GENERAL ADMINISTRATION
EMPLOYEE

045 LEAVE

045.6 Leave Donations Policy

045.6.1 Purpose

The purpose of this policy is to provide guidelines and specific steps for initiating and processing requests for transfer of leave donations for Human Services Department (HSD) employees.

045.6.2 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. "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.

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. "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.).

E. "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.

045.6.3 Policy

A. HSD employees may donate leave to another HSD employee with the approval of the Office of Human Resources (OHR) Manager. An individual may not receive more than 480 hours of donated leave during a one-year period.

B. Employees may donate annual leave to the full amount of their accumulated hours.

C. Employees may donate sick leave under the following conditions:

1. Employees who have accumulated more than six hundred 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 that 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.

045.6.4 Eligibility

A. To qualify for donated leave, the serious health condition is one in which the employee or family member is seriously ill, and the employee is initially unable to report to work for 80 work hours.

B. This kind of leave is not an employer-provided benefit accrued by an employee. It is strictly a voluntary donation from other HSD employees. HSD is not responsible for initiating such requests. Furthermore, the OHR Manager retains final approval authority, and donated leave will not be transferred until approval is granted. Temporary and term employees may not receive donated leave beyond the duration of their appointment.

045.6.5 Processing Donated Annual or Sick Leave

A. Requests for Donated Leave

1. An employee, or designee, requesting donated leave must supply the required medical documentation on OHR's *Certification of Health Care Provider* and OHR's *Application for Family Medical Leave, Annual Leave*

Donations and Leave Without Pay for Medical Reasons forms. The medical documentation must contain a doctor's description of the nature, severity and anticipated duration of the serious health condition involved and a statement that the employee is unable to work. If the request is for a family member's illness, the medical documentation must include a doctor's statement that the employee "is needed to care for" the seriously ill family member. The request and medical documentation must then be transmitted to OHR's Medical Issues Coordinator.

2. For long-term illnesses in which the employee continues to use donated leave, medical documentation must be provided to the Medical Issues Coordinator on request or every six months until the serious health condition is over and the employee has returned to full-time duty.

B. Supervisor's Role

Supervisors should refer any request for donated leave to OHR's Medical Issues Coordinator.

C. Transfer of Donated Leave

The Medical Issues Coordinator will transfer the donated 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.

D. Annual and Sick Leave Usage

Approved donated leave may be used by the employee only after the employee has exhausted all accrued annual and sick leave, compensatory time and personal leave day. Once an employee is utilizing donated leave, he/she is considered to be on sick leave. Therefore, the employee will be accruing annual and sick leave at his/her regular rates while on donated leave. This accrued annual and sick leave must be used as it is accrued before using the donated leave.

045.6.6 Return to Work on Intermittent Basis

If an employee who has received donated leave is unable to return to work on a full-time basis, he/she may continue to use the donated leave to work intermittently until the serious health condition ends. The employee must have exhausted all accrued annual and sick leave, compensatory time and personal leave day. The return to intermittent work and the continued use of donated leave must be supported by medical documentation from the doctor. However, the OHR Manager must approve the continued use of donated leave.

045.6.7 Return of Unused Leave

When the serious health condition ends or the employee separates from the classified service, donated leave shall be returned to the employees who donated the leave on a prorated basis. The supervisor must notify the Medical Issues Coordinator when either of these situations occurs.

045.6.8 Forms

The *Application for Family Medical Leave, Annual/Sick Leave Donations, and Leave Without Pay for Medical Reasons* and *Certification of Health Care Provider* forms are available on the HSD website or may be obtained through OHR.

045.6.9 References

State Personnel Board Rules (1.7.7.9 NMAC Donation of Annual and/or Sick Leave)
FMLA 28 CFR 825.114

APPROVED:

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