

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 4 PAY

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

10.12.4.2 SCOPE: Applies to all employees.
[10.12.4.2 NMAC - N, 7/1/2015]

10.12.4.3 STATUTORY AUTHORITY: Section 31-15-2.4(B)(6) NMSA 1978 and Section 31-15-7 NMSA 1978; and 29 U.S.C. Sections 201 to 262.
[10.12.4.3 NMAC - N, 7/1/2015]

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

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

10.12.4.6 OBJECTIVE: The objective of Part 4 of Chapter 12 is to provide a uniform system of pay administration for employees that is externally competitive and internally equitable.
[10.12.4.6 NMAC - N, 7/1/2015]

10.12.4.7 DEFINITIONS:

A. “Alternative pay range” means the range of pay rates, from the minimum to the maximum for a classification based on the current market rate for benchmark jobs in the relevant labor market(s).

B. “Alternative work schedule” means a schedule that is requested by an employee and approved by the agency that deviates from the normal work schedule.

C. “Appropriate placement” means those elements to be considered in determining pay upon hire, promotion, transfer or reduction including the employee’s education, experience, training, certification, licensure, internal pay equity, budgetary availability and, when known and applicable, employee performance.

D. “Comparison market” means an identified group of employers for which similar jobs can be recognized for the primary purpose of obtaining information that can be used to assess how competitive employee pay levels are relative to the market.

E. “Contributor proficiency zones” means subdivisions of the pay range that designate the employee’s contribution in their job role. These proficiency zones are characterized as associate, independent and principal zones.

F. “In pay range adjustment” means movement within a pay range for demonstrated performance, skill or competency development, and/or internal alignment, which allows department management to provide salary growth within a pay range.

G. “Internal alignment” means an adjustment that addresses pay issues involving the proximity of one employee’s salary to the salaries of others in the same classification who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.

H. “Normal work schedule” means a schedule established by the department, defining a start and end time for the employee.

I. “Pay plan” means a document developed by the human resource director and approved annually by the chief, that describes the chief’s compensation philosophy and it is the foundation for ensuring consistent application of the philosophy

J. “Total compensation” means all forms of cash compensation and the dollar value of the employer-sponsored benefit.

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

10.12.4.8 PAY PLAN:

A. The human resource director, pursuant to direction from the chief, shall establish, maintain and, administer a pay plan for all positions throughout the department, which shall include the pertinent factors that should be considered by managers for determining and justifying appropriate placement within a pay range.

B. The chief shall adopt a recognized method of job evaluation to uniformly and consistently establish the value of each level.

C. The human resource director shall conduct an annual compensation survey that includes total compensation. The comparison market shall be comprised of private and public entities within the state of New Mexico, and regional state government employers. The chief or human resource director may authorize or include additional comparison markets when deemed necessary and appropriate.

D. Prior to the end of each calendar year, the human resource director shall submit to the chief a compensation report that includes a summary of the status of the department pay system and the results of the annual compensation survey that includes total compensation. The chief shall review, adopt and submit this report to the public defender commission.

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

10.12.4.9 ASSIGNMENT OF PAY RANGES: The human resource director shall appoint a job evaluation committee composed of no less than three members including the human resource director and the deputy chief for administration. The human resource director will provide training in the job evaluation and measurement process. The committee shall apply the job evaluation and measurement process to all newly created or revised classifications.

A. The committee shall submit the results of the job evaluation(s) as recommendations to the human resource director. The human resource director shall review the results and convert the total job evaluation points to the appropriate pay range. The human resource director shall submit the pay range assignment results to the chief for adoption.

B. A re-evaluation of a classification may be requested by management which, based upon their analysis, is inappropriately valued. Re-evaluations may be conducted no more than once every 24 months unless otherwise approved by the human resource director or the chief.

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

10.12.4.10 ASSIGNMENT OF ALTERNATIVE PAY RANGES:

A. The human resource director may recommend to the chief the assignment of an alternative pay range(s)

(1) Alternative pay range(s) will be utilized to address compensation related to recruitment and retention issues.

