



PUEBLO OF ISLETA
P.O. BOX 1270
ISLETA, NM 87022

Resolution No. 2016-377

Enacting the Pueblo of Isleta Family and Medical Leave Ordinance

The following resolution was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta:

WHEREAS, the Pueblo of Isleta (the “Pueblo”) is a federally-recognized tribe that acts through its governing body, the Tribal Council, which is charged with decision-making in all matters relative to the resources of the Pueblo and the general welfare of the Pueblo and its members;

WHEREAS, the Pueblo has rights of inherent sovereignty and exclusion;

WHEREAS, Article V, Section 2(e) of the Pueblo’s Constitution authorizes the Tribal Council to enact ordinances to protect the peace, safety, property, health, and general welfare of the members of the Pueblo;

WHEREAS, the Tribal Council desires fair treatment of employees in the workplace and seeks to ensure the proper regulation of the Pueblo’s relationship with all employees of the Pueblo government and Pueblo owned businesses;

WHEREAS, the Tribal Council finds that the enactment of the attached Family and Medical Leave Ordinance to be in the best interests of the Pueblo and its members and employees;

WHEREAS, the Tribal Council desires to exercise the Pueblo’s inherent sovereignty and right of exclusion by enacting the attached Family and Medical Leave Ordinance; and

WHEREAS, the attached Family and Medical Leave Ordinance shall supersede the family and medical leave provisions of the Pueblo of Isleta Labor and Employment Relations Ordinance, Resolution No. 2010-096.

NOW, THEREFORE, BE IT RESOLVED that the Tribal Council hereby enacts the attached Family and Medical Leave Ordinance to become effective as of the date of this Resolution.

BE IT FURTHER RESOLVED that the Tribal Council hereby repeals the Pueblo of Isleta Labor and Employment Relations Ordinance, Resolution No. 2010-096, which shall no longer have any force or effect.

CERTIFICATION

The undersigned do hereby certify that the foregoing Resolution was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta, held on the 1st day of September, 2016, at which time a quorum was present, with 7 voting for, 0 opposing, and 0 abstaining.


Verno Teller, Tribal Council President


E. Paul Torres, Governor

ATTEST:


Ulysses Abeita, Tribal Council Secretary

Family and Medical Leave Ordinance

Section 1 Findings & Purpose.

- (a) The Tribal Council of the Pueblo of Isleta finds that—
 - (1) All employees of the Pueblo of Isleta, its agencies, departments, business enterprises, and entities, are entitled to family and medical leave under the laws of the Pueblo of Isleta; and
 - (2) It is the intent of the Tribal Council to provide all employees of the Pueblo of Isleta, its agencies, businesses, and entities, with family and medical leave, which is consistent with the terms of the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*, as amended (the “Federal Act”), notwithstanding that it is the position of the Pueblo that such Federal Act does not apply to it as a federally recognized Indian tribe.

Section 2 Definitions.

- (a) For the purpose of this Ordinance—
 - (1) “eligible employee” means an employee who has been employed—
 - (A) for at least 12 months by a Pueblo employer with respect to whom leave is requested under this Ordinance; and
 - (B) for at least 1,250 hours of service with such Pueblo employer during the previous 12-month period.
 - (2) “covered servicemember” means a member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces at any time during the period of 5 years preceding such treatment, recuperation, or therapy.
 - (3) “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves—
 - (A) inpatient care in a hospital, hospice, or residential medical care facility; or
 - (B) continuing treatment by a health care provider.
 - (4) “Human Resources Department” means the Human Resources Department of the Pueblo of Isleta, or the Human Resources Department of the Isleta Resort and

Casino, the Isleta Business Corporation, or of another business or entity of the Pueblo of Isleta, as the case may be;

- (5) "Board" means the Employee Grievance Review Board, established pursuant to Tribal Council Resolution No. 2001-13, as amended by Tribal Council Resolution No. 2010-061;
 - (6) "Pueblo employer" means the Pueblo of Isleta, the Isleta Resort and Casino, the Isleta Business Corporation, or another business or entity of the Pueblo of Isleta, as the case may be.
- (b) Except as otherwise defined or provided in this Ordinance, any term used in this Ordinance shall be interpreted in accordance with, and have the meaning assigned to it by the Federal Act and the regulations and guidance issued thereunder.

Section 3 Entitlement to leave.

