

Technician Personnel
Absence and Leave

Summary of Changes: This regulation contains the regulatory requirements of the New Mexico Army and Air National Guard Technicians Absence and Leave System. It is consistent with the requirements of the Office of Personnel Management and Code of Federal Regulations (CFR). It contains general guidance to be used by managers and supervisors relating to technician absence and leave. This regulation supersedes Technician Personnel Regulation Number 630 dated 15 December 1995.

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CHAPTER 1 PURPOSE

1-1. PURPOSE

The purpose of this regulation is to establish policy on the types of leave available to New Mexico National Guard technicians. Leave of any type must be administered in a uniform and equitable basis within the scope of this regulation and in accordance with other governing regulations and authorities. In granting leave, consideration must be given to the needs of the National Guard and the welfare of the technician.

1-2. RESPONSIBILITY

The Human Resource Officer (HRO) is responsible for administering the leave program.

1-3. DEFINITIONS

- a. Accrued Leave: Leave earned by a technician during the current year that is unused at any given time in that leave year.
- b. Accumulated Leave: Unused leave remaining to the credit of a technician at the beginning of a leave year.
- c. Leave Year: The period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the complete pay period in the following calendar year.
- d. Day of Leave: Day upon which a technician would otherwise work and receive pay, exclusive of holiday and all non-work days.
- e. Family member means the following relatives of the technician:
 - (1) Spouse, and parents, thereof;
 - (2) Children, including adopted children and spouses, thereof;
 - (3) Parents;
 - (4) Brothers and sisters, and spouses, thereof; and
 - (5) Any individuals related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- f. Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider.
- g. Medical Certificate: Written statement signed by a registered practicing physician, or other practitioner, certifying to the incapacitation, examination, treatment, or a period of disability of a technician while he or she was undergoing professional treatment.
- h. Injured member of the Armed Forces: a member of the Armed Forces, including a member of the National Guard or a Reserve, who is undergoing medical treatment, recuperation, or therapy for a serious combat-related injury or illness.

1-4. TYPES OF LEAVE

- a. Annual Leave
- b. Sick Leave
- c. Family & Medical Leave
- d. Leave Without Pay (LWOP)
- e. Military Leave
- f. Court Leave
- g. Compensatory Leave
- h. Excused absences
- i. Administrative Dismissal
- j. Family Friendly Leave

1-5. CHARGING OF LEAVE

The minimum charge for annual, sick, LWOP and compensatory leave is fifteen minutes, with additional leave charged in multiples of fifteen minutes. Charges against annual, sick, and compensatory leave will be made only on those days defined as work days.

1-6. ABSENCE WITHOUT LEAVE (AWOL)

An absence from duty which was not authorized or approved or for which a leave request has been denied is documented on the leave record as absent without leave (AWOL). Pay is withheld for the entire period of such

absence. Disciplinary action may be taken in accordance with TPR 752. If it is later determined by the supervisor/manager that the absence without prior authorization was excusable, the charge to absence without leave may be changed to a paid leave status.

CHAPTER 2 ANNUAL LEAVE

2-1. PURPOSE

The purpose of annual leave is to permit or allow the technician to:

- a. Take yearly vacation or other short periods for recreation;
- b. Take care of personal business or emergencies that occur which can only be attended to during normal working hours;
- c. Attend approved service schools or periods of active duty for training, if no military leave is available; and
- d. Annual leave is also authorized when ordered to active duty to provide support services not involving law enforcement duties.

2-2. GRANTING ANNUAL LEAVE

The approval of leave is the responsibility of the immediate supervisor who can best determine if the time off request is compatible with mission requirements of the organization. Technicians may request annual leave, as well as other types of leave, on [OPM Form 71](#).

2-3. QUALIFYING PERIODS

A technician is entitled to accrue and use annual leave if the appointment type is permanent or indefinite; if the temporary appointment is for 90 days or longer, or if the temporary appointment is extended so that it totals 90 days or more. A temporary technician is not entitled to annual leave until he or she has been employed for a continuous period of 90 days without a break in service.

2-4. ANNUAL LEAVE RATES

- a. Accrual rates for full-time technicians:
 - (1) Technicians with less than three years of service (to include military and civilian service) earn four hours of annual leave for each bi-weekly pay period.
 - (2) Technicians with three but less than fifteen years of service earn six hours of annual leave for each bi-weekly pay period except for the last full pay period of the calendar year when they earn ten hours of annual leave.
 - (3) Technicians with fifteen or more years of service earn eight hours of annual leave for each bi-weekly pay period.
- b. Accrual rates for part-time technicians:
 - (1) Part-time technicians must have a regularly assigned tour of duty on at least one day of each week in a pay period in order to earn leave. They earn leave up to the annual maximum, in proportion to their number of hours in a pay status. If the total hours of service in a pay status does not equal the number necessary for a minimum leave credit of one hour, the time may be carried over from one pay period to the next until there is enough work time to earn leave.
 - (2) Upon changing to full-time work, any fractional hours of service are lost for leave credit.
- c. Any change in the annual leave accrual rate is effective at the beginning of the first bi-weekly pay period following completion of the required period of service.

2-5. ACCUMULATION AND RESTRICTION OF ANNUAL LEAVE

The maximum amount of annual leave that may be carried forward from one leave year to the next is 240 hours. Leave hours in excess of 240 hours will be forfeited at the end of the leave year.

2-6. RESTORATION OF SCHEDULED ANNUAL LEAVE

Annual leave that is forfeited by the technician at the end of the leave year may be restored and carried for two years due to sickness, administrative error, or exigency of the public business provided that leave was approved in writing and was scheduled at least three pay periods prior to the end of the leave year.

