

**NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED PERMANENT REGULATIONS**

The Division of Human Resource Management, 100 N. Stewart Street, Carson City, Nevada, telephone number (775) 684-0148, is proposing the amendments and repeal of regulations pertaining to Chapter 284 of Nevada Administrative Code for permanent adoption. A workshop has been set for 9:00 a.m. on Wednesday, January 27, 2016, at the Gaming Control Board, 1919 College Parkway, Carson City, Nevada and by video conference at the Grant Sawyer Building, Suite 2450, 555 E. Washington Avenue, Las Vegas, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following topics that may be addressed in the proposed regulations:

<u>NAC #</u>	<u>Regulation Leadline</u>
NEW	“Professional employee” defined.
284.5405	Annual leave: Credit upon reinstatement, rehiring, reemployment or transfer.
284.551	Sick leave: Credit upon rehiring, reemployment or transfer.
284.204	Adjustment of steps within same grade.
284.581	Adoption by reference of federal law and regulations.
284.52315	“Child” defined.
NEW	Use of medical marijuana.
284.650	Causes for disciplinary action.

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the Division of Human Resource Management at 100 N. Stewart Street, Suite 200, Carson City, Nevada, telephone number (775) 684-0148, or 555 E. Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-2663. A reasonable fee for copying may be charged. The agency’s small business impact statement is attached.

This Notice of Workshop to Solicit Comments on Proposed Permanent Regulations has been sent to all persons on the agency’s mailing list for administrative regulations and posted at the following locations:

CARSON CITY

Blasdel Building, 209 E. Musser Street
NV State Library and Archives, 100 N. Stewart Street
Legislative Counsel Bureau (LCB), 401 S. Carson Street
LCB website: www.leg.state.nv.us
Division of Human Resource Management
website: www.hr.nv.gov

LAS VEGAS

Grant Sawyer State Office Building,
555 E. Washington Avenue

Nevada Public Notice
website: www.notice.nv.gov

In addition, this Notice of Workshop to Solicit Comments on Proposed Permanent Regulations has been sent to:

ALL STATE AGENCIES
ALL NEVADA COUNTY PUBLIC LIBRARIES

NOTE: We are pleased to make reasonable accommodations for individuals with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Division of Human Resource Management, in writing, at 100 N. Stewart Street, Suite 200, Carson City, Nevada 89701-4204 or call Carrie Lee at (775) 684-0135, no later than five working days before the meeting.

Explanation of Proposed Change: The following amendment, proposed by the Division of Human Resource Management, defines the term “professional employee” as used in the proposed amendment to NAC 284.5405 to mean administrative staff of the university system that are not in the classified or unclassified service.

NEW: “Professional employee” defined.

“Professional employee” means an employee of the Nevada System of Higher Education who performs responsibilities related to the formation and implementation of managerial policies or general operations and are governed by policies established and adopted by the Nevada Board of Regents. The term does not include academic faculty.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, clarifies that if a professional employee of the Nevada System of Higher Education (NSHE) is appointed without a break in service to the classified or unclassified service, his or her annual leave will be recomputed to reflect the amount that would have accrued to him or her as a classified or unclassified employee less any annual leave which he or she used in his or her professional position at NSHE and the remaining balance will be transferred to the new appointment.

NAC 284.5405 Annual leave: Credit upon reinstatement, rehiring, reemployment or transfer. (NRS 284.065, 284.155, 284.345, 284.350)

1. Except as otherwise provided in this section, any employee who returns to state service following a separation is eligible to accrue annual leave based on his or her total service with the State after he or she has completed 3 years of continuous service. The employee must requalify after each break in service.

2. An employee who is rehired within 1 year after being laid off accrues annual leave at a rate based on his or her total state service. He or she may use the annual leave immediately upon accruing it if he or she has completed a total of 6 months of employment.

3. An employee with a permanent disability arising from a work-related injury or occupational disease who is reemployed following a separation from state service within 1 year after the date on which he or she sustained the permanent disability as determined pursuant to NAC 284.6013 accrues annual leave at a rate based on his or her total state service. He or she may use the annual leave immediately upon accruing it if he or she has completed a total of 6 months of employment.

