

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R024-16

**NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Adoption and Amendment of Regulations of the
Department of Administration
Division of Human Resource Management**

The Personnel Commission will hold a public hearing at 9:00 a.m., on June 10, 2016 at the Legislative Counsel Building, Room 3138, 401 South Carson Street, Carson City, Nevada and by video conference at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations will not result in an increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.

<u>LCB File:</u>	<u>NAC#:</u>	<u>Regulation Lead Line:</u>
R017-16	NEW NAC 284.52315 NAC 284.5237	“Child” and “parent” defined. “Child” defined. “Parent” defined.
R024-16	NEW NAC 284.5405 NAC 284.551	“Administrative faculty” defined. Annual leave: Credit upon reinstatement, rehiring, reemployment or transfer. Sick leave: Credit upon rehiring, reemployment or transfer.
R060-16	NAC 284.204	Adjustment of steps within same grade.

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Administration, Division of Human Resource Management, 209 East Musser Street, Room 101, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Division of Human Resource Management on or before June 10, 2016. If no person who is directly affected by the proposed action appears to

request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted and amended will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted and amended will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada and 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption or amendment of any regulation, the agency, if requested to do so by an interested person, either before adoption or amendment or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption or amendment and incorporate therein its reason for overruling the consideration urged against its adoption or amendment.

This notice of hearing has been posted at the following locations:

Carson City

Bladel Building, 209 East Musser Street
Nevada State Library & Archives Building, 100 North Stewart Street
Nevada State Capitol Building, 101 North Carson Street
Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Grant Sawyer Building, 555 East Washington Street

Websites

Legislative Counsel Bureau website: www.leg.state.nv.us
Nevada Public Notice website: <http://notice.nv.gov>
Division of Human Resource Management website: www.hr.nv.gov

**REGULATIONS PROPOSED
FOR PERMANENT ADOPTION OR AMENDMENT**

LCB File No. R017-16

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

Explanation of Proposed Change: The following amendment, proposed by the Division of Human Resource Management, creates a new regulation requiring that the Division of Human Resource Management interpret the definition of “child” in a manner consistent with the interpretation by the Wage and Hour Division of the definition of “son or daughter” set forth in federal regulations. Additionally, the amendment requires that the Division interpret the definition of “parent” in a manner consistent with the interpretation by the Wage and Hour Division of the definition of “parent” set forth in federal regulations.

NEW “Child” and “parent” defined.

The Division of Human Resource Management shall interpret and construe:

1. Except as otherwise provided in NAC 284.52315, 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); 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 United States Department of Labor of the definition of “parent” set forth in 29 C.F.R. § 825.122(c).

Section 2. NAC 284.52315 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, revises the definition of “child” in a manner that provides consistency with the definition of “son or daughter,” which is set forth in federal regulations governing leave taken under the federal Family and Medical Leave Act. The amendment also expands the applicability of the definitions, and incorporates the interpretation of the definition of “son or daughter” by the Wage and Hour Division of the United States Department of Labor. Several additional supporting definitions have also been included in this amendment.

NAC 284.52315 “Child” defined. (NRS 284.065, 284.155, 284.345)

1. “Child” means a person who is:

~~[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

~~[2.]~~ **(b)** 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]~~ **self-care** because of a ~~[mental or]~~ physical **or mental** disability ~~[]~~ **at the time the requested leave is to commence.**

2. 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) *“Person standing in loco parentis” means a person who has day-to-day responsibilities to care for or financially support a child. A biological or legal relationship between the person and the child is not necessary.*

(c) *“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).*

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

Section 3. NAC 284.5237 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resources Management, revises the definition of “parent” in a manner that provides consistency with the definition of “son or daughter,” which is set forth in federal regulations governing leave taken under the federal Family and Medical Leave Act. The amendment also expands the applicability of the definitions, and incorporates the interpretation of the definition of “son or daughter” by the Wage and Hour Division of the United States Department of Labor. Additionally, the definition of “person who stood in loco parentis” has also been included in this amendment

NAC 284.5237 “Parent” defined. (NRS 284.065, 284.155, 284.345)

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

2. *As used in this section, “person who stood in loco parentis” means a person who had the day-to-day responsibilities to care for or financially support the employee when the employee was a child. A biological or legal relationship between the person and the employee when the employee was a child is not necessary.*

(Added to NAC by Dep’t of Personnel, eff. 3-23-94)

LCB File No. R024-16

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

Explanation of Proposed Change: The following amendment, proposed by the Division of Human Resource Management, adopts the term “administrative faculty” as used in the proposed amendment to NAC 284.5405 and 284.551, from the Nevada System of Higher Education (NSHE) code.

