

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 7 STATE PERSONNEL ADMINISTRATION
PART 1 GENERAL PROVISIONS

1.7.1.1 ISSUING AGENCY: State Personnel Board.
[1.7.1.1 NMAC - Rp, 1 NMAC 7.1.1, xx/xx/20xx]

1.7.1.2 SCOPE: All state agencies in the classified service.
[1.7.1.2 NMAC - Rp, 1 NMAC 7.1.2, xx/xx/20xx]

1.7.1.3 STATUTORY AUTHORITY: ~~NMSA 1978, Section 10-9-10(A); Section 7: NMSA 1978, Section 10-9-3; Section 12: NMSA 1978, Section 10-9-12 (A); Section 13: 42 U.S.C Section 101 et seq.; Section 14: NMSA 1978, Section 14-2-1 and 42 U.S.C Section 101 et seq; Chapter 173, laws of 1997. Sections 10-9-3, 10-9-7, 10-9-10, 10-9-12 through 10-9-14 and Section 14-2-1 NMSA 1978.~~
[1.7.1.3 NMAC - Rp, 1 NMAC 7.1.3, xx/xx/20xx]

1.7.1.4 DURATION: Permanent.
[1.7.1.4 NMAC - Rp, 1 NMAC 7.1.4, xx/xx/20xx]

1.7.1.5 EFFECTIVE DATE: 07/07/01 unless a later date is cited at the end of a section.
[1.7.1.5 NMAC - Rp, 1 NMAC 7.1.5, xx/xx/20xx]

1.7.1.6 OBJECTIVE: The objective of Part 1 of Chapter 7 is: to define words and phrases used throughout Chapter 7, to cite provisions pertaining to different Parts of Chapter 7, to require maintenance of employment records, and to detail provisions that do not warrant a separate Part.
[1.7.1.6 NMAC - Rp, 1 NMAC 7.1.6, xx/xx/20xx]

1.7.1.7 DEFINITIONS:

A. "Agency" means any state department, bureau, division, branch or administrative group which is under the same employer.

B. "Anniversary date" means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or ~~[change to a different classification in the same pay band]~~ transfer. The assignment of an employee to a new classification which best represents the job performed by the employee does not affect the employee's anniversary date. The director shall resolve disputes over how an anniversary date is derived.

C. "Applicant" means any person, who has applied for a position in the classified service.

D. "Appointment" means the assumption of job duties by a candidate who was offered and then accepted a classified position in a state agency.

D. "Audit" means an examination or inspection of an agency's personnel and human resources functions and activities, including but not limited to personnel transactions, recruitment, leave administration, collective bargaining agreement administration, and completion of personnel evaluations.

~~[D.]E.~~ "Board" means the personnel board.

~~[E.]F.~~ "Break in employment" means any period of ~~[separation]~~ time of at least one workday of not being in the classified service.

~~[F.]G.~~ "Candidate" means any ~~[person]~~ applicant who is on the employment list for a position.

~~[G.]H.~~ "Classified service" means all positions in the executive branch of state government which are not exempt by law.

~~[H.]I.~~ "Classification" means a job that is occupationally and quantifiably distinct.

~~[I.]J.~~ "Compa-ratio" means pay expressed as a percentage of the midpoint of a pay band.

~~[J.]K.~~ "Demotion" means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's pay band or from a classified position in one pay band to a classified position in a lower pay band with a reduction in pay, and/or removal of supervisory responsibilities and pay for disciplinary reasons.

~~[K.]L.~~ "Director" means the state personnel director.

M. "Disciplinary action" means any action taken by an agency to influence change in an employee's performance or behavior to the expected standard, including letters of reprimand, suspensions, demotions and dismissals.

~~[L.]~~**N.** “Dismissal” means the involuntary separation from employment ~~[for disciplinary reasons].~~

~~[M.]~~**O.** “Diversity in the workplace” means an acknowledgment of all people in the workplace equally, regardless of their differences. Agencies’ management of diversity will ensure that efforts are made to adapt to and accept the importance of all individuals who fall within a group identified for protection under equal employment laws and regulations.

P. “Domestic partner” means two individuals who have shared a common, primary residence for at least 12 consecutive months, sign an affidavit of domestic partnership, and meet all of the following criteria:

(1) Both domestic partners must be unmarried.
(2) Domestic partners must have been in a mutually exclusive relationship, intending to do so indefinitely, and the relationship is similar to a marriage relationship in the State of New Mexico.

(3) Domestic partners must meet the age requirements for marriage in New Mexico (18 years of age) and be mentally competent to consent to contract.

(4) Domestic partners must not be related by blood to the degree prohibited in a legal marriage in the State of New Mexico.

(5) Domestic partners must be jointly responsible for the common welfare of each other and share financial obligations.

