5.21. LEAVES AND ABSENCES

5.21.1 A. Introduction:

1. Sick leave is an income protection benefit completely underwritten by the Board of Education. It is the intent of the Board that employees who are sick or need to tend to the sick within their household do not lose needed income during those difficult times. The Board allows for the unlimited accumulation of sick leave realizing that illnesses do occur that may incapacitate the employee for a long period of time. Sick leave is the only type of leave that can be unlimitedly accumulated. It is hoped that the employee uses this benefit prudently and recognizes that it is in the best interest of the employee to accrue as many days’ possible as a contingency against future illness. Leave may be granted for a personal injury or illness, health needs, exposure to disease, care of members of the immediate family or doctor or dental appointments.

2. Professional leave is granted by the administration to free staff from regularly assigned responsibilities to participate in activities that professionally benefit the district.

3. Official leave is granted by the administration to staff that accompany students to events and meetings.

4. Leave of absences are granted to allow employees extended time away from work without compensation or benefits, but with a commitment for subsequent re-employment.

B. Leaves

1. Sick Leave:

   a. Employees accumulate sick leave as defined by in language on the employment contract at the following rates:

      1. 182/183, 192, 202 day contract = 7 days/year
      2. 11 month contract = 9 days/year
      3. 12 month contract = 11 days/year

   b. There shall be no maximum on sick leave accrual. Leave may be granted on an hourly basis; however, if a substitute is required one cannot be dispatched for less than 3.5 hours.

   c. Employees shall accrue 4.375 hours of sick leave per pay period for the-first sixteen to twenty-three (16-23) pay periods dependent on the length of the employment contract of the school year. Employees who terminate employment prior to the completion of the contract year will have deducted from their last paycheck any
hours taken that were not earned. There shall be no maximum on sick leave accrual.

d. If a pattern of sick leave usage or late request for sick leave is established on the days before or after holidays or weekends, such usage or late requests may be considered an abuse of sick leave and cause for disciplinary action.

e. Employees who take sick leave on the day before or after a holiday, on a staff development day, or on an early release day, will be required to provide a note from a licensed health care professional.

f. If an employee applies for sick leave, and no such leave is available, any personal leave available will be docked the appropriate number of hours.

g. Sick leave will not be reduced or lost nor will it be earned by the employee during an officially approved extended leave of absence without pay, while on temporary disability or on layoff status.

2. Sick Leave Conversion

a. Employees who have accrued a minimum of twenty-two (22) days (154/176 hours) of sick leave may request the conversion of two (2) days of sick leave into personal leave once each school year.

b. Employees who have accrued a minimum of forty (40) days (280/320 hours) of sick leave may request the conversion of three (3) days of sick leave into personal leave once each school year.

c. Deadlines for leave conversion will be September 30 and January 30 of the current school year.

d. No more than six (6) days of personal leave, accumulated under this Section and Subsection 4 Personal Leave, may be used in any one school year. Unused personal leave will accumulate from year to year as sick leave.

3. Incentives for Unused Sick Leave

a. Employees contracting with the Los Lunas Schools and who have used one (1) day (7/8 hours) or less of sick leave in the preceding school year will be compensated the amount of two hundred fifty dollars ($250.00) within the first two pay periods of the following school year or as soon as practical after the signing of a short term contract.
b. Beginning July 1, 1999, employees who have earned a minimum of twelve (12) years of service in the Los Lunas Schools will be eligible for the following compensation upon official retirement from the district through the New Mexico Educational Retirement Board.

1. Eligible employees will receive ten percent (10%) of the average daily rate stated in the final employment contract for all unused sick leave days earned on June 30 of the year prior to the last year of service up to a maximum of \(700\) hours. one hundred (100) days.

2. Eligible employees will receive one hundred percent (100%) of the average daily rate stated in the final employment contract for all unused sick leave earned in the final school year of employment up to a maximum of seven (7) days (49/56) hours.

