

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R037-17

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

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613 to require an employer to provide accommodations to an employee who is a victim of domestic violence or whose family or household member is a victim of domestic violence. These accommodations could include a “transfer” or “reassignment,” a modified work schedule, a new telephone number, or anything else that would not create an undue hardship for the employer. Testimony on this bill clarified that the terms “transfer” and “reassignment” are intended to mean the movement of the employee’s desk or office. Because “transfer” and “reassignment” are defined terms in NRS 284, and to reflect the intent of the bill, this amendment utilizes the term “relocation” of the employee in subparagraph (a) of subsection 1.

This bill also amends NRS 613 to make it unlawful for an employer to discharge, discipline, discriminate against in any manner or deny promotion, or threaten such action, any employee who has requested accommodations as listed above, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against them at the employee’s workplace.

This amendment, proposed by the Division of Human Resource Management, will require an agency to provide the accommodations listed above, and also defines “family or household member” for the purposes of this section.

NEW Accommodation for employee affected by domestic violence.

1. An employee who is a victim of an act which constitutes domestic violence as defined in NRS 33.018, or whose family or household member is a victim of an act which constitutes domestic violence as defined in NRS 33.018, must be provided accommodations, including, without limitation:

(a) Relocation of employee, including relocation of assigned work space or assigned duty location;

(b) Modification of employee’s work schedule;

(c) A new telephone number for work; or

(d) Any other reasonable accommodations which will not create an undue hardship deemed necessary to ensure the safety of the employee, the workplace, the employer or other employees.

2. For the purposes of this section, “family or household member” means the employee’s spouse, domestic partner, minor child, or parent or any other adult person who is related within the first degree of consanguinity or affinity to the employee, or other adult

person who is or was actually residing with the employee at the time of the act which constitutes domestic violence as defined in NRS 33.018.

3. For the purposes of this section, the relocation of an employee is not considered a "Transfer" as defined in NAC 284.106 and the employee may not appeal a relocation using the process for the appeal of a transfer as provided for in NRS 284.376.

Section 2. NAC 284.539 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613 to require an employer to provide accommodations to an employee who is a victim of domestic violence or whose family or household member is a victim of domestic violence. These accommodations could include the movement of the employee's desk or office, a modified work schedule, a new telephone number, or anything else that would not create an undue hardship for the employer. This bill also amends NRS 613 to make it unlawful for an employer to discharge, discipline, discriminate against in any manner or deny promotion, or threaten such action, any employee who has requested accommodations as listed above, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against them at the employee's workplace.

This amendment, proposed by the Division of Human Resource Management, requires the approval of accrued annual leave, if available, to an employee who has been employed for at least 6 months, and who is a victim of domestic violence. The regulation also requires the approval of accrued annual leave, if available, to an employee who has been employed for at least six months pursuant to subsection 6 of NRS 284.350 when his or her spouse, domestic partner, minor child, certain other family members, or a member of his or her household is a victim of domestic violence. The maximum allowable amount of a combination of all leave types (annual, sick and leave without pay) is 160 hours in a 12-month period, which begins at the time the domestic violence occurs.

NAC 284.539 Annual leave: Written request; approval or denial; authorized use. (NRS 284.065, 284.155, 284.345, 284.350)

1. Except as otherwise provided by the Family and Medical Leave Act, an appointing authority shall determine the time when annual leave is taken after considering the needs of the agency and the seniority and wishes of the employee. Annual leave may not be granted in excess of the accumulated annual leave.

2. A written request for annual leave that is submitted by an employee within a reasonable time before the date upon which the annual leave is requested to commence must be approved or denied by the appointing authority, in writing, before the date upon which the annual leave is requested to commence or within 15 days after the appointing authority receives the request, whichever is sooner.

3. The appointing authority may deny a request for annual leave for good and sufficient reason. The appointing authority may not prohibit an employee from using at least 5 consecutive days of annual leave in any calendar year.

4. An employee shall request annual leave at least 30 days in advance if the need for leave is foreseeable and the annual leave is to be taken in conjunction with a planned leave of absence without pay.

5. An employee who has accumulated both annual leave and compensatory time off, and who may lose annual leave at the end of the calendar year, may elect to use the annual leave instead of the compensatory time for approved leave. In all other instances, compensatory time must, as far as practicable, be exhausted before annual leave is used.

6. An employee who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may use his or her accrued annual leave pursuant to NAC 284.5775.

