



New Mexico State Personnel Board

State Personnel Office

Michelle Lujan Grisham
Governor


Pamela D. Coleman
Director

State Personnel Board
Christine B. Romero, Chair
Jerry Manzagol, Vice Chair
Carmen V. Chavez, Member
Laura A. Liswood, Member

MEMORANDUM

Date: January 2, 2020

To: Cabinet Secretaries, Agency Heads, and Elected Officials

From: Pamela D. Coleman, Director 

Subject: State Personnel Board Rule changes - 1.7.1 and 1.7.7 NMAC

On December 6, 2019, the State Personnel Board approved changes to the State Personnel Board Rules in both 1.7.1, General Provisions, and 1.7.7, Absence and Leave, of the New Mexico Administrative Code (NMAC). Below is a synopsis of the changes by rule along with the complete rule wording that has been recorded and became effective January 1, 2020.

1.7.1 NMAC, General Provisions

- **1.7.1.7, Definitions.** Technical and substantive changes to clarify/update definitions in 1.7.1.

Anniversary Date	Dismissal	Midpoint	Writing or Written
Appointment	Domestic Partner	Minimum Qualifications	
Audit	Employment List	Reduction	
Break in employment	Employment Records	Signature	
Candidate	Line Authority	Supervisor	
Disciplinary Action	Manager	Without Prejudice	

- **1.7.1.8, Approval Authority.** Provides the Director with authority to take administrative action against an agency for non-compliance with the rules, collective bargaining agreements, or agency policies and changes the compliance review process.

- **1.7.1.12, Employment Records.** Agencies are to maintain personnel files for each of their employees, not the State Personnel Office. Employees may have access to “review” their personnel files. Interview notes are included as confidential records. Clarifies that agencies may disclose employment records in response to subpoenas.
- **1.7.1.13, Settlement Agreements.** Agencies must receive approval to make settlement offers that involve a personnel action that requires SPO Director approval, before the offer is made. Also, settlement agreements that involve payment of monies require joint approval by SPO Director and DFA Secretary.
- **1.7.1.14, Agency HR Policies.** Agencies must provide their HR policies to SPO by July 1 of each year.

1.7.7 NMAC, Leave and Absence

- **1.7.7.7, Definitions.** Technical and substantive changes to clarify/update definitions in 1.7.7.

Child/Children	Eligible Employee	Health Care Provider	Serious Illness or Injury
Covered Active Duty or Call to Active Duty	Extra-curricular Activities	Medical Emergency	Son
Covered Servicemember	Fall Semester	School	Spouse
Daughter	Family Member	Serious Health Condition	

- **1.7.7.10, Sick Leave.** Accrual rates change from 3.69 to 4.00 hours per pay period.
- **1.7.7.12, Family Medical Leave.** Family Medical Leave may be used for baby bonding and qualifying medical exigencies. An employee may request additional leave without pay and permit agencies to require fitness for duty certifications when they return from work after FMLA leave.
- **1.7.7.14, Administrative Leave.** Voting may be used for elections listed in NMSA 1978, §§ 1-12-42 and 1-1-19. Voting leave may not be used for early or absentee voting. Additional amendments address leave for court appearances and parent-teacher conference leave.
- **1.7.7.15, Educational Leave.** Defines “educational leave” and when it can be used. It also provides parameters for required employment after leave is taken as well as reimbursement provisions should the employee not remain at the agency for the required period or if the employee fails the coursework during the leave period.
- **1.7.7.16, Military Leave.** Additional military leave may be granted by the Governor when an employee is ordered to military training for the national guard. Provides for up to 30 days leave for state defense force and state civil air patrol.

