

SUMMARY OF THE WORKSHOP TO SOLICIT COMMENTS ON THE PROPOSED  
REGULATIONS OF THE STATE DEPARTMENT OF PERSONNEL

January 7, 2009  
CARSON CITY, NEVADA

Attendees in Carson City:

Teresa Thienhaus, Director, Department of Personnel  
Shelley Blotter, Division Administrator of Employee and Management Services, Department of Personnel  
Mark Evans, Supervisory Personnel Analyst, Department of Personnel  
Ron Foster, Personnel Analyst III, Department of Personnel  
Carrie Hughes, Administrative Assistant III, Department of Personnel  
Kimberley King, Personnel Officer III, Department of Transportation  
Renee Travis, Personnel Officer I, Department of Administration  
Richard Gilbert, Management Analyst II, Department of Public Safety  
Salli Hebert, Personnel Analyst II, Department of Cultural Affairs  
Suzie Bargmann, Personnel Officer I, Department of Corrections  
Tracy Walters, Personnel Officer II, Department of Health and Human Services  
Mary Gordon, Personnel Analyst I, Department of Health and Human Services  
Deborah Wilson, Management Analyst III, Department of Motor Vehicles  
Louanne Geissler, Management Analyst II, Department of Motor Vehicles  
Phil Brittenham, Personnel Officer III, Department of Motor Vehicles  
Kathleen Callahan, Personnel Officer I, Department of Motor Vehicles  
Izzy Hernandez, Department of Motor Vehicles

Attendees in Las Vegas:

Mark Anastas, Division Administrator of Recruitment and Retention, Department of Personnel  
Willette Gerald, Personnel Officer I, Department of Motor Vehicles  
John Scarborough, Personnel Analyst I, College of Southern Nevada

The workshop commenced at 9:00 a.m. Shelley Blotter welcomed everyone to the meeting.

Shelley Blotter stated that the purpose of the workshop was to solicit comments from effected parties with regard to the regulations proposed for temporary adoption. The Personnel Commission at their February 2009 meeting will consider the regulations for adoption. This meeting is scheduled to be held at the Gaming Control Board in Carson City and video-conferenced to the Grant Sawyer Building in Las Vegas. If the Personnel Commission adopts the regulations, they will go into effect when filed with the Secretary of State.

Shelley Blotter explained that there would be an overview of the regulations by Mark Evans and Ron Foster and the regulations would be grouped by topic.

**Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:**

***NEW. Return to work of employees who have tested positive for alcohol and/or drugs while on duty.***

***1. An employee who tests positive for drugs and/or alcohol while on duty, and whose offense does not result in termination pursuant to NAC 284.646 or NAC 284.650, may be required to:***

***(a) Provide his appointing authority with documentation from his Licensed Substance Abuse Provider, which verifies that the employee is able to return to duty and perform the essential functions of his job; and/or***

***(b) Submit to and pass a return to duty drug and/or alcohol test as determined by the appointing authority.***

***2. The employee is responsible for the cost of any return to duty testing.***

***3. An employee who fails to pass a return to duty test is subject to disciplinary action up to and including termination at the discretion of the appointing authority.***

**Explanation of Proposed Change:** This new section, proposed by the Department of Transportation in concert with the Department of Personnel, provides appointing authorities with an objective way to determine if it is appropriate for an employee to return to work after testing positive while on duty for drugs and/or alcohol. Currently, unless the employee is covered under a federally mandated program for drug testing or if the offense warranted termination, an employee who tests positive for drugs and/or alcohol is returned to duty with no requirement to provide documentation that they are able to safely perform their job. This regulation would require the employee to provide a release to return to work from their Licensed Substance Abuse Treatment Provider stating that the employee is able to return to duty and to pass a return to duty drug and/or alcohol test. This will help ensure that employees do not return to work under the influence of drugs and/or alcohol. An employee who is using drugs and/or alcohol or has them in their system poses a safety risk to themselves, other employees and the public and could also make mistakes that can have far reaching effects. Employees working for the State of Nevada are providing a service to the citizens of Nevada; as such, we should ensure that an employee is substance free and able to perform the essential functions of their job before returning them to duty.

