



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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MEMORANDUM
HR#46-17

August 30, 2017

TO: DHRM Listserv Recipients
Nevada County Libraries
State Library and Archives

FROM: Peter Long, Administrator *Peter Long*
Division of Human Resource Management

SUBJECT: NOTICE OF PUBLIC HEARING – Amendments to NAC 284

The regulation changes included with this memorandum are being proposed for adoption at the September 29, 2017, Personnel Commission meeting. This meeting will be held at 9:00 a.m. at the Legislative Counsel Building, Room 3138, 401 South Carson Street, Carson City, Nevada, with videoconferencing to the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada.

Please circulate or post the attached *Notice of Public Hearing* along with the text of the proposed regulations, or otherwise notify your employees.

PL:krh/cl

Attachments

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Adoption and Amendment of Regulations of the
Department of Administration
Division of Human Resource Management

The Personnel Commission will hold a public hearing at 9:00 a.m., on September 29, 2017 at the Legislative Counsel Building, Room 3138, 401 South Carson Street, Carson City, Nevada and by video conference at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations will not result in an increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.

<u>LCB File:</u>	<u>NAC#:</u>	<u>Regulation Lead Line:</u>
R033-17	NEW	Reasonable break times and place to express milk.
	NEW	Request for break times and place to express milk.
	NEW	Submission of complaint of the Employee-Management Committee.
	NAC 284.0735	“Organizational climate study” defined.
	NAC 284.112	“Working day” defined.
	NAC 284.523	Definitions.
	NAC 284.524	Reporting for work; workweeks and workdays; periods for meals and rest.
	NAC 284.589	Administrative leave with pay.
	NAC 284.658	“Complaint” and “grievance” defined.
	NAC 284.662	Providing assistance to employee.
	NAC 284.680	Date of receipt of grievance or complaint.
	NAC 284.692	Agreement for extension of time to file grievance or complaint, or take required action.
	NAC 284.6952	Request for resolution conference; appointment of facilitator; effect of request for resolution conference on jurisdiction of Employee-Management Committee.
	NAC 284.6955	Hearing before Employee-Management Committee: Procedure.
	NAC 284.6957	Hearing before Employee-Management Committee: Continuance; abeyance.
NAC 284.696	Unlawful discrimination.	
NAC 284.697	When resolution of grievance or complaint becomes binding.	
Section 1 of LCB File No. R076-15		Removal of ineligible grievance from procedure.

R037-17	NEW NEW NEW NAC 284.010 NAC 284.539 NAC 284.554 NAC 284.578 NAC 284.5811	“Domestic violence” defined. “Family or household member” defined. Accommodation for employee affected by domestic violence. Definitions. Annual leave: Written request; approval or denial; authorized use. Sick leave: Authorized use. Leave of absence without pay. Family and medical leave: Maximum amount in 12-month period; eligibility; use.
R039-17	Section 1 of LCB File No. R100-16	Appeal of refusal to examine or certify.

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Administration, Division of Human Resource Management, 209 East Musser Street, Room 101, Carson City, Nevada 89701, Attention: Shelley Blotter. Written submissions must be received by the Division of Human Resource Management on or before September 29, 2017. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted and amended will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted and amended will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada and 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption or amendment of any regulation, the agency, if requested to do so by an interested person, either before adoption or amendment or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption or amendment and incorporate therein its reason for overruling the consideration urged against its adoption or amendment.

This notice of hearing has been posted at the following locations:

Carson City

Blasdel Building, 209 East Musser Street

Nevada State Library & Archives Building, 100 North Stewart Street

Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Grant Sawyer Building, 555 East Washington Street

Websites

Legislative Counsel Bureau website: www.leg.state.nv.us

Nevada Public Notice website: <http://notice.nv.gov>

Division of Human Resource Management website: www.hr.nv.gov

**REGULATIONS PROPOSED
FOR PERMANENT ADOPTION OR AMENDMENT**

LCB File No. R033-17

Section 1. Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Section 2.

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to add a new section providing reasonable break times and a place for an employee who is a nursing mother with a child under the age of 1 to express breast milk.

This amendment, proposed by the Division of Human Resource Management, amends NAC 284 by adding a new section to allow an employee to use accrued annual leave, compensatory time or leave without pay to make up the difference if she determines that her rest periods do not allow enough time to express milk. This new section also includes the requirement that a clean place must be provided that is not a bathroom.

NEW Reasonable break times and place to express milk.

1. Except as otherwise provided by section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427, the appointing authority of an employee who is the mother of a child under 1 year of age shall:

(a) Authorize the employee to take reasonable break times to express breast milk as needed, including, without limitation, modifying the timing of the normal rest periods of an employee so that the normal rest periods occur at a time other than in the middle of a 4-hour period of work; and

(b) Provide a place, other than a bathroom, that is reasonably free from dirt or pollution, protected from the view of others and free from intrusion by others.

2. If an employee described in subsection 1 determines that the normal rest periods of the employee do not provide sufficient time to express breast milk as needed, the appointing authority of the employee shall, except as otherwise provided by section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427:

(a) Approve the use of accrued annual leave, accrued compensatory time or leave without pay to make up the difference, if any, between the normal rest periods of the employee and the time the employee uses to express breast milk; or

(b) Authorize the employee to modify her work schedule to make up the difference, if any, between the normal rest periods of the employee and the time the employee uses to express breast milk.

3. As used in this section, “normal rest periods” means the rest periods required pursuant to NAC 284.524.

Section 3.

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to add a new section providing reasonable break times and a place for an employee who is a nursing mother with a child under the age of 1 to express breast milk.

This amendment, proposed by the Division of Human Resource Management, establishes the requirement that Executive Branch departments or agencies must create a procedure for a nursing mother to request time and a place to express milk. This amendment also encourages working with such an employee to determine her specific needs, even if she is on leave from work. Finally, this amendment describes when a request for break times and a place to express milk is deemed to have been received by a department or agency, and a timeframe for the department or agency to respond to such a request.

NEW Request for break times and place to express milk.

1. Except as otherwise provided by section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427, each department or agency of the Executive Department of State Government shall:

(a) Develop a procedure for an employee who is the mother of a child under 1 year of age to request reasonable break times and a place for the employee to express breast milk as needed; and

(b) Make every effort to address the needs of such an employee including attempting to contact and consult with an employee who is on leave at the time the request is received, including, without limitation, leave granted pursuant to the Family and Medical Leave Act.

2. A request made pursuant to this section is deemed to be received by a department or agency:

(a) On the date on which the employee or her chosen representative personally delivers the request, transmits it by facsimile machine or submits it by electronic mail.

