

**PROPOSED REGULATION OF THE DIRECTOR OF THE
DEPARTMENT OF PERSONNEL**

LCB File No. R102-97

August 21, 1997

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

AUTHORITY: §§ 1-7, NRS 284.155; §§ 8-11, NRS 284.345; §12, NRS 284.407.

Section 1. NAC 284.120 is hereby amended to read as follows:

284.120 *1.* For the purposes of determining the meaning of “essential functions of a position,” “person with a disability,” “qualified person with a disability,” and “reasonable accommodation,” the department hereby adopts by reference and will refer to:

[1.] *(a)* The Americans with Disabilities Act of 1990 (Public Law 101-336). [A copy of this act may be ordered from the United States Equal Employment Opportunity Commission, 1801 L Street NW, Washington D.C. 20507, (202) 663-4264, at no charge.

2.] *(b)* *The provisions of* 29 C.F.R. Part 1630. [A copy of this regulation may be ordered from the United States Equal Employment Opportunity Commission, 1801 L Street NW, Washington D.C. 20507, (202) 663- 4264, at no charge.

3.] *(c)* The Technical Assistance Manual for the Americans with Disabilities Act. [A copy of this manual may be purchased from the United States Equal Employment Opportunity Commission, 1801 L Street NW, Washington D.C. 20507, (800) 950-1211, for the price of \$10.]

2. A copy of the materials adopted by reference pursuant to this section may be obtained at no charge from the United States Equal Employment Opportunity Commission Publications

Information Center, P.O. Box 12549, Cincinnati, Ohio 45212-0549, (800) 669-3362 or (800) 800-3302.

Sec. 2. NAC 284.182 is hereby amended to read as follows:

284.182 1. Except as otherwise provided in this section, an employee's date of record is 1 year of employment equivalent to full-time service from the date of the employee's appointment to his current grade.

2. An employee who receives a promotion or reclassification that does not include the rest of his class and results in an increase of at least two grades must receive a new date of record.

3. If an employee is in a class that is reclassified upward, and all the positions in the class are similarly affected, he retains his date of record.

4. If an employee is in a position that is reclassified upward as a result of an occupational study, he retains his date of record.

5. An employee who is reinstated must receive a new date of record.

6. An employee who is demoted retains his date of record. If an employee was promoted but is being restored to his former position pursuant to the provisions of NAC 284.462, the date of appointment and date of record of the former position must be restored.

7. If an employee transfers to a position without receiving an increase in grade or is reappointed to a position at a grade he formerly held, he retains his date of record.

8. An employee's date of record must be adjusted for the amount of time in excess of 240 hours or, in the case of an excluded classified employee, 30 working days, that he spends on leave without pay and on catastrophic leave, combined, in a year, except for leave without pay pursuant to NRS 281.390 *or* 284.365 *or* NAC 284.580. An employee whose regular work schedule is more than 80 hours biweekly must be allotted additional leave without pay and

catastrophic leave in proportion to the number of hours that his regular work schedule exceeds 80 hours biweekly. For the purpose of this subsection, the year begins on the employee's most recent date of appointment except when there is a retained date of record. In that instance, the year begins 1 year before the retained date of record. Each subsequent year begins on the date the employee attains his date of record.

9. A person who is rehired within 1 calendar year after having been laid off or received a seasonal separation will have his date of record adjusted on a day-for-day basis for the time during which he was not employed.

10. A person with a permanent disability arising from a disability related to work who is reemployed following a separation from state service within 1 year after the date on which he sustained the permanent disability as determined pursuant to NAC 284.6013 will have his date of record adjusted on a day-for-day basis for the time during which he was not employed.

11. If a person is reemployed and has remained continuously employed, he retains his date of record.

12. If a person eligible for military reemployment is reemployed, he retains the date of record held when he separated from the state for his service in the military.

13. An employee who changes from working full time to part time or from part time to full time must have his date of record adjusted to equal 1 year of service equivalent to full-time service.

14. Service in:

(a) Provisional, temporary, special disabled, and emergency status must be credited toward eligibility for an increase in salary based on merit if it is immediately followed by a probationary or permanent status.

(b) A seasonal position which is probationary or permanent must be credited toward eligibility for an increase in salary based on merit. If an incumbent's status of appointment is other than probationary or permanent, the provisions in paragraph (a) apply. An incumbent in a seasonal position must complete 1 year of employment equivalent to full-time service with the state before he is eligible for the increase.