NEW: “Administrative faculty” defined.

1. For the purposes of this section and NAC 284.523 to 284.598, inclusive, the Commission hereby adopts by reference the Board of Regents Handbook. A copy of the Handbook may be obtained, free of charge, from the Nevada System of Higher Education at the Internet address <http://system.nevada.edu/Nshe/index.cfm/administration/board-of-regents/handbook/>.

2. If the publication adopted by reference in subsection 1 is revised, the Commission will review the revision to determine its suitability for this State. If the Commission determines that the revision is not suitable for this State, the Commission will hold a public hearing to review its determination and give notice of that hearing within 90 days after the date of the publication of the revision. If, after the hearing, the Commission does not revise its determination, the Commission will give notice that the revision is not suitable for this State within 90 days after the hearing. If the Commission does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.

Section 2. NAC 284.5405 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, changes the references to “unclassified” employees of the Nevada System of Higher Education (NSHE) to “administrative faculty” as unclassified positions at the NSHE do not exist. Additionally, it clarifies that if a member of the administrative faculty of NSHE is appointed without a break in service to the classified or unclassified service, his or her annual leave will be recomputed to reflect the amount that would have accrued to him or her as a classified or unclassified employee less any annual leave which he or she used in his or her administrative faculty position at NSHE and the remaining balance will be transferred to the new appointment.

NAC 284.5405 Annual leave: Credit upon reinstatement, rehiring, reemployment or transfer. (NRS 284.065, 284.155, 284.345, 284.350)

1. Except as otherwise provided in this section, any employee who returns to state service following a separation is eligible to accrue annual leave based on his or her total service with the State after he or she has completed 3 years of continuous service. The employee must requalify after each break in service.

2. An employee who is rehired within 1 year after being laid off accrues annual leave at a rate based on his or her total state service. He or she may use the annual leave immediately upon accruing it if he or she has completed a total of 6 months of employment.

3. An employee with a permanent disability arising from a work-related injury or occupational disease who is reemployed following a separation from state service within 1 year after the date on which he or she sustained the permanent disability as determined pursuant to NAC 284.6013 accrues annual leave at a rate based on his or her total state service. He or she

may use the annual leave immediately upon accruing it if he or she has completed a total of 6 months of employment.

4. An employee who is rehired within 1 year after being laid off is entitled to buy back the balance of the annual leave for which he or she received payment in a lump sum on the date of the layoff. The rate of pay at which he or she is rehired applies to the buying back of annual leave.

5. An employee with a permanent disability arising from a work-related injury or occupational disease who is reemployed following a separation from state service within 1 year after the date on which he or she sustained the permanent disability as determined pursuant to NAC 284.6013 is entitled to buy back the balance of the annual leave for which he or she received payment in a lump sum at the time of separation. The rate of pay at which he or she is reemployed applies to the buying back of annual leave.

6. If an employee who was laid off before completing 6 months of employment is rehired within 1 year after the layoff, the amount of the unpaid annual leave he or she had earned before the layoff must be restored.

7. If a person eligible for military reemployment is reemployed, he or she accrues annual leave at the rate which he or she would have earned if he or she had not left state service.

8. If an employee is appointed without a break in service from a position under one appointing authority to a position under another appointing authority, the balance of the employee's annual leave is charged to the agency to which he or she is appointed.