4. An employee who is rehired within 1 year after being laid off is entitled to buy back the balance of the annual leave for which he or she received payment in a lump sum on the date of the layoff. The rate of pay at which he or she is rehired applies to the buying back of annual leave.

5. An employee with a permanent disability arising from a work-related injury or occupational disease who is reemployed following a separation from state service within 1 year after the date on which he or she sustained the permanent disability as determined pursuant to NAC 284.6013 is entitled to buy back the balance of the annual leave for which he or she received payment in a lump sum at the time of separation. The rate of pay at which he or she is reemployed applies to the buying back of annual leave.

6. If an employee who was laid off before completing 6 months of employment is rehired within 1 year after the layoff, the amount of the unpaid annual leave he or she had earned before the layoff must be restored.

7. If a person eligible for military reemployment is reemployed, he or she accrues annual leave at the rate which he or she would have earned if he or she had not left state service.

8. If an employee is appointed without a break in service from a position under one appointing authority to a position under another appointing authority, the balance of the employee's annual leave is charged to the agency to which he or she is appointed.

9. If a nonclassified employee, an unclassified *or professional* employee of the Nevada System of Higher Education, or an employee included in the State Personnel System pursuant to NRS 284.022 is appointed without a break in service to the classified or unclassified service, his or her annual leave must be recomputed to reflect the amount that would have accrued to him or her as a classified or unclassified employee less any annual leave which he or she used during his or her nonclassified, Nevada System of Higher Education or governmental agency employment, and the remaining balance will be transferred to the new appointment. The amount of annual leave transferred by the employee pursuant to this subsection may not exceed the maximum amount which is permitted by the classified or unclassified rate of accrual as set forth in NRS 284.350 and NAC 284.538. The agency to which the employee is appointed is not responsible for payment of any annual leave in excess of the amount which is transferable. It is the responsibility of the employee who is transferring annual leave to seek payment of any excess amount of annual leave remaining to his or her credit from his or her former employer. If the amount of annual leave which is recomputed pursuant to this subsection results in a negative amount, the employee will begin the new appointment in the classified or unclassified service without any hours of annual leave.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 8-28-85; 4-19-88; 3-27-92; 11-12-93; 3-1-96; R031-98, 4-17-98; A by Personnel Comm'n by R096-03, 10-30-2003; R022-05, 10-31-2005; R142-05 & R145-05, 12-29-2005)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, clarifies that if a professional employee of the Nevada System of Higher Education (NSHE) is appointed without a break in service to the classified or unclassified service, his or her sick leave will be recomputed to reflect the amount that would have accrued to him or her as a classified or unclassified employee less any sick leave which he or she used in his or her professional position at NSHE and the remaining balance will be transferred to the new appointment.

NAC 284.551 Sick leave: Credit upon rehiring, reemployment or transfer. (NRS 284.065, 284.155, 284.345, 284.355)

1. An employee who is rehired within 1 year after he or she is laid off is entitled to the restoration of the accrued and unused sick leave remaining in his or her account at the time of the layoff.

2. The balance of a seasonal employee's sick leave must be restored to him or her for each subsequent term of appointment if the employee is rehired within 1 year after the date of his or her last seasonal separation.

3. An employee who is reemployed within 1 year after sustaining a permanent disability arising from a work-related injury or occupational disease as determined pursuant to NAC 284.6013 is entitled to restoration of the accrued and unused sick leave that remained in his or her account at the time of separation.

4. If an employee is appointed without a break in service from a position under one appointing authority to a position under another appointing authority, the balance of his or her sick leave is charged to the agency to which he or she is appointed.

5. If a nonclassified employee, an unclassified *or professional* employee of the Nevada System of Higher Education , or an employee covered by NRS 284.022 is appointed to the classified or unclassified service without a break in service, his or her sick leave must be recomputed to reflect the amount that would have accrued to him or her as a classified or unclassified employee less any sick leave which he or she used during his or her nonclassified, Nevada System of Higher Education or governmental agency employment and the remaining balance will be transferred to the new appointment. If the amount of sick leave which is recomputed pursuant to this subsection results in a negative amount, the employee will begin the new appointment in the classified or unclassified service without any hours of sick leave.

