

These are amendments to Title 1, Chapter 7, Part 7 NMAC, Sections 7, 10, 12, 13, 14, 15 and 16, effective xx/xx/20xx.

1.7.7.7 DEFINITIONS:

A. “Child” or “Children” means a person or persons 18 years of age or younger who is enrolled in School, and who is or are the biological child(ren), legally adopted child(ren), foster child(ren), stepchild(ren), or legal ward(s) of an employee.

B. “Covered active duty or call to covered active duty status” means duty during the deployment of a regular member or reservist to a foreign country.

C. “Covered servicemember” means a current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or a covered veteran (member of the Armed Forces, including a member of the National Guard or Reserves, who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the employee takes FMLA leave to care for the covered veteran) who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

D. “Extra-curricular activities” means events or appointments not falling within the normal school curriculum, including but not limited to sporting events, orientations, ceremonies, field trips, registrations.

E. “Fall semester” means August through December.

F. “Family member” means an individual who is the spouse or domestic partner of or is by blood, marriage or legal adoption a parent, grandparent, great-grandparent, child, foster child, grandchild, great-grandchild, brother, sister, niece, nephew, aunt or uncle, or is living in the household of an of an employee.

G. “Health care provider” means a physician, dentist, podiatrist, clinical psychologist, or optometrist who is authorized to practice medicine or surgery in the state in which the individual practices. In cases limited to treatment consisting of manual manipulation of the spine to correct a subluxation, medical certification may be provided by a chiropractor. Others capable of providing health care services include podiatrists, dentists, clinical psychologists, optometrists, nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized to practice in the state; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; any health care provider from whom an employer or the employer’s group health plan’s benefits manager will accept certification for the existence of a serious health condition to substantiate a claim for benefits, including a foreign physician.

H. “Medical emergency” means a medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

I. “School” means a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either a licensed child care center, preschool, elementary, middle, junior high, or high school, or any combination of those, including charter schools, state institutions, and private schools, but not including home schools.

J. “Serious health condition” means an illness or injury that involves an overnight stay in a health care facility and any subsequent treatment in connection with such stay; or, continuing treatment by a health care provider including any one or more of the following:

(1) a period of incapacity of more than three consecutive, full calendar days and subsequent treatment by a health care provider in-person two or more times within 30 days of the first day of incapacity;

(2) treatment by a health care provider in-person on at least one occasion which results in a regimen of continuing treatment;

(3) pregnancy and prenatal care;

(4) chronic condition which requires visits at least twice a year for treatment by a health care provider over an extended period of time and may cause episodic rather than a continuing period of incapacity;

(5) permanent or long-term conditions; and

(6) conditions requiring multiple treatments by a health care provider including recovery time.

K. “Serious illness or injury” means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces, or existed before the beginning of the servicemember’s active duty and was aggravated by service in the line of duty in the Armed Forces, and that may render the covered servicemember medically unfit to perform the duties of the servicemember’s office grade, rank or

rating. In the case of a veteran who was a covered servicemember, "serious illness or injury" means the same as above but the injury or illness manifested itself before or after the member become a veteran.

L. "Son" or "Daughter" means a biological, adopted, or foster child, a step child, 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.

M. "Spring semester" means January through May.

N. "Spouse" is defined in the Family and Medical Leave Act regulations [29 CFR 825.122(b)].

[1.7.7.7 NMAC - Rp, 1 NMAC 7.7.7, 07/07/01; A, xx/xx/20xx]

1.7.7.10 SICK LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay, shall accrue sick leave at the rate of ~~[3.69]~~ 4.00 hours per pay period.

B. Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue sick leave on a prorated basis.

C. Sick leave may not be used before it is accrued and must be authorized or denied according to agency policy.

D. An employee may use sick leave for personal medical treatment or illness or for medical treatment or illness of a ~~[relation by blood or marriage within the third degree]~~ family member, or of a person residing in the employee's household. Employees affected by pregnancy, childbirth, and related medical conditions must be treated the same as persons affected by other medical conditions.

E. There is no limit to the amount of sick leave that may be accrued.

F. No payment shall be made for accrued sick leave at the time of separation from the classified service except as provided by law.

G. Former employees who were laid off and are returned to work in accordance with the provisions of *1.7.10.10 NMAC* shall have restored the sick leave they had accrued as of the date of layoff.

H. An agency may authorize an employee to use accrued sick leave to attend the funeral of a relation by blood or marriage within the third degree, or of a person residing in the employee's household.

I. Payment for Accumulated Sick Leave:

(1) In accordance with the provisions of *NMSA 1978, Section 10-7-10*, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent (50%) of their hourly rate of pay for up to 120 hours of sick leave. Payment for unused sick leave may be made only once per fiscal year on either the payday immediately following the first full pay period in January or the first full pay period in July.

