

**ADOPTED REGULATION OF  
THE PERSONNEL COMMISSION**

**LCB File No. R136-12**

Effective October 4, 2013

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

AUTHORITY: §1, NRS 284.065, 284.155, 284.3621 and 284.3626.

A REGULATION relating to state personnel; revising provisions relating to catastrophic leave; and providing other matters properly relating thereto.

**Section 1.** 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 she or a member of his or her immediate family experiences a catastrophe and the employee has used all of his or her accrued leave.

2. An employee who is affected by a catastrophe and has used or is about to use all of his or her leave may request, on the appropriate form, the transfer of leave to an account for catastrophic leave for his or her personal use after the balance of all of his or her 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 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 appointing authority shall 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 NRS 284.3629.

5. ~~An employee whose request for catastrophic leave for a specified period of time has been approved and who has not had any or enough donations transferred to his or her account for catastrophic leave established pursuant to subsection 1 shall be deemed to be on approved leave without pay for the same period of time that was approved for the catastrophic leave. If a subsequent donation of hours to the employee's account for catastrophic leave is received before the last day of the approved period of catastrophic leave, the donation must be applied retroactively to cover the beginning of the period of leave that was taken without pay.~~

~~6.~~ 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 or her appointing authority on the appropriate form of his or her 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.

~~{7.}~~ 6. A donor and his or her 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}~~ *Except as otherwise provided in this subsection, 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.

~~{8.}~~ *If the donor is separated from state service before the excess leave is restored pursuant to this subsection, the excess leave must be transferred to the account for catastrophic leave of the appointing authority of the donor when the donation of leave was made.*

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

(a) Each employee under its authority, identified by a number assigned in accordance with subsection ~~{9.}~~ 8, donating or using catastrophic leave, his or her 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 ~~{7.}~~ 6, or used by the employee; *and*

(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.~~

~~—9.}~~ 8. The appointing authority shall assign numbers to employees for the purposes of subsection ~~{8.}~~ 7 in a sequential order and in such a manner that ensures the confidentiality of the identity of those employees.

~~10.~~ **9.** Hours donated to an account for catastrophic leave must be donated in increments of 8 hours.

~~11.~~ **10.** As used in this section, “immediate family” has the meaning ascribed to it in NAC 284.562.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066**  
**Informational Statement**  
**LCB File #R136-12**

**1. A clear and concise explanation of the need for the adopted regulation.**

This amendment is necessary to assist agencies in meeting their business needs. The amendment removing subsection 5 would allow an appointing authority to grant approved leave without pay if the amount of catastrophic leave donations required are not received but would no longer require unpaid leave if the business needs of the agency could not support such an absence.

The amendment to subsection 7 is necessary to reduce the administrative burden required to refund a donation of catastrophic leave made by an employee prior to separating service when the donated leave has not been used by the intended recipient. Prior to this amendment such unused leave would have to be refunded to the former employee. The amendment allows an agency to apply the excess hours to the agency's catastrophic leave bank.

Additional changes to this regulation also bring the administrative code into alignment with current catastrophic leave reporting practice.

**2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulations, notices 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 Division of Human Resource Management website, e-mailed to all county libraries in Nevada, and posted at the following locations:

Blasdel Building	Grant Sawyer State Office Bldg.
209 E. Musser St	555 E. Washington Blvd
Carson City, NV 89701	Las Vegas, NV 89101
Nevada State Library and Archives	Capitol Building
100 Stewart Street	Main Floor
Carson City, NV 89701	Carson City, NV 89701
Legislative Building	Gaming Control Board
401 S. Carson Street	1919 College Parkway
Carson City, NV 89701	Carson City, NV 89701

Attached are pertinent minutes from the workshop and the Personnel Commission meeting.

A Regulation Workshop was conducted by the Division of Human Resource Management on June 18, 2012 and a public hearing was held by the Nevada Personnel Commission on December 7, 2012.

- 3. The number of persons who:**
  - (a) Attended each hearing:** December 7, 2012 – 45
  - (b) Testified at each hearing:** December 7, 2012 – 1
  - (c) Submitted written comments:** 0
- 4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

Carrie Hughes, Personnel Analyst  
State of Nevada Human Resource Management Division  
209 E. Musser St., Room 101  
Carson City, NV 89701  
(775) 684-0111  
cphughes@admin.nv.gov

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

Comments were not solicited from businesses, as the regulation does not affect businesses. Comments were solicited from effected parties including employees and employee associations. No written comments were received. Comments from the workshop can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or calling (775) 684-0105.

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

The regulation changes in this file are a result of a comprehensive examination conducted by the Division in response to the Governor's request for State agencies to review regulations that are subject to its enforcement.

Initially, meetings were held with State agencies to solicit input regarding which regulations ere problematic and/or hampered efficient business. Subsequently, a regulation workshop was held to gain additional input from all interested parties, including employee associations. Based upon the input received, changes were made to the proposed regulations.

Amending this regulation will assist agencies in meeting their business needs. Per this change, an Appointing Authority may grant leave without pay if insufficient or no donations are received. It also allows donated hours not used by employee due to

separation to be returned to the agency's general catastrophic leave bank. Lastly, it brings the administrative code into alignment with current reporting practice.

The Personnel Commission unanimously adopted the recommended regulation changes.

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public.**
  - (a) **Estimated economic effect on the businesses which they are to regulate.**
  - (b) **Estimated economic effect on the public which they are to regulate.**

These regulations do not have a direct economic effect on either a regulated business or the public. They only impact the classified service of Executive Branch departments and the Nevada System of Higher Education.

