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DEPARTMENT OF ADMINISTRATION
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MEMORANDUM
HR# 37-24

August 27, 2024

TO: DHRM Listserv Recipients

FROM: Bachera Washington, Administrator *Bachera Washington*
Division of Human Resource Management

SUBJECT: NOTICE OF INTENT TO ACT UPON A REGULATION – Permanent
Amendment of Regulations that Pertain to NAC 284

The regulation changes included with this memorandum are being proposed for amendment at the September 27, 2024, meeting of the Human Resources Commission. This meeting will be held at 9:00 a.m. at the Nevada State Library and Archives Building, Room 110, 100 N. Stewart Street, Carson City, Nevada with videoconferencing to the Eureka Building, 7251 Amigo Street, Suite 120, Las Vegas, Nevada.

Please circulate and post the attached *Notice of Intent to Act Upon A Regulation* along with the text of the proposed regulations.

Attachments

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Amendment of
Regulations of the Human Resources Commission

The Human Resources Commission will hold a public hearing at 9:00 a.m. on September 27, 2024, at the Nevada State Library and Archives Building, Room 110, 100 N. Stewart Street, Carson City, Nevada, with videoconferencing to the Eureka Building, 7251 Amigo Street, Suite 120, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the permanent amendment of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

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

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

<u>LCB File:</u>	<u>Section:</u>	<u>NAC:</u>	<u>Leadline or Description</u>
R165-24	Sec. 1	NEW	“Sexual assault” defined.
	Sec. 2	284.2508	Compensatory time: Use.
	Sec. 3	284.539	Annual leave: Written request; approval or denial; authorized use.
	Sec. 4	284.554	Sick leave: Authorized use.
	Sec. 5	284.578	Leave of absence without pay: Conditions for approval; restrictions on use; revocation.
	Sec. 6	284.5811	Family and medical leave: Maximum amount in 12-month period; use.
	Sec. 7	284.599	Requirements.
R168-24	Sec. 1	284.172	Rate of pay: Effect of promotion.
	Sec. 2	284.254	Compensatory time: Payment upon transfer.
	Sec. 3	284.444	Application of probationary or trial period.
	Sec. 4	284.576	Catastrophic leave: Use and administration; appeal of denial.

	Sec. 5	284.179	Rate of pay: Minimum step for continuous employees hired before 1975.
R171-24	Sec. 1	284.114	Affirmative action program and equal employment opportunity.
	Sec. 2	284.204	Adjustment of steps within same grade: Conditions for approval; request; effective date; revocation.
	Sec. 3	284.206	Special adjustments to pay: Conditions for approval; request; effective date; revocation.
	Sec. 4	284.480	Letters of instruction: Authorized use as coaching or performance management tool; contents; discussion; retention in working file of supervisor.
	Sec. 5	284.638	Warnings and written reprimands.
	Sec. 6	284.662	Providing assistance or representation to employee; discrimination prohibited relating to seeking or filing request for review of grievance or complaint or testifying or providing assistance or representation to another employee; available resources for assistance.
	Sec. 7	284.696	Unlawful discrimination.
	Sec. 8	284.710	Order of processing personnel documents.

Persons wishing to comment upon the proposed action of the Human Resources Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Administration, Division of Human Resource Management, 515 E. Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Michelle Garton. Written submissions must be received by the Division of Human Resource Management on or before September 27, 2024. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Human Resources Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted or amended will be on file at the Nevada State Library, Archives and Public Records, 100 N. Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted or amended will be available at the Division of Human Resource Management, at 515 E. Musser Street, Suite 101, Carson City, Nevada, and 7251 Amigo Street, Suite 120, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada

Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

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

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

Carson City

515 E. Musser Street

Nevada State Library & Archives Building, 100 N. Stewart Street

Nevada State Capitol Building, 101 N. Stewart Street

Legislative Counsel Bureau, 401 S. Carson Street

Las Vegas

Eureka Building, 7251 Amigo Street

Websites

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

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

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

EXPLANATION OF PROPOSED CHANGE
Permanent Regulations

LCB File No. R165-24

Explanation of proposed change: Assembly Bill 163 of the 2023 State of Nevada Legislative Session (signed into law by the Governor), in part, provides for: a) employee leave if the employee or a household member (of the employee) is a victim of sexual assault; and b) accommodation for an employee if the employee or a household member (of the employee) is a victim of sexual assault. The amendments, proposed by the Division of Human Resource Management, will adopt the statutory definition of ‘sexual assault’ and amend existing employee provisions to conform to the expanded protections now outlined in Nevada Revised Statutes.

