

**LCB File No. R060-09**

**PROPOSED REGULATION OF THE  
PERSONNEL COMMISSION**

(This regulation was previously adopted as T032-09)

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

**Sec. 2. NAC 284.5232 is hereby repealed:**

**Explanation of Proposed Change:** This section was previously repealed temporarily and is now recommended for permanent repeal. Proposed by the Department of Personnel, this amendment deletes a definition of “continuing treatment” which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581.

**NAC 284.5232 “Continuing treatment” defined. (NRS 284.065, 284.155, 284.345)**

~~["Continuing treatment" means:~~

- ~~— 1. Two or more treatments received from a provider of health care if the treatment normally requires a visit to the office of the provider of health care or a nurse or physician assistant who is under the direct supervision of the provider of health care;~~
- ~~— 2. Two or more treatments received from a provider of health care services, such as a physical therapist, under the orders of, or referred by, a provider of health care;~~
- ~~— 3. At least one treatment received from a provider of health care which results in a regimen of continuing treatment under the supervision of a provider of health care;~~
- ~~— 4. The continuing supervision of, but not necessarily active treatment by, a provider of health care because of a long term or permanent condition for which treatment may not be effective; or~~
- ~~— 5. Any combination of treatments described in subsections 1 to 4, inclusive.]~~

**Sec. 3. NAC 284.5233 is hereby repealed:**

**Explanation of Proposed Change:** This section was previously repealed temporarily and is now recommended for permanent repeal. Proposed by the Department of Personnel, this amendment deletes a definition of “eligible employee” which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581. Additionally, “eligible employee” is used in a different context in other sections of the Nevada Administrative Code, and such a definition may be confusing.

**NAC 284.5233 “Eligible employee” defined. (NRS 284.065, 284.155, 284.345)**

~~["Eligible employee" means an employee who is eligible for family and medical leave.]~~

**Sec. 4. NAC 284.5234 is hereby repealed:**

**Explanation of Proposed Change:** This section was previously repealed temporarily and is now recommended for permanent repeal. This amendment deletes a definition of “family and medical leave” which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581.

**NAC 284.5234 “Family and medical leave” defined. (NRS 284.065, 284.155, 284.345)**

~~["Family and medical leave" means any paid leave or leave of absence without pay which is granted to an eligible employee:~~

- ~~—1. For the birth of a child of the employee and the care of that child if the leave is taken during the 12 months immediately following the date of the birth of that child;~~
- ~~—2. For the placement of a child through adoption or foster care with the employee if the leave is taken during the 12 months immediately following the date of placement of that child;~~
- ~~—3. To care for his spouse, child or parent who has a serious health condition; or~~
- ~~—4. Because of a serious health condition of the employee which makes him unable to perform one or more of the essential functions of his position.]~~

**Sec. 5. NAC 284.5235 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It adds “next of kin” to the definition of immediate family in cases where an employee is approved to care for a covered servicemember under the Family and Medical Leave Act.

**NAC 284.5235 “Immediate family” defined. (NRS 284.065, 284.155, 284.345)**

“Immediate family” means:

1. The employee’s parents, spouse, children, regardless of age, brothers, sisters, grandparents, great-grandparents, uncles, aunts, nephews, grandchildren, nieces, great-grandchildren and stepparents; and
2. If they are living in the employee’s household, the employee’s 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, granddaughter-in-law, nephew-in-law, niece-in-law, great-grandson-in-law and great-granddaughter-in-law.
3. *Next of kin as provided for by the Family and Medical Leave Act when an employee is approved for family and medical leave to care for a covered servicemember.*

**Sec. 6. NAC 284.5239 is hereby repealed:**

**Explanation of Proposed Change:** This section was previously repealed temporarily and is now recommended for permanent repeal. This amendment deletes a definition of “serious health condition” which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581.