(6) Domestic partner must not be married or a member of another domestic partnership; nor have been so during the past 12 months. If Domestic Partnership dissolves and the same two people want to become partners again, they must once again meet the 12-month requirements.

(7) Domestic partners must provide proof of one of the following: joint mortgage or lease; joint ownership of a motor vehicle; joint bank account; joint credit account; domestic partner named as beneficiary of life insurance; domestic partner named as beneficiary of retirement benefits; domestic partner named as primary beneficiary in the employee's will; domestic partner assigned durable property or health care power of attorney; or documentation of sharing of household expenses by both partners.

~~[N.]~~**P.** “Employee” means a person in a position in the classified service. [note: For purposes of brevity and consistency, this definition differs from *NMSA 1978, Section 10-9-3-(I)* but in no way confers a greater right on certain persons than contemplated by *Section 10-9-3(I)*].

~~[O.]~~**Q.** “Employer” means any authority having power to fill positions in an agency.

~~[P.]~~**R.** “Employment list” means the list of names of candidates referred to a hiring manager by the agency’s Human Resources, [certified by the director,] from which a candidate may be selected for an interview, and from which a candidate may be selected for appointment.

S. “Employment records” means documents that contain information related to a person’s employment or application for employment.

~~[Q.]~~ “Established requirements” means a position’s individual job related qualification standards established by the agency and the office in accordance with the specific requirements and/or needs of the position and are subject to review by the director.

~~[R.]~~**T.** “Examination” means ~~[quantitative]~~ ranked competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including tests.

~~[S.]~~**U.** “Exempt service” means all positions in the executive branch of state government exempt from the classified service by law.

~~[T.]~~**V.** “Filed” means received by the office.

~~[U.]~~ “First line supervisor” means an employee in a non-manager classification who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of two or more other employees and has the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.]

~~[V.]~~**W.** “Involuntary separation” means involuntary removal of an employee from the classified service without prejudice as provided for in **1.7.10.13 NMAC**.

~~[W.]~~**X.** “Line authority” means the assignment of activities ~~[and/]~~ or approval authority by the director to State Personnel Office staff or an agency in a manner that does not relinquish the director’s administrative oversight or authority.

~~[X.]~~**Y.** “Manager” means an employee in a position that manages internal staff ~~[and/]~~ or external staff, ~~[and/]~~ or who plans, organizes, integrates, coordinates, and controls the activities of others. A manager also is held

accountable for the performance of people, services, systems, programs, projects and resources and can change their direction, objectives and assignments to meet performance and business needs.

~~[Y.]Z.~~ Z. “Midpoint” means the salary midway between the minimum and maximum pay rates of a pay band [or pay opportunity that represents the competitive market rate for jobs of the same relative worth in the relevant labor market(s).] for positions in the classified service. Midpoint represents a compa-ratio value of 1.00 or 100% percent.

~~[Z.]AA.~~ AA. “Minimum qualifications” means [statutory] requirements [as required by law, which shall be used to reject applicants] approved by the board that must be met to be considered for a position.

~~[AA.]BB.~~ BB. “Office” means the state personnel office.

~~[BB.]CC.~~ CC. “Pay band” means the range of pay rates, from minimum to maximum.

~~[CC.]DD.~~ DD. “Probationer” means an employee in the classified service who has not completed the one-year probationary period.

~~[DD.]EE.~~ EE. “Promotion” means the change of an employee from a classified position in one pay band to a classified position in a higher pay band.

~~[EE.]FF.~~ FF. “Reduction” means a voluntary change without prejudice, within an employee’s pay band, or from a classified position in one pay band to a classified position in a lower pay band ~~[, or voluntary removal of supervisory or lead worker responsibilities and pay].~~

~~[FF.]GG.~~ GG. “Relation by blood or marriage within the third degree” includes spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, and great-grandparent.

~~[GG.]HH.~~ HH. “Resignation” means the voluntary separation of an employee from the classified service.

~~[HH.]II.~~ II. “Rules” means the rules and regulations of the personnel board.

~~[II.]JJ.~~ JJ. “Signature” means handwritten or electronic signature(s), provided that the mechanism for electronic signatures is approved for use by the director, provides for authentication, and otherwise complies with the Uniform Electronic Transactions Act, NMSA 1978, Sections 14-16-1 to 21.

~~[JJ.]KK.~~ KK. “Status” means all of the rights and privileges of an appointment.

~~[KK.]LL.~~ LL. “Supervisor” means an employee in a non-manager classification who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of two or more other employees and has the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively, but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

~~[LL.]MM.~~ MM. “Suspension” means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days.

~~[MM.]NN.~~ NN. “Transfer” means the movement of an employee from one position to another in the same pay band without a break in employment.

