



**PROCEDURES
EXECUTIVE AND LEGISLATIVE BRANCHES
DEPARTMENT OF PERSONNEL MANAGEMENT**

SECTION:	LEAVE ADMINISTRATION	NO. 03-X-003
SUBJECT:	FAMILY AND MEDICAL LEAVE PROCEDURES	RELEASE DATE: 10/01/96
CROSS REFERENCE:	NNPPM Section X.D Family and Medical Leave and C.1 Approved Leave without Pay	REVISION DATE: 08/28/20
REVIEW:	DEPARTMENT OF JUSTICE REVIEW	DOJ REVIEW DATE: 07/30/20

PURPOSE

To outline the conditions under which an eligible employee may request time off without pay for a limited period with job protection and no loss of accumulated service, provided that the employee returns to work. These procedures support and define the Family and Medical Leave policies of the Navajo Nation Executive and Legislative Branches as contained in the most current Navajo Nation Personnel Policies Manual.

APPLICABILITY

These procedures shall apply to all regular status (full-time) employees who have been employed with the Navajo Nation for at least one year, at the time the employee submits their request.

DEFINITIONS

Continuing Treatment: A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves: 1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, 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.

Family and Medical Leave: approved unpaid leave available to eligible employees for up to six months per year under particular circumstances that are critical to the life of a family. Leave may be taken in the following situations: the birth of the employee's child; the placement of a child with the employee for adoption or foster care; when the employee is needed to care for a child, spouse, or parent who has a serious health condition; or when the employee is unable to perform the functions of his/her position because of a serious health condition.

Health Care Provider: a doctor of medicine or osteopathy who is authorized to practice medicine or surgery, (as appropriate for the medical issue) by the State in which the doctor practices.

In loco parentis: persons with day-to-day responsibilities to care for and financially support a child.

Intermittent Leave: leave taken in intervals; recurrent periodical leave due to a single qualifying reason.

Parent: the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child. This includes an individual who assumed day-to-day responsibility for a child.

Reduced leave schedule: a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Serious health condition: an illness, injury, impairment, or physical or mental condition that involves: a) Inpatient care (e.g. 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 b) continuing treatment by a health care provider.

Son or daughter: a biological, adopted or foster child, a step child, a legal ward, or a child of a person standing in loco parentis (in place of a parent) who is: a) under 18 years of age; or b) 18 years of age or older and incapable of self-care because of a mental or physical disability.

Spouse: a husband or wife as defined or recognized by Navajo Nation law.

ELIGIBILITY

Eligible employees can take up to 12 workweeks of unpaid leave during any 12-month period to attend to the serious health condition outlined below. These conditions can

affect the individual, parent, spouse, or child of the employee. Upon their return to work, it is expected that they will return to the same position with the same pay and benefits, but if that is not possible they will be placed in a position of equal value in terms of pay and benefits.

These procedures do not apply to:

- part-time workers who have worked fewer than 1,250 hours within the 12 months preceding the unpaid leave,
- time off to care for seriously ill elderly relative (other than parents) unless they were acting in loco parentis at the time the employee turned 18,
- time off to care for pets,
- time off to recover from a short-term or common illness like a cold, or to care for a family member of a short-term or common illness, and
- employees who need time off for routine medical care, such as checkups.

PROCEDURES

A. Family and Medical Leave (FML)

1. FML may be taken only in the following situations:
 - a. upon the birth of the employee's child;
 - b. Upon the placement of a child with the employee for adoption or foster care;
 - c. when the employee is needed to care for his/her child, spouse, or parent who has a serious health condition; or
 - d. when the employee is unable to perform the functions of his/her position because of a serious health condition.

FML is without pay and may be available to employees for up to six months in a 12-month period. The 12-month period is measured forward from the date an employee takes FML. The next 12-month period would begin the first time FML is taken after the completion of the prior 12-month period. *Example: Jane's FML begins on November 6, 2019 so her 12-month period is November 6, 2019 through November 5, 2020.*

The first three months of FML are nondiscretionary; if an employee requests leave consistent with the FML policies and procedures, the supervisor must approve the leave. The second three months of FML are discretionary and is subject to the supervisor's approval or disapproval.

B. Leave Requests

1. An Application for FML and a Personnel Action Form (PAF) must be completed and signed by the employee and submitted as far in advance as practicable to the immediate supervisor for proper approval.