- a. While the cut-off date is applicable only to those situations involving possible forfeiture and restoration of annual leave, supervisors and employees should not delay until this date approaches to schedule leave. Action should be taken to assure that annual leave is scheduled for use during the year so as to avoid situations where

employees approach the end of the leave year with a significant amount of annual leave that must be used or forfeited.

b. Approval for the restoration of annual leave forfeited due to exigencies of the public demand rests only with the Adjutant General for the State of New Mexico. Requests for restoration of leave will be forwarded to the Adjutant General through the Human Resource Officer accompanied with the following documentation, and will be retained for two years or until the leave is used:

- (1) Written verification and dates of scheduling and rescheduling of the annual leave to include:
 - (a) Date on which the leave was scheduled and approved.
 - (b) Date for which the leave was scheduled for use.
 - (c) The date the cancelled leave was rescheduled.
 - (d) The date for which the cancelled leave was rescheduled for use.
- (2) Reason(s) for cancelling the approved leave.
- (3) Beginning and ending date of the exigency or operational demand that resulted in the forfeiture.
- (4) The exact number of hours for which restoration is requested.

c. Technicians with leave in excess of 240 hours who are ordered to extended active duty near the end of the leave year should be advised to use the excess leave first to avoid forfeiture.

2-7. ADVANCING ANNUAL LEAVE

a. Annual leave will be advanced to the technician only upon request by the technician and approved by the supervisor, up to the amount expected to be earned during the current leave year.

b. If the technician takes all of his or her advanced leave and is separated before the end of the current year or before the advancement is repaid, the value of leave will be withheld from any compensation due, unless he/she is separated for death, retirement due to disability, or inability to return to work because of illness.

CHAPTER 3 SICK LEAVE

3-1. AUTHORIZED USE OF SICK LEAVE

a. A technician will be granted sick leave when he or she:

- (1) receives medical, dental, or optical examination or treatment, or receives psychological counseling;
- (2) is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;
- (3) provides care for a family member as a result of physical or mental illness, injury, pregnancy, childbirth, or medical, dental, or optical examination or treatment;
- (4) makes arrangements necessitated by the death of a family member, attends the funeral of a family member, or to grieve bereavement;
- (5) would, as determined by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease;
- (6) must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys, court proceedings, required travel, and any other activities necessary to allow the adoption to proceed.

b. Bone marrow/Organ donor:

A technician is entitled to 7 days of paid leave each calendar year to serve as a bone marrow donor. A technician may also receive up to 30 days of paid leave each calendar year to serve as an organ donor. This leave does not accumulate from year to year. If the medical procedure and/or recuperation require an absence longer than 7 days, a technician may request additional time off by using other leave categories such as sick, annual leave, or LWOP.

c. Family Friendly Leave Act

Sick leave may be used by a technician for the purposes described in paragraphs a.(3) and a.(4) of this chapter only to the extent that the amount used for such purposes does not exceed an annual limit of 104 hours. Technicians may use up to 480 hours of sick leave to provide care for a family member with a serious health condition (See Family & Medical Leave for guidance).

d. As it applies to this chapter, the term "family member" has the same meaning as described in Chapter 1-3.e.

3-2. SICK LEAVE AUTHORIZATION

Sick leave will be authorized by the immediate supervisor only in bona fide cases.

a. For the personal use of sick leave:

(1) The supervisor may grant sick leave orally or may require written evidence. It is the responsibility of the supervisor to determine whether absences are properly chargeable as sick leave.

(2) Medical certificates may be required for absences in excess of three work days.

(3) Whenever there is reason to believe that sick leave is being abused, the technician will be advised in writing that a medical certificate will be required to support any future approval of sick leave regardless of the duration.

b. For use of sick leave for a family member:

(1) Sick leave will be requested and approved in advance for routine cases, and can be requested and approved orally in cases of emergency.

(2) Medical certification may be required.

3-3. REQUESTING SICK LEAVE

Leave for prearranged medical, dental, or optical examinations or treatment will be applied for in advance.

a. For personal use of sick leave, technicians must contact their immediate supervisor within one hour of the start of the workday and make their request for sick leave.

b. For use of sick leave for a family member, the technician must submit a written request for sick leave with the immediate supervisor. Technicians should request such leave as far in advance as possible.

c. In the case of an emergency, sick leave for personal use or for family members may be granted orally and must be supported by appropriate documentation within the time frame agreed upon by the supervisor.

3-4. SICK LEAVE ACCRUAL RATES

Sick leave is earned from the start of the first full pay period of employment regardless of the type of appointment or length of service. There is no qualifying period for the earning and use of sick leave.

a. Full-time technicians earn four hours for each full bi-weekly pay period.

b. Part-time technicians (less than 40 hours per week) earn one hour of sick leave for each 20 hours in a pay status.

3-5. ACCUMULATION OF SICK LEAVE

Sick leave that accrues to a technician's credit, but not used during the year, may accumulate from year to year without restrictions on the maximum amount accumulated.

3-6. ADVANCING SICK LEAVE

Request and authorization of advanced sick leave must be approved by the HRO or his/her official designee. Sick leave may be advanced to a technician not to exceed 240 hours at any one time subject to the following conditions:

a. Requests for advanced sick leave will be supported by a medical certificate;

b. All available accumulated sick leave will be exhausted before advancement;

c. Annual leave that would otherwise be forfeited will be used; and

d. There is a reasonable assurance that the technician will return to duty to earn and repay the advanced leave received.

3-7. SUBSTITUTION OF SICK LEAVE FOR ANNUAL LEAVE

Sick leave may be substituted for annual leave when sickness or other action chargeable to sick leave occurs to a technician during a period of annual leave, except when on active duty.

3-8. REPAYMENT OF ADVANCED SICK LEAVE CREDITS

When a technician is separated prior to repayment of advanced sick leave credits, the remaining credit will be charged against accumulated or accrued annual leave and against earned salary. If separation is the result of death or disability retirement, or if the technician is unable to return to work because of a disability that is supported by a medical certificate, advanced sick leave credits are automatically liquidated with no repayment required.

3-9. SICK LEAVE BALANCE UPON RETIREMENT

The creditable service of a National Guard technician who retires on immediate annuity under the Civil Service Retirement System is increased by the days of unused sick leave in his or her balance. This does not apply to technicians who retire under the Federal Employees Retirement System.

3-10. RESTORATION OF SICK LEAVE CREDIT UPON RETURN TO FEDERAL SERVICE

Upon return to the federal service after a break in service of any length of time, a technician will be re-credited with the sick leave balance held at the time of termination.