7. Pursuant to section 7 of Senate Bill No. 361, chapter 613, Statutes of Nevada 2017, an appointing authority must grant annual leave, if the leave has been accrued and the employee has been employed for at least six months pursuant to subsection 6 of NRS 284.350, and any of the following persons are a victim of an act which constitutes domestic violence as defined in NRS 33.018:

(a) Employee, who is not the alleged perpetrator;

(b) Spouse;

(c) Domestic partner;

(d) Minor child; or

(e) Parent or other adult person who is related within the first degree of consanguinity or affinity to the employee, or other adult person who is or was actually residing with the employee at the time of the act which constitutes domestic violence as defined in NRS 33.018.

↪ The combination of all leave taken pursuant to section 7 of Senate Bill No. 361, chapter 613, Statutes of Nevada 2017 must not exceed 160 hours in the 12-month period immediately following the date of the act of domestic violence.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 6-18-86; 9-17-87; 7-14-88; 4-20-90; 3-23-94; 11-16-95; R031-98, 4-17-98; R082-00, 8-2-2000; A by Personnel Comm'n by R145-05, 12-29-2005)

Section 3. NAC 284.554 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613 to require an employer to provide accommodations to an employee who is a victim of domestic violence or whose family or household member is a victim of domestic violence. These accommodations could include the movement of the employee's desk or office, a modified work schedule, a new telephone number, or anything else that would not create an undue hardship for the employer. This bill also amends NRS 613 to make it unlawful for an employer to discharge, discipline, discriminate against in any manner or deny promotion, or threaten such action, any employee who has requested accommodations as listed above, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against them at the employee's workplace.

This amendment, proposed by the Division of Human Resource Management, requires the approval of accrued sick leave, if available, to an employee who has been employed for at least

90 calendar days, and who is a victim of domestic violence. The regulation also requires the approval of accrued sick leave, if available, to an employee who has been employed for 90 calendar days when his or her spouse, domestic partner, minor child, certain other family members, or a member of his or her household is a victim of domestic violence. The maximum allowable amount of a combination of all leave types (annual, sick and leave of absence without pay) is 160 hours in a 12-month period, which begins at the time the domestic violence occurs.

For the purposes of section 7 of SB 361, if sick leave is taken when a family member is a victim of domestic violence, the leave time will be considered sick leave, rather than “family sick leave.”

NAC 284.554 Sick leave: Authorized use. (NRS 284.065, 284.155, 284.345, 284.355)

An employee is entitled to use sick leave if the employee:

1. Is unable to perform the duties of his or her position because he or she is sick, injured or physically incapacitated due to a medical condition;
2. Is physically incapacitated due to pregnancy or childbirth and is therefore unable to perform the duties of the employee’s position;
3. Is quarantined;
4. Is receiving required medical, psychological, optometric or dental service or examination;
5. Is receiving counseling through an employee assistance program for a condition which would otherwise qualify pursuant to the provisions of this section; or
6. Has an illness, death or other authorized medical need in his or her immediate family and he or she complies with the requirements of NAC 284.558 or 284.562.

7. Pursuant to section 7 of Senate Bill No. 361, chapter 613, Statutes of Nevada 2017, an appointing authority must grant accrued sick leave, if such leave is available, to an employee who has been employed for at least 90 calendar days if any of the following persons are a victim of an act which constitutes domestic violence as defined in NRS 33.018:

(a) Employee, who is not the alleged perpetrator;

(b) Spouse;

(c) Domestic partner;

(d) Minor child; or

(e) Parent or other adult person who is related within the first degree of consanguinity or affinity to the employee, or other adult person who is or was actually residing with the employee at the time of the act which constitutes domestic violence as defined in NRS 33.018.

↪ The combination of all leave taken pursuant to section 7 of Senate Bill No. 361, chapter 613, Statutes of Nevada 2017 must not exceed 160 hours in the 12-month period immediately following the date of the act of domestic violence.

[Personnel Div., Rule VII § D part subsec. 6, eff. 8-11-73; A 2-5-82]—(NAC A by Dep’t of Personnel, 10-26-84; 4-20-90; 11-16-95; A by Personnel Comm’n by R141-07, 1-30-2008)

Section 4. NAC 284.578 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613 to require an employer to provide accommodations to an employee who is a victim of domestic violence or whose family or household member is a victim of domestic violence. These accommodations could include the movement of the employee's desk or office, a modified work schedule, a new telephone number, or anything else that would not create an undue hardship for the employer. This bill also amends NRS 613 to make it unlawful for an employer to discharge, discipline, discriminate against in any manner or deny promotion, or threaten such action, any employee who has requested accommodations as listed above, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against them at the employee's workplace.