(2) All jobs in an alternative pay range have the same range of pay: minimum, maximum and midpoint pay.

B. Requests for alternative pay ranges must meet criteria established in the pay plan.

C. The chief may assign alternative pay ranges based on the human resource director's report on comparison market surveys, or additional market survey information, to address critical recruitment/retention issues.

D. The assignments to alternative pay ranges shall be reviewed annually to determine their appropriateness. The human resource director shall recommend to the chief the continuation or removal of the alternative pay range assignments. The salary of affected employees shall be governed by Subsection H. of 10.12.4.12 NMAC.

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

10.12.4.11 SALARY SCHEDULES:

A. Based on the pay plan, the human resource director shall develop and maintain salary schedules for the department that shall consist of pay ranges.

B. No employee in the department shall be paid a salary less than neither the minimum nor greater than the maximum of their designated pay range unless otherwise authorized by the human resource director or chief, or provided for in these rules, or the employee has been transferred into the department by statute or order of a court of competent jurisdiction.

C. The human resource director, pursuant to the direction of the chief, shall adjust the salary schedules to address the external competitiveness of the department and/or other concerns. Employees whose pay range is adjusted upward or downward shall retain their current salary. Such salary schedule adjustments may result

in employees temporarily falling below the minimum or above the maximum of their pay range upon implementation.

(1) The pay of employees who would be above the maximum of the pay range shall not be reduced.

(2) The pay of employees who fall below the minimum of their pay range shall be raised to the minimum unless the human resource director confirms that the agency does not have budget availability. In these instances, department shall raise the pay of employees to the minimum of their pay range within six months of the effective date of the salary schedule adjustment. The chief may grant an extension to the six month time period upon submission and approval of a plan to raise the pay of employees to the minimum of their pay range.

D. An employee's placement in the pay range will be identified by a compa-ratio value.
[10.12.4.11 NMAC - N, 7/1/2015]

10.12.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:

A. **Entrance salary:** Upon entrance to a department position, a newly-appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay range. Any entrance salary in the principal contributor zone must receive approval from the human resource director prior to appointment.

B. **Legislative authorized salary increase:**

(1) Subject to specific statutory authorization for each state fiscal year, employees may be eligible for a salary increase within their assigned pay range.

(2) Employees with a salary at or above the maximum of the position's pay range shall not be eligible for an increase unless authorized by statute.

C. **Salary upon in pay range adjustment:** Upon in pay range adjustment, subject to chief approval, budget availability and reflective of appropriate placement, the department may increase an employee's salary up to 10% during a fiscal year. An employee may receive more than one adjustment within a fiscal year provided the salary increases do not exceed more than 10% and the employee's base salary does not exceed the maximum of the assigned pay range. When reviewing requests for in pay range adjustments the chief will take into consideration those instances where the requesting manager has employees with a current rate of pay that falls below the minimum of their pay range.

D. **Salary upon promotion:** Upon promotion, an employee's salary, subject to budget availability, should reflect appropriate placement within the pay range. A salary increase of less than 5% or greater than 15% shall require approval of the chief. A salary increase greater than 15% to bring an employee's salary to the minimum of the pay range or less than 5% to prevent an employee's salary from exceeding the maximum of the pay range does not require the approval of the chief. The salary of a promoted employee shall be in accordance with Subsection B. of 1.12.4.11 NMAC.

E. **Salary upon demotion:** Upon demotion, an employee's salary shall be decreased to an hourly rate of pay which does not result in more than a 15% decrease from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new pay range or the decrease is being made in accordance with Paragraph (2) of Subsection F. of 10.12.4.12 NMAC.

F. **Pay allowance for performing first line supervisor duties:**

(1) The department may grant a pay allowance to an employee in a non-manager classification who accepts and consistently performs additional duties which are characteristic of a first line supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the technical occupation group and may be between 0% and 20% above the employee's base pay rate.

(2) When the supervisor duties are no longer being performed, the department shall revert the employee to the hourly rate of pay held prior to granting the pay allowance, plus any authorized pay increases.

