GENERAL ADMINISTRATION
EMPLOYEE

045 LEAVE

045.3 Family Medical Leave Policy

045.3.1 Purpose

The Human Services Department (HSD) hereby establishes guidelines and procedures by which to administer and implement the Family and Medical Leave Act (FMLA).

045.3.2 Definitions

A. "Domestic Partner" means a person related to an employee where the employee and the partner presently can affirm that:

1. the partners are in an exclusive and committed relationship for the benefit of each other, and the relationship is the same as, or similar to, a marriage relationship in the state of New Mexico;
2. the partners share a primary residence and have done so for twelve or more consecutive months;
3. the partners are jointly responsible for each other's common welfare and share financial obligations;
4. neither partner is married or a member of another domestic partnership;
5. both partners are at least 18 years of age;
6. the partners are not related by blood to a degree of closeness that would prevent them from being married to each other in the state of New Mexico.

B. "Immediate family member", for purposes of this policy, is defined as a spouse, domestic partner, parent or child (foster, adopted, or biological).

C. "Incapacity" means inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

D. "Intermittent leave" is FMLA leave taken in separate blocks of time due to a single qualifying reason."

E. "Serious Health Condition" means an injury, illness, impairment, or physical or mental condition that involves:

1. Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity, or any

subsequent treatment in connection with such inpatient care; or

2. Continuing treatment by a health care provider including any one of more of the following:

   a) A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

      1) Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider or under orders of a health care provider; or
      2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

   b) Any period of incapacity due to pregnancy, or for prenatal care.

   c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which:

      1) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or under direct supervision of a health care provider;
      2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
      3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

   d) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective but under the continuing supervision of a health care provider.

   e) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or under the orders of a health care provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (such as chemotherapy, radiation, etc.).

F. "Treatment by a health care provider" means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.

G. "Unable to perform the functions of the position" means where the health care

provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act.

045.3.3 Policy

The FMLA entitles qualified employees up to 12 weeks of unpaid leave per year (1) for the birth or adoption of a child, (2) to care for a spouse or an immediate family member with a serious health condition, or (3) when unable to work because of a serious health condition.

For possible benefits (allowances) for military family medical leave, contact HSD's Office of Human Resources (OHR). See 1.7.7.12, NMAC, Family and Medical Leave.

045.3.4 Eligibility

A. To be eligible, an employee must (1) have worked in the classified service for at least 12 months (which need not be consecutive) and (2) have worked at least 1,250 hours during the 12-month period immediately preceding the start of FMLA leave. Hours worked under the Family and Medical Leave Act are computed in the manner established by the Fair Labor Standards Act. Husbands and wives or domestic partners employed by HSD are eligible for FMLA leave; however, the combined total of workweeks of FMLA leave to which they are entitled shall be limited to 12 weeks in a 12-month period when the leave is taken to care for a parent with a serious health condition, for the birth of a child, or placement with the employees of a child for adoption or foster care. Each is entitled to 12 weeks of leave for their own serious health condition, to care for their sick child or for each other.

B. Probationary, term, temporary, and part-time employees may or may not qualify for this type of leave, depending on whether they meet the eligibility requirements of the law.

045.3.5 Permissible Purposes for FMLA Leave and Corresponding Proof Requirements

The following are permissible purposes for an eligible employee entitled to FMLA leave and corresponding proof requirements:

A. For the birth of a child, and to care for that child. Proof requirement is a written statement from a physician or other appropriate health care provider.

B. Upon placement of a child with the employee for adoption or foster care. Proof requirement is a written statement from employee.

C. To care for the employee's seriously ill spouse, domestic partner, child or parent.

Proof requirement is a statement by a physician or other appropriate health care provider that the employee is "needed to care for" a seriously ill family member.

D. For a serious health condition that makes the employee unable to perform his/her job functions. Proof requirement is certification for medical leave that must include a statement that the employee is unable to perform the functions of his/her position.

E. Certification of the medical necessity of intermittent leave or leave on a reduced leave schedule must include a specific description, by a physician or other appropriate health care provider, of the treatment regimen which is necessary for the employee or the employee's immediate family to undergo.

F. In all circumstances of FMLA leave, medical documentation must be provided using OHR's *Certification of Health Care Provider* and *Application for Family Medical Leave, Annual Leave Donations and Leave without Pay for Medical Reasons* forms. HSD may require the employee to obtain a second medical opinion, at HSD's expense. HSD will designate the health care provider to furnish the second opinion.

045.3.6 Allowable Duration

A. An eligible employee may choose to request any combination of accrued paid leave (annual, sick, compensatory time) and unpaid leave for FMLA leave purposes. FMLA leave need not be full time to care for a seriously ill family member or because of the employee's own serious health condition. However, HSD may require that the employee substitute any of their accrued annual leave, accrued sick leave, personal leave day, accrued compensatory time, or donated leave for any part of unpaid FMLA leave.

