



NEW MEXICO JUDICIAL BRANCH
GENERAL PERSONNEL POLICY AND PROCEDURE:
Paid Time Off (PTO) Donation Program Policy

Policy No. 2018.NMJB.20

Reference NMJBPR Part 1, Section 5.14
NMJBPR Part 2, Section 19.14

Inquiries: AOC HRD (505) 470-7205 or email at aochrd-grp@nmcourts.gov
Dev: 5/1/07; Rev: 08/01/10; 02/13/12; 02/08/19, 05/13/23

PAID TIME OFF (PTO) DONATION PROGRAM POLICY

This policy applies to both at-will employees and classified employees.

1. PURPOSE

The intent of this policy is to provide a mechanism and procedures for employees who have a history of responsible leave usage to request and receive donated paid time off from their fellow Judicial Branch employees for a medical emergency where the medical emergency prevents the employee from working, and the employee has exhausted all leave balances. Employees are strongly encouraged to maintain at least forty (40) hours of accrued leave in their account balance for medical emergencies.

The judicial branch extends the request process to include situations for the medical emergency of an immediate family member, when the employee is needed to care for the relation and is therefore prevented from working.

The transfer of donated paid time off is a strictly voluntary donation of paid time off from fellow Judicial Branch employees, with the approval of the Administrative Authority.

Any requests for exceptions to this policy shall be made in writing from the Administrative Authority to the AOC Director for approval. (Added 02/13/12)

2. REFERENCES

A. NMJBPR Part 1, 5.15 Paid Time Off (PTO) Leave Donations

B. NMJBPR Part 2, 19.15 Paid Time Off (PTO) Leave Donations

Removed as this relates specifically to annual/sick and to "state agencies"

D. The Family and Medical Leave Act 29 CFR 825

E. The NMJB Family and Medical Leave Act Policy

3. DEFINITIONS

A. Administrative Authority – Individual or designee with the primary responsibility to supervise and coordinate the administration of a judicial entity, or as designated by the Chief Judge and



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approved by the Supreme Court Order. (Ref: Administrative Authority, Appointing Authority and At-Will Employee List Policy.)

- B. Administrative Leave** - Paid leave authorized by the Chief Justice or Administrative Authority.
- C. AOC HRD** – Administrative Office of the New Mexico Courts Human Resources Division. (Added 08/01/10)
- D. At-Will Employee** – A person in the Judicial Branch who holds an at-will job classification as delineated in the New Mexico Judicial Branch Job Classification and Pay Schedule, excluding a justice or judge. (See also Administrative Authority, Appointing Authority and At-Will Employee Policy.) (Amended 08/01/10; 02/08/19)
- E. Compensatory Time** - Compensatory time or “comp time” is paid time off granted to an employee for working extra hours and in lieu of overtime compensation. (Added 07/01/14; Amended 02/08/19)
- F. Domestic Partner** - A person who is in a committed relationship with an at-will employee or employee and who both share a primary residence for 12 or more consecutive months and who are jointly responsible for the common welfare of each other and who share financial obligations, as evidenced by an affidavit of domestic partnership executed by the at-will employee or employee and the other person, as required by Executive Order 2008-101. (Amended 8/01/10; 02/08/19)
- G. Employee** – For purposes of this policy, an employee is an incumbent who holds a permanent or term position within the Judicial Branch, including at-will employees. Temporary employees are not eligible. (Amended 2/08/19)
- H. Family and Medical Leave Act (FMLA)** – Refers to the Family and Medical Leave Act of 1993, as amended, a federal law, which requires employers to provide job protected leave to eligible employees for certain specified family and medical reasons.
- I. Full-time Employee** – for the purposes of this policy and as a recipient of PTO leave donations a full-time employee must work more than thirty (30) hours per week or 130 hours per month.
- J. Health Care Provider** - Any of the following (Ref: 29CFR 825.800):
 - (1) A doctor of medicine or osteopathy, authorized to practice medicine or surgery by the state in which the doctor practices.



