



New Mexico State Personnel Board

State Personnel Office

Michelle Lujan Grisham
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State Personnel Board
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BEFORE THE NEW MEXICO STATE PERSONNEL BOARD

IN RE: RULEMAKING PROCEEDING FOR
AMENDMENTS TO 1.7.1 NMAC – GENERAL PROVISIONS
REPEAL AND REPLACEMENT OF 1.7.4 NMAC – PAY
AMENDMENTS TO 1.7.4 NMAC – PAY
AMENDMENTS TO 1.7.7 NMAC – ABSENCE AND LEAVE

CONCISE EXPLANATORY STATEMENT

The New Mexico State Personnel Board (the "Board") hereby amends 1.7.1 NMAC – General Provisions, repeals and replaces and amends 1.7.4 NMAC – Pay, and amends 1.7.7 NMAC Absence and Leave. The rules are currently codified in Title 1, Chapter 7, Part 1; Title 1, Chapter 7, Part 4; and Title 1, Chapter 7, Part 7 of the New Mexico Administrative Code.

(1) Statutory Authority for Rule Promulgation:

Under the Personnel Act, "The [personnel] director shall...recommend to the board rules [she] considers necessary or desirable to effectuate the Personnel Act," and "the board shall...promulgate regulations to effectuate the Personnel Act[.]" NMSA 1978, §§ 10-9-10(A), 12(E).

(2) Date of Notice in New Mexico Register:

The Notice of Rulemaking was published in Volume XXXII, Issue: 8 of the New Mexico Register on April 20, 2021.

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(3) Date of Meeting Approving Rule:

June 18, 2021

(4) Date of Adoption of Rule:

June 18, 2021

(5) Date of Publication of Adopted Rule in New Mexico Register:

The adopted Rule will be published in Volume XXXII, Issue: 13 of the New Mexico Register on July 7, 2021.

(6) Effective Date of Rule:

August 1, 2021 (1.7.13.10 NMAC “The Board shall determine the effective date of Rules....”).

(7) Reasons for Adopting Rule:

Amendments to 1.7.1 – General Provisions

The change to 1.7.1.7 Definitions, Subsection EE, clarifies the definition of “pay band” to be a “discrete range of pay rates with fixed minimum and maximum limits to which classifications may be assigned.”

Repeal and Replacement of 1.7.4 NMAC – Pay

The full repeal and replacement of 1.7.4 NMAC – Pay brings all sections of that chapter of the State Personnel Board Rules in line with modern formatting standards.

Amendments to 1.7.4 NMAC – Pay

The change to 1.7.4.7 Definitions, Subsection A, clarifies the definition of “alternative pay band” to be a “pay band based on current market rate for benchmark jobs in the relevant labor market(s).”

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The change to 1.7.4.7 Definitions, Subsection D, defines “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 change to 1.7.4.7 Definitions, Subsection F, clarifies that an “in pay band adjustment” allows *base* salary growth within a pay band.

The change to 1.7.4.10 Assignment of Alternative Pay Bands, Subsection A, removes an unnecessary part of the alternative pay band description.

The change to 1.7.4.12 Administration of the Salary Schedules, Subsection C, removes the 10% cap on in pay band adjustments, but continues to permit agencies to increase an employee’s salary within the employee’s assigned pay band only once per fiscal year, subject to State Personnel Office Director approval, subject to budget availability, and reflective of appropriate placement.

The change to 1.7.4.12 Administration of the Salary Schedules, Subsection E, simplifies the description of salary upon demotion.

The change to 1.7.4.12 Administration of the Salary Schedules, Subsection F, clarifies 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 reaffirms that the pay allowance will be removed once supervisor duties are no longer performed.

The change to 1.7.4.12 Administration of the Salary Schedules, Subsection J, clarifies that the salary of former employees who are returned to work or re-employed in accordance with 1.7.10.10 NMAC, 1.7.10.12 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 change to 1.7.4.12 Administration of the Salary Schedules, Subsection K, clarifies that temporary promotion increases are separate from an employee’s base salary.

The change to 1.7.4.12 Administration of the Salary Schedules, Subsection L, clarifies that temporary salary increases are separate from an employee’s base salary.

