

**PROPOSED REGULATION OF THE
DEPARTMENT OF PERSONNEL**

LCB File No. R082-00

June 5, 2000

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

AUTHORITY: §§1, 4, 31 and 32, NRS 284.155; §§2, 14-23, 25-27 and 29, NRS 284.345; §§3 and 10, NRS 284.343 and 284.345; §§5-7, NRS 284.155 and 284.175; §§8 and 9, NRS 284.155 and 284.250; §§11-13, NRS 284.343; §24, NRS 284.345, 284.350 and 284.355; §28, NRS 284.345 and 284.355; §30, NRS 284.155 and 284.384; §33, NRS 284.407; §34, NRS 284.155 and 284.345.

Section 1. Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *“Family and Medical Leave Act” means the Family and Medical Leave Act of 1993 adopted by reference in NAC 284.581.*

Sec. 3. *In determining whether to approve or deny training or education requested by an employee, an appointing authority shall consider whether the training or education:*

- 1. Is required by or related to the job of the employee;*
- 2. Is relevant to the prospective duties of the employee; or*
- 3. Is a benefit to both the agency and the employee participating by:*
 - (a) Preparing the agency and employee for technological and legal developments;*
 - (b) Increasing the work capabilities of the agency and employee;*
 - (c) Increasing the number of qualified employees in areas for which the agency has difficulty in recruiting or retaining employees; or*
 - (d) Increasing the professional competence of the employees of the agency.*

Sec. 4. 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 *of personnel* hereby adopts by reference and will refer to:

- (a) The Americans with Disabilities Act of 1990 (Public Law 101-336).
- (b) The provisions of 29 C.F.R. Part 1630.
- (c) The Technical Assistance Manual for the Americans with Disabilities Act.

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, *telephone* (800) 669-3362 or *TDD* (800) 800-3302.

Sec. 5. NAC 284.204 is hereby amended to read as follows:

284.204 1. ~~[The department of personnel]~~ *An appointing authority or his designated representative* may approve an adjustment of steps within the same pay grade to:

(a) Meet a difficult recruiting problem if an effort to recruit a person for a position or class has failed to produce applications from at least five eligible persons who are available to work, or the recruitment for the position or class has been deemed historically difficult. Such an adjustment of steps may be approved ~~[by the department of personnel]~~ for a class for a period of 1 year.

(b) Employ a person who possesses qualifications which are superior to those of another eligible person if he possesses experience or education, or both, which exceed:

- (1) The minimum qualifications of the class; and
- (2) The experience and education of any other eligible person who is available.

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Any experience or education, or both, which is considered by the appointing authority *or his designated representative* pursuant to this subsection must be given a greater weight for those areas which are directly related to the position than those areas of general education and experience. The rate of salary is negotiable within the grade of the class of the position.

(c) Maintain an equitable relationship in the status of steps among the employees of the appointing authority if a disparity exists and it is not a condition created solely by differences in seniority. The status of the steps may not be considered for employees:

(1) In another agency; or

(2) When the difference is the result of an adjustment in salary which was attained in a former class.

2. Before granting an adjustment of steps pursuant to this section, the appointing authority *or his designated representative* must ~~submit a request in writing to the department of personnel which justifies the need for the adjustment. The request must indicate that the appointing authority has:~~

~~—(a) Considered]:~~

(a) *Consider* the requirements for the salary and the qualifications of any other eligible person who is available for work;

(b) ~~Ensured] Ensure~~ that the adjustment is feasible on the basis of its fiscal effects;

(c) ~~Ensured] Ensure~~ that the adjustment will not cause inequity in the status of the steps of current employees which would require adjustments in the salaries of those employees which are not feasible on the basis of the fiscal effects of any adjustments; and

(d) ~~Prepared and maintained] Prepare and maintain~~ an accurate record of the consideration of the factors listed in this subsection and of the justification ~~of the appointing authority]~~ for the

adjustment ~~[as specified in this section, as appropriate.]~~ *on a form provided by the department of personnel.*

3. An adjustment of steps which is made pursuant to this section does not constitute a promotion.

4. The effective date of an adjustment of steps ~~[which is approved by the department of personnel]~~ is the date on which ~~[a request that complies with subsection 2 is received by the department of personnel or the personnel office of the agency at which the employee who is receiving the adjustment is employed.]~~ *the appointing authority or his designated representative approves the adjustment of steps.* If an adjustment of steps is delayed because an administrative or clerical error prevented the delivery of a request to the ~~[department of personnel,]~~ *appointing authority or his designated representative,* the effective date must be determined by the appointing authority *or his designated representative* and must be based on the date the request should reasonably have been submitted to the ~~[department of personnel.]~~ *appointing authority or his designated representative.* A retroactive adjustment must not exceed 6 months from the date *on which* the ~~[department of personnel]~~ *appointing authority or his designated representative* receives the request.

5. An adjustment of steps which is made pursuant to paragraph (a) of subsection 1 must be revoked when:

(a) The recruiting problem which caused the adjustment was due to the geographical location of the position; and

(b) The employee transfers to an area where a recruiting problem does not exist.

FLUSH The employee must be placed at the step he would have received if he had not received the adjustment.

Sec. 6. NAC 284.206 is hereby amended to read as follows:

284.206 1. ~~{The department of personnel}~~ *An appointing authority or his designated representative* may approve a special adjustment to a salary equivalent to 5 percent of the employee's regular hourly rate to recognize conditionally:

(a) An employee who works out of his class on a continuing basis and who performs essentially all the duties and responsibilities of a position classified at a higher grade. To receive the increase, the employee must:

(1) Be assigned duties and responsibilities of the higher grade which are clearly demonstrated in the class specification; and

(2) Carry out the duties for at least 16 consecutive workdays before the increase becomes effective.

