

This is an amendment to 1.7.7 NMAC, Sections 8, 9, 10, 11, 12, 14, and 20, effective 8/1/2021

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. However, there shall be no limit to the number of annual leave hours that shall be carried forward after the last pay period of December 2020. Any annual leave hours above 240 that are carried forward past December 2020 and are not used prior to the pay period ending July 9, 2021, shall not be carried forward beyond that pay period.
- F.** 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, notwithstanding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.
- 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 rate, excluding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.
- I.** The estate of an employee who dies while in the classified service shall be paid for the employee's total accrued annual leave, excluding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.

[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]

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 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 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 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]

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 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 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.]~~

~~[H].~~ 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 base 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 of base pay for up to 400 hours of sick leave.

~~[I].~~ 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, 7/7/2001; A, 11/14/2002; A, 1/1/2020; A, 8/1/2021]

1.7.7.11 LEAVE WITHOUT PAY:

- A. Leave without pay may be approved when:
- (1) the agency can assure a position of like status and base pay, at the same geographic location, upon the return of the employee from leave without pay; or
 - (2) the employee agrees in writing to waive that requirement.
- B. Leave without pay shall not exceed 30 consecutive calendar days for employees in emergency or temporary status.
- C. Leave without pay may not exceed 30 consecutive calendar days for probationers or employees in term status with less than one year of employment without the prior approval of the agency. Any leave without pay in excess of 30 consecutive calendar days shall not be credited toward the probationary period unless the employee was called to active military duty.
- D. Leave without pay for employees in career status and term status with more than one year of employment shall not exceed 12 consecutive months without the prior written approval of the agency.
- E. Employees may be authorized leave without pay for up to one year to temporarily accept a position in the exempt service. Such leave without pay may be extended with the approval of the board.

[1.7.7.11 NMAC - Rp, 1 NMAC 7.7.11, 7/7/2001; A, 8/1/2021]

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]~~ An eligible employee is entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period ~~[, at the time of a birth, placement through adoption or foster care, bonding, or serious health condition of a child of the employee or the employee's spouse, at the time of a serious health condition for the employee, or family members.]~~ for the birth and care of a newborn child of the employee within one year of the birth; the placement with the employee of a child for adoption or foster care and the care of the newly placed child within one year of placement; the care of the employee's child, parent, spouse, or domestic partner who has a serious health condition; and the employee's own serious health condition that makes the employee unable to perform the essential functions of their job; or any other qualifying exigency arising out of the fact that the spouse, domestic partner, son, daughter or parent of the employee is on covered active duty~~[-]~~ or has been notified of an impending call or order to covered active duty status, ~~[in support of a contingency operation]~~ as defined in the FMLA regulations [29 CFR 825.102], including ~~[family preparations]~~ issues resulting from ~~[a-]~~short-notice ~~[of]~~ deployment, military events and related activities, childcare ~~[on an urgent basis or for]~~ and school activities for the military member's child, financial and legal arrangements to address the military member's absence while on covered active duty, counseling, spending time with the [service] military member while on short-term leave, post-deployment activities, care of the military member's parent who is incapable of self-care, and other activities in accordance with the FMLA regulations [29 CFR 825.126]. ~~[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, domestic partner, son, daughter, parent, or next of kin of a covered servicemember ~~[who is recovering from]~~ with 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. [29 CFR 825.127]

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, 7/7/2001; A, 11/14/2002; A, 6/30/2006; A, 10/15/2008; A/E, 1/27/2009; A, 5/14/2009; A, 1/1/2020; A, 8/1/2021]

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. Fees received as a witness, excluding reimbursement for travel, shall be remitted to the employee's agency. Employees shall not be entitled to administrative leave to participate in judicial or administrative proceedings against an agency or the state of New Mexico in which the employee is a litigant in or party to the proceeding.

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, 7/7/2001; A, 11/14/2002; A, 7/5/2005; A, 1/1/2020; A, 8/1/2021]

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 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]

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