CHAPTER 4 FAMILY AND MEDICAL LEAVE**4-1. GENERAL**

The Family Medical Leave Act (FMLA) of 1993 entitles a technician up to 12 administrative workweeks of unpaid leave for certain family and medical situations.

4-2. ELIGIBILITY

Family and medical leave is available to full-time and part-time technicians who have completed at least 12 months of service (does not have to be consecutive).

4-3. LEAVE ENTITLEMENT

a. An eligible technician shall be entitled to a total of 12 workweeks of unpaid leave during any 12 month period for one or more of the following reasons:

- (1) The birth of a son or daughter of the technician and the care of such child;
- (2) The placement of a son or daughter with the technician for adoption or foster care;
- (3) The care of a spouse, son, daughter, or parent of the technician, who has a serious health condition;
- (4) A serious health condition of the technician that makes him or her unable to perform the essential functions of the position.

b. A technician must invoke his or her entitlement to family and medical leave and is subject to notification and medical certification requirements. A technician may not retroactively invoke his or her entitlement to family and medical leave unless the technician is physically or mentally incapable of invoking the entitlement due to a FMLA qualifying reason under paragraph 4-3. The technician may retroactively invoke his or her entitlement to FMLA within 2 workdays after returning to work.

c. The 12 month period begins on the date the technician first takes leave for a family or medical need specified in paragraph 4-3 and continues for 12 months. A technician is not entitled to 12 additional workweeks of leave until the previous 12 month period ends and an event or situation occurs that entitles the technician to another period of family or medical leave.

d. The entitlement to leave under paragraph 4-3.(1) and 4-3.(2) of this chapter shall expire at the end of the 12-month period beginning on the date of birth or placement. Leave for a birth or placement must be completed within this 12 month period. Leave may begin prior to the actual date of birth or placement for adoption, or foster care and the 12 month period begins on that date.

e. Supervisors may not place their technicians on family and medical leave and deduct hours from their leave entitlement unless the supervisor has received confirmation from the technician of his or her intent to invoke entitlement to family and medical leave.

4-4. LENGTH OF LEAVE

The 12 workweeks of leave will be calculated on an hourly basis and will equal 12 times the average number of hours in the technicians regularly scheduled workweek. Any holidays and non-work days by federal statute, executive order, or administrative order, that occur during the period of time in which the technician is on family and medical leave may not be counted toward the 12 week entitlement.

4-5. INTERMITTENT LEAVE

Leave under paragraph 4-3.(3) and 4-3.(4) of this chapter can be taken intermittently or on a reduced or modified work schedule. Only the amount of leave taken in intermittent periods or on a reduced leave schedule shall be deducted from the total amount of leave available to the technician.

4-6. SUBSTITUTION OF PAID LEAVE

A technician may elect to substitute the following leave options for any or all of the period of leave without pay taken for family or medical leave:

- a. accrued annual or sick leave;
- b. advanced annual or sick leave approved by the agency;
- c. leave made available under the Voluntary Leave Transfer Program.

4-7. NOTICE OF LEAVE

If leave is to be taken for a foreseeable reason, such as the expected birth of a child, the technician shall provide notice of the intent to take family and medical leave not less than 30 calendar days before the date of leave is to begin. If the need for leave is not foreseeable, such as a medical emergency, and the technician can not provide 30 calendar days notice, the technician shall provide notice within a reasonable period of time appropriate to the circumstances involved.

4-8. MEDICAL CERTIFICATE

a. Requests for family and medical leave shall include appropriate documentation or medical certificate from a healthcare provider. Written medical certificates shall be provided by the technician within 15 calendar days of providing notice to take FMLA leave. The written medical certificate shall include the following:

- (1) the date the serious condition began;
- (2) the probable duration of the serious health condition;
- (3) appropriate medical information concerning the serious health condition;
- (4) limitations or restrictions relating to the essential functions performed in the technician's position.

b. If the technician fails to provide the requested medical certification, the supervisor may charge the technician with absence without leave (AWOL), or may allow the technician to request that the leave be charged as leave without pay, annual compensatory or sick leave.

4-9. ADDITIONAL FMLA FOR FAMILIES OF MEMBERS OF THE ARMED FORCES

a. The Family and Medical Leave Act has been amended to provide military family leave entitlements for a Federal employee who:

- (1) is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) of a covered service member with a serious injury or illness and;
- (2) provides care for such service member.

b. The serious illness or injury must have been incurred by the covered service member in the line of duty while on active duty in the Armed Forces.

c. Covered family members are entitled to up to 26 weeks of FMLA leave during a single 12 month period to care for the service member (hereafter referred to as "military family leave").

d. During the single 12 month period, the technician is entitled to a combined total of 26 weeks of regular FMLA leave and military family leave.

e. The use of this military family leave in a single 12 month period does not limit the use of regular FMLA leave during any other 12 month period.

f. Similar to regular FMLA leave, military family leave is unpaid leave for which a technician may substitute accumulated annual or sick leave. The normal leave year limitations on the use of sick leave to care for a family member do not apply.

CHAPTER 5 LEAVE WITHOUT PAY (LWOP)**5-1. GENERAL**

Leave without pay is a temporary non-pay status and absence from duty which is requested by the technician. It cannot be imposed as a penalty, nor can a technician be required to apply for LWOP in lieu of suspension.

5-2. GRANTING LWOP

a. The authorization of LWOP is a matter of administrative discretion. The HRO may grant LWOP for personal reasons for a period not to exceed 6 months. Technicians cannot demand that they be granted leave without pay as a matter of right; the only exception being LWOP for the purposes of military duty.

b. Each request for LWOP will be examined closely to assure that the value to the National Guard or the serious needs of the technician are sufficient to offset the costs and administrative inconveniences.

c. Requests for LWOP for a duration of more than 30 days must be submitted to the HRO for approval. Requests must assure in writing that the technician will return to duty and that at least one of the following benefits will result:

- (1) increased job ability.
- (2) protection or improvement to the technician's health.
- (3) retention of a desirable technician.

(4) furtherance of a program of interest to the National Guard.

