

**GENERAL ADMINISTRATION
EMPLOYEE**

045 LEAVE

045.2 Leave Without Pay Policy

045.2.1 Purpose

To set forth procedures for requesting and approving leave without pay.

045.2.2 Definitions

- A. “Absent without Leave” or “Absence without Leave” (AWOL) means an unauthorized absence on unpaid status.

- B. “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.

- C. “Geographic location” means the city to which the position is assigned or which is 35 miles from the boundaries of the community in which the employee is employed.

- D. “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.

- E. “Leave without Pay (LWOP)” means an authorized absence from the job on unpaid status.

045.2.3 Policy

Specific conditions and procedures apply for a Human Services Department (HSD) employee to be absent from work beyond the employee's total accrued leave.

045.2.4 Eligibility

- A. Permanent, term, probationary, temporary, and emergency employees are eligible to apply for LWOP.
- B. In some cases, and solely at the HSD's option, LWOP may be granted only if an employee waives his/her right to return to the same geographic location. In such a case, HSD guarantees an HSD position of like status, range and salary elsewhere in the state but always in the same division and with the approval of the appropriate Division Director. Employees who have waived their right to return to the same geographic location must contact the Office of Human Resources (OHR) for placement. A guarantee of a position of like status, range and salary in the same or other geographic location does not apply in the case of any layoff, furlough, disciplinary action, or expiration of appointment affecting a person on LWOP. In such a situation, appropriate notice would be given to the employee as required by State Personnel Board Rules.

045.2.5 Authorization

- A. Supervisors will make a recommendation to the county director or appropriate bureau chief who are authorized to approve LWOP requests for 40 or fewer work hours in a twelve month period for permissible purposes (see Section 045.2.6). If approval is denied, the decision can be appealed to the OHR Manager. Any LWOP of more than 40 work hours must be approved by the OHR Manager.
- B. All procedures and requirements of this policy are applicable to employees on LWOP as a result of injuries covered by Workers' Compensation. This specifically includes the requirement to apply for LWOP and to the time limits imposed by this policy. (See Policy 043.7, Workers' Compensation.)
- C. Extended periods of unpaid leave may affect Public Employees Retirement Association (PERA) benefits. For information regarding the effect of LWOP upon PERA service time, contact PERA.
- D. For information regarding Family Medical Leave without pay, see 045.3, Family Medical Leave Policy.
- E. This policy will not supersede any language in the Collective Bargaining Agreement.

045.2.6 Permissible Purposes for Leave Without Pay and Corresponding Proof Requirements

The following are permissible purposes for requesting leave without pay and corresponding proof requirements:

1. Medical treatment for an employee or a relation by blood or marriage within the third degree or a person residing in the employee's household. Proof requirement for all cases exceeding 3 consecutive work days or 40 cumulative work hours (or at HSD's discretion in the case of fewer hours), is a statement by a physician or other appropriate health care provider corroborating the need for leave is required. In these cases, the supervisor must contact OHR's Medical Issues Coordinator for direction. For specific procedures regarding requesting and handling medical documentation and an employee's right to confidentiality, see the Medical Records Policy 043.11.
2. Education or training directly related to an employee's job. Proof requirements are documentation of registration or acceptance in the course of study and written approval by the Educational Leave Coordinator. See the Educational Leave Policy 045.7 for further guidelines.
3. Military service. Proof requirement is a copy of the military orders to report for duty.
4. Parenting leave to parents of a newborn or newly adopted child. Proof requirement is a written statement from the employee and OHR *Certification of Health Care Provider* form completed and submitted to the Medical Issues Coordinator for authorization.
5. Child-rearing leave. Proof requirement is a statement from physician or other appropriate health provider corroborating illness, emotional or psychological problem with a child and OHR's *Certification of Health Care Provider* form completed and submitted to the Medical Issues Coordinator for authorization.
6. Pregnancy leave. Proof requirement is a written statement from the employee including estimated due date and OHR's *Certification of Health Care Provider* form completed and submitted to the Medical Issues Coordinator for authorization.
7. Family Medical Leave without pay. See the Family Medical Leave Policy 045.3.
8. Other purposes in the best interest of HSD, not to exceed 40 work hours in a twelve month period per employee, and addressed to his/her immediate

supervisor who makes a recommendation to the county director or appropriate bureau chief who has authority to grant or deny the request. Proof requirement for documentation will be determined by immediate supervisor and county director or bureau chief.

9. Other purposes, which are for good cause and in excess of 40 hours in a 12 month period, with the recommendation of the Division Director and the approval of OHR. Proof requirement for documentation will be determined by the OHR Manager.