FLUSH The adjustment in salary must not continue for more than 6 months in any 12-month period unless the person is underfilling a position pursuant to NAC 284.437 and recruitment has failed to produce a sufficient number of applicants on the appropriate list.

(b) An employee required to use bilingual skills or sign language for the deaf at least 10 percent of his work time.

(c) An employee supervising other employees of the same or a higher grade if the supervision is not of a program or function which is provided for in the specification of the class.

(d) An employee of the division of mental health and developmental services of the department of human resources or the division of child and family services of the department of human resources or of the department of prisons which provides mental health services to inpatients, who is required regularly to perform custodial work and clean up human bodily wastes, or, if his principal place of work is located in an assaultive environment as determined by

the administrator, to provide medical treatment, maintain buildings, instruct academic courses or provide therapy. The adjustment ~~{will}~~ *may* be:

- (1) Granted only when such duties are not required of the class as a whole; and
- (2) Granted only once although the employee performs more than one duty described in this paragraph.

FLUSH Except as otherwise provided in this paragraph, such an employee who is assigned to the unit located in an assaultive environment for 1 or more hours but who is not assigned there permanently must also receive the adjustment for each hour and portion thereof he works in the unit. An excluded classified employee who is assigned to the unit located in an assaultive environment for any portion of a workday but who is not assigned there permanently must receive the adjustment for all of his regularly scheduled hours of employment on that workday.

(e) Except as otherwise provided in this paragraph, an employee who conducts a formal program of training for employees in an occupational class series. The training must:

- (1) Be conducted weekly;
- (2) Consist of training on the job and in the classroom or training only in the classroom;
- (3) Include a test to determine the employee's progress in the program; and
- (4) Result in the award of a certificate of completion or advancement in a training class

series to the journey level.

FLUSH If granted, the adjustment begins when the employee starts conducting the program of training and ends when the program is completed. An adjustment ~~{will}~~ *may* not be granted if the duty to conduct training is clearly set forth in the class specification. Informal orientation given to new employees in a class series will not be considered for this special adjustment.

(f) A law enforcement officer who is assigned to motorcycle duty.

(g) An employee of the department of prisons who regularly supervises, or is responsible for the supervision of, a group of inmates assigned to a work area of a prison and who is responsible for implementing security procedures, including, without limitation, securing the work area from inmates who are not authorized to enter, accounting for all inmates who have been assigned to the work area and accounting for all materials, tools and equipment in the work area. ~~[This adjustment will]~~ *Such an adjustment may* be granted only if ~~[such]~~ *those* duties are not provided for in the class specification.

(h) An employee who is authorized by the legislature to receive such an adjustment to his salary.

2. ~~[The department of personnel]~~ *An appointing authority or his designated representative* may approve a special adjustment to the salary of an employee who occupies a position in which the duties have been recognized pursuant to a position questionnaire as being at a higher level, but who does not meet the minimum qualifications for promotion to the new grade. The special adjustment must be equivalent to 2.5 percent of the employee's regular hourly rate if the employee performs duties classified one grade higher than his current position, or 5 percent of the employee's regular hourly rate if the employee performs duties classified two or more grades higher than his current position. A special adjustment made pursuant to this subsection may continue in effect from the date the position is reclassified : ~~[for the position questionnaire is received:]~~

- (a) Until the employee meets the minimum qualifications and is promoted;
- (b) For 1 year after the effective date of the special salary adjustment; or
- (c) Until the date the higher level duties are removed,

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whichever occurs first.

3. A request for a special adjustment to a salary made pursuant to this section may be initiated by an employee, the appointing authority or the department of personnel.

4. A special adjustment authorized by this section does not constitute a promotion.

5. Any special adjustment made pursuant to subsection 1 must be revoked when the conditions justifying it cease to exist.

6. Except as otherwise provided in this section, the effective date of a special adjustment to a salary is the date *on which* the appropriate ~~[document]~~ *form provided by the department of personnel* is received by ~~[the department of personnel or]~~ the personnel office of the agency at which the employee who is receiving the special adjustment is employed ~~[.]~~, *or by the appointing authority or his designated representative, as appropriate*. If a special adjustment to a salary is delayed because an administrative or clerical error prevented the delivery of a prepared ~~[document]~~ *form* to the ~~[department of personnel,]~~ *personnel office of the agency at which the employee who is receiving the special adjustment is employed*, the effective date must be determined by the appointing authority *or his designated representative* and must be based on the date the document should reasonably have been submitted to the ~~[department of personnel,]~~ *personnel office of the agency*. A retroactive adjustment must not exceed 6 months from the date the ~~[department of]~~ *personnel office of the agency* receives the document ~~[.]~~ *or the appointing authority or his designated representative approves the adjustment, as appropriate*.

Sec. 7. NAC 284.208 is hereby amended to read as follows:

284.208 1. As used in this section:

(a) “Dangerous duty” means work performed under such dangerous circumstances that an accident would probably result in serious injury or death.

(b) “Duty involving physical hardship” entails extreme physical discomfort which is not adequately alleviated by protective or mechanical devices.

2. Except as otherwise provided in this subsection, additional compensation equal to 10 percent of an employee’s basic rate of pay must be paid for each hour in which he performs any dangerous duty or duty involving physical hardship. An excluded classified employee who performs any dangerous duty or duty involving physical hardship for any portion of a workday must receive the additional compensation for all of his regularly scheduled hours of employment on that workday.

3. The compensation applies only to employees who are subjected to unusual physical hardship or dangerous duties which are not an inherent part of the job and not regularly part of the job. These duties may appear in the ~~[job description,]~~ *class specification*, but must not be performed with sufficient regularity to constitute an element in fixing the grade of the position.