(b) If the employee mails the request, 3 days after:

(1) The date on which the request was postmarked; or

(2) The date on the return receipt if sent by certified mail.

3. The department or agency shall respond to a request made pursuant to this section within 5 working days after the request is deemed to have been received by the department or agency.

Section 4.

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, describes the procedures a State of Nevada employee must take if he or she is aggrieved by the failure of his or her department or agency to comply with the provisions of Assembly Bill 113 of the 2017

Legislative Session. The amendment requires that the complaint be submitted on a form provided by the Division, includes required time frames, and addresses the Employee-Management Committee's duties when a complaint is received.

NEW Submission of complaint to the Employee-Management Committee.

1. If:

(a) An employee is not satisfied with the response of the department or agency to a request made pursuant to section 3 of this regulation, including, without limitation, a reasonable alternative selected in accordance with subsection 2 of section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427;

(b) The department or agency fails to respond to a request made pursuant to section 3 of this regulation; or

(c) The employee alleges that the employee was retaliated against in violation of subsection 3 of section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427, ↪ the employee may request consideration of a complaint by the Committee pursuant to its rules and this section.

2. The employee must submit the complaint, on a form provided by the Division of Human Resource Management, to the Committee within 10 working days following:

(a) Receipt of the response from the department or agency to the request made pursuant to section 3 of this regulation;

(b) The passage of 8 working days after the request is deemed to have been received by the department or agency; or

(c) The date of the alleged retaliation.

3. The complaint submitted pursuant to subsection 2 must include the specific points of disagreement or contention and supporting evidence.

4. The Committee shall, within 28 working days after the receipt of a request for consideration of a complaint submitted by an employee pursuant to subsection 2:

(a) Answer the request without a hearing if the case is based upon the Committee's previous decisions or does not fall within its jurisdiction; or

(b) Hold a hearing to determine the proper disposition of the request. If a hearing is held, the Committee shall:

(1) Except as otherwise provided in subparagraph (2), provide at least 21 working days' written notice to all parties concerned.

(2) Provide notice to the employee by:

(I) Sending a written notification by certified mail, return receipt requested, at least 21 working days before the hearing; or

(II) Personally delivering a written notification to the employee at least 5 working days before the hearing, if the Chair of the Committee approves of such notice.

(3) Render a decision within 10 days after the closure of the hearing.

5. For the purpose of determining placement on the agenda for consideration by the Committee at a meeting, a complaint has priority over a grievance.

Section 5. NAC 284.0735 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281

by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, makes a conforming change to include “complaints” in the methods used by the Division to complete an organizational climate study.

NAC 284.0735 “Organizational climate study” defined. (NRS 284.065, 284.155) “Organizational climate study” means an independent study conducted by the Division of Human Resource Management to assess and evaluate the culture, effectiveness of management, employee morale and internal communication of an organization through a variety of methods, including, without limitation:

1. Surveys;
 2. Interviews, including, without limitation, exit interviews;
 3. Review of policies, procedures and internal communications;
 4. Review of issues related to recruitment;
 5. Review of data relating to employees, including, without limitation, statistics relating to turnover; ~~and~~
 6. Review of grievances filed by employees ~~and~~; *and*
 7. *Review of complaints described in NAC 284.658 which are filed by employees.*
- (Added to NAC by Personnel Comm’n by R137-12, eff. 10-23-2013)

Section 6. NAC 284.112 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, makes a conforming change to include complaints in the definition of “working day” so that the time frames included in the complaint process are defined.

NAC 284.112 “Working day” defined. (NRS 284.065) “Working day,” for the purpose of a grievance , *a complaint described in NAC 284.658* or an appeal, means Monday to Friday, inclusive, excluding holidays.

(Added to NAC by Dep’t of Personnel, eff. 10-26-84)

Section 7. NAC 284.523 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Legislative Counsel Bureau, incorporates the definition proposed in subsection 3 of Section 2 of LCB File No. R033-17 (e.g., “normal rest periods”) in the “definitions” regulation pertaining to the Attendance and Leaves section of the Nevada Administrative Code Chapter 284.

NAC 284.523 Definitions. (NRS 284.065, 284.155, 284.345) As used in NAC 284.523 to 284.598, inclusive, *and section 2 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 284.5231 to 284.52375, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Dep’t of Personnel, eff. 3-23-94; A by R082-00, 8-2-2000; A by Personnel Comm’n by R060-09, 11-25-2009)

Section 8. NAC 284.524 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Legislative Counsel Bureau, makes a conforming change to allow for an exception to the timing of the required rest period for an employee to express milk.

NAC 284.524 Reporting for work; workweeks and workdays; periods for meals and rest. (NRS 284.065, 284.155, 284.345)

1. An employee shall report for a work shift on time and ready to perform the duties and tasks assigned to his or her position.

2. Except as otherwise provided in this subsection, the workweek for state employees is 40 hours. A workweek of a different number of hours may be established to meet the needs of state agencies in compliance with the provisions of NRS 281.100, 281.110 and 284.180. The workday for a full-time state employee who works a standard or nonstandard work schedule consists of two work periods separated by a 1/2- to 1-hour meal period. Insofar as practicable, the meal period must occur in the middle of the work shift. A rest period of 15 minutes must be granted for each 4-hour

period of work and, *except as otherwise provided in section 2 of this regulation and* insofar as practicable, must occur in the middle of the period of work.

3. Except as otherwise provided in subsections 4 and 5, an appointing authority shall provide a meal period and rest period to an employee who has an innovative work schedule during each workday as follows:

(a) A 1/2- to 1-hour meal period must be provided during each period of work that exceeds 6 hours. Insofar as practicable, the meal period must occur in the middle of the work shift.

(b) A rest period of 15 minutes must be provided for each 4-hour period of work and, *except as otherwise provided in section 2 of this regulation and* insofar as practicable, must occur in the middle of the period of work.

4. The requirement to relieve an employee for a 1/2- to 1-hour meal period does not apply to an employee who receives a paid meal period.

5. The requirement for a rest period does not apply to an employee who works:

(a) Directly with the inmates at a correctional institution.

(b) For the Division of Public and Behavioral Health of the Department of Health and Human Services and who:

(1) Maintains or monitors the equipment in a heat plant which operates 24 hours a day; and

(2) Works a straight 8-hour work shift.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 4-20-90; 8-1-91; 11-12-93; R031-98, 4-17-98; R098-99, 9-27-99; A by Personnel Comm'n by R068-03, 10-30-2003; R145-05, 12-29-2005)

Section 9. NAC 284.589 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, makes a conforming change to allow administrative leave for the appearance of an employee who has filed a complaint at a hearing of the Employee-Management Committee in which the complaint will be heard.