(Added to NAC by Dep't of Personnel, eff. 10-26-84; A 4-19-88; 3-1-96; A by Personnel Comm'n by R142-05 & R145-05, 12-29-2005)

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, modifies when an accelerated rate may be given, clarifies that an adjustment for equity is among positions within departments/agencies and not across State service, removes the ability to create an inequity unless approval is obtained from the Office of the Governor, and makes revocation of the accelerated rate a requirement when criteria that caused the adjustment no longer exists or when the employee moves to a position in an area where a recruiting problem does not exist.

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

1. The Division of Human Resource Management may approve an adjustment of steps within the same grade *for a position that has been deemed critical to agency operations* 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.~~ *Fill a position for which the recruitment for the position or class has been deemed historically difficult; or*

(3) *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.*

↳ This subsection applies only to an initial appointment in State service; does not apply if a selective criteria was used in the recruitment; and does not apply if the adjustment will cause an inequity between current employees which would require the adjustments to the steps of those employees unless, upon submitting written justification, the appointing authority obtains the written concurrence of the Office of the Governor.

(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 *Departments or* 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, not to exceed two 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. *An adjustment will not be granted pursuant to this section if the disparity in steps is among employees of different Departments or agencies.*

2. 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 *with a hiring matrix approved by the Division of Human Resource Management*; 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) *or (2)* 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;]~~ *unless concurrence has been received from the Office of the Governor*; and

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

3. 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. An adjustment of steps which is made pursuant to ~~[subparagraph (1) of paragraph (a) of subsection 1 may]~~ *this section must* be revoked when:

(a) The ~~[recruiting problem]~~ *criteria* which caused the adjustment ~~[was due to the geographical location of the position;]~~ *no longer exists*; ~~[and]~~ *or*

(b) The employee ~~[transfers to]~~ *moves to a position in* 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; A by Personnel Comm'n by R134-12, 10-4-2013)

Explanation of Proposed Change: The following amendment, proposed by the Division of Human Resource Management, assigns the definition of “child” the same meaning as “son or daughter” as used in the Family and Medical Leave Act of 1993. The Division intends to include the federal definition of “son or daughter” as an informational note, shown below, in the *Rules for State Personnel Administration* publication.

Proposed Informational Note: 29 CFR 825.122(d) defines “son or daughter” as follows: “...son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that FMLA leave is to commence.”

NAC 284.581 Adoption by reference of federal law and regulations. (NRS 284.065, 284.155, 284.345)

1. For the purposes of NAC 284.523 to 284.598, inclusive, the Division of Human Resource Management hereby adopts by reference:

(a) The Family and Medical Leave Act of 1993 (Public Law 103-3), as amended.

(1) “Child” has the same definition as “son or daughter” as used in the Family and Medical Leave Act of 1993, CFR 825.122(d).

(b) The Fair Labor Standards Act of 1938, as amended, and 29 C.F.R. Part 541.

2. A copy of the Family and Medical Leave Act, the Fair Labor Standards Act or 29 C.F.R. Part 541 may be obtained at no charge from the United States Government, Wage and Hour Division, P.O. Box 3136, Reno, Nevada 89505-3136, telephone (775) 784-5200, or from the United States Government, Wage and Hour Division, 1050 Flamingo Road, Suite 321, Las Vegas, Nevada 89119, telephone (702) 699-5581.

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95; R082-00, 8-2-2000)

Explanation of Proposed Change: The Division of Human Resource Management recommends the repeal of the current definition of “child.” In place of this definition, an amendment to NAC 284.581 is proposed, which will reference the definition of “son or daughter” as used in the federal regulations for the purposes of the Family and Medical Leave Act, to define “child” for the purposes of NAC 284.523 to 284.598, inclusive.