Mark Evans read the following informational statement:

Section 1 is a new regulation. Currently, unless an employee is covered under a federally mandated program for alcohol and/or drug testing or if the offense warrants termination, an employee who tests positive for drugs and/or alcohol can conceivably return to work the next day. The employee is not currently required to provide any documentation that he is able to safely return to work and perform his job duties. This new regulation will give the appointing authority the option to require the employee to provide documentation from a licensed substance abuse treatment provider that he is able to return to work and perform the essential functions of the job. It also gives the appointing authority the option of requiring a return to duty drug and/or alcohol test. The employee is responsible for the cost of the test through the State's drug testing vendor. An employee who fails the test is subject to discipline. An employee who is using drug and/or alcohol or has them in his system, poses a safety risk to himself, other employees, and the public. This regulation will give appointing authorities tools to help reduce this risk and is consistent with the State's rehabilitation approach to alcohol and drug abuse.

Kimberley King commented: The Department of Transportation is in support of this change; this regulation will assist us in returning employees to work safely.

There were no other questions, comments, opposition or discussion on this section.

**Section 12. NAC 284.882 is hereby amended to read as follows:**

**NAC 284.882 Administration of screening tests. (NRS 284.065, 284.155, 284.407)** A screening test to detect the general presence of:

1. A controlled substance must comply with the standards and procedures established by the *United States* 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 *the conforming products list of evidential breath measurement devices as outlined in the Federal Register for the National Highway Traffic Safety Administration*. ~~[NRS 484.3882 and NAC 484.660.]~~

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A 10-27-97; R082-00, 8-2-2000)

**Explanation of Proposed Change:** This amendment, proposed by the Department of Personnel, is intended to create more consistency with breath alcohol testing in State government. Currently a preliminary breath alcohol test is done by a Nevada Highway Patrol (NHP) officer typically at the agency and then, if positive the employee is transported to a designated law enforcement facility for an evidentiary breath test (essentially required by subsection 2 of this regulation). With this change, an agency will have the ability to send an employee for breath alcohol testing by using a designated subcontractor under the statewide drug testing contract. This procedure is consistent with other breath alcohol testing that is done for commercial drivers license positions in State government. Further if the agency suspects that the employee may be under the influence of more than one substance (i.e., alcohol and drugs) they can run both tests at one location rather than making two separate trips for comprehensive testing. We propose adoption of the Federal standard for equipment used for this testing which is commonly recognized as the gold standard in reasonable suspicion alcohol testing nationwide. Finally, this regulation change will better uphold the intent of NRS 284.4067 which states in part, testing to detect the general presence of alcohol or of a controlled substance, must be administered in such a manner as to protect the person tested from any unnecessary embarrassment. While there may still be times when the NHP is needed, always bringing them into a State agency when an employee is suspected of impairment does not lend itself to protecting the employee's privacy. This change does not remove the ability to use the NHP for breath alcohol testing or the ability to conduct a blood alcohol test where testing via breath is not feasible.

Mark Evans read the following informational statement:

Section 12 is a proposed change to NAC 284.882. This regulation currently allows for breath alcohol testing to be performed on certified equipment only available through law enforcement agencies. This regulation change would allow alcohol breath testing to also be performed through the State's contractor

under the statewide drug testing contract. This is consistent with breath alcohol drug testing used for commercial drivers license positions in State government. The contracted testing facilities use testing devices approved by the National Highway Traffic Safety Administration. This method is recognized nationally as the gold standard in reasonable suspicion alcohol testing. The regulation change gives appointing authorities more options for conducting reasonable suspicion testing for alcohol. It allows them to eliminate potential embarrassment for employees caused by having a NHP officer come to the workplace to perform the initial test. Finally, it makes it possible for testing to be done in one location instead of two if the employee is being testing for other drugs.

There were no questions, comments, opposition or discussion on this section.