4. Only the following groups, under the conditions described, are entitled to receive pay for dangerous duty:

(a) Employees engaged in scuba or skin diving.

(b) Employees who perform duties at a height of more than 16 feet above the floor in a building or 16 feet above ground level outside of a building if the work is performed on portable equipment or outside of a railed or protected area.

(c) All employees, except pilots, for time spent in single engine aircraft or helicopters when required to do so by the employer.

(d) Employees required to handle or use explosives.

Sec. 8. NAC 284.370 is hereby amended to read as follows:

284.370 1. If there has been no material change in the qualification requirements, subject matter, scope ~~or~~ or weights of various phases of the examinations, names of persons who become eligible subsequent to the initial recruitment for the same class may be integrated on ranked lists *for subsequent recruitment*, according to the final rating of the eligible persons. If the method of certification is that of unranked lists, eligible persons will be integrated in unranked order.

2. If a material change occurs in the qualification requirements, subject matter, scope, or weights of various phases of the examinations, eligible persons who appear on a list will be offered the choice of recompeting or integrating their previously established final examination score, but only if they also meet any new qualification requirements. The decision to re compete cannot be reversed once any phase of the new examination has been taken and the results of the most recent examination will prevail.

Sec. 9. NAC 284.378 is hereby amended to read as follows:

284.378 When using lists of persons who are eligible and considering eligible persons who have been certified, the following conditions apply:

1. When a reemployment list is certified:

(a) Eligible persons who are available for appointment and who are certified on reemployment lists, other than seasonal reemployment lists, must be hired in the order in which they appear unless the appointing authority, upon submitting written justification, obtains the written concurrence of the governor to deviate from the order of priority or to hire from another list. The appointing authority must make the written justification available for examination by affected persons or their designated representatives.

(b) A person who receives a written offer of reemployment must accept or refuse the offer within 3 business days after the offer is received. If an offer of reemployment is mailed to a person, he must accept or refuse the offer within 6 days after the date of the postmark on the letter containing the offer. The failure to accept the offer within the prescribed time constitutes a refusal of the offer.

2. The appointing authority may request selective certification for a particular position if the normal method of certification does not provide candidates qualified to perform the duties of the position satisfactorily. Where selective certification is necessary, the appointing authority must furnish in writing the special requirements peculiar to the position and his reasons therefor. If the facts and reasons justify such a method of selection, the department *of personnel* may certify the highest ranking eligible persons who possess the special qualifications. Determination of special qualifications may require circularization of eligible persons before certification can be made.

3. Certification of *only* eligible persons ~~[of only one]~~ *who are the same* sex will not be made unless there is clear evidence that duties assigned could be performed efficiently only by the sex specified.

4. Authorization for selective certification will be made on an individual basis and, with the exception of clerical positions requiring typing, shorthand, or word processing, *database or spreadsheet* skills, subsequently reported to the commission at their next regular meeting.

5. When using ranked lists other than those for reemployment, the appointing authority must attempt to communicate, as provided in NAC 284.382, with persons in the first five ranks to determine their availability and qualifications. The names on each type of list must be considered before names from the next succeeding list. If there are fewer than five ranks with persons who are available for appointment on a given list and the appointing authority requests a full

complement of five ranks, the name or names at the top of the next succeeding list must be combined with those on the preceding list to establish five eligible ranks with persons who are available for appointment. Except as otherwise provided in subsection 7, all competitive appointments from ranked lists must be made from the persons who:

- (a) Are in a rank of persons who received the five highest scores on the examination; and
- (b) Are available for appointment.

6. If the list is unranked or waived, the appointing authority must attempt to communicate, as provided in NAC 284.382, with at least five eligible persons he deems most qualified based upon a review of their respective qualifications as they relate to the position or class, or *with* all of the eligible persons if there are five or less. Except as otherwise provided in subsection 1, any eligible person who is certified from an unranked or waived list may be appointed.

7. If persons from fewer than five ranks of eligible persons are willing to accept appointment:

- (a) The appointing authority may make an appointment from among those remaining available eligible persons.
- (b) Certification and appointment may be made from other appropriate lists, including lists of higher grades as determined by the department of personnel. The names from other lists will follow those which have been certified, if any, from the original lists.
- (c) A new recruitment may be conducted.
- (d) A provisional appointment may be made only if the requirements of NAC 284.406 are met.

Sec. 10. NAC 284.484 is hereby amended to read as follows:

284.484 1. When training is required by the appointing authority, the authority must grant release time to attend the training. Release time is considered time worked. The agency is responsible for any overtime earned as a result of such training.

2. When training is requested by the employee, the appointing authority may:

(a) Grant the employee release time, but not overtime;

(b) Require the employee to take approved leave for the work time spent to attend the training; or

(c) Deny the request. Approval must not be unreasonably withheld and reasons for denial must be provided the employee in writing.

FLUSH In making ~~[this determination,]~~ *the determination to approve or deny training pursuant to this subsection*, the appointing authority must consider the appropriateness of the training ~~[to the employee's job.]~~ *in accordance with section 3 of this regulation.*

Sec. 11. NAC 284.486 is hereby amended to read as follows:

284.486 ~~[1.]~~ Money for training must be used to produce the greatest benefit in relation to the cost of the training. This requirement applies to money which is administered by the department of personnel and to money which is administered by other agencies.