NAC 284.589 Administrative leave with pay. (NRS 284.065, 284.155, 284.345, 284.383, 284.385, 284.390)

1. An appointing authority may grant administrative leave with pay to an employee:

(a) To relieve the employee of his or her duties during the active investigation of a suspected criminal violation or the investigation of alleged wrongdoing;

(b) For up to 30 days when the appointing authority initiates the leave to obtain the results of an examination concerning the ability of the employee to perform the essential functions of his or her position;

(c) For up to 30 days to remove the employee from the workplace when he or she has committed or threatened to commit an act of violence;

(d) For up to 2 hours to donate blood;

(e) To relieve the employee of his or her duties until the appointing authority receives the results of a screening test pursuant to NRS 284.4065; or

(f) To attend a general employee-benefits orientation or an educational session relating to employee benefits, including, without limitation, retirement and deferred compensation.

2. The appointing authority, upon approval of the Risk Management Division, may extend administrative leave with pay granted to an employee for a purpose set forth in paragraph (b) or (c) of subsection 1.

3. If an employee is granted administrative leave with pay pursuant to subsection 1 or 2, the employee must be available:

(a) By telephone to the supervisor of the employee; and

(b) To report to a work site or another location, as directed by the supervisor of the employee, ↪ during regular business hours.

4. Except as otherwise provided in subsection 5, an appointing authority or the Division of Human Resource Management may grant administrative leave with pay to an employee for any of the following purposes:

(a) His or her participation in, or attendance at, activities which are directly or indirectly related to the employee's job or employment with the State but which do not require him or her to participate or attend in an official capacity as a state employee.

(b) His or her safety during an emergency when employees have been authorized by the Governor not to report to work or to leave work before the end of their shifts during the emergency, including, without limitation, emergencies relating to enemy attacks or other hostile actions, natural causes or other catastrophes, except for employees who are designated as essential and notified that they are required to report to work or remain at work.

(c) Closure of the employee's office or work site caused by a natural disaster, pandemic or other similar adverse condition when the employee is scheduled and expected to be at work. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

(d) Closure, as a result of a pandemic, of a school or a center or facility that provides day care services which is attended by the employee's dependent child or the temporary cancellation, as a result of a pandemic, of a program attended by the employee's dependent child. An appointing authority may designate certain employees as essential and notify them that they are required to report to work.

(e) His or her appearance as an aggrieved employee , *an employee who filed a complaint described in NAC 284.658* or a witness at a hearing of the Committee.

(f) His or her appearance as a witness at a hearing regarding a matter described in subparagraph (1), (2) or (3) of paragraph (e) of subsection 6.

(g) His or her appearance to provide testimony at a meeting of the Commission.

5. An appointing authority or the Division of Human Resource Management shall grant administrative leave with pay to an employee for a purpose set forth in paragraph (e), (f) or (g) of subsection 4 if:

(a) The employee requests the administrative leave for a period of time that is reasonably needed to testify at the hearing or meeting;

(b) The employee requests the administrative leave at least 2 weeks before the leave is needed, unless such notice is impractical; and

(c) The absence of the employee will not cause an undue hardship to the operations of the appointing authority or adversely impact the provision of services to clients or to the public.

6. An appointing authority shall grant administrative leave with pay to an employee for any of the following purposes:

(a) The initial appointment and one follow-up appointment if the employee receives counseling through an employee assistance program, including, without limitation, consultations provided in-person or telephonically.

(b) His or her attendance at a health fair or related event coordinated by the Public Employees' Benefits Program.

(c) His or her participation in an official capacity as a member of a committee or board created by statute on which he or she serves as a representative of state employees. Such leave must be in lieu of other fees provided for attendance at meetings and participation in official functions of the committee or board.

(d) Up to 8 hours for preparation for any hearing described in paragraph (e).

(e) The appearance of the employee as a party at a hearing regarding:

(1) An alleged reprisal or retaliatory action against the employee for disclosing an improper governmental action as provided in NRS 281.641;

(2) An involuntary transfer of the employee as provided in NRS 284.376; or

(3) A suspension, demotion or dismissal of the employee as provided in NRS 284.390 and NAC 284.6561.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 4-20-90; A by Personnel Comm'n, 8-1-91; A by Dep't of Personnel, 9-13-91; 12-26-91; 11-12-93; 3-23-94; 11-16-95; 10-27-97; R042-99, 9-27-99; R058-01, 9-6-2001; A by Personnel Comm'n by R038-03, 10-30-2003; R183-03, 1-27-2004; R145-05, 12-29-2005; R141-07, 1-30-2008; R061-09 & R081-09, 10-27-2009; R063-09, 11-25-2009; R058-10, 10-15-2010; R137-13, 6-23-14; R042-15, 12-21-2015)

Section 10. NAC 284.658 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Legislative Counsel Bureau, incorporates the definition of a complaint into the regulation defining grievance for the Adjustment of Grievances section of the Nevada Administrative Code Chapter 284. The definition is based on section 2 of Assembly Bill 113 of the 2017 Legislative Session, which does not limit filing a complaint with the EMC to classified employees, therefore allowing unclassified and nonclassified to also use the complaint process.

NAC 284.658 ~~["Grievance"]~~ **"Complaint" and "grievance" defined.** (NRS 284.065, 284.155, 284.340, 284.384)

~~[H.]~~ As used in NAC 284.341 and 284.658 to 284.697, inclusive, ~~[and]~~ section 1 of ~~[this regulation, a "grievance"]~~ **LCB File No. R076-15 and sections 3 and 4 of this regulation, unless the context otherwise requires:**

1. *“Complaint” means a written complaint filed by an employee pursuant to section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427. The term does not include a complaint filed pursuant to paragraph (c) of subsection 1 of NAC 284.696.*

2. *“Grievance” means an act, omission or occurrence which a permanent classified employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement or a contested report on performance. The act, omission or occurrence must be established with factual information including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved.*

~~{2.}~~ For the purposes of NAC 284.341 and 284.658 to 284.697, inclusive, ~~{and}~~ section 1 of *LCB File No. R076-15 and sections 3 and 4 of* this regulation, the term “grievance” does not include any grievance for which a hearing is provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390.

Section 11. NAC 284.662 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, makes conforming changes to include “complaint” in the provisions allowing an employee to seek assistance with the complaint process, prohibiting discrimination of an employee for filing a complaint or assisting an employee with a complaint, and ensures that the assistance of the Division is available to all parties to a complaint.

NAC 284.662 Providing assistance to employee. (NRS 284.065, 284.155, 284.384)

1. An employee filing for a review of a grievance *or complaint* may be assisted or represented by any person of his or her choosing, if the person agrees to act in this capacity, at any step of the procedure except the initial informal discussion with his or her immediate supervisor.