9. If a nonclassified employee, ~~[an unclassified employee of the Nevada System of Higher Education]~~ *a person employed in a position described in paragraph (d) of subsection 1 of section 2 of chapter 3 of title 4 of the Board of Regents Handbook, as adopted by reference in section 1 of this regulation*, or an employee included in the State Personnel System pursuant to NRS 284.022 is appointed without a break in service to the classified or unclassified service ~~[governed by the Commission]~~, his or her annual leave must be recomputed to reflect the amount that would have accrued to him or her as a classified or unclassified employee *governed by the Commission*, less any annual leave which he or she used during his or her nonclassified ~~[Nevada System of Higher Education]~~ *service, employment in a position described in paragraph (d) of subsection 1 of section 2 of chapter 3 of title 4 of the Board of Regents Handbook, or employment with a governmental agency [employment,] included in the State Personnel System pursuant to NRS 284.022*, and the remaining balance will be transferred to the new appointment. The amount of annual leave transferred by the employee pursuant to this subsection may not exceed the maximum amount which is permitted by the classified or unclassified rate of accrual as set forth in NRS 284.350 and NAC 284.538. The agency to which the employee is appointed is not responsible for payment of any annual leave in excess of the amount which is transferable. It is the responsibility of the employee who is transferring annual leave to seek payment of any excess amount of annual leave remaining to his or her credit from his or her former employer. If the amount of annual leave which is recomputed pursuant to this subsection results in a negative amount, the employee will begin the new appointment in the classified or unclassified service *governed by the Commission* without any hours of annual leave.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 4-19-88; 3-27-92; 11-12-93; 3-1-96; R031-98, 4-17-98; A by Personnel Comm'n by R096-03, 10-30-2003; R022-05, 10-31-2005; R142-05 & R145-05, 12-29-2005)

Section 3. NAC 284.551 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, changes the references to “unclassified” employees of the Nevada System of Higher Education (NSHE) to “administrative faculty” as unclassified positions at the NSHE do not exist. Additionally, it clarifies that if a member of the administrative faculty of NSHE is appointed without a break in service to the classified or unclassified service, his or her sick leave will be recomputed to reflect the amount that would have accrued to him or her as a classified or unclassified employee less any sick leave which he or she used in his or her administrative faculty position at NSHE and the remaining balance will be transferred to the new appointment.

NAC 284.551 Sick leave: Credit upon rehiring, reemployment or transfer. (NRS 284.065, 284.155, 284.345, 284.355)

1. An employee who is rehired within 1 year after he or she is laid off is entitled to the restoration of the accrued and unused sick leave remaining in his or her account at the time of the layoff.

2. The balance of a seasonal employee’s sick leave must be restored to him or her for each subsequent term of appointment if the employee is rehired within 1 year after the date of his or her last seasonal separation.

3. An employee who is reemployed within 1 year after sustaining a permanent disability arising from a work-related injury or occupational disease as determined pursuant to NAC 284.6013 is entitled to restoration of the accrued and unused sick leave that remained in his or her account at the time of separation.

4. If an employee is appointed without a break in service from a position under one appointing authority to a position under another appointing authority, the balance of his or her sick leave is charged to the agency to which he or she is appointed.

5. If a nonclassified employee, ~~[an unclassified employee of the Nevada System of Higher Education]~~ *a person employed in a position described in paragraph (d) of subsection 1 of section 2 of chapter 3 of title 4 of the Board of Regents Handbook, as adopted by reference in section 1 of this regulation*, or an employee covered by NRS 284.022 is appointed to the classified or unclassified service *governed by the Commission* without a break in service, his or her sick leave must be recomputed to reflect the amount that would have accrued to him or her as a classified or unclassified employee *governed by the Commission*, less any sick leave which he or she used during his or her nonclassified ~~[, Nevada System of Higher Education]~~ *service, employment in a position described in paragraph (d) of subsection 1 of section 2 of chapter 3 of title 4 of the Board of Regents Handbook, as adopted by reference in section 1 of this regulation*, or *employment with a governmental agency [employment] included in the State Personnel System pursuant to NRS 284.022*, and the remaining balance will be transferred to the new appointment. If the amount of sick leave which is recomputed pursuant to this subsection results in a negative amount, the employee will begin the new appointment in the classified or unclassified service *governed by the Commission* without any hours of sick leave.