This amendment, proposed by the Division of Human Resource Management, requires the approval of leave of absence without pay to an employee who has been employed for at least 90 calendar days, and who is a victim of domestic violence. The regulation also requires the approval of leave of absence without pay to an employee who has been employed for 90 calendar days when his or her spouse, domestic partner, minor child, certain other family members, or a member of his or her household is a victim of domestic violence. The maximum allowable amount of a combination of all leave types (annual, sick and leave of absence without pay) is 160 hours in a 12-month period, which begins at the time the domestic violence occurs.

NAC 284.578 Leave of absence without pay. (NRS 284.065, 284.155, 284.345, 284.360)

1. Except as otherwise provided in NRS 284.360, an appointing authority may grant a leave of absence without pay to an employee for not more than 1 year for any satisfactory reason.

2. The Commission may grant leaves of absence without pay in excess of 1 year for purposes deemed beneficial to the public service.

3. An appointing authority may require an employee on leave of absence without pay to submit every 2 weeks a statement of his or her intent to return to work.

4. If the reason for granting the leave no longer exists, the appointing authority may revoke the leave after notifying the employee in writing and allowing, so far as is practicable, not less than 5 working days after the date of notification for the employee to return to work.

5. An employee shall request leave *of absence* without pay at least 30 days in advance of when the need for the leave is foreseeable, if practicable.

6. An employee may not use leave *of absence* without pay in lieu of sick leave or annual leave without approval of the appointing authority.

7. An employee who is using leave pursuant to the Family and Medical Leave Act may not use leave *of absence* without pay until the employee has exhausted 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, as required by NAC 284.5811.

8. Pursuant to section 7 of Senate Bill No. 361, chapter 613, Statutes of Nevada 2017, an appointing authority must grant a leave of absence without pay to an employee who has been employed for at least 90 calendar days if any of the following persons are a victim of an act which constitutes domestic violence as defined in NRS 33.018:

(a) Employee, who is not the alleged perpetrator;

(b) Spouse;

(c) Domestic partner;

(d) Minor child; or

(e) Parent or other adult person who is related within the first degree of consanguinity or affinity to the employee, or other adult person who is or was actually residing with the employee at the time of the act which constitutes domestic violence as defined in NRS 33.018.

↪ The combination of all leave taken pursuant to section 7 of Senate Bill No. 361, chapter 613, Statutes of Nevada 2017 must not exceed 160 hours in the 12-month period immediately following the date of the act of domestic violence.

[Personnel Div., Rule VII § E subsecs. 1-4, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 3-23-94; 10-27-97; A by Personnel Comm'n by R145-05, 12-29-2005; R060-09, 11-25-2009)

Section 5. NAC 284.5811 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613 to require an employer to provide accommodations to an employee who is a victim of domestic violence or whose family or household member is a victim of domestic violence. These accommodations could include the movement of the employee's desk or office, a modified work schedule, a new telephone number, or anything else that would not create an undue hardship for the employer. This bill also amends NRS 613 to make it unlawful for an employer to discharge, discipline, discriminate against in any manner or deny promotion, or threaten such action, any employee who has requested accommodations as listed above, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against him or her at the employee's workplace.

Pursuant to Section 1 of Senate Bill 361, this amendment, proposed by the Division of Human Resource Management, requires an employee to take leave related to an act of domestic violence concurrent with the Family and Medical Leave Act provisions, if an employee meets the eligibility factors for both provisions.

NAC 284.5811 Family and medical leave: Maximum amount in 12-month period; eligibility; use. (NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626)

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 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. If an employee:

(a) Is absent from work pursuant to section 1 of Senate Bill 361, chapter 613, Statutes of Nevada 2017;

(b) Meets the requirements for eligibility for the Family and Medical Leave Act; and

(c) Or his or her spouse, parent, or child have a serious health condition pursuant to the Family and Medical Leave Act as the result of an act of domestic violence pursuant to section 1 of Senate Bill 361, chapter 613, Statutes of Nevada 2017,

↪ 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.

8. 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.

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95; R082-00, 8-2-2000; A by Personnel Comm'n by R096-03, 10-30-2003; R145-05, 12-29-2005; R060-09, 11-25-2009; R021-13, 10-23-2013)