



NEW MEXICO
**LAW OFFICES OF THE
PUBLIC DEFENDER**

**Chief Public Defender
Bennett J. Baur**

TITLE: 400 HUMAN RESOURCES ADMINISTRATION

CHAPTER: 106 LEAVE ADMINISTRATIONS

PART: 4 PAID PARENTAL LEAVE

EFFECTIVE DATE: April 20, 2020

PURPOSE: To establish guidelines for the request, approval, and administration of paid parental leave for Law Offices of the Public Defender (LOPD) eligible employees. The purpose of the leave is to provide up to 12 weeks of paid parental leave to enable eligible employees to care for and bond with a newborn or newly adopted child/children, or foster child with an anticipated placement of six (6) months or more.

APPLICABILITY: All LOPD employees.

AUTHORITY: Section 31-15-7 NMSA 1978

CROSS-REFERENCES: 10.12.2 NMAC Appointments; 10.12.7 NMAC Absence and Leave; Human Rights Act, §28-1-7, NMSA 1978; Title VII of the Civil Rights Act of 1964

RELATED FORMS: LOPD Paid Parental Leave Request Form

1. DEFINITIONS

- A. **Chief Public Defender** - pursuant to the Public Defender Act, the administrative head of the Department. The Chief is responsible for the operations of the Department. It is the Chief's duty to manage all operations of the Department.
- B. **Review Panel** - a three (3) person panel to review any case forwarded by Human Resources or cases that fall outside the parameters outlined in this policy. This panel will consist of the following members:
1. General Counsel for LOPD or designee
 2. HR Director or designee
 3. ASD Deputy Chief or designee

- C. **Family and Medical Leave (FML) Act** - A federal law that mandates up to 12 weeks of unpaid, job-protected leave to eligible employees for certain specified family and medical reasons.
- D. **LOPD HR** - Human Resources Division.
- E. **Eligible Employee** - an employee who has completed their probationary period and is in career status (as defined by LOPD rules) and worked a minimum of 1250 hours in the 12 months preceding the leave, or an employee who has been appointed by the Chief Public Defender, employed with the LOPD twelve consecutive months, prior to the start of paid parental leave and worked a minimum of 1250 hours in the 12 months preceding the leave, excluding temporary, emergency and term appointments.

Career employees who complete their probationary period after *[effective date of this policy TBD]* or employees appointed by the Chief Public Defender twelve months of consecutive service after *[effective date of this policy TBD]*, will be eligible for paid parental leave subject to the requirements set forth herein, including but not limited to the requirement that paid parental leave be taken within six (6) months of the birth or adoption of the child/children.
- F. **Career Status-An** employee in a career appointment attains career status beginning the day following the end of the probationary period required by 10.12.2.8 NMAC unless otherwise provided for by these rules.
[10.12.2.9 NMAC - N, 7/1/2015]
- G. **Parent** - includes a biological, adoptive, step, or foster parent of a child with an anticipated placement of six months or more, or other individual standing *in loco parentis* to a newborn or newly adopted child/children.
- H. **Child or Infant** - a person who is less than 18 years old.
- I. **Son or Daughter** - a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under age 18 years old.
- J. **Intermittent Leave** - leave taken at separate periods of time rather than for one (1) continuous period of time, and may include leave of periods from a half hour or more to several weeks.
- K. **Concurrently** - at the same time, simultaneously.
- L. **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 are, including how and when to submit requests, methods of approval and entry onto timesheets.
- M. **Paid Parental Leave** - a paid leave of absence that does not reduce an employee's earned leave balances for the purpose of providing eligible employees flexibility and time to bond with their newborn or newly adopted child/children, or foster child with an anticipated placement of six (6) months or more under the age of 18.

2. ELIGIBILITY

- A. To be eligible for paid parental leave an employee must have completed his or her probationary period, be in career status (as defined by LOPD rules) and have worked a minimum of 1250 hours in the 12 months preceding the leave or an employee who has been appointed by the Chief Public Defender, employed with the LOPD twelve consecutive months, prior to the start of paid parental leave and worked a minimum of 1250 hours within the last year, excluding temporary, emergency and term appointments.
- B. Requests to take paid parental leave must be approved prior to taking leave.
- C. A request for paid parental leave can only be made once per 12 months.
- D. Requests must be received 30 days in advance of the birth of a newborn or newly adopted child/children, or foster child with an anticipated placement of six (6) months or more. If 30 days notice is not possible, notice is expected as soon as practical. "As soon as practical" means at least verbal notice within two business days of learning of the need for leave followed by written confirmation.
- E. Provide legal documents to the immediate supervisor and LOPD-HR within 15 calendar days of the birth or adoption of a child, or foster child with an anticipated placement of six (6) months or more.

Documents that will be considered are a report of birth, a birth certificate, an adoptive or foster placement agreement, or an adoption or foster care order from Children, Youth and Families Department (CYFD). The legal documents provided shall, at a minimum, show the date of birth or date of adoption, date of foster care placement, the age of the child at the time of adoption or foster care placement when applicable, and the name of the parent(s).

- F. An eligible employee on Paid Parental Leave will be required to provide periodic reports as deemed appropriate during the leave about the employee's status and intent to return to work.