FINAL RULE 1.7.1

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, 01/01/2020]

1.7.1.2 SCOPE: All state agencies in the classified service.
[1.7.1.2 NMAC - Rp, 1 NMAC 7.1.2, 01/01/2020]

1.7.1.3 STATUTORY AUTHORITY: 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, 01/01/2020]

1.7.1.4 DURATION: Permanent.
[1.7.1.4 NMAC - Rp, 1 NMAC 7.1.4, 01/01/2020]

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, 01/01/2020]

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, 01/01/2020]

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 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.
- E. "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.
- F. "Board" means the personnel board.
- G. "Break in employment" means any period of time of at least one workday of not being in the classified service.
- H. "Candidate" means any applicant who is on the employment list for a position.

- I.** "Classified service" means all positions in the executive branch of state government which are not exempt by law.
- J.** "Classification" means a job that is occupationally and quantifiably distinct.
- K.** "Compa-ratio" means pay expressed as a percentage of the midpoint of a pay band.
- L.** "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.
- M.** "Director" means the state personnel director.
- N.** "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.
- O.** "Dismissal" means the involuntary separation from employment.
- P.** "Diversity in the workplace" means an acknowledgement 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.
- R.** "Employee" means a person in a position in the classified service. [note: For purposes of brevity and consistency, this definition differs from Subsection I of Section 10-9-3 NMSA 1978, but in no way confers a greater right on certain persons than contemplated by Subsection I of Section 10-9-3 NMSA 1978.]
- S.** "Employer" means any authority having power to fill positions in an agency.
- T.** "Employment list" the list of names of candidates referred to a hiring manager by the agency's Human Resources, from which a candidate may be selected for an interview, and from which a candidate may be selected for appointment.
- U.** "Employment records" means documents that contain information related to a person's employment or application for employment.
- V.** "Examination" means ranked competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including tests.
- W.** "Exempt service" means all positions in the executive branch of state government exempt from the classified service by law.
- X.** "Filed" means received by the office.
- Y.** "Involuntary separation" means involuntary removal of an employee from the classified service without prejudice as provided for in 1.7.10.13 NMAC.
- Z.** "Line authority" means the assignment of activities 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.
- AA.** "Manager" means an employee in a position that manages internal staff or external staff, 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.
- BB.** "Midpoint" means the salary midway between the minimum and maximum pay rates of a pay band for positions in the classified service. Midpoint represents a compa-ratio value of 1.00 or one hundred percent.
- CC.** "Minimum qualifications" means requirements approved by the board that must be met to be considered for a position.
- DD.** "Office" means the state personnel office.

EE. "Pay band" means the range of pay rates, from minimum to maximum.

FF. "Probationer" means an employee in the classified service who has not completed the one-year probationary period.

GG. "Promotion" means the change of an employee from a classified position in one pay band to a classified position in a higher pay band.

HH. "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.

II. "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.

JJ. "Resignation" means the voluntary separation of an employee from the classified service.

KK. "Rules" means the rules and regulations of the personnel board.

LL. "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, Sections 14-16-1 to 21 NMSA 1978.

MM. "Status" means all of the rights and privileges of an appointment.

NN. "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.

OO. "Suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days.

PP. "Transfer" means the movement of an employee from one position to another in the same pay band without a break in employment.

QQ. "Without prejudice" means a declaration that no rights or privileges of the employee concerned are waived or lost except as may be expressly conceded or decided.

RR. "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, Sections 14-16-1 to 21 NMSA 1978.

[1.7.1.7 NMAC - Rp, 1 NMAC 7.1.7, 01/01/2020]

1.7.1.8 APPROVAL AUTHORITY:

A. Pursuant to the provision of Subsection A of Section 10-9-12 NMSA 1978, the director shall supervise all administrative and technical personnel activities of the state. The director may audit the administrative and technical personnel activities of the state. The director shall submit 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 the agency's policies, and 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 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.

D. The director 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.

[1.7.1.8 NMAC - Rp, 1 NMAC 7.1.8, 01/01/2020]

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, 01/01/2020]

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, 01/01/2020]

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, 01/01/2020]

1.7.1.12 EMPLOYMENT RECORDS:

A. 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 file. 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, 01/01/2020]

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. 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, the director may authorize the agency to extend the offer of settlement to the employee. 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, 01/01/2020]

1.7.1.14 AGENCY HUMAN RESOURCE POLICIES: Each agency shall provide a copy of their human resource policies to the office 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, 01/01/2020] -

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, 01/01/2020]

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, 01/01/2020]

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 01/01/2020.

