



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
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MEMO PERD #30/12

July 23, 2012

TO: Agency Personnel Liaisons
Agency Personnel Representatives
Employee Representatives

FROM: Lee-Ann Easton, Administrator *Lee-Ann Easton*
Division of Human Resource Management

SUBJECT: PRE-ADOPTION REVIEW OF REGULATION SUBMITTED

As discussed in the Regulation Workshop on June 18th, the Division of Human Resource Management would very much like to keep you updated on the regulations that were submitted to LCB for pre-adoption review. We have attached each regulation that was sent to LCB with the proposed language changes. Please let us know if you have any questions, comments, or concerns @ (775) 684-0149 (dseymour@admin.nv.gov) or Shelley Blotter at (775) 684-0105 (sblotter@admin.nv.gov).

**REGULATION CHANGES PROPOSED
FOR PERMANENT ADOPTION AND REPEAL
LCB FILE# R133-12**

Section 1. NAC 284.170 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management proposes revised language and a split of NAC 284.170 into separate sections to provide for a clearer and easier understanding of the regulations.

NAC 284.170 ~~[Initial rate]~~ *Rate of pay: Initial appointment.* ~~[; effect of promotion, demotion, transfer, reappointment or reemployment; minimum step for continuous employee; rate of pay for nonclassified or unclassified employee appointed to classified position.]~~ (NRS 284.065, 284.155, 284.175)

~~[1. Except as otherwise provided in NAC 284.204 regarding adjustment of steps within the same grade and NAC 284.206 regarding special adjustments to pay, the following provisions govern the grade and the step at which an employee must be paid at the time of employment:~~

~~—(a) If the employment is an initial appointment, the employee's base rate of pay must be set at step 1 of the grade of the position's class~~~~],~~ *except as otherwise provided in NAC 284.204 and NAC 284.206.*

~~[(b) If the employment is a reinstatement to a position which is:~~

~~—(1) At the same grade as that of the employee's former position, he or she must be paid at or below the step which he held in his or her former position.~~

~~—(2) At a lower grade than the employee's former position, he or she must be paid at or below the step in the lower grade which most closely corresponds to the base rate of pay of his or her former position.~~

~~—(3) A result of the reallocation of the entire class because of a reclassification or a general pay increase, he or she must be paid at or below the step in the new grade which most closely corresponds to the base rate of pay of his or her former grade.~~

~~—2. The following provisions govern the rate of pay which must be paid if an employee is promoted:~~

~~—(a) The employee must be placed at the lowest step in the higher grade that meets one of the following requirements:~~

~~—(1) If the employee moves one or two grades above his or her former grade, he or she must be placed at the same step in the new grade as the step held in his or her former grade.~~

~~—(2) If the employee moves three or more grades above his or her former grade, the employee must be placed:~~

~~—(I) At a step which is equivalent to an increase of two steps above the step held in his or her former grade; or~~

~~—(II) At the lowest step of the new grade;~~

~~↪ whichever pay is higher and in accordance with the provisions of subsection 8.~~

~~—(b) A special adjustment to an employee's pay for performing supervisory duties which is granted in accordance with paragraph (e) of subsection 2 of NAC 284.206 is the present level of pay for the purpose of calculating a promotional increase authorized by paragraph (a) only if the employee has received the special adjustment to his or her pay for more than 6 months of continuous full-time service.~~

~~—(c) If an employee has been demoted, he or she may not receive a promotional increase in pay that is greater than the increase which he or she would have otherwise been entitled to receive had he or she not been demoted.~~

~~—(d) This subsection does not apply when an employee is reemployed or reappointed to his or her former grade within 1 year after holding that grade.~~

~~—3. Except as otherwise provided in this subsection and paragraph (b) of subsection 1 of NAC 284.618, an employee who is demoted must be paid at a step within the grade of the class to which he or she was demoted as follows:~~

~~—(a) If the employee has attained permanent status in the class from which he or she was demoted and the demotion is instituted at the employee's request or is acceptable to the employee, the appointing authority shall pay him or her at a step in the grade of the class to which he or she was demoted which is:~~

~~— (1) Equal to his or her present base rate of pay; or~~

~~— (2) Equivalent to a decrease of not more than one step from his or her base rate of pay in the position from which he or she was demoted. Except as otherwise provided in paragraph (b), if the base rate of pay in the position from which he or she was demoted does not fall within the grade of the class to which he or she was demoted, the employee must be paid at a step in the grade of the class to which he or she was demoted which is equal to:~~

~~— (I) The step he or she would have received if he or she had not been promoted to the position from which he or she was demoted; or~~

~~— (II) The step he or she would have received if he or she had been employed in that class from the inception of his or her employment with the State of Nevada.~~

~~—(b) An exception to subparagraph (2) of paragraph (a) may be granted by the appointing authority to pay an employee at a rate that does not fall within the grade of the class to which he or she is demoted if the appointing authority determines that the demotion is in the best interest of the employee and the State of Nevada. If such an exception is granted:~~

~~— (1) The employee's base rate of pay will be limited to three grade levels above the grade of the class to which he or she is demoted or his or her base rate of pay in the position from which he or she was demoted, whichever is less.~~

~~— (2) The employee's base rate of pay in the position to which he or she was demoted will be frozen until it falls within the grade of the class to which he or she was demoted or for a maximum of 2 years after the date of demotion, making the employee ineligible for any merit pay increases, cost of living adjustments or adjustments for a class of employees that has been approved by the Legislature.~~

~~— (3) If the employee's frozen base rate of pay does not fall within the grade of the class to which he or she was demoted within the 2-year period, his or her base rate of pay will be adjusted to the highest step within the grade of the class to which he or she was demoted.~~

~~—(c) If an employee accepts a promotion and is demoted before attaining permanent status in the class, he or she must be paid at a step in the grade of the class to which he or she was demoted which is equivalent to the base rate of pay to which he or she would have been entitled had he or she not been promoted.~~

~~—(d) If the demotion is instituted by the appointing authority for disciplinary reasons and is not covered by paragraph (b), the appointing authority shall determine the step in the grade of the class to which the employee was demoted at which the employee will be paid.~~

~~—(e) If an employee is demoted during his or her probationary period in state service, the appointing authority may pay the demoted employee at any step in the grade of the class to which the employee was demoted that is not greater than his or her base rate of pay before the demotion.~~

~~—4. Except as otherwise provided in NAC 284.204, if an employee transfers to a position in the same or a related class, he or she must be placed at the corresponding step in the same grade that he or she held before the transfer. Any exception to this subsection must be:~~

~~—(a) Based on the provisions of NAC 284.204; or~~

~~—(b) Approved by the Division of Human Resource Management based upon a written request and justification for the exception submitted by the appointing authority.~~