Subsection M is deleted from 1.7.4.12 Administration of the Salary Schedules to allow the dusk to dawn provisions to be moved to 1.7.4.13 Pay Differentials, Subsection D.

The change to 1.7.4.13 Pay Differentials, Subsection A, simplifies the language allowing the State Personnel Office Director to authorize temporary recruitment differentials of more than

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15% of an employee's base pay or that result in an employee's pay exceeding the maximum of the pay band.

The change to 1.7.4.13 Pay Differentials, Subsection B, simplifies the language allowing the State Personnel Office Director to authorize temporary retention differentials of more than 15% of an employee's base pay or that result in an employee's pay exceeding the maximum of the pay band.

The change to 1.7.4.13 Pay Differentials, Subsection D, removes the out-of-state differential, replaces it with the pay for dusk to dawn differential, clarifies that agencies need to notify the State Personnel Office Director of any change to the dusk to dawn differential, and establishes that an agency can 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.

Amendments to 1.7.7 NMAC – Absence and Leave

The change to 1.7.7.8 Annual Leave, Subsection G, clarifies that accrued annual leave payout upon an employee's separation from the classified service shall be paid at the current hourly rate of the employee's *base* salary.

The change to 1.7.7.9 Donation of Annual or Sick Leave, Subsection D, clarifies that agencies need to maintain documentation on the hourly rate of *base* pay of proposed donated leave recipients.

The change to 1.7.7.9 Donation of Annual or Sick Leave, Subsection F, clarifies 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.

Subsection H is deleted from 1.7.7.10 Sick Leave, 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 is deleted to avoid any confusion with new Section 1.7.7.20 – Bereavement Leave, which contains a similar provision.

The change to 1.7.7.10 Sick Leave, Subsection I, clarifies 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.

The change to 1.7.7.11 Leave Without Pay, Subsection A, clarifies that leave without pay may be approved if an agency can assure a position of like status and *base* pay, at the same

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geographic location, upon the return of the employee, or if the employee agrees in writing to waive that requirement.

The change to 1.7.7.12 Family and Medical Leave, Subsection B, clarifies certain reasons an FMLA-eligible employee is entitled to 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 change to 1.7.7.12 Family and Medical Leave, Subsection C, clarifies 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.

The change to 1.7.7.14 Administrative Leave, Subsection D, clarifies 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 a State agency or the State of New Mexico.

Section 1.7.7.20 Bereavement Leave is added to 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, to clarify that bereavement leave is a form of administrative leave agencies may grant to employees pursuant to 1.7.7.14(A) NMAC, and to 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.

(8) Reasons for Changes from Published Proposed Rule:

There are no changes from the published proposed rules. The proposed rules, which were available for public review and introduced as an exhibit at the public hearing, have been adopted in full.

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(9) Reasons for Not Accepting Substantive Arguments from Public Comment:

There were no substantive arguments from public comment related to the amendment of 1.7.1 NMAC, the repeal and replacement of 1.7.4 NMAC, the amendment of 1.7.4 NMAC, or the amendment of 1.7.7 NMAC.

Sam Chavez, AFSCME Council 18, provided the only public comment. Mr. Chavez stated that the proposed changes to 1.7.4.13(D) NMAC (dusk to dawn pay differential) and 1.7.7.14(D) NMAC (administrative leave for employees to participate in judicial or administrative proceedings) conflict with the Collective Bargaining Agreement (CBA) between AFSCME and the State of New Mexico. However, after being given additional time, Mr. Chavez was unable to identify any specific provisions of the CBA where such a conflict exists. The one specific CBA provision Mr. Chavez pointed to, Appendix C, Health and Safety, Section 4, pertains to administrative leave for New Mexico Corrections Department employees who are recovering after being taken hostage, not to administrative leave for employees to participate in judicial or administrative proceedings.

The repealed and replaced Rule and the amended Rules, as authorized by the Board during its regular meeting held June 18, 2021, are hereby adopted as of the date of this Concise Explanatory Statement.

IT IS SO ORDERED,

ON BEHALF OF THE NEW MEXICO
STATE PERSONNEL BOARD

6/23/2021

DATE

DocuSigned by:

Laura Liswood

LAURA LISWOOD, CHAIR