Sec. 3. NAC 284.251 is hereby amended to read as follows:

284.251 An employee who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS may use his accrued compensatory time to receive payment for the difference between his normal pay and the benefits received . [if the employee has:

1. Elected to use his accrued sick leave time pursuant to NRS 281.390; and
2. Exhausted his accrued sick leave.]

Sec. 4. NAC 284.254 is hereby amended to read as follows:

284.254 [If] 1. *Except as otherwise provided in subsection 2, if* an employee who has accumulated overtime transfers from a position under the jurisdiction of one appointing authority to a position under the jurisdiction of another appointing authority, the accumulated overtime which [an] *the* employee has not used or for which he has not been paid must be compensated for by the agency he is leaving, unless the receiving agency agrees in writing to assume the liability for the overtime and the employee concurs.

2. *A receiving agency shall not assume the liability for the accumulated overtime of an employee if the employee is transferring to an excluded position. The accumulated overtime of an employee transferring to an excluded position must be compensated for by the agency the employee is leaving.*

3. *As used in this section, “excluded position” means a position in the classified or unclassified service that is subject to the provisions of NRS 284.148.*

Sec. 5. NAC 284.282 is hereby amended to read as follows:

284.282 1. Except as otherwise provided in NAC 284.580, an employee who is on leave without pay *or catastrophic leave* for the entire 6-month period of qualification is not entitled to pay for longevity for that period. Leave without pay *or catastrophic leave* for 240 hours or less in a calendar year may be counted as time worked for an employee other than an excluded classified employee or excluded unclassified employee. Leave without pay *or catastrophic leave* for 30 working days or less in a calendar year may be counted as time worked for an excluded classified employee or excluded unclassified employee.

2. Except as otherwise provided in NAC 284.580, the formulas provided in NAC 284.278 must be used in calculating the payment for longevity for:

(a) Employees, other than excluded classified employees and excluded unclassified employees, who take leave without pay *or catastrophic leave* in excess of 240 hours in any 1 calendar year; and

(b) Excluded classified employees and excluded unclassified employees, who take leave without pay *or catastrophic leave* in excess of 30 working days in any 1 calendar year.

3. For the purposes of subsections 1 and 2, an employee whose regular work schedule is more than 80 hours biweekly must be allotted additional leave without pay in proportion to the number of hours his regular work schedule exceeds 80 hours biweekly. For the purposes of this subsection, a fireman who is assigned to a 24-hour shift shall be deemed to work an average of 56 hours per week and 2,912 hours per year.

4. An employee who retires and applies for retirement pursuant to the provisions of chapter 286 of NRS or who dies during the 6-month qualifying period is eligible for longevity pay according to the applicable formula in NAC 284.278.

5. An employee who is laid off and is rehired within 1 year [from] *after* the date of layoff is eligible for pay for the longevity he would have earned if he had not been laid off. The employee must be treated as if he had been on leave without pay pursuant to subsections 1 and 2.

6. A person with a permanent disability arising from a disability related to work who is reemployed following a separation from state service within 1 year after the date on which he sustained the permanent disability as determined pursuant to NAC 284.6013 is eligible for pay for the longevity he would have earned if he had not been separated from state service. The employee must be treated as if he had been on leave without pay pursuant to subsections 1 and 2.

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

(a) Subsection 1 or 3 of NRS 281.390, is entitled to accrue service credit for longevity during the period he is receiving benefits and is being paid an amount of sick leave equal to the difference between his normal salary 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 from performing the essential functions of his position. Such an employee may, while he is on such leave, elect to use his accrued annual leave in lieu of being placed on leave of absence without pay.

8. An employee who does not have enough sick leave to make up the difference between his normal salary and benefits for temporary total disability must be placed on leave of absence

without pay for the period he is receiving such benefits and the balance of time not covered by sick leave or other paid leave. Such an employee accrues service credit only for the time he is covered by sick leave or other paid leave. The employee ceases to be on leave of absence without pay when he has exhausted all of his sick leave and is not approved for other leave.

9. Service in a seasonal position must be credited towards payments for longevity if the employee is employed on December 31 and June 30 and if the requirements for longevity service have been met. If an employee in a seasonal position is not on the payroll on those two dates and he is reemployed without a 12-month break in service, the employee is entitled to receive a prorated payment for longevity based on the service during the last longevity period.

