

**PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R151-17

January 18, 2018

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

AUTHORITY: §§1, 2 and 3, NRS 284.065, 284.155, 284.345, 284.350, 284.355 and 284.3626;
§4, NRS 284.065, 284.155 and 284.407.

A REGULATION relating to the State Personnel System; revising provisions governing the use of certain types of leave by an employee who is eligible for temporary total disability benefits; revising provisions governing breath-testing devices used to screen employees for alcohol; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a public employee who is receiving benefits for temporary total disability to elect to receive all or part of the difference between his or her normal pay and the benefits received by using his or her accrued sick leave, compensatory time or annual leave or catastrophic leave. Alternatively, a public employee may elect to be placed on leave of absence without pay. (NRS 281.390; NAC 284.5775) Under existing regulations, a person who elects to make up the difference between his or her normal pay and his or her temporary total disability benefits using sick leave continues to accrue annual leave and sick leave during the period he or she is being paid an amount of sick leave equal to the difference between his or her normal pay and the benefits received. (NAC 284.5385, 284.544) **Sections 1 and 2** of this regulation clarify that an employee also continues to accrue annual leave and sick leave if the employee elects to supplement his or her temporary total disability benefits using compensatory time or annual leave. **Section 3** of this regulation makes a conforming change.

Existing regulations require that a screening test conducted on a public employee to detect the presence of alcohol by testing the employee's breath be conducted using a breath-testing device appearing on the conforming products list of Evidential Breath Testing Devices published in the Federal Register by the National Highway Traffic Safety Administration of the United States Department of Transportation. (NAC 284.882) Effective January 1, 2018, the list of Evidential Breath Testing Devices approved by the National Highway Traffic Safety Administration will no longer appear exclusively on a conforming products list published in the Federal Register. (82 Fed. Reg. 52240 (November 13, 2017)) Instead, federal regulations require that the Evidential Breath Testing Devices approved by the National Highway Traffic Safety Administration be listed on an Internet website page maintained by the Office of Drug and Alcohol Policy and Compliance of the United States Department of Transportation. (49 C.F.R. §

40.229) **Section 4** of this regulation requires that a screening test to detect the presence of alcohol by testing an employee's breath be conducted using a breath-testing device appearing on that Internet website maintained by the Office of Drug and Alcohol Policy and Compliance.

Section 1. NAC 284.5385 is hereby amended to read as follows:

284.5385 1. Except as otherwise provided in NAC 284.580, an employee does not accrue annual leave during the time he or she is on leave *of absence* without pay or on catastrophic leave.

2. A person who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS and makes the election provided in ~~†~~

~~—(a) Subsection 1 or 3 of NRS 281.390†~~ *subparagraph (1), (2) or (3) of paragraph (a) of subsection 1 of NAC 284.5775* is entitled to accrue annual leave during the period he or she is receiving those benefits and is being paid an amount of ~~{sick}~~ *paid* leave equal to the difference between his or her normal pay and the benefits received.

~~{(b) Subsection 5 of NRS 281.390 must be placed on leave of absence without pay, unless the employee is on family and medical leave because a serious health condition prevents him or her from performing one or more of the essential functions of his or her position. Such an employee may, while on such leave, elect to use his or her accrued annual leave in lieu of being placed on leave of absence without pay.~~

~~—3.— An employee who does not have enough sick leave to make up the difference between his or her normal pay and the benefits for a temporary total disability must be placed on leave of absence without pay for the time he or she is receiving such benefits and the balance of time not covered by sick leave or other paid leave.†~~ The employee accrues annual leave only for the time he or she is in paid status, excluding overtime.

Sec. 2. NAC 284.544 is hereby amended to read as follows:

284.544 1. Except as otherwise provided in NAC 284.580, an employee does not accrue sick leave during the time he or she is on leave *of absence* without pay or on catastrophic leave.

2. A person who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS and ~~†~~

~~—(a) Makes~~ *makes* the election provided in *subparagraph (1), (2) or (3) of paragraph (a) of* subsection 1 ~~{or 3}~~ of ~~[NRS 281.390]~~ *NAC 284.5775* is entitled to accrue sick leave during the period he or she is receiving those benefits and is being paid an amount of ~~{sick}~~ *paid* leave equal to the difference between his or her normal pay and the benefits received.

~~{(b) Makes the election provided in subsection 5 of NRS 281.390 must be placed on leave of absence without pay, unless the employee elects to use his or her accrued annual leave.~~

~~—3.— An employee who does not have enough sick leave to make up the difference between his or her normal pay and the benefits for temporary total disability must be placed on leave of absence without pay for the time he or she is receiving such benefits and the balance of time not covered by paid leave.†~~ The employee accrues sick leave only for the time he or she is in paid status, excluding overtime.

~~{4.}~~ 3. To compute the amount of sick leave to which an employee is entitled, an employee must be considered to work not more than 40 hours each week. If an employee occupies more than one position in different departments, the amount of sick leave to which the employee is entitled must be computed based on not more than 40 hours each week in each position.

~~{5.}~~ 4. The basis for the computation of the amount of sick leave to which an exempt classified employee or exempt unclassified employee is entitled must not exceed the number of hours authorized in the biennial operating budget of this State for his or her position.

Sec. 3. NAC 284.5775 is hereby amended to read as follows:

284.5775 *1.* An employee who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may:

~~1(a)~~ *(a)* Elect to receive payment for all or part of the difference between his or her normal pay and the benefits received by:

~~1(a)(1)~~ *(1)* Using his or her accrued sick leave as provided in subsection 1 or 3 of NRS 281.390;

~~1(b)~~ *(2)* Using his or her accrued compensatory time;

~~1(e)~~ *(3)* Using his or her accrued annual leave if he or she:

~~1(1)~~ *(1)* Is on family and medical leave for a serious health condition that prevents him or her from performing one or more of the essential functions of his or her position; or

~~1(2)~~ *(II)* Elected to use his or her accrued sick leave pursuant to NRS 281.390 and has exhausted all of his or her accrued sick leave; or

~~1(d)~~ *(4)* Using catastrophic leave if he or she has exhausted all of his or her accrued annual leave, sick leave and compensatory time and his or her request for catastrophic leave has been approved pursuant to NAC 284.576; or

~~1(2)~~ *(b)* Elect to be placed on leave of absence without pay in accordance with subsection 5 of NRS 281.390.

2. An employee who does not have enough paid leave to make up the difference between his or her normal pay and the benefits for a temporary total disability pursuant to paragraph (a) of subsection 1 must be placed on leave of absence without pay for the time he or she is receiving such benefits and the balance of time not covered by paid leave.

Sec. 4. NAC 284.882 is hereby amended to read as follows:

284.882 A screening test to detect the general presence of:

1. A controlled substance must comply with:

(a) The standards established by the United States Department of Health and Human Services which are hereby adopted by reference. A copy of the standards is available, without charge, from the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace Programs, ~~1 Choke Cherry Road,~~ **5600 Fishers Lane**, Rockville, Maryland 20857; and

(b) Any supplementary standards and procedures established by the Commission.

2. Alcohol by testing a person's breath must be conducted using a breath-testing device ~~certified in accordance with the "Conforming Products List of Evidential Breath Alcohol Measurement Devices" published in the Federal Register~~ **approved** by the National Highway Traffic Safety Administration of the United States Department of Transportation ~~and listed on the "Approved Evidential Breath Measurement Devices" webpage on the Internet website maintained by the Office of Drug and Alcohol Policy and Compliance of the United States Department of Transportation pursuant to 49 C.F.R. § 40.229.~~