**Section 13. NAC 284.888 is hereby amended to read as follows:**

**NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (NRS 284.065, 284.155, 284.407)**

1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his duties safely and efficiently include, but are not limited to:

- (a) The operation of a motor vehicle by the employee in any manner that causes bodily harm;
- (b) Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;
- (c) The odor of *alcohol or other controlled substance* on the breath of the employee [~~and a decline in job performance that is not otherwise normally explainable~~];
- (d) Observation of the employee consuming alcohol [~~and a resulting decline in job performance that is not otherwise normally explainable~~]; or
- (e) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source.

2. Pursuant to subsection 2 of NRS 284.4065, “substantial damage to property” includes, but is not limited to:

- (a) The operation of a motor vehicle in such a manner as to cause more than \$2,500 worth of property damage; or
- (b) The operation of a motor vehicle in such a manner as to cause two property accidents within a 1-year period.

3. Before requiring an employee to submit to a screening test, a supervisor must complete a form provided by the Department of Personnel.

(Added to NAC by Dep’t of Personnel, eff. 12-26-91)

<p><b>Explanation of Proposed Change:</b> This amendment, proposed by the Department of Personnel, is intended to bring this regulation in line with NRS 284.4062 as well as the State’s position on having a drug and alcohol free workplace. NRS 284.4062 states that an employee who consumes or is under the influence of alcohol while on duty is subject to disciplinary action. This language will better uphold the intent of the law.</p>
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Mark Evans read the following informational statement:

Section 13 is a proposed change to NAC 284.888. This regulation currently offers a nonexclusive list of reasons that constitute an appointing authority's basis for reasonable belief that an employee is under the influence of alcohol and/or drugs. Eliminating the words "and a resulting decline in job performance that is not otherwise normally explainable" in Sections 1(c) and (d) clarifies that an odor of alcohol or other controlled substance on the breath of an employee or observing an employee consuming alcohol are both sufficient reasons to justify testing.

There were no questions, comments, opposition or discussion on this section.

**Section 9. NAC 284.614 is hereby amended to read as follows:**

**NAC 284.614 Layoffs: Procedure. (NRS 284.065, 284.155, 284.380)**

1. Except as otherwise provided in NAC 284.425, if it becomes necessary for a classified employee to be laid off because of a shortage of work or money, the abolition of a position, or some other material change in duties or organization:

(a) The director of the department shall determine in what geographical location, class series, class and option the reductions in staff will have the least detrimental effect on the operations of the department and shall specify layoffs accordingly. In the Department of Health and Human Services and the Nevada System of Higher Education, the administrator of a division may be designated to make these determinations with the approval of the director of the department.

(b) Within the department, geographical location, class series, class and option selected, all employees of the department who are not permanent must be separated from service before any permanent employees in the following order:

- (1) Emergency employees.
- (2) Temporary employees.
- (3) Provisional employees.
- (4) Probationary employees.

(c) If additional reductions are necessary, permanent employees must be laid off on the basis of seniority pursuant to NAC 284.632.

(d) In the department, geographical location, class series, class and option where layoffs are to take place, those employees with the least seniority must be laid off, transferred as set forth in subsection 2 or voluntarily demoted as set forth in NAC 284.618.

(e) An appointing authority may consider limiting layoffs to employees in full-time or parttime positions. Similar considerations may be given to and limitations placed on positions requiring selective certification pursuant to NAC 284.361.

2. If a permanent employee must be laid off for one of the reasons set forth in subsection 1, the appointing authority shall notify the employee that he may choose to:

- (a) Transfer within his department, class and option into the position of the employee in his department, class and option with the least seniority;
- (b) Be voluntarily demoted as set forth in NAC 284.618; or
- (c) Exercise his reemployment rights as set forth in NAC 284.630.

3. Within 3 working days after an employee has been notified of his choices pursuant to subsection 2, he must designate in writing to the appointing authority the choice he will exercise.