2. If the assistant is a state employee, he or she may only assist on his or her own time.

3. An employee may not be discriminated against in recruitment, examination, appointment, training, promotion, retention, classification or any other personnel action for informally seeking or formally filing a request to have his or her grievance *or complaint* reviewed, testifying on behalf of another employee, helping another employee prepare a grievance ~~{report}~~ *or complaint* or acting as a representative of any employee requesting a review of a grievance ~~{}~~ *or complaint*.

4. To assist in resolving an employee’s grievance ~~{}~~ *or complaint*, the resources and consultation available from the Division of Human Resource Management and the personnel offices of the agency must be made available to all parties.

[Personnel Div., Rule XV part § A, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep’t of Personnel, 10-26-84; A by Personnel Comm’n by R096-03, 10-30-2003)

Section 12. NAC 284.680 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, describes when a complaint is deemed to have been received by the Division of Human Resource Management.

NAC 284.680 Date of receipt of grievance *or* complaint. (NRS 284.065, 284.155, 284.384)

1. For the purposes of NAC 284.682, 284.686 and 284.690, a grievance is deemed to have been received at each step in the grievance procedure ~~[-; -or]~~

~~1. -On] on~~ the date on which the employee or his or her chosen representative personally delivers the grievance, transmits it by facsimile machine or submits it via the Internet using the Employee Incident Tracking System within the Nevada Employee Action and Timekeeping System developed by the Division of Human Resource Management, which is available at <https://nvapps.state.nv.us/NEATS/admin/Home.aep> . ~~[-; -or]~~

2. *For the purposes of section 4 of this regulation, a complaint is deemed to have been received by the Committee on the date on which the employee or the chosen representative of the employee personally delivers the complaint, transmits it by facsimile machine or submits it by electronic mail.*

3. If the employee mails the grievance ~~[-; -or]~~ *or complaint, the grievance or complaint is deemed to have been received* 3 days after:

(a) The date on which the grievance *or complaint* was postmarked; or

(b) The date on the return receipt if sent by certified mail.

(Added to NAC by Personnel Comm'n by R065-98, eff. 7-24-98; A by R044-08, 8-26-2008)

Section 13. NAC 284.692 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

As a result of increased use of electronic mail, the Division will accept an agreement for the extension of time to file a grievance in the body of a message sent via electronic mail, if both parties have expressed agreement to the extension. This amendment, proposed by the Division of Human Resource Management, removes the requirement that an agreement for extension of time to file a grievance or complaint must be submitted on a form provided by the Division of Human Resource Management in order to bring the regulation into alignment with current practice.

NAC 284.692 Agreement for extension of time to file grievance *or complaint*, or take required action. (NRS 284.065, 284.155, 284.384)

1. Except as otherwise provided in subsection 3, the time limit for filing a grievance and for taking any other action required by either party at any step in the grievance procedure may be extended by the mutual agreement of the employee who may file the grievance and the appointing authority or his or her designated representative.

~~{2.}~~ An agreement to an extension of time entered into pursuant to *this* subsection ~~{1}~~ must be ~~f~~

~~—(a) Made} made~~ in writing ~~[on a form prescribed by the Division of Human Resource Management; and~~

~~—(b) Signed by:~~

~~—(1) The} and authorized by both the~~ employee ~~}; and~~

~~—(2) The} and the~~ appointing authority or his or her designated representative.

2. The time limit for filing a complaint and for taking any other action required by either party in the complaint procedure may be extended by the mutual agreement of the employee who may file the complaint and the appointing authority or his or her designated representative. An agreement to an extension of time entered into pursuant to this subsection must be made in writing and authorized by both the employee and the appointing authority or his or her designated representative.

3. The provisions of this section do not apply to a grievance that has been submitted to the Committee.

(Added to NAC by Personnel Comm'n by R023-05, eff. 10-31-2005)

Section 14. NAC 284.6952 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, incorporates the ability of an employee who submits a complaint, or an administrator or his or her designee, to request a resolution conference to discuss the complaint and possible resolutions.

Additionally, to bring the regulation into alignment with subparagraph (c) of subsection 2 of NRS 284.384, this amendment ensures participation by both parties if either party requests a resolution conference.

NAC 284.6952 Request for resolution conference; appointment of facilitator; effect of request for resolution conference on jurisdiction of Employee-Management Committee. (NRS 284.065, 284.155, 284.384)

1. If an employee is not satisfied with the decision rendered by the highest administrator of the department pursuant to NAC 284.690 and submits a request for consideration of the grievance by the Committee pursuant to NAC 284.695, the employee or the highest administrator or his or her

designee may request a resolution conference to meet informally in the presence of a neutral facilitator to discuss the grievance and possible resolutions.

2. *If an employee is not satisfied with the response of the department or agency pursuant to section 3 of this regulation and submits a request for consideration of a complaint by the Committee pursuant to section 4 of this regulation, the employee or the department or agency or a designee thereof may request a resolution conference to meet informally in the presence of a neutral facilitator to discuss the complaint and possible resolutions.*

3. Except as otherwise provided in this subsection, a request for a resolution conference may be submitted to the Division at any time after the employee submits his or her request for consideration of the grievance *or complaint* by the Committee. If the Committee has notified the parties of the date on which it will hold a hearing to consider the grievance ~~[]~~ *or complaint*, the request for a resolution conference may not be submitted less than 15 working days before that date.

~~[3.—Upon receipt of a request for a]~~

4. *If either party requests a resolution conference, the Division shall appoint a neutral facilitator to conduct the resolution conference ~~[]~~ and require both parties to participate.* The facilitator must not be affiliated with either party.

~~[4.]~~ 5. The submission of a request for a resolution conference does not deprive the Committee of jurisdiction to consider the grievance *or complaint* if:

(a) The parties are unable to reach an agreement for the resolution of the grievance *or complaint* at the resolution conference; ~~[or]~~

(b) The parties reach an agreement for the resolution of the grievance *or complaint* at the resolution conference, but the employee subsequently notifies the Committee that the agreement has failed ~~[]~~; *or*

(c) The Division is unable to arrange a resolution conference as described in subsection 6.

6. *Except as otherwise provided in this subsection, if a party to a complaint submits a request for a resolution conference, the Division shall arrange a resolution conference before the scheduled hearing. If the Division is unable to arrange a resolution conference in the period between the request for the resolution conference and the scheduled hearing, the Division shall provide to the Committee, upon request, the reason that the Division was unable to arrange the resolution conference.*

(Added to NAC by Personnel Comm'n by R026-11, 12-30-2011, eff. 1-1-2012)

Section 15. NAC 284.6955 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, incorporates “complaint” into the procedure for a hearing before the Employee-Management Committee.