**PROPOSED REGULATION OF THE
HUMAN RESOURCES COMMISSION**

LCB File No. R165-24

July 18, 2024

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: § 1, NRS 284.065 and 608.0198; § 2, NRS 284.065, 284.155, 284.175, 284.345 and 608.0198; § 3, NRS 284.065, 284.155, 284.345, 284.350 and 608.0198; § 4, NRS 284.065, 284.155, 284.345, 284.355 and 608.0198; § 5, NRS 284.065, 284.155, 284.345, 284.360 and 608.0198; § 6, NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626 and 608.0198; § 7, NRS 284.065 and 613.222.

A REGULATION relating to state human resources; providing, under certain circumstances, for certain leave, compensatory time and accommodation if a state employee or a family or household member of a state employee is a victim of an act which constitutes sexual assault; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Assembly Bill No. 163 (A.B. 163) of the 2023 Legislative Session requires employers to provide certain hours of leave to an employee who: (1) has been employed by the employer for at least 90 days; and (2) is a victim of an act which constitutes sexual assault, or such an employee whose family or household member is a victim of an act which constitutes sexual assault and the employee is not the alleged perpetrator. (NRS 608.0198, as amended by section 1 of Assembly Bill No. 163, chapter 207, Statutes of Nevada 2023, at page 1230) A.B. 163 also requires employers to provide reasonable accommodations which will not create an undue hardship for an employee who is a victim of an act which constitutes sexual assault or whose family or household member is a victim of an act which constitutes sexual assault. (NRS 613.222, as amended by section 3 of Assembly Bill No. 163, chapter 207, Statutes of Nevada 2023, at page 1232)

Existing law requires the Human Resources Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations necessary to carry out provisions of law relating to the Human Resources System, including regulations for attendance and leave with or without pay for state employees. (NRS 284.065, 284.345) To conform to the requirements of A.B. 163, **sections 2-5** of this regulation provide that an appointing authority shall, under certain circumstances, grant or approve, as applicable, a request by a state employee who is a victim of an act which constitutes sexual assault or whose family or household member is a victim of such an act for: (1) compensatory time; (2) annual leave; (3) sick leave; or (4) leave without pay. (NAC 284.2508, 284.539, 284.554, 284.578)

Section 6 of this regulation provides that if a state employee who is a victim of an act which constitutes sexual assault, or whose family or household member is a victim of such an act, is absent from work and meets the eligibility requirements pursuant to the Family and Medical Leave Act, any amount of time that state employee is absent from work during that period will be designated as leave pursuant to the Act. **Section 7** of this regulation provides that the appointing authority of a state employee who is a victim of an act which constitutes sexual assault or whose family or household member is a victim of an act which constitutes sexual assault, and the state employee is not the alleged perpetrator, shall, upon the request of the state employee, provide reasonable accommodation to the state employee.

Section 1 of this regulation defines the term “sexual assault.”

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

“Sexual assault” has the meaning ascribed to it in NRS 200.366.

Sec. 2. NAC 284.2508 is hereby amended to read as follows:

284.2508 1. At the direction of the appointing authority, compensatory time must be used within a reasonable time after it is accrued.

2. Unless it would cause an undue hardship to the agency, a request for the use of compensatory time may not be unreasonably denied if the request is made at least 2 weeks in advance of the first date on which the employee wishes to use his or her compensatory time.

3. Unless it would cause an employee to forfeit an amount of annual leave pursuant to subsection 2 of NRS 284.350, an employee must, to the extent possible, exhaust his or her compensatory time before using his or her available annual leave.

