

**ADOPTED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R017-16

Effective November 2, 2016

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

AUTHORITY: §§1-7, NRS 284.065, 284.155 and 284.345.

A REGULATION relating to state personnel; revising certain definitions for the purposes of the provisions governing attendance and leave of employees in the public service; generally requiring the Division of Human Resource Management of the Department of Administration to construe and interpret those definitions consistently with the interpretation of similar terms in federal regulations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing regulations define the terms “child” and “parent” for the purpose of the provisions governing the attendance and leave of employees in the public service when the federal Family and Medical Leave Act applies and when the federal Family and Medical Leave Act does not apply. (NAC 284.52315, 284.5237; 29 U.S.C. §§ 2601 et seq.) **Sections 2 and 3** of this regulation require, with certain limited exceptions, the Division of Human Resource Management of the Department of Administration to interpret and construe: (1) the definition of “child” set forth in NAC 284.52315 in a manner that is consistent with the interpretation by the Wage and Hour Division of the United States Department of Labor of the definition of “son or daughter” set forth in federal regulations; and (2) the definition of “parent” set forth in NAC 284.5237 in a manner that is consistent with the interpretation by the Wage and Hour Division of the definition of “parent” set forth in federal regulations. **Sections 6 and 7** of this regulation revise those definitions of “child” and “parent” in existing regulations in a manner that: (1) with certain limited exceptions, provides consistency with the definitions of “son or daughter” and “parent,” respectively, which are set forth in federal regulations governing leave taken under the federal Family and Medical Leave Act; (2) expands the applicability of the definitions; and (3) with certain limited exceptions, incorporates the interpretation of the definition of “son and daughter” and “parent” by the Wage and Hour Division.

The definition of the term “son or daughter” set forth in the federal regulations governing leave taken under the federal Family and Medical Leave Act includes a child of a “person standing in loco parentis.” (29 C.F.R. § 825.122(d)) Those federal regulations provide that the phrase “persons who are in loco parentis” includes persons with “day-to-day responsibilities to care for and financially support a child.” (29 C.F.R. § 825.122(d)(3) (Emphasis added.)) The

Wage and Hour Division has interpreted those provisions to also include persons who have day-to-day responsibilities to care for or financially support a child. (Wage and Hour Administrator's Interpretation No. 2010-3 (June 22, 2010)) **Section 4** of this regulation defines the terms "person standing in loco parentis" and "person who stood in loco parentis" for the purpose of the provisions governing the attendance and leave of employees in the public service in a manner that is consistent with the interpretation of such phrases by the Wage and Hour Division.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *Except for the purposes of NAC 284.5235 and 284.562, the Division of Human Resource Management shall interpret and construe the definition of "child" set forth in NAC 284.52315 in a manner that is consistent with the interpretation by the Wage and Hour Division of the United States Department of Labor of the definition of "son or daughter" set forth in 29 C.F.R. § 825.122(d).*

Sec. 3. *The Division of Human Resource Management shall interpret and construe the definition of "parent" set forth in NAC 284.5237 in a manner that is consistent with the interpretation by the Wage and Hour Division of the United States Department of Labor of the definition of "parent" set forth in 29 C.F.R. § 825.122(c).*

Sec. 4. 1. *"Person standing in loco parentis" or "person who stood in loco parentis" means:*

(a) For the purposes of NAC 284.52315, a person who has day-to-day responsibilities to care for or financially support a child; and

(b) For the purposes of NAC 284.5237, a person who had the day-to-day responsibilities to care for or financially support an employee when the employee was a child.

2. For the purposes of this section, a biological or legal relationship between the person and the child or between the person and the employee when the employee was a child, as applicable, is not necessary.

Sec. 5. NAC 284.523 is hereby amended to read as follows:

284.523 As used in NAC 284.523 to 284.598, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 284.5231 to 284.52375, inclusive, *and section 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 6. NAC 284.52315 is hereby amended to read as follows:

284.52315 **1.** “Child” means a person who is:

~~1-1~~ **(a)** A biological, adopted or foster child, a stepchild, a legal ward or ~~the~~ *a* child of a person ~~[with the daily responsibility of caring for and financially supporting]~~ *standing in loco parentis to* that child; and

~~1-2~~ **(b)** Except as otherwise provided in NAC 284.5235 and 284.562, under 18 years of age or *who* is 18 years of age or older and incapable of ~~[caring for himself or herself]~~ *self-care* because of a ~~[mental or]~~ physical *or mental* disability ~~1-1~~ *at the time the requested leave is to commence.*

2. *The term includes a person who meets the definition of “child” as interpreted by the Division of Human Resource Management pursuant to section 2 of this regulation.*

3. *As used in this section:*

(a) *“Incapable of self-care” means that a person requires active assistance or supervision to provide daily self-care in three or more of the:*

(1) *Activities of daily living which include adaptive activities, including, without limitation, caring appropriately for personal grooming and hygiene, bathing, dressing and eating; or*

(2) Instrumental activities of daily living which include, without limitation, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories and using a post office.

