

NEW MEXICO

STATE PERSONNEL OFFICE

Michelle Lujan Grisham
Governor

Dylan K. Lange
Acting Director

State Personnel Board

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Member

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Member

Interpretive Memorandum 2023-002

Date: November 3, 2023
To: Cabinet Secretaries, Agency Heads, and HR Managers
From: Dylan K. Lange, Acting Director
Subject: Administrative Leave for Voting

Purpose

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

Background

State Personnel Board Rule (1.7.7.14 NMAC) provides:

- 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 workday 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.

Covered Elections

The following statutory elections apply to administrative leave for voting:

NMSA 1978, § 1-1-19. Elections covered by code.

- A. The Election Code applies to the following:
- (1) general elections;
 - (2) primary elections;
 - (3) special elections;
 - (4) elections to fill vacancies in the office of United States representative;
 - (5) local elections included in the Local Election Act; and
 - (6) recall elections of county officers, school board members or applicable municipal officers.

Address:

2600 Cerrillos Road
Santa Fe, NM 87505-3258

Phone:

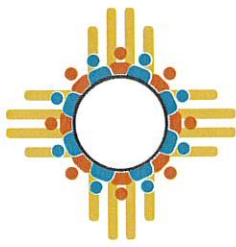
505-476-7759

Fax:

505-476-7949

Website:

www.spo.state.nm.us



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- B. To the extent procedures are incorporated or adopted by reference by separate laws governing such elections or to the extent procedures are not specified by such laws, certain provisions of the Election Code shall also apply to special district elections not covered by the Local Election Act [Chapter 1, Article 22 NMSA 1978].

NMSA 1978, § 1-12-42. Conduct of election; employees; time to vote.

- A. On *election day* a voter may absent themselves from employment in which they are 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.
- B. The provisions of Subsection A of this section do not apply to an employee whose workday 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.

Guidelines

- A. An employee utilizing administrative leave for voting shall use the Time Reporting Code "**VOTES - Voting Time Paid.**"
- B. Pursuant to NMSA 1978, § 1-12-42(A) and 1.7.7.14 NMAC, administrative leave for voting is only available on Election Day and is not available for the purposes of early voting or absentee voting.
- C. Administrative leave for voting must be requested and approved in advance. Managers and supervisors may specify the two hours between the time of opening and time of closing of the polls during which the voter may be absent.
- D. An employee must have worked hours on Election Day to be eligible for administrative leave for voting.
- E. Use of administrative leave for voting may be audited. Employees who abuse administrative leave for voting may be disciplined, up to and including dismissal.