4. An appointing authority shall approve a request for compensatory time of an employee who is a victim of an act which constitutes domestic violence *or sexual assault* or whose family or household member is a victim of an act which constitutes domestic violence ~~§~~ *or sexual assault*, and the employee is not the alleged perpetrator if:

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

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

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

Sec. 3. NAC 284.539 is hereby amended to read as follows:

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

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

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

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

5. An employee who has accumulated both annual leave and compensatory time off, and who may lose annual leave at the end of the calendar year, may elect to use the annual leave

instead of the compensatory time for approved leave. In all other instances, compensatory time must, as far as practicable, be exhausted before annual leave is used.

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

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

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

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

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

Sec. 4. NAC 284.554 is hereby amended to read as follows:

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

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

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

(c) Is quarantined;

- (d) Is receiving required medical, psychological, optometric or dental service or examination;
- (e) Is receiving counseling through an employee assistance program for a condition which would otherwise qualify pursuant to the provisions of this section;
- (f) Has an illness, death or other authorized medical need in his or her immediate family and he or she complies with the requirements of NAC 284.558 or 284.562; or
- (g) Meets the requirements set forth in subsection 2.

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

- (a) The employee has been employed in public service for at least 90 days;
- (b) The employee has accrued the amount of sick leave necessary to cover the time requested; and
- (c) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence *or sexual assault* occurred.

Sec. 5. NAC 284.578 is hereby amended to read as follows:

284.578 1. Except as otherwise provided in NRS 284.360, an appointing authority may grant a leave of absence without pay to an employee for not more than 1 year for any satisfactory reason.

2. The Commission may grant leaves of absence without pay in excess of 1 year for purposes deemed beneficial to the public service.

3. An appointing authority may require an employee on leave of absence without pay to submit every 2 weeks a statement of his or her intent to return to work.
4. If the reason for granting the leave no longer exists, the appointing authority may revoke the leave after notifying the employee in writing and allowing, so far as is practicable, not less than 5 working days after the date of notification for the employee to return to work.
5. An employee shall request leave without pay at least 30 days in advance of when the need for the leave is foreseeable, if practicable.
6. An employee may not use leave without pay in lieu of sick leave or annual leave without approval of the appointing authority.
7. An employee who is using leave pursuant to the Family and Medical Leave Act may not use leave without pay until the employee has exhausted all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave that the employee is eligible to use based on the nature of the absence, as required by NAC 284.5811.
8. An appointing authority shall grant leave without pay, upon request, to an employee who is a victim of an act which constitutes domestic violence *or sexual assault* or whose family or household member is a victim of an act which constitutes domestic violence ~~H~~ *or sexual assault*, and the employee is not the alleged perpetrator, if:
 - (a) The employee has been employed in public service for at least 90 days; and
 - (b) The combination of all leave taken by the employee for this purpose does not exceed 160 hours in the 12-month period immediately following the date on which the act which constitutes domestic violence *or sexual assault* occurred.

Sec. 6. NAC 284.5811 is hereby amended to read as follows:

284.5811 1. Except as otherwise provided in subsection 2, an employee who is entitled to take leave pursuant to the Family and Medical Leave Act is limited to a total of 12 weeks of such leave during a rolling 12-month period. The rolling 12-month period is measured backward from the date an employee uses any leave pursuant to the Family and Medical Leave Act.

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

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

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

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

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

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

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

(b) The employee may use paid leave for the time that the employee is being compensated for the non-work-related injury or illness if the employee has entered into an agreement with the appointing authority to use the paid leave. If the employee and the appointing authority have not entered into such an agreement, the employee may not elect to use and the appointing authority may not require the employee to use paid leave for that time.

6. If an employee who is a victim of an act which constitutes domestic violence *or sexual assault* or whose family or household member is a victim of an act which constitutes domestic violence ~~H~~ *or sexual assault*, and the employee is not the alleged perpetrator, is absent from work and meets the requirements for eligibility pursuant to the Family and Medical Leave Act, any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act.

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.

Sec. 7. NAC 284.599 is hereby amended to read as follows:

284.599 1. Except as otherwise provided in subsection 2, the appointing authority of an employee who is a victim of an act which constitutes domestic violence *or sexual assault* or

whose family or household member is a victim of an act which constitutes domestic violence ~~+~~ *or sexual assault*, and the employee is not the alleged perpetrator, shall, upon the request of the employee, provide reasonable accommodation to the employee.