(Added to NAC by Dep’t of Personnel, eff. 10-26-84; A 4-19-88; 3-1-96; A by Personnel Comm’n by R142-05 & R145-05, 12-29-2005)

LCB File No. R060-16

Section 1. NAC 284.204 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, clarifies that an adjustment for equity is among positions within departments/agencies and not across State service, removes the requirement that an appointing authority must ensure that an adjustment will not create an inequity, and adds the ability to remove an adjustment if an employee moves to a position in a department/agency where a similar recruiting problem does not exist.

NAC 284.204 Adjustment of steps within same grade. (NRS 284.065, 284.155, 284.175)

1. The Division of Human Resource Management may approve an adjustment of steps within the same grade to:

(a) Allow an appointing authority the flexibility to adjust the rate of pay for a position that will be filled by a person from a pool of eligible persons who are applying for the position on an open competitive basis in order to:

(1) Meet a difficult recruiting problem in which an effort to recruit a person for a position or class has failed to produce at least five eligible persons who are available to work, or the recruitment for the position or class has been deemed historically difficult. Such an adjustment of steps may be approved by the Division of Human Resource Management for a class for a period of 1 year.

(2) Employ a person whose education (or) experience is superior to those of another eligible person and who exceeds the minimum qualifications of the class. Any experience or education which is considered by the appointing authority pursuant to this subparagraph must be given a greater weight for those areas which are directly related to the position than general education and experience.

(b) Maintain an equitable relationship in the status of steps among the employees of the appointing authority if a disparity exists. An adjustment will not be granted pursuant to this section if the disparity in steps is:

(1) Among employees of different *departments or* agencies; or

(2) A result of:

(I) The length of service of employees;

(II) An adjustment in pay which was attained in a former class; or

(III) An adjustment in pay for an employee who resides in a particular geographical area.

(c) Maintain an appropriate differential, not to exceed two steps, between the base rate of pay of a supervisor and the base rate of pay of an employee who is in the direct line of authority of the supervisor. An adjustment may be granted pursuant to this paragraph if, before the adjustment, the base rate of pay of the employee is the same or greater than the base rate of pay of the supervisor.

2. Before granting an adjustment of steps pursuant to this section, the appointing authority must submit a request on a form prescribed by the Division of Human Resource Management to the Division of Human Resource Management which:

(a) Specifies the qualifying conditions and justification for the request; and

(b) Certifies that the appointing authority has, where applicable:

(1) Considered the requirements for the pay required to meet the need described in subparagraph (1) of paragraph (a) of subsection 1;

(2) Considered the qualifications of any other eligible person who is available for work for the purposes of subparagraph (2) of paragraph (a) of subsection 1;

(3) Ensured that the adjustment is feasible on the basis of its fiscal effects;

~~{(4) Ensured that the adjustment will not cause inequity between current employees which would require adjustments in the steps of those employees which are not feasible on the basis of the fiscal effects of such adjustments;}~~ and

~~{(5)}~~ (4) Prepared and maintained an accurate record of the consideration of the factors listed in this section.

3. If an adjustment of steps pursuant to this section is approved by the Division of Human Resource Management, the effective date of such an adjustment is the date on which a request that complies with subsection 2 is received by the Division of Human Resource Management or the personnel office of the *department or* agency at which the employee who is receiving the adjustment is employed. If a request for an adjustment of steps is delayed because an administrative or clerical error prevented the delivery of the request, the effective date must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment must not exceed 6 months from the date on which the Division of Human Resource Management receives the request.

4. An adjustment of steps which is made pursuant to subparagraph (1) of paragraph (a) of subsection 1 may be revoked when:

(a) The recruiting problem which caused the adjustment was due to the geographical location of the position; and

(b) The employee ~~{transfers to an}~~ *moves from one position to another position in either a different area [where] within the department or agency in which the employee is currently employed or a different department or agency than the department or agency in which the employee is currently employed, and a similar recruiting problem does not exist [.] in the new area, department or agency.*

↪ The employee must be placed at the step he or she would have received if he or she had not received the adjustment.

(Added to NAC by Dep't of Personnel, eff. 8-14-90; A 7-1-94; R197-99, 1-26-2000; R147-01, 1-22-2002; R015-02, 5-2-2002; A by Personnel Comm'n by R134-12, 10-4-2013)