4. For the purposes of this section, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

**5. Subsections 1 through 4 do not apply if an employee of the Department of Motor Vehicles involved in the processing and issuing of Drivers' Licenses is laid off as a result of receiving a disqualifying background investigation that is required by the Federal Real ID Act of 2005. A permanent employee who is laid off as a result of a background investigation for the Real ID Act has all rights provided in NAC 284.630.**

[Personnel Div., Rule XIII § B subsec. 1, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 8-28-85; 8-22-86; 7-21-89; 8-1-91; 3-27-92; 9-16-92; 11-16-95; 10-27-97; R031-98, 4-17-98; R043-99, 9-27-99; R146-01, 1-18-2002; R147-01, 1-22-2002; A by Personnel Comm'n by R096-03, 10-30-2003; R143-05, 12-29-2005)

**Explanation of Proposed Change:** This temporary amendment, proposed by the Department of Personnel in collaboration with the Department of Motor Vehicles, is to insure compliance with the Federal Real ID Act of 2005. The Act requires that certain employees of the Department of Motor Vehicles involved in the processing and issuing of drivers' licenses and identification cards be qualified to do so by a specified background investigation. The proposal will allow the disqualified employees to receive certain lay-off rights as opposed to being terminated.

**Section 10. NAC 284.618 is hereby amended to read as follows:**

**NAC 284.618 Layoffs: Voluntary demotions. (NRS 284.065, 284.155, 284.175, 284.380)**

1. In lieu of being laid off, a permanent employee may choose to be voluntarily demoted to a vacant position or displace an employee within the department and geographical location where employed to one of the next lower classes:

(a) Within his current class series and option; or

(b) Within the class series and option from which he was appointed to his current position during current continuous service if he cannot be demoted pursuant to paragraph (a).

➤ For the purposes of this subsection, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

2. No employee in a higher class may displace an employee in a lower class who has more seniority. If an employee chooses to displace another, he must displace the member of the next lower class who has the least seniority. If that member has more seniority, the displacing employee must descend further in the class series.

3. The employees displaced reestablish the layoff class.

4. An employee may choose to displace another only if he meets the minimum qualifications for the class, option and position. For the purposes of this subsection, qualifications for a position may be different from those of the class and option only when selective certification is required pursuant to subsection 2 of NAC 284.361.

5. Full-time, part-time and seasonal employees must be treated separately and can only displace like employees.

6. Displacement is always a movement to a class at a lower grade.

7. A current employee who elects to displace another employee has priority over former employees already on reemployment lists.

8. The pay of the employee who is taking a voluntary demotion cannot exceed the highest step for the class to which the employee is being demoted. If the current pay falls within the lower rate range, no reduction in pay may occur unless money is not available as certified by the Chief of the Budget Division

of the Department of Administration or, in the case of an agency which is not supported from the State General Fund, as certified by the administrator of that agency.

**9. Subsections 1 through 8 do not apply if an employee of the Department of Motor Vehicles involved in the processing and issuing of Drivers' Licenses is laid off as a result of receiving a disqualifying background investigation that is required by the Federal Real ID Act of 2005.**

[Personnel Div., Rule XIII § B subsec. 2, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8- 26-83; 10-26-84; 7-21-89; 8-1-91; R146-01, 1-18-2002; A by Personnel Comm'n by R096-03, 10-30-2003; R143-05, 12-29-1005)

**Explanation of Proposed Change:** This temporary amendment, proposed by the Department of Personnel in collaboration with the Department of Motor Vehicles, is to insure compliance with the Federal Real ID Act of 2005. The Act requires that certain employees of the Department of Motor Vehicles involved in the processing and issuing of drivers' licenses and identification cards be qualified to do so by a specified background investigation. The proposal will allow the disqualified employees to receive certain lay-off rights as opposed to being terminated.

**Section 11. NAC 284.626 is hereby amended to read as follows:**

**NAC 284.626 Layoffs: Notice. (NRS 284.065, 284.155, 284.380)** All permanent employees to be laid off must be given written notice of the layoff at least 30 calendar days before the effective date of the layoff. A copy of the seniority calculations and layoff notice must be sent to the Department of Personnel. The notice must specifically list the positions and locations where the employee has a current right to displace another employee, if those positions and locations are known at the time of notification. ***If an employee of the Department of Motor Vehicles is being laid off as a result of receiving a disqualifying background investigation that is required by the Federal Real ID Act the notice must specifically state that the employee has no right to displace another employee.***

[Personnel Div., Rule XIII § B subsec. 5, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 8-1-91; A by Personnel Comm'n by R143-05, 12-29-2005)

**Explanation of Proposed Change:** This temporary amendment, proposed by the Department of Personnel in collaboration with the Department of Motor Vehicles, is to insure compliance with the Federal Real ID Act of 2005. The Act requires that certain employees of the Department of Motor Vehicles involved in the processing and issuing of drivers' licenses and identification cards be qualified to do so by a specified background investigation. The proposal will allow the disqualified employees to receive certain lay-off rights as opposed to being terminated.