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- (2) Podiatrists, dentists, clinical psychologists, optometrists, chiropractors authorized to practice in the state and perform within the scope of their practice under state law.
 - (3) Nurse practitioners, nurse-midwives, clinical social workers and physician's assistants authorized to practice in the state and perform within the scope of their practice under state law. (Amended 02/08/19)
 - (4) Christian Science practitioners listed with the First Church of Christ Science in Boston, Massachusetts.
 - (5) Any health care provider from whom a state of New Mexico contracted health plan will accept a certification for the existence of a serious health condition to substantiate a claim for benefits.
 - (6) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his/her practice as defined under such law.
- K. Immediate Family Member** – A child for whom the at-will employee or employee has acted as a parent, regardless of the blood relation; biological parents or anyone who has acted as a parent when the at-will employee or employee was a child; and husband or wife as defined under the laws of the state of New Mexico, and domestic partner. (Added 02/13/12; Amended 02/08/19)
- L. Intermittent Leave** - Leave taken at separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from a half hour or more to several weeks. (Added 08/01/10)
- M. Leave without Pay (LWOP)** – An authorized unpaid absence from the job, which requires prior approval. Employees do not accrue PTO leave for periods of leave without pay.
- N. Part-time Employee** – for the purposes of this policy and as a recipient of PTO leave donations a part-time employee is generally an employee who works less than eighty (80) hours per pay period.
- O. Serious Health Condition** - An illness, injury, impairment, or physical or mental condition that involves either: (29 CFR 825.113) (Definition Amended 08/01/10)
- (1) Inpatient care (e.g., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (e.g., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care: or



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- (2) Continuing treatment by a health care provider, which includes:
- a. A period of incapacity lasting more than **three (3) consecutive, full calendar days**, and any subsequent treatment or period of incapacity relating to the same condition that **also** includes:
 - 1. Treatment two (2) or more times by or under the supervision of a health care provider (e.g., in-person visits, the first within seven (7) days and both within thirty (30) days of the first day of incapacity); or
 - 2. one (1) treatment by a health care provider (e.g., an in-person visit within seven (7) days of the first day in incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or
 - b. Any period of incapacity related to pregnancy or prenatal care. A visit to the healthcare provider is not necessary for each absence; or
 - c. Any period of incapacity or treatment for a chronic serious health condition, which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence (e.g., asthma, diabetes, epilepsy, etc.); or
 - d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment (e.g., Alzheimer's, stroke, terminal diseases, etc.); or
 - e. Any absences to receive multiple treatments for restorative surgery or for a condition that likely would result in incapacity of more than three (3) consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).
- Q. Child** – For FMLA purposes, a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under eighteen (18) years of age or is eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability as defined in the FMLA.



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3. ELIGIBILITY

Eligible employees who face financial hardship because they have exhausted all of their own accrued leave due to an extended, catastrophic, or unforeseen illness, injury or impairment may request PTO donations. In order to be eligible to receive PTO donations, there are specific qualifications that each employee must meet.

- A. Employees receiving workers' compensation benefits are not eligible. (Amended 02/13/12)
- B. The employee must be on the Family and Medical Leave Act (FMLA) and all related requirements as outlined in section (a.) below must be met.
 - a. Employees who have been employed for at least twelve (12) months (the 12 months of employment do not have to be consecutive and may have been in the past seven years as defined in the FMLA), and who have worked at least 1,250 hours during the twelve (12) month period immediately preceding the start of FMLA leave, may take up to twelve (12) work weeks of unpaid or paid leave (FMLA leave) for the following reasons:
 - i. Birth of a child, to care for the newborn child, and bond with a newborn child within one year of birth.
 - ii. Placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement.
 - iii. Care for the employee's spouse or domestic partner, child, or parent with a serious health condition.
 - iv. Serious health condition that makes the employee unable to perform the functions of the employee's job.
 - v. Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on "covered active duty;" or twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the service member's spouse, child, parent, or next of kin (military caregiver leave).
 - b. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.
- C. Recipients of PTO donations must have exhausted all accrued paid time off, administrative leave, and compensatory time before any paid time off donations may be used.



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- D. Employees may request donations prior to exhausting all leave, but may not use donated leave until their other accrued leave balances are zero. (Amended 02/08/19)
- E. Employees who have a documented history of leave abuse or inappropriate pattern of leave usage may, at the Administrative Authority's discretion, have their request for leave donations capped at eighty (80) hours per request, rather than the one hundred and sixty (160) hours. An inappropriate pattern of leave usage may include documentation to the employee within the past twenty-four (24) months addressing patterns of calling in on certain days of the week; a pattern of calling in immediately prior to or following scheduled days off, holidays, weekends, and paydays; a pattern of calling in when leave has been denied; a pattern of using leave without pay due to lack of accrued leave; a pattern of leave being used as soon as it is accrued; or one instance of absence without leave. Leave approved as FMLA or as a reasonable American with Disability Act (ADA) accommodation does not constitute leave abuse. Employees are responsible for requesting FMLA and/or an ADA accommodation for qualifying conditions as set forth in the NMJBPR, NMJB Personnel Policies, or law.

