

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 6 GENERAL WORKING CONDITIONS

10.12.6.1 ISSUING AGENCY: Public Defender Commission
[10.12.6.1 NMAC - N, 7/1/2015]

10.12.6.2 SCOPE: Applies to employees
[10.12.6.2 NMAC - N, 7/1/2015]

10.12.6.3 STATUTORY AUTHORITY: Paragraph (6) of Subsection B of Section 31-15-2.4 NMSA 1978, Section 31-15-7 NMSA 1978, Section 12-5-2 NMSA 1978 and Sections 24-2B-1 to 24-2B-9 NMSA 1978, 5 U.S.C. Sections 1501 to 1508.
[10.12.6.3 NMAC - N, 7/1/2015; A, 5/19/2020]

10.12.6.4 DURATION: Permanent.
[10.12.6.4 NMAC - N, 7/1/2015]

10.12.6.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[10.12.6.5 NMAC - N, 7/1/2015]

10.12.6.6 OBJECTIVE: The objective of Part 6 of Chapter 12 is: to define certain acceptable activities; to prohibit certain activities and to provide legal holiday observation dates, while setting forth general working conditions for employees including employee complaint processes and readiness for work policy.
[10.12.6.6 NMAC - N, 7/1/2015]

10.12.6.7 DEFINITIONS: “Nonpartisan election” is any election for public office when the candidate’s party affiliations are neither indicated nor required.
[10.12.6.7 NMAC - N, 7/1/2015]

10.12.6.8 NEPOTISM: The department shall not permit the hiring, promotion, or direct supervision of an employee by a person who is related by blood or marriage within the third degree to the employee.
[10.12.6.8 NMAC - N, 7/1/2015]

10.12.6.9 LEGAL HOLIDAYS: Each year, prior to December 1, the chief shall publish the dates on which legal public holidays as designated in Section 12-5-2 NMSA 1978 (Repl. Pamph. 1988) shall be observed for the next calendar year.
[10.12.6.9 NMAC - N, 7/1/2015]

10.12.6.10 PROHIBITED POLITICAL ACTIVITIES: Employees are prohibited from:

- A.** allowing political or personal considerations to conflict with the interests of a department client’s case;
- B.** using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose;
- C.** directly or indirectly coercing, attempting to coerce, commanding, soliciting or advising a client, state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for a political purpose;
- D.** threatening to deny promotions or pay increases to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to a political fund, influencing subordinate employees to buy tickets to political fund-raising dinners and similar events, advising employees to take part in political activity, and matters of a similar nature;
- E.** using any state, department or client equipment, facilities, property or time resources for political purposes;
- F.** engaging in political activity while on duty; or
- G.** being an officer of a political organization.

[10.12.6.10 NMAC - N, 7/1/2015; A, 5/19/2020]

10.12.6.11 PUBLIC/POLITICAL OFFICE:

A. Employees covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] may not be candidates for partisan political office elections.

B. Employees not covered by the provisions of the Hatch Act [5 U.S.C. Sections 1501 to 1508] may be candidates for any partisan political office but the employee shall use annual leave or leave without pay, subject to approval pursuant to department policy, if campaigning requires that the employee be absent from assigned duties.

C. Employees may be candidates for nonpartisan political office, subject to the restriction set forth in 10.12.6.11 NMAC, but the employee shall use annual leave or leave without pay, subject to approval pursuant to department policy, if campaigning requires that the employee be absent from assigned duties.

D. Employees may hold only a nonpartisan county or municipal political office during employment in the department. If elected to a partisan political office, the employee shall resign from the department prior to taking the oath of office.

E. Being a local school board member or an elected member of any post-secondary educational institution shall not be construed as holding political office.

F. Employees running for or holding public office shall not use state equipment, facilities, property or time dedicated to employment duties to conduct campaign or public office related business. Violation of this Rule is punishable by disciplinary action pursuant to 10.12.11 NMAC and the criminal penalties set forth in Section 10-9-23 NMSA 1978.

G. At a minimum of 30 days prior to any entry as a candidate into a political contest, employees shall notify the department's human resource division so the department can monitor compliance with the Hatch Act and any other law.

[10.12.6.11 NMAC - N, 7/1/2015; A, 5/19/2020]

10.12.6.12 RESCISSION OF RESIGNATION: An employee may rescind a letter of resignation within three workdays of its submission and the department must honor the rescission if it is submitted within the prescribed time limit.

[10.12.6.12 NMAC - N, 7/1/2015]

10.12.6.13 EMPLOYEE COMPLAINTS:

A. Employees are provided with an in-house method for resolving complaints. All employees are encouraged to resolve complaints at the lowest level and informally if possible. Employees are encouraged to contact the human resource director before filing a formal written complaint. A complaint may be withdrawn at any time by the initiating party. Employees who utilize the formal complaint procedure or participate in the investigation of any complaint will not be subject to retaliation for participation. The employee filing the complaint is responsible for ensuring all the time limits are followed. Time limits may be waived by the complainant at any time.