(b) “Physical or mental disability” means a physical or mental impairment that substantially limits one or more of the major life activities of a person, as those terms are defined in 29 C.F.R. § 1630.2(h), (i) and (j).

Sec. 7. NAC 284.5237 is hereby amended to read as follows:

284.5237 1. “Parent” means ~~the~~ a biological , *adopted or foster* parent *or stepparent* of an employee or ~~the~~ a person who ~~had the daily responsibility of caring for and financially supporting~~ *stood in loco parentis to* the employee when the employee was a child.

2. The term includes a person who meets the definition of “parent” as interpreted by the Division of Human Resource Management pursuant to section 3 of this regulation.

3. The term does not include a parent of the spouse of an employee.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R017-16

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

The amendments included in this LCB File are necessary to provide consistency between State and federal leave laws.

The three new regulations explain the interpretation of “child”, “parent,” and define “person standing in loco parentis” and “person who stood in loco parentis,” for use in the Attendance and Leaves section of NAC 284. These changes align the terms as used in NAC 284 with those used in the administration of Family and Medical Leave (FMLA). NAC 284.5811 requires, with few exceptions, an employee to use his or her applicable paid leave (e.g., sick leave) concurrent with the FMLA’s provisions. For that reason, differences in definitions of key terminology between the FMLA regulations, the U.S. Department of Labor Wage and Hour Division interpretations, and Nevada Administrative Code creates difficulty and potential liability in the administration of FMLA leave.

The amendment to NAC 284.5237 aligns the interpretation of “parent” by the Wage and Hour Division of the United States Department of Labor to the definition of “parent” as used in the Attendance and Leaves section of NAC 284. (See United States Department of Labor; Administrator’s Interpretation No. 2010-3; June 22, 2010; dol.gov.)

2. A 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.

On August 31, 2016, copies of the proposed regulation amendments 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 via Listserv. These documents were also made available on the Division of Human Resource Management’s website, the Nevada Public Notice website, the Legislative Counsel Bureau’s website, and mailed to all county libraries in Nevada, and posted at the following locations:

Blasdel Building
209 E. Musser Street
Carson City, NV

Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV

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

Grant Sawyer Office Building
555 E. Washington Avenue
Las Vegas, NV

Nevada State Capitol Building
101 N. Carson Street
Carson City, NV

Regulation workshops were conducted by the Division of Human Resource Management on June 25, 2015, and on January 27, 2016. A public hearing was held by the Nevada Personnel Commission on September 30, 2016.

During the workshop held on June 25, 2015, comment was received from the Deputy Director, Department of Health and Human Services, who expressed concerns that patterning state regulations to match federal regulations may create confusion. As a result of this comment, the proposed regulation was restructured for the final version. Additionally, the Division will provide training and resource materials for ease of application of the regulation.

Additionally, comment was received from the Personnel Officer, Department of Corrections, regarding how an agency would document whether an employee had the day-to-day care or financial responsibility of a child. Staff explained this has not changed from how the regulation is currently administered, and the agency could take a statement either verbally or in writing.

No comment was received during the workshop held on January 27, 2016.

At the public hearing, staff provided information regarding the intent and need for the regulations.

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

3. **The number of persons who:**
 - (a) **Attended each hearing:** - 37
 - (b) **Testified at each hearing:** - 1
 - (c) **Submitted written comments:** - 0

4. **Following is a list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3(b):**

Carrie Hughes, Personnel Analyst
State of Nevada
Department of Administration
Division of Human Resource Management
100 N. Stewart Street
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(775) 684-0111

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- 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. Written minutes and comments from the workshop and public hearing can be obtained as instructed in the response to question #2.

- 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.**

There was no opposition to the regulation at the Personnel Commission hearing.

- 7. 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.

- 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 proposed 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 does not overlap or duplicate any State or federal regulations.

- 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 covered by any federal regulations.

- 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.