~~[2.— Money appropriated for training may not be used to finance staff conferences, meetings, conventions or other activities which are held merely for an interchange of ideas among administrators or specialists or for a review of their experiences. No money may be expended under a contract to provide or receive training unless the contract specifies the expenditure and the contract is approved by the state board of examiners.]~~

Sec. 12. NAC 284.490 is hereby amended to read as follows:

284.490 1. If an employee ~~requests permission~~ *receives approval* to take *training or education that he requested to take, including, without limitation,* a course or workshop ~~and~~ *the training is required by or related to his job:*

~~1.] :~~

(a) The employing agency may reimburse the employee for the expense of the ~~course or workshop~~ *training or education* only after his successful completion of the training; or

~~2.]~~ (b) The employing agency may elect to prepay the cost of the ~~course or workshop and~~ *training or education.*

2. *An employing agency* may enter into an agreement with ~~the employee for repayment of the~~ *an employee requiring the employee to repay any* money *prepaid to him for the cost of training or education* if ~~the~~ :

(a) *The* employee fails to ~~successfully~~ complete the training ~~and~~ *successfully; or*

(b) *Within 1 year after the successful completion of training or education that is not required by his job, the employee terminates his employment with the agency.*

FLUSH *Any repayment from wages owed to the employing agency must not be taken from any payment for overtime owed to the employee and must not reduce the pay of the employee below the minimum wage required by federal law.*

3. For the purposes of this section, “successful completion of ~~training”~~ *training and education”* means:

(a) Receiving a grade of C or better;

(b) Receiving a passing grade if the students are designated only as passing or failing the course;

(c) Receiving a certificate of completion; or

(d) Receiving other evidence of completion as predetermined by the appointing authority.

Sec. 13. NAC 284.514 is hereby amended to read as follows:

284.514 1. A stipend for an educational leave of up to three-fourths of the employee's base salary may be paid if money is available for that purpose and the course of study ~~is related to the job.]~~ *meets the requirements set forth in section 3 of this regulation.*

2. An employee's request for such a stipend must be endorsed by his appointing authority and be accompanied by a copy of the employee's agreement to return to work for the state. The request will be reviewed, and a recommendation made, by the department of personnel. Before the employee is given the stipend to engage in the proposed college program, his request must be approved by the state board of examiners.

3. An agency may not have more than 2 percent of its full-time work force receiving such a stipend at any one time except that an agency with less than 50 full-time employees may have one employee receiving such a stipend.

Sec. 14. NAC 284.522 is hereby amended to read as follows:

284.522 Except in a matter concerning stipends for educational leaves as to which a decision of the state board of examiners is final, any appeal concerning a matter under NAC 284.482 to 284.522, inclusive, *and section 3 of this regulation* must be made in accordance with the grievance procedure set forth in NAC 284.658 to 284.695, inclusive.

Sec. 15. NAC 284.523 is hereby amended to read as follows:

284.523 As used in NAC 284.523 to 284.598, inclusive, *and section 2 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 284.5231 to 284.5239, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 16. NAC 284.5233 is hereby amended to read as follows:

284.5233 “Eligible employee” means an employee who is eligible for family and medical leave. ~~[pursuant to NAC 284.581.]~~

Sec. 17. NAC 284.52375 is hereby amended to read as follows:

284.52375 “Provider of health care” means:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state or country in which the doctor practices;

2. A podiatric physician, a dentist, a clinical psychologist, an optometrist or a chiropractor who is authorized to practice as a podiatric physician, a dentist, a clinical psychologist, an optometrist or a chiropractor by the state or country in which he practices and who is performing within the scope of his practice as defined by the law of that state or country;

3. A nurse practitioner, nurse midwife or clinical social worker who is authorized to practice as a nurse practitioner, nurse midwife or clinical social worker by the state or country in which he practices and who is performing within the scope of his practice as defined by the law of that state or country;

4. A practitioner in Christian Science who is listed with ~~[the]~~ *The* First Church of Christ, Scientist, in Boston, Massachusetts. The list of practitioners may be obtained from the Christian Science Committee on Publication ~~[]~~ *for Nevada*, P.O. Box ~~[95752,]~~ *92752*, Henderson, Nevada 89009, (702) 566-1097, at a cost of \$3.50; or

5. A provider of health care, as defined in NRS 629.031, acting within the scope of his license whose certification of the existence of a serious health condition is acceptable to substantiate a claim for benefits under the public employees’ benefits program.

Sec. 18. NAC 284.526 is hereby amended to read as follows:

284.526 1. For the purpose of this section, “paid status” means the time an employee is working, is on leave approved pursuant to NAC 284.580 or is on leave with pay, excluding overtime hours or catastrophic leave.

2. A full-time employee working other than a standard work week is entitled to the same number of paid holidays as a full-time employee working the equivalent standard work week.

3. Except as otherwise provided in ~~[subsections 11 and 12,]~~ *this section*, a full-time employee who works 40 hours per week, does not work on a holiday and is in paid status during any portion of his scheduled shift immediately before the holiday is entitled to receive ~~[8]~~ *the same number of* hours of holiday pay ~~[.]~~ *as the number of hours in his normally scheduled shift.*

4. Except as otherwise provided in ~~[subsections 11 and 12,]~~ *this section*, a full-time employee who works more than 40 hours per week or 80 hours biweekly, is not scheduled to work on a holiday and is in paid status during any portion of his scheduled shift before the holiday is entitled to receive an amount of holiday pay equal to the pay received for his average workday. The average workday of *such* an employee is determined by dividing the total scheduled hours of work per year by 2,088 and multiplying the quotient by 8. For the purposes of this subsection, a fireman assigned to a 24-hour shift shall be deemed to work 56 hours per week and 2,912 hours per year.

