

## NOTICE OF PROPOSED RULEMAKING

**Public Notice:** The New Mexico State Personnel Board provides notice that it will conduct a public hearing via Zoom meeting on Friday, June 18, 2021 at 9:00 a.m. Log-in details for the Zoom meeting will be available on the State Personnel Office website, [spo.state.nm.us](http://spo.state.nm.us), beginning Tuesday, June 15, 2021. The purpose of the public hearing is to receive public input on the proposed amendment to 1.7.1 NMAC – General Provisions, the repeal and replacement of and proposed amendments to 1.7.4 NMAC – Pay, and the proposed amendments to 1.7.7 NMAC – Absence and Leave.

**Authority:** Personnel Act, NMSA 1978, Sections 10-9-10 and 10-9-12.

**Purpose:** The purpose of the change to 1.7.1 NMAC is to clarify the definition of “pay band.” The purposes of the changes to 1.7.4 NMAC are to: (1) repeal and replace all Sections of 1.7.4 NMAC, (2) clarify the definitions for “alternative pay band” and “in pay band adjustment,” (3) establish a definition for “base pay”/“base salary,” (4) remove part of the alternative pay band description, (5) remove the 10% cap on in pay band adjustments, (6) simplify the description of salary upon demotion, (7) clarify that a pay allowance for performing first line supervisor duties is considered part of an employee’s *base* salary, (8) clarify that the salary of former employees who are returned to work or re-employed in accordance with 1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC shall not exceed the hourly rate of their *base* salary at the time of separation, (9) clarify that temporary promotion increases and temporary salary increases are separate from an employee’s base salary, (10) move the pay for dusk to dawn work provision from 1.7.4.12 - Administration of the Salary Schedules to 1.7.4.13 - Pay Differential, (11) simplify the language allowing the State Personnel Office Director to authorize temporary recruitment differentials and temporary retention differentials of more than 15% of any employee’s base salary or that result in an employee’s pay exceeding the maximum of the pay band, (12) clarify that agencies need to notify the State Personnel Director of any change to the dusk to dawn differential and establish that an agency can choose not to pay the dusk to dawn differential to employees whose alternative work schedule request results in the employee working hours between 6:00 p.m. and 7:00 a.m., and (13) remove the out-of-state differential. The purposes of the changes to 1.7.7 NMAC are to: (1) clarify that terminal annual leave payout will be paid at the current hourly rate of an employee’s *base* salary, (2) clarify that agencies need to maintain documentation on a proposed donated leave recipient’s hourly rate of *base* pay, (3) clarify that agencies need to convert the value of donated leave based on the donor’s hourly rate of *base* pay to hours of leave based on the recipient’s hourly rate of *base* pay, (4) move the provision allowing agencies to authorize employees to use accrued sick leave to attend the funeral of a relation by blood or marriage within the third degree from 1.7.7.10 – Sick Leave to new Section 1.7.7.20 – Bereavement Leave, (5) clarify that payout of unused sick leave in excess of 600 hours shall be at a rate equal to 50% of an employee’s hourly rate of *base* pay, (6) clarify that leave without pay may be approved if an agency can assure a position of like status and *base* pay, at the same geographic location upon the employee’s return, (7) clarify certain reasons FMLA-eligible employees are entitled to FMLA leave, including to care for the serious health condition of a domestic partner and for qualifying exigencies arising out of the fact that an employee’s domestic partner is on or has been called for active covered duty, (8) clarify that an FMLA-eligible employee who is the domestic partner of a covered servicemember with a serious illness or injury sustained in the line of duty on active duty is entitled to 26 weeks of unpaid FMLA to care for the servicemember, (9) clarify that an employee is not entitled to administrative leave to participate in a judicial or administrative proceeding in which the employee is a party to the proceeding and adverse to an agency or the State of New Mexico, and (10) establish that bereavement leave may be granted to employees as a form of administrative leave.

### Summary of Proposed Amendment to 1.7.1 NMAC:

#### 1.7.1.7 – Definitions

The proposed amendment to Subsection EE would clarify that a “pay band” is a discrete range of pay rates with fixed minimum and maximum limits to which classification may be assigned.

### Summary of Proposed Amendments to the Repeal and Replacement of 1.7.4 NMAC:

#### 1.7.4.7 – Definitions

The proposed amendment to Subsection A would clarify that an “alternative pay band” is a pay band based on current market rate for benchmark jobs in the relevant labor market(s).

The proposed amendment to Subsection D would define “base pay” or “base salary” as the rate of compensation paid to an employee exclusive of benefits, temporary increases, pay differentials, overtime payments, call-back pay, on-call pay, holiday pay, and incentive awards.

The proposed amendment to Subsection F would clarify that an “in pay band adjustment” allows *base* salary growth within a pay band.

#### 1.7.4.10 – Assignment of Alternative Pay Bands

The proposed amendment to Subsection A would remove part of the description of alternative pay band that is unnecessary.

#### 1.7.4.12 – Administration of the Salary Schedules

The proposed amendment to Subsection C would remove the 10% cap on in pay band adjustments, but would continue to permit agencies to increase an employee’s salary within the employee’s assigned pay band once per fiscal year, subject to State Personnel Office Director approval, subject to budget availability, and reflective of appropriate placement.

The proposed amendment to Subsection E would simplify the description of salary upon demotion.

The proposed amendment to Subsection F would clarify that a pay allowance for performing first line supervisor duties is considered part of an employee’s *base* salary while it is in place and would reaffirm that a pay allowance will be removed once supervisor duties are no longer being performed.