TEXT OF REPEALED SECTION

NAC 284.52315 “Child” defined. (NRS 284.065, 284.155, 284.345) “Child” means a person who is:

1. A biological, adopted or foster child, a stepchild, a legal ward or the child of a person with the daily responsibility of caring for and financially supporting that child; and

2. Except as otherwise provided in NAC 284.5235 and 284.562, under 18 years of age or is 18 years of age or older and incapable of caring for himself or herself because of a mental or physical disability.

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A by Personnel Comm'n by R096-03, 10-30-2003)

Explanation of Proposed Change: The following regulations are proposed by the Division of Human Resource Management based upon S.B. 447 of the 2015 Legislative Session. Two versions are offered but the final regulation language may differ based upon the feedback provided by stakeholders.

Version #1

NEW: Use of medical marijuana.

For the purposes of NRS and NAC 284:

1. Peace officers as defined by NRS 289.010 and employees who occupy positions that require pre-employment testing or random testing for controlled substances, are prohibited from engaging in the medical use of marijuana and are subject to disciplinary action by the appointing authority.

2. Except as provided in subsection 1, an employee who holds a valid registry identification card to engage in the medical use of marijuana pursuant to chapter 453A of NRS and tests positive for medical marijuana due to a pre-employment screening test for a position requiring pre-employment testing for controlled substances, will be removed from all lists requiring pre-employment testing in accordance with subsection 1 of NAC 284.894 but shall not be disciplined for being under the influence of medical marijuana. Such an employee will not be required to pass a return to work drug test as required by NAC 284.893 but will be referred to an employee assistance program.

Version #2

NEW: Use of medical marijuana.

For the purposes of NRS and NAC 284:

1. Peace officers as defined by NRS 289.010 and employees who occupy positions that require pre-employment testing or random testing for controlled substances, are prohibited from engaging in the medical use of marijuana and are subject to disciplinary action by the appointing authority.

2. Except as provided in subsection 1, an employee who holds a valid registry identification card to engage in the medical use of marijuana pursuant to chapter 453A of NRS and tests positive for medical marijuana:

(a) Due to a workplace injury, accident or automobile crash and may be disciplined in accordance with NAC 284.650;

(b) Due to reasonable suspicion may be disciplined for engaging in acts or behavior as provided for in NAC 284.650;

(c) Due to a pre-employment screening test for a position requiring pre-employment testing for controlled substances, will be removed from all lists requiring pre-employment testing in accordance with subsection 1 of NAC 284.894 but shall not be disciplined for being under the influence of medical marijuana.

↳ Such an employee will not be required to pass a return to work drug test as required by NAC 284.893 but will be referred to an employee assistance program.

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, provides clarification related to the use of medical marijuana by State of Nevada employees pursuant to NRS 453A.800.

Based upon subsection 2 of NRS 453A.800, possessing or using marijuana while on the premises of the workplace or engaging in State business will not be allowed.

NAC 284.650 Causes for disciplinary action. (NRS 284.065, 284.155, 284.383)

Appropriate disciplinary or corrective action may be taken for any of the following causes:

1. Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.
2. Disgraceful personal conduct which impairs the performance of a job or causes discredit to the agency.
3. The employee of any institution administering a security program, in the considered judgment of the appointing authority, violates or endangers the security of the institution.
4. Discourteous treatment of the public or fellow employees while on duty.
5. Incompetence or inefficiency.
6. Insubordination or willful disobedience.
7. Inexcusable neglect of duty.
8. Fraud in securing appointment.
9. Prohibited political activity.
10. Dishonesty.
11. Abuse, damage to or waste of public equipment, property or supplies because of inexcusable negligence or willful acts.
12. Drug or alcohol abuse as described in NRS 284.4062 and NAC 284.884.
13. Conviction of any criminal act involving moral turpitude.
14. Being under the influence of intoxicants, a controlled substance without a medical doctor's prescription or any other illegally used substances while on duty.