(2) Immediately prior to retirement from the classified service, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent (50%) of their hourly rate for up to 400 hours of sick leave.

J. An agency shall not discharge or threaten to discharge, demote, suspend or retaliate or discriminate against an employee because that employee requests or uses sick leave for medical treatment or illness of a family member in accordance with the agency's sick leave policy, files an appeal alleging violation of the Public Employee Caregiver Leave Act, NMSA 1978, Section 10-16H-1, et seq., cooperates in an investigation or prosecution of an alleged violation of that act or opposes any policy or practice established pursuant to that act.

K. Denials of an employee's request for sick leave related to medical treatment or illness of a family member, or alleged violations of the Public Employee Caregiver Leave Act by an agency directly impacting an employee, may be appealed to the director through the agency's chain-of-command. Appeals to the director must be in writing and include the agency's analysis of the reasons for the appeal. The director's decision is final and binding.

[1.7.7.10 NMAC - Rp, 1 NMAC 7.7.10, 07/07/01; A, 11/14/02; A, xx/xx/20xx]

1.7.7.12 FAMILY AND MEDICAL LEAVE:

A. In addition to other leave provided for in *1.7.7 NMAC* eligible employees are entitled to leave in accordance with the *Family and Medical Leave Act (FMLA) of 1993 [29 U.S.C. Section 2601 et seq.]*, as amended. Employees who have been in the classified service for at least 12 months (which need not be consecutive) and who have worked, as defined by *Section 7 of the Fair Labor Standards Act [29 U.S.C. Section 201 et seq.]*, at least 1250 hours during the 12 month period immediately preceding the start of FMLA leave are "eligible employees". In

addition, employment in the exempt service, legislative or judicial branch, shall count as classified employment for purposes of this rule.

B. Eligible employees are entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period, at the time of a birth [ø], placement through adoption or foster care, bonding, or serious health condition of a child of the employee or the employee's spouse, [ø] at the time of a serious health condition for the employee, or family members, or any other qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call or order to active duty status, in support of a contingency operation as defined in the FMLA, including family preparations resulting from a short-notice of deployment, military events and related activities, childcare on an urgent basis or for school activities, financial and legal arrangements, counseling, spending time with the servicemember while on short-term leave, post-deployment activities, and other activities in accordance with the FMLA regulations [29 CFR 825.12]. An employee whose family member is on active duty or called to active duty status in support of a contingency operation as a member of the Armed Forces is not eligible to take leave because of qualifying exigency. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

C. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for the servicemember. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

D. An employee may elect, or an agency may require the employee, to substitute any of the employee's accrued annual leave, accrued sick leave, personal leave day, accrued compensatory time, or donated leave for any part of unpaid FMLA leave.

E. If a paid holiday occurs within a week of FMLA leave, the holiday is counted towards the FMLA entitlement. However, if an employee is using FMLA in increments less than one week, the holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

F. Employees shall not accrue annual and sick leave while on unpaid FMLA leave.

G. Agencies shall post the required FMLA notices, maintain the required employee records, and implement agency policies in accordance with the FMLA. All medical records and correspondence relating to employees and/or their families shall be considered confidential in accordance with *1.7.1.12 NMAC*.

H. Disputes over the administration of this rule shall be forwarded to the director for resolution.

I. As a condition for restoring an employee whose own serious health condition required FMLA leave, an agency may require the employee to provide certification from their health care provider that the employee is able to resume work. The fitness-for-duty certification may only pertain to the specific health condition that required FMLA leave.

[1.7.7.12 NMAC - Rp, 1 NMAC 7.7.12, 07/07/01; A, 11/14/02; A, 6-30-06; A, 10-15-08; A/E, 1/27/09; A, 5-14-09; A, xx/xx/20xx]

1.7.7.13 ABSENCE WITHOUT LEAVE:

A. Employees who fail to appear for work without authorized leave or who appear for work but are in violation of agency policy governing their readiness for work shall be considered to be absent without leave.

B. Employees shall not be paid for any periods of absence without leave and shall not accrue annual or sick leave and may be subject to appropriate disciplinary action.

[1.7.7.13 NMAC - Rp, 1 NMAC 7.7.13, 07/07/01; A, xx/xx/20xx]

1.7.7.14 ADMINISTRATIVE LEAVE:

A. An agency may authorize employees leave with pay for up to five consecutive work days when it is in the best interests of the agency to do so. Administrative leave in excess of five consecutive work days must have the prior written approval of the director except for administrative leave granted in accordance with the provisions of *Paragraph (2) of Subsection B of 1.7.8.19 NMAC* or *Paragraph (2) of Subsection D of 1.7.8.19 NMAC* or *1.7.11.12 NMAC*.