5-3. CHARGING LWOP

Charges to LWOP will be in multiples of 15 minute increments. The day or days declared as a holiday immediately preceding the first day or following the last day of a period of leave without pay are to be considered as days to which the technician is entitled to pay, if he or she would have otherwise have been available and performed duty.

5-4. CONVERSION OF LWOP

If a technician requests and is granted leave without pay, the period of leave may not retroactively convert to annual or sick leave unless:

- a. the technician is granted LWOP for a pending disability retirement which is subsequently denied; or
- b. the technician is on LWOP for a pending OWCP claim which is subsequently denied. In either case, annual or sick leave may be retroactively substituted for the period of LWOP.

CHAPTER 6 MILITARY LEAVE

6-1. GENERAL

Military leave is leave authorized for permanent and indefinite technicians to allow a technician to be absent from work without loss of pay while performing active duty, active duty for training, and inactive training.

6-2. ACCRUAL

Accrual of military leave is limited to a maximum of 120 hours per each fiscal year. Public Law 96-431 permits a carryover of unused military leave for up to a maximum of 120 additional hours.

6-3. GRANTING OF MILITARY LEAVE

- a. Technicians may use as much military leave during a single period of active duty as they may legally accrue subject to a limit of 240 hours per fiscal year.
- b. Technicians may be credited with 120 hours of military leave for a new fiscal year even if the technician is serving on active duty.
- c. The requirement that technicians first use available military leave when ordered to active duty or active duty training has been eliminated. Technicians have the option of using available annual leave, compensatory leave, or leave without pay, for the performance of such duty.
- d. The minimum charge to military leave is one hour. A technician may be charged military leave only for those hours that the technician would otherwise have worked and received pay. Technicians who request military leave for inactive duty training will be charged only the amount of military leave necessary to cover the period of training and required travel. Members of the National Guard will no longer be charged military leave for weekends and holidays that occur within the period of military service.

6-4. FORFEITURE OF MILITARY LEAVE

Military leave will be automatically forfeited in the following situations:

- a. Technicians who have more than 120 hours of military leave at the end of the fiscal year will forfeit any hours in excess of 120.
- b. Technicians who terminate employment will not be paid for any unused military leave.

CHAPTER 7 COURT LEAVE

7-1. GENERAL

Court leave is an authorized absence without charge to leave or the loss of pay when a technician is excused from work status to serve as a juror or a witness.

7-2. ELIGIBILITY

Court leave is granted to permanent and temporary technicians in the following instances:

- a. When a technician is summoned to appear as a witness on behalf of any party in connection with any judicial proceedings to which the United States, the District of Columbia, or a state or local government is party; or

b. When a technician is summoned in connection with a judicial proceeding by a court or authority responsible for the conduct of the proceeding to serve as a juror.

7-3. USE OF ANNUAL LEAVE

If a technician is on annual leave or compensatory leave when called for jury service, court leave should be substituted.

7-4. DURATION OF JURY SERVICE

A technician who is under proper summons should be granted court leave during his or her absence and paid for the entire period, regardless of the number of hours per day or days per week he or she actually serves on the jury during the period.

7-5. INTERIM EXCUSE FROM JURY DUTY

When no hardship would result, the supervisor, at his or her discretion, may require a technician on jury duty to return to technician duty or be charged annual leave if excused from jury service for one day or even a substantial part of a day.

7-6. COURT FEES

Fees received for duty as a witness or juror will be handled in the following manner:

a. If a technician is absent from his or her regularly scheduled duties to serve as a juror in state or municipal court, he or she will collect all fees and allowances payable as a result of the service and must render the monies to the appropriate representative of the financial manager for proper disposition. The technician is permitted to keep those fees or allowances in excess of the amount of technician compensation he or she is due for the time absent from work.

b. A technician eligible for court leave may not accept fees for services in a federal or District of Columbia court where the service is performed during the regularly scheduled administrative workweek.

c. Technicians who perform jury service on a non-workday are entitled to retain the fees received for such services. The technician may keep any allowances for mileage and subsistence authorized by law to cover expenses in connection with the jury service.

d. A technician who performs jury service that does not conflict with hours of employment may retain the fees received for jury service. If, however, performance of jury service is in a court of the United States during hours in which he or she is in a pay status, he or she may not be paid jury fees for that day.

e. Fee received for jury duty either in a federal or state court on a holiday falling within the technician's basic tour of duty may be retained by the employee, provided that, if he or she had not been on jury duty, he or she would have been excused from regular duties on that holiday.

f. A technician who is in a leave without pay status when called for jury service can retain jury fees and per diem allowance for each day's attendance in court and allowances for mileage and subsistence.

g. When a technician appears in court as a witness for a private party, and the United States, District of Columbia, state, or local government is not a party in the action, his or her absence from duty must be charged as either annual leave, compensatory leave, or leave without pay.

h. Technicians will not be paid witness fees when testifying on behalf of the United States government; however, they will be paid their regular salary and the time absent from work to serve as a witness will not be deducted from their leave balances. A technician who is called as a witness for the United States or District of Columbia may receive witness fees if on a LWOP status during the entire period.

CHAPTER 8 LAW ENFORCEMENT LEAVE

8-1. GENERAL

Technicians who are called to state or federal active duty to provide military aid to enforce law or to assist civil authorities will be entitled to an additional 22 days of military leave in a calendar year.

8-2. COVERAGE

This leave entitlement applies to National Guard technicians who perform, for the purpose of providing military aid to enforce the law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property or the prevention of injury in accordance with:

a. Federal service under section 331, 332, 333, or 12406 of Title 10, or other provision of law, as applicable; or

b. Full-time military service for the state, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States.

8-3. ENTITLEMENT

National Guard technicians serving under a permanent or indefinite status appointment are entitled to leave without loss of, or reduction in pay; leave to which otherwise is entitled; credit for time or service; or performance/efficiency rating. Leave shall not exceed 22 work days in a calendar year. Upon request of a technician, the period for which a technician is absent to perform service described in paragraph 8-2. may be charged to accrued annual leave or compensatory time available. The period of absence may not be charged to sick leave.