5. Except as otherwise provided in ~~[subsection 11 and 12,]~~ *this section*, an employee who is scheduled to work on a holiday and who works any portion of his scheduled shift is eligible to receive holiday pay in the amount provided in subsection 3 or 4. ~~[The employee is entitled to earn additional holiday pay on an hour for hour basis for any hours worked in addition to the period represented by the holiday pay if the hours are worked as part of the employee’s normally~~

~~scheduled shift.]~~ Any hours worked in addition to the normally scheduled shift *of an employee* do not qualify for additional holiday pay.

6. ~~[An employee who works on a holiday must be in paid status on that holiday for the amount of time which is the difference between the time represented by his holiday pay and his normal work schedule for that holiday. If the employee has not worked enough hours to be in paid status, he must use sick leave, annual leave, or compensatory time to make up the difference.~~

~~—7.]~~ Except as otherwise provided in ~~[subsection 11,]~~ *this section*, an employee who is scheduled to work on a holiday, but does not work, is eligible for holiday pay in the manner provided in subsection 3 or 4.

~~[8.]~~ 7. A full-time employee whose employment begins on a holiday is entitled to receive holiday pay in accordance with subsection 3 or 4 if he is in paid status during his scheduled shift.

~~[9.— A full-time employee whose regular schedule of work is more than 8 hours, but who has the day off because of a holiday, may use annual leave, compensatory leave, or have his schedule adjusted for the amount of time in excess of the holiday pay to which he would be entitled pursuant to subsection 3 or 4. An employee who does not elect to use annual leave or compensatory time and whose schedule is not adjusted may, with the approval of the appointing authority, be placed on a leave of absence without pay.~~

~~—10.]~~ 8. An employee working a part-time standard, nonstandard or innovative work week must be paid holiday pay if:

(a) The holiday falls on a scheduled workday; and

(b) He is in paid status during his scheduled shift immediately before the holiday or on the holiday if his employment begins on that day.

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The amount of holiday pay must not exceed 8 hours but must otherwise equal what he would have been paid if there had not been a holiday.

~~{11.}~~ **9.** An employee scheduled to work on a holiday who fails to report his absence to his supervisor or a designated representative as required by NAC 284.590 is not entitled to receive compensation for the holiday.

~~{12.}~~ **10.** An employee whose employment is terminated:

(a) The day before the holiday is not entitled to receive compensation for the holiday.

(b) On a holiday on which he is working must be paid an amount for the holiday in proportion to the time he actually worked on the holiday. When an employee gives notice to terminate on a holiday and is not scheduled to work on the holiday, the last day worked or in paid leave status is his date of termination.

~~{13.}~~ **11.** An employee who transfers the day before a holiday becomes an employee of record in the new agency on the holiday and is entitled to receive compensation for the holiday from the new agency. An employee who transfers from an agency at the end of a shift on a holiday is entitled to receive compensation for the holiday from the previous agency.

~~{14.}~~ **12.** An employee whose employment is not full-time employment is entitled to be paid holiday pay as provided in subsection ~~{10.}~~

~~—15.— Subsections 1 to 14, inclusive,}~~ **8.**

13. *The provisions of this section* do not apply to an excluded classified employee or excluded unclassified employee. The salary of an excluded classified employee or excluded unclassified employee must not be reduced solely because a holiday occurs on a scheduled workday of that employee.

Sec. 19. NAC 284.539 is hereby amended to read as follows:

284.539 1. Except as otherwise provided ~~in subsection 3 of NAC 284.5815, the~~ *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 service and the seniority and wishes of the employee. Annual leave may not be granted in excess of the accumulated annual leave.

2. If an employee submits a written request for annual leave at least 60 days in advance, it must be honored except for good and sufficient reason. The approval or denial must be in writing within 15 workdays after receipt by the appointing authority of the written request for leave. The appointing authority may not prohibit an employee from using at least 5 consecutive days of annual leave in any calendar year.

3. 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.

4. 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.

5. 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 accrued annual leave pursuant to NAC 284.5775.

Sec. 20. NAC 284.558 is hereby amended to read as follows:

284.558 1. Except as otherwise provided in this section, if an employee is needed to provide care for a member of his immediate family with an illness or other authorized medical need, the employee may use his accumulated sick leave , not to exceed ~~80~~ *120* hours in any 1

calendar year. *An employee is not subject to this 120-hour limitation if the leave is approved under the Family and Medical Leave Act.*

2. The appointing authority may approve an exception to the ~~[80-hour]~~ *120-hour* limitation or the requirement that the immediate family member be living in the employee's household. To obtain an exception, the employee may be required to submit his request in writing to the appointing authority. The appointing authority may require that the request be accompanied by a certification from a provider of health care of the need for the employee's participation. The appointing authority may use the procedure and form which is ~~[set forth in NAC 284.5819 for the certification.]~~ *used for certification under the Family and Medical Leave Act.*

3. The appointing authority may request that the employee submit supplemental information. Supplemental information may include a second and third medical opinion as provided in subsection 2 of NAC 284.566.

Sec. 21. NAC 284.562 is hereby amended to read as follows:

284.562 1. If a member of the employee's immediate family dies, he may use his accumulated sick leave, or request approval for catastrophic leave pursuant to NAC 284.576, not to exceed 5 working days for each death.

2. For the purposes of this section, "immediate family" means the employee's parents, spouse, children, brothers, sisters, grandparents, great-grandparents, uncles, aunts, nephews, grandchildren, nieces, great-grandchildren, father-in-law, mother-in-law, son-in-law, daughter-in-law, grandfather-in-law, grandmother-in-law, great-grandfather-in-law, great-grandmother-in-law, uncle-in-law, aunt-in-law, brother-in-law, sister-in-law, grandson-in-law, grand-daughter-in-law, nephew-in-law, niece-in-law, great-grandson-in-law, great-granddaughter-in-law, *first cousin, first cousin-in-law*, stepparents ~~[]~~ and stepchildren.