3. For the purposes of sick leave accounting, the last sick leave days/hours earned will be the first hours used.

4. Temporary Leaves of Absences (Leaves of less than sixty days)
   a. Personal Leave
      1. Three (3) days may be granted per year for personal, legal, business, household or family matters. Notice to the employee’s principal or other immediate supervisor that personal leave is to be taken shall be given at least forty-eight (48) hours before taking such leave (except in case of unforeseen circumstances). Unused days may be accumulated from year to year as sick leave.

      2. All parties recognize that adequate coverage is essential, therefore personal leave will be approved on a first come, first-served basis, based on the coverage at the school. Employees who have converted sick leave to personal leave will have priority in the approval process.

   b. Religious Leave
      Employees may request and the District shall not unreasonably deny leave for religious observances. Such leave will be identified and requested at least five (5) days prior to the desired leave.
Up to two (2) days per year of this leave may be charged to accrued sick leave. Leave beyond the two (2) days will be charged to unused personal leave or leave without pay.

c. **Professional Leave**
   Professional growth is desirable; therefore, leave for this purpose may be granted subject to District approval. Leave will be granted on a fair, equitable, and instructionally sound basis. Excused professional leave without pay may be granted to an employee in exceptional circumstances with the approval of the Superintendent or by Board Action. Requests must be submitted at least thirty (30) working days prior to the leave being taken.

d. **Official Leave**
   1. This leave is designated for employees who accompany students on job related absences such as activity trips and athletic events.
   2. Absences must be related to the employee’s duties and be applied for in advance in the same manner as professional leave. Leave will be granted on a fair, equitable and instructionally sound basis.

e. **Court Leave**
   Time that is required for appearances in a legal proceeding that is job related where the employee is testifying at the request of the District, to serve on jury duty, or when subpoenaed to testify for a job related incident (this does not apply to an employment related litigation against the District) will be granted to the employee. Employees will be paid their regular pay in lieu of any pay received by the employee for such appearance. Any compensation received by the employee for such appearance during normal working hours shall be submitted to the District Business Office. Any appearance in court involving personal business shall be charged to unused personal leave or leave without pay.

f. **Bereavement Leave**
1. Two (2) days will be granted, without leave being charged as sick leave, in the case of a death in the immediate family. Immediate family for this purpose is defined as the employee’s spouse, children, parents, step parents, grandparents, grandchildren, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother, sister or an individual under legal guardianship. Leave granted beyond the two-day limit shall be charged against accumulated sick leave.

2. Leave for the attendance of the funeral of students, employees, relatives outside the immediate family or friends may be granted by the hour up to one (1) full day. Such leave shall be charged to sick leave unless the District approves other arrangements.

g. Legislative Leave
Legislative leave shall be granted for an employee to serve on the state legislature and appropriate committee assignments. Such leave shall be charged to leave without pay.

h. Association Leave
1. Association representatives may be released from duty on leave without pay for the purpose of conducting Association business, subject to staffing needs.

2. The Association will be provided a total of twenty (20) days of paid leave per school year to be used by Association officers or representatives. The Association will assume the cost of substitutes. Additional days may be provided with the approval of the Superintendent.

i. School Business Leave
Leave to serve on assigned committees approved by the Superintendent or designee is considered official school business and will not be charged against an employee’s professional leave.

j. On the Job Injury Leave
Employees may be granted accrued sick leave in an amount equal to the difference between the employee’s normal net take home pay and the Workman’s Compensation benefit received by the employee. Normal take home pay is defined as gross pay minus legal, statutory deductions.

C. Leave Without Pay
1. Definitions:
a. Approved Leave without Pay: an absence for which no paid leave was available, and approval was obtained.

b. Unapproved Leave without Pay: an absence for which no paid leave is available and for which approval was not obtained.

2. The District recognizes that special circumstances may require an employee to be absent when no paid leave is available. Leave without pay may be granted with the prior approval of the Personnel Administrator/designee, or by school board action. If prior approval is not obtained, the employee will contact the Personnel Administrator for procedures to follow.