B. Complaints pursuant to these sections must be submitted in writing and must include the following information:

(1) Employee name, job title, work location, date the complaint is filed and work phone number.

(2) A description and the date of the alleged incident for which the complaint is filed.

(3) The relief requested.

(4) The employee signature.

C. The complaint procedure has three levels:

(1) Level One.

(a) The employee shall present the complaint in writing to the immediate supervisor or to the district defender if the complaint is against the immediate supervisor, within ten calendar days after the complainant became aware or reasonably could have been aware, of the incident giving rise to the complaint.

(b) The supervisor or district defender notifies the human resource director to coordinate investigation of the complaint and the response to the employee. The response is due ten calendar days from the date that the supervisor is made aware of the complaint. This response will be made in writing after review by the human resource director.

(c) If the complainant determines that the supervisor or district defender's decision is unsatisfactory, the employee may appeal directly to the deputy chief. The appeal is due within ten calendar days of the level one response.

(d) If the level one complaint does not receive a response within ten calendar days, the complaint shall be deemed denied and the employee may submit the complaint to the next level.

(2) Level Two.

(a) If the complaint is against the district defender or seeks to appeal the response in level one the employee may submit the complaint to the deputy chief within ten calendar days after the complainant became aware or reasonably could have been aware, of the incident giving rise to the complaint or after the response, if any, is provided in level one.

(b) The complaint should include the response received in level one, if any, and the reasons that the response was unsatisfactory.

(c) The employee or the deputy chief sends a copy of the complaint to the human resources human resource director.

(d) Where appropriate the deputy chief reviews the level one complaint and response.

(e) The deputy chief determines if additional information is necessary or if an informal meeting is appropriate and attempts to resolve the matter.

(f) The deputy chief's decision will be returned within 14 calendar days.

(g) A copy of the response will be send to the human resources human resource director.

(h) If the complainant determines that the deputy chief's decision is unsatisfactory, the employee may appeal directly to the chief. The appeal is due within 14 calendar days of the level two response.

(i) If the level two complaint does not receive a response within 14 calendar days, the complaint shall be deemed denied and the employee may submit the complaint to the next level.

(3) Level Three.

(a) If the complaint is against the deputy chief or seeks to appeal the response in level two the employee may submit the complaint to the chief within ten calendar days after the complainant became aware or reasonably could have been aware, of the incident giving rise to the complaint or after the response, if any, is provided in level two.

(b) The complaint should include the previous response(s), if any, and the reason that the previous responses were unsatisfactory.

(c) A copy of the appeal is sent to the human resources human resource director.

(d) The chief determines if additional information or informal meetings are needed prior to making a final decision and responds to the complaint in writing within 21 days.

(e) A copy of the response is sent to the human resource director.

D. After exhausting internal procedures, a complainant may appeal to outside agencies.

(1) Complaints alleging discrimination may be appealed to the department of workforce solutions, human rights division within 180 calendar days of the alleged act; or

(2) to the equal employment opportunity commission within 300 calendar days of the alleged act.

[10.12.6.13 NMAC - N, 7/1/2015]

10.12.6.14 READINESS FOR WORK:

A. In accordance with Subsection A of 10.12.7.13 NMAC, employees who fail to appear for work without authorized leave or who appear for work in a condition that interferes with their ability their assignments in violation of this policy are considered absent without leave.

B. Employees are expected to be properly attired to meet the demands of the workday. District defenders or designee may establish reasonable dress standards as approved by the chief public defender that are set forth clearly in a memorandum. An employee who arrives at work in inappropriate attire is not ready to work and may be sent home on annual leave or leave without pay to change into appropriate clothing.

C. Department employees are expected to be fully engaged in the performance of their duties during their working hours. Conducting personal business on work time should be brief, not interfere with the duties to be performed and not disruptive to co-workers or clients. Personal business may include but is not limited to phone calls, text messaging, personal emails, reading magazines or newspapers, browsing the internet, visiting with co-workers or any other personal business not related to job duties.

[10.12.6.14 NMAC - N, 7/1/2015]

10.12.6.15 DUTY TO COOPERATE WITH INVESTIGATIONS: Allegations of violations of policies and procedures set forth by the department and state or federal law may require employees to participate as witnesses or potential witnesses in a variety of investigations.

A. Employees have a duty to cooperate in an investigation and are required to do so in good faith.

B. During the investigative process, witnesses or potential witnesses who are interviewed are responsible to maintain confidentiality about the content of their interviews.

C. Employees cannot be subjected to retaliation for cooperating with the department in investigations. Any employee who feels subjected to retaliation because of cooperating in an investigation should contact the human resource director immediately.

[10.12.6.15 NMAC - N, 7/1/2015; A, 5/19/2020]

HISTORY OF 10.12.6 NMAC [RESERVED]