



**Interpretive Memorandum 2019-01**

**Date:** August 26, 2019  
**To:** LOPD Employees  
**From:** Bennett J. Baur, Chief Public Defender  
**Subject:** Medical Emergency (Leave Donations)

**1. Purpose**

This shall serve to establish guidelines to identify a medical emergency for the request, approval and administration of donated annual and/or sick leave to employees.

**2. Background**

Pursuant to **Subsection A of 10.12.7.9 NMAC Donations of Annual or Sick Leave**, LOPD employees may donate leave to another employee in the department for a medical emergency with approval of the office.

**3. Eligibility Parameters**

A **medical emergency** shall mean the same as a serious health condition as defined below (29C.F.R. 825.113):

**Serious Health Condition** - An illness, injury, impairment, or physical or mental condition that involves either:

(1) Inpatient care (e.g., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (e.g., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; (Amended 08/01/10) or

(2) Continuing treatment by a *health care provider* which includes:

**a.** A period of incapacity lasting more than **three (3) consecutive, full calendar days**, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes: (Amended 08/01/10)

**1.** treatment two (2) or more times by or under the supervision of a *health care provider* (e.g., in-person visits, the first within seven (7) days and both within thirty (30) days of the first day of incapacity); (Added 08/01/10); or

**2.** one (1) treatment by a *health care provider* (e.g., an in-person visit within seven (7) days of the first day in incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or

**b.** Any period of incapacity related to pregnancy or for prenatal care. A visit to the *health care provider* is not necessary for each absence; or

**c.** Any period of incapacity or treatment for a chronic *serious health condition*, which continues over an extended period of time, requires periodic visits (at least twice a year) to a *health care provider*, and may involve occasional episodes of incapacity. A visit to a *health care provider* is not necessary for each absence (e.g., asthma, diabetes, epilepsy, etc.); (Amended 08/01/10) or

**d.** A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a *health care provider* is required, rather than active treatment (e.g., Alzheimer's, stroke, terminal diseases, etc.

**e.** Any absences to receive multiple treatments for restorative surgery or for a condition that likely would result in incapacity of more than three (3) consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.). (Amended 08/01/10)

Employees eligible for leave donations are not required to be certified under the Family Medical Leave Act (FMLA).

Cc: Ronald Herrera, Human Resources Director  
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