3. It is recognized by all that good attendance is important for satisfactory job performance and accountability. Therefore, unapproved leave without pay will result in progressive disciplinary action, up to and including termination/discharge.

D. Progressive Discipline:
1. Verbal notice is covered by the site supervisor at a staff meeting in the beginning of the school year or verbal and/or written notice within ten (10) school days of employment.

2. Written reprimand from the Site Administrator and the employee be placed on an Improvement and Assistance Plan. If the abuse of leave is not corrected an Intensive Review Plan for Attendance.

3. Termination/dismissal will occur if the employee has not met the requirements for the Intensive Review Plan for attendance.

E. Extended Leave of Absence – Leaves of sixty days or more.
1. A leave of absence without pay for up to two (2) years may be granted to any employee who accepts a Fulbright Scholarship or is pursuing planned professional growth opportunities relating to the employee’s job.

2. A permanent employee may be granted a leave of absence without pay for two (2) years to teach in a college or university.

3. A leave of absence without pay for up to two (2) years may be granted to any employee with five (5) or more years of consecutive service in the District to pursue a personal growth opportunity that
does not exist in the District or a leave of absence without pay for up to two (2) years may be granted to any employee with seven (7) years or more years of consecutive service in the District for personal renewal.

F. **Family Leave (FMLA)**
   The following leaves shall be handled in accordance with this type of leave:
   - Parental Leave
   - Maternity Leave
   - Paternity Leave
   - Adoptive Parental Leave

G. **Medical Leave**
   1. A leave of absence, as provided for under FMLA, shall be granted for the purpose of caring for a sick member of the employee’s immediate family or to an employee who has used his/her available sick leave and cannot work because of health condition/s.

   2. **Benefits**
      While on leave, an employee shall have the option to remain an active participant in the District’s insurance benefit programs in accordance with NMPSIA and FMLA requirements. The employee may also participate in the retirement program subject to the requirements of the ERB.

   4. All leaves are subject to the recommendation of the principal/site supervisor and the approval of the Superintendent/designee.

H. **Administration of Extended, Medical Leave and FMLA**
   1. If a leave is granted it is with or without pay. Neither sick leave nor vacation is accumulated during the leave. Time on a leave of absence will not be considered in the experience factor for salary, vacation, years of service or other considerations affecting salary. While a leave of absence guarantees a position upon return it does not guarantee the same position held prior to the leave. All leaves granted will be for a period of time not to exceed June 30, of the school year in which the leave is requested.

   2. Upon the Board granting the leave of absence the Superintendent/designee shall notify in writing each employee that they must take one of the following action by May 1, of the year in which the leave is granted:
      a. Notify the Superintendent in writing of their intent to report to work on their first normal workday after July 1: or

      b. Notify the Superintendent in writing of their intent to resign.
5.21.2. FAMILY AND MEDICAL LEAVE OF ABSENCE

This Policy is adopted to implement the federal Family and Medical Leave Act of 1993 (FMLA) pursuant to the terms, conditions, and limitations of the Act and as amended in future. In the event of any conflict between the provisions of this or any other leave policy of the Board of Education and the provisions of the FMLA, the latter shall prevail.

A. To be eligible for leave under the Act, an employee must have worked for the School District for a total of twelve (12) months, and the employee must have worked a total of 1,250 hours in the previous twelve (12) months.

B. Pursuant to the Family and Medical Leave Act, employees are permitted up to twelve 12 workweeks of unpaid leave per year during any twelve 12-month period. Family and medical leave can be requested for the following reasons:

1. childbirth and infant care;

2. placement of a child with the employee for adoption or placement of a child with the employee by a state agency for foster care. Entitlement to leave for birth or placement of a child expires twelve (12) months after the birth or placement of the child. Adoption leave covers only children under the age of eighteen (18) unless the child is incapable of self-care in three (3) or more activities of daily living because of a mental or physical handicap;

3. care of the employee's spouse, son or daughter or parent with a serious health condition; and

4. the inability of the employee to perform their job duties due to their own serious health condition, or the necessary absence from work of an employee to receive medically necessary treatment.