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

- (a) Relocating the employee, including, without limitation, providing a different work area for the employee or changing the location to which the employee reports;
- (b) Modifying the schedule of the employee; or
- (c) Providing the employee a new telephone number for work.

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

- (a) As a transfer as defined in NAC 284.106; or
- (b) To authorize the employee to appeal the relocation using the process for an appeal of a transfer set forth in NRS 284.376.

EXPLANATION OF PROPOSED CHANGE
Permanent Regulations

LCB File No. R168-24

Explanation of Proposed Change: The Division of Human Resource Management is proposing the repeal of NAC 284.179 in Section 5 of this LCB File. There are no individuals employed with the State of Nevada to which this regulation would apply since they would have had to been continuously employed for over 48 years. The amendment to NAC 284.172 in Section 1 of the File makes an appropriate conforming change.

The amendment in Section 2, proposed by the Division of Human Resource Management, requires the agency an employee is leaving to pay the compensatory time an employee has accrued. This change will result in the payment of compensatory time by the agency in which the hours were actually accrued, and not allow the liability to be placed on another agency.

The amendment Section 3, proposed by the Division of Human Resource Management, allows an appointing authority to waive the probationary period of an employee who transfers from the unclassified or nonclassified service.

This amendment in Section 4, proposed by the Division of Human Resource Management, will provide flexibility to work with a modern human resource information system while maintaining intent.

**PROPOSED REGULATION OF THE
HUMAN RESOURCES COMMISSION**

LCB File No. R168-24

July 18, 2024

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1, 2 and 5 NRS 284.065, 284.155 and 284.175; § 3, NRS 284.065, 284.155 and 284.290; § 4, NRS 284.065, 284.155, 284.3621 and 284.3626.

A REGULATION relating to state human resources; eliminating the authority for a receiving agency to assume the liability for compensatory time of certain nonexempt employees; authorizing an appointing authority to waive a new probationary period for certain employees who transfer to the classified service; revising certain requirements for the use of catastrophic leave; repealing the minimum rate of pay for certain continuous employees hired before 1975; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Human Resources Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations to carry out the State Human Resources System. (NRS 284.065)

Existing regulations provide that if a nonexempt employee who has accrued compensatory time transfers from a position under the jurisdiction of one appointing authority to a position under the jurisdiction of another appointing authority, the accrued compensatory time must be paid by the agency he or she is leaving, unless the receiving agency agrees in writing to assume the liability for the compensatory time and the employee concurs. (NAC 284.254)

Section 2 of this regulation eliminates the authority for a receiving agency to agree in writing to assume the liability for the compensatory time.

Existing regulations provide that an employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period. (NAC 284.444) **Section 3** of this regulation provides instead that an employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period unless the new probationary period is waived in writing by the appointing authority.

Existing regulations provide that, under certain circumstances: (1) 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; and (2) an employee who wishes to donate hours to an account for catastrophic leave for use by another employee may notify his or her appointing authority on the appropriate form of his or her intent to donate the leave. Existing regulations further require a donor and his or her appointing authority to 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. (NAC 284.576) **Section 4** of this regulation eliminates the requirement that such requests be on an appropriate form.

Existing regulations require the appointing authority to assign numbers to employees in a sequential order and in such manner that ensures the confidentiality of the identity of employees for purposes of providing certain information to the Administrator of the Division of Human Resource Management. (NAC 284.576) **Section 4** eliminates the requirement to assign such numbers and provides instead that the appointing authority shall not provide the names of employees for purposes of providing certain information to the Administrator of the Division of Human Resource Management.

Existing regulations provide that 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. (NAC 284.179) **Section 5** of this regulation repeals this provision. **Section 1** of this regulation makes a conforming change to eliminate an internal reference to the repealed provision.

Section 1. NAC 284.172 is hereby amended to read as follows:

284.172 1. Except as otherwise provided in NAC 284.204, 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 NAC 284.179.]~~

(b) 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.

(c) If an employee has been demoted, he or she may not, within 1 year after the demotion, 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 unless the Administrator approves the promotional increase.

(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.