- (a) An eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:
- (1) Because of the birth of a son or daughter of the eligible employee and in order to care for such son or daughter, provided, however, that such entitlement to leave shall expire 12 months after the date of such birth;
 - (2) Because of the placement of a son or daughter with the eligible employee for adoption or foster care, provided, however, that such entitlement to leave shall expire 12 months after the date of such placement;
 - (3) In order to care for the spouse, or a son, daughter, or parent, of the eligible employee, if such spouse, son, daughter, or parent has a serious health condition;
 - (4) Because of a serious health condition that makes the eligible employee unable to perform the functions of the position of such employee; or
 - (5) Because of a qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the eligible employee is on covered active duty, or has been notified of an impending call or order to covered active duty in the Armed Forces.
- (b) **Servicemember family leave.** An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the servicemember, provided, however, that such leave shall only be available during a single 12-month period.
- (c) **Combined leave total.** During the single 12-month period described in subsection (b), an eligible employee shall be entitled to a combined total of 26 workweeks of leave under subsection (a) and (b) of this Section.

(d) **Paid/Unpaid Leave.** Except as provided in this subsection (d), leave granted under this Section may consist of unpaid leave.

- (1) If a Pueblo employer provides paid leave for fewer than 12 workweeks, or 26 workweeks in the case of leave provided under subsection (b) of this section, the additional weeks of leave may be provided without compensation.
- (2) An eligible employee may elect, or a Pueblo employer may require the employee, to use any of the accrued paid vacation leave, personal leave, or family leave of the eligible employee for leave provided under paragraphs 1, 2, 3, and 5 of subsection (a) of this Section.
- (3) An eligible employee may elect, or a Pueblo employer may require the eligible employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the eligible employee for leave provided under paragraphs 3 and 4 of subsection (a) of this Section or subsection (b) of this Section, except that nothing in this Ordinance shall require a Pueblo employer to provide paid sick leave or paid medical leave in any situation in which such Pueblo employer would not normally provide any such paid leave.

(e) **Foreseeable leave**

- (1) In any case in which the necessity for leave under paragraphs 1 or 2 of subsection (a) of this Section is foreseeable, the eligible employee shall provide the Pueblo employer with not less than 30 days' notice, or, if the circumstances make that impractical, as much notice as is practicable.
- (2) In any case in which the necessity for leave under paragraphs 3 and 4 of subsection (a) of this Section or under subsection (b) is foreseeable the eligible employee—
 - (A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the Pueblo employer, subject to the approval of the applicable health care provider; and
 - (B) shall provide the Pueblo employer with not less than 30 days' notice, before the date the leave is to begin, or if the circumstances make that impractical, as much notice as is practicable.
- (3) In any case in which the necessity for leave under paragraph 5 of subsection (a) is foreseeable, the eligible employee shall provide such notice to the Pueblo employer as is reasonable and practicable.

(f) **Spouses employed by the same employer**

- (1) In any case in which a husband and wife entitled to leave under subsection (a) are each employed by a Pueblo employer, the aggregate number of workweeks of leave to which both may be entitled may be limited in a manner consistent with the terms of the Federal Act.

Section 4 Certification.

- (a) A Pueblo employer may require that a request for leave under paragraph 3 or 4 of subsection (a) or subsection (b) of Section 3 of this Ordinance be supported by a certification issued by the applicable health care provider in form and substance consistent with the requirements of the Federal Act, which the eligible employee shall provide in a timely manner.

(b) **Second opinion**

In any case in which the Pueblo employer has reason to doubt the validity of the certification provided under subsection (a) of this Section for leave under paragraph 3, 4 or 5 of subsection (a) of Section 3, the Pueblo employer may require, at the expense of the Pueblo employer, that the eligible employee obtain the opinion of a second independent health care provider designated or approved by the Pueblo employer.

(c) **Resolution of conflicting opinions**

In any case in which the second opinion described in subsection (b) of this Section differs from the opinion in the original certification provided under subsection (a) of this Section, the Pueblo employer may require, at the expense of the Pueblo employer, that the eligible employee obtain the opinion of a third independent health care provider designated or approved jointly by the Pueblo employer and the eligible employee which shall be considered to be final and shall be binding on the Pueblo employer and the eligible employee.

Section 5 Employment and benefits protection.