Ron Foster read the following informational statement:

The Department of Motor Vehicles (DMV) is currently working under a deadline of December 31, 2009 to become fully compliant with the Federal Real ID Act of 2005. The Department of Homeland Security enforces the act and one of the requirements is that any employee who is involved in the processing and issuing of drivers licenses must pass a background investigation. This requirement is already being applied to new hires, but must also be applied to approximately six hundred fifty existing DMV employees. The investigations are to begin in the near future.

Permanently disqualifying criminal offenses include such things as espionage, treason, terrorism, and unlawful possession or trafficking in explosives. Certain offenses are disqualifying only if the applicant was convicted within seven years of the date of the application or was incarcerated and released within five years of the application date. These offenses include such crimes as extortion, bribery, immigration violations, and drug trafficking. A complete list of disqualifying offenses is contained in 49 CFR Part 1572.103.

DMV anticipates a small number of disqualified employees, if any at all, and it has committed to place any affected employees by transfer, whenever possible. Failing that, however, we are proposing some temporary amendments to lay-off rules so that outright termination of any disqualified employee can be avoided. The regulations proposed for amendment include NAC 284.614, 284.618, and 284.626. Since these amendments are necessary for a limited time period, they will be allowed to expire automatically on November 1, 2009.

NAC 284.614 relates to lay-off procedure. This regulation provides guidelines as to how an appointing authority is to determine which employees are to be laid-off. It addresses issues such as geographical location and status to establish the order of employees that must be laid-off before permanent employees. It also references other regulations relating to seniority rights, transfers, voluntary demotions, and reemployment rights and it specifies a time frame for the affected employee to notify the appointing authority of his choices.

Since a disqualifying background investigation would be the sole reason for a lay-off in this case, it is necessary to waive these guidelines so that DMV can comply with the federal law.

NAC 284.618, this regulation addresses layoffs and voluntary demotions. It allows a lay-off to displace an employee within the department and geographical location in a position classified at a lower grade level within his current class series or to a previous class series when the employee is displaced has less seniority than the lay-off. This is commonly referred to as “bumping rights”. Again, the application of this provision would conflict with the requirements placed on the DMV to comply with federal law.

NAC 284.626, this regulation requires that employees being laid-off be given a thirty-day written notice and be provided with a list of positions to which they have displacement rights. This amendment preserves the thirty-day written notice while requiring that the employee be notified that normal displacement rights, in this situation, do not apply.

Kathleen Callahan commented: The Department of Motor Vehicles supports these temporary regulations that give the agency the ability to become materially compliant by the due date in the federal regulations.

There were no other questions, comments, opposition or discussion on these sections.

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

**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.]~~
- (Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95)

**Explanation of Proposed Change:** This temporary amendment, proposed by the Department of Personnel, 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.

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

**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.]  
 (Added to NAC by Dep't of Personnel, eff. 3-23-94; A by R082-00, 8-2-2000)

**Explanation of Proposed Change:** This temporary amendment, proposed by the Department of Personnel, deletes a definition of “eligible employee” which duplicates a section of the federal 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.

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

**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.]  
 (Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95)

**Explanation of Proposed Change:** This temporary amendment, proposed by the Department of Personnel, deletes a definition of “family and medical leave” which duplicates a section of the federal FMLA. The FMLA is adopted by reference in NAC 284.581.