8-4. PAY RECEIVED

Pay received for services performed under this chapter may not be less than the pay due to a technician for normal technician pay for the same period of time. Pay (other than travel, transportation, or per diem allowance) received will be charged against the technician's pay and, if less than the technician's normal pay, the difference will be paid to the technician. If the military pay exceeds the civilian pay, no civilian pay will be made, nor will a refund of the excess be required.

NOTE: Technicians should be advised that if they suffer injury or death as a result of state active duty, they are not eligible for employee's compensation benefits under the Federal Employee's Compensation Act. State active duty does not constitute performance of official technician duties. Coverage under the Federal Employee's Compensation Act for injuries incurred while on excused absence in other situations will be determined on a case-by-case basis by the U.S. Department of Labor.

CHAPTER 9 COMPENSATORY LEAVE

9-1. GENERAL

Compensatory time off is time off from regularly scheduled work in lieu of compensation for overtime worked. Supervisors will ensure that workweeks are scheduled to accommodate peak workloads in order to minimize the requirements for compensatory time. Compensatory leave is similar to annual leave in the criteria of usage.

9-2. AUTHORIZATION OF TIME

Overtime work must be ordered and approved, in writing, and in advance. The approving official must be at least one level higher than the first line supervisor. Those individuals who report directly to the Air Commander or the Adjutant General are exceptions. The Air National Guard and the Army National Guard will use [NGB 46-14](#). The completed form will be submitted to the Technician Pay Branch with the time and attendance cards.

9-3. EARNING COMPENSATORY TIME

Compensatory time may be earned in multiples of 15 minutes in situations where: work that is excess of 80 hours biweekly is necessary and proper for a technician in support of the National Guard and that is ordered by the technician's supervisor or by the Adjutant General; or as time spent in a travel status at or away from the official duty station outside of regular working hours. For guidance on what situations are considered compensatory time, contact the Human Resource Office.

9-4. GRANTING COMPENSATORY TIME OFF

Compensatory time is granted on the basis of one hour off for each hour of overtime worked. Compensatory time must be taken within 26 pay periods from the pay period in which it was earned. There are no provisions for restoration of compensatory time. Positive steps will be taken by supervisors and technicians to ensure that accrued compensatory time is scheduled for use to avoid forfeiture. Compensatory time will be taken before annual leave, except in those instances where forfeiture of annual leave will occur. Compensatory time will not be granted before it is earned.

9-5. GRANTING COMPENSATORY TIME OFF FOR RELIGIOUS OBSERVATIONS

A technician whose personal religious beliefs require the absence from work during a certain period of time may elect to work compensatory time for the time lost to meet those religious requirements. To the extent that such modifications in work schedule do not interfere with the efficient accomplishment of an agency's mission, the

agency shall in each instance afford the technician the opportunity to work compensatory overtime and shall grant compensatory time off to a technician requesting such time off for religious observances when the technician's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek. Compensatory overtime shall be credited to a technician on an hour for hour basis or authorized fractions thereof. Appropriate records will be kept on compensatory overtime earned and used. The premium pay provisions for overtime work do not apply to compensatory overtime work performed by a technician for this purpose.

CHAPTER 10 EXCUSED ABSENCE

10-1. GENERAL

The authority to grant excused absence to technicians is within the administrative discretion of the state Adjutant General or his/her designee. In addition, the technician may also be authorized excused absence from regular duty assignments for brief periods without charge to leave in order to perform acts or services in situations where the Adjutant General or delegate official has made a determination that support of the activity would benefit the National Guard.

10-2. HOLIDAYS

The following are holidays for New Mexico National Guard technicians:

- a. New Year's Day: first day of January
- b. Birthday of Martin Luther King Jr.: third Monday of January
- c. Washington's Birthday: third Monday of February
- d. Memorial Day: last Monday of May
- e. Independence Day: fourth day of July
- f. Labor Day: first Monday of September
- g. Columbus Day: second Monday of October
- h. Veterans Day: eleventh day of November
- i. Thanksgiving Day: fourth Thursday of November
- j. Christmas Day: twenty-fifth day of December

10-3. REGISTRATION AND VOTING

Supervisors may excuse technicians for a reasonable time when it doesn't interfere with operations, to vote or to register in any election or in referendums on civic matters in their community. Generally, a technician is excused from duty to permit him or her to report to work three hours after the polls have opened or to leave three hours before the polls close, whichever results in the lesser amount of time off.

10-4. EXAMINATIONS

A technician, who is required to take an examination, either mental or physical, as a condition for employment, continued employment, or promotional opportunity in the National Guard, may be excused for the time required for such examinations.

10-5. CONFERENCES AND CONVENTIONS

Technicians attending conferences or conventions may be excused without charge to leave if it has been determined by the state Adjutant General or his/her designee that such attendance would be in the best interest of the federal government or the National Guard.

10-6. BLOOD DONATION

A technician who makes a blood donation without compensation may be excused from work for a reasonable time without charge to leave. This excused absence will not be carried forward or used on another day. This excused absence should follow immediately after the blood donation since its purpose is the convalescence of the technician.

10-7. TARDINESS AND BRIEF ABSENCE

Brief absences from duty of less than an hour and tardiness may be excused when the reasons are justified to the supervisor.

10-8. CIVIL ACTIVITIES

Technicians may be excused for short periods to participate in civil activities the federal government is interested in encouraging. These periods will be confined to not more than a combined total of three workdays during a calendar year. Official civic activities may include but are not limited to: inaugurations; dedication of public buildings and projects; ceremonies for officially invited government visitors; and the convening of legislative bodies. Before granting excused absence, it should be determined that such participation is in the best interest of the federal government, including the National Guard.

10-9. ADMINISTRATIVE DISMISSAL

The closing of an activity for brief periods is within the administrative authority of the Adjutant General or his/her designee. This authority will be used sparingly and only for short periods of time, normally not to exceed three consecutive workdays for any single period of excused absence. The excused absence will cover all affected technicians only from the time the decision is made to the end of their duty day.

10-10. EFFECT OF DISMISSAL

When group dismissals occur by reason of closing an activity or by releasing technicians in the public interest, technicians affected by these activities are generally excused without charge to leave and without loss of pay. However, the authority to excuse technicians administratively is not to be used for periods of interrupted or suspended operations that may be anticipated in sufficient time to permit the arrangement of other work or the scheduling of annual leave. Normally, where 24 hours advance notice can be given, technicians who cannot be assigned to other work must be placed in an appropriate leave status, excluding sick leave, with or without their consent.