NAC 284.6955 Hearing before Employee-Management Committee: Procedure. (NRS 284.065, 284.155, 284.384) If a hearing is held to determine the proper disposition of a grievance pursuant to NAC 284.695 ~~§~~ *or of a complaint pursuant to section 4 of this regulation*, the following procedure must be followed:

1. Each party shall submit to the Clerk of the Committee 12 copies of the set of documents and materials to be presented at the hearing or any rescheduled hearing. These copies must be submitted not less than 15 working days before the scheduled date of the hearing. The Clerk of the Committee shall forward one copy of the set of the documents and materials of each party to the other party.

2. If the employee fails to comply with subsection 1, the Chair or a member of the Committee designated by the Chair may reschedule the hearing to the next time designated for such hearings, but in no case earlier than 20 working days after the originally scheduled date of the hearing. If the employer fails to comply with subsection 1, the Chair or a member of the Committee designated by the Chair may reschedule the hearing at his or her discretion. If the employee fails to comply with the provisions of subsection 1 for a rescheduled hearing, the grievance *or complaint* must be dismissed with prejudice unless he or she can show in writing to the Committee's satisfaction that the reason for noncompliance was beyond his or her control.

3. Each document or material offered in evidence must be marked as follows:

(a) Documents or materials presented by the employee must be marked at the bottom of the page as "Exhibit ____" indicated by consecutive Arabic numerals, beginning with the number "1."

(b) Documents or materials presented by the employer must be marked at the bottom of the page as "Exhibit ____" indicated by consecutive letters of the English alphabet, beginning with the letter "A." If the employer offers more than 26 exhibits, the 27th exhibit must be marked as "Exhibit AA," the 28th exhibit as "Exhibit BB," and so forth.

4. All evidence offered at the hearing must be relevant and bear upon the grievance ~~§~~ *or complaint*.

5. Each person who provides a statement at the hearing shall state his or her name, address, and occupation for the record.

6. It is the responsibility of each party to arrange for the appearance of all necessary witnesses. The Committee may request additional witnesses or information as it deems necessary.

7. If a subpoena is issued for a document and the person named in the subpoena determines that the document contains confidential information, the person must provide to the Committee by the date specified in the subpoena:

(a) Two copies of the original document, submitted under seal, and

(b) One copy of the document with the confidential information redacted.

8. For good cause shown, the Committee may take testimony from a person by telephone or video conference whether or not the person is at a location designated on the agenda as a location for the hearing.

9. Upon proper recognition by the Chair or the member of the Committee designated to act as the Chair during the hearing, any member of the Committee may ask a question of a party or witness at any time during the hearing.

(Added to NAC by Personnel Comm'n, eff. 8-1-91; A by Dep't of Personnel, 11-16-95; A by Personnel Comm'n by R026-11, 12-30-2011, eff. 1-1-2012; R076-15, 4-4-2016)

Section 16. NAC 284.6957 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for

taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, allows a party to request a continuance or to have a complaint held in abeyance. The Chair of the Employee-Management Committee may grant either type of request if good cause is shown.

NAC 284.6957 Hearing before Employee-Management Committee: Continuance; abeyance. (NRS 284.065, 284.155, 284.384)

1. A party may request a continuance of a hearing to determine the proper disposition of a grievance pursuant to NAC 284.695 *or a complaint pursuant to section 4 of this regulation*, or request to have a grievance *or complaint* held in abeyance. The party must submit the request to the Clerk of the Committee at least 12 working days before the scheduled hearing, unless the party received personal notice of the hearing less than 21 working days before the hearing pursuant to subsection 2 of NAC 284.695 ~~or~~ *or pursuant to subsection 4 of section 4 of this regulation*, in which case he or she may request a continuance as long as the request is made at least 4 working days before the scheduled hearing.

2. The Chair or a member of the Committee designated by the Chair may grant a request for a continuance or a request to have a grievance *or complaint* held in abeyance if good cause is shown.

(Added to NAC by Dep't of Personnel, eff. 3-27-92; A 11-16-95; A by Personnel Comm'n by R076-15, 4-4-2016)

Section 17. NAC 284.696 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, specifies that a complaint filed pursuant to this regulation does not include a complaint filed by an employee pursuant to section 2 of Assembly Bill No. 113.

NAC 284.696 Unlawful discrimination. (NRS 284.065, 284.155, 284.384)

1. An employee alleging unlawful discrimination based on any pertinent state or federal law or regulation may:

(a) Report the alleged discrimination to:

(1) The division of the Division of Human Resource Management that investigates sexual harassment and discrimination;

(2) The Attorney General;

(3) The employee's appointing authority;

- (4) An equal employment opportunity officer;
 - (5) A personnel representative of the department in which the employee is employed; or
 - (6) The office charged with enforcing affirmative action within the appropriate university, state college or community college which is part of the Nevada System of Higher Education;
- (b) Except as otherwise provided in NRS 284.384, use the procedure for the adjustment of a grievance contained in NAC 284.658 to 284.6957, inclusive; or
- (c) File a complaint, *other than a complaint described in NAC 284.658*, with:
- (1) The Nevada Equal Rights Commission pursuant to NRS 613.405; or
 - (2) The United States Equal Employment Opportunity Commission.
2. The appointing authority of an employee who has alleged unlawful discrimination shall promptly notify the deputy attorney general or staff counsel assigned to represent the agency of the allegation and the actions which are being undertaken by the agency to address the allegation.
- (Added to NAC by Dep't of Personnel, eff. 10-26-84; A 9-16-92; 11-16-95; A by Personnel Comm'n by R023-05, 10-31-2005; R026-11, 12-30-2011, eff. 1-1-2012)

Section 18. NAC 284.697 is hereby amended to read as follows:

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, incorporates “complaint” into the provisions governing when the resolution of a complaint becomes binding.

NAC 284.697 When resolution of grievance *or complaint* becomes binding. (NRS 284.065, 284.155, 284.384)

1. Except as otherwise provided in subsection 2, the resolution of a grievance *or complaint* is binding when:
- (a) There is an agreement between the person filing the grievance *or complaint* and the appointing authority or the designated representative of the employing agency; or
 - (b) The Committee renders a final decision.
2. The appointing authority or the designated representative of the employing agency shall submit each proposed resolution of a grievance *or complaint* which has a fiscal effect to the Budget Division for a determination of whether the resolution is feasible on the basis of its fiscal effects. The resolution is binding only if it is so found.
- (Added to NAC by Dep't of Personnel, eff. 8-28-85; A by Personnel Comm'n by R030-02, 5-2-2002)

Section 19. Section 1 of LCB File No. R076-15, which was adopted by the Personnel Commission and filed with the Secretary of State on April 4, 2016, is hereby amended to read as follows:

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

Explanation of Proposed Change: Assembly Bill 113 of the 2017 Legislative Session amends NRS 281 to prohibit retaliation for the use of break time or a place to express milk, as well as for taking any action to ensure compliance with these requirements. This bill also amends NRS 281 by adding a new section authorizing a public employee to file a complaint with the Employee-Management Committee for certain violations by his or her public employer, and amends NRS 284 to instruct the Personnel Commission to adopt regulations to provide for the adjustment of a complaint.