B. 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.

C. An employee may apply for FMLA leave on an intermittent basis over a twelve-month period based on the same condition authorized for FMLA leave. The employee must make a reasonable effort to schedule such leave so as not to disrupt unduly HSD's operations. HSD may temporarily transfer an employee on planned intermittent leave to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position during the period that the intermittent leave schedule is required.

D. Any leave based on the birth or placement of a child must be taken within 12

months following the event. An employee is not entitled to intermittent FMLA leave for taking leave for birth or placement of a child with an employee for adoption or foster care. However, it may be approved at the discretion of OHR.

E. Total FMLA leave, whether paid or unpaid, may not exceed 12 weeks or 480 hours in a 12-month period. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

045.3.7 Processing an FMLA Leave Request

A. Employees, in foreseeable circumstances, must give notice of their need to take FMLA leave at least 30 days in advance. In unforeseeable situations, an employee must give notice within two working days of when the employee learns of the need for FMLA. Medical documentation must be submitted within 15 calendar days of the request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith effort.

B. To initiate a request for Family Medical Leave, employees must submit an *Application for Family Medical Leave, Annual Leave Donations, and Leave Without Pay for Medical Reasons* form to the Medical Issues Coordinator. Within 5 days of receipt of the application, the Medical Issues Coordinator will send the employee a *Notice of Eligibility* along with the appropriate *Certification of Health Care Provider* form to have the doctor complete. Employees have 15 days to return the *Certification of Health Care Provider* form to the Medical Issues Coordinator. Within 5 days of receipt of the *Certification of Health Care Provider* form, the Medical Issues Coordinator will finalize the FMLA request by sending the employee a *Designation Notice* along with an approval or denial letter notifying the employee of their FMLA status, copied to the supervisor.

C. OHR may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after OHR has given the employee the opportunity to correct any deficiencies in the certification. OHR may not ask health care providers for additional information beyond that required by the certification form.

D. OHR may require the employee to obtain a second opinion at HSD's expense. If the opinion of the employee's and HSD's designated health care providers differ, HSD may require the employee to obtain certification from a third health care provider approved jointly by HSD and the employee at HSD's expense. This third opinion shall be final and binding.

E. Employees on FMLA leave must keep the Office of Human Resources (OHR) informed of their current contact information.

045.3.8 Extension Requirements

Requests for FMLA leave extensions must be in the same format, provide the same proof/documentation and are approved in the same manner as the original requests, provided that the 480-hour limit has not been exceeded.

045.3.9 Considerations in Approval of FMLA

If medical certification is required for the type of leave requested, and it is not provided in a timely manner, the FMLA leave may be denied until the required medical documentation has been provided.

045.3.10 Return to Work

A. Whenever an employee is on approved FMLA leave due to a personal serious health condition, a return-to-work certification is required. Such proof/documentation of the employee's ability to perform his/her position shall be in the form of a health provider's statement corroborating that the employee is able to return to work.

B. If an employee fails to provide requested return-to-work certification by the end of the approved FMLA leave, HSD may (1) deny reentry to the work place, or (2) place the employee on absence without leave (AWOL) as appropriate. In the last case, an employee is subject to dismissal.

C. Failure to report to work on expiration of approved FMLA leave, whether paid or unpaid, will be considered AWOL and may subject an employee to disciplinary action up to and including dismissal.

D. HSD guarantees a position of equivalent status, range, and salary in the same geographic location (but not necessarily the same office or position which the employee left) upon return from FMLA leave of an employee who has complied with all the provisions of this policy.

E. Any guarantees of a position of like status, range, and salary in the same or other geographic location are null and void in the case of any layoff, furlough, disciplinary action, or expiration of appointment affecting a person on FMLA leave.

045.3.11 Impact on Leave Accrual and Benefits

A. An employee shall not accrue annual and sick leave while on unpaid FMLA leave.

B. Any unpaid leave designated and approved as FMLA leave without pay shall be counted towards the maximum leave without pay as stated in the department's

Leave Without Pay Policy.

C. Approved FMLA leave, whether paid or unpaid, shall not be considered a break in employment.

D. FMLA leave shall not be considered as time worked for overtime purposes. For information regarding the effect of unpaid FMLA leave upon PERA service time, contact the Public Employees Retirement Association.

E. Unpaid FMLA leave shall not change the employee's anniversary date as established by State Personnel Board Rules.

F. All provisions of this policy shall be modified/amended or superseded by any State Personnel Board Rules or Family and Medical Leave Act or regulation changes.

045.3.12 References

State Personnel Board Rules
Family and Medical Leave Act of 1993 (28 CFR 825.114)
Fair Labor Standards Act
United States Code, Title 10, Section 101

APPROVED: DATE:

Kathryn Falls 2/25/10

KATHRYN FALLS, Secretary