~~—5. If an employee is reappointed to a position which is in:~~

~~—(a) The grade which he or she currently holds, he or she retains his or her step.~~

~~—(b) A higher grade and the appointment occurs within 1 year after the date on which he or she last held the grade, the employee must be placed at the step which he or she last held in that grade.~~

~~—(c) A higher grade and the reappointment occurs more than 1 year after he or she held that grade, his or her pay must be calculated pursuant to the provisions relating to promotion in subsection 2.~~

~~→ Any exception to this subsection must be approved by the Division of Human Resource Management based upon a written request and justification for the exception submitted by the appointing authority.~~

~~—6. Except as otherwise provided in subsection 7, if a person is reemployed at:~~

~~—(a) The same grade, he or she must be placed at the step which he or she last held in that grade.~~

~~—(b) A lower grade, he or she must be placed at a step which most closely corresponds to the base rate of pay which he or she held at the time of his or her layoff or separation.~~

~~—(c) A higher grade and the appointment occurs within 1 year after the date on which he or she last held the grade, he or she must be placed at the step which he or she last held in that grade.~~

~~→ An exception to this subsection may be made if the conditions in NAC 284.204 exist, or if money is not available as certified by the Chief of the Budget Division or, in the case of an agency that is not funded from the State General Fund or the Nevada System of Higher Education, as certified by the administrator of that agency or the System. If an exception is made pursuant to this subsection because the agency does not have sufficient money available, the employee retains his or her right of reemployment.~~

~~—7. If a person who is eligible for military reemployment is reemployed, the period of the military service must be included in calculating the step at which he or she will be placed.~~

~~—8. An employee who has been continuously employed without a break in service may not have his or her step set below:~~

~~—(a) Step 4 of any grade if his or her date of hire is before April 26, 1973; or~~

~~—(b) Step 3 of any grade if his or her date of hire is before May 3, 1975, but on or after April 26, 1973, except for disciplinary reasons which result in demotion.~~

~~—9. Except as otherwise provided in this subsection, if a nonclassified or unclassified employee or an employee included in the Personnel System pursuant to the provisions of NRS 284.022 is appointed without a break in service to the classified service, he or she may, at the discretion of the appointing authority:~~

~~—(a) Be paid at a step which corresponds to or is below his or her rate of pay as a nonclassified or unclassified employee if it is within the grade of the class to which he or she is appointed;~~

~~—(b) Be paid at the first step in the new grade to which he or she is appointed; or~~

~~—(c) Receive a special adjustment to his or her pay pursuant to subsection 1 of NAC 284.204 or NAC 284.206.~~

~~→ An exception to this subsection may be made if a nonclassified or unclassified employee who was an employee of the Legislative Branch of State Government employed at the conclusion of a regular session of the Legislature pursuant to NRS 284.3775 transfers to state service.~~

~~—10. An employee who was previously employed in the classified service and is appointed pursuant to the provisions of subsection 9 may not be paid at a step and grade which is greater than he or she received at the time he or she left the classified service, unless he or she has held the unclassified or nonclassified position for more than 1 year.~~

~~—11. As used in this section, “present level of pay” means a rate of pay that is equal to the amount that is assigned to the step within the grade which is closest to, but does not exceed, the employee’s pay after a special adjustment to pay pursuant to the provisions of NAC 284.206.]~~

[Personnel Div., Rule III § F, eff. 8-11-73; A 10-6-78]—(NAC A by Dep’t of Personnel, 10-26-84; 8-28-85; 5-27-86; 7-22-87; 9-17-87; 12-17-87; 7-21-89; 8-14-90; 8-1-91; 7-6-92; 3-23-94; 7-1-94; 3-1-96; R098-99, 9-27-99; R197-99, 1-26-2000; R147-01, 1-22-2002; A by Personnel Comm’n by R038-03, 10-30-2003)

Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2.

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment simplifies the language on how to determine the rate of an employee's pay when he or she is reinstated.

NEW. Rate of pay: Reinstatement. (NRS 284.065, 284.155, 284.175) If the appointment is a reinstatement, the employee's base rate of pay must be set at or below that amount which most closely corresponds to the base rate of pay of his or her most recently held position with the state.

Sec. 3.

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment just places this language in its own section so that it is easier to locate the relevant information.

NEW. Rate of pay: Promotion (NRS 284.065, 284.155, 284.175) The following provisions govern the rate of pay which must be paid if an employee is promoted:

1. The employee must be placed at the step in the higher grade that meets one of the following requirements:

(a) If the employee moves one or two grades above his or her former grade, he or she must be placed at the same step in the new grade as the step held in his or her former grade.

(b) If the employee moves three or more grades above his or her former grade, the employee must be placed:

(1) At a step which is equivalent to an increase of two steps above the step held in his or her former grade; or

(2) At the lowest step of the new grade,

↪ whichever pay is higher and in accordance with the provisions of Section 9.

2. A special adjustment to an employee's pay for performing supervisory duties which is granted in accordance with paragraph (c) of subsection 2 of NAC 284.206 is the present level of pay for the purpose of calculating a promotional increase authorized by paragraph (a) only if the employee has received the special adjustment to his or her pay for more than 6 months of continuous full-time service.

3. If an employee has been demoted, he or she may not receive a promotional increase in pay that is greater than the increase which he or she would have otherwise been entitled to receive had he or she not been demoted.

4. This subsection does not apply when an employee is reemployed or reappointed to his or her former grade within 1 year after holding that grade.

Sec. 4.

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment just places this language in its own section so that it is easier to locate the relevant information.

NEW. Rate of pay: Demotion. (NRS 284.065, 284.155, 284.175) Except as otherwise provided in this section and paragraph (b) of subsection 1 of NAC 284.618, an employee who is demoted must be paid at a step within the grade of the class to which he or she was demoted as follows:

1. If the employee has attained permanent status in the class from which he or she was demoted and the demotion is instituted at the employee's request or is acceptable to the employee, the appointing authority shall pay him or her at a step in the grade of the class to which he or she was demoted which is:

(a) Equal to his or her present base rate of pay; or

(b) Equivalent to a decrease of not more than one step from his or her base rate of pay in the position from which he or she was demoted. Except as otherwise provided in subsection 2, if the base rate of pay in the position from which he or she was demoted does not fall within the grade of the class to which he or she was demoted, the employee must be paid at a step in the grade of the class to which he or she was demoted which is equal to:

(1) The step he or she would have received if he or she had not been promoted to the position from which he or she was demoted; or

(2) The step he or she would have received if he or she had been employed in that class from the inception of employment with the State of Nevada.

