

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R135-12

August 14, 2012

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

AUTHORITY: §§1, 4 and 6, NRS 284.065 and 284.155; §2, NRS 284.065, 284.155 and 284.345; §3, NRS 284.065, 284.155, 284.345 and 284.355; §5, NRS 284.065, 284.155, 284.345, 284.355 and 284.3626.

A REGULATION relating to state personnel; adding a physician assistant to the list of providers of health care from whom medical documentation will be accepted regarding the medical condition of an employee or an employee's immediate family member; revising certain provisions relating to the federal Family and Medical Leave Act; and providing other matters properly relating thereto.

Section 1. NAC 284.441 is hereby amended to read as follows:

284.441 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 or her need for reasonable accommodation.

2. The appointing authority shall consider the essential functions of the position ~~[that have been identified pursuant to NAC 284.440]~~ 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. 2. 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 or she practices and who is performing within the scope of his or her practice as defined by the law of that state or country.

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

4. A practitioner in Christian Science who is listed with 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 92752, Henderson, Nevada 89009, (702) 566-1097, at a cost of \$3.50.~~ *2994 Talbot Street., Las Vegas, Nevada 89169, by telephone at (702) 807-8026, by electronic mail at nevada@compub.org or on the online directory located at www.christianscience.com.*

5. A provider of health care, as defined in NRS 629.031, acting within the scope of his or her 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. 3. 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. *If a second medical opinion is required, an employee shall obtain the opinion from a provider of health care designated by the appointing authority. The employing agency shall pay for the consultation.* 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 or her duties and responsibilities and when he or she 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 form which is used for certification under 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 or her 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 form which is used for certification under 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 or her 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 *employing* agency shall pay for the consultation.

~~[5.]~~ 4. 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.]~~ 5. 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 or her position.

Sec. 4. NAC 284.568 is hereby amended to read as follows:

284.568 1. An appointing authority may place an employee on sick leave if:

(a) Due to a known or suspected illness or injury, the employee is not performing at the level required by his or her position or is not able to perform the essential functions of the position with or without reasonable accommodation, as determined by the appointing authority pursuant to NAC ~~[284.440 and]~~ 284.441; or

(b) The illness appears to be contagious.

2. If the appointing authority places the employee on sick leave pursuant to subsection 1, the appointing authority may require the employee, before the employee may return to work, to provide documentation from a provider of health care which verifies that the employee is medically able to perform the essential functions of the job with or without reasonable accommodation and does not have a contagious illness.

3. 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.

Sec. 5. NAC 284.5811 is hereby amended to read as follows:

284.5811 1. Except as otherwise provided in subsection 2, an employee who is entitled to take leave pursuant to the Family and Medical Leave Act is limited to a total of 12 weeks of such leave during a rolling 12-month period. The rolling 12-month period is measured backward from the date an employee uses any leave pursuant to the Family and Medical Leave Act.

2. An employee who is entitled to take leave pursuant to the Family and Medical Leave Act to care for a covered service member is limited to a total of 26 weeks of such leave during a single 12-month period.

3. To calculate eligibility for leave pursuant to the Family and Medical Leave Act, each hour that an employee is in paid status in the 12-month period immediately preceding the leave must be considered as time worked.

4. Except as otherwise provided in subsection 5 ~~or~~ **or 6**, an employee who meets the requirements for eligibility for and who is taking leave pursuant to the Family and Medical Leave Act must exhaust all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave that the employee is eligible to use based on the nature of the absence before using leave without pay. Any accrued sick leave, accrued annual leave, accrued

compensatory time, catastrophic leave and holiday pay to which the employee is entitled pursuant to NAC 284.255 runs concurrently with the leave granted pursuant to the Family and Medical Leave Act if the employee is otherwise eligible for that sick leave, annual leave, compensatory time, catastrophic leave or holiday pay.

5. If an employee is absent from work as the result of a work-related injury or illness and meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:

(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and

(b) The employee may elect to use paid leave or leave without pay for the portion of time that he or she is not being compensated for the work-related injury or illness.

6. *An employee who meets the requirements for eligibility for and who is taking leave pursuant to the Family and Medical Leave Act may elect to use paid leave or leave without pay for the portion of time that his or her leave is covered by payments from a plan covering temporary disability.*

7. An appointing authority may require an employee to provide medical or other appropriate documentation to support his or her need for leave pursuant to the Family and Medical Leave Act.

Sec. 6. NAC 284.440 is hereby repealed.

TEXT OF REPEALED SECTION

284.440 Determination by appointing authority. (NRS 284.065, 284.155) An appointing authority shall determine the essential functions of a position on a case-by-case basis. An appointing authority shall consider the following factors, without limitation, in making its determination:

1. Whether an employee is currently performing or has performed the function;
2. Whether removing the function would fundamentally alter the position;
3. Whether the position exists to perform the function;
4. The number of other employees available to perform the function;
5. The degree of expertise or skill required to perform the function; and
6. The amount of time spent performing the function.