2. When the need for leave is foreseeable such as the birth or adoption of a child, or planned medical treatment, the employee must submit an application for leave at least 30 calendar days before the leave is to begin.
3. Requests for FML must have sufficient medical certification as required in B.1-3 below.
4. A supervisor must provide a response (decision) within five (5) working days from receipt of the request for FML. If appropriate medical certification, or other required information is not provided by the employee, the supervisor must request this information, preferably in writing. An employee must provide the requested medical certification within 15 calendar days.
5. The supervisor is responsible for verifying that the employee has exhausted his/her accrued sick leave hours prior to approving the request for FML.
6. The supervisor is responsible for preparing and submitting a Start of Family and Medical Leave PAF to the Department of Personnel Management for processing.
7. If medically necessary for a serious health condition, leave may be requested on an "intermittent" basis or a "reduced leave schedule." However, if leave is requested on this basis, the Navajo Nation may require the employee to be assigned to another position which better accommodates a recurring period of absence or a part-time work schedule, provided the position has equivalent pay.

B. Medical Certification

1. For purposes of leave due to a serious health condition of the employee's child, spouse or parent, the certificate should include:
 - a. the date on which the serious health condition commenced;
 - b. the probable duration of the condition;
 - c. the appropriate medical facts within the knowledge of the health care provider regarding the condition; and
 - d. an estimate of the amount of time that the employee is needed to provide such care.
2. If leave is being requested for an employee's own serious health condition, in addition to B.1.a-d above, the certification must also include a statement that the employee is unable to perform the functions of his/her position.

3. In the case of certification for recurrent or periodical leave (intermittent), or leave on a reduced leave schedule for planned and/or unanticipated medical treatment of a related serious health condition; leave for the recovery from treatment; leave for recovery from a serious health condition; or leave to provide care or psychological comfort to an immediate family member with a serious health condition, the dates on which such treatment is expected to be given and the duration of such treatment must be stated.
- C. When the leave is for the birth or placement of a child, an employee must submit an application for leave at least 30 calendar days before leave is to begin.
1. Entitlement to FML for a birth or placement expires at the end of 12 months after the date of birth or placement. For example: If a child is born November 4, leave must be taken by November 4 of the following year.
 2. Spouses who are both employed by the Navajo Nation are entitled to a total of six months of leave (rather than six months each) for the birth or adoption of a child or for the care of a sick child.
- D. If leave is unforeseeable, the employee must provide notice to the supervisor as soon as practicable. If medical certification has not been provided, it must be submitted within 15 calendar days of notice from the supervisor. Failure to provide appropriate medical certification within the required period may result in the denial of or delay in the use or approval of family and medical leave.
- E. Reporting Requirements:
1. Employees on FML will be required to report to the immediate supervisor periodically regarding their leave status and intention to return to work.
 2. If an employee fails to return to work after leave expires or give notice of intent not to return to work it shall be deemed a resignation unless an extension is granted.
- F. Extension of Family and Medical Leave
1. An employee who requests an extension of FML due to the continuation, recurrence, or onset of his/her own serious health condition, or due to the serious health condition of the employee's spouse, child or parent must submit a written request for extension to the employee's supervisor prior to the end of the initial FML period.
 2. This request should be made as soon as the employee realizes that he/she will not be able to return at the expiration of the leave period.

3. Extension requests may be taken as outlined under Section X.C.1. Approved Leave Without Pay. Leave without pay may not exceed 15 consecutive working days, which may be granted by the supervisor. Requests for leave without pay exceeding 15 consecutive working days must be supported by a written recommendation by the supervisor, and must be approved by the Division Director. Such leave may not exceed thirty (30) calendar days within the leave year.

G. Return from Leave

1. An employee must complete and submit a Notice of Intention to Return from FML before he/she can be returned to active status.
2. If an employee wishes to return to work prior to the expiration of leave, the employee must submit a Notice of Intention to Return from FML to his/her supervisor at least five (5) working days prior to an employee's planned return.

REQUIRED FORMS

Personnel Action Form (PAF): Start of FML and End of FML

Application for Family and Medical Leave

Response to Request for Family and Medical Leave

Certification of Health Care Provider for Employee's Serious Health Condition

Certification of Health Care Provider for Family Member's Serious Health Condition

Notice of Intention to Return from Family and Medical Leave