2. An exception to paragraph (b) of subsection 1 may be granted by the appointing authority to pay an employee at a rate that does not fall within the grade of the class to which he or she is demoted if the appointing authority determines that the demotion is in the best interest of the employee and the State of Nevada. If such an exception is granted:

(a) The employee's base rate of pay will be limited to three grade levels above the grade of the class to which he or she is demoted or his or her base rate of pay in the position from which he or she was demoted, whichever is less.

(b) The employee's base rate of pay in the position to which he or she was demoted will be frozen until it falls within the grade of the class to which he or she was demoted or for a maximum of 2 years after the date of demotion, making the employee ineligible for any merit pay increases, cost of living adjustments or adjustments for a class of employees that has been approved by the Legislature.

(c) If the employee's frozen base rate of pay does not fall within the grade of the class to which he or she was demoted within the 2-year period, his or her base rate of pay will be adjusted to the highest step within the grade of the class to which he or she was demoted.

3. If an employee accepts a promotion and is demoted before attaining permanent status in the class, he or she must be paid at a step in the grade of the class to which he or she was demoted which is equivalent to the base rate of pay to which he or she would have been entitled had he or she not been promoted.

4. If the demotion is instituted by the appointing authority for disciplinary reasons and is not covered by subsection 2, the appointing authority shall determine the step in the grade of the class to which the employee was demoted at which the employee will be paid.

5. If an employee is demoted during his or her probationary period in state service, the appointing authority may pay the demoted employee at any step in the grade of the class to which the employee was demoted that is not greater than his or her base rate of pay before the demotion.

Sec. 5.

<p>Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment simplifies the language on how to determine the rate of an employee's pay when he or she transfers.</p>

NEW. Rate of pay: Transfer. (NRS 284.065, 284.155, 284.175) If an employee transfers to a position in the same or a related class, he or she must maintain the step held before the transfer. Any exception to this subsection must be based on the provisions of NAC 284.204

Sec. 6.

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment just places this language in its own section so that it is easier to locate the relevant information.

NEW. Rate of pay: Reappointment. (NRS 284.065, 284.155, 284.175) If an employee is reappointed to a position, he or she retains his or her step.

1. The grade which he or she currently holds, he or she retains his or her step.

2. A higher grade and the appointment occurs within 1 year after the date on which he or she last held the grade, the employee must be placed at the step which he or she last held in that grade.

3. A higher grade and the reappointment occurs more than 1 year after he or she held that grade, his or her pay must be calculated pursuant to the provisions relating to promotion in Section 3.

↳ Any exception to this subsection must be approved by the Division of Human Resource Management based upon a written request and justification for the exception submitted by the appointing authority.

Sec. 7.

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment simplifies the language on how to determine the rate of an employee's pay when he or she is reemployed.

NEW. Rate of pay: Reemployment. (NRS 284.065, 284.155, 284.175) Except as otherwise provided in Section 8, if a person is reemployed, he or she must be placed at the step which most closely corresponds to the base rate of pay which he or she held at the time of his or her layoff or separation.

↳ An exception to this section may be made if the conditions in NAC 284.204 exist, or if money is not available as certified by the Chief of the Budget Division or, in the case of an agency that is not funded from the State General Fund or the Nevada System of Higher Education, as certified by the administrator of that agency or the System. If an exception is made pursuant to this section because the agency does not have sufficient money available, the employee retains the right of reemployment.

Sec. 8.

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment just places this language in its own section so that it is easier to locate the relevant information.

NEW. Rate of pay: Military Reemployment. (NRS 284.065, 284.155, 284.175) If a person who is eligible for military reemployment is reemployed, the period of the military service must be included in calculating the step at which he or she will be placed.

Sec. 9.

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment just places this language in its own section so that it is easier to locate the relevant information. There are employees that were hired prior to 1973 and are still employed.

NEW. Rate of pay: Minimum step for continuous employment (NRS 284.065, 284.155, 284.175) An employee who has been continuously employed without a break in service may not have his or her step set below:

- 1. Step 4 of any grade if his or her date of hire is before April 26, 1973; or*
- 2. Step 3 of any grade if his or her date of hire is before May 3, 1975, but on or after April 26, 1973, except for disciplinary reasons which result in demotion.*

Sec. 10.

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment just places this language in its own section so that it is easier to locate the relevant information.

NEW. Rate of pay: Nonclassified, Unclassified Appointed to Classified. (NRS 284.065, 284.155, 284.175)

1. Except as otherwise provided in this subsection, if a nonclassified or unclassified employee or an employee included in the Personnel System pursuant to the provisions of NRS 284.022 is appointed without a break in service to the classified service, he or she may, at the discretion of the appointing authority:

(a) Be paid at a step which corresponds to or is below his or her rate of pay as a nonclassified or unclassified employee if it is within the grade of the class to which he or she is appointed;

(b) Be paid at the first step in the new grade to which he or she is appointed; or

(c) Receive a special adjustment to his or her pay pursuant to subsection 1 of NAC 284.204 or NAC 284.206.

↪ An exception to this subsection may be made if a nonclassified or unclassified employee who was an employee of the Legislative Branch of State Government employed at the conclusion of a regular session of the Legislature pursuant to NRS 284.3775 transfers to state service.

2. An employee who was previously employed in the classified service and is appointed pursuant to the provisions of subsection 1 may not be paid at a step and grade which is greater than he or she received at the time he or she left the classified service, unless he or she has held the unclassified or nonclassified position for more than 1 year.

3. As used in this section, "present level of pay" means a rate of pay that is equal to the amount that is assigned to the step within the grade which is closest to, but does not exceed, the employee's pay after a special adjustment to pay pursuant to the provisions of NAC 284.206.

Sec. 11. NAC 284.182 is hereby amended to read as follows:

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, this amendment just places this language in its own section so that it is easier to locate the relevant information. Language in subsection 6 was relocated under subsection 2 as it impacts this subsection.

NAC 284.182 Adjustment and retention of pay progression date; restoration of date of appointment and pay progression date. (NRS 284.065, 284.155, 284.175)

1. ***New Pay Progression Date.*** An employee receives a new pay progression date if he or she is:

- (a) Promoted to a position that results in an increase of two grades or more; or
- (b) Reinstated.

2. ~~[An employee who is]~~ ***Retained Pay Progression Date.*** *An employee will retain his or her current pay progression date when he or she is:*

- (a) Promoted to a position that results in an increase of one grade;
- (b) In a position that is reclassified to a higher class as a result of an individual classification study or an occupational study;
- (c) Transferred to a position without receiving an increase in grade;
- (d) Reappointed to a position at a grade that he or she formerly held;
- (e) Reemployed and has remained continuously employed; or
- (f) Demoted[.].

