

TITLE: 400 HUMAN RESOURCES ADMINISTRATION

CHAPTER 106 LEAVE ADMINISTRATION

PART 2 SICK LEAVE

EFFECTIVE DATE: November 1, 2017

PURPOSE: The purpose of this policy is to provide guidelines for administration of sick leave for LOPD employees.

APPLICABILITY: All LOPD employees

AUTHORITY: Section 31-15-7 NMSA 1978

CROSS REFERENCES: 400.103.8 Worker's Compensation; 10.12.7 NMAC Absence and Leave; 10.12.10 NMAC Furlough, Reduction in Force, Separation without Prejudice; 10-7-10 NMSA 1978; 28-1-1 through 15 NMSA Human Rights Act

RELATED FORMS: LOPD Office Leave Policy Template

DEFINITIONS

Family and Medical Leave (FML) Act: A federal law that mandates up to 12 work weeks of unpaid, job protected leave to eligible employees for certain specified family and medical reasons.

Relation by blood or marriage within the third degree" includes spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, and great-grandparent.

Office Leave Policy: a document developed by the supervisor and provided to all employees describing the supervisor's requirements for requesting and obtaining approval of leave including how and when to submit requests, methods of approval and entry onto timesheets.

- 1 Policy:** The Law Offices of the Public Defender (LOPD) administers sick leave in accordance with 10.12.7 NMAC and the following guidelines.
 - 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.

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- 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 LOPD 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:
 - i. 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.
 - ii. Immediately prior to retirement from the LOPD, 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.

2 Procedure: Employee Responsibilities

- A. Employees must request sick leave in advance and in accordance with the office leave policy established by their supervisor.

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- B. Employees must notify their supervisor of unanticipated sick leave in accordance with the established office policy.
- C. Employees enter leave on their timesheet as soon as approval is received from the supervisor utilizing no more than two decimal places. Employees may use any paid leave hours available if they are sick however, they shall not use sick leave for any purpose other than for reasons of medical need.
- D. Employees are required to provide documentation upon request to support sick leave for chronic medical conditions, surgery, birth of a child or any other reason identified as a qualifying event under the FML Act.
- E. Employees who are absent due to an illness or injury related to work shall utilize their own sick or annual leave pending approval for payment by the Workers Compensation Bureau of the Risk Management Division, General Services Department.

3 Procedure: Immediate Supervisor Responsibilities

- A. Supervisors provide an office leave policy in writing, either hard copy or electronic, to employees.
- B. Supervisors approve leave requests in a timely manner and in accordance with department and office leave policy. Consideration of leave requests pending approval shall include but not be limited to employee leave balances, the number of leave requests for the same time period, and any rotation defined by the supervisor in the office policy.
- C. Supervisors are required to consult with Human Resources when they are aware of a need for FML to include sick leave absences for chronic medical conditions, surgery, birth of a child or any serious medical condition identified as a qualifying event under the FML Act for the employee, a spouse, a parent or a child.
- D. Supervisors approve sick leave for absences related to Workers Compensation claims until notified by Human Resources that the Workers Compensation Bureau has authorized other payment.
- E. Supervisors approve sick leave on the timesheet upon verifying leave balances during the pay period in which the leave is to be taken. If there are insufficient sick leave balances or the employee is unable to make their own timesheet entries the supervisor may make the modifications to the timesheet and document the reason for the adjustment.
- F. If the employee has insufficient leave balances or the reason for the sick leave is not a medical emergency, the leave may be denied or modified and the employee may be

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directed to report to work.

- G. If the employee fails to report to work when sick leave is denied or modified, the employee shall be designated as Absent Without Leave and subject to disciplinary action.
- H. If there is a reason to believe that the employee is abusing sick leave, supervisors request a written statement by a doctor verifying that the employee is unable to work and discuss concerns with the employee. If the potential abuse of leave continues the supervisor should contact Human Resources. Reasons to believe an employee may be abusing sick leave include, but are not limited to, the following:
 - i. Example: A pattern of calling in or requesting sick leave on certain days of the week.
 - ii. Example: A pattern of calling in or requesting sick leave prior to or following scheduled days off.
 - iii. Example: A request for another type of leave has been denied, and the employee calls in sick for the same period.
 - iv. Example: The employee uses sick leave as quickly as he or she has earned it and has not declared a medical condition.
 - v. Example: A pattern of calling in or requesting sick leave for several days at a time.

4 Procedure: Human Resource Responsibilities

- A. HR identifies payroll exceptions when an employee does not have sufficient sick leave for the requested amount.
- B. HR conducts leave audits upon employee request.
- C. HR may enter sick leave on an employee's timesheet at the request of the employee and/or the supervisor.
- D. HR may not approve sick leave without permission from the supervisor in writing.
- E. HR works with the supervisor if concerns regarding possible abuse of sick leave are reported.
- F. HR provides information to employees and supervisors regarding FML, Workers

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Compensation, and/or Sick Leave Buy Back.

Authorized Signature

APPROVED: _____

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