15. The possession or use of marijuana on the premises of the workplace or on state business.

- ~~[15.]~~ 16. Unauthorized absence from duty or abuse of leave privileges.
- ~~[16.]~~ 17. Violation of any rule of the Commission.
- ~~[17.]~~ 18. Falsification of any records.
- ~~[18.]~~ 19. Misrepresentation of official capacity or authority.
- ~~[19.]~~ 20. Violation of any safety rule adopted or enforced by the employee's appointing authority.
- ~~[20.]~~ 21. Carrying, while on the premises of the workplace, any firearm which is not required for the performance of the employee's current job duties or authorized by his or her appointing authority.
- ~~[21.]~~ 22. Any act of violence which arises out of or in the course of the performance of the employee's duties, including, without limitation, stalking, conduct that is threatening or intimidating, assault or battery.
- ~~[22.]~~ 23. Failure to participate in any investigation of alleged discrimination, including, without limitation, an investigation concerning sexual harassment.
- ~~[23.]~~ 24. Failure to participate in an administrative investigation authorized by the employee's appointing authority.

[Personnel Div., Rule XII § D, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 7-22-87; 12-26-91; 7-1-94; 11-16-95; R031-98, 4-17-98; A by Personnel Comm'n by R065-98, 7-24-98; R147-06, 12-7-2006)



STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
100 N. Stewart Street, Suite 200 | Carson City, Nevada 89701
Phone: (775) 684-0150 | www.hr.nv.gov | Fax: (775) 684-0124

REGULATIONS WORKSHOP

DATE: January 27, 2016

TIME: 9:00 a.m.

PLACE: Gaming Control Board
1919 College Parkway
Carson City, Nevada

Grant Sawyer Building
Suite 2450
555 E. Washington Avenue
Las Vegas, Nevada

The sites will be connected by videoconference. The public is invited to attend at either location.

AGENDA

1. Call To Order
2. Review of proposed changes to NAC 284:

<u>NAC#</u>	<u>Regulation Leadline</u>
NEW	“Professional employee” defined.
284.5405	Annual leave: Credit upon reinstatement, rehiring, reemployment or transfer.
284.551	Sick leave: Credit upon rehiring, reemployment or transfer.
284.204	Adjustment of steps within same grade.
284.581	Adoption by reference of federal law and regulations.
284.52315	“Child” defined.
NEW	Use of medical marijuana.

3. Adjournment

This workshop will be conducted in accordance with the Open Meeting Law (NRS 241.020).

NOTE: Comments by the general public will be taken following a description of the proposed regulation changes. Public comment may be limited to 15 minutes per person at the discretion of the staff member conducting the workshop.

If anyone has questions or wishes to discuss in further detail, the items scheduled for this regulations workshop, please contact Shelley Blotter at (775) 684-0105.

Notices have been posted on the Division of Human Resource Management's website at www.hr.nv.gov and at the following locations:

CARSON CITY

Blasdel Building, 209 E. Musser Street
NV State Library and Archives, 100 N. Stewart Street
Legislative Counsel Bureau (LCB), 401 S. Carson
Street

LCB website: www.leg.state.nv.us

Nevada Public Notice

website: www.notice.nv.gov

LAS VEGAS

Grant Sawyer State Office Building,
555 E. Washington Avenue

We are pleased to make reasonable accommodations for individuals with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Division of Human Resource Management, in writing, at 100 N. Stewart Street, Suite 200, Carson City, Nevada 89701-4204 or call Carrie Lee at (775) 684-0135, no later than five working days before the meeting.

Brian Sandoval
Governor



Patrick Cates
Director

Lee-Ann Easton
Administrator

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management
100 N. Stewart Street, Suite 200 | Carson City, Nevada 89701
Phone: (775) 684-0150 | www.hr.nv.gov | Fax: (775) 684-0124

January 4, 2016

Regulation Small Business Impact Statement

The Division of Human Resource Management has determined that the adoption of this proposed regulation does not impose a significant economic burden on small businesses, nor will it restrict the formation, operation or expansion of small business.

These regulations only impact the classified service of Executive Branch departments and the Nevada System of Higher Education.

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 is accurate.


Lee-Ann Easton, Administrator


Date