

**TITLE 10       PUBLIC SAFETY AND LAW ENFORCEMENT**  
**CHAPTER 4     DISTRICT ATTORNEYS**  
**PART 3        COMPENSATION PLAN**

**10.4.3.1       ISSUING AGENCY:** Administrative Office of the District Attorneys  
[10.4.3.1 NMAC - N, 06/30/2010]

**10.4.3.2       SCOPE:** This part sets forth the rules for the establishment, maintenance and administration of an equitable, uniform compensation plan which shall be applicable to all positions in the offices of the district attorneys and the administrative office of the district attorneys.  
[10.4.3.2 NMAC - Rp, NMDAA 91-1.2.01, 06/30/2010]

**10.4.3.3       STATUTORY AUTHORITY:** This rule is adopted pursuant to:

- A.       Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;
- B.       Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;
- C.       Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;
- D.       Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and
- E.       Section 36-1A-8 (B) (2) NMSA 1978 which requires the promulgation of district attorney personnel rules governing a compensation plan for all positions.

[10.4.3.3 NMAC - N, 06/30/2010]

**10.4.3.4       DURATION:** Permanent  
[10.4.3.4 NMAC - N, 06/30/2010]

**10.4.3.5       EFFECTIVE DATE:** June 30, 2010, unless a later date is cited at the end of a section.  
[10.4.3.5 NMAC - N, 06/30/2010]

**10.4.3.6       OBJECTIVE:** To establish for all district attorneys a uniform, equitable and binding system of personnel administration.  
[10.4.3.6 NMAC - N, 06/30/2010]

**10.4.3.7       DEFINITIONS:** [RESERVED]  
[See 10.4.1.7 NMAC]

**10.4.3.8       ESTABLISHMENT OF COMPENSATION PLAN:**

- A.       The compensation plan shall consist of the approved classification and salary schedule, the rules governing the administration of the personnel and compensation plan, approved job specifications and an employee performance appraisal form.
- B.       Based on an approved methodology of job measurement, each classification shall be assigned a salary range that reflects the job content, accountability, job context and salary comparability. All employees shall be paid in accordance with the rates shown in the official salary schedule.
- C.       The classification and salary schedule shall consist of, but not be limited to, classifications or class titles, salary ranges and the minimum, midpoint and maximum rates of pay for all classes.

[10.4.3.8 NMAC - Rp, NMDAA 91-1.2.03, 06/30/2010]

#### **10.4.3.9 NEW EMPLOYEE'S ENTRANCE SALARY:**

A. A district attorney may pay a newly hired employee from the minimum rate to the midpoint of the salary range of the appointed class. The salary placement above the minimum rate must be based on the following documented assessments:

(1) the employee possesses training or experience substantially above the minimum qualifications required for the class and the district attorney determines that the employee is exceptionally well qualified for the position; and

(2) other factors may include the availability of suitable applicants, geographic location and special circumstances affecting the applicant or the district attorney.

B. The district attorney must base salary placement above the midpoint on documented assessment of the new employee's relevant education, experience, salary history, review of salaries of current employees performing the same job, qualifications and other relevant factors. In such cases, the district attorney, subject to fund availability, may pay the new employee at any rate up to fifteen percent (15%) above the midpoint compensation rate with the prior approval of the board.

[10.4.3.9 NMAC - Rp, NMDAA 91-1.2.05, 06/30/2010]

**10.4.3.10 REINSTATED EMPLOYEE ENTRANCE SALARY:** An employee who has been granted an authorized leave of absence without pay upon returning to the same position or equivalent position shall be paid at the same rate paid at the time leave was granted. If a pay range adjustment has occurred during such an absence, the employee's pay rate shall be adjusted to the minimum entry level salary if the minimum of the new range is higher than the rate paid at the time leave was granted.

[10.4.3.10 NMAC - Rp, NMDAA 91-1.2.06, 06/30/2010]

#### **10.4.3.11 SALARY ADMINISTRATION:**

A. Promotion/reclassification. A promotion is a reassignment of an employee to a position with a higher salary range. Upon promotion, an employee's salary may be increased up to the mid-point of the new job class. Any increases beyond mid-point of the new job class must be justified in writing based on qualifications, years of experience, expertise, etc. with prior approval of the board. No salary upon promotion may exceed the maximum rate of the new range.

B. Reduction in class. An employee may elect to or be placed in a job at a lower salary due to pending layoff or reduction-in-force or other reasons, if such position exists, with the approval of the district attorney. When a reduction in class occurs, the employee's salary shall in no event be increased and shall be no greater than the maximum salary of that class.

C. Demotion. At the discretion of the district attorney, an employee may be demoted to a position at a lower salary range, due to unsatisfactory job performance, misconduct or other disciplinary considerations. When an employee is demoted, his/her present salary must be reduced by at least 5%, to a rate within the salary range of the class to which demoted and shall not exceed the maximum of the new salary range.

D. Range changes. Subject to legislative approval, the salaries of all employees affected by range changes due to market pricing reviews, job measurement studies, and classification studies shall be adjusted to at least the minimum rate of the new salary range.

