

**SECOND REVISED PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R017-16

June 16, 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.