

Chapter 15 – EMPLOYEE LEAVE OF ABSENCE

SECTION 1. POLICY

The Nation as a benefit of employment will grant its employees permission to be absent from work when such absence is granted by means of formally established procedures. The proper chain of command or authority must approve all leave. Leave may be authorized with or without pay and shall be granted in accordance with the rules and procedures presented in this Chapter.

Classified or Court employees of the Nation shall be allowed to earn credit or accumulate leave with pay as a benefit of employment. Probationary employees shall accumulate paid leave but may not take it until their probationary period is completed.

All requests for leave with pay must be requested and approved in writing prior to the leave being taken. If an employee is absent from duty before leave has been requested and approved, the employee shall notify the immediate supervisor or Director within a reasonable time period. Under such a circumstance leave with pay may or may not be approved. Regardless of the circumstance, formal leave forms or documents must be completed and approved.

Specific types of employee leave allowed, and the procedures therein are presented below.

SECTION 2. ANNUAL LEAVE

All Classified or Court employees from the date of hire earn annual leave. New employees serving a probationary period earn annual leave but may not take such leave until a probationary period is satisfactorily completed. A current employee, with an accumulated leave balance, who because of a change in employment status is serving a probationary period, is likewise not allowed to take paid leave. Annual leave may be taken as earned or accumulated after completion of the required probationary period.

Annual leave may be accrued up to a maximum of two hundred forty (240) hours per fiscal year. Any accrual in excess of 240 hours is forfeited or lost if not used. In no case shall an employee be allowed to carry a negative annual leave balance. Annual Leave credit shall be earned as follows:

- A. Less than three years of service—four (4) hours per pay period.
- B. Three years to nine years inclusive—six (6) hours per pay period.
- C. Ten or more years—eight (8) hours per pay period.

To promote efficiency of Nation operations and to cause the least disruption to government services, employees are encouraged to plan their annual leave in advance and take leave on a planned and scheduled basis.

An employee who terminates employment with ninety (90) calendar days of service or more is eligible to receive payment for unused accumulated or accrued annual leave, computed to the effective date of separation. An employee that is separated within the first ninety (90) calendar days is not entitled to payment for the unused or accrued annual leave.

Classified or Court employees are allowed to use annual leave in lieu of sick leave in cases where the employee has exhausted their sick leave balance.

SECTION 3. SICK LEAVE

All Classified or Court employees from the date of hire earn sick leave. New employees serving a probationary period earn sick leave but may not take such leave until a probationary period is satisfactorily completed.

Sick leave may be granted for absence from work because of personal illness, legal quarantine, injury, surgery, and medical or dental appointments, provided that the employee has sick leave accumulated. Sick leave shall not be used at the employee's discretion but shall be allowed only in cases of actual illness, medical disability, or for required medical related absence of an employee.

For sick leave in excess of three (3) days, Executive Leadership, Court Administrator, Director, as appropriate, may require either a certificate from the attending physician, medicine man or traditional healer stating the reason that the illness, injury, medical condition which prevented the employee from working.

Purposely abusing sick leave may subject an employee to disciplinary action.

There shall be no maximum or limit on sick leave accruals. In the event the employee is terminated for any reason, there shall be no payment for unused or accrued sick leave, except as allowed below. In no case shall an employee be allowed to carry a negative leave balance. Sick leave credit shall be earned as follows:

- A. Less than three (3) years of service—four (4) hours per pay period.
- B. Three (3) years to nine (9) years inclusive—six (6) hours per pay period.
- C. Ten (10) or more years—eight (8) hours per pay period.

Payment for accrued sick leave is allowed under the two circumstances described below:

- A. An employee who dies while in the Nation's employ shall be entitled, in addition to any other benefit that may be due such employee, to have payment made to such

employee's surviving spouse or designated beneficiary for all accrued or accumulated sick leave to be computed at the rate of one hundred (100%) percent of the last hourly rate of pay of such employee multiplied by the number of accrued or accumulated hours of sick leave.

