



New Mexico State Personnel Board State Personnel Office

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Interpretive Memorandum 2014 – 003 (REVISED)

Date: October 15, 2014

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

From: Justin R. Najaka, Interim Director, State Personnel Office

Subject: Administrative Leave for Voting

I. Purpose

The State encourages all eligible employees to exercise their right to vote. This memorandum shall serve to interpret the application of the New Mexico Administrative Code (NMAC) regarding the granting of administrative leave for voting.

II. Background

The following statutes and administrative code provisions apply to administrative leave for voting:

§ 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.

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- 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).

1.7.7.14 NMAC

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.

In addition to the elections identified in § 1-12-42(C) NMSA, voting leave is also allowed for the following elections:

§ 1-1-19. Elections covered by code

- (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.

III. Guidelines

- A. According to §1-12-42(A) NMSA and 1.7.7.14 NMAC, administrative leave for voting is only available on Election Day. It is not available for the purposes of early voting or absentee voting.
- B. Agencies need to be aware of elections covered by § 1-1-19 NMSA that may impact their central office and/or field office operations, in order to properly schedule voting leave for eligible employees during elections covered by statute.

- C. Agencies may specify the time during scheduled work hours in which the voter may be absent; however, agencies may not refuse the right granted for time to vote.
 - D. Agencies must maintain appropriate staffing levels with their departments and worksites.
 - E. An employee must have worked regular hours on the same day, in order to be eligible for administrative leave for voting.
 - F. An employee's use of annual and/or sick leave cannot be used in direct conjunction with voting leave.
 - G. An employee utilizing administrative leave for voting shall enter time as "Voting Time Paid-VOTES", and leave a comment as to what election the employee voted in.
 - H. While employees are encouraged to vote, and to utilize voting leave as needed to facilitate voting, misuse or abuse of voting leave may lead to disciplinary action, up to and including dismissal. Use of voting leave when an employee does not vote will be considered misuse and/or abuse of this leave.
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