10. If a person [~~who is eligible for military reemployment has been reemployed,~~] *is on leave of absence without pay for military service pursuant to NRS 284.365 or is reemployed within 90 days after the military service*, the time during which he was not [~~employed by the state~~] *in paid status* because of his military service will be counted when determining the rate for pay for longevity. The person is [~~not eligible for payment for the time not employed by the state.~~] *eligible for payment for longevity for the time he is in paid status in accordance with the provisions of subsections 1 and 2.*

11. If a nonclassified employee or an employee covered by NRS 284.022 is appointed without a break in service to the classified or unclassified service, the previous time served is counted for longevity purposes but not for any retroactive payment.

Sec. 6. NAC 284.294 is hereby amended to read as follows:

284.294 1. An employee who is required to furnish his own tools may elect to be reimbursed for the use, loss, theft, and breakage of the tools at a monthly rate of [~~\$20~~] *\$35* if the monetary value of the tools is more than \$300 and less than \$1,000, or at a monthly rate of [~~\$30~~]

\$50 if the monetary value exceeds \$1,000. This monthly allowance must not be considered part of the employee's salary.

2. The payment of reimbursement pursuant to subsection 1 absolves the agency of any responsibility for the employee's tools if the loss per occurrence is \$1,000 or less. If the loss is more than \$1,000 and is covered under the terms and conditions of the policy of property insurance or program of self-insurance maintained by the state, the loss must be paid by the insurer or the state, as appropriate. If reimbursement is not paid and a loss occurs which is covered by the policy of property insurance or program of self-insurance, the first \$1,000 of the loss must be paid by the agency and the balance by the insurer or the state, as appropriate.

3. Agencies must approve and maintain a listing of those tools which are required.

4. As used in this section, "tools" does not include weapons or other protective equipment.

Sec. 7. NAC 284.357 is hereby amended to read as follows:

284.357 1. The appointing authority shall provide a description of the essential functions of a position to each candidate who is being considered for a vacant position. The information must be provided in a timely manner to allow a candidate with a disability to determine his need for reasonable accommodation.

2. The appointing authority shall consider [only] the essential functions of the position that have been identified pursuant to [subsection 1] NAC 284.356 when determining which candidate will be offered employment. *If the disability of a candidate prevents or impedes the performance of one or more of the functions of the position that are not identified as essential, the appointing authority shall not consider those functions when determining which candidate will be offered employment.*

3. The provisions of this section apply to all competitive and noncompetitive appointments to classified positions.

Sec. 8. NAC 284.538 is hereby amended to read as follows:

284.538 1. An employee who has completed 10 years or more but less than 15 years of continuous full-time state service is entitled to 1 1/2 days of annual leave for each calendar month of service. If an employee has not been in continuous public service, the period before the interruption will not be counted except as provided in NAC 284.5405.

2. An employee who has completed 15 years or more of total full-time state service is entitled to 1 3/4 days of annual leave for each calendar month of service. If an employee has not been in continuous public service, the period before the interruption will not be counted except as provided in NAC 284.5405.

3. Except **[as otherwise provided in]** *for an employee who is on a leave of absence pursuant to NRS 281.390 or 284.365 or* NAC 284.580, the date an employee becomes eligible for an increased rate of annual leave must be delayed 8 hours for each day of leave without pay in excess of 240 hours or, in the case of an excluded classified employee or excluded unclassified employee, 30 working days, in any 1 calendar year. For the purpose of this subsection, a day of leave is 8 hours, except for an employee who regularly works more than 80 hours in a biweekly period. For such an employee, a day of leave must be determined by dividing his regularly scheduled hours in a year by 2,088 and multiplying the quotient by 8.

Sec. 9. NAC 284.578 is hereby amended to read as follows:

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

2. The commission, upon the recommendation of the appointing authority, 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 intent to return to work.

4. Except as otherwise provided in NRS 281.390, if the reason for granting the leave no longer exists, or for another bona fide reason, the appointing authority may revoke the leave after notifying the employee in writing and allowing a reasonable time for the employee to return to work.

5. [A leave of absence without pay taken pursuant to subsection 5 of NRS 284.360 must commence within 6 months after the birth of the child or the date of placement of the child with the eligible employee through adoption. Such a leave of absence taken by an eligible employee shall be deemed to be family and medical leave pursuant to NAC 284.5815 and may not be taken as intermittent or reduced leave unless otherwise approved by the appointing authority.]

