

## NOTICE OF PROPOSED RULEMAKING

**Public Notice:** The New Mexico State Personnel Office provides notice that it will conduct a public hearing in Santa Fe at the State Personnel Office Auditorium, Willie Ortiz Building, 2600 Cerrillos Rd, Santa Fe, New Mexico, Friday, December 6, 2019 at 9:00 a.m. The purpose of the public hearing is to receive public input on the proposed repeal and replace of 1.7.1 NMAC – General Provisions and amendments to 1.7.7 NMAC – Absence and Leave.

**Authority:** Personnel Act, NMSA 1978, Sections 10-9-10 and 10-9-12.

**Purpose:** The purposes of the repeal and replacement of 1.7.1 NMAC and the amendments to 1.7.7 NMAC are to add, clarify, and amend definitions used throughout the State Personnel Board rules and update procedures to reflect current practices and changes in law. 1.7.1 NMAC is being repealed and replaced to conform to current NMAC2 style and format.

### Summary of Proposed Amendments to the Repeal and Replacement of 1.7.1 NMAC:

#### 1.7.1.7 – Definitions

The proposed changes would add, delete, or amend the following definitions to reflect current meanings:

- \* Amend definition of “anniversary date” to correct a conflict with Subsection B of NMAC 1.7.9.8 and 1.7.3.10 NMAC and clarify that classification studies do not impact the anniversary date.
- \* Add definition of “appointment” because it used throughout the Rules.
- \* Add definition of “audit” because it is used throughout the Rules.
- \* Amend definition of “break in employment” to clarify that a break relates to “period of time”.
- \* Amend definition of “candidate” to distinguish “candidate” from “applicant.”
- \* Add definition of “disciplinary action” because it is used throughout the Rules but not defined.
- \* Amend definition of “dismissal” to clarify that an employee may be dismissed for reasons other than discipline (i.e. performance, inability to perform essential functions of job, etc.).
- \* Add definition of “domestic partner” because it is used throughout the Rules but not defined. The definition is consistent with General Services Department, Risk Management Division, Employee Benefits Bureau guidance from January 2015.
- \* Amend definition of “employment list” to reflect current practice.
- \* Add definition of “employment records” because there has been an issue regarding whether employment records include applicant records (i.e. ADA requests by applicants, information on applicant lists, resumes, etc.).
- \* Delete definition of “established requirements” because this term is not used. The term “minimum qualifications,” which are established by the Board, is used.
- \* Delete definition of “first-line supervisor” because these no longer exist. (See Interpretive Memorandum 2012-001, eliminating use of first-line supervisor pay allowances, and moving employees into new supervisory job classifications, approved by the Board).
- \* Amend “line authority” definition to make clear that line authority may be delegated by the director to State Personnel Office staff or an agency.
- \* Amend definition of “manager” to allow the classification to be used for management of people or activities.
- \* Amend definition of “midpoint” to clarify its meaning.
- \* Amend definition of “minimum qualifications” to clarify that these are established by the Board and not statute, and to clarify the meaning.
- \* Amend definition of “reduction” to delete removal of supervisory or lead worker responsibilities since those duties are discretionary on the part of the agency.
- \* Add definition of “signature” to address electronic signatures.
- \* Add definition of “supervisor,” because “supervisor” and “supervisory” appear throughout the Rules but are not defined.

- \* Amend definition of “without prejudice” to remove superfluous language.
- \* Amend definition of “writing” or “written” to include electronic records.

#### 1.7.1.8 – Approval Authority

The proposed amendment would change the “quality assurance program” references in Subsection A to an “audit” function, which is more in line with current practice, and it clarified the consequences to an agency for violating the rules, policies, or State Personnel Office directives regarding administration of the collective bargaining agreements.

The proposed amendments to Subsection B would clarify what actions may be taken if an agency violates the Rules, Collective Bargaining Agreements, or agency policy.

The proposed amendments to Subsections C and D would conform this subsection with current practice. It should be noted that Board approval of the Director’s ability to grant or withdraw line authority to agencies was removed because it is within the Director’s statutory responsibility to supervise the administrative and technical personnel activities of the State of New Mexico.

#### 1.7.1.12 – Employment Records

In accordance with current practice, the proposed amendments would clarify that agencies are to maintain personnel files for each of their employees, not the State Personnel Office. Also, the proposed amendments would clarify that employees may have access to “review” their personnel files and that “interview notes” are included as confidential records. The proposed changes would also add “subpoena” to Subsection B as agencies receive subpoenas that require disclosure of employment records.

#### 1.7.1.13 – Settlement Agreements

In accordance with current practice, this proposed amendment would clarify that agencies must receive approval to make settlement offers that involve a personnel action that requires Director approval, before the offer is made. The reference to requiring joint approval by the Cabinet Secretary of the Department of Finance and Administration (“DFA”) also would be updated to be in line with current practices.