The twelve (12)-month period within which each employee may take twelve (12) weeks of leave under the FMLA shall be a "rolling" twelve (12)-month period, measured backward for each employee from the first time each such employee uses leave under the FMLA.
C. A "serious health condition" is an illness, injury, impairment, or physical or mental condition that (a) requires in-patient care in a hospital, hospice, or residential medical care facility; or (b) requires continuing treatment by a health care provider and which, if left untreated, would likely result in an absence from work of more than three days; or (c) involves pre-natal care. A "serious health condition" does not include voluntary cosmetic treatments, unless inpatient care is required, or routine physical examinations.

D. An employee requesting leave shall submit a "Request for Leave" form to the Director for Human Resources.

E. If an employee requests leave for treatment of an employee's serious medical condition or for that of a child, parent, or spouse, the employee must make a reasonable effort to schedule the treatment at a time that is not unduly disruptive to the District.

F. An employee seeking leave for a foreseeable reason such as the birth or placement of a child or for planned medical treatment shall provide the School District with at least 30 days’ advance notice of the leave. If thirty (30) days advance notice is not possible under the circumstances, e.g., in the case of a premature birth, the employee shall give such notice as is practicable (e.g., within one or two business days of the day the employee learns of the need for leave). If an employee's reason for seeking leave was unforeseeable, such employee shall give such notice as is practicable. An employee who fails to give notice of leave as required herein may be denied such leave until the notice requirements are met. If less than thirty (30) days notice of leave is provided, the employee must schedule an appointment with the Director for Human Resources for approval.

G. An employee seeking leave on the basis of the serious medical condition of the employee or the employee's spouse, son or daughter, or parent, must provide certification issued by the health care provider of the employee or of the employee's spouse, son or daughter, or parent, stating:
   1. the date the condition began;
   2. its probable duration;
   3. appropriate medical facts; and
   4. that, for a specified time, either
      (a) the employee is unable to perform his or her job functions or will be unavailable to do so while receiving necessary medical treatment, or
      (b) the employee will be needed to care for the sick family member.
If the adequacy of medical certification is questioned by the District, the District may require the employee to seek the opinion of a second health care provider, who is not regularly employed by the District, at the District's expense. If the opinions of the first and second health care providers differ, the District may require the employee to obtain a third opinion at the District's expense, from a health care provider agreed upon by the employee and the District. The third opinion shall be final and binding.

H. Spouses employed by the School District are limited to a combined total of twelve (12) workweeks per year for the birth or placement of a child, or to care for a parent. However, for other covered leaves, such as to care for a spouse or child, or for treatment of the employee's own serious health condition, each spouse may take up to 12 weeks a year.

I. Intermittent leave and reduced work schedules are allowed when such are medically necessary; however, employees may not take intermittent leaves or go on reduced work schedules that reduce the number of hours worked per week or per day for childbirth/infant care or adoption leave.

J. If an eligible "instructional employee" seeks intermittent leave or reduced-schedule leave for the care of a spouse, son or daughter, or parent, or for the employee's own serious health condition, and the leave is foreseeable on the basis of planned medical treatment, and the employee would be on leave for more than 20% of the work days during the 12-month period, the employee must choose either to:

1. Take leave for a period or periods of a particular length, not greater than the length of the planned medical treatment; or

2. Transfer temporarily to an equivalent position which better accommodates recurring periods of leave.

"Instructional employees" include teachers, instructional assistants, coaches, and other employees whose duties principally involve the direct provision of instructional services to students. In the event an employee involuntarily takes additional leave time under subparagraph 1, above, the entire leave time shall be counted against the employee's available leave under the FMLA and any District leave policy.

K. If any employee requests intermittent leave or leave on a reduced work schedule to care for a seriously-ill family member or for the employee's own serious health condition, and the need for leave is foreseeable based upon planned medical treatment, the employee may temporarily be
transferred to an available alternative position with equivalent pay and benefits, if the employee is qualified for the position and the position better accommodates recurring periods of leave than the employee's regular job.