2. 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. 2. NAC 284.254 is hereby amended to read as follows:

284.254 1. Except as otherwise provided in subsection 2, if a nonexempt employee who has accrued compensatory time transfers from a position under the jurisdiction of one appointing authority to a position under the jurisdiction of another appointing authority, the accrued compensatory time must be paid by the agency he or she is leaving . ~~[- unless the receiving agency agrees in writing to assume the liability for the compensatory time and the employee concurs.]~~

2. The accrued compensatory time of an employee transferring to an exempt position must be paid by the agency the employee is leaving.

3. As used in this section, “exempt position” means a position in the classified or unclassified service that is subject to the provisions of NRS 284.148.

Sec. 3. NAC 284.444 is hereby amended to read as follows:

284.444 1. A probationary employee who transfers:

- (a) Within the same class must serve the remaining portion of the probationary period.
- (b) From one class to another class must serve a new probationary period.

2. A permanent employee must serve a trial period if he or she voluntarily transfers:

- (a) Within the same class; or
- (b) From one class to another class and such classes are comparable classes,

↳ unless the trial period is waived in writing by the appointing authority. If the appointing authority waives the trial period, the employee is entitled to the status of appointment held at the time he or she transferred.

3. Promotion to a vacant position requires a new probationary period or trial period. A promotion that results from a reclassification is governed by NAC 284.134 and 284.138.

4. Except as otherwise provided in subsection 11:

- (a) No probationary period will be required if a permanent employee is demoted.
- (b) A new probationary period will be required if a probationary employee is demoted.

5. An employee who is reinstated must serve a new probationary period unless it is waived in writing by the appointing authority. If an appointing authority waives the probationary period, the status of the appointment of the employee is permanent.

6. A probationary employee who is reappointed must serve a new probationary period.

7. A permanent employee who is reappointed to a class:

(a) At a higher grade level must serve a trial period unless it is waived in writing by the appointing authority.

(b) At the same grade level or a lower grade level is not required to serve a trial period.

8. An employee who is laid off, but who is reemployed within 1 year, must serve a new probationary period if reemployed in a different class or in a different department than that from which he or she was laid off, and the employee is subject to the provisions of subsection 8 of NAC 284.630.

9. A person with a permanent disability arising from a work-related injury or occupational disease who is reemployed in a different class or option than his or her regular position must serve a new probationary period as required by NAC 284.6018.

10. A person who is on a military leave of absence pursuant to NRS 284.359 is entitled to return to the status of appointment held at the time he or she commenced the military leave of absence. If the employee did not complete the probationary period, he or she will only be required to complete the remaining portion thereof. Upon successful completion of the probationary period, permanent status must be granted to the employee as of the date on which permanent status would have been granted if the employee had not taken a military leave of absence.

11. An employee who is restored to his or her former position or class pursuant to NAC 284.462 following a promotional appointment must serve the portion of the trial period which was remaining at the time of the promotion. No probationary period is required if, pursuant to subparagraph (1) of paragraph (c) of subsection 2 of NAC 284.462, an employee is placed in a position in a class equal to or lower than the class held by the employee immediately before the promotion.

12. An employee who transfers from the unclassified or nonclassified service to the classified service must serve a new probationary period ~~†~~, *unless the new probationary period is waived in writing by the appointing authority.* Except for those unclassified employees who transfer pursuant to subsection 2 of NAC 284.398 ~~†~~ *or for those employees for whom the appointing authority has waived the new probationary period pursuant to this subsection,* the status of a permanent employee may not be attained until the satisfactory completion of the probationary period.

Sec. 4. NAC 284.576 is hereby amended to read as follows:

284.576 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 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}~~ *notify* 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.

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. Except as otherwise provided in this subsection, 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 the donor is separated from state service before the excess leave is restored pursuant to this subsection, the excess leave must be transferred to the account for catastrophic leave of the appointing authority of the donor when the donation of leave was made.

7. For each employee who donates or uses catastrophic leave, the appointing authority shall annually, or as requested by the Administrator, provide to the Administrator ~~the number assigned to each employee in accordance with subsection 8 and~~ the 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 6, or used by each such employee.

8. The appointing authority shall ~~assign numbers to employees~~ *not provide the names of employees* for the purposes of subsection 7 ~~in a sequential order and in such a manner that ensures~~ *to ensure* the confidentiality of the identity of those employees.