- B. An employee who retires from the Nation's employ who is otherwise qualified to retire under the provisions of the Personnel Code shall be entitled, in addition to any other benefits that may be due such employee, to have payment made to such employee for all accrued or accumulated sick leave to be computed at the rate of fifty (50%) percent of the last hourly rate of pay of such employee multiplied by the number of accrued or accumulated hours of sick leave.

SECTION 4. MATERNITY / PATERNITY LEAVE

Classified or Court employees who are about to have a baby or has had a baby may request a maternity leave not to exceed sixty (60) calendar days. The employee must use sick leave first, then accumulated annual leave, and then leave without pay. Leave requests over sixty (60) calendar days requires department approval. A doctor's statement may be requested. Additional time off may be approved and annual leave may be used. All requests for maternity/paternity leave shall be requested in writing to the Human Resources Office and scheduled and granted upon written request and approval from Executive Leadership.

Maternity/Paternity Leave will be designated as FMLA leave and will run concurrently with FMLA. For example, if an employee utilizes 8 weeks of maternity / paternity leave, the 8 weeks will be designated as FMLA leave and counted toward the employee's 12-week entitlement.

SECTION 5. BEREAVEMENT LEAVE

All employees may be granted time off, four (4) days, due to the death of an immediate family member. An employee who is requesting bereavement leave must provide notice and a written request for approval by an Executive Leadership or Court Administrator, as appropriate.

SECTION 6. AUTHORIZED LEAVE WITHOUT PAY

The Nation may allow a Classified or Court employee to be absent from work on authorized leave without pay or without benefit of compensation while continuing to maintain the status of an employee. Leave without pay must be authorized and approved by the Executive Leadership or Court Administrator, as appropriate. An employee shall not accumulate sick or annual leave while on leave without pay.

In cases where a Classified or Court employee does not have sufficient leave accumulated, that employee may be granted leave without pay. An employee who is not eligible for paid leave must request approval for leave without pay before being absent from work.

A Nation employee may be placed on leave without pay status by the President or the Trial Judge, respectively, during the period of investigation of alleged violation of employment rules. If, as a result of such investigation, the employee is disciplined, the wages and benefits will be lost as a part of a disciplinary action. If the employee is not disciplined or cleared of wrongdoing, the wages and benefits lost while on leave without pay shall be reimbursed to the employee, the following pay period.

SECTION 7. EMERGENCY LEAVE

Emergency leave may be granted for up to four days or thirty-two (32) hours in the event of a serious illness or death in the immediate family. Emergency leave shall be charged to accumulated sick leave, however, when an employee has no accumulated sick leave, annual leave shall be charged. In the event an employee has exhausted or used accumulated annual or sick leave, the employee shall be placed on leave without pay status.

All requests for emergency leave shall be approved by the Nation President or Trial Judge, as appropriate, upon recommendation from the Executive Leadership or Court Administrator, as appropriate.

SECTION 8. ADMINISTRATIVE LEAVE

The President or Trial Judge, as appropriate, may grant administrative leave with or without pay. The amount of time off authorized will be determined by the proclamation and notice issued. Administrative leave will not replace or to be charged to annual or sick leave.

Administrative leave may be authorized for the entire work force or for individual departments of the Nation. This type of leave generally involves extenuating circumstances or events that include the following: power outages, natural catastrophes, and traditional native ceremonies.

The Nation President or Trial Judge, as appropriate may grant other administrative leave to an employee, when it is recommended in writing by Executive Leadership or Court Administrator. Approved leave in this category may include activities mandated by law such as jury duty and active military duty.

SECTION 9. FAMILY AND MEDICAL LEAVE ACT POLICY (FMLA)

The Nation has adopted the general intent and spirit of this 1993 act and the Nation has committed to applying the general principles of the Act.