↳ ~~[retains the pay progression date he or she held before the action described in paragraphs (a) to (f), inclusive, occurred.]~~ ***If the number of total hours of leave without pay or catastrophic leave of a nonexempt employee that exceed 240 hours is less than one day of full-time equivalent service for the pay class designation of the employee, an adjustment will not be made for those hours.***

3. ***Military:*** If a person who is eligible for military reemployment is reemployed, he or she retains the pay progression date held when separated from this State for his or her service in the military.

4. ***Restored to Former Position following Promotion:*** If an employee was promoted but is being restored to his or her former position pursuant to the provisions of NAC 284.462, the date of appointment and pay progression date of the former position must be restored.

5. ***Pay Progression Date adjustment:*** Except as otherwise provided in this subsection and subsection 6, an employee's pay progression date must be adjusted:

(a) To equal 1 year of full-time equivalent service for an employee who changes from full-time employment to part-time employment or from part-time employment to full-time employment; or

(b) On a day-for-day basis for the amount of time the employee:

(1) Was separated from state service if the employee is reemployed within 1 year after the date on which he or she was laid off or received a seasonal separation.

(2) Was separated from state service if the employee is a person with a permanent disability arising from a ***work-related injury or occupational disease*** who is reemployed within 1 year after the date on which he or she sustained the permanent disability as determined pursuant to NAC 284.6013.

(3) Was on leave without pay, or on catastrophic leave, if the employee is:

(I) A nonexempt employee and the leave without pay or catastrophic leave was in excess of 240 hours; or

(II) An exempt classified employee and the leave without pay or catastrophic leave was in excess of 30 working days,

↳ in a year, except for leave without pay for a work-related injury or illness pursuant to NRS 281.390 or on a military leave of absence pursuant to NRS 284.359 or a leave of absence without pay during a fiscal emergency pursuant to NAC 284.580. An employee whose base hours are more than 80 hours biweekly must be allotted additional leave without pay and catastrophic leave in proportion to the base hours for his or her pay class designation. As used in this subparagraph, "year" means a period equal to 12 months of full-time equivalent service measured backward from the employee's pay progression date.

6. ~~[If the number of total hours of leave without pay or catastrophic leave of a nonexempt employee that exceed 240 hours is less than one day of full-time equivalent service for the pay class designation of the employee, an adjustment will not be made for those hours.]~~

~~7.]~~ **Pay Progression Date during leave without pay or on catastrophic leave:** If an employee is on leave without pay, or on catastrophic leave, on his or her pay progression date, any adjustment to his or her pay progression date will be made after he or she returns to work.

[Personnel Div., Rule III part § G, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 8-28-85; 5-27-86; 8-22-86; 4-19-88; 7-21-89; 10-18-89; 3-27-92; 7-6-92; 9-16-92; 11-16-95; 3-1-96; 10-27-97; 10-27-97; R043-99, 9-27-99; R147-01, 1-22-2002; A by Personnel Comm'n by R182-03, 1-27-2004; R022-05, 10-31-2005; R142-05, 12-29-2005)

Sec. 12. NAC 284.587 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will clarify that civil leave must be granted for a leave of absence for duty as an emergency communications technician as outlined in NRS 281.149. It will additionally clarify that only leave taken in response to a disaster or emergency that is declared to be a disaster or emergency by an appropriate authority, such as the Governor of the State of Nevada or the President of the United States, will qualify for civil leave.

NAC 284.587 Civil leave with pay for certain volunteers or when absence is necessary to meet disaster or emergency. (NRS 284.065, 284.155, 284.345)

Civil leave with pay must be granted to an employee who meets the requirements of **NRS 281.149** or NRS 284.357, and may also be granted by the appointing authority to an employee whose absence from the job is necessary to meet a **declared** disaster or emergency.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A by R146-01, 1-18-2002)

Sec. 13. NAC 284.588 is hereby repealed:

Explanation of Proposed Change: The repeal of this regulation is proposed by the Division of Human Resource Management due to the fact that NRS 284.358 mirrors this regulation making this regulation unnecessary.

NAC 284.588 Civil leave with reduced pay when performing certain service in time of war or emergency. (NRS 284.065, 284.155, 284.175, 284.345) ~~[An employee in the public service who performs active military service in the Armed Forces of the United States or any other category of persons designated by the President of the United States or the Governor of this State, including, without limitation, the Commissioned Corps of the Public Health Service, in time of war or emergency, is entitled to civil leave with reduced pay pursuant to this section for the period of such service. The pay that such an employee is entitled to receive pursuant to this section is the difference between the pay he or she would have otherwise received as a state employee and his or her pay for active military service. If his or her pay for active military service is greater than the pay he or she would have otherwise received as a state employee, the employee will not receive any additional pay pursuant to this section while he or she is in active military service.]~~

(Added to NAC by Dep't of Personnel by R146-01, 1-18-2002, eff. 2-4-2002)

REGULATION CHANGES PROPOSED FOR PERMANENT ADOPTION
LCB File #134-12

Section 1. NAC 284.204 is hereby amended to read as follows:

Explanation of Proposed Change: Proposed by the Division of Human Resource Management, the amendments will limit the adjustment of steps made to a supervisor's pay for equity purposes to no more than 2 steps above their subordinate. Other changes are recommended to increase clarity.

NAC 284.204 Adjustment of steps within same grade. (NRS 284.065, 284.155, 284.175)

1. *Adjustment of Steps within same grade justifications:* The Division of Human Resource Management may approve an adjustment of steps within the same grade to:

(a) Allow an appointing authority the flexibility to adjust the rate of pay for a position that will be filled by a person from a pool of eligible persons who are applying for the position on an open competitive basis in order to:

(1) Meet a difficult recruiting problem in which an effort to recruit a person for a position or class has failed to produce at least five eligible persons who are available to work, or the recruitment for the position or class has been deemed historically difficult. Such an adjustment of steps may be approved by the Division of Human Resource Management for a class for a period of 1 year.

(2) Employ a person whose education or experience is superior to those of another eligible person and who exceeds the minimum qualifications of the class. Any experience or education which is considered by the appointing authority pursuant to this subparagraph must be given a greater weight for those areas which are directly related to the position than general education and experience.

(b) Maintain an equitable relationship in the status of steps among the employees of the appointing authority if a disparity exists. An adjustment will not be granted pursuant to this section if the disparity in steps is:

(1) Among employees of different agencies; or

(2) A result of:

(I) The length of service of employees;

(II) An adjustment in pay which was attained in a former class; or

(III) An adjustment in pay for an employee who resides in a particular geographical area.

