

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R063-18

July 3, 2018

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

AUTHORITY: §1, NRS 284.065, 284.155, 284.4065, 284.4066 and 284.407; §2, NRS 284.065, 284.155 and 284.345.

A REGULATION relating to the State Personnel System; delineating the circumstances under which an applicant or employee is deemed to have refused to submit to a requested or required screening test for alcohol or drugs; prescribing the consequences for certain applicants who are deemed to have refused to submit to such a screening test; revising provisions governing leave of employees in the public service; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes an appointing authority to request that an employee submit to a screening test for alcohol or drugs under certain circumstances. (NRS 284.4065) Under existing law, with certain exceptions, a classified or unclassified employee who fails or refuses to submit to a screening test requested by his or her appointing authority is subject to disciplinary action. (NRS 284.4063) Existing law also requires an appointing authority to screen an applicant for alcohol and drugs before hiring the applicant for any position of employment that affects public safety. (NRS 284.4066) **Section 1** of this regulation delineates the circumstances under which an applicant or employee is deemed to have refused to submit to a requested or required screening test for alcohol or drugs. **Section 1** also prescribes the consequences for certain applicants who are deemed to have refused to submit to such a screening test.

Existing law requires an employer to provide certain hours of leave to an employee who is a victim of an act which constitutes domestic violence, or such an employee whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator. Specifically, existing law: (1) provides that such an employee is entitled to 160 hours of leave during a 12-month period; and (2) specifies that such leave may be paid or unpaid. (NRS 608.0198) **Section 2** of this regulation deletes from the existing regulation governing the approval or denial of leave without pay examples of the specific types of authorized leave for an employee who is a victim of an act which constitutes domestic violence or an employee whose family or household member is a victim of an act which constitutes domestic violence and the employee is not the alleged perpetrator. This nonsubstantive change is being made in order to be consistent with similar provisions governing the approval or denial of sick leave and compensatory time for such an employee.

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

1. For the purposes of NRS 284.4063, 284.4065 and 284.4066, an applicant or employee is deemed to have refused to submit to a screening test requested pursuant to NRS 284.4065 or required pursuant to NRS 284.4066 when the applicant or employee:

(a) Provides oral or written notice to the appointing authority that he or she refuses to take the requested or required screening test;

(b) Absent any extenuating circumstances, fails to appear at the collection site for a screening test within a reasonable time after being requested or required to do so;

(c) Absent any extenuating circumstances, fails to remain at the collection site until the collection process is complete;

(d) Fails to provide a sufficient amount of specimen when requested or required to do so pursuant to the standards adopted by reference in NAC 284.882 and fails to undergo a medical evaluation to determine whether there is a legitimate medical explanation for the insufficient amount of specimen;

(e) Fails to provide a sufficient amount of specimen when requested or required to do so pursuant to the standards adopted by reference in NAC 284.882, and it has been determined, through a required medical evaluation, that there was no legitimate medical explanation for the insufficient amount of specimen;

(f) Fails to cooperate with any part of the process related to the screening test, including, without limitation, refusing to sign any required forms;

(g) Brings materials or devices to the collection site for the purpose of adulterating, substituting or diluting the specimen;

(h) Attempts to adulterate, substitute or dilute the specimen; or

(i) Admits to the collector or Medical Review Officer that he or she adulterated or substituted the specimen.

2. The appointing authority shall rescind any offer of employment that is contingent upon successful passage of a screening test made to an applicant who is deemed, pursuant to subsection 1, to have refused to submit to a screening test required by NRS 284.4066.

3. As used in this section:

(a) "Collection site" means a location where specimens are collected.

(b) "Collector" means a person trained to instruct and assist an applicant or employee in providing a specimen.

(c) "Medical Review Officer" means a licensed physician or vendor who has entered into a contract with the State of Nevada to review, verify and report the results of screening tests.

(d) "Specimen" means breath or fluid collected from an applicant or employee for the purpose of conducting a screening test.

Sec. 2. 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.