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

10. As used in this section, “immediate family” has the meaning ascribed to it in NAC 284.562.

Sec. 5. NAC 284.179 is hereby repealed.

TEXT OF REPEALED SECTION

284.179 Rate of pay: Minimum step for continuous employees hired before 1975. (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.

EXPLANATION OF PROPOSED CHANGE
Permanent Regulations

LCB File No. R171-24

Explanation of Proposed Change: The amendments in this LCB File make changes based on SB431 to various regulations in NAC 284, changing “personnel” to “human resources.”

**PROPOSED REGULATION OF THE
HUMAN RESOURCES COMMISSION**

LCB File No. R171-24

July 17, 2024

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-8, NRS 284.065.

A REGULATION relating to state human resources management; replacing certain terminology relating to “personnel” in existing regulations with terminology relating to “human resources” to conform with existing law; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Senate Bill No. 431 (S.B. 431) of the 2023 Legislative Session changed the names of: (1) the Personnel Commission, within the Division of Human Resource Management of the Department of Administration, to the Human Resources Commission; and (2) the State Personnel System to the State Human Resources System. (NRS 284.022, as amended by section 70 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3562, NRS 284.030, as amended by section 71 of Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3562) S.B. 431 also made certain conforming changes to existing law to replace the term “personnel” with “human resources” throughout the provisions of the Nevada Revised Statutes relating to the Commission and the System. (Senate Bill No. 431, chapter 532, Statutes of Nevada 2023, at page 3544)

Sections 1-8 of this regulation make similar changes to terminology in existing regulations for conformity with the Nevada Revised Statutes, including replacing references to: (1) the “personnel management system” with the “human resources management system”; (2) the “personnel office” of a department or agency with the “human resources office” of a department or agency; (3) the “personnel file” of an employee with the “human resources file” of an employee; (4) a “personnel action” with a “human resources action”; (5) a “personnel representative” with a “human resources representative”; and (6) “personnel documents” with “human resources documents.”

Section 1. NAC 284.114 is hereby amended to read as follows:

284.114 1. The Division of Human Resource Management is responsible for establishing, coordinating and evaluating an affirmative action program for this State.

2. The Division of Human Resource Management will cooperate and consult with agencies to:

(a) Identify barriers in the ~~personnel~~ *human resources* management system which may adversely affect the ability of applicants and employees to reach their full employment potential without regard to race, sex, sexual orientation, gender identity or expression, religion, color, national origin, age, genetic information, disability or whether or not the person is a domestic partner.

(b) Coordinate programs to remove barriers to equal employment opportunity while ensuring the effectiveness of the merit system and the opportunity for persons to enter the system and progress in it to the extent of their merit.

Sec. 2. NAC 284.204 is hereby amended to read as follows:

284.204 1. Subject to the provisions of subsection 2, 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 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.

2. Before the Division of Human Resource Management may approve an adjustment of steps pursuant to subsection 1, 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; and

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

3. If an adjustment of steps is approved by the Division of Human Resource Management pursuant to subsection 1, 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~~ *human resources* office of the department or 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 be revoked when:

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

(b) The employee moves from one position to another position in either a different area within the department or agency in which the employee is currently employed or a different department or agency than the department or agency in which the employee is currently employed, and a similar recruiting problem does not exist in the new area, department or agency.

5. If an adjustment of steps is revoked pursuant to subsection 4, the employee must be placed at the step he or she would have received if he or she had not received the adjustment.

Sec. 3. NAC 284.206 is hereby amended to read as follows:

284.206 1. The Division of Human Resource Management may approve a special adjustment to the pay of an employee pursuant to this section. A request for a special adjustment to pay may be initiated by an employee, the appointing authority or the Division of Human Resource Management. A special adjustment to pay does not constitute a promotion.

2. An employee may receive a special adjustment to pay equivalent to 5 percent of the employee's base rate of pay during any period in which:

(a) The employee works out of his or her class on a continuing basis and performs essentially all the duties and responsibilities of a position classified at a higher grade. To receive the increase, the employee must be assigned duties and responsibilities of the higher grade which are clearly demonstrated in the class specification and carry out the duties and responsibilities for at least 16 consecutive workdays before the increase becomes effective. The adjustment to pay pursuant to this paragraph is effective retroactively, commencing on the date on which the employee assumed the additional duties and responsibilities. The adjustment to pay must not continue for more than 6 months in any 12-month period unless:

(1) The employee is underfilling a position pursuant to NAC 284.437.