B. Employees who are members of a state board or commission may be entitled to leave with pay to attend meetings or transact business of the board or commission.

C. Employees who are registered voters may absent themselves from work for two hours for the purpose of voting between the time of the opening and the time of the closing of the polls. The employer may specify

the hours during the period in which the voter may be absent. This leave is not available to employees whose work day begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls. This leave is only available for those elections listed in Subsection A of Sections 1-12-42 and 1-1-19 NMSA 1978, and does not apply to absentee or early voting.

D. Employees shall be entitled to administrative leave when appearing during regularly scheduled work hours in obedience to a subpoena as a witness before a grand jury or court or before a federal or state agency in which the State of New Mexico or one of its agencies is a party or the employee is a party related to the employee's employment with the State of New Mexico. Fees received as a witness, excluding reimbursement for travel, shall be remitted to the employee's agency.

E. Employees shall be entitled to leave with pay for serving on a grand or petit jury during regularly scheduled work hours. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the employee's agency.

F. Employees with a child or children enrolled in a school shall be entitled to the following amounts of paid administrative leave for parent-teacher conferences, provided that the express purpose of the leave is to attend a parent-teacher conference during the employee's normal work day; provided that the leave is not being requested for parental participation or assistance in extra-curricular school activities; provided that the employee follows any procedures required by the office or agency to request paid administrative leave for the parent-teacher conference; and, provided that the employee provides reasonable notice to the agency in an effort to avoid disruption to operational needs:

(1) Employees with three or more children may be granted up to four hours of paid administrative leave during the spring semester, and up to four hours of paid administrative leave during the fall semester for parent-teacher conferences; and

(2) Employees with one child or two children may be granted up to two hours of paid administrative leave during the spring semester, and up to two hours of paid administrative leave during the fall semester for parent-teacher conferences.

(3) Two employees may request available leave to attend the same scheduled parent-teacher conference for their children.

[1.7.7.14 NMAC - Rp, 1 NMAC 7.7.14, 07/07/01; A, 11/14/02; A, 7-15-05; A, xx/xx/20xx]

1.7.7.15 EDUCATIONAL LEAVE:

A. An agency may grant employees educational leave with or without pay to pursue ~~special~~ training related to their employment that is of immediate or potential value to the agency, including new ideas and innovation that could result from an employee's education on a variety of subjects, expansion of employee skill sets for later promotional or leadership opportunities, and retention. "Educational leave" means time away from work, paid or unpaid, for approved coursework at an academic institution, including participation in classes and travel between an employee's normal work site and the academic institution. Educational leave may be requested as part-time administrative leave with pay or full-time Educational Leave without pay.

B. Employees on full-time educational leave with pay shall not accrue annual or sick leave.

C. Employees who are working part-time while on educational leave shall accrue annual and sick leave in accordance with the provisions of *Subsection D of 1.7.7.8 NMAC* and *Subsection B of 1.7.7.10 NMAC*.

D. Employees who are granted paid educational leave ~~[for training in excess of 100 work hours in a calendar year shall agree in writing to continue with the agency for a period of time equal to three times the period of the training]~~ and who leave the employ of the agency within one year of the conclusion of the educational leave, must reimburse the agency for any tuition, expenses, or costs that the agency paid on behalf of the employee. Employees who are granted paid educational leave and who fail to complete any coursework, testing, or requirements of the educational program must reimburse the agency for any tuition, expenses, or costs that the agency paid on behalf of the employee.

[1.7.7.15 NMAC - Rp, 1 NMAC 7.7.15, 07/07/01; A, xx/xx/20xx]

1.7.7.16 MILITARY LEAVE:

A. Members of organized reserve units or the national guard ordered to ~~active duty~~ training shall be given up to 15 workdays of paid military leave per federal fiscal year. These 15 workdays are in addition to other authorized leave.

B. The governor may grant members of the national guard ordered to training up to 15 days of paid military leave ~~[for active duty training]~~, in addition to that already given by law. Such additional leave must not exceed 15 workdays per federal fiscal year.

C. Members of the state defense force shall be granted paid military leave to attend officially authorized training or instruction courses. Such leave applies only to full-time employees and must not exceed [~~45~~] 30 workdays per federal fiscal year.

D. Members of the civil air patrol shall be granted military leave not to exceed [~~45~~] 30 workdays per calendar year for search and rescue missions.

E. Employees on military leave with pay shall accrue annual and sick leave.

F. Employees who are members of a reserve component of the United States armed forces shall, upon request, be granted unpaid leave for the period required to perform active duty for training or inactive duty training in the United States armed forces.

G. This rule does not apply to employees in temporary or emergency status.

[1.7.7.16 NMAC - Rp, 1 NMAC 7.7.16, 07/07/01; A, 11/14/02; A, 7-15-05; A, xx/xx/20xx]

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