3. POLICY

- A. In order to assist and support new parents in balancing work and family, the Law Offices of the Public Defender (LOPD) provides eligible employees with a period of paid parental leave for activities related to the bonding, care, and well-being of their newborn or newly adopted child/children or foster child with an anticipated placement of six (6) months or more. Domestic partners who are eligible employees are eligible for paid parental leave.
- B. The LOPD will provide up to 12 weeks of paid parental leave for all eligible employees following the birth or adoption of a child or foster child with an anticipated placement of six (6) months or more.
- C. Paid parental leave shall be paid at the eligible employee's base salary (excluding temporary increases in pay, such as temporary promotional increases, temporary recruitment

differentials/geographical pay or temporary salary increases) determined by the employee's regularly scheduled work hours.

- D. Each parent who is an eligible employee may receive paid parental leave under the terms of this policy.
- E. Eligible employees must take paid parental leave during the first six (6) months following the birth, adoption of a child, or placement of a foster child with an anticipated placement of six (6) months or more. Any unused leave at the end of this six (6) month period will be forfeited. Paid parental leave will have no cash value and will not result in a payout benefit. Paid parental leave may not be donated to another employee. Paid parental leave can be taken in a single continuous period or intermittently during the six (6) month period.
- F. Employees utilizing paid parental leave shall continue to accrue vacation and sick leave in accordance with state rules and regulations during the period of parental leave. If an official holiday occurs during the eligible employee's paid parental leave, the eligible employee will receive holiday pay in lieu of paid parental leave, provided the eligible employee is in paid status the day before and the day after the official holiday.
- G. An employee cannot receive short-term disability benefits and paid parental leave benefits at the same time. If an employee is eligible for short-term disability benefits after giving birth to a child, the employee may utilize 28 days of paid parental leave to cover the 28 day waiting period required by Short Term Disability.
- H. Paid parental leave taken under this policy shall run concurrently with leave under the FMLA. This means that when paid parental leave taken under this policy falls under the definition of FMLA qualifying leave, the paid parental leave will be counted against the employee's 12 week FMLA leave entitlement. An employee shall be eligible for paid parental leave even if the employee has otherwise exhausted their allotted FML.

4. PROCEDURES

- A. To apply for paid parental leave, an eligible **employee** shall:
 - (1) Notify and discuss with the employee's immediate supervisor the intended request for paid parental leave 30 days in advance of the anticipated birth or placement of an adopted child or foster child with an anticipated placement of six (6) months or more with an anticipated placement of six (6) months or more. If 30 days notice is not possible, notice is expected as soon as practical. "As soon as practical" means at least verbal notice within two business days of learning of the need for leave followed by written confirmation.
 - (2) Complete the Request for Paid Parental Leave Form and submit the form to the employee's immediate supervisor, for initial review, signature and approval, and then to HR for final review, signature and approval at least 30 days in advance of the anticipated birth or placement of an adopted child or foster child with an anticipated placement of six (6) months or more. If 30 days notice is not

possible, notice is expected as soon as practical. "As soon as practical" means at least verbal notice within two business days of learning of the need for leave followed by written confirmation. The form is available on the LOPD website or by contacting LOPD-HR@lopdnm.us.

- (3) Provide legal documentation of the birth or adoption of a child or placement of a foster child with an anticipated placement of six (6) months or more to HR within 15 days of the birth or the adoption or as soon as it is available. Situations where a legal document cannot be provided at the time of birth or adoption or placement of foster child with an anticipated placement of six (6) months or more or within the required timeframe or as soon as practical, will be considered on a case-by-case basis by the Review Panel.

Examples of legal documents that will be considered are a report of birth, a birth certificate, an adoptive or foster placement agreement, or an adoption or foster care order from Children, Youth and Families Department (CYFD). The legal documents provided shall, at a minimum, show the date of birth or date of adoption, date of foster care placement, the age of the child at the time of adoption or foster care placement when applicable, and the name of the parent(s).

- (4) Notify the employee's immediate supervisor and HR in writing of any changes to the approved paid parental leave request form, at least two (2) business days in advance of the affected change.
- (5) These obligations are for any employee requesting paid parental leave.

B. **Supervisors:** As paid parental leave is used, the employee's immediate supervisor will report and approve the employee's paid parental leave hours in SHARE using the time reporting code "PdPmtLv" if FMLA leave is not applicable or, "FMLA PdPmtLv" when the employee is approved for both FMLA leave and paid parental leave to run concurrently.

C. **HR shall:**

- (1) Communicate available leave options with the employee upon receipt of a request for paid parental leave, including FMLA leave, if the employee is eligible for such leave.
- (2) Notify the requesting employee that the request for paid parental has been approved or disapproved after the immediate supervisor and HR have made a decision.
- (3) Keep completed and signed forms in the employee's personnel file.

LOPD reserves the right to have the Review Panel, a three (3) person panel of members, review any case forwarded by HR that falls outside of the parameters outlined in this policy. The Review Panel will review requests in which the following is unclear; legal documentation, employee written request, the duration is not defined, or needs further consideration. The Review Panel may request additional information from the employee or deny requests at agency discretion.

Failure to comply with policies and procedures listed may result in the delay or denial of an employee's request for paid parental leave.

Any requests for exception to this policy shall be made in writing to the Chief Public Defender.

Authorized Signature ;

APPROVED: _____

Bennett J. Baur, Chief Public Defender
Law Offices of the Public Defender

4/20/20