

**ADOPTED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R021-13

Effective October 23, 2013

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

AUTHORITY: §1, NRS 284.065, 284.155, 284.345, 284.350, 284.355 and 284.3626.

A REGULATION relating to state personnel; revising certain provisions concerning family and medical leave; and providing other matters properly relating thereto.

Section 1. 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. 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.

4. Except as otherwise provided in ~~subsection~~ *subsections 5 and 6*, 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.

5. 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.

6. *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.

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.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File #R021-13

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

This amendment is necessary in order to bring the State's practices into alignment with the Department of Labor's interpretation of federal Family and Medical Leave Act regulations; the amendment to NAC 284.5811 allows employees to receive short-term or long term disability plan benefits while on FMLA leave and does not require the employee to exhaust their accrued paid leave.

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, emailed to all county libraries in Nevada, and posted at the following locations:

Blasdel Building
209 E. Musser Street
Carson City, NV 89701

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

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

Capitol Building
Main Floor
Carson City, NV 89701

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

Gaming Control Board
1919 College Parkway
Carson City, NV 89701

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

A Regulation Workshop was conducted by the Division of Human Resource Management on July 17, 2013 and a public hearing was held by the Nevada Personnel Commission on October 10, 2013.

Comments from the workshop and hearing can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or calling (775) 684-0105.

3. **The number of persons who:**
 - (a) **Attended each hearing:** October 10, 2013 – 53
 - (b) **Testified at each hearing:** October 10, 2013 – 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 and hearing 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.**

No opposition to the regulation was received at either the workshop or the hearing. This regulation amendment simply brings the State's regulations into alignment with the Department of Labor, Wage and Hour Division's interpretation. Additionally, this regulation provides a greater benefit to employees than was previously allowed. The regulation was unanimously adopted by the Personnel Commission.

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.**

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

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.

The regulation is based on the Department of Labor, Wage and Hour Division's interpretation of the federal Family and Medical Leave Act.

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

The regulation does 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 this regulation.

Pertinent Testimony from Regulation Workshop Held July 17, 2013

Carrie Hughes, Personnel Analyst, HRM: Stated that HRM was proposing a permanent amendment to NAC.284.5811. She noted that the amendment would clarify that an employee may not be required to use his or her accrued paid leave when on approved FMLA (Family and Medical Leave Act) leave and also receiving payment from a disability benefit plan such as short or long-term disability at the same time. She added that the amendment would bring the regulation into compliance with the FMLA federal regulations. She noted that an agency and an employee may jointly agree to allow the employee to supplement his or her disability benefit with his or her applicable accrued paid leave.

Kareen Masters, Deputy Director, DHHS: Stated that if she understood the federal regulations the time still would count toward the employee's FMLA entitlement. She suggested an amendment and modification to Subsection 5 and elaborated on this. She said that she had known in the past that employees did have the ability to use their paid leave and then apply for their short-term disability and would receive both at the same time. She indicated that she had never known that they had the ability to say that they could not do that.

Carrie Hughes, Personnel Analyst, HRM: Stated that it was a change to the current regulation and she added that it was specifically addressed in the federal regulations. She noted that it was a change and stated that it had been discussed with Mark Evans and it was decided to address it on the forms. There would be notification of both the employee and employer being able to address the issue so the agency was aware of it.

Shelley Blotter, Deputy Administrator, HRM: Confirmed that they would look at the language and it might look different when it went up for adoption. She added that they had submitted it to legal counsel at the LCB (Legislative Counsel Bureau) for pre-adoption review.

Sarina Rupert, Personnel Services, DETR: Stated she managed all the FMLA leave for the department. She asked if the leave or short-term disability leave counted towards the 480 hours.

Carrie Hughes, Personnel Analyst, HRM: Stated that the fact the employee was receiving disability plan benefits would not change whether that time was attributed to their entitlement period. She noted that it would still count towards the use of the 12 work weeks.

Sarina Rupert, Personnel Services, DETR: Asked how the agency would account for that pay to go towards the 480 hours if they were not coding their timesheets to FMLA using leave or unpaid leave.

Carrie Hughes, Personnel Analyst, HRM: Stated one thing they had considered was administering it somewhat the way that workers' compensation would be supplemented by accrued paid leave. She stated she did not know how it would be coded. She added that they would code it to the FMLA. She mentioned several other areas that were discussed.

Ron Cuzze, President, NSLEOA: Asked if this amendment affected the members of the NSLEOA. He was advised by Shelley Blotter that the answer was no, that it was separate and different. She confirmed it would have no impact.

Pertinent Testimony from Personnel Commission Meeting Held October 10, 2013

Carrie Hughes: Human Resource Management is proposing a permanent amendment to NAC 284.5811 in LCB File #R021-13. The intent of this amendment is to clarify that an employee may not be required to use his or her accrued paid leave when on approved Family and Medical Leave Act leave and also receiving payment from a disability benefit plan such as short or long term disability at the same time. Currently, employees are required to exhaust all of their applicable paid leave while on FMLA leave, with the exception of workers' compensation. This amendment will allow an agency and employee to jointly agree to allow the employee to use his or her accrued paid leave while receiving his or her disability benefit. This amendment is based on the Family and Medical Leave Act federal regulations.