FINAL RULE 1.7.7

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 7 STATE PERSONNEL ADMINISTRATION PART 7 ABSENCE AND LEAVE

1.7.7.1 ISSUING AGENCY: State Personnel Board.
[1.7.7.1 NMAC - Rp, 1 NMAC 7.7.1, 07/07/01]

1.7.7.2 SCOPE: All state agencies in the classified service.
[1.7.7.2 NMAC - Rp, 1 NMAC 7.7.2, 07/07/01]

1.7.7.3 STATUTORY AUTHORITY: NMSA 1978, Section 10-9-13(G); Section 11: NMSA 1978, Section 10-7-10; Section 13: 29 U.S.C. Sections 201 and 2601 et seq.; Section 15: NMSA 1978, Section 1-12-42; Section 17: NMSA 1978, Sections 20-4-7, 20-5-14 and 20-7-5 and 38 U.S.C. Section 2024.
[1.7.7.3 NMAC - Rp, 1 NMAC 7.7.3, 07/07/01; A, 11/14/02]

1.7.7.4 DURATION: Permanent.
[1.7.7.4 NMAC - Rp, 1 NMAC 7.7.4, 07/07/01]

1.7.7.5 EFFECTIVE DATE: 07/07/01 unless a later date is cited at the end of a section.
[1.7.7.5 NMAC - Rp, 1 NMAC 7.7.5, 07/07/01]

1.7.7.6 OBJECTIVE: The objective of Part 7 of Chapter 7: is to provide for the accrual and administration of leave available to employees.
[1.7.7.6 NMAC - Rp, 1 NMAC 7.7.6, 07/07/01]

1.7.7.7 DEFINITIONS:

- A. "Child" or "Children" means a person or persons 18 years of age or younger who is enrolled in School, and who is or are the biological child(ren), legally adopted child(ren), foster child(ren), stepchild(ren), or legal ward(s) of an employee.
- B. "Covered active duty or call to covered active duty status" means duty during the deployment of a regular member or reservist to a foreign country.
- C. "Covered servicemember" means a current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or a covered veteran (member of the Armed Forces, including a member of the National Guard or Reserves, who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the employee takes FMLA leave to care for the covered veteran) who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.
- D. "Extra-curricular activities" means events or appointments not falling within the normal school curriculum, including but not limited to sporting events, orientations, ceremonies, field trips, registrations.
- E. "Fall semester" means August through December.

F. "Family member" means an individual who is the spouse or domestic partner of or is by blood, marriage or legal adoption a parent, grandparent, great-grandparent, child, foster child, grandchild, great-grandchild, brother, sister, niece, nephew, aunt or uncle, or is living in the household of an of an employee.

G. "Health care provider" means a physician, dentist, podiatrist, clinical psychologist, or optometrist who is authorized to practice medicine or surgery in the state in which the individual practices. In cases limited to treatment consisting of manual manipulation of the spine to correct a subluxation, medical certification may be provided by a chiropractor. Others capable of providing health care services include podiatrists, dentists, clinical psychologists, optometrists, nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized to practice in the state; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification for the existence of a serious health condition to substantiate a claim for benefits, including a foreign physician.

H. "Medical emergency" means a medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

I. "School" means a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either a licensed child care center, preschool, elementary, middle, junior high, or high school, or any combination of those, including charter schools, state institutions, and private schools, but not including home schools.