(3) The department shall require that a form, established by the human resource director, be signed by all employees at the time of acceptance of a pay allowance evidencing their agreement to the terms and conditions of the pay allowance.

G. **Salary upon intra- agency transfer:**

(1) Upon intra-agency transfer an employee's salary, subject to budget availability and reflective of appropriate placement, may be increased up to 10%. The chief may approve a salary increase greater than 10% due to special circumstances that are justified in writing.

(2) Employees shall be compensated, for compensatory time accumulated in accordance with the overtime provisions of the Fair Labor Standards Act (FLSA) prior to intra-agency transfer.

(3) Employees shall not be compensated, for compensatory time accumulated while exempt from the overtime provisions of the FLSA, prior to intra-agency transfer.

H. Salary upon pay range change: When a change of pay range is authorized in accordance with the provisions of 10.12.4.9 NMAC, 10.12.4.10 NMAC or 10.12.4.11 NMAC the salaries of affected employees shall be determined in accordance with Subsection C. of 10.12.4.11 NMAC. Employees whose pay range is adjusted upward or downward shall retain their current salary in the new pay range. Employees' salaries may be addressed through in pay range adjustment unless otherwise allowed by statute.

I. Salary upon reduction: The salary of employees who take a reduction may be reduced by up to 15% unless the reduction is made in accordance with Paragraph (2) of Subsection F. of 10.12.4.12 NMAC. An employee's salary should reflect appropriate placement within the pay range. The chief may approve a salary reduction greater than 15% due to special circumstances that are justified in writing.

J. Salary upon return to work or reemployment: The salary of former employees who are returned to work or re-employed in accordance with the provisions of 10.12.10 NMAC, 10.12.11 NMAC, 10.12.12 NMAC, or 10.12.14 NMAC shall not exceed the hourly pay rate held at the time of separation unless a higher salary is necessary to bring the employee to the minimum of the pay range.

K. Salary upon temporary promotion: Pay for a temporary promotion shall be treated the same as a regular promotion. The department shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

L. Temporary salary increase: The chief may grant a temporary salary increase of up to 15%, for a period not to exceed 1 year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a job requiring greater responsibility/accountability and/or a higher valued job. The chief may approve temporary salary increases above the maximum of the employee's current pay range. The department shall discontinue the temporary salary increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

M. Salary adjustment to minimum: An employee whose salary falls below the minimum of the pay range will be adjusted in accordance with Paragraph (2) of Subsection C of 10.12.4.11 NMAC.
[10.12.4.12 NMAC - N, 7/1/2015]

10.12.4.13 PAY DIFFERENTIALS:

A. Temporary recruitment differential: The chief may authorize, in writing, a pay differential of up to 15% of an employee's base pay to an employee who fills a position which has been documented as critical to the effective operation of the department and has been demonstrated and documented to be a severe recruitment problem for the department.

(1) A temporary recruitment differential authorized under this provision shall be tied to the position and may not transfer with the employee should the employee leave that position. Payment of this differential shall be separate from the employee's base salary.

(2) A temporary recruitment differential of more than 15% of an employee's base pay or a total salary (base pay plus differential amount) that exceeds the maximum of the pay range may be authorized if approved by the chief.

B. Temporary retention differential: The chief may authorize, in writing, a pay differential of up to 15% of an employee's base pay to an employee in a position which the department has documented and has been designated as critical to the effective operation of the department and the employee's departure would disrupt the agency's ability to fulfill its mission.

(1) A temporary retention differential authorized under this provision may be approved up to one year. The manager must provide a detailed plan to the chief that outlines how they intend to resolve the problems associated with the retention difficulties. Payment of this differential shall be separate from the employee's base salary and may not transfer with the employee should the employee leave that position.

(2) A temporary retention differential of more than 15% of an employee's base pay or a total salary (base pay plus differential amount) that exceeds the maximum of the pay range may be authorized if approved by the chief.

C. The temporary recruitment differential and the temporary retention differential are separate and distinct pay differentials that are administered separately.