3. If a reasonable amount of additional time is needed for traveling related to funeral arrangements, the appointing authority shall approve an exception to this limitation.

Sec. 22. NAC 284.566 is hereby amended to read as follows:

284.566 1. An appointing authority may approve sick leave only after having ascertained that the absence was for an authorized reason. For absences in excess of 3 consecutive working days, or for cases of suspected abuse, the appointing authority may require that the employee submit substantiating evidence, which may include, but is not limited to, a certificate from a provider of health care of the need for the absence.

2. For absences for which medical certification is required, the appointing authority may require the employee to provide a second medical opinion. The provider of health care who provides the second opinion of an employee's health condition shall certify as to the ability of the employee to perform his duties and responsibilities and when he believes the employee can return to work. The provider of health care who provides the second opinion of an immediate family member's health condition shall certify as to the health condition of the family member, the probable duration of the health condition and incapacity, and the need for the employee's assistance or presence. A copy of each opinion must be provided to the employee, the patient and the appointing authority, as appropriate. If the first and second opinions differ, the appointing authority may require the employee to provide a third medical opinion.

3. If a second medical opinion is required, an employee shall obtain the opinion, on the appropriate form of certification, in accordance with ~~[NAC 284.5819,]~~ *the Family and Medical Leave Act*, from a provider of health care designated by the appointing authority. The designated provider of health care must not be regularly used by the state unless the employee or a member

of his immediate family resides or works in an area where such a provider of health care is not available and must not be employed by the state. The agency shall pay for the consultation.

4. If a third medical opinion is required, an employee shall obtain the opinion, on the appropriate form of certification, in accordance with ~~NAC 284.5819,~~ *the Family and Medical Leave Act*, from a provider of health care approved jointly by the employee and the appointing authority. If necessary, a list of three providers of health care from which the selection must be made may be requested from the medical society of the county in which the employee or, if applicable, the member of his immediate family, resides or works. If such a list is used, the selection of the third provider of health care must be made by the employee and appointing authority alternately striking one name off the list. The third opinion is final and binding. The agency shall pay for the consultation.

5. An employee shall request sick leave at least 30 days in advance if the need for leave is foreseeable and the sick leave is to be taken in conjunction with a planned leave of absence without pay.

6. An appointing authority may require a statement from a provider of health care that an employee is able to resume work if the requirement is related to the employee's ability to perform one or more of the essential functions of his position.

Sec. 23. NAC 284.568 is hereby amended to read as follows:

284.568 1. An appointing authority may place an employee on sick leave if, due to a known or suspected illness, the employee is not performing at the level required by his position or the illness is such that it appears to be contagious.

2. An appointing authority may place an employee with a disability on sick leave if, due to an illness or injury, the employee is not able to perform the essential functions of the job with

reasonable accommodation or the illness or injury is such that it is a direct threat to the employee or to another person. Before placing an employee with a disability on sick leave because an illness or injury is a direct threat to the employee or other person, the appointing authority shall consider whether the direct threat may be eliminated or reduced by reasonable accommodation.

3. If an appointing authority places an employee with a disability on sick leave pursuant to subsection 2, the appointing authority must:

- (a) Identify a specific, significant ~~{}~~ and current risk of substantial harm; and
- (b) Document the risk by medical or other factual evidence concerning the employee with a disability or other person.

4. Except as otherwise provided in NRS 281.390, the appointing authority may require an eligible employee to use sick leave during the time family and medical leave is granted .

~~{pursuant to NAC 284.5819.}~~

Sec. 24. NAC 284.5775 is hereby amended to read as follows:

284.5775 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. *To receive payment for all or part of the difference between his normal pay and the benefits received:*

(a) Elect to use his accrued sick leave as provided in subsection 1 or 3 of NRS 281.390;

~~{2.}~~ (b) Use his accrued compensatory time;

~~{3.}~~ (c) Use his accrued annual leave if he:

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

~~[(b)]~~ (2) Elected to use his accrued sick leave pursuant to NRS 281.390 and has exhausted all of his accrued sick leave; or

~~[4.]~~ (d) Use catastrophic leave if he has exhausted all of his accrued annual leave, sick leave and compensatory time and his request for catastrophic leave has been approved pursuant to NAC 284.576 ~~;~~

FLUSH ~~to receive payment for all or part of the difference between his normal pay and the benefits received.]; or~~

2. Elect to be placed on leave of absence without pay in accordance with subsection 5 of NRS 281.390.

Sec. 25. NAC 284.581 is hereby amended to read as follows:

284.581 1. ~~[An employee is eligible for family and medical leave if he:~~

- ~~—(a) Has at least 12 months of service with the state on the date that the leave commences, regardless of whether such service is continuous;~~
- ~~—(b) Has at least 1,250 hours of service with the state during the 12 months preceding the day that the leave commences;~~
- ~~—(c) Is employed, on the day that he gives notice of the need for leave, at a worksite where the state employs at least 50 employees within 75 miles of the worksite; and~~
- ~~—(d) Has used less than 12 work weeks that have been designated family and medical leave during the current calendar year.~~

~~—2.— To calculate the hours of service for the purposes of this section, paid leave shall be considered as time worked.] For the purposes of NAC 284.523 to 284.598, inclusive, and section 2 of this regulation, the department of personnel hereby adopts by reference:~~

(a) The Family and Medical Leave Act of 1993 (Public Law 103-3), as amended.

(b) The Fair Labor Standards Act of 1938, as amended, and 29 C.F.R. Part 541.

2. A copy of the Family and Medical Leave Act, the Fair Labor Standards Act or 29 C.F.R. Part 541 may be obtained at no charge from the United States Government, Wage and Hour Division, P.O. Box 3136, Reno, Nevada 89505-3136, telephone (775) 784-5200, or from the United States Government, Wage and Hour Division, 1050 Flamingo Road, Suite 321, Las Vegas, Nevada 89119, telephone (702) 699-5581.