J. "Serious health condition" means an illness or injury that involves an overnight stay in a health care facility and any subsequent treatment in connection with such stay; or, continuing treatment by a health care provider including any one or more of the following:

(1) a period of incapacity of more than three consecutive, full calendar days and subsequent treatment by a health care provider in-person two or more times within 30 days of the first day of incapacity;

(2) treatment by a health care provider in-person on at least one occasion which results in a regimen of continuing treatment;

(3) pregnancy and prenatal care;

(4) chronic condition which requires visits at least twice a year for treatment by a health care provider over an extended period of time and may cause episodic rather than a continuing period of incapacity;

(5) permanent or long-term conditions; and

(6) conditions requiring multiple treatments by a health care provider including recovery time.

K. "Serious illness or injury" means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces, or existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty in the Armed Forces, and that may render the covered servicemember medically unfit to perform the duties of the servicemember's office grade, rank or rating. In the case of a veteran who was a covered servicemember, "serious illness or injury" means the same as above but the injury or illness manifested itself before or after the member become a veteran.

L. "Son" or "Daughter" means a biological, adopted, or foster child, a step child, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care" because of a mental or physical disability at the time that FMLA leave is to commence.

M. "Spring semester" means January through May.

N. "Spouse" is defined in the Family and Medical Leave Act regulations [29 CFR 825.122(b)].
[1.7.7.7 NMAC - Rp, 1 NMAC 7.7.7, 07/07/01; A, 01/01/2020]

1.7.7.8 ANNUAL LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay shall accrue annual leave at the rate of:

(1) 3.08 hours per pay period if less than three years of cumulative employment,

(2) 3.69 hours per pay period if three years or more but less than seven years of cumulative employment,

(3) 4.61 hours per pay period if seven years or more but less than eleven years of cumulative employment,

(4) 5.54 hours per pay period if eleven years or more but less than fifteen years of cumulative employment; or

(5) 6.15 hours per pay period if fifteen years or more of cumulative employment.

B. For purposes of *Subsection A of 1.7.7.8. NMAC*, any employment in the classified or exempt service and judicial or legislative branches of New Mexico state government shall be counted in determining years of cumulative employment in the classified service.

C. For purposes of *Subsection A of 1.7.7.8. NMAC*, employment in programs transferred into the classified service by legislation or executive order shall count as cumulative employment.

D. Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue annual leave on a prorated basis.

E. A maximum of 240 hours of annual leave shall be carried forward after the last pay period beginning in December.

F. Annual leave shall not be used before it is accrued and must be authorized before it is taken in accordance with agency policy.

G. Employees separating from the classified service, except by a reduction in force, shall be paid for accrued annual leave, as of the date of separation, up to a maximum of 240 hours at their current hourly rate.

Employees separating from the classified service as the result of a reduction in force shall be paid for all accrued annual leave, as of the date of separation, at their current hourly rate.

H. The estate of an employee who dies while in the classified service shall be paid for the employee's total accrued annual leave.

[1.7.7.8 NMAC - Rp, 1 NMAC 7.7.8, 07/07/01; A, 11/14/02]

1.7.7.9 DONATION OF ANNUAL AND/OR SICK LEAVE:

A. Employees may donate leave to another employee in the same agency for a medical emergency with approval of the head of the agency.

B. Employees may donate annual leave to the full amount of their accumulated hours.

C. In accordance with the provisions of *NMSA 1978, Section 10-7-10*, the donation of sick leave is governed by the following restrictions:

(1) employees who have accumulated more than six hundred hours of sick leave can transfer the additional amounts over 600 hours to another employee;

(2) the dollar value of the transferred leave shall equal 50% of the monetary value of the total hours transferred by the donor employee;

(3) no more than 120 hours of sick leave may be transferred by the donor in any one fiscal year, with the exception of the year in which an employee retires, when an employee may transfer up to 400 hours of sick leave;

(4) donations of sick leave may be made only once per fiscal year on either the pay date immediately following the first full pay period in January or the first full pay period in July, unless the employee is retiring.

D. An agency shall maintain the following documentation:

(1) the name, position title, and hourly rate of pay of the proposed leave recipient;

(2) a licensed health care provider's description of the nature, severity, and anticipated duration of the emergency involved which has been provided by the employee or legally authorized representative and a statement that the recipient is unable to work all or a portion of their work hours; and

(3) any other information which the employing agency may reasonably require.