(c) Maintain an appropriate differential, ~~as determined by the appointing authority~~ *not to exceed 2 steps*, between the base rate of pay of a supervisor and the base rate of pay of an employee who is in the direct line of authority of the supervisor. An adjustment may be granted pursuant to this paragraph if, before the adjustment, the base rate of pay of the employee is the same or greater than the base rate of pay of the supervisor.

2. *Adjustment of Steps within same grade request form:* Before granting an adjustment of steps pursuant to this section, the appointing authority must submit a request on a form prescribed by the Division of Human Resource Management to the Division of Human Resource Management which:

(a) Specifies the qualifying conditions and justification for the request; and

(b) Certifies that the appointing authority has, where applicable:

(1) Considered the requirements for the pay required to meet the need described in subparagraph (1) of paragraph (a) of subsection 1;

(2) Considered the qualifications of any other eligible person who is available for work for the purposes of subparagraph (2) of paragraph (a) of subsection 1;

(3) Ensured that the adjustment is feasible on the basis of its fiscal effects;

(4) Ensured that the adjustment will not cause inequity between current employees which would require adjustments in the steps of those employees which are not feasible on the basis of the fiscal effects of such adjustments; and

(5) Prepared and maintained an accurate record of the consideration of the factors listed in this section.

3. *Adjustment of Steps within same grade effective date:* If an adjustment of steps pursuant to this section is approved by the Division of Human Resource Management, the effective date of such an adjustment is the date on which a request that complies with subsection 2 is received by the Division of Human Resource Management or the personnel office of the agency at which the employee who is receiving the adjustment is employed. If a request for an adjustment of steps is delayed because an administrative or clerical error prevented the delivery of the request, the effective date must be determined by the appointing authority and must be based on the date on which the request should reasonably have been submitted. A retroactive adjustment must not exceed 6 months from the date on which the Division of Human Resource Management receives the request.

4. *Adjustment of Steps within same grade revocation:* An adjustment of steps which is made pursuant to ~~{subparagraph (1) of paragraph (a) of}~~ subsection 1, *paragraph (a), subparagraph (1)* may be revoked when:

(a) The recruiting problem which caused the adjustment was due to the geographical location of the position; and

(b) The employee transfers to an area where a recruiting problem does not exist.

↪ The employee must be placed at the step he or she would have received if he or she had not received the adjustment.

(Added to NAC by Dep't of Personnel, eff. 8-14-90; A 7-1-94; R197-99, 1-26-2000; R147-01, 1-22-2002; R015-02, 5-2-2002)

**REGULATION CHANGES PROPOSED
FOR PERMANENT ADOPTION AND REPEAL
LCB FILE #139-12**

Section 1. NAC 284.498 is hereby amended to read as follows:

Explanation of Proposed Changes: The Division of Human Resource Management is recommending that training regarding work performance standards is completed within 6 months of appointment as a understanding of these are required in order to evaluate performance. To avoid unnecessary repetitiveness of training, the acceptable completion period for supervisory or managerial training accepted by the appointing was expanded to 3 years.

NAC 284.498 Training of supervisory and managerial employees. (NRS 284.065, 284.155, 284.343)

1. Except as otherwise provided in this section:

(a) Within 6 months after an agency initially appoints an employee to a supervisory position or managerial position, the employee shall attend a training class concerning *performance standards and* the evaluation of the performance of employees.

(b) Within 12 months after an agency appoints an employee to a supervisory position or managerial position, the employee shall attend at least one training class which has been approved by the Division of Human Resource Management in each of the following areas:

- (1) Equal employment opportunity;
- (2) Interviewing and hiring;
- (3) Alcohol and drug testing;
- (4) Progressive disciplinary procedures; and
- (5) Handling grievances.

2. Every 3 years, a supervisor or managerial employee shall ~~attend~~ *complete* training which is approved by the Division of Human Resource Management. Such training must include, without limitation, training classes in each of the topic areas described in subsection 1.

3. The appointing authority, at its discretion, may accept, in lieu of the training required by subsection 1 *or 2*, supervisory or managerial training classes which are approved by the Division of Human Resource Management and taken by the employee during the ~~12 months~~ *3 years* immediately preceding the employee's appointment.

4. In addition to the training otherwise required by this section, the Division of Human Resource Management or an appointing authority may require a supervisor or managerial employee to retake any part or all of the training required by this section, or to participate in any additional training or other classes deemed necessary by the Division of Human Resource Management or appointing authority.

5. As used in this section:

(a) "Managerial position" means a position which is held by an employee who:

- (1) Formally evaluates supervisors;
- (2) Is involved in the hiring and firing of subordinate staff;
- (3) Determines organizational structure within a component of the organization; and
- (4) Develops, monitors and implements policies to accomplish long-range goals.

(b) "Supervisory position" means a position which is held by an employee who:

- (1) Formally evaluates staff;

(2) Is involved in the hiring and firing of subordinate staff; and

(3) Establishes policies which affect the performance or behavior of subordinate staff.

[Personnel Div., Rule X part § F, eff. 1-18-82]—(NAC A by Dep't of Personnel, 10-26-84; 5-27-86; 10-18-89; 3-23-94; R197-99, 1-26-2000; A by Personnel Comm'n by R182-03, 1-27-2004; R057-10, 10-15-2010)

Sec. 2. NAC 284.494 is hereby repealed:

Explanation of Proposed Change: The Division of Human Resource Management proposes that this section be repealed. Training provided by DHRM is now requested through the NEATS system and DHRM does not control how training is funded. Whether or not release time is granted is covered in NAC 284.484.

NAC 284.494 Request for training. (NRS 284.065, 284.155, 284.343) [~~A request for training to be provided by the Division of Human Resource Management must be completed on a form provided by the Division of Human Resource Management and approved before the training is begun if:~~

~~—1. The cost involved will be charged to the budgetary category for training; or~~

~~—2. Release time from the employee's regular job will be granted for the training.]~~

[Personnel Div., Rule X § E, eff. 1-18-82]—(NAC A by Dep't of Personnel, 10-26-84; 5-27-86)

**REGULATION CHANGES PROPOSED FOR PERMANENT ADOPTION
LCB FILE# R136-12**

Section 1. NAC 284.576 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, makes changes to the administration of the catastrophic leave benefit. To assist agencies in meeting their business needs, the amendment in subsection 5 will remove the provision that deems an employee on approved leave without pay if insufficient donations are received for the period the employee has been granted catastrophic leave. The amendment in proposed subsection 6 will allow, in cases where a donating employee has left State service, for donating returned excess leave to the donor's former agency's general catastrophic leave bank. The amendment in proposed subsection 7 brings the administrative code into alignment with current reporting practice.

