

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R037-17

August 28, 2017

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

AUTHORITY: §§1-3 and 10, NRS 284.065, 284.345 and section 6 of Senate Bill No. 361, chapter 496, Statutes of Nevada 2017, at page 3179; §4, Section 6 of Senate Bill No. 361, chapter 496, Statutes of Nevada 2017, at page 3179; §§5-9, NRS 284.065 and 284.345.

A REGULATION relating to the State Personnel System; requiring, with limited exceptions, an appointing authority to provide reasonable accommodation to an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence; revising provisions governing attendance and leave of employees in the public service; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Pursuant to Senate Bill No. 361 of the 2017 Legislative Session, an employer is required to provide reasonable accommodation to an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence and the employee is not the alleged perpetrator, unless the accommodation would impose an undue hardship on the employer. (Section 6 of chapter 496, Statutes of Nevada 2017, at page 3179) This requirement becomes effective on January 1, 2018. (Section 11 of chapter 496, Statutes of Nevada 2017, at page 3185) **Section 4** of this regulation requires, with limited exceptions, the appointing authority of such an employee to provide reasonable accommodation to the employee.

Existing law requires the Personnel Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations for attendance and leave with or without pay or reduced pay in the various classes of positions in the public service. (NRS 284.345)

Sections 6-8 of this regulation amend existing regulations governing the approval or denial of annual leave, sick leave and leave without pay to require an appointing authority to grant annual leave, sick leave and leave of absence without pay, upon request, to an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence and the employee is not the alleged perpetrator if: (1) the employee has been employed in public service for a specified period; (2) the employee

has accrued the leave requested, as applicable; and (3) the combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence occurred.

Section 9 of this regulation amends existing regulations to provide that an absence from work by an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence and the employee is not the alleged perpetrator will be designated as leave pursuant to the Family and Medical Leave Act if the employee meets the requirements for eligibility for leave pursuant to the Family and Medical Leave Act.

Section 3 of this regulation defines “family or household member” for the purpose of the provisions of **sections 4 and 6-9**.

Section 10 of this regulation provides that this regulation becomes effective on January 1, 2018, or upon filing with the Secretary of State, whichever occurs later.

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. *“Domestic violence” means an act described in NRS 33.018.*

Sec. 3. *“Family or household member” has the meaning ascribed to it in section 4 of Senate Bill No. 361, chapter 496, Statutes of Nevada 2017, at page 3178.*

Sec. 4. 1. *Except as otherwise provided in subsection 2, the appointing authority of an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator, shall, upon the request of the employee, provide reasonable accommodation to the employee.*

2. Reasonable accommodation provided pursuant to this section must not cause an undue hardship to the operations of the appointing authority and must be deemed by the appointing authority to ensure the safety of the employee, the workplace, the employer or other employees. Such accommodation may include, without limitation:

(a) Relocating the employee, including, without limitation, providing a different work area for the employee or changing the location to which the employee reports;

(b) Modifying the schedule of the employee; or

(c) Providing the employee a new telephone number for work.

3. For the purposes of this section, a relocation of an employee must not be construed:

(a) As a transfer as defined in NAC 284.106; or

(b) To authorize the employee to appeal the relocation using the process for an appeal of a transfer set forth in NRS 284.376.

Sec. 5. NAC 284.010 is hereby amended to read as follows:

284.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 284.021 to 284.1125, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 6. NAC 284.539 is hereby amended to read as follows:

284.539 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~~ *Except as otherwise provided in subsection 7, 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. An appointing authority shall approve a request for annual leave of an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator if:

(a) In accordance with NRS 284.350, the employee has been employed in public service for at least 6 months;

(b) The employee has accrued the amount of annual leave necessary to cover the time requested; and

(c) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence occurred.

Sec. 7. NAC 284.554 is hereby amended to read as follows:

284.554 **1.** An employee is entitled to use sick leave if the employee:

~~1-1~~ **(a)** 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;

~~1-2~~ **(b)** Is physically incapacitated due to pregnancy or childbirth and is therefore unable to perform the duties of the employee's position;

~~1-3~~ **(c)** Is quarantined;

~~1-4~~ **(d)** Is receiving required medical, psychological, optometric or dental service or examination;

~~1-5~~ **(e)** Is receiving counseling through an employee assistance program for a condition which would otherwise qualify pursuant to the provisions of this section; ~~1-6~~

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(f) 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 ~~1-7~~; **or**

(g) Meets the requirements set forth in subsection 2.

2. An appointing authority shall approve a request for sick leave of an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator if:

(a) The employee has been employed in public service for at least 90 days;

(b) The employee has accrued the amount of sick leave necessary to cover the time requested; and

(c) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence occurred.

Sec. 8. NAC 284.578 is hereby amended to read as follows:

284.578 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 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 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 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. An appointing authority shall grant leave without pay, upon request, to an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator if:

(a) The employee has been employed in public service for at least 90 days; and

(b) The combination of all leave taken by the employee for this purpose, including, without limitation, sick leave, annual leave, compensatory time and leave without pay, does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence occurred.

Sec. 9. NAC 284.5811 is hereby amended to read as follows:

284.5811 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 who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator, is absent from work and meets the requirements for eligibility pursuant to the Family and Medical Leave Act, 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.

Sec. 10. This regulation becomes effective on January 1, 2018, or upon filing with the Secretary of State, whichever occurs later.