045.2.7 Allowable Duration

- A. Total cumulative LWOP for any reason(s) except military leave will not exceed 1040 work hours in any 12-month period running from the first occurrence of LWOP. This includes any unpaid leave taken under FMLA. See the Family Medical Leave Policy on how Family Medical Leave and LWOP can be combined.
- B. However, running from the first occurrence of LWOP, an employee who uses 640 or more hours in a 12 month period is only eligible for 480 hours of approved continuous or intermittent FMLA leave (paid or unpaid) and an additional four (4) weeks of LWOP that must be taken in one continuous period during the subsequent 12 month period. Extensions may be granted for extenuating circumstances by the OHR Manager with the recommendation of the Division Director.
- C. Leave without pay for probationary employees may not exceed 240 hours except in the case of military leave (see State Personnel Board Rule 1.7.7.16 NMAC). Extensions may be approved by the OHR Manager. (See Section 045.2.9, Extension Requirements). Leave without pay for temporary and emergency employees may not exceed 240 hours. Leave without pay for a term, temporary or emergency employee will not be granted beyond his/her expiration date.
- D. Permanent or term job-sharing (part-time) employees are eligible for LWOP as stated above, pro-rated by the normal number of hours the employee works per pay period. Temporary part-time employees are eligible to apply for LWOP in an amount not to exceed 240 hours under any circumstances.

045.2.8 Processing an LWOP Request

- A. Employees, in foreseeable circumstances, must give notice of their intention to apply for LWOP a minimum of 30 days before the requested start date of the LWOP.
- B. Requests for LWOP purposes (8) Other Purposes (40 hours or less) within Section 045.2.6 must be in writing from the employee concerned and must be addressed

to his/her immediate supervisor, who makes a recommendation to the county director or appropriate bureau chief who has authority to grant or deny the request.

- C. Requests for LWOP purposes (1) Medical treatment, (4) Parenting leave, (5) Child-rearing leave and (6) Pregnancy leave within Section 045.2.6 must be in writing. The request will be on OHR's *Application for Family Medical Leave, Annual Leave Donations, and Leave without Pay for Medical Reasons* form and submitted to the Medical Issues Coordinator for authorization. OHR's *Certification of Health Care Provider* form must also be submitted at this time, when appropriate.
- D. A request for LWOP purpose (2) Education or training, (3) Military Service, or (9) Other Purposes (excess of 40 hours) within Section 045.2.6 is addressed to the immediate supervisor and to the County Director, who will forward the request to the OHR Manager.
- E. Employees on LWOP must keep OHR informed of their current contact information.

045.2.9 Extension Requirements

Requests for leave extensions must be received at least 10 workdays before the expiration date of LWOP. Extension requests must be in the same format, require the same proof documentation, and must be approved in the same manner as the original requests. HSD may or may not approve requests for extension of LWOP, based on evaluation of the employee's compliance with proper procedures and workplace needs at the time of the request for extension.

045.2.10 Considerations in Approval of LWOP

- A. Requests for LWOP may be granted when all the above requirements have been met, including furnishing acceptable proof/documentation. HSD, however, reserves the right to refuse or grant LWOP for a lesser period than requested.
- B. Requests for LWOP for purposes (2) Education or training, (8) Other Purposes (40 hours or less) and (9) Other Purposes (excess of 40 hours) within Section 045.2.6, may be granted only if workplace efficiency can be maintained and the unit can guarantee a position of like status, range, and salary upon return. An employee's performance ratings and accrued leave balances will be considered in reaching a decision on approval/denial of LWOP requests for these purposes (2), (8) and (9).

045.2.11 Return to Work

- A. An employee may return to work with OHR approval before the approved ending

date for LWOP with medical release documentation when appropriate.

- B. Whenever an employee is on approved LWOP due to a personal serious health condition, a return-to-work certification will be required. Such proof/documentation shall be in the form of a physician's statement corroborating the employee's fitness for duty. At HSD's discretion, a review of an employee's medical file may be performed to verify the employee's fitness to return. An employee who fails to present acceptable proof/documentation may be denied reentry to the work place, continued on LWOP at the employee's request (provided maximum durations have not been exceeded) or placed on AWOL status as appropriate. In the case of AWOL, an employee is subject to dismissal.
- C. Failure to report to work upon expiration of approved LWOP is considered AWOL and can subject an employee to dismissal.
- D. HSD guarantees a position of like status (career, term, or temporary), range and salary in the same geographic location (but not necessarily the same office or position from which the employee left) on the return from LWOP of an employee who has complied with all the provisions of this policy.

045.2.12 Impact of LWOP Upon Leave Accrual, Probationary Period, and Insurance Premiums

- A. Employees do not accrue sick or annual leave while on LWOP.
- B. Any LWOP in excess of 30 consecutive calendar days is not credited toward the probationary period unless the employee was called to active military duty.
- C. For information regarding the effect of LWOP upon PERA service time, contact the Public Employees Retirement Association.

045.2.13 References

State Personnel Board Rules
HSD Medical Documentation Policy
HSD Family Medical Leave Policy
HSD Educational Leave Policy

APPROVED:

DATE:



KATHRYN FALLS, Secretary

2/25/10