

This is an amendment to 1.7.7 NMAC, Sections 3, 7, 8, 9, 15, 20, and new section 21, effective x/x/202x.

1.7.7.3 STATUTORY AUTHORITY: ~~[NMSA 1978, Section 10-9-13(G); Section 11: NMSA 1978, Section 10-7-10; Section 13: 29 U.S.C. Sections 201 and 2601 et seq.; Section 15: NMSA 1978, Section 1-12-42; Section 17: NMSA 1978, Sections 20-4-7, 20-5-14 and 20-7-5 and 38 U.S.C. Section 2024]~~ Subsection G of Section 10-9-13 NMSA 1978; Section 10-7-10 NMSA 1978; Section 10-7-13 NMSA 1978; 29 U.S.C. Sections 201 and 2601 et seq.; Section 1-12-42 NMSA 1978; Sections 20-4-7, 20-5-14 and 20-7-5 and 38 NMSA 1978; U.S.C. Section 2024.

[1.7.7.3 NMAC - Rp, 1 NMAC 7.7.3, 7/7/2001; A, 11/14/2002; A, x/x/2026]

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 an unexpected 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 may involve[s] 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, 7/7/2001; A, 1/1/2020; A, x/x/2026]

1.7.7.8 ANNUAL 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 annual leave at the rate of:

- (1) 3.08 hours per pay period if less than three years of cumulative employment,
- (2) 3.69 hours per pay period if three years or more but less than seven years of cumulative employment,
- (3) 4.61 hours per pay period if seven years or more but less than eleven years of cumulative employment,
- (4) 5.54 hours per pay period if eleven years or more but less than fifteen years of cumulative employment; or
- (5) 6.15 hours per pay period if fifteen years or more of cumulative employment.

B. For purposes of Subsection A of 1.7.7.8. NMAC, any employment in the classified or exempt service and judicial or legislative branches of New Mexico state government shall be counted in determining years of cumulative employment in the classified service.

C. For purposes of Subsection A of 1.7.7.8. NMAC, employment in programs transferred into the classified service by legislation or executive order shall count as cumulative employment.

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

E. A maximum of 240 hours of annual leave shall be carried forward after the last pay period beginning in December.

F. Annual leave may be requested before it is accrued. The employer, at its discretion, may authorize such a request. However, annual leave shall not be used before it is accrued and must be authorized before it is taken in accordance with agency policy.

G. Employees separating from the classified service, except by a reduction in force, shall be paid for accrued annual leave, as of the date of separation, up to a maximum of 240 hours at the current hourly rate of their base salary. This payout shall not exceed 240 hours.

H. Employees separating from the classified service as the result of a reduction in force shall be paid for all accrued annual leave, as of the date of separation, at their current ~~hourly~~ base rate.

I. The estate of an employee who dies while in the classified service shall be paid for the employee’s total accrued annual leave.

[1.7.7.8 NMAC - Rp, 1 NMAC 7.7.8, 7/7/2001; A, 11/14/2002; A, 1/1/2021; A, 8/1/2021; A, 5/20/2025; A, x/x/2026]

1.7.7.9 DONATION OF ANNUAL OR SICK LEAVE:

A. Employees may donate annual or sick leave to another employee in the same agency for a medical emergency or serious health condition with approval of the head of the agency. Employees may also make and receive donations of annual leave to and from employees in the exempt service in the same agency for a medical emergency or serious health condition with approval of the head of the agency, as set forth by the department of finance and administration’s policies for Governor Exempt Employees.

B. Employees may donate annual leave to the full amount of their accumulated hours.

C. In accordance with the provisions of Section 10-7-10 NMSA 1978, the donation of sick leave is governed by the following restrictions:

- (1) employees who have accumulated more than six hundred hours of sick leave can transfer the additional amounts over 600 hours to another employee;
- (2) the dollar value of the transferred leave shall equal fifty percent of the monetary value of the total hours transferred by the donor employee;
- (3) no more than 120 hours of sick leave may be transferred by the donor in any one fiscal year, with the exception of the year in which an employee retires, when an employee may transfer up to 400 hours of sick leave;
- (4) donations of sick leave may be made only once per fiscal year on either the pay date immediately following the first full pay period in January or the first full pay period in July, unless the employee is retiring.

