a child through adoption or foster care with the employee if the leave is taken during the 12 months immediately following the date of placement of that child;

3. To care for his spouse, child or parent who has a serious health condition; or

4. Because of a serious health condition of the employee which makes him unable to perform one or more of the essential functions of his position.

284.5239 “Serious health condition” defined. (NRS 284.065, 284.155, 284.345)

1. “Serious health condition” means an illness, an injury, or a physical or mental condition which involves:

(a) Inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

(b) Continuing treatment by or under the supervision of a provider of health care for one or more periods of:

(1) Incapacity of more than 3 consecutive calendar days, and any subsequent treatment or period of incapacity related to the same condition that also involves continuing treatment.

(2) Incapacity because of pregnancy or for prenatal care.

(3) Incapacity because of a chronic serious health condition, or treatment for such incapacity. A chronic serious health condition is one that continues over an extended period of time, requires periodic visits for treatment by or under the direct supervision of a health care provider, and which may cause episodic periods of incapacity.

(4) Incapacity which is permanent or long-term because of a condition for which treatment may not be effective, but for which the person is under the continuing supervision of a health care provider.

(5) Absence to receive multiple treatments by or under the direction of a health care provider for restorative surgery after an accident or other injury.

(6) Absence to receive multiple treatments by or under the direction of a health care provider for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment.

2. The term “serious health condition” does not include:

(a) Cosmetic treatments which do not require inpatient care and which do not result in medical complications; or

(b) Minor conditions such as the common cold, flu or an earache which do not result in medical complications.

3. As used in this section, “incapacity” means the inability to work, attend school or perform other regular daily activities because of a serious health condition, including any treatment or recovery period.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R060-09**

The Personnel Commission adopted regulations assigned LCB File No. R060-09 which pertain to chapter 284 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

The following statement is submitted for amendments to Nevada Administrative Code (NAC) 284.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, notice of workshop, and notices of intent to act upon a regulation were sent by email to persons who were known to have an interest in the subject of proposed personnel regulation changes as well as any person who had specifically requested such notice. These documents were also made available on the website of the Department of Personnel (DOP), <http://dop.nv.gov/>, mailed to all county libraries in Nevada and posted at the following locations:

Department of Personnel
Blasdel Building
209 E. Musser St
Carson City, NV 89701

Grant Sawyer State Office Bldg.
555 E. Washington Blvd
Suite 4401
Las Vegas, NV 89101

Nevada State Library and Archives
100 Stewart St
Carson City, NV 89701

Capitol Building
Main Floor
Carson City, NV 89701

Legislative Building
401 S. Carson St
Carson City, NV 89701

Gaming Control Board
1919 College Parkway
Carson City, NV 89701

Attached are excerpts from the minutes from the workshop that apply to these changes.

A public hearing by the Nevada Personnel Commission was held on September 25, 2009. There were no comments received from the public.

The number of persons who:

- (a) **Attended each hearing:** September 25, 2009, Personnel Commission meeting (hearing), 49 attendees
- (b) **Testified at each hearing:** September 25, 2009, Personnel Commission meeting, 0 testified
- (c) **Submitted written comments:** None

2. **A description of how comment was solicited from businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were not solicited, as the regulation does not affect businesses.

3. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

No comments opposed to this regulation were received.

4. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

This regulation does not have a direct economic effect on either a regulated business or the public.

5. **The estimated cost to the agency for enforcement of the adopted regulation:**

No direct cost is anticipated to the Department of Personnel for the enforcement of this regulation. Indirect costs will be incurred based on the need to update forms and informational guides and to provide consultation to employees and agencies.

6. **A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

This regulation change makes State regulations consistent with federal regulations. It also deletes State regulations that duplicate federal regulation.

7. **If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

This regulation does not include any provisions that are more stringent than any federal regulation. The regulation allows for the use of paid leave to be used in conjunction with Family and Medical Leave which is more generous than the federal requirement which allow but do not require the leave to be paid. However, this is consistent with the current State regulations, and the only significant change is allowing employees to use compensatory time in conjunction with FMLA. This change was made because it is now allowed based on federal changes to the FMLA.

8. **If the regulation provides a new fee or increases an existing fee, the total annual**

amount the agency expects to collect and the manner in which the money will be used.

No fees are associated with this regulation.

- 9. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

This regulation is specific to State government agencies and has no impact on small business.