

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Amendment
of Regulations of the
Personnel Commission

The Personnel Commission will hold a public hearing at 9:00 a.m. on December 10, 2021, at the Nevada State Library and Archives Building, Room 110, 100 N. Stewart Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 1400, 555 E. Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the 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>Section:</u> | <u>NAC:</u> | <u>Leadline or Description</u> |
|-------------------------|------------------------|--------------------|--|
| R015-21 | Sec. 1 | 284.5811 | Family and medical leave: Maximum amount in 12-month period; eligibility; use. |
| R016-21 | Sec. 1 | NEW | “Sex- or gender-based harassment” defined. |
| | Sec. 2 | 284.010 | Definitions. |
| | Sec. 3 | 284.496 | Classes and training concerning prevention of sex- or gender-based harassment. |
| | Sec. 4 | 284.498 | Training of supervisory and managerial employees. |
| | Sec. 5 | 284.650 | Causes for disciplinary or corrective action. |
| | Sec. 6 | 284.696 | Unlawful discrimination. |
| | Sec. 7 | 284.718 | Confidential records. |
| | Sec. 8 | 284.726 | Access to confidential records. |
| | Sec. 9 | 284.771 | Sex- or gender-based harassment. |
| | Sec. 10 | 284.0995 | “Sexual harassment” defined. |
| R017-21 | Sec. 1 | NEW | Appeal of determination to release confidential records. |
| | Sec. 2 | 284.718 | Confidential records. |
| | Sec. 3 | 284.726 | Access to confidential records. |

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, Suite 101, Carson City, Nevada 89701, Attention: Michelle Garton. Written submissions must be received by the Division of Human Resource Management on or before December 10, 2021. 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 and amendment of any regulation, the agency, if requested to do so by an interested person, either before adoption and amendment, or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and amendment, and incorporate therein its reason for overruling the consideration urged against its adoption and amendment.

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

Carson City

Blasdel Building, 209 East Musser Street

Nevada State Library & Archives Building, 100 North Stewart Street

Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Grant Sawyer Building, 555 East Washington Avenue

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

EXPLANATION OF PROPOSED CHANGES
LCB File No. R015-21

Section 1: NAC 284.5811 Family and medical leave: Maximum amount in 12-month period; eligibility; use.

This amendment default to the State’s Family and Medical Leave Act (FMLA) eligibility criteria to the criteria outlined in the U.S. Department of Labor’s FMLA regulations. “Paid status” is defined in NAC 284.0742 as including leave with pay (not including catastrophic leave) and leave without pay pursuant to NAC 284.580. However, the FMLA federal regulations base the hours requirement on the “hours of service” during the 12-month period immediately preceding the employee’s leave. The current method of FMLA eligibility calculation may, in certain circumstances, allow an employee to qualify for leave, based on this regulation, prior to qualifying based on the federal regulations. If an employee is provided FMLA leave early and then not granted FMLA-protected leave during the period the employee qualifies under the federal FMLA regulations, it could leave the State open to review by the FMLA regulatory body, the U.S. Department of Labor.

**PROPOSED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R015-21

July 20, 2021

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

AUTHORITY: § 1, NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626 and 608.0198.

A REGULATION relating to state personnel; revising eligibility requirements for certain state employees to take family and medical leave; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

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 in the various classes of employee positions in the public service of the Executive Department of the State Government. (NRS 284.345) Existing regulations: (1) adopt by reference the federal Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq. (FMLA); and (2) provide that an employee in the public service who is entitled to take leave pursuant to the FMLA is limited to a total of 12 weeks of such leave during a rolling 12-month period. (NAC 284.062, 284.581, 284.5811) To calculate eligibility for leave pursuant to the FMLA, each hour that an employee is in paid status in the 12-month period immediately preceding the leave must be considered as time worked. (NAC 284.5811) An employee’s paid status includes time that an employee is on: (1) leave with pay, except catastrophic leave; or (2) leave of absence due to a fiscal emergency. (NAC 284.0742) This regulation eliminates the provision that requires each hour that an employee is in paid status in the 12-month period immediately preceding the FMLA leave to be considered as time worked. As a result, the determination of whether an employee is entitled to take leave pursuant to the FMLA is determined by the provisions of the FMLA, which exclude time that an employee is on leave. (29 U.S.C. § 207)

Section 1. 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~~ 4 and ~~6~~ 5, 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~~ 4. 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.

~~16.1~~ 5. 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.

~~17.1~~ 6. 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.

~~18.1~~ 7. 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.