SUMMARY OF THE WORKSHOP TO SOLICIT COMMENTS ON THE PROPOSED REGULATIONS OF THE PERSONNEL COMMISSION THROUGH THE DIVISION OF HUMAN RESOURCE MANAGEMENT

June 18, 2012

CARSON CITY, NEVADA
And via Video Conferencing in
LAS VEGAS, NEVADA

Attendees in Carson City:
Shelley Blotter, Deputy Administrator, Division of Human Resource Management
Peter Long, Deputy Administrator, Division of Human Resource Management
Mark Evans, Division of Human Resource Management
Kimberley King, Personnel Officer III, Department of Transportation
Sheri Vondrak, NDOT
Tracy Walters, NDOT
Adam Drost, Central Payroll Manager, DHRM
Alys Dobel, Personnel Officer III, DMV
Teri Hack, Forestry
Denise Woo-Seymour, DHRM
Carrie Hughes, DHRM
Mary Gordon, DHCFP
Denise Madole, UNR
Janet Damschen, UNR
Maureen Martinez, Risk Management
Kareen Masters, Deputy Director, DHHS
Angelica Gonzalez, DHRM
Amy Davey, DHRM
Carrie Parker, Attorney General's Office
Mindy McKay, DPS
Kateri Cavin, PEBP
Roger Rahming, PEBP
Jim Wells, Executive Officer, PEBP
Chrissy Miller, Records
Cynthia Willden, Records
Anke Simpson, State Parks
Renee Travis, DHHS
Michelle Barnes, MHDS
Norma Mallett, MHDS
Priscilla Maloney, AFSCME Local 4041
Lauren Risinger DCFS
Ashu Manocha, DMV
Hazel Brandon, DMV

Attendees in Las Vegas:
Willette Gerald, DMV-HR

Michelle Hooper, CSN
Naomi Thomsen, UNLV
Johnny Hanes, UNLV
Larry Hamilton, Chief Human Resources Officer, UNLV
John Scarborough, CSN
Karen Belleni, DETR
Heather Dapice, DHRM-CCR

Call to Order:

Shelley Blotter: Opened the meeting at 9:05 a.m. and explained that initially the participants would be surveyed to determine which regulations were going to receive either support or objections before discussing the individual regulation changes. The proposed regulation changes are part of the review process that the Governor asked all agencies to undertake with an objective of simplification, consistency, and making the regulations easier for our customers to deal with. Meetings were held last summer and into the fall to solicit comments and suggestions for potential changes. Additionally, the Division is recommending some changes based upon our experiences with certain regulations. This was the time for feedback and not to make decisions. If language can be agreed upon, it will be taken to the Personnel Commission. If subsequent meetings need to be held to get feedback and more input then the Division will facilitate those meetings.

Review of Proposed Changes to NAC 284:

Shelley Blotter: Asked for a show of hands from individuals who were in support of breaking apart 284.170 into separate topics. The participants were asked by a show of hands on how many were opposed to that. Some participants had not decided, but it appears that the majority like it separated. By a show of hands it also appeared that there was support for the changes in sections, 284.182, 284.204, 284.587, 284.893, 284.440 and 284.494. The participants were then asked again if anyone would like to make comments of any kind on those sections.

Kimberley King: Proposed that section 12, 284.204(1)c be removed. Merit increases are earned by employees for their performance on the job. The employee is of progressively greater value to the State for their experiences on the job. Classification is what determines what the supervisor should get paid. So you're already compensating the supervisor based on the classification of their position at a greater grade. Why should the supervisor actually get paid just for supervising an employee who has been of progressively greater value to the State for all those years?

Peter Long: Didn't have problem with that recommendation. This was proposed six or seven years ago, possibly by DPS. This proposed amendment is an attempt limit the number steps to a two step differential. Some agencies have increased someone from a step 1 to a step 10 using this particular regulation.

John Scarborough: We're fine with the amendment of adding the not to exceed two steps, but we would be against deleting the provision altogether. We want the flexibility to do this if we needed to.

Priscilla Maloney: AFSCME is in agreement with Mr. Scarborough's comments. It is recognized that the State is trying to control costs wherever they can, but it would preferable to maintain this provision with a cap of 2-steps. It does give an appointing authority some flexibility to do the things they may feel they need to do in either a recruitment or an adjustment.

Amy Davey: Questioned whether this particular section is used to make an adjustment where something is out of alignment and a supervisor may not be making more than the employee they supervise?

Peter Long: That is correct. There are times where, as Ms. King noted, that a new supervisor makes less than a subordinate who has been with the State longer. This allows them to adjust the supervisor's steps to be compensated more than his/her subordinate.

Amy Davey: In that case, I would like to see this language stay to allow for some flexibility to make those changes. In one of our divisions this situation has already occurred because of the occupational study that didn't go through two legislative sessions ago; a supervisor is making less than their employee.

Kareen Masters: Supports the proposal to include the not exceed 2-steps language, retaining flexibility in the regulation.

Kimberley King: Requested clarification regarding which position is being referred to in the phrase "to the base rate of pay of his or her former position" as used in Section 2. What if they held a different position and then they changed and they are re-stating to, not the last position, but a previous position? It wasn't clear.

Peter Long: Stated the proposed language in Section 2 is the original language of NAC 284.170 and offered to try to clarify it. The intent of this revision was to keep them equal to what they had been at when they left. Suggestions to clarify the wording were requested.

Kimberley King: Suggested to change the wording to most recently held position with the State just to make it clear.

Peter Long: Offered the wording to say "which most closely corresponds to the base rate of pay of his most recently held position."

Kimberley King: Stated that it was what she was thinking and would be clearer than former position because that could be any former position.

Shelley Blotter: Asked if there were any comments regarding Section 3 Rate of Pay on Promotion.

Kimberley King: Thanked the Division regarding the change to Section 3, subsection 1a as it takes care of a problem that they've had in the department.

Amy Davey: Questioned the affect of the regulation and asked for clarification. Would the employee retain his steps if for example he was a grade 26, step 10 and then applies for a grade

36, would be placed at a step 10 if he got the job?

Peter Long: The employee would be placed at a step 10 unless that exceeds the pay scale and then say you go from a grade 20 to a grade 40, you would come into grade 40 at a step 1. The intent is that it would be within the range of the 10 steps.

Amy Davey: Okay. So similar to the way it is now.

Peter Long: Right, but you wouldn't be limited. The way it is now, if you promote more than two grades, you're limited to a 10 percent increase. This kind of ties back to what Kimberley was saying earlier. Steps are based on longevity; grade is based on the duties and complexity of a position. So we didn't necessarily see where, if you take a five grade increase why you should be limited to the 10 percent. We are trying to maintain it within those 10 steps, if it goes higher than that, then you would put it in at the step 1.

Amy Davey: Asked to verify understanding of the proposal. If my budget was a concern and within a group of candidates for a grade 36 position there is a current State employee who is a grade 26, step 10 and a non-state employee, could this proposal limit the current State employee because that person would be at step 10 in the new position?