Sec. 26. NAC 284.5811 is hereby amended to read as follows:

284.5811 ~~[No more than 12 work weeks of one or any combination of paid leave or leave without pay may be designated as family and medical leave in 1 calendar year.]~~

1. The entitlement for family and medical leave for an eligible employee is limited to a total of 12 weeks during a rolling 12-month period.

2. To calculate the hours of service needed for eligibility under the Family and Medical Leave Act, paid leave must be considered as time worked.

3. As used in this section, a “rolling 12-month period” means the 12-month period as measured backward from the date an employee uses any family and medical leave.

Sec. 27. NAC 284.5813 is hereby amended to read as follows:

284.5813 ~~[1.]~~ Each appointing authority shall maintain accurate records of family and medical leave used by its employees, including any form approved for requesting family and medical leave.

~~[2.— Upon granting the family and medical leave or becoming aware that an eligible employee is using leave, with or without pay, in a manner which would otherwise qualify as family and medical leave, the appointing authority shall provide notice to the employee which~~

~~details the obligations of the employee and the effects of using the leave. A copy of this notice must be retained in the personnel file of the employee maintained by the agency.]~~

Sec. 28. NAC 284.6002 is hereby amended to read as follows:

284.6002 1. Except as otherwise provided in subsection 4, an appointing authority shall require an employee who has a disability related to work to submit to the appointing authority a physical assessment of the disability that is prepared by the employee's treating physician or chiropractor. The appointing authority may require the employee to submit a physical assessment after each visit to the physician or chiropractor or after only those visits designated by the appointing authority.

2. Each physical assessment must:

(a) Be reported on the appropriate form prescribed by the division of industrial relations of the department of business and industry. The appointing authority shall provide the appropriate form to the employee.

(b) Contain any limitations or restrictions imposed on the employee's ability to work by the treating physician or chiropractor.

3. An employee who is required to submit a physical assessment shall deliver or mail the assessment to the appointing authority within 3 working days after the date of his visit to his treating physician or chiropractor.

4. If an employee is on family and medical leave because of a disability related to work, he may, in lieu of submitting physical assessments required pursuant to subsection 1, submit to his appointing authority certification from a provider of health care substantiating the need for family and medical leave in the manner prescribed ~~[in NAC 284.5819.]~~ *by the Family and Medical Leave Act.*

Sec. 29. NAC 284.6012 is hereby amended to read as follows:

284.6012 Except as otherwise provided ~~[in NAC 284.5819,]~~ *by the Family and Medical Leave Act*, an employee who is granted family and medical leave because a disability related to work prevents him from performing one or more of the essential duties of his regular position:

1. May not be required to accept a temporary assignment offered pursuant to NAC 284.6004 in lieu of continuing on the family and medical leave that has been authorized by his appointing authority.

2. May voluntarily accept a temporary assignment pursuant to NAC 284.6004. An employee who voluntarily accepts such a temporary assignment retains the right to be returned to the position he held before the temporary assignment or an equivalent position pursuant to ~~[subsection 7 of NAC 284.5815]~~ *the Family and Medical Leave Act* until the time served in the temporary assignment plus any family and medical leave taken during a ~~[calendar year]~~ *rolling 12-month period pursuant to NAC 284.5811* exceeds 12 work weeks.

Sec. 30. NAC 284.658 is hereby amended to read as follows:

284.658 **1.** As used in NAC 284.346 and 284.658 to 284.697, inclusive, a “grievance” means an act, omission ~~[,]~~ or occurrence which a permanent employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement. The act, omission ~~[,]~~ or occurrence must be established with factual information including, but not limited to, the date, time ~~[,]~~ and place of the act, omission ~~[,]~~ or occurrence and the names of other persons involved.

2. For the purposes of NAC 284.346 and 284.658 to 284.697, inclusive, the term “grievance” does not include any grievance for which a hearing is provided by NRS 284.165, 284.376 or 284.390.

Sec. 31. NAC 284.726 is hereby amended to read as follows:

284.726 1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority’s decision to hire that person is limited to the appointing authority or his designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of paragraph (b) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee ~~§~~ or the designated representative of either.

2. Except as otherwise provided in subsection 3, access to an employee’s file of employment containing any of the items listed in paragraphs (e) to (h), inclusive, of subsection 1 of NAC 284.718 is limited to:

- (a) The employee;
- (b) The employee’s representative when a signed authorization from the employee is presented or is in his employment file;
- (c) The appointing authority or a designated representative of the agency by which the employee is employed;
- (d) The director of the department of personnel or his designated representative;
- (e) An appointing authority, or his designated representative, who is considering the employee for employment in his agency;
- (f) Persons who are authorized pursuant to any state or federal law or an order of a court; and

(g) The state board of examiners if the board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.

3. Information concerning the *health, medical condition or* disability of an employee or a member of his immediate family must be kept separate from the employee's file in a locked cabinet. Access to such information is limited to the employee, his current supervisor and the appointing authority ~~or~~ *or his designated representative*.

4. Upon request, the department of personnel will provide the personal mailing address of any employee on file with the department to the state controller's office and the Internal Revenue Service.

5. The director or the appointing authority, or his designated representative, shall authorize the release of any confidential records under his control which are requested by the committee, a hearings officer, the commission, the Nevada equal rights commission ~~or~~ or a court. If the director or his designated representative determines that the release of any confidential record is not necessary for those purposes, the decision may be appealed.