L. The responsibilities of instructional employees near the end of academic terms - examinations, grading, etc. - require that the School District be able to limit leave taking by instructional employees at such times as follows:
   1. Leaves beginning more than five weeks before the end of a semester: If an instructional employee starts a leave more than five weeks before the end of a semester, the School District may require the employee to continue the leave until the end of the semester if:
      (a) the leave is of at least three weeks' duration; and
      (b) the employee would return from leave during the three-week period preceding the semester's end.
   2. Leaves beginning five weeks or less before the end of a semester: If an instructional employee begins a leave five weeks or less before the end of a semester, the School District may require the employee to continue the leave until the end of the semester if:
      (a) the leave will last more than two weeks; and
      (b) the employee would return from leave during the two-week period before the term's end.
   3. Leaves beginning three weeks or less before the end of a semester: If an instructional employee starts a leave three weeks or less before the end of a semester, the School District may require the employee to continue the leave until the end of the term if the leave will last more than five working days.

M. All requests for family/medical leave must be approved by the employee's supervisor and the Director for Human Resources.

N. Employees who take family/medical leave must utilize any available paid leave they have accrued under another of the District's leave policies when the reason for leave corresponds with the basis for leave under the other policy. Accrued vacation or personal leave shall be substituted for any FMLA-qualifying purpose. If the requested leave period extends beyond
the employee's accrued number of paid leave days, the remaining leave days will be unpaid.

Example: An employee who sought leave due to his or her own serious medical condition and inability to perform his or her job duties has accrued six weeks’ sick leave. The employee must use the six weeks of paid sick leave and may thereafter use the remaining six weeks of unpaid leave available under this policy.

Any employee seeking leave shall explain the reasons for the needed leave on forms provided by the School District. It shall be the School District's responsibility to identify the requested leave as covered by the FMLA and as paid or unpaid on the basis of leave time accrued under other School District leave policies. Such identification shall be made at the time leave is requested or during such leave, on the basis of information provided by the employee.

O. During the period of leave, the School District will maintain the School District group-coverage health plan if the employee is enrolled; however, the employee is responsible for continuing to pay the employee's monthly portion of the premium. If an employee fails to make payment of the employee’s share of health insurance premiums, the District will pay both portions while the employee is on leave and recover these payments upon return to work.

If the employee fails to return to work following leave under the FMLA for any reason (1) other than the continuation of the FMLA-qualifying circumstances upon which the need for leave was originally based, or (2) circumstances beyond the control of the employee, the employee shall be required to reimburse the District for the cost of health insurance premiums the School District paid to maintain coverage for the employee during the leave period.

P. Employees will not accrue leave or other benefits during the family/medical leave period.

Q. An employee other than a "key employee," who has taken family/medical leave will be restored to his or her previous position or to a position of equivalent pay, benefit, and other terms and conditions of employment.

Equivalency of positions shall be determined on the basis of District policy. A "key employee" may be denied reinstatement if it would create a substantial and grievous economic injury for the School District. A "key
employee" is one whose compensation is within the highest 10 percent of the work force of the School District.

R. While on leave, the employee may be required to furnish the School District with periodic reports of their status and intent to return to work as stated in § 825.309 of the FMLA regulations.

S. The employee may also be required to furnish re-certification relating to a serious health condition as stated in §825.308 of the FMLA regulations.

T. In each School District building there shall be posted a notice to employees, describing the provisions of the FMLA, provided and approved by the Wage and Hour Division of the United States Department of Labor.

5.21.3. PROCEDURES FOR SUBMITTING FAMILY/MEDICAL LEAVE REQUEST

Employees requesting family/medical leave absence are required to:

1. Submit a "Leave Request Form" to the Human Resources Department at least 30 days prior to the requested leave period.

2. If the requested family/medical leave is for treatment of an employee's serious medical condition or for treatment of a child, parent, or spouse, the employee must make "a reasonable effort" to schedule the treatment at a time that is not "unduly disruptive" to the School District and must give at least 30 days’ notice of the leave.