E. Supporting documentation for the request to donate leave shall be kept confidential and not subject to public inspection without the written consent of the employee.

F. The agency shall transfer the leave to the leave account of the employee converting the dollar value of the donor's leave based on the donor's hourly rate of pay to hours of leave based on the recipient's hourly rate of pay.

G. The recipient of donated leave may not use such leave until first exhausting all accrued annual and sick leave, compensatory time and personal leave day.

H. Donated leave shall revert to the employees who donated the leave on a prorated basis when the medical emergency ends or the employee separates from the agency.

[1.7.7.9 NMAC - Rp, 1 NMAC 7.7.9, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.7.10 SICK LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay, shall accrue sick leave at the rate of 4.00 hours per pay period.

B. Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue sick leave on a prorated basis.

C. Sick leave may not be used before it is accrued and must be authorized or denied according to agency policy.

D. An employee may use sick leave for personal medical treatment or illness or for medical treatment or illness of a family member, or of a person residing in the employee's household. Employees affected by pregnancy, childbirth, and related medical conditions must be treated the same as persons affected by other medical conditions.

E. There is no limit to the amount of sick leave that may be accrued.

F. No payment shall be made for accrued sick leave at the time of separation from the classified service except as provided by law.

G. Former employees who were laid off and are returned to work in accordance with the provisions of 1.7.10.10 NMAC, shall have restored the sick leave they had accrued as of the date of layoff.

H. An agency may authorize an employee to use accrued sick leave to attend the funeral of a relation by blood or marriage within the third degree, or of a person residing in the employee's household.

I. Payment for Accumulated Sick Leave:

(1) In accordance with the provisions of NMSA 1978, Section 10-7-10, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in

excess of 600 hours at a rate equal to fifty percent (50%) of their hourly rate of pay for up to 120 hours of sick leave. Payment for unused sick leave may be made only once per fiscal year on either the payday immediately following the first full pay period in January or the first full pay period in July.

(2) Immediately prior to retirement from the classified service, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent (50%) of their hourly rate for up to 400 hours of sick leave.

J. An agency shall not discharge or threaten to discharge, demote, suspend or retaliate or discriminate against an employee because that employee requests or uses sick leave for medical treatment or illness of a family member in accordance with the agency's sick leave policy, files an appeal alleging violation of the Public Employee Caregiver Leave Act, NMSA 1978, Section 10-16H-1, et seq., cooperates in an investigation or prosecution of an alleged violation of that act or opposes any policy or practice established pursuant to that act.

K. Denials of an employee's request for sick leave related to medical treatment or illness of a family member, or alleged violations of the Public Employee Caregiver Leave Act by an agency directly impacting an employee, may be appealed to the director through the agency's chain-of-command. Appeals to the director must be in writing and include the agency's analysis of the reasons for the appeal. The director's decision is final and binding.

[1.7.7.10 NMAC - Rp, 1 NMAC 7.7.10, 07/07/01; A, 11/14/02; A, 01/01/2020]

1.7.7.11 LEAVE WITHOUT PAY:

A. Leave without pay may be approved when:

(1) the agency can assure a position of like status and pay, at the same geographic location, upon the return of the employee from leave without pay; or

(2) the employee agrees in writing to waive that requirement.

B. Leave without pay shall not exceed 30 consecutive calendar days for employees in emergency or temporary status.

C. Leave without pay may not exceed 30 consecutive calendar days for probationers or employees in term status with less than one year of employment without the prior approval of the agency. Any leave without pay in excess of 30 consecutive calendar days shall not be credited toward the probationary period unless the employee was called to active military duty.

D. Leave without pay for employees in career status and term status with more than one year of employment shall not exceed 12 consecutive months without the prior written approval of the agency.

E. Employees may be authorized leave without pay for up to one year to temporarily accept a position in the exempt service. Such leave without pay may be extended with the approval of the board.