D. An agency shall maintain the following documentation:

- (1) the name, position title, and hourly rate of base pay of the proposed leave recipient;
- (2) a licensed health care provider's description of the nature, severity, and anticipated duration of the emergency involved which has been provided by the employee or legally authorized representative and a statement that the recipient is unable to work all or a portion of their work hours; and
- (3) any other information which the employing agency may reasonably require.

E. Supporting documentation for the request to donate leave shall be kept confidential and not subject to public inspection without the written consent of the employee.

F. The agency shall transfer the leave to the leave account of the employee converting the dollar value of the donor's leave based on the donor's hourly rate of base pay to hours of leave based on the recipient's hourly rate of base pay.

G. The recipient of donated leave may not use such leave until first exhausting all accrued annual and sick leave, compensatory time and personal leave day.

H. Donated leave shall revert to the employees who donated the leave on a prorated basis when the medical emergency or serious health condition ends or the employee separates from the agency.

[1.7.7.9 NMAC - Rp, 1 NMAC 7.7.9, 7/7/2001; A, 11/14/2002; A, 7/5/2005; A, 1/1/2021; A, 8/1/2021; A, x/x/2026]

1.7.7.15 EDUCATIONAL LEAVE:

A. An agency may grant employees educational leave with or without pay to pursue 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 and who leave the employ of the agency within one year of the conclusion of the educational leave, ~~[must]~~ may be required to 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, 7/7/2001; A, 1/1/2020; A, x/x/2026]

1.7.7.20 BEREAVEMENT LEAVE:

A. Agencies may grant bereavement leave to employees who have experienced the death of a relation by blood or marriage within the third degree or a person residing in the employee's household.

B. Bereavement leave is a form of administrative leave that an agency may grant to employees in accordance with 1.7.7.14(A) NMAC. The agency may authorize bereavement leave for up to five consecutive workdays when it is in the best interests of the agency to do so. Bereavement leave in excess of five consecutive workdays must have the prior written approval of the SPO director.

C. An agency may supplement bereavement leave by authorizing an employee to use accrued annual or sick leave or compensatory time to attend the funeral of a relation by blood or marriage within the third degree or a person residing in the employee's household.
[1.7.7.20 NMAC – N, 8/1/2021; A, x/x/2026]

1.7.7.21 PAID PARENTAL LEAVE

A. Employers shall provide 12 work weeks of fully paid parental leave to eligible employees following the birth or adoption of a child. An eligible employee means a full-time classified employee who has completed the one year probationary period prior to the start of Paid Parental Leave (PPL).

B. PPL shall be paid based upon the eligible employee's base salary (excluding temporary increases of pay, such as temporary promotion increases, temporary recruitment differentials, temporary retention differentials, or temporary salary increases) determined by the employee's regularly scheduled work hours.

C. Domestic partners are eligible for PPL when children join their household via birth or adoption. If both parents, including a domestic partner of a parent, are eligible employees, each parent or partner shall receive PPL.

D. Eligible employees must take PPL during the first six months following the birth or adoption of a child. Eligible employees may utilize one term of PPL (up to 12 work weeks) per birth or adoption event.

E. Employees utilizing PPL shall continue to accrue vacation and sick leave in accordance with Subsection A of 1.7.7.8 NMAC and Subsection A of 1.7.7.10 NMAC during the period of PPL. If an official holiday occurs during the eligible employee's PPL, the eligible employee will receive holiday pay in lieu of PPL, provided the eligible employee is in pay status the day before and the day after the official holiday.

F. PPL may not be donated and any such leave not utilized within the six-month period explained above shall be forfeited.

G. PPL shall run concurrently with leave under the federal Family Medical Leave Act (FMLA) as applicable.

H. Eligible employees cannot receive short-term disability benefits and PPL benefits at the same time.

I. Eligible employees shall be required to notify their employer at least 30 days in advance of their intention to use PPL so that the employer may secure backfill coverage as necessary. When 30 days' notice is not possible, the employee must provide this notice as soon as practicable.

[1.7.7.21 NMAC – N, x/x/2026]