D. Out-of-state differential: The chief may authorize an out-of-state differential to an employee up to the maximum of the pay range if the department is able to substantiate that the employee's current salary is insufficient to adequately pay an employee while working or residing out of state. Payment of this differential

should be separate from the employee's base salary. A total salary (base pay plus differential amount) that exceeds the maximum of the pay range may be authorized if approved by the chief.
[10.12.4.13 NMAC - N, 7/1/2015]

10.12.4.14 OVERTIME:

A. The office is responsible for the evaluation of each employee's position and duties in order to determine their overtime status as set forth under the Fair Labor Standards Act.

B. The office shall provide documentation to employees as to the determination of their overtime status.

C. Employees have the right to appeal the determination of their overtime status in accordance with the internal complaint process to the human resource director. The human resource director shall notify employees in writing of the appeal decision within 30 calendar days. The employee may file an appeal of the human resource director's decision to the chief within 30 calendar days of the human resource director's decision. The office shall notify employees that their appeal to the chief must be in writing and must include the reason(s) why the employee believes he or she is improperly identified for overtime coverage. The appeal must include documentation describing the work currently being performed by the employee and any other relevant information. All information contained in the appeal shall be verified by the department.

D. The office shall maintain a record on each employee containing information required by the provisions of the FLSA.

E. Workweek is a period of time which begins at 12:01 a.m. Saturday, and ends at 12:00 midnight, the following Friday. The chief may approve an alternative workweek.

F. Time worked in excess of 40 hours during the designated workweek shall be compensated in accordance with the provision of the Fair Labor Standards Act 29 U.S.C. Sections 201 to 262 for covered, non-exempt employees.

G. The department shall not change the workweek to avoid payment of overtime. A change to the scheduled work hours within the workweek shall not be considered a change to the workweek.

H. The department shall determine the need for employees to work overtime, and be responsible for authorizing overtime work.

I. Paid holiday leave in accordance with the provisions of Subsection A of 10.12.4.17 NMAC, annual leave taken in accordance with the provisions of Subsection F. of 10.12.7.8 NMAC, and administrative leave for voting taken in accordance with the provisions of Subsection C. of 10.12.7.14 NMAC shall also count as time worked in the consideration of overtime for FLSA covered, non-exempt employees.

J. The department shall pay FLSA covered, non-exempt employees for overtime worked unless the employee, in advance, agrees in writing to compensatory time off. Non-exempt employees may accrue a maximum of 240 hours of compensatory time, unless otherwise authorized by statute and shall be paid for accrued compensatory time upon separation.

K. Employees not covered or exempt from the overtime provisions of the FLSA may be compensated for overtime at the discretion of the chief and subject to budget availability.

L. Any additional regular hours worked shall not be substituted for approved paid leave time during the same week additional regular hours were worked.

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

10.12.4.15 HOLIDAY PAY:

A. When an authorized holiday falls on an employee's regularly scheduled work day and the employee is not required to work, the employee shall be paid at their hourly rate of pay for the number of hours they would have normally worked.

B. Full-time employees, whose normal work schedule does not include the day observed as a holiday, shall be entitled to time off equal to the employee's normal workday.

C. Employees required to work on the day a holiday is observed, shall be compensated at two and one-half times their hourly rate of pay for all hours actually worked on the holiday. Such compensation shall be in the form of straight time cash payment for all hours actually worked and additional premium compensation, at the chief's discretion, of either compensatory time off or cash payment at one and one-half times the usual hourly rate of pay for all hours actually worked.

D. Part-time employees whose normal work schedule does not include the day a holiday is observed shall not be compensated for the holiday.

E. Employees who have been charged absence without leave on the workday prior to or directly following a holiday shall not be paid for the holiday.
[10.12.4.15 NMAC - N, 7/1/2015]

10.12.4.16 GOVERNMENT COST SAVINGS INCENTIVE AWARDS: The department may provide cash awards to employees with the approval of the chief in accordance with the provisions of Section 10-7-12 NMSA 1978.
[10.12.16 NMAC - N, 7/1/2015]

HISTORY OF 10.12.4 NMAC [RESERVED]