**Section 5. NAC 284.5235 is amended as follows:**

**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.***

(Added to NAC by Dep’t of Personnel, eff. 3-23-94)

**Explanation of Proposed Change:** This temporary amendment, proposed by the Department of Personnel, adds “next of kin” to the definition of immediate family in cases where an employee is approved to care for a covered service member under the FMLA.

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

**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.]~~

(Added to NAC by Dep’t of Personnel, eff. 3-23-94; A 11-16-95)

**Explanation of Proposed Change:** This temporary amendment, proposed by the Department of Personnel, deletes a definition of “serious health condition” which duplicates a section of the federal FMLA. The FMLA is adopted by reference in NAC 284.581.

**Section 7. NAC 284.578 is hereby amended as follows:**

**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 as required by NAC 284.5811.

[Personnel Div., Rule VII § E subsecs. 1-4, eff. 8-11-73]—(NAC A by Dep’t of Personnel, 10-26-84; 3-23-94; 10-27-97; A by Personnel Comm’n by R145-05, 12-29-2005)

**Explanation of Proposed Change:** This temporary amendment, proposed by the Department of Personnel, requires an employee to exhaust all leave, including compensatory time, 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.

**Section 8. NAC 284.5811 is hereby amended as follows:**

**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, 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 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.~~]

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95; R082-00, 8-2-2000; A by Personnel Comm'n by R096-03, 10-30-2003; R145-05, 12-29-2005)

<p><b>Explanation of Proposed Change:</b> This temporary amendment, proposed by the Department of Personnel, adds provisions that make the regulation consistent with new federal FMLA regulations. It allows for the use of twenty six weeks in a single twelve 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.</p>
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Mark Evans read the following informational statement:

New FMLA federal regulations go into effect on January 16, 2009 and based on these changes, we reviewed the State regulations to insure that they are consistent with the federal regulations. We found in several situations, we can eliminate regulations that duplicate federal law because NAC 284.581 adopts the federal law by reference. The majority of this information can best be addressed by including it in the State's FMLA guide, and we will refer to that guide through informational notes in the *Rules for State Personnel Administration*. In a few cases, we have added updated language in regulations that need to be retained because their scope goes beyond the FMLA.

Section 2, NAC 284.5232 defines “continuing treatment”. This regulation duplicates federal regulation and can be better addressed in the FMLA guide. We are proposing the repeal of this regulation.

Section 3, NAC 284.5233 defines “eligible employee”. This term is used in a different context without a definition in other regulations, so a definition here is confusing. Additionally, an “eligible employee” for the purposes of FMLA is defined in federal regulation and can be addressed in the FMLA guide. We are also proposing repeal of this regulation.

Section 4, NAC 284.5234 defines “family and medical leave”. This is another regulation that duplicates federal regulation and can be addressed through the guide. We are recommending its repeal.

Section 5, NAC 284.5235 defines “immediate family” for purposes that go beyond the use of FMLA. We are adding a statement that allows for the definition to include “next of kin” as provided by the FMLA. Changes to the FMLA allow an employee who is designated as a “next of kin” for an injured or ill service member to take leave to care for that service member. This regulation will allow employees to use paid leave for that purpose.

Section 6, NAC 284.5239 defines “serious health condition”. This regulation duplicates federal regulation and should be repealed.

Section 7, NAC 284.578 addresses leave without pay and currently states that an employee cannot use leave without pay for family and medical leave until the employee has exhausted accrued sick leave, annual leave, and catastrophic leave. Changes to the FMLA now allow public sector employees to use accrued compensatory time for family and medical leave. This regulation change will add compensatory time to the type of leave that must be exhausted before the employee can use leave without pay.

Section 8, NAC 284.5811 addresses the use of Family and Medical leave. This amendment will make the regulation consistent with changes to the FMLA regulations. Specifically, it allows employees up to twenty six weeks of leave to care for a covered service member as provided by amendments to the FMLA. The regulation has also been amended to allow for the use of compensatory time for Family and Medical leave. Finally, the definition of “documentation” has been expanded, since the new federal regulations allow for Family and Medical leave use for non-medical purposes to assist a family member in the military.

There were no questions, comments, opposition or discussion on these sections.

Shelley Blotter called the workshop closed at 9:23 A.M.