[1.7.7.11 NMAC - Rp, 1 NMAC 7.7.11, 07/07/01]

1.7.7.12 FAMILY AND MEDICAL LEAVE:

A. In addition to other leave provided for in 1.7.7 NMAC eligible employees are entitled to leave in accordance with the *Family and Medical Leave Act (FMLA) of 1993 [29 U.S.C. Section 2601 et seq.]*, as amended. Employees who have been in the classified service for at least 12 months (which need not be consecutive) and who have worked, as defined by *Section 7 of the Fair Labor Standards Act [29 U.S.C. Section 201 et seq.]*, at least 1250 hours during the 12 month period immediately preceding the start of FMLA leave are eligible employees. In addition,

employment in the exempt service, legislative or judicial branch, shall count as classified employment for purposes of this rule.

B. Eligible employees are entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period, at the time of a birth, placement through adoption or foster care, bonding, or serious health condition of a child of the employee or the employee's spouse, at the time of a serious health condition for the employee, or family members, or any other qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call or order to active duty status, in support of a contingency operation as defined in the FMLA, including family preparations resulting from a short-notice of deployment, military events and related activities, childcare on an urgent basis or for school activities, financial and legal arrangements, counseling, spending time with the servicemember while on short-term leave, post-deployment activities, and other activities in accordance with the FMLA regulations [29 CFR 825.12]. An employee whose family member is on active duty or called to active duty status in support of a contingency operation as a member of the Armed Forces is not eligible to take leave because of qualifying exigency. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

C. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for the servicemember. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The 12 month period is calculated forward from the date an employee's first FMLA leave begins.

D. An employee may elect, or an agency may require the employee, to substitute any of the employee's accrued annual leave, accrued sick leave, personal leave day, accrued compensatory time, or donated leave for any part of unpaid FMLA leave.

E. If a paid holiday occurs within a week of FMLA leave, the holiday is counted towards the FMLA entitlement. However, if an employee is using FMLA in increments less than one week, the holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

F. Employees shall not accrue annual and sick leave while on unpaid FMLA leave.

G. Agencies shall post the required FMLA notices, maintain the required employee records, and implement agency policies in accordance with the FMLA. All medical records and correspondence relating to employees and/or their families shall be considered confidential in accordance with 1.7.1.12 NMAC.

H. Disputes over the administration of this rule shall be forwarded to the director for resolution.

I. As a condition for restoring an employee whose own serious health condition required FMLA leave, an agency may require the employee to provide certification from their health care provider that the employee is able to resume work. The fitness-for-duty certification may only pertain to the specific health condition that required FMLA leave.

[1.7.7.12 NMAC - Rp, 1 NMAC 7.7.12, 07/07/01; A, 11/14/02; A, 6-30-06; A, 10-15-08; A/E, 1/27/09; A, 5-14-09; A, 01/01/2020]

1.7.7.13 ABSENCE WITHOUT LEAVE:

A. Employees who fail to appear for work without authorized leave or who appear for work but are in violation of agency policy governing their readiness for work shall be considered to be absent without leave.

B. Employees shall not be paid for any periods of absence without leave and shall not accrue annual or sick leave.

[1.7.7.13 NMAC - Rp, 1 NMAC 7.7.13, 07/07/01]

1.7.7.14 ADMINISTRATIVE LEAVE:

A. An agency may authorize employees leave with pay for up to five consecutive work days when it is in the best interests of the agency to do so. Administrative leave in excess of five consecutive work days must have the prior written approval of the director except for administrative leave granted in accordance with the provisions of *Paragraph (2) of Subsection B of 1.7.8.19 NMAC or Paragraph (2) of Subsection D of 1.7.8.19 NMAC or 1.7.11.12 NMAC.*

B. Employees who are members of a state board or commission may be entitled to leave with pay to attend meetings or transact business of the board or commission.

C. 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.

This leave is only available for those elections listed in *Subsection A of Sections 1-12-42 and 1-1-19 NMSA 1978*, and does not apply to absentee or early voting.