This amendment, proposed by the Division of Human Resource Management, will provide the authority to the Division of Human Resource Management to remove a complaint from the procedure if it is determined that the complaint is not eligible pursuant to Assembly Bill 113 of the 2017 Legislative Session. The amendment also includes several conforming changes to include “complaint” in the provisions.

Section 1 of LCB File No. R076-15 Removal of ineligible grievance *or complaint* from procedure.

1. If the Division of Human Resource Management determines that a request for the adjustment of ~~§~~:

(a) A grievance is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in subsection ~~§~~ 2 of NAC 284.658 or because a hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 ~~§~~; *or*

(b) *A complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in paragraph (a) of subsection 4 of section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427,*

↳ the Division must ~~§, as soon as practicable:~~

—(a) *take the actions described in subsection 2.*

2. *Upon making a determination pursuant to subsection 1 that a request for the adjustment of a grievance or complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, the Division must, as soon as practicable:*

(a) Remove the request from the procedure for the adjustment of grievances *or complaints* set forth in NAC 284.658 to 284.6957, inclusive; and

(b) Provide to the person who submitted the request and the agency in which the grievance *or complaint* arose:

(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances *or complaints* set forth in NAC 284.658 to 284.6957, inclusive, and an explanation for that determination;

(2) Notice that the Division has removed the request from the procedure for the adjustment of grievances *or complaints* set forth in NAC 284.658 to 284.6957, inclusive;

(3) If applicable, information relating to the appropriate procedure for resolving the person's concern; and

(4) Information relating to the person's right to appeal the determination to the Committee.

~~2.~~ **3.** If the Division of Human Resource Management determines that a request for the adjustment of a grievance *or complaint* is not eligible for the procedure for the adjustment of grievances *or complaints* set forth in NAC 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.

(Added to NAC by Personnel Comm'n by R076-15, eff. 4-4-2016)

LCB File No. R037-17

Section 1. Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Section 2.

Explanation of Proposed Change: This amendment, proposed by the Legislative Counsel Bureau, defines "domestic violence" for the purposes of Chapter 284 of the Nevada Administrative Code, as any of the acts described in NRS 33.018.

NEW "Domestic violence" defined. "Domestic violence" means an act described in NRS 33.018.

Section 3.

Explanation of Proposed Change: This amendment, proposed by the Legislative Counsel Bureau, defines "family or household member" for the purposes of Chapter 284 of the Nevada Administrative Code, as ascribed in Senate Bill 361 of the 2017 Legislative Session. This bill defines a "family or household member" as a spouse, domestic partner, minor child, or parent or other adult person who is related within the first degree of consanguinity or affinity to the employee, or other adult person who is or was actually residing with the employee at the time of the act which constitutes domestic violence.

NEW "Family or household member" defined. "Family or household member" has the meaning ascribed to it in section 4 of Senate Bill No. 361, chapter 496, Statutes of Nevada 2017, at page 3178.

Section 4.

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613 to require an employer to provide accommodations to an employee who is a victim of domestic violence or whose family or household member is a victim of domestic violence. Such accommodations could include relocating the employee, a modified work schedule, a new work telephone number, or anything else that does not place an undue hardship on the employee, the workplace, the employer or other employees.

This amendment, proposed by the Division of Human Resource Management, will require an appointing authority to provide the accommodations described above to an employee who is not the alleged perpetrator.

Subsection 3 of this regulation makes it clear that relocating an employee shall not be construed as a transfer pursuant to NAC 284.106, and that an employee may not use the appeal process set forth in NRS 284.376 in relation to this type of accommodation.

NEW Accommodation for employee affected by domestic violence.

1. Except as otherwise provided in subsection 2, the appointing authority of an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator, shall, upon the request of the employee, provide reasonable accommodation to the employee.

2. Reasonable accommodation provided pursuant to this section must not cause an undue hardship to the operations of the appointing authority and must be deemed by the appointing authority to ensure the safety of the employee, the workplace, the employer or other employees. Such accommodation may include, without limitation:

(a) Relocating the employee, including, without limitation, providing a different work area for the employee or changing the location to which the employee reports;

(b) Modifying the schedule of the employee; or

(c) Providing the employee a new telephone number for work.

3. For the purposes of this section, a relocation of an employee must not be construed:

(a) As a transfer as defined in NAC 284.106; or

(b) To authorize the employee to appeal the relocation using the process for an appeal of a transfer set forth in NRS 284.376.

Section 5. NAC 284.010 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment incorporates the two new definition regulations proposed in LCB File No. R037-17 (e.g., “Domestic violence” defined and “Family or household member” defined) into the General Provisions pertaining to Chapter 284 of the Nevada Administrative Code.

NAC 284.010 Definitions. (NRS 284.065) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 284.021 to 284.1125, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

(Supplied in codification; A by Dep’t of Personnel, 10-26-84; 4-19-88; 8-1-91; 7-6-92; 3-23-94; 10-27-97; R031-98, 4-17-98; R043-99, 9-27-99; R197-99, 1-26-2000; R058-01, 9-6-2001; R147-01, 1-22-2002; A by Personnel Comm’n by R038-03, 10-30-2003; R142-05, 12-29-2005; R147-06, 12-7-2006; R137-12, 10-23-2013)

Section 6. NAC 284.539 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613 to require an employer to provide accommodations to an employee who is a victim of domestic

violence or whose family or household member is a victim of domestic violence. Such accommodations could include relocating the employee, a modified work schedule, a new work telephone number, or anything else that does not place an undue hardship on the employee, the workplace, the employer or other employees.

This bill also amends NRS 613 to make it unlawful for an employer to discharge, discipline, or discriminate against in any manner or deny promotion, or threaten such action, any employee who has requested accommodations as listed above, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against them at the employee's workplace.

This amendment, proposed by the Division of Human Resource Management, requires the approval of accrued annual leave, if available, to an employee who is not the alleged perpetrator, and who has been employed for at least 6 months, pursuant to subsection 6 of NRS 284.350, and who is a victim of domestic violence. The regulation also requires the approval of accrued annual leave, if available, to an employee who has been employed for at least 6 months when his or her family or household member is a victim of domestic violence. The maximum allowable amount of leave is 160 hours in a 12-month period, including any combination of all leave type, e.g. annual, sick and leave without pay. The 12-month period begins at the time the domestic violence occurs.

