

**TITLE 10       PUBLIC SAFETY AND LAW ENFORCEMENT**  
**CHAPTER 4     DISTRICT ATTORNEYS**  
**PART 5        REDUCTION IN FORCE**

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

**10.4.5.2       SCOPE:** This part sets forth the layoff procedure affecting covered employees in the event of a reduction in force.  
[10.4.5.2 NMAC - Rp, NMDAA 91-1.4.01, 06/30/2010]

**10.4.5.3       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) (6) NMSA 1978 which requires the promulgation of district attorney personnel rules governing reduction in force.

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

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

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

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

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

**10.4.5.8       LAYOFF PROCEDURE:**

- A.       When a covered position cannot be continued due to the lack of work, lack of legislatively appropriated funds or other reasons that do not reflect discredit on the services of employees, the district attorney may order a reduction in personnel.
- B.       A district attorney may propose to divide their office into organizational units based on the needs of the office for purposes of layoff. Such organizational units may be recognized on the basis of geographic area, function or classification and may be different for different classifications.
- C.       The order of layoff due to reduction in force shall be based upon type of appointment, classification and length of uninterrupted service with the district attorney's office where employed.
- D.       Employees in that classification series to be affected by a layoff shall be given two (2) weeks written notice of such action.

E. For layoff purposes, employees in the various organizational units shall be laid off in the following order:

- (1) temporary employees;
- (2) probationary employees in term positions;
- (3) probationary employees in permanent positions;
- (4) covered employees in term positions; and
- (5) covered employees in permanent positions.

[10.4.5.8 NMAC - Rp, NMDAA 91-1.4.03, 06/30/2010]

#### **10.4.5.9 RECALL RIGHTS:**

A. For a period of six (6) months following a layoff, affected employees shall be given priority for reinstatement to their former positions at the same pay or to a similar position for which they qualify at a lower, equivalent or higher rate of pay in the reverse order in which they were laid off (see Subsections C and E of 10.4.5.8 NMAC).

B. The district attorney shall advise the employee to be recalled by certified or registered United States mail. Laid off employees have the responsibility of keeping the district attorney informed as to their current mailing address.

C. Recall rights shall cease:

- (1) six (6) months after the effective date of layoff;
- (2) when an employee refuses to accept employment with the district attorney in a position for which they are qualified and for which the pay is the same or comparable to that of the position from which they were laid off;
- (3) when an employee unconditionally accepts another position with the district attorney;
- (4) when a former employee fails to respond to an offer of re-employment; or
- (5) when a former employee who accepts re-employment after layoff fails to occupy the position within the allotted time.

[10.4.5.9 NMAC - Rp, NMDAA 91-1.4.04, 06/30/2010]

#### **HISTORY OF 10.4.5 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.