3. In cases where the employee is requesting leave based upon the serious health condition of a child, spouse or parent, or the employee's own serious health condition, the employee must provide certification of his or her condition by a health care provider. This certification must be submitted with the leave request form.

5.21.4. SICK LEAVE BANK
The intent of the Sick Leave Bank is to provide an employee additional sick leave when a prolonged and catastrophic illness or injury (excluding normal pregnancy) is incurred by the employee or a member of the employee's immediate family that requires hospitalization or home confinement and for which no other compensation will be received.

A. DEFINITIONS:

1. Sick Leave Bank—A bank formed to provide employees with additional sick leave.

2. Catastrophic Illness—An illness not consistent with ordinary illness, i.e. cancer, heart attack, stroke, major surgery, etc., and requiring absence from employment in excess of 20 days.

3. Disability—Illness, accident, or injury disabling an individual from employment for more than 20 working days, as reported by a physician.

4. Serious Accident—Accident requiring extensive and intensive hospitalization or at home care and disabling an individual from performing his/her work duties for more than 20 working days.

5. Extended treatment—Therapy required in order to overcome illness or accident.


B. PURPOSE: The purpose of the Sick Leave Bank is to provide employees of the Los Lunas Schools additional income protection when an illness/accident occurs, and the employee has exhausted his/her sick and personal leave before the employee benefit of income protection insurance long term disability goes into effect or in the event of catastrophic illness, disability, serious accident, or extended treatment of a member of the immediate family as defined above.

C. CREATION OF SICK LEAVE BANK:

1. Participation in the Sick Leave Bank will be on a voluntary basis. Each employee shall annually be required to participate in the District’s long term disability income protection coverage if he/she chooses to participate in the Sick Leave Bank. All participants will be required to donate one day of personal leave with the understanding that once the day is donated, it is not refundable.

2. The initial donation will be at the inception of the Sick Leave Bank. An employee previously employed by the schools and not enrolled in the sick
leave bank at the original time of employment may enroll at the time of open
enrollment for school insurance by meeting aforementioned conditions for
enrollment. The employee will be required to donate a personal leave day
at this time of enrollment. A donation of one day, thereafter would be asked
if the number of days in the Sick Leave Bank drops below 40 days.

3. The Superintendent will appoint a sick leave bank committee. The
committee will consist of two classified employee and an alternate, two
bargaining unit employee and an alternate, two administrators and an
alternate, and one central office administrator and an alternate. The
President of the Association will recommend bargaining unit employees.

4. The policy shall be renewed on an annual basis.

D. CRITERIA: In Order to qualify for leave from the Sick Leave Bank, employees
will meet the following criteria.

1. The applicant will be a regular employee of the Los Lunas Schools.

2. The applicant will be an active contributor to the Sick Leave Bank.

3. The applicant will be a participant in the district’s long term disability
income protection plan.

4. The applicant will be experiencing a catastrophic illness, a disability or a
serious accident as defined above.

5. The employee’s accumulated leave sick/personal/annual will be verified
at the onset of the illness or accident. Once verification of available leave
has been made, determination will be made as to how many days are needed,
to equal 20, from the Sick Leave Bank.


7. Exclusions:

   a. Routine pregnancy with normal delivery with no pre-
postnatal complications.

E. PROCEDURE:
1. Employees may borrow up to twenty days for any one catastrophic illness or injury, disability, serious accident or extended treatment as defined in this policy if the sick leave days are available in the bank.

2. The employee applying for days from the Sick Leave Bank will submit a written request accompanied by a written statement from the physician with diagnosis and prognosis to the committee.

3. The recommendation of the committee will be submitted to the Superintendent for final approval.

4. Recipients will donate one (1) personal day the following school year.

5. Committee will meet within 3-5 days of the receipt of the request.

6. Exceptions to the minimum 20 days requirement may be approved by a unanimous vote of the sick leave bank committee and with the approval of the Superintendent.