Peter Long: There could be that situation, but right now, it's almost the other way around where a State employee is limited to those two steps and someone comes in from the outside in an open competitive list and they can use the accelerated rate to get more than what a current State employee can get. We're trying to balance that scale.

Amy Davey: Do you have any concern about there being inequity then if I promote into your agency at a higher step than somebody who has been there for four or five years?

Peter Long: No, although agencies may have that concern. We haven't had that concern because through the accelerated rate process there is a way to adjust for equity. If I wasn't clear on your earlier question, an employee moving from a Grade 20 to a Grade 40, would go in at a Grade 40, Step 1, because that's more than a Step 10 at a Grade 20. They would go with whatever the higher salary is.

Kareen Masters: My concerns are the same ones that Amy had. So if we had an Administrative Assistant III, Grade 27, Step 10, go and get her social work degree, she could go to a Grade 32, Step 10, Social Worker I? So as I'm reading it she would go from a 27, 10 to a 32, 10.

Peter Long: That's how it's written. Yes.

Kareen Masters: Does have concerns about that. Conceptually people shouldn't typically be limited to the 2-grades. I would have very great concerns about someone who is just entering a professional field and to bring them in at the top step working side-by-side with our seasoned Social Work staff.

Peter Long: We're open to any suggestions you might have. What we were trying to do is simplify and take out some of the language that agencies have problems with and Central Records has problems with. If you want to suggest an in-between or suggest that we take it out

completely, we're good.

Kareen Masters: Maybe some consideration can be given to the number of grades the person is promoting or maybe it should be handled through the accelerated rate; not limit accelerated rate to open competitive lists. Let people on promotional lists apply for an accelerated rate so that divisions can weigh the different factors to decide whether they want to offer a higher step or not.

Shelley Blotter/Peter Long: Agree to pull the section and have additional discussion on it.

Kimberley King: Understands the concerns that Amy and Kareen brought up. NDOT is experiencing supervisors who are promoting 3-grades. We want to make sure that they get paid for the full 3-grades, not just limited to 10%. So maybe there's some language that can address all of our concerns.

Shelley Blotter: Asks if there are any comments related to Section 4 Rate of Pay on Demotion?

Peter Long: Explained that the language for the good of the State was unintentionally left out. If there is agreement, we would like to put that section back in. It's permissive language and it's not mandatory.

Kareen Masters: That was my concern. We do have some concerns about subsection 4 and the ability to manipulate someone's pay to a rate that really isn't warranted. If somebody promotes and then they demote, they could potentially get a benefit from that because of the flexibility that's allowed.

Peter Long: Section 4, subsection 4 is the original language from demotion, but we took out the part that says you can't be higher than you would have been had you not demoted. That part we took out. Is that your concern?

Kareen Masters: So if I promote during my initial probationary period and I go to a Step 7, and then, if I demote back down, even though I might have been a Step 5 in my prior class they can pay me at a Step 7.

Peter Long: The appointing authority can. Yes. So it's permissive. So you just want it to be uniform where they can't make more than they would have had they not promoted and demoted?

Kareen Masters: Yes. I'm sure the majority of the people would, carry it out in an appropriate manner, but there is the potential to promote for two weeks just to get a 10% increase.

Peter Long: I don't disagree. Let's put this as one we need to discuss because that section was under the promotion section, and that's caused a lot of concern over the years where someone has promoted, demoted and they can't be higher than they would have been. It used to catch up fairly quickly when we had MSIs. Now we don't. So we've had people that have gone back down and we've had to re-adjust their payback for three or four, five years and so we thought that's just really hard to track. I'll asterisk it and we can discuss it and come up with something later.

Shelley Blotter: Some of the proposed regulations we discussed what the impact would be and

felt like there was a small populations that would actually be affected by this, so, again, for the ease of administration, we are balancing that with including a rule that is cumbersome to use.

Mark Evans: One of the issues with this is that in the past you've had to go back to figure out what an employee really should have been making several years ago. We've had grievances about that and where the employee unexpectedly had to pay back a lot of money. Maybe what we could do is we could limit it to their most recent position instead of having to go back to whenever they became permanent at that grade because that seems to be where a lot of the confusion is.

Peter Long: I think Kareen is right. When it says initial probationary period, I think the intent was their first position in State service when they're in their initial probationary period. They demote and so it didn't think about promotion, but she's right in that you can promote multiple times, and if you've never become permanent, you've never gotten past your initial probationary period. So I think that's where the concern comes in, so we can look at it.

Kimberley King: I'd like to work through that language. We have run into some problems with people who have demoted and then promoted, but I think that we can work through the language later. We were concerned about number 3. If the demotion was instituted for disciplinary reasons, the base rate shall be equivalent to decrease of not more than one step from his or her current base rate of pay. We've had a situation where somebody was demoted three grades. We wouldn't want to have our management constrained on what we should be paying them down to just one step. I need to work through some more situations, but it's almost better to get demoted for cause than voluntary with this language.

Peter Long: We could leave the original verbiage in there that was the appointing authority may pay the demoted employee at any step in the grade to which the employee was demoted that is not greater than his or her base rate of pay before the demotion. You are fine with the way it was?

Kimberley King: Yes, we were fine with that. That gives the agency head the ability to manage their department.

Peter Long: Okay. Our only concern on that one was simplification and that possible inconsistency across State service of how much was taken away from an employee.

Kimberley King: I can understand that and if we want to talk about different language that might address both concerns that would be great.

Amy Davey: I just want to support what Kimberley had to say exactly. My concern also is about just the 1-step decrease. I do understand about the consistency issue. I'm not quite sure how to address it, but I think that is a concern as well. I just don't think that a 1-step decrease being locked in is the right thing.

Shelley Blotter: Asked if there were any other comments regarding section 4? She advised that there would be additional conversations about section 4. She asked if there were any additional comments, and there was no response. She proceeded on to Section 5, rate of pay on transfer. No one came forward. She proceeded to Section 6, rate of pay reappointment.

Kimberley King: Commented this is similar to the very first one -- retains his or her step. Can we be clear if we're simplifying the language, which step -- last position? I just thought it could be clearer.

Peter Long: Agreed.

Kareen Masters: Thinks there still needs to be the distinction in whether they are being reappointed to a higher or lower grade, because, again, I think that could end up with some inequities.

Peter Long: We can add that back in.

Shelley Blotter: Asked if there were any concerns or other comments regarding section 6 or the proposal to add the language related to whether it's a higher or lower grade back in? No other comments. Proceeded to Section 7, rate of pay on reemployment.

Priscilla Maloney: I didn't raise my hand when we were going through the list as far as objections go, but we did have a question about subsection 2. We're aware that other State legislatures have some provisions, if there's a fiscal emergency, we get to do X. Could Mr. Long or someone explain how this new exception to the section would work?

Peter Long: This section was there before. It's not a new section. It's highlighted because it will be a totally new number within 284, but that section was there before. So the Budget Division or the Nevada System of Higher Education could say there wasn't enough funding, which then allows the employee to decide whether they do or don't want to take that job at a lower pay.

Priscilla Maloney: Right. I assume when it's referencing 204, again, we're back to the 2-steps cap. So Section 7, rate of pay reemployment and an exception to the section may be made if the conditions in 284.204 exist or if the money is not available. I just want to try and clarify whether or not it's dovetailing within 204 right now or mirroring that. I'm looking at Subsection 1C in 204.