**NAC 284.5239 “Serious health condition” defined. (NRS 284.065, 284.155, 284.345)**

~~[1. “Serious health condition” means an illness, an injury or a physical or mental condition which involves:~~

- ~~—(a) Inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or~~
- ~~—(b) Continuing treatment by or under the supervision of a provider of health care for one or more periods of:
 
  - ~~—(1) Incapacity of more than 3 consecutive calendar days, and any subsequent treatment or period of incapacity related to the same condition that also involves continuing treatment.~~
  - ~~—(2) Incapacity because of pregnancy or for prenatal care.~~
  - ~~—(3) Incapacity because of a chronic serious health condition, or treatment for such incapacity. A chronic serious health condition is one that continues over an extended period of time, requires periodic visits for treatment by or under the direct supervision of a health care provider, and which may cause episodic periods of incapacity.~~
  - ~~—(4) Incapacity which is permanent or long term because of a condition for which treatment may not be effective, but for which the person is under the continuing supervision of a health care provider.~~
  - ~~—(5) Absence to receive multiple treatments by or under the direction of a health care provider for restorative surgery after an accident or other injury.~~
  - ~~—(6) Absence to receive multiple treatments by or under the direction of a health care provider for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment.~~~~
- ~~—2. The term “serious health condition” does not include:
 
  - ~~—(a) Cosmetic treatments which do not require inpatient care and which do not result in medical complications; or~~
  - ~~—(b) Minor conditions such as the common cold, flu or an ear ache which do not result in medical complications.~~~~
- ~~—3. As used in this section, “incapacity” means the inability to work, attend school or perform other regular daily activities because of a serious health condition, including any treatment or recovery period.]~~

**Sec. 7. NAC 284.578 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It adds compensatory time to the list of leave that must be exhausted before using leave without pay for family and medical leave. New federal regulations now allow compensatory time to be used for family and medical leave. Additional language has been added to the original text of the temporary regulation to clarify that the employee must use all leave that he is eligible to use based on the nature of the absence before he can receive leave without pay.

**NAC 284.578 Leave of absence without pay. (NRS 284.065, 284.155, 284.345)**

1. Except as otherwise provided in NRS 284.360, an appointing authority may grant a leave of absence without pay to an employee for not more than 1 year for any satisfactory reason.
2. The Commission may grant leaves of absence without pay in excess of 1 year for purposes deemed beneficial to the public service.
3. An appointing authority may require an employee on leave of absence without pay to submit every 2 weeks a statement of his intent to return to work.

4. If the reason for granting the leave no longer exists, the appointing authority may revoke the leave after notifying the employee in writing and allowing, so far as is practicable, not less than 5 working days after the date of notification for the employee to return to work.

5. An employee shall request leave without pay at least 30 days in advance of when the need for the leave is foreseeable, if practicable.

6. An employee may not use leave without pay in lieu of sick leave or annual leave without approval of the appointing authority.

7. An employee who is using leave pursuant to the Family and Medical Leave Act may not use leave without pay until he has exhausted his accrued sick leave, *compensatory time*, annual leave and catastrophic leave *that he is eligible to use based on the nature of the absence* as required by NAC 284.5811.

**Sec. 8. NAC 284.5811 is hereby amended to read as follows:**

**Explanation of Proposed Change:** This amendment was previously adopted as a temporary regulation and is now being proposed by the Department of Personnel as a permanent regulation. It adds provisions that make the regulation consistent with new federal Family and Medical Leave Act (FMLA) regulations. It allows for the use of 26 weeks in a single 12-month period to care for a covered service member, incorporates the use of compensatory time for use with the FMLA, and expands the type of documentation accepted for qualifying FMLA events. Additional language has been added to the original text of the temporary regulation to clarify that the employee must use all leave that he is eligible to use based on the nature of the absence before he can receive leave without pay.

**NAC 284.5811 Family and medical leave: Maximum amount in 12-month period; eligibility; use. (NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626)**

1. *Except as provided for in subsection 2, [An]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 to care for a covered servicemember may be approved for up to a total of 26 weeks of leave during a single 12-month period as provided for in the Family and Medical Leave Act.*

~~[2.]~~ 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.

~~[3.]~~ 4. Except as otherwise provided in subsection ~~[4]~~ 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 his accrued sick leave, *accrued compensatory time*, accrued annual leave and catastrophic leave *that he is eligible to use based on the nature of the absence* before he may use leave without pay. Any accrued sick leave, *accrued compensatory time*, accrued annual leave, 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, *accrued compensatory time*, annual leave, catastrophic leave or holiday pay.

~~{4.}~~ 5. If an employee is absent from work as the result of a work-related injury or illness and he 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 is not being compensated for the work-related injury or illness.

~~{5.}~~ 6. An appointing authority may require an employee to provide medical documentation *or other appropriate documentation* to support his need for leave pursuant to the Family and Medical Leave Act ~~[due to a serious health condition of the employee or of a spouse, parent or child of the employee]~~.