The proposed amendment to Subsection J would clarify that the salary of former employees who are returned to work or re-employed in accordance with 1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC shall not exceed the hourly rate of their *base* salary at the time of separation, unless a higher salary is necessary to bring the employee to the minimum of the pay band.

The proposed amendment to Subsection K would clarify that payment of a temporary promotion increase is separate from an employee’s base salary.

The proposed amendment to Subsection L would clarify that payment of a temporary salary increase is separate from an employee’s base salary.

Subsection M would be deleted, removing the pay for dusk to dawn work provision. A revised pay for dusk to dawn work provision would be added to 1.7.4.13 NMAC – Pay Differentials.

#### 1.7.4.13 – Pay Differentials

The proposed amendment to Subsection A would simplify the language allowing the State Personnel Office Director to authorize a temporary recruitment differential of more than 15% of an employee’s base pay or that results in an employee’s pay exceeding the maximum of the pay band.

The proposed amendment to Subsection B would simplify the language allowing the State Personnel Office Director to authorize a temporary retention differential of more than 15% of an employee’s base pay or that results in an employee’s pay exceeding the maximum of the pay band.

Subsection D would be deleted, removing the out-of-state differential. Proposed new Subsection D would contain an amended pay for dusk to dawn work provision, which would clarify that agencies must notify the State Personnel Office Director of any change to the dusk to dawn differential and establish that an agency may choose not to pay

the dusk to dawn differential to an employee whose alternative work schedule request results in the employee working any hours between 6:00 p.m. and 7:00 a.m.

### **Summary of Proposed Amendments and Additions to 1.7.7 NMAC:**

#### 1.7.7.8 – Annual Leave

The proposed amendment to Subsection G would clarify that accrued annual leave payout upon separation from the classified service shall be paid at the current hourly rate of an employee's *base* salary.

#### 1.7.7.9 – Donation of Annual or Sick Leave

The proposed amendment to Subsection D would clarify that agencies need to maintain documentation on the hourly rate of *base* pay of proposed leave recipients.

The proposed amendment to Subsection F would clarify that an agency needs to convert the value of a donor's leave based on the donor's hourly rate of *base* pay to hours of leave based on the recipient's hourly rate of *base* pay.

#### 1.7.7.10 – Sick Leave

Subsection H would be deleted, removing the provision allowing agencies to authorize employees to use accrued sick leave to attend the funeral of a relation by blood or marriage within the third degree or a person residing in the employee's household. This provision would be removed to avoid any confusion with new Section 1.7.7.20 - Bereavement Leave, which would contain a similar provision.

The proposed amendments to Subsection I would clarify that payout of unused sick leave in excess of 600 hours shall be at a rate equal to 50% of an employee's hourly rate of *base* pay.

#### 1.7.7.11 – Leave Without Pay

The proposed amendment to Subsection A would clarify that leave without pay may be approved if an agency can assure a position of like status and *base* pay, at the same geographic location upon the return of the employee, or if the employee agrees in writing to waive that requirement.

#### 1.7.7.12 – Family and Medical Leave

The proposed amendment to Subsection B would clarify certain reasons an employee eligible for FMLA leave is entitled to up to 12 weeks of unpaid FMLA leave, including but not limited to: the birth and care of a newborn child of the employee within one year of the birth; the placement with the employee of a child for adoption or foster care and the care of the newly placed child within one year of placement; the care of the employee's child, parent, spouse, or domestic partner who has a serious health condition; the employee's own serious health condition that makes the employee unable to perform the essential functions of their job; and qualifying exigencies arising out of the fact that an employee's domestic partner is on or has been called for active covered duty.

The proposed amendment to Subsection C would clarify that an FMLA-eligible employee who is the domestic partner of a covered servicemember with a serious illness or injury sustained in the line of duty on active duty is entitled to 26 weeks of unpaid FMLA in a single 12-month period to care for the servicemember.

#### 1.7.7.14 – Administrative Leave

The proposed amendment to Subsection D would clarify that an employee is not entitled to administrative leave to participate in judicial or administrative proceedings in which the employee is a party to the proceeding and adverse to an agency or the State of New Mexico.

#### 1.7.7.20 – Bereavement Leave

New Section 1.7.7.20 would define bereavement leave as leave that may be granted to an employee who has experienced the death of a relation by blood or marriage within the third degree or a person residing in the employee's household. It would clarify that bereavement leave is a form of administrative leave agencies may grant to employees pursuant to 1.7.7.14(A) NMAC. And it would allow agencies to supplement bereavement leave by authorizing agencies to allow employees to use accrued leave or compensatory time to attend the funeral of a relation by blood or marriage within the third degree or a person residing in the employee's household.

**How to Comment on the Proposed Rules:**

Interested individuals may provide verbal comments at the public hearing and/or submit written or electronic comments to Denise Forlizzi, via email at [DeniseM.Forlizzi@state.nm.us](mailto:DeniseM.Forlizzi@state.nm.us), fax (505) 476-7806, or mail to Attn: Denise Forlizzi– Rule Changes to 1.7.1, 1.7.4, and 1.7.7 NMAC, State Personnel Office, 2600 Cerrillos Rd., Santa Fe, New Mexico 87505. Written comments must be received no later than May 31, 2021. However, the submission of written comments as soon as possible is encouraged. Persons may also provide verbal comments at the public hearing.

**Copies of Proposed Rules:**

Copies of the proposed rules are available for download on the State Personnel Office's website at [spo.state.nm.us](http://spo.state.nm.us). A copy of the proposed rules may also be requested by contacting Denise Forlizzi at (505) 365-3691.

**Special Needs:**

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Denise Forlizzi at (505) 365-3691 as soon as possible to provide requested special accommodations.