**NAC 284.539 Annual leave: Written request; approval or denial; authorized use.
(NRS 284.065, 284.155, 284.345, 284.350)**

1. Except as otherwise provided by the Family and Medical Leave Act, an appointing authority shall determine the time when annual leave is taken after considering the needs of the agency and the seniority and wishes of the employee. Annual leave may not be granted in excess of the accumulated annual leave.

2. A written request for annual leave that is submitted by an employee within a reasonable time before the date upon which the annual leave is requested to commence must be approved or denied by the appointing authority, in writing, before the date upon which the annual leave is requested to commence or within 15 days after the appointing authority receives the request, whichever is sooner.

3. ~~The~~ *Except as otherwise provided in subsection 7, the* appointing authority may deny a request for annual leave for good and sufficient reason. The appointing authority may not prohibit an employee from using at least 5 consecutive days of annual leave in any calendar year.

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

5. An employee who has accumulated both annual leave and compensatory time off, and who may lose annual leave at the end of the calendar year, may elect to use the annual leave instead of the compensatory time for approved leave. In all other instances, compensatory time must, as far as practicable, be exhausted before annual leave is used.

6. An employee who is receiving benefits for a temporary total disability pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may use his or her accrued annual leave pursuant to NAC 284.5775.

7. An appointing authority shall approve a request for annual leave of an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator if:

(a) In accordance with NRS 284.350, the employee has been employed in public service for at least 6 months;

(b) The employee has accrued the amount of annual leave necessary to cover the time requested; and

(c) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence occurred.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 6-18-86; 9-17-87; 7-14-88; 4-20-90; 3-23-94; 11-16-95; R031-98, 4-17-98; R082-00, 8-2-2000; A by Personnel Comm'n by R145-05, 12-29-2005)

Section 7. NAC 284.554 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613 to require an employer to provide accommodations to an employee who is a victim of domestic violence or whose family or household member is a victim of domestic violence. Such accommodations could include relocating the employee, a modified work schedule, a new work telephone number, or anything else that does not place an undue hardship on the employee, the workplace, the employer or other employees.

This bill also amends NRS 613 to make it unlawful for an employer to discharge, discipline, or discriminate against in any manner or deny promotion, or threaten such action, any employee who has requested accommodations as listed above, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against them at the employee's workplace.

This amendment, proposed by the Division of Human Resource Management, requires the approval of accrued sick leave, if available, to an employee who is not the alleged perpetrator, and who has been employed for at least 90 calendar days, and who is a victim of domestic violence. The regulation also requires the approval of accrued sick leave, if available, to an employee who has been employed for 90 calendar days when his or her family or household member is a victim of domestic violence. The maximum allowable amount of leave is 160 hours in a 12-month period, including any combination of all leave type, e.g. annual, sick and leave without pay. The 12-month period begins at the time the domestic violence occurs.

For the purposes of section 7 of SB 361, if sick leave is taken when a family member is a victim of domestic violence, the leave time will be considered sick leave, rather than "family sick leave."

NAC 284.554 Sick leave: Authorized use. (NRS 284.065, 284.155, 284.345, 284.355)

1. An employee is entitled to use sick leave if the employee:

~~1-1~~ **(a)** Is unable to perform the duties of his or her position because he or she is sick, injured or physically incapacitated due to a medical condition;

~~1-2~~ **(b)** Is physically incapacitated due to pregnancy or childbirth and is therefore unable to perform the duties of the employee's position;

~~1-3~~ **(c)** Is quarantined;

~~1-4~~ **(d)** Is receiving required medical, psychological, optometric or dental service or examination;

~~5.1~~ (e) Is receiving counseling through an employee assistance program for a condition which would otherwise qualify pursuant to the provisions of this section; ~~for~~

~~6.1~~

(f) Has an illness, death or other authorized medical need in his or her immediate family and he or she complies with the requirements of NAC 284.558 or 284.562 ~~1.1~~; or

(g) *Meets the requirements set forth in subsection 2.*

2. An appointing authority shall approve a request for sick leave of an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator if:

(a) The employee has been employed in public service for at least 90 days;

(b) The employee has accrued the amount of sick leave necessary to cover the time requested; and

(c) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence occurred.

[Personnel Div., Rule VII § D part subsec. 6, eff. 8-11-73; A 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 4-20-90; 11-16-95; A by Personnel Comm'n by R141-07, 1-30-2008)

Section 8. NAC 284.578 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613 to require an employer to provide accommodations to an employee who is a victim of domestic violence or whose family or household member is a victim of domestic violence. Such accommodations could include relocating the employee, a modified work schedule, a new work telephone number, or anything else that does not place an undue hardship on the employee, the workplace, the employer or other employees.

This bill also amends NRS 613 to make it unlawful for an employer to discharge, discipline, or discriminate against in any manner or deny promotion, or threaten such action, any employee who has requested accommodations as listed above, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against them at the employee's workplace.

This amendment, proposed by the Division of Human Resource Management, requires the approval of leave of absence without pay to an employee who is not the alleged perpetrator, and who has been employed for at least 90 calendar days, and who is a victim of domestic violence. The regulation also requires the approval of leave of absence without pay to an employee who has been employed for 90 calendar days when his or her family or household member is a victim of domestic violence. The maximum allowable amount of leave is 160 hours in a 12-month period, including any combination of all leave type, e.g. annual, sick and leave without pay. The 12-month period begins at the time the domestic violence occurs.

NAC 284.578 Leave of absence without pay. (NRS 284.065, 284.155, 284.345, 284.360)

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 or her 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 the employee has exhausted all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave that the employee is eligible to use based on the nature of the absence, as required by NAC 284.5811.

8. An appointing authority shall grant leave without pay, upon request, to an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator if:

(a) The employee has been employed in public service for at least 90 days; and

(b) The combination of all leave taken by the employee for this purpose, including, without limitation, sick leave, annual leave, compensatory time and leave without pay, does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence occurred.

[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; R060-09, 11-25-2009)

Section 9. NAC 284.5811 is hereby amended to read as follows:

Explanation of Proposed Change: Senate Bill 361 of the 2017 Legislative Session amends NRS 613 to require an employer to provide accommodations to an employee who is a victim of domestic violence or whose family or household member is a victim of domestic violence. Such accommodations could include relocating the employee, a modified work schedule, a new work telephone number, or anything else that does not place an undue hardship on the employee, the workplace, the employer or other employees.