#### 1.7.1.14 – Agency Human Resources Policies

This proposed amendment would provide agencies a deadline with which to submit copies of their policies, each year.

### **Summary of Proposed Amendments to 1.7.7 NMAC:**

#### 1.7.7.7 – Definitions

The proposed amendments to this Section would add a definition of “medical emergency,” because there has been some confusion regarding what constitutes a “medical emergency” for purposes of donation of annual and sick leave, *1.7.7.9 NMAC*, Donation of Annual and/or Sick Leave.

In addition, the proposed amendments to this section would add the following definitions, based on the amendment to *1.7.7.14 NMAC*, Administrative Leave, which allows for parent-teacher conference leave:

- \* “Child” or “Children”;
- \* “Eligible employee”;
- \* “Extra-curricular activities”;
- \* “Fall semester”;
- \* “School”; and,
- \* “Spring semester”.

The proposed amendments in this section also would add the following definitions to clarify terms used or proposed in *NMAC 1.7.7.12*, Sick Leave, and *NMAC 1.7.7.14*, Family Medical Leave:

- \* “Covered active duty or call to covered active duty status”;
- \* “Covered servicemember”;
- \* “Family member”;
- \* “Health care provider”;
- \* “Medical Emergency”;
- \* “Serious health condition”;
- \* “Serious illness or injury”;
- \* “Son” or “daughter”; and,
- \* “Spouse”.

#### 1.7.7.12 – Sick Leave

The proposed amendments to Subsection A would change the sick leave accrual rate from 3.69 to 4.00 hours.

The proposed amendments to Subsection D expand the reason the use of sick leave to include illness or for medical treatment or illness of a family member in accordance with the recently enacted New Mexico Public Employee Caregiver Leave Act, Section 10-16H-1, *et seq.* NMSA 1978.

The proposed amendments in Subsections J and K also would update the Rules to comply the Public Employee Caregiver Leave Act by prohibiting disciplinary action against an employee because the employee requests or uses sick leave for medical treatment or illness of a family member in accordance with the agency’s sick leave policy and providing an appeal procedure to the Director for denials of sick leave related to medical treatment or illness of a family member or other allegations that an agency has not complied with the Public Employee Caregiver Leave Act.

#### 1.7.7.12 – Family and Medical Leave

The proposed amendments to Subsection B would clarify that Family Medical Leave may be used for baby bonding and any other qualifying exigency, in accordance with the Family Medical Leave Act (FMLA).

The proposed amendments to Subsection I would expressly permit agencies to require fitness for duty certifications when an employee returns to work from FMLA leave (some agencies do at present).

#### 1.7.7.14 – Administrative Leave

The proposed amendments to Subsection C would clarify that administrative leave for voting may only be utilized for those elections listed in Sections 1-12-42 and 1-1-19, NMSA 1978, and that administrative leave may not be used for absentee or early voting, in accordance with current practice.

The proposed amendments to Subsection D clarify when administrative leave may be used to appear in court.

The proposed amendments to Subsection F would provide for parent-teacher conference leave, in accordance with Executive Order 2014-007.

#### 1.7.7.15 – Educational Leave

The proposed amendments to Subsection A would define educational leave and when it can be used.

The proposed amendments to Subsection D would delete the requirement that an employee who uses educational leave in excess of 100 hours stay employed with the agency for triple the amount of leave taken; and, proposes to add a requirement that employees who leave within a year of taking educational leave, reimburse the agency for any educational costs incurred on behalf of the employee. This proposed amendment would also require that employees who take educational leave and fail the coursework, reimburse the agency for any education costs incurred on behalf of the employee.

#### 1.7.7.16 – Military Leave

The proposed amendments would allow for 30 days of leave, as opposed to 15. Frequently, the Governor provides an additional 15 days of leave every federal fiscal year. The proposed amendments also would clarify that the leave granted by the Governor may be used when an employee is ordered to military training, which is in line with current practice.

#### **How to Comment on the Proposed Rules:**

Interested individuals may provide comments at the public hearing and/or submit written or electronic comments to Annette Lopez, via email at [Annette.lopez2@state.nm.us](mailto:Annette.lopez2@state.nm.us), fax (505) 476-7727, or mail to Attn: Annette Lopez– Rule Changes to 1.7.1 and 1.7.7 NMAC, State Personnel Office, 2600 Cerrillos Rd., Santa Fe, New Mexico.

Written comments must be received no later than 5:00 pm on December 5, 2019. However, the submission of written comments as soon as possible is encouraged. Persons may also submit written comments at the public hearing.

#### **Copies of Proposed Rules:**

Copies of the proposed rule are available for download on the State Personnel Office's website at <http://www.spo.state.nm.us/> and available at the State Personnel Office located at 2600 Cerrillos Rd, Santa Fe, NM 87505. A copy of the proposed rule may also be requested by contacting Annette Lopez at (505) 476-7813.

#### **Special Needs:**

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Annette Lopez at (505) 476-7813 as soon as possible to provide requested special accommodations.