5.21.4. MILITARY LEAVE

The Uniformed Services Employment & Reemployment Rights Act (USERRA) and as amended in the future requires that employees be granted a leave of absence to perform their military duties. In the event of any conflict between the provisions of this or any other leave policy of the Board of Education and the provisions of the USERRA, the latter shall prevail.

USERRA and this Policy allows for rights and benefits provided that:

1. the Employee has given advance written notice or verbal notice of military service to the School District (notice can be from the military itself and no notice if required if “military necessity” prevents notification);

2. the cumulative length of the Employee’s absence and all previous absences from his or her job for military service does not exceed five years; and

3. the person reports to or submits an application for reemployment to the School District.
After the Employee has been absent for 31 days or more for military service, the School District may ask the Employee or the Employee’s military unit for documentation showing that:

1. the Employee submitted a timely application for employment;

2. the Employee’s length of military service has not exceeded the five-year limitation; and

3. the Employee’s separation from military service meets the requirements for reemployment.

If the Employee cannot provide this documentation because it is not readily available or does not exist, the employer is still required to promptly reemploy the returning employee.

It is important to note that the USERRA and this Policy requires the employee to submit an application for reemployment and report for work within specific time periods depending on the length of the Employee’s military service. The time limits for reporting for work are as follows:

- 1 to 30 days of military service: The Employee reports to the School District by the beginning of the first scheduled work day that falls eight (8) hours after the end of the last calendar day of military service. This means that a service member who returns home at 10:00 p.m. can be required to report for work for 6:00 a.m. work-shift the following day. This same guideline applies to an Employee who has been ordered to take a fitness-for-service examination regardless of the length of the service member’s absence from the job.

- 31 to 180 days of military services: The Employee must submit an application for reemployment no later than fourteen (14) days after completion of military service. If the 14th day falls on a day when the School District is closed or unavailable to accept a reemployment application, the time is extended to the next business day.

- 181 days or more of military service: The Employee must submit an application for reemployment no later than ninety (90) days after completion of military service. If the 90th day falls on a day when the school district is closed or unavailable to accept a reemployment application, the time is extended to the next business day.

- Cases of disability: Employees who are hospitalized or recovering from a disability that relates to the employee’s military service have up to two (2) years to submit an application for reemployment.
Failure to report under this timetable will not automatically forfeit the Employee’s entitlement to rights and benefits but will subject the service member to the same rules, policies and procedures the School District has for other employees returning from leave.

Provided that the service member meets the prerequisites of the statute, reemployment must occur in a specific order of priority.

- If the period of military service for the employee was ninety (90) days or less –
  - the service member must be reemployed in the position he or she would have occupied had the employment with the School District not been interrupted, provided the Employee is qualified or can become qualified with reasonable effort on the part of the School District;
  - the service member must be reemployed to the position the employee held on the date that the Employee entered military service, provided the Employee is qualified or can become qualified with reasonable effort on the part of the School District; and
  - if the Employee cannot become qualified in either case (except for an incurred disability), he or she must be reemployed in a position that the Employee can perform and which closely approximates the positions above, with full seniority.

- If the period of military service for the employee was ninety-one (91) days or more –
  - the service member must be reemployed to the job the Employee would have held had the Employee remained continuously employed, or a position of like seniority and status, provided the Employee is qualified or can become qualified with reasonable effort on the part of the School District;
  - the service member must be reemployed to the position the Employee held on the date that the Employee entered military service, or a position of like seniority and status, provided the Employee is qualified or can become qualified with reasonable effort on the part of the School District; and
  - if the Employee cannot become qualified in either case (except for an incurred disability), he or she may be reemployed in a position of lesser status or pay, that the Employee can perform, but that most closely approximates the positions above, with full seniority.
If two or more returning service members are entitled to the same position, then the service member who left home first for military service has the priority. Although the focus of the USERRA and this Policy is on reemployment, the statute also includes the right to returning service members to be free from discrimination in initial employment, retention, promotion or benefits, pension, health benefits, vacations and seniority work selection rights. The USERRA also protects covered employees from retaliation for engaging in certain protected conduct specified in the USERRA.

