



# New Mexico State Personnel Board State Personnel Office

**SUSANA MARTINEZ  
GOVERNOR**

**Justin Najaka**  
Director

**State Personnel Board**  
Christine B. Romero, Chair  
Jerry Manzagol, Vice Chair

**Nivia L. Thames**  
Deputy Director

Megan Muirhead  
Carmen V. Chavez

BEFORE THE NEW MEXICO STATE PERSONNEL BOARD

IN RE: THE REPEAL OF 1.7.6.12 NMAC – RESCISSION OF RESIGNATION

RULEMAKING PROCEEDING FOR THE  
REPEAL OF 1.7.6.12 NMAC (RESCISSION OF  
RESIGNATION).

## CONCISE EXPLANATORY STATEMENT

The New Mexico State Personnel Board (the “Board”) hereby repeals 1.7.6.12 NMAC – Rescission of Resignation. The rule is currently codified in Title 1, Chapter 7, Part 6 of the New Mexico Administrative Code.

(1) Statutory Authority for Rule Promulgation:

Under the Personnel Act, “The [personnel] director shall . . . recommend to the board rules he considers necessary or desirable to effectuate the Personnel Act,” and “the [B]oard shall . . . promulgate regulations to effectuate the Personnel Act[.]” NMSA 1978, §§ 10-9-10(A), -12(E).

(2) Effective Date of Rule:

Date of publication in the New Mexico Register. *See* NMSA 1978, §§ 10-9-13 (“Rules promulgated by the board shall be effective when filed as required by law.”); 14-4-5(D) (“Unless a later date is otherwise provided by law or in the rule, the effective date of a rule shall be the date of publication in the New Mexico register.”).

---

2600 Cerrillos Road, Santa Fe, New Mexico, 87505 (505) 476-7759



(3) Date of Adoption of Rule:

October 29, 2018

(4) Date of Meeting Approving Rule:

October 19, 2018

(5) Reasons for Adopting Rule:

The purpose of the repeal of 1.7.6.12 NMAC is to make an employee resignation effective immediately. Under the current rule, an employer must allow an employee three (3) days to rescind their resignation. The repeal of this rule will eliminate that time requirement and align the resignation process with best practices in the human resource profession, streamline operations and encourage better communication between employees and agencies. Not all resignations occur because of stress or adverse conditions. Some resignations occur because an employee is simply moving from one job to another. The repeal of this rule would not prevent an employee from rescinding their resignation. If an employee wants to rescind a resignation, it can be handled on a case-by-case basis by the employer and the employee involved.

(6) Reasons for Changes from Published Rule:

N/A

(7) Reasons for Not Accepting Substantive Arguments from Public Comment:

Fifteen (15) comments generally related to the “cooling off period” existing in the rule. Most respondents commented that three days was adequate cooling off period, but a couple of respondents supported an expansion of the period of up to two to four weeks. One respondent indicated that three days was too much and would support reducing the time period to 24-48 hours. Two respondents commented that there are times when an employee is unable to cope with home stressors such as caring for themselves or a family member in addition to competing with work activities.

The repeal of a three day “automatic” rescission period does not prevent an employee and the agency from mutually agreeing to rescind the resignation up to the time of separation. This is currently allowed, and will continue to be allowed in the future. If an employee resigns based on an emotional response to a specific situation, the employee or agency can both agree to discuss the situation at a future time after the heat of the moment has dissipated. If an employee chooses to consult with a union representative, attorney, or financial planner they should consider these options prior to submitting their resignation.

---

2600 Cerrillos Road, Santa Fe, New Mexico, 87505 (505) 476-7759

Two respondents indicated that if there was any type of coercion, threatening behavior, or abuse by supervisors causing an employee to resign, the cooling off period would allow human resources to investigate. State agencies take this type of behavior very seriously and would investigate any allegations regardless even without a three day automatic rescission period.

One respondent indicated that this rule could help a career employee who was misinformed regarding a new position that the employee accepted. Employment is a two-way arrangement in which the employer interviews the employee for the right fit and the employee interviews the employer for the same. Once both parties agree, an employment relationship is established. It is compulsory on the employee not to resign until they have a written letter of employment offer in hand.

One respondent stated that if they received a false-negative diagnosis from a physician that caused them to resign they should be able to rescind the resignation. The employee should consider all options prior to making a life-changing decision and currently has the option to work with the agency to mutually rescind the resignation if both parties agree.

One respondent stated that the repeal of this rule violates both the United States Constitution and New Mexico Constitution in regards to due process, sexual discrimination, equal protection, and eminent domain. After consultation with State Personnel Office legal counsel it has been determined that this is not accurate.

Four respondents simply indicated they opposed the change but did not provide a reason.

Three respondents stated that there is no rationale behind the change. As mentioned above, the rationale behind the change is to remove this mandatory provision to align operations with best human resource practices and support increased communication between employees and agencies. Director Najaka spoke to Human Resource leaders from other state governments at both the 2018 National Association of State Personnel Executives mid-year meeting and the 2018 National Compensation Association of State Governments and is unaware of other states having a mandatory provision in rule or code. Virginia has a *discretionary* cooling off period in which the agency *may* allow 28-day period of rescission. Additionally, he is not aware of other private sector organizations that have this mandatory provision in their systems.

Two respondents mentioned that state employees were underpaid and overworked. One said that confidential settlement agreements should be made public to hold managers accountable. One stated that it is better for the taxpayer to keep an employee employed than to be unemployed. One respondent provided input to a rule change proposed by the New Mexico

Retiree Health Care Authority. These comments were not considered relevant to this rule repeal.

The proposed rule repeal, as authorized by the Board during its regular meeting held October 19, 2018, is hereby adopted as of the date of this Concise Explanatory Statement.

**IT IS SO ORDERED.**

10/29/2018  
DATE

ON BEHALF OF THE NEW MEXICO  
STATE PERSONNEL BOARD

  
CHRISTINE B. ROMERO, CHAIR

---

2600 Cerrillos Road, Santa Fe, New Mexico, 87505 (505) 476-7759