Peter Long: It's referencing that the intent of that is that they don't have to be limited to the base rate of pay if they can get an adjustment through 204.

Priscilla Maloney: But, again, the cap would be that adjustment would be the two steps, wouldn't it?

Peter Long: No, no. It's not referencing that specifically. It's referencing anything in 204 where say they were a grade 32, step 5 when they left. They would come back at an equivalent salary to that, notwithstanding, that they could still get that adjustment in 204 of a plus 5 for any of the reasons that are in 204.

Priscilla Maloney: Okay. We're thinking about our military folks or somebody who's gone for a while and actually leave State service and maybe comes back.

Peter Long: That's a different type of reemployment.

Priscilla Maloney: Okay. Thank you.

Shelley Blotter: Asked if there were any other comments regarding Section 7, rate of pay on reemployment, Section 8, rate of pay, military reemployment, Section 9, rate of pay, minimum step for continuous employment. No comments. Proceeded to Section 10, rate of pay, non-classified/unclassified appointment to classified.

Peter Long: An agency brought forth that they wanted us to consider that if an employee left classified service and went to unclassified service and then came back, that the time they were in unclassified service count towards their steps. I think we'll need to get an opinion from our DAG. Statute says that they come back with equivalent compensation and duties. So I don't know that we could add steps for the time that they've been gone, but it's something we would be willing to look at if there was an appetite for that, so I don't know if that means we need to table this one.

Shelley Blotter: Advised to do that just in case. She asked if there were any other comments on Section 10. No comments. She advised that before going on to Section 11, she wanted to recap that there's a need to have additional discussion about Section 3, Section 4, and Section 10.

Mark Evans: Just to clarify, we will go forward with splitting those out. We'll just leave the language the same. Is that correct? Is that how people understand it?

Shelley Blotter: So in other words, if there had been a change in it and it's in one of those that I just mentioned, we'll go with the original language and then have additional conversations about proposed changes, so that we can go ahead with the breaking apart of 284.170 for clarity purposes. Does anyone object to that?

Peter Long: I have a Question on Section 6. That's the one where you wanted to address on reappointment higher or lower grade. Do we need to table that or are we going to make the proposed changes and then address them and discuss them again when they get to the Commission?

Shelley Blotter: I think the proposed change in that one is to just clarify that it was the last position.

Peter Long: That was part of it, but Kareen also wants to add back in whether if they were reappointed to a higher or lower grade.

Shelley Blotter: We'll go ahead and table that one as well. Are there any other comments on those sections before we go ahead? Okay. So now we are at 284.182 and that was one that we all agreed that it was fine as proposed. We already had the discussion about 284.204. Anyone else have comments about 284.204? No comments. Proceeded to 284.206.

Priscilla Maloney: It's AFSCME's understanding on this that in February 2010, then-Governor Gibbons suspended special adjustments to pay all the pay codes that are relevant that are under this 206. It's our understanding that that was until further notice and that these pay codes are still frozen. Is that correct?

Peter Long: That is correct.

Priscilla Maloney: Some of these regs are wordsmithing by our assessment, but here is the first

one that has a substantive change. I understand that this regulation is currently frozen and no employees are receiving the adjustment to pay.

In Section 2, 3B of the proposed regulation the employee who is required to use bilingual skills or sign language for persons who are deaf have been compensated at one of those special adjustments to pay rates for performing those duties at least 10% of the time. The increase that's suggested here is to 50 percent. Quite frankly, we need more information. We would even request that officially we have a second workshop on this after we get more information. We have no idea where increasing the percentage from 10% to 50% comes from. We would like to know things, for instance, such as what languages are we talking about, how many State employees throughout the State, north, south and the rural areas, are performing these duties. We'll probably be making a formal request for that information breaking it down by agency what languages we're talking about. We simply need to know the basis for this 50% requirement and I'm sure that there's some information out there. So, we request a second workshop on this, specifically.

Peter Long: A second workshop is not a problem. As far as gathering the information on who might be eligible, we could certainly survey agencies. I don't know how responsive or receptive they might be because it's been gone now for two or three years so they may not have a good idea. As far as language goes, we've never limited it to any specific language. If they say a particular language is required, we're not questioning them on that.

Priscilla Maloney: A period of time prior to February 2010 when the Executive Order went into place could be reviewed. We'd want to know, in a specific timeframe, was the bulk of State dollars going to one language over another. That's something that we think is important and relevant to this. Nevada is an incredibly diverse state. That's one of its wonderful strengths. We have many populations that are growing where English is not the first language spoken. We know that this is going to be an increasing cost to the State, but we want to see our employees appropriately compensated for that. We have put a call out to our membership to give us anecdotal statements and/or testimony that could be provided at the next workshop. For instant, anecdotally, we've heard of stories that one particular person who works in one of the mental health facilities down south says she's often pulled from her tasks, right now, even with the Executive Order, she's not compensated and asked to translate on an intake for a mental health client that's coming in that the State is serving and that person can spend anywhere from 3 to 5 hours translating without this. And we recognize that this is permissive.

Shelley Blotter: It is no problem bringing these back at a later time. I agree with Peter that I don't believe our records codes show which languages are spoken. So, it would be just a survey of our agencies to determine that.

Priscilla Maloney: Well, and from a public policy matter and a budgeting matter, that might be good to know. And the rurals versus the north versus the south where the dollars are going and where the dollars needed for this service. In a happy sense, that's the world we live in, a diverse world.

Peter Long: We can survey and ask, but if we're not limiting it to any particular language,

what's the benefit of knowing which language -- I mean, we would allow any language to get this adjustment.

Priscilla Maloney: There's the overriding concern that there are people who are doing this service sometimes a huge part of their day and are not being compensated for it. If we need to do recruitments where a specific language is really needed in that agency, again, we'd just like some quantified information. If it's not there, you know, then maybe this becomes the part of the step that is the foundation for a study to break it down where that information could be gathered from and what it means in terms of recruitments, hiring, work performance standards, and all of those things. We're hearing a lot is people are being told under the work performance standards language that almost all of them have "and other duties as agency assigns" and that is what's being used for a lot of these people to be pulled off of their regular tasks and then sent to go translate in a different language.

Larry Hamilton: Wanted to offer some supportive comments. As we were doing our due diligence with respect to taking a look at this section, many of the questions that the prior speaker asked came up in our conversations as well, so we look forward to working with the groups and with the other colleagues across the state to answer some of these questions. The 50 percent threshold in our preliminary look at other agencies, western states, other cities within the west and then here within the Las Vegas and the Clark County area really did not seem to indicate that 50 percent was a threshold; it was much less. Also some preliminary research that we did, and we'll follow up on that research and provide more at the second workshop, seem to indicate that most bilingual pay policies required some kind of certification or some kind of exam process, which ours does not. So we look forward to working with everyone on this at the next workshop.