~~[NN.]OO.~~ OO. “Without prejudice” means a declaration that no rights or privileges of the employee concerned are ~~[to be considered as thereby] waived or lost except [in so far] as may be expressly conceded or decided.~~

~~[OO.]PP.~~ PP. “Writing” or “written” means in the written form and/or an alternative format, where deemed appropriate, and when requested, including electronic records that comply with the Uniform Electronic Transactions Act, NMSA 1978, Sections 14-16-1 to 21.

[1.7.1.7 NMAC - Rp, 1 NMAC 7.1.7, xx/xx/20xx]

1.7.1.8 APPROVAL AUTHORITY:

A. Pursuant to the provision of NMSA 1978, Section 10-9-12(A) the director shall supervise all administrative and technical personnel activities of the state.

(1) The director may audit the administrative and technical personnel activities of the state.~~[, pursuant to direction from the board, will establish a quality assurance review program, and will ensure that a copy of the program is provided to each agency. The board will review the quality assurance review program on an annual basis.~~

~~_____~~ (2) ~~The director shall ensure that all agencies are reviewed, as outlined in the quality assurance review program, which will enable the director the ability to supervise all administrative and technical personnel activities of the state and ensure compliance with the rules.]~~ The director shall submit ~~[the]~~ any findings of non-compliance with these rules to the board.

B. If it is established that an agency has violated the rules, an applicable collective bargaining agreement in place with the state, or their the agency’s policies [which require office approval], and [they are] the

agency is given adequate opportunity to correct violations and fails to do so, the director may suspend the agency's line authority or right to approve personnel actions, to approve employment lists, to advertise employment positions, to negotiate with or to make agreements with exclusive bargaining representatives, or to perform any activities related to the agency's violations, such actions as provided in the rules and all such actions and require director approval until the director rescinds the suspension.

C. The director reserves the right to assign line authority under these rules so long as such line authority maintains the director's administrative oversight and authority. ~~[Such decisions are subject to the board's review. Such authority shall be derived from the director through written instruction which shall specify the responsibility(ies) and accountability(ies) which are being assigned.]~~

D. The director ~~[- with the approval of the board,]~~ shall establish criteria governing the requirements which must be met to achieve and maintain line authority status.

E. The director may modify or withdraw line authority status. ~~[Such decisions are subject to the board's review.]~~

[1.7.1.8 NMAC - Rp, 1 NMAC 7.1.8, 07/07/01; A, 11/14/02; A, 7-15-05; A, 6-15-10; Re-pr, insert date]

1.7.1.9 INTERPRETATIONS: The board shall establish a procedure for the issuance of interpretations of these Rules.

[1.7.1.9 NMAC - Rp, 1 NMAC 7.1.9, xx/xx/20xx]

1.7.1.10 METHOD OF SERVING NOTICE: Any notice required of an agency by these rules, except for *1.7.13 NMAC*, shall be delivered by a method that provides proof of service or attempted service.

[1.7.1.10 NMAC - Rp, 1 NMAC 7.1.10, xx/xx/20xx]

1.7.1.11 COMPUTATION OF TIME:

A. In computing any period of time prescribed or allowed by these rules, the day from which period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

B. Whenever an employee is permitted or required by these rules to respond or do some other act within a prescribed period after service of a notice or paper upon the employee and the notice or paper is served by mail or courier service, 3 calendar days shall be added to the prescribed period.

[1.7.1.11 NMAC - Rp, 1 NMAC 7.1.11, xx/xx/20xx]

1.7.1.12 EMPLOYMENT RECORDS:

A. ~~[The director and agencies]~~ Agencies shall maintain a record of each employee's employment history in accordance with operational necessity and applicable state and federal law requirements. Employees shall have access to review their own files. Employment-related confidential records shall be available for inspection by agencies during the process of interviewing for employment when the employee has provided a signed release. No materials shall be placed in an employee's employment history without providing the employee with a copy. Employees may submit written rebuttal to any material placed in their employment history. Agencies shall transfer the complete record of an employee's employment history upon inter-agency transfer.

B. Employment records, except confidential records, are subject to inspection by the general public. Confidential records may be inspected with the written permission of the employee or pursuant to a lawful court order or subpoena.

C. For the purpose of inspection of public records under *Subsection B of 1.7.1.12 NMAC*, the following material shall be regarded as confidential and exempted from public inspection: records and documentation pertaining to physical or mental illness, injury or examinations, sick leave and medical treatment of persons; records and documentation maintained for purposes of the *Americans with Disabilities Act [42 U.S.C. Section 12010 et seq]*; letters of reference concerning employment, licensing, or permits; records and documentation containing matters of opinion; interview notes; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed; college transcripts; military discharge; information on the race, color, religion, sex, national origin, political affiliation, age, and disability of employees; home address and personal telephone number unless related to public business; social security number; laboratory reports or test results generated according to the provisions of *1.7.8 NMAC*; and as otherwise provided by state or federal law.