This bill also amends NRS 613 to make it unlawful for an employer to discharge, discipline, or discriminate against in any manner or deny promotion, or threaten such action, any employee who has requested accommodations as listed above, requested leave pursuant to section 1 of the bill, attended court proceedings, or has an act of violence committed against them at the employee's workplace.

Pursuant to Section 1 of Senate Bill 361, this amendment, proposed by the Division of Human Resource Management, requires an employee to take leave related to an act of domestic violence concurrent with the Family and Medical Leave Act provisions, if an employee meets the eligibility factors for both provisions.

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

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

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

4. Except as otherwise provided in subsections 5 and 6, an employee who meets the requirements for eligibility for and who is taking leave pursuant to the Family and Medical Leave Act must exhaust all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave that the employee is eligible to use based on the nature of the absence before using leave without pay. Any accrued sick leave, accrued annual leave, accrued compensatory time, catastrophic leave and holiday pay to which the employee is entitled pursuant to NAC 284.255 runs concurrently with the leave granted pursuant to the Family and Medical Leave Act if the employee is otherwise eligible for that sick leave, annual leave, compensatory time, catastrophic leave or holiday pay.

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

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

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

6. If an employee is absent from work as the result of a non-work-related injury or illness, the employee is receiving compensation for the injury or illness from a disability benefit plan and the employee 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 use paid leave for the time that the employee is being compensated for the non-work-related injury or illness if the employee has entered into an agreement with the appointing authority to use the paid leave. If the employee and the appointing authority have not entered into such an agreement, the employee may not elect to use and the appointing authority may not require the employee to use paid leave for that time.

7. If an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator, is absent from work and meets the requirements for eligibility pursuant to the Family and Medical Leave Act, 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.

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

(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; R060-09, 11-25-2009; R021-13, 10-23-2013)

Section 10.

Explanation of Proposed Change: This section provides that the regulations included in LCB File No. R037-17 become effective on January 1, 2018, or upon filing with the Secretary of State, whichever occurs later.

This regulation becomes effective on January 1, 2018, or upon filing with the Secretary of State, whichever occurs later.

LCB File No. R039-17

Section 1. Section 1 of LCB File No. R100-16, is hereby amended to read as follows:

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

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, reflects the steps in the process that are currently in place for an applicant to use if he or she wishes to pursue an appeal of the refusal to examine, or, if he or she is determined to be eligible, the refusal to certify. Within 30 days of being notified of either decision, the affected individual may first request a review by the supervisor of recruitment of the Division of Human Resource Management. The supervisor of recruitment of the Division of Human Resource Management has 10 days to respond to the employee. Then, within 30 days, if the person remains unsatisfied, he or she may request a written statement from the Administrator of the Division of Human Resource Management of the reasons for the refusal to examine, or, if eligible, refusal to certify. Finally, if the individual is still not satisfied, he or she may appeal the decision to the Personnel Commission, also within a 30 day time period after receiving the statement of the Administrator.

Section 1 of LCB File No. R100-16 Appeal of refusal to examine or certify.

1. An applicant affected by ~~the refusal of the Administrator~~ *a refusal* to examine the applicant or an eligible person affected by ~~the refusal of the Administrator~~ *a refusal* to certify the eligible person may ~~file a written appeal~~ *request a review* of the action ~~with the Administrator~~ *by the supervisor of recruitment of the Division of Human Resource Management* not later than 30 *calendar* days after the applicant or eligible person receives ~~from the Administrator, in accordance with subsection 1 of NRS 284.245, a statement of the reasons for~~ *notification of* the refusal to examine or the refusal to certify, as applicable. ~~The appeal must:~~

(a) ~~Address the points outlined in the statement; and~~
(b) ~~Indicate the points in the statement with which the applicant or eligible person disagrees and express the reasons for the disagreement.~~

2. ~~The Administrator will issue a decision on the appeal within 30 working days after receiving the appeal unless:~~

~~(a) He or she is prohibited from doing so because of the number of appeals resulting from other determinations regarding his or her refusal to examine or certify;~~

~~(b) There is an agreement with the applicant or eligible person to extend the limitation of time for the issuance of the decision; or~~

~~(c) The Administrator delegates the duty to decide the appeal to a designated representative pursuant to subsection 3.~~

~~3.—The Administrator may delegate the duty to decide the appeal to a designated representative if the Administrator is unavailable or reasonably believes he or she has a conflict of interest. If the Administrator makes such a delegation, the designated representative shall issue a decision on the appeal within 30 working days after the Administrator received the appeal.~~

~~4.]~~

2. The supervisor of recruitment of the Division of Human Resource Management shall conduct the review and return it to the applicant or eligible person within 10 days after receipt of the request for review. If the applicant or eligible person is not satisfied with the review by the supervisor of recruitment of the Division of Human Resource Management, the applicant or eligible person may request that the Administrator provide, in accordance with NRS 284.245, a statement of the reasons for the refusal to examine or the refusal to certify, as applicable. Such a request must be made within 30 calendar days after receipt of the response by the supervisor of recruitment.

3. An applicant or eligible person may, within 30 working days after receipt of ~~[written notice issued pursuant to subsection 2 or 3 notification of the decision to of the decision]~~ *the statement* of the Administrator ~~[or his or her designated representative,]~~ *provided pursuant to subsection 2,* appeal the decision to the Commission. The appeal must:

(a) Be in writing;

(b) Be addressed to the Administrator;

(c) Address the points outlined in the ~~[decision]~~ *statement* issued pursuant to subsection 2 ~~[or 3]~~ regarding the refusal to examine or certify the applicant or eligible person; and

(d) Indicate the points in the ~~[decision]~~ *statement* with which the applicant or eligible person disagrees and express the reasons for the disagreement.

(Added to NAC by Personnel Comm'n by R100-16, eff. 11-2-2016)



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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August 30, 2017

Regulation Small Business Impact Statement

Section 15 of Article 15 of the Nevada Constitution requires the Legislature to provide for a State merit system governing the employment of employees in the Executive Branch of State government and in 1969 the Legislature provided for such in NRS 284. Additionally, NRS 284.013 provides limitations to which employees of the Executive Branch are covered by NRS 284. NRS 284.065 authorizes the Personnel Commission to adopt regulations to carry out the provisions of this chapter.

Due to the limitations of the Nevada State Constitution and NRS 284, the Division of Human Resource Management staff has determined that the adoption of this proposed regulation does not affect small businesses, impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business. These regulations only impact employees moving into the nonclassified, classified, or unclassified service of the Executive Branch.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small business and that the information contained in this statement was prepared properly and is accurate.

Peter Long

Peter Long, Administrator

August 30, 2017

Date