Sec. 32. NAC 284.802 is hereby amended to read as follows:

284.802 1. At the beginning of his testimony, each witness who has not previously testified in the hearing must be required to state his name, address and business, employment or position.

2. Testimony may be presented in the form of a statement or questions and answers.

3. The hearing officer may have the testimony ~~reported~~ *recorded* and transcribed.

Sec. 33. 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 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 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 484.631~~ **NRS 484.3882** and **NAC 484.660**.

Sec. 34. NAC 284.0635, 284.081, 284.091, 284.0935, 284.5815, 284.5817 and 284.5819 are hereby repealed.

TEXT OF REPEALED SECTIONS

284.0635 “Essential functions of a position” defined. “Essential functions of a position” means the functions that a person who holds the position must be able to perform unaided or with the assistance of reasonable accommodation.

284.081 “Person with a disability” defined. “Person with a disability” means a person who:

1. Has a physical or mental impairment that substantially limits one or more of his major life activities;

2. Has a record of such an impairment; or
3. Is regarded as having such an impairment by another person.

284.091 “Qualified person with a disability” defined. “Qualified person with a disability” means a person with a disability who:

1. Has the skills, experience, education, and other requirements for employment in a specific position which the person holds or desires; and
2. Can perform the essential functions of the position unaided or with reasonable accommodation.

284.0935 “Reasonable accommodation” defined. “Reasonable accommodation” means the modification or adjustment of the process of applying for a position, the functions of a position, or the environment at work so a qualified person with a disability has an opportunity to attain the same level of performance or to enjoy the benefits and privileges of employment that are available to a similarly situated person without a disability.

284.5815 Family and medical leave: Notice; use of paid leave; statement of intent to return; placement of employee upon return from leave. (NRS 284.345)

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 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.

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.

284.5817 Family and medical leave: Birth or placement through adoption or foster care of child. (NRS 284.345) 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. 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.

284.5819 Family and medical leave: Serious health condition.

1. Family and medical leave may be granted to an eligible employee if the employee:

(a) Is needed to care for his spouse, child, or parent with a serious health condition; or

(b) Has a serious health condition which makes him unable to perform one or more of the essential functions of his position.

2. Family and medical leave taken pursuant to this section may include leave necessitated because:

(a) Of a disease or an injury to the employee that is related to his work; or

(b) The employee is incapacitated because of pregnancy or childbirth.

3. An appointing authority may require an employee to provide certification from a provider of health care, on the appropriate form as provided by the department of personnel, of the serious health condition of the employee or the spouse, child, or parent of the employee, to substantiate the need for family and medical leave taken pursuant to this section before granting a request to commence family and medical leave. If an employee uses sick leave rather than family and medical leave in the form of a leave of absence without pay, the employee shall comply with the certification requirements of NAC 284.566.

4. Except as otherwise provided in this section, an appointing authority may require subsequent recertification from a provider of health care at reasonable intervals of 30 days or more, or if the current certification on file specifies a minimum period of incapacity, after that specified period has expired.

5. For a serious health condition other than a condition described in subsection 6, an appointing authority may require subsequent recertification from a provider of health care at any time:

(a) If the employee requests an extension of leave;

(b) If the appointing authority receives information which casts doubt on the continuing validity of the current certification on file; or

(c) If circumstances described in the current certification on file change significantly.

6. If the serious health condition is a pregnancy or a chronic, permanent or long-term condition under the continuing supervision of a health care provider, the appointing authority may require subsequent recertification, in connection with an absence by the employee, from a provider of health care at reasonable intervals of 30 days or more, or the appointing authority may require subsequent recertification at any time if:

(a) The circumstances described in the current certification on file change significantly; or

(b) The appointing authority receives information which casts doubt on the reason stated by the employee for the employee's absence.

7. The appointing authority may refuse to grant the family and medical leave to an eligible employee who fails to provide certification pursuant to subsection 3, 4, 5, or 6 until the required certification is provided.

8. The information on a certification concerning the serious health condition of an employee must be related to his ability to perform one or more of the essential functions of his position and consistent with the needs of the agency related to that position. Certification concerning the serious health condition of the spouse, child, or parent of an employee and the care of that spouse, child, or parent must include information regarding:

(a) The assistance which the spouse, child, or parent requires;

(b) The type of care which the employee will provide; and

(c) The length of time for which care will be provided or for which the presence of the employee would be beneficial to the spouse, child, or parent.

9. Except as otherwise provided in this subsection, if certification from a provider of health care is requested by the appointing authority, the employee shall provide the certification within

15 calendar days after receiving the request or as soon as practicable given the circumstances. If the appointing authority has paid premiums for group health insurance on behalf of an employee who is unable to return to work because of the continuation, recurrence or onset of a serious health condition, the employee must provide the certification within 30 days after receiving the request.

10. An employee who is eligible for family and medical leave in accordance with this section must be allowed to take the leave in the form of intermittent leave or reduced leave if a provider of health care certifies that such leave is medically necessary. If possible, the employee shall schedule medical treatment at a time which is not unduly disruptive to the operation of the agency.

11. An appointing authority may require an employee requesting family and medical leave pursuant to this section in the form of intermittent leave or reduced leave to transfer on a temporary basis to an equivalent position which better accommodates the recurring periods of leave if the appointing authority complies with subsection 1 of NAC 284.390.

12. An appointing authority who has reason to doubt the validity of the initial certification from a provider of health care to substantiate a request for family and medical leave may require the employee to obtain a second opinion or a third opinion, if necessary, from a provider of health care using the procedure set forth in NAC 284.566.

13. Unless an employee has taken leave in the form of intermittent leave, an appointing authority may require a statement from a provider of health care that an employee is able to resume work if the requirement is related to the employee's ability to perform one or more of the essential functions of his position.