8. **The estimated cost to the agency for enforcement of the proposed regulation:**

There is no additional cost to the agency for enforcement of these regulations.

9. **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.**

There are no other state or government agency regulations that the proposed amendments duplicate.

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

These regulations do not include any provisions that are more stringent than any federal regulation.

11. **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 these regulations.

### **Pertinent Testimony from Regulation Workshop Held June 18, 2012**

**Shelley Blotter:** This language was inserted just a few years ago regarding what happens if there are not sufficient donations for someone who has been approved for catastrophic leave. What the deletion would do is make it permissible whether to grant leave without pay or not in those situations.

**Jim Wells:** I just want to make sure I'm clear on the intent of the removal of Subsection 5. Currently it is deemed an approved leave without pay. And now, you're saying it would be at the discretion of the appointing authority as to whether or not that would be approved leave without pay.

**Shelley Blotter:** Right. In conversations with agencies, some have felt like it was overly burdensome to require the appointing authority to grant LWOP when staffing may not allow for someone to be out for that period of time. So it would make it permissive if you can accommodate that extended absence, you could grant LWOP if there wasn't sufficient catastrophic leave.

**Jim Wells:** And then, how does that interact with the current language that's in Section 611 that talks about physical separations for people who are on approved leave? So under the current language for those two sections, you couldn't separate somebody for a physical disability if they were on this approved leave without pay.

**Shelley Blotter:** Right. That part of the regulations is a little bit muddy right now. If they had leave on the books, would you allow them to take it? If you had granted leave without pay for that period of time, would you be allowed to terminate them? She asked if there were additional comments? No additional comments. She proceeded to Section 20, 284.5811.

**Priscilla Maloney:** On Subsection 6. Our only concern was just the pragmatics of how this would work. In other words, our question was under the current law as it stands in FMLA. Let's assume for a moment that the person has purchased a short-term temporary disability policy that is 12 weeks in length, just to keep it simple since FMLA is 12 weeks, which would go first? Would it be concurrent, would it be you could exhaust your policy and then tack on the 12 weeks? I mean, that's what we were wondering is how that would work in the real world.

**Carrie Hughes:** The intention of this change is not to change the ability of FMLA and that short-term or long-term disability to run concurrently, simply to make it optional whether to require the use of paid leave when it is both. The Department of Labor, both in their regulations and in one of their interpretation letters, have said, basically, that we cannot require them to substitute. So this is kind of carving this out as an exception to the rules within this regulation requiring them to exhaust their paid leave when on FMLA before going into leave without pay.

**Priscilla Maloney:** I'm sorry, because were running concurrent. That's where I'm getting a little bit bogged down. Because oftentimes, when someone has a serious medical condition, the big issue is hanging onto that insurance for as long as possible. Especially, if there's a good chance that they'll recover and be able to stay in State service, but if somebody has this policy, you're saying it would not be coded, perhaps, on payroll as leave without pay or am I getting too lost in the weeds here?

**Shelley Blotter:** I think what it says is that we would not require you to take other types of accrued leave. So we wouldn't require you to take annual leave or sick leave if you have one of these policies. You could be in leave without pay and then use your policy to cover your pay.



**Priscilla Maloney:** And then you would still have whatever you would have on the books left because, again, we've had at least one situation where somebody was undergoing treatment and the whole issue was, was everything going to run out nicely by when the treatment was supposed to conclude so that that person didn't have to move into the situation of exploring a medical retirement if they were going to recover.

**Kareen Masters:** I guess my only request would be is maybe inserting some language that requires the employee to notify us if they have a policy because we aren't always aware that they have that. So maybe at the time they apply for FMLA leave, they have to make their employer aware that they're covered by a policy that they intend to seek benefits from.

### **Pertinent Testimony from Personnel Commission Meeting Held Dec. 7, 2012**

**Carrie Hughes,** Personnel Analyst, Department of Administration, DHRM: Referred to Item X. D. LCB File No. R136-12 and said the DHRM was proposing permanent amendments to NAC 284.576 to assist agencies in meeting their business needs. She noted the proposed language would remove the provision that deemed an employee on approved leave without pay if insufficient donations were received for the period the employee had been granted catastrophic leave. She added proposed language would allow, in cases where an employee had left state service, for the donation of returned catastrophic leave to donor's former agencies' general catastrophic leave bank. She noted also the removal of current regulation language which would bring the administrative code into alignment with current catastrophic leave reporting practice.

A. LCB File No. R136-12

Sec. 1 NAC 284.576 – Catastrophic leave; Use and administration; appeal of denial

**Chairperson Fox:** Requested clarification to confirm she understood the changes. She stated if an employee requested catastrophic leave and had made insufficient donations in the past they would go on approved leave without pay and without there being a requirement that the agency had approved that leave without pay. **Carrie Hughes:** Explained the agency would approve the time period for catastrophic leave but if insufficient donations had been received for that approved period then yes, as the regulation before the amendment would be they would go into a leave of absence without pay.

**Commissioner Brust:** Referred to the language that the DHRM was proposing be eliminated and posed several circumstances and asked how it would be handled if the language was removed. **Carrie Hughes:** Responded that it would remove that from regulation but it would still exist in central payroll policies, the provision allowing for retroactive use of the donations.

**Commissioner Brust:** Asked if the provision would still be available. **Carrie Hughes:** Responded yes.

**MOTION:** Moved to approve provisions to the Nevada Administrative Code 284.576 as identified in LCB File No. R136-12

**BY:** Commissioner Mauger

**SECOND:** Commissioner Sanchez

**VOTE:** The vote was unanimous in favor of the motion