When unavoidable circumstances make a 24 hour notice impractical, technicians may be placed on leave with or without their consent if notice is given before the end of the work period immediately preceding the one in which they are to be placed on leave. Efforts will be made to keep to a minimum the occasions on which a technician is required to take leave with less than a 24 hour notice, and such leave will not exceed five days in any one leave year. When an activity is not closed, but due to climatic conditions or the breakdown of transportation facilities, it is impossible for some technicians to report to work, it is within administrative discretion of the Adjutant General or his/her designee to excuse such absences without loss of pay, charge to leave, or to require the use of annual leave.

10-11. ON-THE-JOB INJURIES

A technician who sustains a job-related injury in the performance of assigned duties will be carried on the time and attendance card in the following manner:

- a. On the day of injury: If the injury occurs during the technician's work shift and the injury requires medical care or the technician cannot continue his/her duties and goes home, he/she will be carried on administrative leave for the absence during that day. Absences resulting from the injury in excess of the day the injury occurred is chargeable to annual leave, sick leave, LWOP, or to the provisions of paragraph 10-11.b.
- b. Traumatic on-the-job injuries: A technician who sustains a job-related traumatic injury in the performance of assigned duties is entitled to continuation of regular pay for a period of not more than 45 calendar days. Continuation of pay will be recorded on the time and attendance card as Traumatic Leave (LT) with the date of the traumatic injury noted. The 45 days start at the beginning of the first shift after the day of injury. The technician will be kept in a pay status for any fraction of a day or shift on which the disability begins without charge to the 45-day period. If the technician is not immediately disabled as a result of the injury, the 45 days begin on the first full day or first shift on which the disability begins. Medical evidence and documentation must be provided by the technician to the HRO to support the disability and the continuation of pay.

CHAPTER 11 BASIC WORKWEEK, HOURS OF WORK, OVERTIME, LEAVE**11-1. ADMINISTRATIVE WORKWEEK**

The administrative workweek will consist of seven consecutive calendar days, Sunday through Saturday.

11-2. BASIC WORKWEEK AND HOURS OF WORK

- a. Hours of work and the basic workweek will consist of either;

(1) Four consecutive nine hour days followed by one eight hour day one week, and four consecutive nine hour days the next week;

(2) For those not participating in the 9/5/4 work schedule, the workweek will be five consecutive eight hour days each week;

(3) For the maintenance section within the Air National Guard, the work schedule will consist of four ten hour days each week.

b. Management may change the basic workweek of a department, activity, or organizations in order to meet the requirements of the mission.

c. Hours of work or the tour of duty of technicians may be changed to meet mission requirements. Technicians regularly scheduled for other than normal tours of duty will receive night differential pay, holiday pay, premium pay, or compensatory time, in accordance with any applicable regulations.

d. When a vacancy occurs on a shift after the initial assignments, employees from other shifts who volunteer will be considered. Employees may swap shifts on a permanent or temporary basis if both agree to the exchange and management approves and receives one week's notice of their intentions.

11-3. CHANGES IN BASIC WORKWEEK AND HOURS

The days and hours of a technician's basic workweek may be changed if the technician receives as much advance notice as possible, but not less than one weeks notice before the first day of work affected by the change.

11-4. OVERTIME

Overtime is defined as necessary and proper work authorized by the supervisor in excess of normal duty hours in the administrative workweek. Overtime can be earned in increments of 15 minutes. It must be authorized by the second-level supervisor.

11-5. IRREGULAR AND REGULAR OVERTIME

a. Irregular or occasional overtime is overtime performed on an intermittent or occasional basis, even though planned or scheduled in advance of performance.

b. Regular overtime is overtime scheduled in advance for specific periods of stated days and will reoccur over an extended period of at least two workweeks.

11-6. OVERTIME PROCEDURES

a. Overtime will be kept to a minimum, consistent with mission and workload requirements as determined by the agency. Overtime work assignments shall be distributed equally as practicable on a rotation basis among all qualified employees within the trade, craft, or occupation in the organizational element for which overtime has been authorized. In no case will overtime be assigned to any technician as a reward or punishment. Technicians assigned to work overtime must be qualified to perform the overtime work in a safe, efficient, and expeditious manner.

b. Records will be maintained on overtime performed.

c. The organization will notify technicians of the necessity to perform overtime work immediately after establishing firm overtime requirements. The organization will provide this notice at least three work days prior to the scheduled overtime. However, emergency situations may preclude such advance notice of overtime work.

d. When, in the case of emergency, as determined by the organization, technicians are not informed of overtime assignments prior to start of their tour of duty, and are expected to work more than two hours beyond the end of their daily tour of duty, an opportunity to obtain food at their expense, and a non-paid thirty minute lunch period to consume it at the worksite will be provided. The non-paid lunch period shall be free from all duty obligations, unless the nature of the work is such that it cannot be interrupted, in which case the organization will allow the food consumption to occur in a work status.

e. Technicians will be given a work schedule for holidays, when the situation does not meet the definition of emergency, at least thirty days in advance or immediately following notification of such requirement.

11-7. CALLBACK

Unscheduled callback work performed by a technician on a day when work was not scheduled, or which he/she is required to return to the workplace, is credited as compensatory time and deemed to be at least two (2) hours in duration.

11-8. REST PERIODS

Supervisors are encouraged to grant short rest periods during the daily tour, when such periods are beneficial and/or necessary. The policy adopted will be stated in writing, and the technician will be advised accordingly.

a. Criteria for determining the policy are as follows:

(1) Protection of technician's health by relief from hazardous work or that which requires continual and/or considerable physical exertion.

(2) Reduction of accident rate by removal of potential for fatigue.

(3) Working in confined spaces in areas where normal personal activities are restricted.

(4) Increase in or maintenance of high quality and/or quality production traceable to the rest period.

b. Rest periods granted in accordance with these provisions are considered duty time and are included in the daily tour of duty.