Amy Davey: At 50 percent, I guess what I wonder is, would it be feasible to consider that if bilingual skills were required for a position, it became a requirement for the position? Previous to State service, I worked in local government. This was always an issue. We did require certification in a language in order to receive bilingual pay. Additionally, what we found is that employees who were bilingual in a language that they couldn't routinely use felt somewhat left out of the whole bilingual pay issue. I guess what I would wonder, if you say a job requires that you be bilingual if you work at the counter for DMV or you work on the telephone lines for DETR, maybe that's something that we write into the minimum qualifications for the job.

Peter Long: We can discuss this at the workshop and see what all agencies think. The 50 percent was a number that we kind of threw out there because what we found when the Governor rescinded these plus fives was that when we started notifying agencies that they had to remove these, there was a fair percentage of employees that were getting this plus five that the agencies didn't even realize were getting it. We didn't require documentation to prove that they were doing it. Ten (10) percent is four hours a week and what they had were a lot of people out there that, as the AFSCME rep said, maybe grabbed to come to the counter and then they may do it for five minutes once a month, but they were getting a plus five. So we were looking at it as, 50 percent seemed reasonable in that it doesn't tie in with the other elements in 204. It's a skill that just like we ask for word processing or spreadsheets, we don't pay an additional five percent for having that. So as you said, if it's a requirement of the job and we announce it that way and they have it, that's what they need to get the job, why pay an additional five percent for having that skill? So

that's how we were kind of looking at it, as well. I do like the idea of the certification

Janet Damschen: I'd like to echo what Mr. Hamilton said. Beyond that, we have a practical concern that we haven't researched fully, but the vast majority of our people who are being paid this differential right now are using it a small amount of the time. If we lose that group of people, if we take that away, we're afraid that we're not going to be able to use them for that service ever. That they will say, oh, you took away my five percent and 10 percent and now they won't assist us in that way anymore and we're going to lose that service. So we're thinking that 50 percent is too high. You might be able to go with 25, something like that, but we'll look forward to the workshop as well.

Peter Long: That's something that we're open to and can survey other jurisdictions and see what an average may be on something like that.

Hazel Brandon: I just wanted to echo that we are recruiting and asking for bilingual skills and it is working. I don't see a need to put it in our class specs. When they are applying for the job, they know that they need to speak a different language, whatever it is, and I think that takes care of it.

Peter Long: Wouldn't anticipate changing our specs. I think it could fall under selective criteria like we do other classes. To the best of my knowledge when these plus fives were taken away, there were some concerns, but I don't know of anybody that actually left their job because they lost the five percent.

Shelley Blotter: Asked if there were any other comments regarding this? Proceeded to Section 14, 284.294.

Mark Evans: Had received some concerns from an agency. Originally, this regulation change was based on a change to the State Administration Manual, which now states, "State employees' personal property kept or maintained on State property will be considered to be at their own risk and to be covered by their own personal insurance." So the State Administration Manual is saying that tools kept on property that belongs to the employee wouldn't be covered under the insurance. What happened when we made that change is we eliminated the tool allowance. And now, in talking with Risk Management, their major concern is the insurance issue because, in some cases, what was happening is people were filing claims with their homeowners insurance as well as the Risk Management insurance. There are just issues. So we've met with the agency that was concerned and with Risk Management as well, and I think we're still in the process of coming up with a solution, but what we were looking at doing is putting back in the language that would allow agencies to pay the allowance for the tools. And then, add language that would clarify that, basically, restate what is in the State Administrative Manual saying that if they kept their tools on property, then it was going to be at their own risk. And then the proposal was to bump up the allowance somewhat to help cover the cost of the employee's homeowners insurance. I think that's been researched a little bit. Those policies are pretty expensive. The other option we have is, and we'd have to research this as well, maybe we don't need this regulation. Maybe it's up to the agencies and their policies to decide if they want to have a tool allowance. We want to look at what Public Safety and some other agencies are doing with things such as uniforms. So the question is, are there other agencies that are out there giving tool allowances and what are their thoughts on this?

Peter Long: Asked why this is in the compensation section of 284. If we have to go to Risk Management to interpret one of our regulations to figure out how to apply it, I don't know that it should be here.

Shelley Blotter: Originally this regulation provided pay for particular types of tools. What Risk Management is talking about is they're not going to pay off an insurance claim for the loss of tools. So it looks like there is possibly one agency that has a concern about this. We'll continue to work with them and Budget to determine what's appropriate, as well as compensation. Agreed that this section would be tabled.

Priscilla Maloney: When we were reviewing this we had some concerns, too. If the State is affirmatively requiring a State employee to furnish something of their own, there may be a conflict with the types of insurance needed. There may be an exclusion in their homeowners insurance so they may be required to get a business rider. I just see a lot of problems with that. So we definitely don't want this to be in the form it's in right now. We'd just come to the table after you've worked with Risk Management and the agencies on this issue.

Mark Evans: Keep in mind, most of the employee types that would be furnishing their own tools, that it is a common practice for their industry. It's not just you work for the State and you do it.

Priscilla Maloney: We just don't want the policies to be clashing. An unintended consequence might be both sides say, it's an exclusion and there is no coverage and then it's required for your job and then there is a problem.

Shelley Blotter: Proceeded to Section 15. She asked if there were any comments.

Larry Hamilton: We wanted to make comment with respect to 284.498, the Subsection 2, which changes the refresher requirement on supervisor training from three years to two years. To kind of set the stage for our position, I think we would all agree that requiring refresher training every six months would be insane and probably requiring refresher training every 10 years would probably border on negligence. But we think, at UNLV, that staff, our colleagues and the Personnel Commission got it right when they made changes back in September of 2010. That's the current regulations that we see in front of us without the change from three years to two years. We think it was right. We think that's an appropriate balance between the supervisors' responsibilities towards maintaining their edge with respect to those skills and keeping those fresh, and then also other responsibilities that they have on their job. So we're supportive of that staying the same at three years and not being modified to two years.

Shelley Blotter: I remember that conversation and we talked about moving it to two years at that time. I guess the feeling, again, is still trying to simplify what the requirements are under all sections. The thought behind the proposal is to make the refresher training for the supervisory classes the same as for the sexual harassment training.

Larry Hamilton: We're not asking or we're not supportive of changing the sexual harassment to a three-year refresher. We believe it's an important topic. We believe that it needs to be at the two-year threshold. But we think, given all of the other items that have happened in the State in the last few years, given that we're seeing a flattening of our organizations, we're seeing

supervisors actually supervising more employees than they did previously, that that three-year threshold strikes the right balance.

Kimberley King: We would also support leaving this at three years. We think that is a good balance. We still do classroom training for our supervisors, so it is not just online and going over the rules. We actually go through the exercises. It is one of our performance measures for the department as well that we report on. We are trying to make sure all of our supervisors are in compliance and we are reporting on that. The concern is if we go to two years with the workload that our employees and our supervisors have that they might just give up because, basically, it takes a good week for them to get all the refresher training. The explanation for the proposed change states allowing managers to be updated more frequently with current developments. I agree. We have regulation changes. We have different requirements that get implemented. Maybe we can find a different method or mechanism for making sure that all of our supervisors are updated of those changes each time that they happen.