D. Employees shall be entitled to administrative leave when appearing during regularly scheduled work hours in obedience to a subpoena as a witness before a grand jury or court or before a federal or state agency. Fees received as a witness, excluding reimbursement for travel, shall be remitted to the employee's agency.

E. Employees shall be entitled to leave with pay for serving on a grand or petit jury during regularly scheduled work hours. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the employee's agency.

F. Employees with a child or children enrolled in a school shall be entitled to the following amounts of paid administrative leave for parent-teacher conferences, provided that the express purpose of the leave is to attend a parent-teacher conference during the employee's normal work day; provided that the leave is not being requested for parental participation or assistance in extra-curricular school activities; provided that the employee follows any procedures required by the office or agency to request paid administrative leave for the parent-teacher conference; and, provided that the employee provides reasonable notice to the agency in an effort to avoid disruption to operational needs:

(1) Employees with three or more children may be granted up to four hours of paid administrative leave during the spring semester, and up to four hours of paid administrative leave during the fall semester for parent-teacher conferences; and

(2) Employees with one child or two children may be granted up to two hours of paid administrative leave during the spring semester, and up to two hours of paid administrative leave during the fall semester for parent-teacher conferences.

(3) Two employees may request available leave to attend the same scheduled parent-teacher conference for their children.

[1.7.7.14 NMAC - Rp, 1 NMAC 7.7.14, 07/07/01; A, 11/14/02; A, 7-15-05; A, 01/01/2020]

1.7.7.15 EDUCATIONAL LEAVE:

A. An agency may grant employees educational leave with or without pay to pursue training related to their employment that is of immediate or potential value to the agency, including new ideas and innovation that could result from an employee's education on a variety of subjects,

expansion of employee skill sets for later promotional or leadership opportunities, and retention. "Educational leave" means time away from work, paid or unpaid, for approved coursework at an academic institution, including participation in classes and travel between an employee's normal work site and the academic institution. Educational leave may be requested as part-time administrative leave with pay or full-time Educational Leave without pay.

B. Employees on full-time educational leave with pay shall not accrue annual or sick leave.

C. Employees who are working part-time while on educational leave shall accrue annual and sick leave in accordance with the provisions of *Subsection D of 1.7.7.8 NMAC* and *Subsection B of 1.7.7.10 NMAC*.

D. Employees who are granted paid educational leave and who leave the employ of the agency within one year of the conclusion of the educational leave, must reimburse the agency for any tuition, expenses, or costs that the agency paid on behalf of the employee. Employees who are granted paid educational leave and who fail to complete any coursework, testing, or requirements of the educational program must reimburse the agency for any tuition, expenses, or costs that the agency paid on behalf of the employee.

[1.7.7.15 NMAC - Rp, 1 NMAC 7.7.15, 07/07/01; A, 01/01/2020]

1.7.7.16 MILITARY LEAVE:

A. Members of organized reserve units or the national guard ordered to training shall be given up to 15 workdays of paid military leave per federal fiscal year. These 15 workdays are in addition to other authorized leave.

B. The governor may grant members of the national guard ordered to training up to 15 days of paid military leave, in addition to that already given by law. Such additional leave must not exceed 15 workdays per federal fiscal year.

C. Members of the state defense force shall be granted paid military leave to attend officially authorized training or instruction courses. Such leave applies only to full-time employees and must not exceed 30 workdays per federal fiscal year.

D. Members of the civil air patrol shall be granted military leave not to exceed 30 workdays per calendar year for search and rescue missions.

E. Employees on military leave with pay shall accrue annual and sick leave.

F. Employees who are members of a reserve component of the United States armed forces shall, upon request, be granted unpaid leave for the period required to perform active duty for training or inactive duty training in the United States armed forces.

