

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R017-16

Explanation of Proposed Change: The following amendment is proposed by the Division of Human Resource Management with the intent of providing a uniform definition of “child” and “son or daughter” for leave use both when the Family and Medical Leave Act of 1993 (FMLA) does and does not apply. This amendment assigns the definition of “child” in the Attendance and Leaves section (i.e., NAC 284.523 to 284.598) of Nevada Administrative Code chapter 284 the same meaning as “son or daughter” as used in the FMLA.

The U.S. Department of Labor has interpreted “son or daughter” as used in the FMLA regulations to include a situation in which “either day-to-day care or financial support may establish an in loco parentis relationship where the employee intends to assume the responsibilities of a parent with regard to a child.” (U.S. Department of Labor; Administrator’s Interpretation No. 2010-3; June 22, 2010; dol.gov) This differs from the parallel portion of the definition of “child” in NAC 284.52315 which states, “...the child of a person with the daily responsibility of caring for and financially supporting that child...” This amendment will unify these conflicting definitions.

NAC 284.581 Adoption by reference of federal law and regulations. (NRS 284.065, 284.155, 284.345)

1. For the purposes of NAC 284.523 to 284.598, inclusive, the Division of Human Resource Management hereby adopts by reference:

(a) The Family and Medical Leave Act of 1993 (Public Law 103-3), as amended.

(1) “Child” has the same definition as “son or daughter” as used in the Family and Medical Leave Act of 1993, CFR 825.122(d).

(b) The Fair Labor Standards Act of 1938, as amended, and 29 C.F.R. Part 541.

2. A copy of the Family and Medical Leave Act, the Fair Labor Standards Act or 29 C.F.R. Part 541 may be obtained at no charge from the United States Government, Wage and Hour Division, P.O. Box 3136, Reno, Nevada 89505-3136, telephone (775) 784-5200, or from the United States Government, Wage and Hour Division, 1050 Flamingo Road, Suite 321, Las Vegas, Nevada 89119, telephone (702) 699-5581.

(Added to NAC by Dep’t of Personnel, eff. 3-23-94; A 11-16-95; R082-00, 8-2-2000)

Explanation of Proposed Change: The Division of Human Resource Management recommends the repeal of the current definition of “child.” In place of this definition, an amendment to NAC 284.581 is proposed, which will reference the definition of “son or daughter” as used in the federal regulations for the purposes of the Family and Medical Leave Act of 1993, to define “child” for the purposes of NAC 284.523 to 284.598, inclusive.

TEXT OF REPEALED SECTION

NAC 284.52315 “Child” defined. (NRS 284.065, 284.155, 284.345) “Child” means a person who is:

1. A biological, adopted or foster child, a stepchild, a legal ward or the child of a person with the daily responsibility of caring for and financially supporting that child; and
2. Except as otherwise provided in NAC 284.5235 and 284.562, under 18 years of age or is 18 years of age or older and incapable of caring for himself or herself because of a mental or physical disability.

(Added to NAC by Dep’t of Personnel, eff. 3-23-94; A by Personnel Comm’n by R096-03, 10-30-2003)