(1) The rest period may not exceed fifteen (15) minutes during each four (4) hours of continuous work.

(2) If the period from the beginning of the daily tour to the lunch period is less than four (4) hours, a rest period should be granted only in unusual circumstances.

(3) The rest period may not be a continuation of the lunch period.

11-9. LUNCH PERIODS

All technicians shall receive, at their discretion, either a half hour or an hour lunch period, except in emergency situations. The lunch period will be approximately midway through the tour of duty. Technicians shall be free to leave the worksite during this period.

CHAPTER 12 VOLUNTARY LEAVE TRANSFER PROGRAM**12-1. PURPOSE**

The purpose of this chapter is to set forth the procedures and requirements for a voluntary leave transfer program under which the unused accrued annual leave of a NMNG technician may be transferred for use by another NMNG technician who requires such leave because of a personal emergency.

12-2. APPROVAL/DISAPPROVAL AUTHORITY

The Human Resource Officer has the responsibility of approving or disapproving all requests for leave transfers. This will be done in accordance with the procedures outlined in this chapter.

12-3. DEFINITIONS

a. Leave donor: a technician who voluntarily and in writing requests the transfer of annual leave to the annual leave accounts of one or more leave recipients.

b. Leave recipient: a technician from whom the HRO has approved an application to receive annual leave from the annual leave accounts of one or more leave donors.

c. Personal emergency: a medical or family emergency or other hardship situation that is likely to require a technician's absence from duty for an extended period of time and to result in a substantial loss of income to the technician because of unavailability of paid leave. Whether a situation constitutes an emergency or hardship will be left to the judgment of the HRO based upon the documents submitted.

12-4. PROCEDURES FOR APPLYING TO BECOME A LEAVE RECIPIENT

a. A technician who has been affected by a personal emergency may make a written application through his/her first and second line supervisor to the Human Resource Officer. If such a technician is not capable of making application on his/her behalf, another NMNG technician may make written application on their behalf. The application must be accompanied by the following information:

(1) Recipients' position title, and grade or pay level.

(2) Brief description of the nature, severity, and anticipated duration of the medical, family, or other hardship situation affecting the technician; and,

(3) Any additional relevant information including medical documentation, if appropriate; e.g. doctor's statements.

b. The first level supervisor will endorse the [OPM Form 630](#) indicating a recommendation for approval or disapproval. Recommendations for disapproval must be accompanied by the reason(s) for disapproval.

12-5. PROCESSING APPLICATIONS OF LEAVE RECIPIENTS

- a. The Human Resource Officer will review an application to become a leave recipient to insure that:
 - (1) The recipient has been affected by a personal emergency as defined by paragraph 12-3.c. above, and
 - (2) The absence from duty without available paid leave is (or is expected to be) at least three (3) workdays.
- b. If the application is approved, the HRO will forward a copy of the completed [OPM Form 630](#) to the recipient.
- c. If the application is disapproved, the HRO will forward a copy of the disapproved [OPM Form 630](#) together with the reason(s) for disapproval to the applicant.

12-6. PROCEDURES FOR APPLYING TO BECOME A LEAVE DONOR

NMNG technicians who wish to donate accrued annual leave to another National Guard technician must submit an [OPM Form 630-A](#) to the Human Resource Office. Technicians who wish to donate to an employee of another Federal agency must submit an [OPM Form 630-B](#).

12-7. LIMITATIONS ON DONATION OF ANNUAL LEAVE

- a. The HRO will not transfer annual leave to a leave donor's official supervisor.
- b. In any one leave year, a leave donor may donate no more than a total of one-half the amount of annual leave he/she has accrued during the leave year in which the donation is made.
- c. A leave donor who will have forfeited annual leave at the end of the leave year may donate no more than the number of hours he/she will accrue in the remainder of the leave year.

12-8. PROCESSING APPLICATION FOR LEAVE DONORS

- a. If an application is approved, HRO will forward a copy of the approved [OPM Form 630-A](#) to both the donor and the leave recipient.
- b. If the application is disapproved, HRO will forward a copy of the disapproved [OPM Form 630-A](#) to the donor with the reasons for the disapproval.

12-9. USE OF TRANSFERRED ANNUAL LEAVE

- a. A leave recipient may use annual leave transferred to his/her annual leave account under the provisions of this chapter in the same manner and for the same purposes listed in paragraph 2-2., of this regulation. However, annual leave that accrues to the account of the leave recipient shall be used before any transferred annual leave.
- b. Approval of the use of transferred annual leave will be subject to the same conditions outlined in paragraph 2-3., of this regulation.
- c. Transferred annual leave may accumulate without regard to limitations imposed by paragraph 2-6., of this regulation.
- d. Transferred annual leave may not be:
 - (1) transferred to another leave recipient;
 - (2) transferred to another federal agency upon the recipient's transfer of employment;
 - (3) included in a lump-sum payment upon separation or upon entering active duty; or
 - (4) made available for re-credit upon reemployment by a federal agency.

12-10. MONITORING THE STATUS OF PERSONAL EMERGENCY

The HRO will be responsible for monitoring the status of the personal emergency of the recipient by requesting written updates, as requested, of the emergency situation.

12-11. TERMINATION OF PERSONAL EMERGENCY

- a. The personal emergency affecting a leave recipient shall terminate:
 - (1) when the leave recipient's employment is terminated;
 - (2) at the end of the bi-weekly pay period in which the HRO determines that the leave recipient is no longer affected by a personal emergency;
 - (3) at the end of the bi-weekly pay period in which the HRO receives notice that the Office of Personnel Management (OPM) has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees Retirement System.
- b. When the personal emergency affecting the leave recipient terminates, no further requests to transfer annual leave to the leave recipient may be granted.

12-12. RESTORATION OF TRANSFERRED ANNUAL LEAVE

When the personal emergency affecting a leave recipient is terminated, any annual leave donated to a leave recipient that has not used must be returned to the leave donor(s).

- a. The amount of unused transferred annual leave to be restored to each leave donor will be in direct proportion to the amount donated and the amount used.
- b. If the number of eligible leave donors exceeds the number of total leave hours to be restored, no unused transferred annual leave will be restored.
- c. If the leave donor retires, dies, or otherwise is separated from federal service before the unused leave is restored, the agency will not restore the unused leave.