G. This rule does not apply to employees in temporary or emergency status.

[1.7.7.16 NMAC - Rp, 1 NMAC 7.7.16, 07/07/01; A, 11/14/02; A, 7-15-05; A, 01/01/2020]

1.7.7.17 PERSONAL LEAVE DAY:

A. Employees in career status are entitled to 1 personal leave day each calendar year. The personal leave day will be consistent with the employee's normal workday. Such leave must be requested and approved in advance.

B. The personal leave day must be taken during consecutive hours.

C. The personal leave day must be taken by December 31 or it will be lost.

D. Employees who do not take the personal leave day shall not be paid for it upon separation from the classified service.

[1.7.7.17 NMAC - Rp, 1 NMAC 7.7.17, 07/07/01; A, 11/14/02; A, 10-15-08]

1.7.7.18 TRANSFER OF LEAVE:

A. Employees who transfer from one agency to another shall retain all accrued annual, personal and sick leave.

B. All accrued annual and sick leave shall be transferred when persons change status from a position in the exempt service to a position in the classified service without a break in employment.

C. Agencies shall accept all accrued sick leave from persons who separate from the judicial or legislative branches of state government and are employed in the classified service without a break in employment of such separation.

[1.7.7.18 NMAC - Rp, 1 NMAC 7.7.18, 07/07/01; A, 11/14/02]

1.7.7.19 DONATING AN ORGAN OR BONE MARROW:

A. In accordance with the provisions of *NMSA 1978, Section 24-28-3*, an agency head may authorize a leave of absence, not to exceed twenty workdays, to an employee for the purpose of donating an organ or bone marrow.

B. In accordance with the provisions of *1.7.7.9 NMAC*, an employee may request and use donated annual or sick leave for the purpose of donating an organ or bone marrow.

C. If an employee requests donations of annual leave or sick leave but does not receive the full amount of leave needed for the donation of an organ or bone marrow, the agency head may grant paid administrative leave for the remainder of the needed leave up to the maximum total of twenty workdays.

D. An agency head may require verification by a physician regarding the purpose of the leave requested and information from the physician regarding the length of the leave requested.

E. Any paid leave of absence granted pursuant to this provision shall not result in a loss of compensation, seniority, annual leave, sick leave or accrued overtime for which the employee is otherwise eligible.

[1.7.7.19 NMAC - N, 12/1/10]

HISTORY OF 1.7.7 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 13, Leaves of Absence, filed 05-22-80;
SPB Rule 13, Leaves of Absence, filed 09-01-81;
SPB Rule 13, Leaves of Absence, filed 09-04-81;
SPB Rule 13, Leaves of Absence, filed 07-22-82;
SPB Rule 13, Leaves of Absence, filed 10-21-82;
SPB Rule 13, Leaves of Absence, filed 03-07-86;
SPB Rule 13, Leaves of Absence, filed 10-17-86;
SPB Rule 13, Leaves of Absence, filed 01-13-89;
SPB-15, Absence and Leave, filed 04-04-90;
SPB-15, Absence and Leave, filed 12-13-90;
SPB 10, Absence and Leave, filed 12-15-92;
SPB 10, Absence and Leave, filed 08-03-93;
SPB 10, Absence and Leave, filed 12-02-93;
SPB 10, Absence and Leave, filed 03-18-94;
SPB 10, Absence and Leave, filed 12-01-94;
SPB 10, Absence and Leave, filed 12-29-94;
SPB 10, Absence and Leave, filed 01-27-95;
SPB 10, Absence and Leave, filed 03-20-95;
SPB 10, Absence and Leave, filed 09-01-95.

History of Repealed Material:

1 NMAC 7.7, Absence and Leave, filed 06-13-97.

Other History:

1 NMAC 7.9, Absence and Leave, filed 01-12-96 replaced SPB 10, filed 09-01-95;

1 NMAC 7.7, Absence and Leave, filed 06-13-97 replaced 1 NMAC 7.9, Absence and Leave, filed 01-12-96;

1 NMAC 7.7, Absence and Leave, filed 06-13-97 replaced by 1.7.7 NMAC, Absence and Leave, effective 07/07/01.