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Interpretative Memorandum 2011 - 008

Date: September 30, 2011

To: Cabinet Secretaries, Agency Heads, and Agency Human Resource Managers

From: Eugene J. Moser,  Director, State Personnel Office

Subject: Administrative Leave for Voting

I. Purpose

This shall serve to interpret the application of State Personnel Board (SPB) Rules and New Mexico Administrative Code (NMAC) regarding the granting of administrative leave for voting.

II. Background

State Personnel Board (SPB) Rules provide:

"Employees who are registered voters may absent themselves from work for two hours for the purpose of voting between the time of the opening and the time of the closing of the polls. The employer may specify the hours during the period in which the voter may be absent. This leave is not available to employees whose work day begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls".¹

Only those elections listed in NM State Statute are eligible for the leave under this SPB Rule and this leave shall not apply to either early voting or absentee voting.

¹ Subsection C of Administrative Leave. 1.7.7.14 NMAC

§ 1-1-19. Elections covered by code

A. The Election Code [Chapter 1 NMSA 1978], applies to the following:

- (1) general elections;
- (2) primary elections;
- (3) statewide special elections;
- (4) elections to fill vacancies in the office of representative in congress; and
- (5) school district elections.

B. To the extent procedures are incorporated or adopted by reference by separate laws governing such elections or to the extent procedures are not specified by such laws, certain provisions of the Election Code [Chapter 1 NMSA 1978] shall also apply to:

- (1) municipal officer or municipal bond elections; or
- (2) special district officer or special district bond or other special district elections.

§ 1-12-42. Conduct of election; employees: time to vote

A. On Election Day a voter may absent himself from employment in which he is engaged for two hours for the purpose of voting between the time of opening and the time of closing the polls. The voter shall not be liable to any penalty for such absence; however, the employer may specify the hours during this period in which the voter may be absent.

B The provisions of Subsection A of this section do not apply to an employee whose work day begins more than two hours subsequent to the time of opening the polls, or ends more than three hours prior to the time of closing the polls.

C. The provisions of Subsection A of this section apply to elections of Indian nations, tribes or pueblos for a voter who is enrolled as a member of the Indian nation, tribe or pueblo and is qualified to vote in the election.

D. A person who refuses the right granted in this section to an employee is guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100).

III. Guidelines

A. Agencies need to be aware of elections covered by § 1-1-19 that may impact their central office and/or field office operations in order to properly schedule voting time to eligible employees for elections covered by NM State Statute.

B. Agencies may specify the time during scheduled work hours in which the voter may be absent, however may not refuse the right granted for time to vote.

- C. Agencies must maintain appropriate staffing levels with their departments and worksites.
- D. An employee must have worked regular hours on the same day in order to be eligible for administrative leave for voting.
- E. An employee's use of their annual and/or sick leave cannot be used in direct conjunction with voting time.
- F. Administrative leave for voting is not available for the purposes of early voting or absentee voting.