(2) The duties and responsibilities that the employee has been carrying out have been assumed from one or more positions that have not been authorized to be filled because of a hiring freeze or fiscal emergency. A hiring freeze or fiscal emergency must be certified by the Chief of the Budget Division or, in the case of an agency that does not receive money from the State General Fund or the Nevada System of Higher Education, certified by the administrator of that agency or the System.

(3) The appointing authority submits a written request to the Administrator accompanied by documentation justifying an extension of the 6-month period and certifies that money is

available to pay for the continuation of the special adjustment to pay. The Administrator may authorize the continuation of the special adjustment to pay after receiving the request and documentation and determining that the extension of the 6-month period is a business necessity and in the best interest of the State.

(b) The employee is required to use bilingual skills or sign language for persons who are deaf at least 10 percent of his or her work time.

(c) The employee is supervising other employees of the same or a higher grade if the supervision:

(1) Is not part of the supervision or management responsibilities for a program that is provided for in the class specification; and

(2) Includes, without limitation, selection, work assignment, training, work review, reports on performance and discipline of employees.

(d) The employee is required regularly to perform custodial work and clean up human bodily waste in a medical, clinical or inpatient facility.

(e) Except as otherwise provided in this paragraph, the employee is conducting a formal training program for employees. The training program must:

(1) Be conducted weekly;

(2) Consist of training on the job and in the classroom or training only in the classroom;

(3) Include a test to determine the employees' progress in the program; and

(4) Result in the award of a certificate of completion or advancement in a class series to the journey level.

↪ If an adjustment to pay is granted pursuant to this paragraph, the adjustment begins when the employee starts conducting the training program and ends when the training program is

completed. An adjustment will not be granted if the duty to conduct training is clearly set forth in the class specification. Informal orientation given to new employees will not be considered for this special adjustment.

(f) The employee, if employed as a law enforcement officer, is assigned to motorcycle duty.

(g) The employee, if employed by the Department of Corrections, is responsible for the supervision of a group of inmates assigned to a work area of an institution and who is responsible for implementing security procedures, including, without limitation:

- (1) Securing the work area from inmates who are not authorized to enter the work area;
- (2) Accounting for all inmates who have been assigned to the work area; and
- (3) Accounting for all materials, tools and equipment in the work area.

↪ The adjustment to pay pursuant to this paragraph will be granted only if such duties are not provided for in the class specification.

(h) The employee is authorized by the Legislature to receive such an adjustment to his or her pay.

3. An employee may receive a special adjustment to pay if he or she occupies a position in which the duties have been recognized through the classification process as being at a higher level, but who does not meet the minimum qualifications for the class. The special adjustment to the employee's pay must be equivalent to 2.5 percent of the employee's base rate of pay if the employee performs duties classified one grade higher than his or her current position, or 5 percent of the employee's base rate of pay if the employee performs duties classified two or more grades higher than his or her current position. A special adjustment to an employee's pay made pursuant to this subsection may continue in effect from the date on which the position questionnaire is received:

- (a) Until the employee meets the minimum qualifications and is promoted;
- (b) For 1 year after the effective date of the special adjustment to pay; or
- (c) Until the date the higher level duties are removed,

↳ whichever occurs first.

4. Except as otherwise provided in paragraph (a) of subsection 2, any special adjustment to pay made pursuant to subsection 2 must be revoked when the conditions justifying it cease to exist.

5. Except as otherwise provided in this section, the effective date of a special adjustment to pay is the date on which the written request is received by the Division of Human Resource Management or the ~~personnel~~ *human resources* office of the agency at which the employee who is receiving the special adjustment to pay is employed. If the request for the special adjustment to pay is delayed because an administrative or clerical error prevented its delivery, the effective date of the special adjustment to pay 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 to pay must not exceed 6 months from the date on which the Division of Human Resource Management receives the written request.