E. Merit based salary increases. Subject to legislative appropriations, employee performance appraisals may be the basis for merit-based salary increases. A merit-based salary increase, however, may not exceed the maximum salary level for an employee's job class according to the approved salary schedule.

F. Temporary salary adjustment. A district attorney may grant a temporary salary adjustment, for up to six (6) months, to an employee who temporarily accepts the duties of a higher classification. The temporary salary adjustment shall not exceed ten percent (10%) of the employee's current salary. The district attorney shall, at the end of the temporary job assignment, revert the employee to his/her previous salary, plus any pay increases for which the employee may have been eligible.

G. Budgetary limitations. All provisions of this part relating to payment of salaries are contingent upon funds being available.

H. Effective date of salary changes. The effective date of all salary changes provided for in this part shall be the first day of a pay period following approval by the district attorney.

I. Out-of-cycle salary increase:

(1) An employee may be awarded an out-of-cycle salary increase. Documentation must exist that justifies the increase. Employees will be limited to one (1) out-of-cycle salary increase per fiscal year, not including

adjustments or other increases as approved and appropriated by the legislature. The increase shall not exceed fifteen percent (15%) of an incumbent's current hourly rate.

(2) The following requirements must be met when requesting out-of-cycle salary increases.

(a) An out-of-cycle salary increase shall not be granted to a new employee unless the employee has completed a period of at least six (6) months in the same position.

(b) An out-of-cycle salary increase shall not affect the date on which an employee is eligible for any other increase in salary.

(c) An out-of-cycle salary increase shall not be requested unless adequate funds exist in the current budget. It may only be funded through vacancy savings or other approved revenues as long as the increase does not result in a request for a deficiency or supplemental appropriation from the legislature nor for emergency funding from the state board of finance.

(d) An out-of-cycle salary increase may be in the form of either a lump sum payment or an increase to an employee's base hourly rate.

(e) An out-of-cycle salary increase shall not be requested if an employee's last performance appraisal did not reflect a rating of "meets expectations" or higher.

(f) All out-of-cycle salary increases shall be justified in writing to the personnel review board utilizing the request for out-of-cycle salary increase form and based on at least one of the following criteria:

(i) An employee's assigned duties have significantly exceeded the expected and established job requirements of the employee's job class, and their performance remains at a fully effective level or higher.

(ii) An employee's performance of duties has involved overcoming unusual prolonged difficulties.

(iii) An employee's performance has involved special effort or special innovations resulting in significant economic savings or improvements.

(iv) An employee's salary is not comparable to their level of performance or job responsibility when compared with employees in similar positions with similar work experience.

(v) An employee has been offered a job, in writing, by an employer outside of this personnel compensation plan and an incentive for emergency retention purposes is warranted.

(g) The administrative office of the district attorneys must submit an approved request form (request for out-of-cycle salary increase) which shall be sent to both the department of finance and administration and the legislative finance committee analysts assigned to the district attorneys.

(h) All out-of-cycle salary increases shall be approved by the district attorney personnel review board.

(i) The total number of out-of-cycle salary increases shall not exceed 20% of all eligible employees per office during the fiscal year.

[10.4.3.11 NMAC - Rp, NMDAA 91-1.2, 06/30/2010]

#### **10.4.3.12 DISTRICT ATTORNEYS REQUEST FOR OUT-OF-CYCLE SALARY INCREASE**

**FORM:** With regard to out-of-cycle salary increases, a form entitled "request for out-of-cycle salary increase" shall be completed and submitted. The form may be created and revised from time to time by the administrative office of the district attorneys, subject to the approval or ratification by the district attorneys as a group. The current version of the form shall be maintained by, and is available upon request from, the administrative office of the district attorneys and may contain the following information:

- A. date submitted;
- B. indication of whether the position is a non-general fund, term or contract position;
- C. employee name;
- D. job class;
- E. current hourly salary;
- F. proposed hourly salary;
- G. date of last salary increase;
- H. percentage increase over current salary;
- I. lump sum amount;
- J. date of appointment to current class;
- K. date and rating of last performance evaluation;
- L. source of available funds;
- M. if the increase was to the base hourly rate, an indication of:

- (1) the amount required from the effective date to the end of the current fiscal year; and
  - (2) the amount required for a full fiscal year;
  - N. reasons for a salary increase;
  - O. a certification by the district attorney and the chief financial officer for the district attorney that based on the agency's most recent budget projections, the out-of-cycle salary increase will not result in the agency having to request either a deficiency or a supplemental appropriation from the legislature or emergency funding from the state board of finance, and it will not result in an increase to the base operating budget; and
  - P. a dated certification from a representative of the district attorney personnel review board that the out-of-cycle salary increase request was reviewed and approved by the district attorney personnel review board.
- [10.4.3.12 NMAC - N, 06/30/2010]

**HISTORY OF 10.4.3 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center:

NMDAA 90-1, New Mexico District Attorney's Association Personnel Rules and Regulations for New Mexico District Attorneys Association, filed 2/22/90.

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91.

**History of Repealed Material:**

NMDAA 91-1, Personnel and Compensation Plan for the Employees of the District Attorneys of the State of New Mexico, filed 6/11/91 - Repealed effective 06/30/2010.