Jim Wells: I have comments very similar to Ms. King's, although from a small agency standpoint. We don't have a training officer that can go out and do classroom training for our individuals, but between the agency trainings that all of the State agencies are requiring now it is becoming burdensome for small agencies in that our people are being out of the office more and more when we are not getting more and more people to do the work. So you're really putting us in kind of a Catch 22. Do we take the people off the workload and get training or do we get the work done? Even with the three-year requirement, we have at times had problems keeping up with the three-year requirement. I also actually liked Ms. King's comments about whether or not we could do this in a different way. I absolutely agree that there are changes that come out that would be beneficial for all of our supervisors to know without going through necessarily a formal class. The other thing that I would suggest, if it goes through at two years or it stays at three is that there be a delineation or a differentiation between the training classes that are required at initial and those that are required as kind of refresher similar for what you have on the sexual harassment side and if the training has not changed since the person took it the last time, they don't have to keep taking the same training over and over again.

Shelley Blotter: Our training section is actually working on differentiation of the training. So their online training is pretty much on the rules and regulations related to a particular topic. They're in the process of developing workshops to add a practical element to actually carrying out those particular functions. So they don't have to go to the same exact training each time.

Janet Damschen: Just want to echo what has been said by the other speakers. We support having this remain at three years.

Kareen Masters: Our preference would be to leave it at three years, as well. I would also propose that we could look at Subsection 3 and where it says the appointing authority, at its discretion, may accept, in lieu of the training required by Subsection 1 at/or Subsection 2 supervisory managerial training, which are approved by the Division of Human Resource Management period. So that would give the Department some flexibility to give credit for other managerial training.

Shelley Blotter: Let me see if I follow you. In Subsection 3, what you're suggesting is it would read in the first sentence, "The appointing authority, at its discretion, may accept in lieu of the

training required by Subsection 1 or 2, and then are you recommending deleting other pieces of this?

Kareen Masters: I was suggesting inserting a period after Human Resource Management, so you'd be deleting "and taken by the employee during the 12 months immediately preceding the employee's appointment".

Shelley Blotter: So it could go back as far as you wanted to?

Kareen Masters: Yes. Or you could establish some other time limit, but since we're talking about refresher training, by its nature, it would be exceeding the 12 months.

Alys Dobel: I would agree with everybody so far that has spoken. We're a little larger agency. We're not the biggest agency, but we have had a hard time getting a handle on getting our supervisors and managers trained within the three-year period alone. So I could not support a two-year at this time.

Shelley Blotter: I think we've heard you loud and clear on that one a couple of times, back in 2010 and now. I'd like to take a break now for the next 10 minutes, come back at 10:30.

(BREAK.)

Shelley Blotter: The meeting continued and proceeded to Section 16, 284.52375.

Priscilla Maloney: We are very happy that you're adding physician assistant.

Kimberley King: It's not a problem. My understanding is you tried to make that an informational note in the past regarding the address. Just thought it might make it easier for you.

Shelley Blotter: No, the Legislative Counsel Bureau actually requires us to put the address in even though it changes.

There were no additional comments. Proceeded to Section 17. I know we have comments on this one, so I'm going to start off with what we intended to do and then where it may have gone wrong, you can let us know. So, Carrie, if you can talk about the intent.

Carrie Hughes: This amendment was proposed by our Division to in some degree deal with consistency across State agencies. It was to include leave for bonding time following the birth, adoption or placement of a child and a list of authorized uses for sick leave, and it would clarify the amount of time that could be used for bonding and limit that time period to the first 12 months following adoption, placement for foster care or birth. And that's why we mentioned why it would codify what was going on in some agencies because some agencies were not allowing use of sick leave for this under the FMLA, whereas, other agencies were.

Shelley Blotter: So in other words, when we have a healthy baby and a healthy mom, after the birth of the child, if neither one of them are sick, you could use sick leave for bonding time. Whereas, in the past, we have said that if it wasn't a qualifying event that you could not use sick leave. That's what we intended to do. And so, now I'd like to hear whether you like that intent or you think there's problems with the language and we don't want to go in that direction.

Kareen Masters: I do have concerns about this section. I think we're taking a benefit that's based on a neutral criteria, so that neutral criteria should use sick leave for an authorized medical need. Now, we're expanding it to a different scenario. We're giving a preference to a limited segment of our workforce to have additional sick leave usage for people that give birth or adopt or foster children. I think it's fairly easy to get the justification for some use of sick leave for authorized reasons. So yes, the mother recovering from childbirth, you have six weeks there, you're probably going to get father, a couple of weeks to care for his wife that's recovering from childbirth or foster care or adoption placement. You could probably get a certificate from a mental health care provider to substantiate the need to have some time to form the attachment. So I think those are all appropriate. What we're doing is giving preferential treatment to a specific segment of the population of the workforce. My mother is 80 years old. I would like to use sick leave to just hang out with my mom because I don't know when she's not going to be here anymore, but why is that not covered when we're saying bonding is covered? And a secondary issue, I think it's hard enough for agencies to balance getting the work done when people are using leave for legitimate reasons and to extend that beyond that can cause a hardship as well.

Larry Hamilton: This modification to this regulation is very similar to what we permit with respect to our professional staff. The rules and regulations for our professional staff are governed by the Board of Regents as opposed to Chapter 284. So I just wanted to say that. I can't imagine that we didn't have substantial discussions about this. I believe that our institution, UNLV, would be highly supportive of this since we're supportive of it for our professional staff.

Kimberley King: First, our department does not allow for sick leave for a mother unless there is a medical need, and that would include the father. So this is an additional benefit. We're not opposed to it, but I'm concerned after the first sentence because it seems to go on that it's not just for those employees who are bonding while on Family Medical Leave. It also says if they don't meet the requirements for eligibility for Family Medical Leave, that they would also be able to use that sick leave. I'm concerned that they're going to take Family Medical Leave first and that they'll get an additional 12 weeks with the way it reads. If we do proceed in this direction, can discuss the language and make sure it's clear?

Shelley Blotter: If I could just summarize, you would be open to the interpretation on the first part of it, but you wouldn't want it in addition to anything they would have already previously had. So if it was a new employee who wasn't eligible for FMLA yet, you would allow them to take sick leave for that, but if they'd already taken their 12 weeks, you wouldn't want them to get additional time off.

Kimberley King: If they're eligible for Family and Medical Leave and would have that time off bonding anyway under the Family Medical Leave Act this would be a substitution of sick leave for the annual leave or leave without pay. And again, just so you realize, this is a new benefit to employees that we haven't allowed in the past.

Shelley Blotter: Right. So what about the new employee that hasn't worked 12 months, but they come in pregnant and now they need to have time off for bonding. Would you allow sick leave in that situation?

Kimberley King: The good news is they probably won't have much sick leave. But no, I think that it should be limited, unless you change the sick leave language itself. Which you could take a look at that, as well.

Amy Davey: I like the intent and I don't have a problem with lining this up with the FMLA. I don't see it as a greater benefit. They already have the benefit under the FMLA to take the leave. So we're just allowing them to use their paid accrual to apply towards that leave. What I am concerned about, though, is the language in the second sentence. I'm concerned that if we say you're not eligible for FMLA, but you can still do this, what's to stop people with other conditions saying I'm not eligible for FMLA, but I also want this same benefit, which says if I'm not eligible, I can still use my sick leave?