NAC 284.576 Catastrophic leave: Use and administration; appeal of denial. (NRS 284.065, 284.155, 284.3621, 284.3626)

1. An account for catastrophic leave may be established for an employee when he or she or a member of his or her immediate family experiences a catastrophe and the employee has used all of his or her accrued leave.

2. An employee who is affected by a catastrophe and has used or is about to use all of his or her leave may request, on the appropriate form, the transfer of leave to an account for catastrophic leave for his or her personal use after the balance of all of his or her leave has been used. Such a request must be accompanied by a statement from a physician on a form provided by the Committee on Catastrophic Leave created pursuant to NRS 284.3627 which substantiates the necessity of the leave.

3. When a member of the immediate family of an employee is affected by a catastrophe, the appointing authority of the employee may require substantiating evidence that the member of the immediate family requires the employee's attendance before approving the transfer of leave to an account for catastrophic leave for use by the employee. Such evidence may include a statement by an attending physician regarding the status of the catastrophe.

4. The appointing authority shall approve or deny a request for catastrophic leave, taking into consideration the nature of the catastrophe and the expected duration of the leave. The decision of the appointing authority may be appealed to the Committee on Catastrophic Leave pursuant to NRS 284.3629.

~~[5. An employee whose request for catastrophic leave for a specified period of time has been approved and who has not had any or enough donations transferred to his or her account for catastrophic leave established pursuant to subsection 1 shall be deemed to be on approved leave without pay for the same period of time that was approved for the catastrophic leave. If a subsequent donation of hours to the employee's account for catastrophic leave is received before the last day of the approved period of catastrophic leave, the donation must be applied retroactively to cover the beginning of the period of leave that was taken without pay.]~~

~~[6]~~ 5. An employee who wishes to donate hours to an account for catastrophic leave for use by another employee who has been approved to receive the donated hours shall notify his or her appointing authority on the appropriate form of his or her intent to donate the leave. The appointing authority of the employee donating the leave shall submit a copy of the form to the

appointing authority of the employee receiving the leave. The appointing authority of the recipient shall use the notice to effect a transfer of leave from the account of the donor to the account of the recipient when the recipient needs to use those hours. If more than one notice of intent to donate leave is received by the recipient's appointing authority on behalf of the recipient, the notices must be maintained in chronological order and used, one at a time as needed, according to the date in which they were received.

~~{7}~~ 6. A donor and his or her appointing authority must be notified on the appropriate form when the donated leave specifically designated for use by another employee has been used or if the amount of leave donated is in excess of the amount approved for use by the recipient. Excess leave must be restored to the account of the donor within 30 working days after the last day on which the recipient was eligible to receive catastrophic leave. *If a donor has separated from State service prior to the restoration of the excess leave, the excess leave shall be donated to the account for catastrophic leave of the appointing authority of the donor when the donation of leave was made.*

~~{8}~~7. The appointing authority shall provide the following information on a calendar year basis or as requested by the Director:

(a) Each employee under its authority, identified by a number assigned in accordance with subsection 9, donating or using catastrophic leave, his or her grade and rate of pay and the number of hours and dollar value of the leave donated, excluding any excess leave restored to the account of a donor, pursuant to subsection 7, or used by the employee;

(b) The period and nature of the disability for each employee using catastrophic leave; and

(c) ~~{A comparison of the average dollar value of the accounts for catastrophic leave based on the average rate of pay of the donors and the average dollar value of the leave taken by the recipients.}~~

~~{9}~~8. The appointing authority shall assign numbers to employees for the purposes of subsection 8 in a sequential order and in such a manner that ensures the confidentiality of the identity of those employees.

~~{10}~~9. Hours donated to an account for catastrophic leave must be donated in increments of 8 hours.

~~{11}~~10. As used in this section, "immediate family" has the meaning ascribed to it in NAC 284.562.

(Added to NAC by Dep't of Personnel, eff. 10-18-89; A 8-14-90; 3-23-94; R146-01, 1-18-2002; A by Personnel Comm'n by R145-05, 12-29-2005)

**REGULATION CHANGES PROPOSED FOR PERMANENT ADOPTION
LCB FILE# R-137-12**

Section 1. NAC 284.718 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management proposes additional language that will designate information gathered during an organizational climate study that directly reflects on a specific employee's performance as confidential. This is consistent with other provisions of the regulation.

NAC 284.718 Confidential records. (NRS 284.065, 284.155, 284.355, 284.407)

1. The following types of information, which are maintained by the Division of Human Resource Management or the personnel office of an agency, are confidential:

(a) Information relating to salaries paid in other than governmental employment which is furnished to the Division of Human Resource Management on the condition that the source remain confidential;

(b) Any document which is used by the Division of Human Resource Management or an agency in negotiations with employees or their representatives which has not been made public by mutual agreement;

(c) The rating and remarks concerning an applicant by the individual members of the board or assessors of a center for assessment;

(d) Any document which is used by the Division of Human Resource Management or an agency in the process of interviewing an applicant, including, without limitation, a document containing interview questions, evaluation tools used for rating applicants and any notes concerning an applicant that were taken by a person as part of the process of rating an applicant;

(e) Materials used in examinations, including suggested answers for oral examinations;

(f) Records and files maintained by an employee assistance program offered by the State of Nevada;

(g) Reports by employers, appointing authorities or law enforcement officials concerning the hiring, promotion or background of applicants, eligible persons or employees;

(h) The class title and agency of an employee whose name is excluded from the official roster, as provided in subsection 3 of NAC 284.714, when an inquiry concerning the employee is received;

(i) Any information contained on a person's application or relating to his or her status as an eligible person; and

(j) Information in the file or record of employment of a current or former employee which relates to the employee's:

(1) Performance;

(2) Conduct, including any disciplinary actions taken against the employee;

(3) Usage or balance of his or her annual leave and sick leave;

(4) Race, ethnic identity or affiliation, sex, genetic information, disability or date of birth;

(5) Home telephone number; or

(6) Social security number.

2. If the employee has requested that his or her personal mailing address be listed as confidential, the employee's file must be so designated and list his or her business address.

3. The name of any beneficiary of an employee contained in the payroll document must not be released to anyone unless:

(a) The employee dies; or

(b) The employee signs a release.

4. Any records in the possession of the Committee on Catastrophic Leave created pursuant to NRS 284.3627 that reveal the health, medical condition or disability of a current or former employee or a member of his or her immediate family are confidential.

5. Any notes, records, recordings or findings of an investigation conducted by the Division of Human Resource Management relating to sexual harassment or discrimination, or both, and any findings of such an investigation that are provided to an appointing authority are confidential.