4. PROCESS FOR APPROVAL OF PAID TIME OFF (PTO) DONATIONS

- A. Based on justifiable and equitability applied circumstances, the Administrative Authority shall have the discretion to grant or deny a request of paid time off donations. Circumstances considered might include a review of the previous 24-months non-FMLA leave usage. (Added 02/13/12; Amended 02/08/19))
- B. The employee is responsible for providing their Administrative Authority and Human Resources Professional with all information required to evaluate the request. The employee or designee requesting donations must initiate a written request to include the nature, severity, and anticipated duration of the medical condition. The request shall include:
 - (1) A completed Request for PTO Donations Form signed by the employee's supervisor and Division Director; and
 - (2) The completed FMLA Certification of Healthcare Provider Form for the Employee's Serious Health Condition form; or
 - (3) The completed FMLA Certification for the Employee's Family Member's Serious Health Condition form; or
 - (4) The completed FMLA Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave form; or



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- (5) The completed FMLA Certification for Serious Injury or Illness of Current Service members – for Military Family Leave form. (Amended 02/08/19)
- C. The Administrative Authority may send an employee to a health care provider of the judicial entity's choice and at the judicial entity's expense for a second opinion. The employee shall be on administrative leave with pay during the examination and for a reasonable period of transportation time to and from the examination. The Administrative Authority shall provide the employee with a copy of any examination reports.
- D. If the PTO donation request is approved, the Administrative Authority shall authorize requests for solicitation of paid time off donations within the judicial entity or judiciary wide. If solicitation is within the judicial entity then the Human Resources Professional or designee will prepare and send out the notification. If approval for solicitation is judiciary wide, the request will be forwarded to AOC HRD for processing. (Amended 02/08/19)
- E. Upon final Administrative Authority approval, all associated documentation shall be forwarded to the appropriate judicial entity's Human Resources Professional or designee who shall:
- (1) Notify employees of the request for donated leave within the judicial entity or Judicial Branch and attach a *Donation of Paid Time Off (PTO) Leave Form* for donors to complete and submit to Human Resources; (Amended 02/08/19, 0*/**/2022)
 - (2) Maintain donation forms in the donating employee's personnel file; and
 - (3) Track the use of donated PTO leave at least bi-weekly and communicate to the recipient the remaining balance at least monthly.
- F. If a PTO donation is not transferred, the donor shall be notified and it shall be returned to their accrued leave balance.
- G. Donation requests shall be handled as follows:
- (1) A full-time eligible employee may receive the amount needed and not more than 160 donated hours per request, except as provided in Section 3(E) above. Requests are limited to a total of three (3) during any 12-month period. (Amended 02/13/12; 02/08/19)
 - (2) A part-time eligible employee may receive the amount needed and not more than 80 donated hours per request, except as provided in Section 3(E) above. Requests are limited to a total of three (3) during any 12-month period. (Amended 02/08/19)



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(3) Subsequent requests shall follow the same request procedures as outlined above.

H. PTO donations shall transfer on a dollar-for-dollar basis to the recipient's donated PTO balance. (Example: Employee "A" who earns \$20.00 per hour donates 3 hours leave to employee "B" who earns \$15.00 per hour. From Employee "A", Employee "B" receives 4 hours of donated leave. [$\$20.00 \times 3 \text{ hours} = \60.00 . $\$60.00 / \$15.00 = 4 \text{ hours}$]). (Amended 02/08/19)

5. USE OF LEAVE

- A. Donations of PTO may be used consecutively or intermittently.
- B. The use of donated leave hours shall not exceed the employee's regularly scheduled work hours per pay period.
- C. PTO donations can only be used after all other leave has been completely exhausted and only for the qualifying FMLA event and purpose for which the leave was donated (full-time or intermittent FMLA). (Added 02/13/12; Amended 02/08/19)
- D. All donated leave not used within six (6) months shall be reverted to the donor on a prorated basis, unless after the six (6) months the employee is still on approved intermittent FMLA for the same FMLA qualifying event. (Added 02/13/12)
- E. The amount of leave donations shall not create or imply a right to leave. The judicial entity may rescind approved donated leave upon determination of leave abuse, or when leave is not judicially used for reasons not related to the medical necessity.

6. CESSATION OF FMLA QUALIFYING EVENT

The employee shall immediately notify their HR Professional or designee when the FMLA qualifying event requiring leave ends. (Amended 02/08/19) Any unused donated leave will be reverted to the donor in the same form of leave that was donated on a pro-rated basis. Leave will revert back when the medical emergency ends or when the receiving employee is separated from the judicial entity, whichever occurs first.