CHAPTER 13 EMERGENCY LEAVE TRANSFER PROGRAM**13-1. PURPOSE**

The purpose of this chapter is to set forth procedures and requirements for the Emergency Leave Transfer Program under which employees in any executive agency may donate annual leave for transfer to technicians of his/her agency or to employees of other agencies who are adversely affected by a disaster or emergency declared by the President.

13-2. DEFINITIONS

- a. Disaster or emergency: a major disaster or emergency, as declared by the President of the United States, that results in severe adverse effects for a substantial number of employees.
- b. Emergency leave transfer program: is a program established by OPM that permits federal employees to transfer their unused annual leave to other federal employees adversely affected by a disaster or emergency, as declared by the President.

13-3. ESTABLISHMENT OF AN EMERGENCY LEAVE TRANSFER PROGRAM

OPM will notify agencies of the establishment of an emergency leave transfer program for a specific disaster or emergency. Once notified, the agency is authorized to do the following:

- a. Determine whether and how much donated annual leave is needed by the affected employees;
- b. Approve leave donors and/or leave recipients in their agencies, as appropriate;
- c. Facilitate the distribution of donated annual leave from approved leave donors to approved leave recipients within the agency; and
- d. Determine the period of time for which donated annual leave may be accepted for distribution to approved leave recipients.

13-4. APPLICATION TO BECOME AN EMERGENCY LEAVE RECIPIENT

- a. A technician who has been adversely affected by a disaster or emergency may make written application to his/her agency to become an emergency leave recipient. If the technician is not capable of making a written application, a personal representative of the potential leave recipient may make written application on his/her behalf.
- b. A technician who has a family member who has been adversely affected by a disaster or emergency may also make written application to his/her agency to become an emergency leave recipient. An emergency leave recipient may use donated annual leave to assist an affected family member, provided that such family member has no reasonable access to other forms of assistance.
- c. For the purposes of this chapter, a technician will be considered to be adversely affected by a major disaster or emergency if the disaster or emergency has caused severe hardship to the technician or family members of the technician to such a degree that the technician's absence from work is required.
- d. The leave recipient's application must be accompanied by the following information:
 - (1) the name, position title, and grade or pay level of the potential emergency leave recipient;
 - (2) statement describing his/her need for leave from the emergency leave transfer program; and
 - (3) any additional information that may be required by the leave recipient's agency.
- e. Agencies may administratively determine a time period in which technicians must apply to become an emergency leave recipient after the occurrence of a major disaster or emergency.

13-5. APPROVAL/DISAPPROVAL AUTHORITY

- a. The HRO will review all applications to become a leave recipient to ensure that the potential leave recipient is or has been affected by a major disaster or emergency as outlined in this chapter.
- b. If the application is approved, the HRO will notify the leave recipient within ten (10) calendar days after the date the application was received.
- c. If the application is not approved, the HRO will notify the applicant within ten (10) calendar days after the date the application was received with reasons for its disapproval.
- d. An approved emergency leave recipient is not required to exhaust his/her accrued annual leave and sick leave before receiving donated leave under the emergency leave transfer program.

13-6. LIMITATIONS ON DONATION AND USE OF ANNUAL LEAVE

- a. NMNG technicians who wish to donate accrued annual leave must submit an [OPM Form 630-A](#) to the Human Resource Office. An emergency leave donor may not donate leave for transfer to a specific emergency leave recipient.
- b. An emergency leave donor may not contribute less than one (1) hour nor more than 104 hours of annual leave in a leave year.
- c. Annual leave donated under this chapter may not be applied against the limitations on the donation of annual leave under the voluntary leave transfer or leave bank programs.
- d. An emergency leave recipient may receive a maximum of 240 hours of donated annual leave at any one time from an emergency leave transfer program for each disaster or emergency.
- e. The emergency leave recipient must use the donated annual leave only for the purpose related to the disaster or emergency for which the leave recipient was approved.
- f. Annual leave transferred under this program may be:
 - (1) Substituted retroactively for any period of leave without pay used because of adverse effects of the disaster or emergency; or
 - (2) Used to liquidate an indebtedness incurred by the emergency leave recipient for advance annual or sick leave used due to the adverse effects of the disaster or emergency.
- g. While an emergency leave recipient is using donated annual leave from an emergency leave transfer program, annual and sick leave will accrue to the credit of the technician at the same rate as if the technician were in a paid leave status.
- h. Transferred leave may not be:
 - (1) included in a lump-sum payment upon separation or upon entering active military duty;
 - (2) made available for re-credit upon reemployment by a federal agency; or
 - (3) used to establish initial eligibility for immediate retirement or acquire eligibility to continue health benefits into retirement.

13-7. GOVERNMENT WIDE TRANSFER OF EMERGENCY LEAVE

If the HRO does not receive a sufficient amount of donated annual leave to meet the demands of approved emergency leave recipients within the agency, the HRO may contact OPM for assistance.

13-8. TERMINATION OF DISASTER OR EMERGENCY

- a. The disaster or emergency affecting an emergency leave recipient terminates:
 - (1) when the HRO or OPM determines that the disaster or emergency has terminated;
 - (2) when the emergency leave recipient's federal service terminates;
 - (3) at the end of the bi-weekly pay period in which the emergency leave recipient, or his/her personal representative notifies the HRO that he/she is no longer affected by such disaster or emergency;
 - (4) at the end of the bi-weekly pay period in which the HRO determines, after written notice from the agency and an opportunity for the emergency leave recipient or his/her representative to answer orally or in writing, that the emergency leave recipient is no longer affected by such disaster or emergency; or
 - (5) at the end of the bi-weekly pay period in which the HRO receives notice that OPM has approved an application for disability retirement for the emergency leave recipient under the Civil Service Retirement System or the Federal Employee's Retirement System.
- b. When a disaster or emergency affecting an emergency leave recipient is terminated, any annual leave donated to an emergency leave transfer program that has not used by an approved emergency leave recipient must be returned to the emergency leave donors.