6. Any results from an organizational climate study that directly reflect on an individual's performance are confidential.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 7-21-89; 7-6-92; 11-12-93; R058-01, 9-6-2001; A by Personnel Comm'n by R068-03, 10-30-2003; R182-03, 1-27-2004; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009; R055-10, 6-30-2010)

Sec. 2. NAC 284.726 is hereby amended to read as follows:

Explanation of Proposed Change: The Division of Human Resource Management proposes additional language that will establish which individuals will have access to information gathered as part of an organizational climate study.

NAC 284.726 Access to confidential records. (NRS 284.065, 284.155, 284.335, 284.407)

1. Except as otherwise provided in this subsection, access to materials for an examination and information relating to an applicant or eligible person which are relevant to an appointing authority's decision to hire that person is limited to the appointing authority or his or her designated representative. If the name of the applicant is not disclosed and the information is used for the purposes of subparagraph 2 of paragraph (a) of subsection 1 of NAC 284.204, information relating to the education and experience of an applicant may be made available to any affected applicant, employee or the designated representative of either.

2. Except as otherwise provided in subsections 3 and 4, access to an employee's file of employment containing any of the items listed in paragraphs (g) to (j), inclusive, of subsection 1 of NAC 284.718 is limited to:

(a) The employee.

(b) The employee's representative when a signed authorization from the employee is presented or is in his or her employment file.

(c) The appointing authority or a designated representative of the agency by which the employee is employed.

(d) The Administrator or a designated representative.

(e) An appointing authority, or a designated representative, who is considering the employee for employment in the agency.

(f) Persons who are authorized pursuant to any state or federal law or an order of a court.

(g) The State Board of Examiners if the Board is considering a claim against the State of Nevada filed pursuant to chapter 41 of NRS which involves the employee.

(h) Persons who are involved in processing records for the transaction of business within and between state agencies.

(i) Persons who are involved in processing records for the transaction of business that is authorized by the employee.

3. Information concerning the health, medical condition or disability of an employee or a member of his or her immediate family must be kept separate from the employee's file in a locked cabinet. Except as otherwise provided in subsection 7, access to such information is limited to the employee, his or her current supervisor, and the appointing authority or a designated representative.

4. Except as otherwise provided in subsection 7, access to information concerning the employee's usage or balance of annual leave and sick leave is limited to the employee, the employee's immediate supervisor and the employee's appointing authority or the designated representative of the appointing authority.

5. Except as otherwise provided by specific statute, records maintained by an employee assistance program offered by the State of Nevada must not be released without written permission signed by the employee to whom the records pertain.

6. Upon request, the Division of Human Resource Management will provide the personal mailing address of any employee on file with the Division of Human Resource Management to the State Controller's Office and the Internal Revenue Service.

7. The Administrator or the appointing authority, or a designated representative, shall authorize the release of any confidential records under his or her control which are requested by the Employee-Management Committee, a hearings officer, the Commission, the Committee on Catastrophic Leave created pursuant to NRS 284.3627, the Nevada Equal Rights Commission or a court.

8. Access to information gathered during an organizational climate study that directly reflects on an individual's performance will be limited to:

(a) The employee who is the subject of the comment.

(b) The Administrator or a designated representative.

(c) The appointing authority or a designated representative of the agency by which the employee is employed.

(d) Persons who are authorized pursuant to any state or federal law or an order of a court.

(e) The Governor or a designated representative.

[Personnel Div., Rule XVI part § C, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-28-85; 9-30-88; 7-21-89; 8-14-90; 7-6-92; 3-23-94; R042-99, 9-27-99; R082-00, 8-2-2000; R058-01, 9-6-2001; R147-01, 1-22-2002; A by Personnel Comm'n by R068-03, 10-30-2003; R024-05, 10-31-2005; R141-07, 1-30-2008; R065-09, 10-27-2009, R059-10, 10-15-2010)

**REGULATION CHANGES PROPOSED FOR PERMANENT ADOPTION
LCB FILE# R-138-12**

Section 1. NAC 284.884 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Risk Management, will raise the maximum allowable concentration of alcohol in the blood or breath of an employee. This will bring the State's standard into alignment with the federal standard established by the United States Department of Transportation, Federal Motor Carrier Safety Administration, preventing confusion of the State's contracted vendors that can lead to violations of the confirmatory provision in subsection 2.

NAC 284.884 Maximum allowable concentrations of alcohol in blood or breath of employee; confirmation of positive result on screening test of breath. (NRS 284.065, 284.155, 284.407)

1. An employee must not have a concentration of alcohol in his or her blood or breath greater than ~~0.04~~ *.02* gram by weight of alcohol per 100 milliliters of his or her blood or per 210 liters of his or her breath while on duty. Disciplinary action may be taken by the appointing authority in accordance with the provisions of NAC 284.638 to 284.6563, inclusive, if a screening test indicates that the concentration of alcohol in the blood or breath of the employee is greater than ~~0.04~~ *.02* gram by weight of alcohol per 100 milliliters of his or her blood or per 210 liters of his or her breath while on duty.

2. A positive result on a screening test of a person's breath must be confirmed by a second screening test. The second screening test must be conducted immediately after receipt of the positive result of the first screening test.

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A by R058-01, 9-6-2001)

Sec. 2. NAC 284.893 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will clarify that the requirements outlined in the regulation must be met prior to an employee's return to work.

NAC 284.893 Return to work of employee who tests positive for alcohol or controlled substance while on duty. (NRS 284.065, 284.155, 284.407)

1. The appointing authority of an employee who tests positive for the presence of alcohol or a controlled substance while on duty and who, as a result, is subject to disciplinary action pursuant to NAC 284.646 or 284.650 but is not terminated shall require, *before the employee returns to work*, the employee to:

(a) Provide to the appointing authority documentation from a counselor who is licensed or certified pursuant to chapter 641C of NRS or another health care provider who has training or

experience in substance abuse counseling, which verifies that the employee is able to return to duty and perform the essential functions of his or her job;

(b) Submit to a screening test.

2. The employee is responsible for the cost of any:

(a) Counseling services the employee receives to verify that the employee is able to return to duty and perform the essential functions of his or her job and any documentation of those services; and

(b) Screening test,

↪ required pursuant to subsection 1.

3. An employee who fails or refuses to submit to a screening test required pursuant to subsection 1 is subject to disciplinary action, including, without limitation, termination, at the discretion of the employee's appointing authority.