- A. The transfer of donated PTO shall end. Any unused PTO donations shall be returned to the donors within the next pay period on a prorated basis depending on the dollar value of hours donated and the total value of donated leave. (Example: Employee "R" donates \$100.00 worth of leave to Employee "Q". Employee "Q" receives a total of \$500.00 worth of donated leave. ($\$100 / \$500 \times 100 = 20\%$) Employee "Q" returns to work, and \$75.00 worth of unused leave remains. Employee "R" will have 20% of the remaining \$75.00 returned. ($\$75.00 \times 20\% = \15.00) (Amended 02/08/19)



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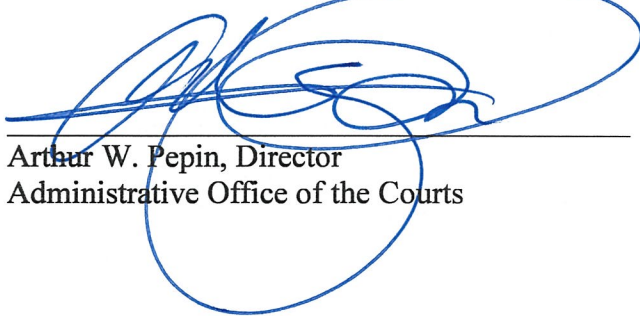
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7. ATTACHMENTS

Donation of Paid Time Off (PTO) Form and Request for Paid Time Off (PTO) Donations Form

Effective Date: May 1, 2007; Revised April 8, 2015; January 1, 2018; May 13, 2023



Arthur W. Pepin, Director
Administrative Office of the Courts

5-4-2023

Date



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REQUEST FOR PAID TIME OFF (PTO) DONATIONS FORM

To be eligible for paid time off donations Family and Medical Leave (FMLA) requirements must be met.

If a completed FMLA Certification of Healthcare Provider Form is already on file with your Human Resources Professional - no additional medical information will be required with this request form. An eligible employee may receive the amount needed and not more than 160 donated hours per request. Requests are limited to a total of three (3) during a 12-month period.

Employee Name: _____ **Judicial Entity:** _____

Job Title: _____

Leave is for a (check one): Self _____ Domestic Partner _____ Immediate Family Member _____

Date FMLA Leave is to Begin/End: _____ **Requested # of Hours Needed** _____

Please explain the condition and/or situation necessitating this request for donated leave:

The information submitted on this form is true and accurate.

Employee Signature: _____ **Date:** _____

Supervisor/Division Director's Signature: _____ **Date:** _____

For Human Resources / Administrative Authority Use Only

Request # _____ (1-3)	Balances as of _____: (date)
# Hours of Donations Previously Received: _____	Paid Time Off (PTO): _____
Certification of Leave Balances	Compensatory Time: _____
Balances Pay Period Ending: _____	Administrative Leave Time: _____

As Administrative Authority, I have reviewed this request for donated leave.

_____ Yes, I approve this request. _____ No, I disapprove this request.

Administrative Authority Signature: _____ **Date** _____

Leave Donations Solicited: _____ **Within Judicial Branch - forward to AOC HRD:** _____

Within Employee's Judicial Entity Only (retain locally): _____



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DONATION OF PAID TIME OFF (PTO) FORM

To the extent possible, this shall remain anonymous.

Donor Name:	Donor Employee ID #:
Donor's Judicial Entity:	
Hours of PTO Donated:	Donor's Hourly Rate of Pay:
Recipient's Name:	Recipient's Judicial Entity:
I hereby authorize the donation of paid time off, effective this date, pursuant to the New Mexico Judicial Branch Personnel Rules and the New Mexico Judicial Branch Personnel Rules for At-Will Employees.	
Donor's Signature: _____ Date: _____	
For Administrative Use Only	
Donor's PTO Leave Balance: _____	Before Donation: _____ After Donation: _____
Pay period ending in which leave donation is applied to recipient's donated paid time off balance: _____	
$\frac{\text{Donor's hourly rate of pay}}{\text{\# of hours donated}} \times \text{Value of donated leave} = \$ \frac{\text{Recipient's hourly rate of pay}}{\text{\# of hours Donated.}}$	
RETURN OF DONATED LEAVE	
$\frac{\text{\$Value of Donor's Leave}}{\text{\$Value of all Donated Leave}} \times 100 = \text{\% of Donor's Leave.}$	
$\frac{\text{\$Value of Unused Leave}}{\text{\% of Donor's Leave}} \times \text{\$Value of Leave to return to Donor} \times \text{Donor's Rate of Pay} = \text{\# of Hours of Leave to return to Donor.}$	

cc: Donor's Personnel File