Janet Damschen: Would this, then, allow somebody to be on leave without pay? I'm not quite clear on that.

Shelley Blotter: I think we're just addressing sick leave in this situation.

Janet Damschen: So I don't know if the wording is going to get us into trouble, but if somebody is otherwise eligible for FMLA, because people can be on LWOP while on FMLA. So we're just worried about getting into a situation where we'd have to approve leave without pay. We do everything we can to control that. We've had a lot of trouble with that up there. So what the intent of this is just sick leave.

Carrie Hughes: Yes, the intent is just for sick leave and that's why we placed it under this regulation.

Shelley Blotter: No further comments. She proceeded to Section 18.

Priscilla Maloney: In reviewing what's being stricken, obviously, there's nothing being added but what's being stricken and then the explanation of proposed change. We were concerned about a couple of things on this. For instance, we're aware that Division of Industrial Relations maintains lists both of permanent impairment rating physicians and providers of Workers' Comp treatment. Those lists are maintained by DIR, and so in Subsection 3 from a provider of healthcare designated by the appointing authority, where that list would come from and what the possibilities of possible costs. It says the agency shall pay for the consultation, but we were concerned about where the list would come from and how they would be qualified to do this and whether you would be just dovetailing with, maybe, Division of Industrial Relations.

Carrie Hughes: This regulation, as you said, we're striking language, we're not adding specifically where that list would have to be attained from. Where this has come up in the past is where the office of Risk Management has participated in assisting agencies in getting second opinions done on medical documentation. Their list of employees, to some degree, with regards to Workers' Compensation and things like that are physicians that they have a relationship with and have a relationship with the State. So that's been the problem in the past. And really, that was the intent, was to allow Risk Management to potentially be able to assist an agency in finding a specialized doctor.

Priscilla Maloney: What's happened anecdotally, and I think you may have even been present during one grievance, we had a big discussion of, and AFSCME agrees that the problem where

an agency was using the same kind of certification and/or release back-to-work form after that three days, they were just cobbling from the FMLA packet and forms that Division of Human Resources Management had online. And I think that that's a good thing that we're moving away so there's a clear delineation. You don't just use that as a template. You use a separate form. And I assume that you folks would be drafting a form that would subsequently be posted online for this?

Carrie Hughes: I don't know that there was any intent to draft a separate form. Part of the concern was that a second opinion could be requested for various reasons. If it was an FMLA second opinion, these forms would be entirely appropriate. But if it was a second opinion with regards to an Americans with Disabilities Act reasonable accommodation request for medical information, we have a form now for that online with sample questions that can be used, but also, there's a situation of potentially a second opinion on a catastrophic leave physician's documentation. Again, the questions are different. So I don't know that there's one size fits all type of form for this.

Priscilla Maloney: We're just trying to keep the simplicity for the State employee and if the problem with them going to their own physician, I mean, it's always preferable with their own physician because after three days, that physician is going to be, hopefully, intimately familiar with what's going on medically with that person and be able to assure the agency why they need to be out longer than three days. But the flip side of that is, of course, that the employee ends up paying for that consultation or that doctor's note. And that's the problem. But on the other hand, it would be a concern of ours if they've been treating with their regular provider of healthcare and say, they've got the measles or some sort of viral thing and it's longer than the three days and the agency is concerned, for whatever reason, and wants a doctor's note, I think it would be easier for them to go back to their provider of healthcare that's already treating them for that than being shuffled off to a list of providers from the State after only three days. That would be our concern is that this may make it a little bit more burdensome than it needs to be.

Carrie Hughes: In the case of requiring documentation following an absence of more than three days, generally, they are going to be directed back to their healthcare provider. This would be a second opinion in a case where the facts don't seem to match up with what the physician has said.

Priscilla Maloney: Okay. So this is not for the Subsection 3. Subsection 3 is not contemplating that on day four of an absence you have to go use one of these providers of healthcare on Risk Management's list.

Carrie Hughes: That's not the intent. Also, if you notice, one of the sentences that was remaining at the end of Subsection 3 is that the agency would be responsible for paying for a second opinion.

Priscilla Maloney: Right. But we didn't know if it was three days and then, boom, on day four, you know, you're out of the situation where you're dealing with your own healthcare provider.

Carrie Hughes: That wasn't the intent, no.

Shelley Blotter: This is when the facts don't line up that we're getting a second opinion from a doctor from our provider list. She asked if there were any other comments. No other comments

made. She proceeded to Section 19, 284.576. This language was inserted just a few years ago regarding what happens if there are not sufficient donations for someone who has been approved for catastrophic leave. What the deletion would do is make it permissible whether to grant leave without pay or not in those situations.

Jim Wells: I just want to make sure I'm clear on the intent of the removal of Subsection 5. Currently it is deemed an approved leave without pay. And now, you're saying it would be at the discretion of the appointing authority as to whether or not that would be approved leave without pay.

Shelley Blotter: Right. In conversations with agencies, some have felt like it was overly burdensome to require the appointing authority to grant LWOP when staffing may not allow for someone to be out for that period of time. So it would make it permissive if you can accommodate that extended absence, you could grant LWOP if there wasn't sufficient catastrophic leave.

Jim Wells: And then, how does that interact with the current language that's in Section 611 that talks about physical separations for people who are on approved leave? So under the current language for those two sections, you couldn't separate somebody for a physical disability if they were on this approved leave without pay.

Shelley Blotter: Right. That part of the regulations is a little bit muddy right now. If they had leave on the books, would you allow them to take it? If you had granted leave without pay for that period of time, would you be allowed to terminate them?

She asked if there were additional comments? No additional comments. She proceeded to Section 20, 284.5811.

Priscilla Maloney: On Subsection 6. Our only concern was just the pragmatics of how this would work. In other words, our question was under the current law as it stands in FMLA. Let's assume for a moment that the person has purchased a short-term temporary disability policy that is 12 weeks in length, just to keep it simple since FMLA is 12 weeks, which would go first? Would it be concurrent, would it be you could exhaust your policy and then tack on the 12 weeks? I mean, that's what we were wondering is how that would work in the real world.

Carrie Hughes: The intention of this change is not to change the ability of FMLA and that short-term or long-term disability to run concurrently, simply to make it optional whether to require the use of paid leave when it is both. The Department of Labor, both in their regulations and in one of their interpretation letters, have said, basically, that we cannot require them to substitute. So this is kind of carving this out as an exception to the rules within this regulation requiring them to exhaust their paid leave when on FMLA before going into leave without pay.

Priscilla Maloney: I'm sorry, because were running concurrent. That's where I'm getting a little bit bogged down. Because oftentimes, when someone has a serious medical condition, the big issue is hanging onto that insurance for as long as possible. Especially, if there's a good chance that they'll recover and be able to stay in State service, but if somebody has this policy, you're saying it would not be coded, perhaps, on payroll as leave without pay or am I getting too lost in the weeds here?

