

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT**  
**CHAPTER 12 PUBLIC DEFENDER DEPARTMENT**  
**PART 7 ABSENCE AND LEAVE**

**10.12.7.1 ISSUING AGENCY:** Public Defender Commission  
[10.12.7.1 NMAC - N, 7/1/2015]

**10.12.7.2 SCOPE:** Applies to all employees.  
[10.12.7.2 NMAC - N, 7/1/2015]

**10.12.7.3 STATUTORY AUTHORITY:** Section 31-15-2.4(B)(6) NMSA 1978; Section 31-15-7 NMSA 1978, Section 10-7-10 NMSA 1978; Section 13: 29 U.S.C. Sections 201 and 2601 et seq.: Section 15: Section 1-12-42 NMSA 1978, Section 17 NMSA 1978, Sections 20-4-7, 20-5-14 and 20-7-5 NMSA 1978.  
[10.12.7.3 NMAC - N, 7/1/2015]

**10.12.7.4 DURATION:** Permanent.  
[10.12.7.4 NMAC - N, 7/1/2015]

**10.12.7.5 EFFECTIVE DATE:** 7/1/2015 unless a later date is cited at the end of a section.  
[10.12.7.5 NMAC - N, 7/1/2015]

**10.12.7.6 OBJECTIVE:** The objective of Part 7 of Chapter 12: is to provide for the accrual and administration of leave available to employees.  
[10.12.7.6 NMAC - N, 7/1/2015]

**10.12.7.7 DEFINITIONS: [RESERVED]**  
[10.12.7.7 NMAC - N, 7/1/2015]

**10.12.7.8 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 annual leave accrual rate, any employment in the exempt service and judicial, executive or legislative branches of New Mexico state government shall be counted in determining years of cumulative employment.

**C.** For purposes of annual leave accrual rate, employment in programs transferred into the department by legislation or other lawful 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 shall not be used before it is accrued and must be authorized before it is taken in accordance with department policy.

**G.** Employees separating from the department, 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 their current hourly rate. Employees separating from the department 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.

**H.** The estate of an employee who dies while employed by the department shall be paid for the employee's total accrued annual leave.

[10.12.7.8 NMAC - N, 7/1/2015]

**10.12.7.9 DONATION OF ANNUAL OR SICK LEAVE:**

- A.** Employees may donate leave to another employee in the department for a medical emergency with approval of the office.
- 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 600 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 50% 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.** The department shall maintain the following documentation:
  - (1) the name, position title, and hourly rate of 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 department 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 office 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 pay to hours of leave based on the recipient's hourly rate of 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 department.

[10.12.7.9 NMAC - N, 7/1/2015]

**10.12.7.10 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 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 department 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, 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 department except as provided by law.
- G.** Former employees who were laid off and are returned to work in accordance with the provisions of 10.12.10 NMAC shall have restored the sick leave they had accrued as of the date of layoff.
- H.** The department 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 Section 10-7-10 NMSA 1978, 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 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 department, 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 50% of their hourly rate for up to 400 hours of sick leave.

[10.12.7.10 NMAC - N, 7/1/2015]

**10.12.7.11 LEAVE WITHOUT PAY:**

**A.** Leave without pay may be approved when:

(1) the department can assure a position of like status and 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 office. 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 office.

**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 chief.

[10.12.7.11 NMAC - N, 7/1/2015]

**10.12.7.12 FAMILY AND MEDICAL LEAVE:**

**A.** In addition to other leave provided for in 10.12.7 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.].

Employees who have been employed by the department 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, and classified service shall count as department 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 or placement of a child or at the time of a serious health condition for the employee, or family members, or any 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 to active duty status, in support of a contingency operation as defined in the FMLA. 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 service member 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 service member. 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.** The department requires 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 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.** The department 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 Subsection C of 10.12.1.12 NMAC.

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

[10.12.7.12 NMAC - N, 7/1/2015]

**10.12.7.13 ABSENCE WITHOUT LEAVE:**

**A.** Employees who fail to appear for work without authorized leave or who appear for work but are in violation of department policy governing their readiness for work shall be considered to be absent without leave in accordance with 10.12.6.13 NMAC.

**B.** Employees shall not be paid for any periods of absence without leave and shall not accrue annual or sick leave.

[10.12.7.13 NMAC - N, 7/1/2015]

**10.12.7.14 ADMINISTRATIVE LEAVE:**

**A.** The department may authorize employees leave with pay for up to five consecutive work days when it is in the best interests of the department to do so. Administrative leave in excess of five consecutive work days must have the prior written approval of the chief except for administrative leave granted in accordance with the provisions of 10.12.11 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 with the approval of the chief.

**C.** Employees who are registered voters with the permission of their supervisors 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 supervisor 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. Employees who chose to vote pursuant to this provision on the day of elections, may be required subject to confirmation that they voted. Employees are encouraged to use early voting and absentee voting provisions to exercise the right to vote however, voting leave shall not be used for early voting or absentee 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 department.

**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 department.

[10.12.7.14 NMAC - N, 7/1/2015]

**10.12.10.15 EDUCATIONAL LEAVE:**

**A.** The department may grant employees educational leave with or without pay to pursue special training related to their employment.

**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 10.12.7.8 NMAC and Subsection B of 1.12.7.10 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 department for a period of time equal to three times the period of the training.

[10.12.7.15 NMAC - N, 7/1/2015]

**10.12.7.16 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 chief may grant members of the national guard 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 15 workdays per federal fiscal year.

D. Members of the civil air patrol shall be granted military leave not to exceed 15 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.  
[10.12.7.16 NMAC - N, 7/1/2015]

**10.12.7.17 PERSONAL LEAVE DAY:**

A. Employees in career status are entitled to one personal leave day each calendar year. The personal leave day will be consistent with the employee's normal workday. Such leave must be requested and approved in advance.

B. The personal leave day must be taken during consecutive hours.

C. The personal leave day must be taken by December 31 or it will be lost.

D. Employees who do not take the personal leave day shall not be paid for it upon separation from the department.

[10.12.7.17 NMAC - N, 7/1/2015]

**10.12.7.18 TRANSFER OF LEAVE:**

A. All accrued annual and sick leave shall be transferred when persons change status from a position in the exempt service to a non-exempt position in the department without a break in employment.

B. The department shall accept all accrued sick leave and military leave from persons who separate from the executive, judicial or legislative branches of state government and are employed in the department without a break in employment.

C. The department may accept accrued annual leave from persons who separate from the executive, judicial or legislative branches of state government and are employed in the department without a break in employment as determined by the chief.

[10.12.7.18 NMAC - N, 7/1/2015]

**10.12.7.19 DONATING AN ORGAN OR BONE MARROW:**

A. In accordance with the provisions of Section 24-28-3 NMSA 1978, the chief may authorize a leave of absence, not to exceed 20 workdays, to an employee for the purpose of donating an organ or bone marrow.

B. An employee may request and use donated annual or sick leave for the purpose of donating an organ or bone marrow.

C. If an employee requests donations of annual leave or sick leave but does not receive the full amount of leave needed for the donation of an organ or bone marrow, the chief may grant paid administrative leave for the remainder of the needed leave up to the maximum total of twenty workdays.

D. The chief may require verification by a physician regarding the purpose of the leave requested and information from the physician regarding the length of the leave requested.

E. Any paid leave of absence granted pursuant to this provision shall not result in a loss of compensation, seniority, annual leave, sick leave or accrued overtime for which the employee is otherwise eligible.

[10.12.7.19 NMAC - N, 7/1/2015]

**HISTORY OF 10.12.7 NMAC [RESERVED]**