- (a) Except as provided in subsection (e) of this Section, any eligible employee who takes leave under Section 3 of this Ordinance for the intended purpose of the leave shall be entitled, on return from such leave—
- (1) to be restored by the Pueblo employer to the position of employment held by the eligible employee when the leave commenced; or
 - (2) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

- (b) The taking of leave under Section 3 of this Ordinance shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.
- (c) Nothing in this Section shall be construed to entitle any restored eligible employee to—
 - (1) the accrual of any seniority or employment benefits during any period of leave; or
 - (2) any right, benefit, or position of employment other than any right, benefit, or position to which the eligible employee would have been entitled had the eligible employee not taken the leave.
- (d) As a condition of restoration under subsection (a) of this Section for an eligible employee who has taken leave under paragraph 4 of subsection (a) of Section 3, the employer may have a uniformly applied practice or policy that requires each such eligible employee to receive certification from the health care provider of the eligible employee that the eligible employee is able to resume work.
- (e) A Pueblo employer may deny restoration under subsection (a) of this Section to any eligible employee that is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the Pueblo employer if—
 - (1) such denial is necessary to prevent substantial and grievous economic injury to the operations of the Pueblo employer;
 - (2) the Pueblo employer notifies the eligible employee of the intent of the Pueblo employer to deny restoration on such basis at the time the Pueblo employer determines that such injury would occur; and
 - (3) in any case in which the leave has commenced, the eligible employee elects not to return to employment after receiving such notice.
- (f) Except as provided in paragraph 1 of this subsection (f), during any period that an eligible employee takes leave under Section 3 of this Ordinance, the Pueblo employer shall maintain coverage under any group health plan for the duration of such leave at the level and under the conditions coverage would have been provided if the eligible employee had continued employment continuously for the duration of such leave.
 - (1) The Pueblo employer may recover the premium that the Pueblo employer paid to maintain coverage for the eligible employee under such group health plan during any period of unpaid leave under Section 3 of this Ordinance if—
 - (A) the eligible employee fails to return from leave under Section 3 of this Ordinance after the period of leave to which the eligible employee is entitled has expired; and
 - (B) the eligible employee fails to return to work for a reason other than—

- (i) the continuation, recurrence, or onset of a serious health condition that entitles the eligible employee to leave under paragraphs 3 or 4 of subsection (a) of Section 3 of this Ordinance or under subsection (b) of Section 3; or
- (ii) other circumstances beyond the control of the eligible employee.

Section 6 Enforcement; statements of noncompliance; statute of limitations.

- (a) Subject to subsection (d) of this Section, any eligible employee who believes his or her Pueblo employer has failed to comply with the terms of this Ordinance may file a written statement of noncompliance with the applicable Human Resources Department, which describes the basis upon which the eligible employee claims his or her Pueblo employer has failed to comply with the terms of this Ordinance. Upon considering a statement of noncompliance, the Human Resources Department shall, for cause shown, and as the case may be—
 - (1) make retroactive payment of any wages, salary, employment benefits, or other compensation denied or lost to such eligible employee by reason of the noncompliance;
 - (2) as appropriate, order employment or reinstatement; or
 - (3) deny the claim for failing to show a Pueblo employer's noncompliance with the terms of this Ordinance.
- (b) A decision by the applicable Human Resources Department under subsection (a) of this Section may be appealed by the affected eligible employee or Pueblo employer to the Board within ten (10) calendar days after the decision. The Board shall adopt procedures for receiving and deciding such an appeal, subject to approval by the Tribal Council.
- (c) The sole remedy that the Board is authorized to provide upon an appeal taken pursuant to subsection (b) of this Section shall be either to uphold the denial of the claim or to grant the appropriate relief provided in subsection (a) of this Section. The Board is not authorized to consider any other claim or provide any other remedy of any nature except as expressly provided in subsection (a) of this Section.
- (d) Any claim or statement of noncompliance shall be forever barred unless filed with the applicable Human Resources Department within two (2) years after the date on which the last event constituting the alleged noncompliance, or within three (3) years for willful noncompliance.
- (e) For the sole purpose of considering a statement of noncompliance or an appeal thereof, the applicable Human Resources Department or the Board may reference the Federal Act,

regulations and guidance issued thereunder, and relevant case law for guidance; provided, however, that such federal law shall apply by reference only.

Section 7 Sovereign Immunity.

Except as expressly provided in Section 6 of this Ordinance for the sole purpose of process before the applicable Human Resources Department or the Board, the Pueblo of Isleta reserves its sovereign immunity, and that of Pueblo employers, from legal process and unconsented suit to the fullest extent permitted by law. Nothing herein shall be construed as, nor deemed to be, a waiver of the Pueblo of Isleta's or a Pueblo employer's sovereign immunity for any claim brought pursuant to the Federal Act.

Section 8 Severability.

The provisions of this Ordinance are severable. If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of this Ordinance and the application to other persons or circumstances shall not be affected thereby.