Shelley Blotter: I think what it says is that we would not require you to take other types of accrued leave. So we wouldn't require you to take annual leave or sick leave if you have one of these policies. You could be in leave without pay and then use your policy to cover your pay.

Priscilla Maloney: And then you would still have whatever you would have on the books left because, again, we've had at least one situation where somebody was undergoing treatment and the whole issue was, was everything going to run out nicely by when the treatment was supposed to conclude so that that person didn't have to move into the situation of exploring a medical retirement if they were going to recover.

Kareen Masters: I guess my only request would be is maybe inserting some language that requires the employee to notify us if they have a policy because we aren't always aware that they have that. So maybe at the time they apply for FMLA leave, they have to make their employer aware that they're covered by a policy that they intend to seek benefits from.

Mark Evans: He asked if any of the compensation ones were being pulled.

Shelley Blotter: She answered that she did not believe any were being pulled unless she hears otherwise they will be going back and discussing them further. She asked if there was anything that needed to be pulled that was not mentioned to let her know. She reiterated that section 21 was one that was okay. She asked if there were any comments or questions on Section 21. No comments were made. She proceeded to Section 22. No comments were made. She proceeded to Section 23, 284.589.

Priscilla Maloney: On this one, we were certainly familiar with what we suspect was the impetus for the serious fires we had last fall and I guess it was in early January, too. I think January 2012 was the one where the Governor issued, not an Executive Order, but a Proclamation or a Notice, because we had our main Highway 395 shut down. Our Executive Director, who has a great deal of experience with safety and OSHA issues had concerns about this as we explained what happened. For one thing, anecdotally, again, we got multiple calls from different State employees being confused as it says certain employees may be designated as essential and notified that they are required to report to work. We're not sure if this is talking about first responders versus somebody who simply says, hey, I've got to have our phone lines, we've got to have somebody there. Keith Urarti, our new Chief of Staff at AFSCME wanted to make sure that we put on the record that we'd like this one pulled and have this one come back to in the next workshop because we do have backup information that we will be interested in. For instance, there's multiple sections in NRS 618 about OSHA training and safety equipment and requirements that would come into play in a situation like this. If we're talking about first responders versus, a natural causes catastrophe kind of situation. It was pretty chaotic. And I know everybody did the best they could. But we would like to make sure that all appropriate OSHA regulations are followed in terms of training and I know that our State agencies all have safety committees and that's part of, State services that most agencies have somebody in the office who's the safety committee manager or supervisor or what have you. But we just want to make sure that if there is another situation like we had with the fire, that we've got some adherence to everything in 618 and OSHA.

Shelley Blotter: In this situation, each agency could designate who those essential employees are. And we're not specifically speaking about first responders. So it could be an IT person. It

could be a wide variety of job classes that we're talking about that need to be there to carry on the operations of the State, but other employees would not be required to come in. So I think those are fairly well established. So even when the regulation had previously, and it still does, talks about work sites or work locations being closed, it would be that same group of employees that may need to still show up to keep the infrastructure going.

Priscilla Maloney: So I'll just put down not necessarily talking about first responders. But you're open to having this being part of our next workshop, so if there are concerns, we can bring them.

Shelley Blotter: Sure. We can go ahead and take those at that same time.

Kareen Masters: Not necessarily a concern, but just another suggestion. You just mentioned that it was your intent that the appointing authority be the one that declares who are essential employees. So you may want to use the same language that you used in Subsection 5B an appointing authority may designate certain employees as essential. And I don't know, you might want to say the Governor may grant appointing authorities the authority to grant administrative leave with pay. And that's just because I know sometimes people call the Governor's office directly to see if leave has been granted.

Priscilla Maloney: Not related to this issue but another problem with 589 we see coming up is related to folks who are either being served with an NPD-32 form which is a Notice of Internal Investigation or being told that they are going to have an informal meeting, that notice hasn't been served yet, with their management, however, it could lead to discipline, in regards a potential disciplinary matter. And then, either our shop stewards or other State employees are being asked, either by management or the actual employee at issue, to be there during that meeting as a representative and at least one agency is now either disciplining people if they don't code their NEATS timesheet as their own time for this during work hours which is comp time/annual time. So some folks don't want to get disciplined themselves for being that person. Our position is that this provides a service and safeguard for both management and the employee, and we're happy to train our stewards and have them do that. But this might be a time where we would like to at least suggest that we can propose some language to include that the appointing authority can give, at their option, either release time for this purpose, and we're not talking about sitting down working through a grievance now, we're talking narrowly, specifically the investigative meeting, the formal meeting, or where management has informed the employee that it could lead to disciplinary and they want a second person there. So we're going to suggest some language, if it's appropriate, to include that in this section. That it can be either admin time or release time at the appointing authority's discretion, but we want to have that in place so that we don't have this cropping up. Right now it's limited, as far as we can tell, to one particular agency or department, but this is happening where people are actually going in and using their own comp time in the middle of their work day to do this. And we just don't feel that's correct.

Shelley Blotter: Since we're going to pull this one, anyway, we can have that discussion as well. No additional comments made. She proceeded to Section 24, 284.611.

Kareen Masters: And I guess this is a situation and I'm not sure if maybe the intent doesn't correspond with the wording. When I read the proposed wording, I take it to mean that someone who is on sick leave, who has exhausted their FMLA entitlement can be terminated, which is not

what is reflected in your explanation of change. And if that's the intent, I do have major concerns with that. Employees who are doing the right thing, so who are saving their sick leave in case they need it. I mean, they can accrue far above 12 weeks of sick leave over the course of their career and to change the regulation to say that someone can be terminated under 284.611 when they have sick leave in the books, I definitely don't agree with that. And again, I'm not sure if that's your intention because it's just simply stating it will clarify the employee may not be terminated under the provisions of FMLA.

Shelley Blotter: That is the intent. That if they were not covered by FMLA they could be terminated.

Kareen Masters: Even if they have sick leave on the books?

Shelley Blotter: She answered yes. So that is the intended change and we can clarify the explanation if we need to. But this is in situations where the employee's physician or an independent medical evaluation says that the condition does not respond nor do they expect the person to respond to treatment and that the extended absence will be required. So this is somebody who their physician is saying we don't know if they're ever going to respond to this nor may they ever come back from their particular health condition. So this would allow them to be terminated if all those other conditions are met. They would retain the right to come back and be reinstated. So that safety net is still there. This is to give agencies the opportunity to fill those positions that, they have critical need to have filled, but because somebody has a large sick leave balance that they can't fill. So it's just to make it a little bit easier for that appointing authority to continue their business.

Kareen Masters: Well, and again, I would have major concerns with that. I view it from the legislature has a statute that allows for the accrual of sick leave and goes through the whole provision of special sick where, if you have long-term illness and then we're saying, you've accrued this benefit employee, that if you come into a situation where you're seriously ill, you're dying of cancer, sorry, you can't use it. Three months, you're off. I mean, this is a time in their lives that, again, they've been doing the right thing. They've been saving their sick leave in case, you know, such a catastrophe should occur. And you know, during sick leave, their insurance benefits continue to be taken out of their pay and, I mean, talk about kicking them when they're down, I'm sorry, I have major concerns about that.