[1.7.1.12 NMAC - Rp, 1 NMAC 7.1.12, xx/xx/20xx]

1.7.1.13 SETTLEMENT AGREEMENTS: Any settlement agreement reached by an agency and an employee to resolve a matter between them, that incorporates provisions covered by these rules, must conform to the provisions of these rules, unless otherwise approved by the director [and have the prior approval of the director]. [The director may approve a settlement agreement, which does not conform to the provisions of these rules if,] If a potential offer of settlement relates to a personnel action covered by these rules, including, but not limited to, disciplinary appeals, grievance arbitrations, and prohibited practice complaints, or a collective bargaining agreement entered into by the state, an agency must secure approval from the director prior to extending the offer. If in the judgment of the director, the offer of settlement is in the best interest of the state of New Mexico, the director may authorize the agency to extend the offer of settlement to the employee. [with the joint approval of the cabinet secretary of the department of finance and administration signifying budget availability-]. If such settlement also involves payment of monies by an agency, joint approval of the cabinet secretary of the department of the department of finance and administration and administration signifying budget availability and the director is required.
[1.7.1.13 NMAC - Rp, 1 NMAC 7.1.13, 07/07/01, xx/xx/20xx]

1.7.1.14 AGENCY HUMAN RESOURCES POLICIES: Each agency shall provide a copy of their human resources policies to the office by July 1 of each year and these policies must conform to the provisions of these rules and other statutory requirements as required by law and include, among other things, policies regarding diversity in the workplace.
[1.7.1.14 NMAC - Rp, 1 NMAC 7.1.14, xx/xx/20xx]

1.7.1.14 AGENCY HUMAN RESOURCE POLICIES: Each agency shall provide a copy of their human resource policies to the office by July 1 of each year and these policies must conform to the provisions of these rules and other statutory requirements as required by law and include, among other things, policies regarding diversity in the workplace.
[1.7.1.14 NMAC - Rp, 1 NMAC 7.1.14, xx/xx/20xx]

1.7.1.15 TRAINING AND DEVELOPMENT: The director shall establish, pursuant to direction from the board, and maintain a training and development work plan. The board will review the training and development work plan on an annual basis.
[1.7.1.15 NMAC - Rp, 1 NMAC 7.1.15, xx/xx/20xx]

1.7.1.16 SEVERABILITY: A determination by a court of competent jurisdiction that any provision of 1.7.1 NMAC is unconstitutional or invalid shall not adversely affect the constitutionality, validity or enforceability of the remaining provisions.
[1.7.1.16 NMAC - Rp, 1 NMAC 7.1.16, xx/xx/20xx]

HISTORY OF 1.7.1 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

SPB Rule 1, Definitions, filed 05-22-80;
SPB Rule 1, Definitions, filed 06-03-81;
SPB Rule 1, Definitions, filed 07-22-82;
SPB Rule 1, Definitions, filed 10-21-82;
SPB Rule 1, Definitions, filed 06-28-83;
SPB Rule 1, Definitions, filed 03-07-86;
SPB Rule 1, Definitions, filed 10-17-86;
SPB Rule 1, Definitions, filed 07-30-87;
SPB-A, Glossary, filed 04-04-90;
SPB-A, Glossary, filed 10-19-90;
SPB 1, Definitions, filed 12-15-92;
SPB 1, Definitions, filed 02-10-94;
SPB Rule 2, General Provisions, filed 05-22-80;
SPB Rule 2, General Provisions, filed 06-03-81;
SPB Rule 2, General Provisions, filed 07-22-82;

SPB Rule 2, General Provisions, filed 10-21-82;
SPB Rule 2, General Provisions, filed 06-28-83;
SPB Rule 2, General Provisions, filed 03-07-86;
SPB Rule 2, General Provisions, filed 10-17-86;
SPB-1, General Applicability filed 04-04-90;
SPB-1, General Applicability filed 10-19-90;
SPB-1, General Applicability filed 12-24-91;
SPB 2, General Provisions, filed 12-15-92;
SPB 2, General Provisions, filed 02-10-94;
SPB 2, General Provisions, filed 12-29-94.

Other History:

1 NMAC 7.1, General Provisions, filed 01-12-96 replaced SPB 1, filed 02-14-94 and SPB 2, filed 12-29-94;
1 NMAC 7.1, General Provisions, filed 05-02-96;
1 NMAC 7.1, General Provisions, filed 06-13-97 replaced by 1.7.1 NMAC, General Provisions, effective 07/07/01.

History of Repealed Material:

1 NMAC 7.1, General Provisions, filed 06-13-97.
1.7.1 NMAC, General Provisions, filed 6/13/1997 replaced by 1.7.1 NMAC, General Provisions, effective xx/xx/20xx.