(Added to NAC by Dep't of Personnel, eff. 10-27-2009; R195-09, 4-20-2010)

**REGULATION CHANGES PROPOSED
FOR PERMANENT ADOPTION AND REPEAL
LCB FILE# R135-12**

Section 1. NAC 284.52375 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will clarify that that a physician’s assistant is a “provider of health care” and bring this regulation into alignment with the Family and Medical Leave Act federal regulations. This clarification will impact who an agency will accept medical documentation from in regards to an employee’s or an employee’s immediate family member’s medical condition. Additionally, the amendment will update the contact information for the First Church of Christ, Scientist.

NAC 284.52375 “Provider of health care” defined. (NRS 284.065, 284.155, 284.345)
“Provider of health care” means:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state or country in which the doctor practices.
2. A podiatric physician, a dentist, a clinical psychologist, an optometrist or a chiropractor who is authorized to practice as a podiatric physician, a dentist, a clinical psychologist, an optometrist or a chiropractor by the state or country in which he or she practices and who is performing within the scope of his or her practice as defined by the law of that state or country.
3. A nurse practitioner, nurse midwife, *physician assistant* or clinical social worker who is authorized to practice as a nurse practitioner, nurse midwife, *physician assistant* or clinical social worker by the state or country in which he or she practices and who is performing within the scope of his or her practice as defined by the law of that state or country.
4. A practitioner in Christian Science who is listed with The First Church of Christ, Scientist, in Boston, Massachusetts. The list of practitioners may be obtained from the Christian Science Committee on Publication for Nevada, ~~[P.O. Box 92752 Henderson]~~ *2994 Talbot St., Las Vegas, Nevada [89009, 702.566.1097, at a cost of \$3.50.] 89169, 702.807.8026, nevada@compub.org or on the online directory located at www.spirituality.com.*
5. A provider of health care, as defined in NRS 629.031, acting within the scope of his or her license whose certification of the existence of a serious health condition is acceptable to substantiate a claim for benefits under the Public Employees’ Benefits Program.
(Added to NAC by Dep’t of Personnel, eff. 3-23-94; A 11-16-95; R082-00, 8-2-2000)

Sec. 2. NAC 284.566 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, removes the requirement that second medical opinions be obtained on a Family and Medical Leave Act (FMLA) certification form. The Americans with Disabilities Act (ADA) requires that medical information requested of an employee be consistent with business necessity. The information requested on a FMLA medical certification may not always be relevant to an employee’s need for sick leave and may lead to liability under the ADA. Additionally, a FMLA certification form does not always address the questions that need to be

addressed in a sick leave second opinion. However, this would not eliminate the option of using a FMLA medical certification form, when appropriate.

Removing the requirement that a second opinion be provided by a health care provider that is not regularly used by the State will allow agencies to use providers with experience in occupational medicine for second opinions, not related to FMLA protected leave, even though they regularly provide services to the State. However, a provider of health care who provides a third opinion to settle the differences between a first and second opinion will still need to be approved jointly by the employee and the agency.

NAC 284.566 Sick leave: Approval by appointing authority; medical certification. (NRS 284.065, 284.155, 284.345, 284.355)

1. An appointing authority may approve sick leave only after having ascertained that the absence was for an authorized reason. For absences in excess of 3 consecutive working days, or for cases of suspected abuse, the appointing authority may require that the employee submit substantiating evidence, which may include, but is not limited to, a certificate from a provider of health care of the need for the absence.

2. For absences for which medical certification is required, the appointing authority may require the employee to provide a second medical opinion. The provider of health care who provides the second opinion of an employee's health condition shall certify as to the ability of the employee to perform his or her duties and responsibilities and when he or she believes the employee can return to work. The provider of health care who provides the second opinion of an immediate family member's health condition shall certify as to the health condition of the family member, the probable duration of the health condition and incapacity, and the need for the employee's assistance or presence. A copy of each opinion must be provided to the employee, the patient and the appointing authority, as appropriate. If the first and second opinions differ, the appointing authority may require the employee to provide a third medical opinion.

3. If a second medical opinion is required, an employee shall obtain the opinion ~~[, on the form which is used for certification under the Family and Medical Leave Act,]~~ from a provider of health care designated by the appointing authority. ~~[The designated provider of health care must not be regularly used by the State unless the employee or a member of his or her immediate family resides or works in an area where such a provider of health care is not available and must not be employed by the State.]~~ The agency shall pay for the consultation.

4. If a third medical opinion is required, an employee shall obtain the opinion ~~[, on the form which is used for certification under the Family and Medical Leave Act,]~~ from a provider of health care approved jointly by the employee and the appointing authority. If necessary, a list of three providers of health care from which the selection must be made may be requested from the medical society of the county in which the employee or, if applicable, the member of his or her immediate family, resides or works. If such a list is used, the selection of the third provider of health care must be made by the employee and appointing authority alternately striking one name off the list. The third opinion is final and binding. The agency shall pay for the consultation.

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

6. An appointing authority may require a statement from a provider of health care that an employee is able to resume work if the requirement is related to the employee's ability to perform one or more of the essential functions of his or her position.

[Personnel Div., Rule VII § D subsec. 8, eff. 8-11-73; A and renumbered as subsec. 9, 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 3-23-94; 11-16-95; R082-00, 8-2-2000)

Sec. 3. NAC 284.5811 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will bring the regulation into alignment with the Family and Medical Leave Act (FMLA) federal regulations. The FMLA regulations prohibit requiring an employee who is receiving payment from a plan covering temporary disability (e.g., short term disability insurance) from being required to use paid leave concurrently with FMLA protected leave because the leave is not unpaid.

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 servicemember is limited to a total of 26 weeks of such leave during a single 12-month period.

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

4. Except as otherwise provided in ~~subsection~~ *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 he or she may use 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 he or she 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 takes leave pursuant to the Family and Medical Leave Act, the employee may elect to use paid leave or leave without pay for the portion of time that his or her leave is covered by payment(s) from a plan covering temporary disabilities.

~~6~~7. An appointing authority may require an employee to provide medical or other appropriate documentation to support his or her need for leave pursuant to the Family and Medical Leave Act.

(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)

Sec. 4. NAC 284.440 is hereby repealed:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, repeals NAC 284.440. As NAC 284.120 adopts the Americans with Disabilities Act definition for “essential functions of a position” by reference from 29 C.F.R. §1630.2, NAC 284.440 is redundant as this information is adopted by reference. Specifically, the federal regulation defines essential functions as “the fundamental job duties of the employment position the individual with a disability holds or desires” indicating that essential functions are specific to an employment position. Additionally, the federal regulation includes the criteria for determining what functions of a position are essential.

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

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

(Added to NAC by Dep't of Personnel, eff. 7-6-92)—(Substituted in revision for NAC 284.356)