Shelley Blotter: And I understand those concerns. And they might qualify for a medical retirement. It could be they qualify for a payout on their sick leave. So those are additional ways of compensation.

Kareen Masters: It's not the same as getting your full pay and being, basically, an employed status. And I don't think that's consistent with the intent of the legislature.

Amy Davey: I'm in support of this language. I feel like it does give the agency some balance in situations where employees have access to FMLA, they have access to catastrophic leave, they have access to leave without pay, there can be times when sick leave balances can be quite large. It may tie an agency's hands to have no options for hundreds and hundreds and hundreds of hours of sick leave.

Priscilla Maloney: I fully support what I think the thrust of Ms. Masters comments are. Even though somebody can get cashed out after a certain amount of years of service for their sick leave, and of course, they can always get cashed out on their annual. In a catastrophic situation, as Ms. Masters pointed out, the real concern, I would say, of most citizens is to hang onto that health insurance as long as possible. I mean, eventually, when it's a real catastrophic situation, you may have to switch over to COBRA, but I think that's for most employees, I suspect that that would be the bigger concern. Is to not stretch it out to burden the agency, but so that they can work through their treatment while they're still under PEBP. I think that's the problem. And if they qualify for a medical retirement, that's already built into this regulation, but I'm familiar with at least one situation where it was difficult because the treatment was scheduled to end in June, but the person was out of leave in the spring and that the treating physician was not able, at that time, to say with certainty this person will qualify for a medical retirement. And so what that person needed was to, hang on to her PEBPs as long as possible to finish the treatment that was going to be scheduled at least three months after. And her agency had been very generous about leave without pay and a lot of things, but all these concerns. But that's, I think, for most people is the hanging onto that insurance. That's the big hope.

John Scarborough: We agree that it seems a little heavy-handed not to allow the folks to use the accrued sick leave that they might have. And I know we've had situations here at the college where people have been out on FMLA and prolonged sick leave and what have you, and what we've done is we've used the provisions of the NAC and we hired temporary employees to help the agency through. The fact that they don't have a resource available to them to help get the work done, but still, appreciating the fact that the person still does have sick leave and they are able to use that sick leave. At the point that that gets exhausted, then we may very well pull the trigger on 284.611, but as long as they have the sick leave, we think they should be able to use it.

Kimberley King: When an employee saves their sick leave, that's what we're looking for, we are looking for people who that's a benefit to them. We don't want them abusing it. We don't want them calling in sick. It's an insurance policy if they do get ill. It's a benefit that they get. To terminate them while they still have sick leave is penalizing them for actually doing the right thing with their sick leave. So we are not in support of this. In addition, if you approve leave for an employee, it doesn't seem while they are on approved leave that you should be able to separate them, either. If you don't want them to have approved leave, don't approve it and then you can separate them, but if you approve leave, it's not fair then to separate the employee while they're on approved leave.

Shelley Blotter: There were no additional comments. She proceeded to Section 25, 284.718.

Priscilla Maloney: This relates to Section 26, too, which is 284.726. We would just like to know what a climate study is. If there is some sort of defined written explanation of what a climate study is we'd like to know that.

Mark Evans: Climate survey would be similar to an employee satisfaction survey. We have started offering those to several agencies, and what we would like to keep confidential would be comments that specifically say things like Mark Evans is a total jerk; anything that could be identified back to the person. Those type of things where we think that request on an individual's performance, basically. So by name, it shouldn't be out there.

Shelley Blotter: She asked if there were additional comments for Section 25 or 26.

Kareen Masters: On Section 26, maybe just some clarification. So again, it says information gathered during organizational climate survey that directly reflects on an individual. Performance will be limited to the employee. Again, which employee? I mean, sometimes climate surveys are conducted because an employee raises a particular issue, so the department is doing a survey of other people in the work unit. So that could be interpreted as the employee that made the complaint versus I think what the intent is, the employee that was the subject of whatever the comment might be. And again, I'm kind of maybe thinking through the process. If it's confidential, does that mean that it can't be documented in a performance evaluation or some type of letter of an instruction to an employee? So maybe kind of thinking through, really, if you gather information, what do you want to be able to do with it and are you precluding yourself from doing something with it?

Mark Evans: I think the intent would be it would still be usable in those other types of confidential documents. So performance appraisal or discipline would be acceptable. So we just need to clarify that.

Amy Davey: I wonder if you want to use the word study instead of survey just because it may be part of an overall study versus, when we think of a survey, we think of that particular tool that used, and there may be other elements to a study that don't involve a survey.

Mark Evans: Good point.

Shelley Blotter: No further comments were made. She Proceeded to Section 27

Kimberley King: Although we don't support a higher use of alcohol, it will be helpful to have this be consistent with the federal.

Shelley Blotter: No further comments were made. She proceeded to Section 28, which was believed to be in agreement. She asked if anyone had comments. No comments were made. Proceeded to Section 29, 284.440, also believed to be in agreement. She asked if anyone had comments. No comments were made. Proceeded to Section 30, 284.494. She advised that she wanted to go back and reiterate where we're at with this. So it's our intent to go back and meet with interested parties. We'll let you know when those meetings will be occurring on Section 3, which had to do with rate of pay on promotion; Section 4, rate of pay on demotion; Section 6, rate of pay on reappointment; Section 10, rate of pay non-classified/unclassified appointed to classified.

Adam Drost: I apologize for missing this earlier, but Section 19, the new Section 6. This talks about a donor who is separated from State service and then having the leave returned to him or her. Our current practice is if it's annual leave or special sick leave, we track it back to the donor and they get another annual leave or special sick leave payout. So this would be a change in that respect. If it's sick leave that wouldn't impact a payout to the donor, I think that's appropriate, but we might want to clarify that. And if that is the intent, to take that additional payout out of the way.

Shelley Blotter: So once they've separated from service, what this would do is it would go back to the bank rather than to that person. Yes, that was our intent.

Adam Drost: To eliminate that additional annual leave or special sick leave payout.

Shelley Blotter: Asked if anyone else had concerns regarding Section 19? No one came forward. She proceeded tabling: Section 3 is new rate of pay promotion. Section 4 is new rate of pay demotion. Section 6 is rate of pay reappointment. Section 10, new rate of pay non-classified/unclassified appointment to classified. Section 13, NAC 284.206. Section 14, NAC 284.294. Section 23, 284.589. And those are the ones that I have noted that we will be having further discussions on. Did I miss any one of them?

So our intent at this point is that we will go back and look at the regulations we've received comment on, make a determination whether or not we are going to submit them for pre-adoption review to the Legislative Council Bureau's Legal Division. And for those that go through that process, then we will go ahead and take them on to the Personnel Commission. For the ones that are modifying 284.170 where there are questions, we'll take the original language, but go ahead and have continued conversations about any amendments. She asked if there were any questions about where we're going from here. No questions were asked. We'll see you soon. I really appreciate all the comments and getting your input. It's very helpful to hear from all of you, and we'll continue to do that as we work through the process. So we're going to go ahead and close this Regulation Workshop. Thank you.

Adjournment.