FMLA leave is unpaid. Under certain circumstances an eligible employee may substitute paid leave for FMLA leave. Substitution of paid accrued annual leave or sick leave may be made for all or part of any unpaid FMLA leave. Generally, the FMLA leave by an eligible employee is permitted for a combined total of twelve (12) weeks during any twelve (12) month period. FMLA leave can be taken all at once or in parts.

Eligible employees may be granted FMLA leave for a period of up to twelve (12) workweeks in any twelve (12) month period for the following reasons:

- Birth of a child and care of such child by the mother or father—entitlement may begin before birth and ends twelve (12) after birth.
- Adoption or foster care placement of a child by an employee—entitlement may begin before placement date and ends twelve (12) months after placement.
- The care of a spouse, son, daughter or parent of the employee, if such spouse, son, daughter or parent has a serious health condition.
- Serious health condition of an employee that makes the employee unable to perform one or more the essential functions of the employee's position.

The requirements for eligibility are determined by the following criteria:

- Employee has been employed by the Nation for not less than twelve (12) months.
- Employee has been employed for at least 1250 hours of service during the twelve (12) month period immediately preceding the commencement of leave.
- Employee is employed at a work site where fifty (50) or more employees are employed by the employer within seventy-five (75) miles of the work site.

The Human Resource Office is responsible for providing further information about FMLA.

SECTION 10. VOTING LEAVE

Employees who are formally registered to vote in national, state, local, and Nation elections shall be granted administrative leave with pay to vote. Administrative leave with pay for voting will require proof from employees that they are registered to vote in an election.

Voting leave requires approval by a supervisor and such leave shall not be used for any other purpose.

SECTION 11. JURY DUTY

Employees are required to notify their supervisor promptly upon receipt of a jury summons and subsequent notice to serve as a juror. Employees summoned for jury duty, including military jury duty, will receive their regular rate of pay for normal work hours, provided the employee submits evidence of the summons and selection notice. Fees received as compensation for jury duty shall be paid to Jicarilla Apache Nation. Employees will be allowed to retain any reimbursements for transportation, lodging, meals etc. paid by the respective court jurisdiction.

SECTION 12. CEREMONIAL/CULTURAL LEAVE

An employee who is a Nation member or a spouse of a Nation member may be granted administrative leave with pay from work to participate in a Nation recognized or sanctioned

Nation ceremony or event. Such leave shall not exceed five (5) working days or forty (40) hours per calendar year.

The Nation President or Trial Judge, as appropriate, must approve ceremonial leave. An employee granted ceremonial leave, which has used up all administrative leave (40 hours) shall use annual leave or be on leave without pay.

Nation employees who are not Jicarilla Apache Nation members, but who are Indian may also qualify for ceremonial/cultural leave and will be reviewed on a case-by-case basis with final approval by the Nation President or Trial Judge, as appropriate.

SECTION 13. MILITARY LEAVE

Classified or Court employees who are required or called to serve in the military services of the United States are entitled to military leave and reemployment rights. Sick and annual leave will continue to accrue as if the employee had not been absent for military service.

While on military leave health care insurance coverage will continue to be provided. Life and Accidental/Disability insurance may have conditions on benefits due to war (declared or not). All pensions, which are a reward for length of service, are protected. If enrolled in the contribution retirement plan, both the employee and Jicarilla Apache Nation contributions will be made to the Nation compensation plan that the employee earns while on leave. Optional benefit coverage will continue while on paid military leave. The employee may pay the premiums and continue other insurance coverage while on military leave.

Upon release from military service with honorable discharge, certificate or other evidence showing satisfactory completion of service, the employee is entitled to be reinstated to position held or one of similar in responsibility, status, and pay.

The Human Resource Office will handle military leave request on a case by case basis and make appropriate recommendation based on the facts of the situation.

SECTION 14. EDUCATIONAL LEAVE

Classified or Court Employees who desire to take an Educational Leave must follow the policies and guidelines for Career Development.