Sec. 4. NAC 284.480 is hereby amended to read as follows:

284.480 1. A letter of instruction is a document that is in written or electronic form and that:

(a) A supervisor of an employee may provide to the employee as a coaching or performance management tool to:

- (1) Address the job performance or behavior of the employee; and
- (2) Provide evidence of the job performance or behavior expected of the employee; and

(b) Is not part of the formal disciplinary process.

2. A letter of instruction must include at least the following elements:

(a) A brief statement identifying the deficiency or area of concern in the job performance or behavior of the employee;

(b) An outline of the expectations of the supervisor of the employee relating to the job performance or behavior of the employee;

(c) Instructions or a recommended course of action for overcoming the deficiency or area of concern and a description of any additional training that will be provided to the employee; and

(d) A time frame for the completion of any recommended action items and for the proposed improvement in the job performance or behavior of the employee.

3. A letter of instruction must not include any reference to disciplinary action or consequences for failure to comply with the expectations of the supervisor of the employee relating to the job performance or behavior of the employee.

4. The supervisor of the employee and the employee must meet to discuss the expectations of the supervisor relating to the job performance or behavior of the employee outlined in the letter of instruction.

5. The supervisor of the employee shall retain a copy of the letter of instruction in the supervisor's working file for the employee. The supervisor must attach any written response by the employee to the letter of instruction. These documents must not be retained in the permanent ~~personnel~~ *human resources* file of the employee unless they are attached to documentation of a subsequent disciplinary action taken against the employee as documentation of a nondisciplinary action that was taken before a specified disciplinary action was taken against the employee.

Sec. 5. NAC 284.638 is hereby amended to read as follows:

284.638 1. If an employee's conduct comes under one of the causes for action listed in NAC 284.650, the supervisor shall inform the employee promptly and specifically of the conduct.

2. If appropriate and justified, following a discussion of the matter, a reasonable period of time for improvement or correction may be allowed before initiating disciplinary action.

3. In situations where an oral warning does not cause a correction of the condition or where a more severe initial action is warranted, a written reprimand prepared on a form prescribed by the Division of Human Resource Management must be sent to the employee and a copy placed in the employee's ~~personnel folder~~ *human resources file* which is filed with the Division of Human Resource Management.

Sec. 6. NAC 284.662 is hereby amended to read as follows:

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

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

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

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

Sec. 7. NAC 284.696 is hereby amended to read as follows:

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

(a) Report the alleged discrimination to:

(1) The division of the Division of Human Resource Management that investigates sex- or gender-based harassment and discrimination;

(2) The Attorney General;

(3) The employee's appointing authority;

(4) An equal employment opportunity officer;

(5) A ~~personnel~~ *human resources* representative of the department in which the employee is employed; or

(6) The office charged with enforcing affirmative action within the appropriate university, state college or community college which is part of the Nevada System of Higher Education;

(b) Except as otherwise provided in NRS 284.384, use the procedure for the adjustment of a grievance contained in NAC 284.658 to 284.6957, inclusive; or

(c) File a complaint, other than a complaint described in NAC 284.658, with:

(1) The Nevada Equal Rights Commission pursuant to NRS 613.405; or

(2) The United States Equal Employment Opportunity Commission.

2. The appointing authority of an employee who has alleged unlawful discrimination shall promptly notify the deputy attorney general or staff counsel assigned to represent the agency of the allegation and the actions which are being undertaken by the agency to address the allegation.

Sec. 8. NAC 284.710 is hereby amended to read as follows:

284.710 Any ~~personnel~~ *human resources* documents effecting changes in an employee's pay and having the identical effective date will be processed in the following order:

1. Merit pay increases.
2. Reclassifications or overall adjustments to the compensation plan.
3. Promotions or demotions.

Joe Lombardo
Governor



Joy Grimmer
Director

Bob Ragar
Deputy Director

Bachera Washington
Administrator

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Regulation Small Business Impact Statement

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

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

A concerted effort was made to determine any economic burden. The Department has relied on the expert knowledge of Department staff. The regulation solely addresses pay for government employees so the impact is solely on government employees and agencies and no small business will be affected.

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

Bachera Washington
Bachera Washington, Administrator

August 27, 2024
Date