6. Except as otherwise provided in subsection 5 of NRS 284.360, an] An employee shall request leave without pay at least 30 days in advance of when the need for the leave is foreseeable, if practicable.

[7. As used in subsection 5 of NRS 284.360, “recently adopted” means the 6-month period immediately following the placement of the adopted child with the employee.]

Sec. 10. NAC 284.5815 is hereby amended to read as follows:

284.5815 1. Except as otherwise provided in this section and subsection 7 of NAC 284.5819, an appointing authority shall grant family and medical leave to an eligible employee who gives at least 30 days’ notice or gives notice as soon as practicable under the circumstances. If an employee elects to use paid leave instead of using family and medical leave in the form of a

leave of absence without pay, the employee shall comply with the notice requirements governing the use of paid leave unless such notice requirements are more stringent than the 30-day notice required for family and medical leave.

2. An appointing authority may require an eligible employee to use annual leave, sick leave, or catastrophic leave instead of using family and medical leave in the form of a leave of absence without pay, unless [:

(a) ~~The~~ *the* employee is on family and medical leave because of a disability related to work, is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS, and elects not to supplement his benefits with paid leave . [; or

(b) ~~The family and medical leave is taken in the form of a leave of absence without pay pursuant to subsection 5 of NRS 284.360 and commences within 6 months after the birth of the child of the employee or within 6 months after the date of placement of the child with the eligible employee through adoption.]~~

3. An eligible employee may request the use of annual leave, sick leave, or catastrophic leave instead of using family and medical leave in the form of a leave of absence without pay. The use of accrued annual leave must not be denied if the family and medical leave is granted in accordance with subsection 1 and the employee has completed his first 6 months of employment. An employee may request the use of compensatory time off for a purpose that would qualify him to use family and medical leave. An employer shall not unreasonably deny such a request. If the employer permits the use of compensatory time off for such purpose, the use of compensatory time off must not be counted against the employee's entitlement to 12 work weeks of family and medical leave.

4. Authorization to use paid leave pursuant to this section is subject to the provisions of NAC 284.539, 284.554, 284.558, and 284.576, as applicable.

5. Paid leave and leave without pay used may not be designated as family and medical leave after the employee has returned to work, unless:

(a) The appointing authority did not learn the reason for the leave until the employee returned to work and the appointing authority designates the leave as family and medical leave within 2 working days after the date the employee returns to work; or

(b) The appointing authority provisionally designated the leave as family and medical leave and is awaiting documentation to confirm that the leave qualifies as family and medical leave.

6. An appointing authority may require an employee who is taking family and medical leave to submit every 2 weeks a statement of his intent to return to work.

7. At the conclusion of family and medical leave, the employee must be returned to his position or to an equivalent position, unless the employee would not otherwise have been employed in such a position if leave had not been taken.

Sec. 11. NAC 284.5817 is hereby amended to read as follows:

284.5817 Family and medical leave which is taken for the birth of a child of an eligible employee and the care of that child or for the placement of a child through adoption or foster care with the employee:

1. May be taken in the form of intermittent leave or reduced leave if approved by the appointing authority.

2. Must be concluded within 12 months after the date of the birth of the child or placement of the child with the eligible employee.

3. May be limited to a combined 12 work weeks if both parents are eligible employees . [unless the family and medical leave is taken in the form of a leave of absence without pay pursuant to subsection 5 of NRS 284.360 and commences within 6 months after the birth of the child of the employees or within 6 months after the date of placement of the child with the eligible employees through adoption, whichever is applicable.] The combined 12 work weeks must not include any family and medical leave which is taken because of a serious health condition of:

(a) The employee which makes him unable to perform one or more of the essential functions of his position; or

(b) The spouse, child, or parent of the eligible employee.

Sec. 12. 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 the standards and procedures established by the [National Institute on Drug Abuse] *Department of Health and Human Services* which are hereby adopted by reference. A copy of the standards and procedures is available, without charge, from the [National Institute on Drug Abuse, WPTRB Room 9A-53, 5600 Fishers Lane, Rockville, Maryland 00657.] *Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace, 5600 Fishers Lane, Parklawn Building, 13A-54, Rockville, Maryland 20857.*

2. Alcohol by testing a person's breath must be conducted by an operator certified in accordance with NAC 484.640 using a breath testing device certified in accordance with NAC 484.600 and 484.660.