

**APPROVED REGULATION OF
THE PERSONNEL COMMISSION**

LCB File No. R015-21

Filed September 28, 2022

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

AUTHORITY: § 1, NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626 and 608.0198.

A REGULATION relating to state personnel; revising eligibility requirements for certain state employees to take family and medical leave; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Personnel Commission of the Division of Human Resource Management of the Department of Administration to adopt regulations for attendance and leave in the various classes of employee positions in the public service of the Executive Department of the State Government. (NRS 284.345) Existing regulations: (1) adopt by reference the federal Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq. (FMLA); and (2) provide that an employee in the public service who is entitled to take leave pursuant to the FMLA is limited to a total of 12 weeks of such leave during a rolling 12-month period. (NAC 284.062, 284.581, 284.5811) To calculate eligibility for leave pursuant to the FMLA, each hour that an employee is in paid status in the 12-month period immediately preceding the leave must be considered as time worked. (NAC 284.5811) An employee's paid status includes time that an employee is on: (1) leave with pay, except catastrophic leave; or (2) leave of absence due to a fiscal emergency. (NAC 284.0742) This regulation eliminates the provision that requires each hour that an employee is in paid status in the 12-month period immediately preceding the FMLA leave to be considered as time worked. As a result, the determination of whether an employee is entitled to take leave pursuant to the FMLA is determined by the provisions of the FMLA, which exclude time that an employee is on leave. (29 U.S.C. § 207)

Section 1. 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. ~~{To calculate eligibility for leave pursuant to the Family and Medical Leave Act, each hour that an employee is in paid status in the 12-month period immediately preceding the leave must be considered as time worked.~~

~~—4.~~ Except as otherwise provided in subsections ~~{5}~~ 4 and ~~{6,}~~ 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.

~~{5}~~ 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.

~~{6-}~~ 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.

~~{7-}~~ 6. If an employee who is a victim of an act which constitutes domestic violence or whose family or household member is a victim of an act which constitutes domestic violence, and the employee is not the alleged perpetrator, is absent from work and meets the requirements for eligibility pursuant to the Family and Medical Leave Act, any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act.

~~18.1~~ 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.