With regard to seniority, the “escalator principle” requires the School District to place returning service members back into the “seniority escalator” at the point the Employee would have occupied had he or she remained continuously employed. This could result in the Employee acquiring tenure rights under the N.M. Stat. Ann. § 22-10A-24(A) (2003) without three (3) years of continuous employment with the School District. Additionally, if the Employee accepted an employment contract for the upcoming school year, but had yet to work in that position before being called to military service, the returning service member is entitled to the contracted position upon his or her return. Also, any seniority benefits that would have accrued to the Employee for example, FMLA, salary increases, sick and personal leave accrual, must be granted to the returning service member upon reemployment.

Returning service members may be disqualified for reemployment under four conditions:

1. a dishonorable or bad conduct discharge;
2. separation from military service under “other than honorable conditions”;
3. a commissioned officer’s dismissal via a court martial or by order of the President; and
4. when a service member is absent from his duty station without authority or because of civilian imprisonment.

As many service members are returning from the war injured or wounded, the School District also has certain obligations regarding reemployment of service members who incurred disabilities or aggravated disabilities during military service. There are three (3) guiding steps which govern reemployment of service members with disabilities:

- The School District must take reasonable efforts to accommodate the returning service member’s disability so the Employee can perform the job he or she would have occupied had he or she remained continuously employed.
• If despite reasonable accommodation, the Employee is not qualified for the position above, he or she must be employed in a position of equivalent seniority, status and pay so long as the Employee is qualified to perform the duties of the position or could become qualified to perform them with reasonable efforts by the School District.

• If the Employee does not become qualified in either case above, he or she must be employed in a position which most closely approximates in seniority, status and pay, the position held just prior to entering military service.

Reemployment of a returning service member is not required under the following circumstances:

• If the School District’s circumstances have changed so much that reemploying the Employee would be impossible or unreasonable. An example is a reduction in force that would include the Employee’s position.

• If the Employee left an employment position that was for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

• The School District is excused from efforts to qualify or accommodate returning employees with military service-related disabilities when doing so would be so difficult or expensive as to cause the School District an undue hardship as determined under the USERRA.

• Service members forfeit their reemployment rights if, prior to leaving for military service, the Employee provided an informed, clear, written notice of intent not to return to work. However, the burden of proof rests with the School District to prove that the Employee knowingly provided clear written notice of intent not to return to a position of employment after military service and, in doing so, was aware of the specific rights and benefits to be lost.

As provided under state law, N.M. Stat. Ann. § 20-4-6 (1978), this Policy prohibits any adverse action against applicants or employees on the basis that the person is a member of or has applied for membership in the National Guard.
In addition, under N.M. Stat. Ann. § 28-15-1 (1978), this Policy requires reinstatement of an employee to the same or like position unless it is impossible or unreasonable for the School District. If the Employee is honorably discharged or released from military service to complete his or her remaining service in a reserve component, and if the Employee is still qualified to perform the duties of the position he or she previously held, the Employee shall be deemed to meet all the requirements of the School Personnel Act, as well as all residency requirements or other provisions of state law, and shall be restored to such position or to a position of like seniority, status and pay. The language in N.M. Stat. Ann. § 28-15-2 (1978) states that the restored employee shall not be discharged by the School District from his or her position without cause within one (1) year after such restoration and shall be incorporated into this Policy.

As provided in N.M. Stat. Ann. § 20-4-7 (1978), this Policy grants Employees of the School District who are members of organized units of the Army or Air National Guard or Army, Air Force, Navy, Marine or Coast Guard reserves up to fifteen (15) working days of military leave with pay per fiscal year in addition to other leave or vacation time with pay to which such employees are otherwise entitled. Additionally, the Governor may grant any member of the National Guard or reserves additional military leave with pay for training when he deems that such training will benefit the State by enabling that employee to better perform the duties required.

ADOPTED: June 24, 2008

REVISED:


CROSS REFERENCES: