

## **ARTICLE 9**

### **Personnel**

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#### **10-9-1. Short title.**

This act may be cited as the "Personnel Act".

#### **10-9-2. Purpose of act; enactment under constitution.**

The purpose of the Personnel Act [ [10-9-1](#) NMSA 1978] is to establish for New Mexico a system of personnel administration based solely on qualification and ability, which will provide greater economy and efficiency in the management of state affairs. The Personnel Act is enacted under and pursuant to the provisions of [Article 7, Section 2](#) of the constitution of New Mexico, as amended.

#### **10-9-3. Definitions.**

As used in the Personnel Act [ [10-9-1](#) NMSA 1978]:

- A. "director" means the personnel director;
- B. "board" means the personnel board;
- C. "service" means the state personnel service created by the Personnel Act, and includes all positions covered by the Personnel Act;

- D. "position" means any state office, job, or position of employment;
- E. "employer" means any authority having power to fill positions, in an agency;
- F. "agency" means any state department, bureau, division, branch or administrative group which is under the same employer;
- G. "class" means a group of positions similar enough in powers and responsibilities that they can be covered by the same qualifications and rate of pay;
- H. "test" means a test of the qualifications, fitness and ability, and includes tests that are written, oral, physical or in the form of a demonstration of skill or any combination thereof;
- I. "employee" means a person in a position in the service who has completed his probationary period; and
- J. "probationer" means a person in a position in the service who is still in the probationary period for that position.

**10-9-4. Coverage of service.**

The Personnel Act [ [10-9-1](#) NMSA 1978] and the service cover all state positions except:

- A. officials elected by popular vote or appointed to fill vacancies to elective offices;
- B. members of boards and commissions and heads of agencies appointed by the governor;
- C. heads of agencies appointed by boards or commissions;
- D. directors of department divisions;
- E. those in educational institutions and in public schools;
- F. those employed by state institutions and by state agencies providing educational programs and who are required to hold valid certificates as certified school instructors as defined in [Section 22-1-2](#) NMSA 1978 issued by the state board of education;
- G. those in the governor's office;
- H. those in the state militia or the commissioned officers of the New Mexico state police division of the department of public safety;
- I. those in the judicial branch of government;
- J. those in the legislative branch of government;
- K. not more than two assistants and one secretary in the office of each official listed in Subsections A, B and C of this section, excluding members of boards and commissions in Subsection B of this section;
- L. those of a professional or scientific nature which are temporary in nature;
- M. those filled by patients or inmates in charitable, penal or correctional institutions;
- N. state employees if the personnel board in its discretion decides that the position is one of policymaking; and
- O. disadvantaged youth under twenty-two years of age regularly enrolled or to be enrolled in a secondary educational institution approved by the state board of education or in an accredited state institution of advanced learning or vocational

training and who are to be employed for not more than seven hundred twenty hours during any calendar year:

- (1) the term "disadvantaged youth" shall be defined for purposes of this exemption by regulation duly promulgated by the board; and
- (2) the board shall:
  - (a) require that all the criteria of this subsection have been met;
  - (b) establish employment lists for the certification of the highest-standing candidates to the prospective employers; and
  - (c) establish the pay rates for such employees.

**10-9-4.1. Personnel Act; rocky mountain information network employees; exemption from coverage.**

A. Notwithstanding the provisions of [Section 10-9-4](#) NMSA 1978, all employees of the rocky mountain information network who commence employment on or after the effective date of this act are exempt from coverage under the Personnel Act [ [10-9-1](#) NMSA 1978].

B. Notwithstanding the provisions of [Section 10-9-4](#) NMSA 1978, any employee of the rocky mountain information network who was employed prior to the effective date of this act may elect to become exempt from coverage under the Personnel Act by filing a written election to do so with the director of the rocky mountain information network and the director of the state personnel office. An election is effective upon filing and shall be irrevocable so long as the employee remains employed by the rocky mountain information network.

C. As used in this section, "rocky mountain information network" means that project funded by the United States department of justice, regulated by the provisions of 28 Code of Federal Regulations, Part 23, created as part of the regional information sharing systems program established by the United States department of justice and serving law enforcement agencies in the states of New Mexico, Arizona, Nevada, Colorado, Wyoming, Montana, Idaho and Utah.

**10-9-5. Public officers and public employees; executive branch; annual exempt salaries plan.**

A. The department of finance and administration shall prepare, by December 1 of each year, an exempt salaries plan for the governor's approval. The plan shall specify salary ranges for the following public officer and public employee positions of the executive branch of government:

- (1) members of boards and commissions appointed by the governor;
- (2) heads of agencies or departments appointed by the governor;
- (3) heads of agencies or departments appointed by the respective boards and commissions of the agencies;
- (4) directors of department divisions;
- (5) employees in the governor's office;
- (6) positions in the state militia and the commissioned officers of the New Mexico state police division of the department of public safety;
- (7) assistants and secretaries in the offices of each official covered by Paragraphs (2), (3) and (10) of this subsection;

- (8) positions of a professional or scientific nature which are temporary in nature;
  - (9) state employees whose positions the personnel board has classified as policy-making positions and exempt employees of elective public officials; and
  - (10) secretaries of departments appointed by the governor.
- B. Excluded from the provisions of this section are employees of the commission on higher education and employees of state educational institutions named in [Article 12, Section 11](#) of the constitution of New Mexico.
- C. The exempt salaries plan for the ensuing fiscal year, as prepared by the department of finance and administration and approved by the governor, shall be published as a part of the executive budget document presented to the legislature at its next regular session following the preparation of the plan.
- D. Upon the governor's approval, the plan shall take effect at the beginning of the subsequent fiscal year.

**10-9-6. Certified school instructors previously employed under the provisions of the Personnel Act.**

Certified school instructors who were employed as certified school instructors by state institutions or state agencies under the provisions of the Personnel Act [ [10-9-1 NMSA 1978](#)] prior to July 1, 1974, may elect to continue to be employed under the Personnel Act. Certified school instructors who elect to continue under the Personnel Act shall file a notice of such election with the personnel director prior to the effective date of this act.

**10-9-7. Certain rules changes requiring legislative approval.**

The state personnel office shall not spend any of its appropriation for the promulgating or filing of rules, policies or plans which have significant financial impact or which would require significant future appropriations to maintain without prior, specific legislative approval.

**10-9-8. Personnel board; appointment.**

The personnel board is created, and shall be composed of five members appointed by the governor and confirmed by the senate, who shall served staggered terms of five years each with one board member's term expiring each year. No person shall be a member of the board or eligible for appointment to the board who is an employee in the service, holds political office or is an officer of a political organization.

**10-9-9. Board members; pay; meetings.**

Each board member shall be paid per diem and mileage according to the Per Diem and Mileage Act [ [10-8-1 NMSA 1978](#)] when traveling on board business. The board shall meet at the call of the chairman but in the absence of such call, at least once every two months.

**10-9-10. Board duties.**

The board shall:

- A. promulgate regulations to effectuate the Personnel Act [ [10-9-1](#) NMSA 1978];
- B. hear appeals and make recommendations to the employers;
- C. hire, with the approval of the governor, a director experienced in the field of personnel administration;
- D. review budget requests prepared by the director for the operation of the personnel program and make appropriate recommendations thereon;
- E. make investigations, studies and audits necessary to the proper administration of the Personnel Act;
- F. make an annual report to the governor at the end of the fiscal year;
- G. establish and maintain liaison with the general services department; and
- H. represent the public interest in the improvement of personnel administration in the system.

**10-9-11. Board and office administratively attached to general services department.**

The board and the state personnel office are administratively attached, as defined in the Executive Reorganization Act [ [9-1-1](#) NMSA 1978], to the general services department.

**10-9-12. Director duties.**

The director shall:

- A. supervise all administrative and technical personnel activities of the state;
- B. act as secretary to the board;
- C. establish, maintain and publish annually a roster of all employees of the state, showing for each employee his division, title, pay rate and other pertinent data;
- D. make annual reports to the board;
- E. recommend to the board rules he considers necessary or desirable to effectuate the Personnel Act [ [10-9-1](#) NMSA 1978]; and
- F. supervise all tests and prepare lists of persons passing them to submit to prospective employers.

**10-9-13. Rules; adoption; coverage.**

Rules promulgated by the board shall be effective when filed as required by law. The rules shall provide, among other things, for:

- A. a classification plan for all positions in the service;
- B. a pay plan for all positions in the service;
- C. competitive entrance and promotion tests to determine the qualifications, fitness and ability of applicants to perform the duties of the position for which they apply. Such rules shall also provide for the awarding to those applicants having a passing grade of two preference points for each year of residency in New Mexico not to exceed a total of ten preference points;
- D. exemption from competitive entrance tests for those professional persons applying for classified positions in the service who possess recognized registration or certification by another state agency;

- E. a period of probation of one year during which a probationer may be discharged or demoted or returned to the eligible list without benefit of hearing;
- F. the establishment of employment lists for the certification of the highest standing candidates to the prospective employers and procedure to be followed in hiring from the lists;
- G. hours of work, holiday and leave;
- H. dismissal or demotion procedure for employees in the service, including presentation of written notice stating specific reasons and time for the employees to reply thereto, in writing, and appeals to the board;
- I. the rejection of applicants who fail to meet reasonable requirements as to age, physical condition, training, experience or moral conduct; and
- J. employment of any apparently qualified applicant for a period of not more than ninety days when an emergency condition exists and there are no applicants available on an appropriate employment list as provided in Subsection F of this section. The applicant, if employed, shall be paid at the same rate as a comparable position covered by the Personnel Act [ [10-9-1](#) NMSA 1978].

**10-9-13.1. Legislative finding; purpose of act.**

The legislature finds that residents of the state are a valuable resource in state employment because of their dedication and commitment to the state they live in. Therefore, the purpose of this act [ [10-9-13](#), [10-9-13.1](#) NMSA 1978] is to encourage residents to remain in the state rather than moving out of state because of unsatisfactory employment opportunities in New Mexico.

**10-9-13.2. Veteran's preference.**

- A. In establishing the list of eligibles for appointment, the board shall provide preference points for veterans honorably discharged from the armed forces of the United States. Veterans with a service-connected disability shall be awarded ten points over and above their regular test scores. Veterans without a service-connected disability shall be awarded five points over and above their regular test scores.
- B. The board shall determine the rank on any employment list by adding the points to the veteran's final passing grade on the examination after the veteran has submitted proof of having status as a veteran at the time of application for employment with a state agency. In the case of a veteran having a service-connected disability, the veteran shall provide proof of a service-connected disability in the form of a certification by the federal veterans' administration. A veteran with or without a service-connected disability shall have his name placed on the list in accordance with the numerical rating of other veterans and nonveterans.

**10-9-14. Blind not barred from competitive examination; method of testing.**

- A. No agency or officer of the state or any of its political subdivisions shall prohibit, prevent, disqualify or discriminate against any blind person, otherwise qualified, from registering, taking or competing in a competitive entrance or promotion test for any position for which the blind person makes application.
- B. The state personnel board and all political subdivisions of the state which require competitive or promotion tests for any position shall provide and adequate

and equal test by an appropriate method for any blind person requesting such a test at the time of submitting his application.

**10-9-15. Duties of state officers and employers.**

All officers and employers of the state shall comply with the Personnel Act [ [10-9-1 NMSA 1978](#)]. All employers shall hire employees only from employment lists of applicants who meet prescribed minimum requirements and have passed the prescribed tests, provided by the director. All officers and employers shall furnish any records or information which the director or the board requests.

**10-9-16. Status of present employees.**

All employees of the state holding positions brought into the classified service by the Personnel Act [ [10-9-1 NMSA 1978](#)] shall be continued in their positions and become regular employees without original examinations, if they have held the position for at least one year immediately prior to the effective date of the Personnel Act. All other employees of the state holding positions brought into the service by the Personnel Act shall be continued in their positions as probationers until they have, not later than one year from the effective date of the Personnel Act, taken and passed a qualifying test prescribed by the director for the position held. An employee who fails to qualify shall be dismissed within thirty days after the establishment of an employment or promotion list for his position. Nothing in the Personnel Act shall preclude the reclassification or reallocation of any position held by an incumbent.

This section shall not apply to employees of the grant-in-aid agencies whose status as employees or probationers shall be recognized under rules to be promulgated by the board.

**10-9-17. Certification of payroll.**

No person shall make or approve payment for personnel services to any person in the service, unless the payroll voucher or account of the pay is certified by the director that the person being paid was employed in accordance with the Personnel Act [ [10-9-1 NMSA 1978](#)].

**10-9-18. Appeals by employees to the board.**

- A. An employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appealing employee and the agency whose action is reviewed have the right to be heard publicly and to present facts pertinent to the appeal.
- B. An applicant denied permission to take an examination or who is disqualified may appeal to the board.
- C. The technical rules of evidence shall not apply to appeals to the board.
- D. A record shall be made of the hearing, which shall be transcribed if there is an appeal to the district court. Costs of the transcripts, including one copy for the board, shall be paid initially by the agency. The cost of the transcripts may be assessed by the court to the losing party on appeal.
- E. The board may designate a hearing officer who may be a member of the board or any qualified state employee to preside over and take evidence at any hearing held

pursuant to this section. The hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a decision, which shall include findings of fact and conclusions of law.

F. If the board finds that the action taken by the agency was without just cause, the board may modify the disciplinary action or order the agency to reinstate the appealing employee to his former position or to a position of like status and pay. Every consideration shall be given to placing the appealing employee in the same geographical location in which he was employed prior to the disciplinary action. The board may recommend that the appealing employee be reinstated by an agency other than the one who disciplined the appealing employee. When the board orders an agency to reinstate an appealing employee, the reinstatement shall be effective within thirty days of the board's order. The board may award back pay as of the date of the dismissal, demotion or suspension or as of the later date as the board may specify.

G. A party aggrieved by the decision of the board made pursuant to this section may appeal the decision to the district court pursuant to the provisions of [Section 39-3-1.1](#) NMSA 1978.

#### **10-9-19. Reduction in force.**

Whenever an employee is terminated by an employer in a reduction in force by the employer, the terminated employee shall be rehired by that employer if the same or a comparable position becomes available in an increase of force within six months after the termination.

#### **10-9-20. Oaths; testimony; records; refusal.**

The board has the power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by the Personnel Act [ [10-9-1](#) NMSA 1978]. Refusal to testify before the board on matters pertaining to personnel is grounds for dismissal from the service.

#### **10-9-21. Prohibited acts.**

A. No employer shall dismiss an employee for failure or refusal to pay or promise to pay any assessment, subscription or contribution to any political organization or candidate; however, nothing contained in this section shall prevent voluntary contributions to political organizations.

B. No person in the personnel office or employee in the service shall hold political office except for a non-partisan county or municipal office or be an officer of a political organization during his employment. For the purposes of the Personnel Act [ [10-9-1](#) NMSA 1978], being a local school board member or an elected board member of any post-secondary educational institution shall not be construed to be holding political office, and being an election official shall not be construed to be either holding political office or being an officer of a political organization. Nothing in the Personnel Act shall deny employees the right to vote as they choose or to express their opinions on political subjects and candidates.

C. Any employee who becomes a candidate for public office shall, upon filing or accepting the nomination and during the campaign, take a leave of absence. This

subsection does not apply to those employees of a grant-in-aid agency whose political activities are governed by federal statute.

D. The director shall investigate any written charge by any person that this section has been violated and take whatever steps deemed necessary.

E. No person shall be refused the right of taking an examination, from appointment to a position, from promotion or from holding a position because of political or religious opinions or affiliation or because of race or color.

F. No employee or probationer shall engage in partisan political activity while on duty.

G. With respect to employees of federal grant-in-aid agencies, the applicable personnel standards, regulations and federal laws limiting activities shall apply and shall be set forth in rules promulgated by the board.

#### **10-9-22. Unlawful acts prohibited.**

It is unlawful to:

A. make any false statement, certificate, mark or rating with regard to any test, certification or appointment made under the Personnel Act [ [10-9-1](#) NMSA 1978];

B. directly or indirectly give, pay, offer, solicit or accept any money or other valuable consideration or secure or furnish any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the service.

#### **10-9-23. Penalties.**

Any person wilfully violating any provision of the Personnel Act [ [10-9-1](#) NMSA 1978] or the rules of the board is guilty of a misdemeanor. In addition to the criminal penalties, a person found guilty of a misdemeanor under the Personnel Act is ineligible for appointment to or employment in a position in the service, and forfeits his office or position.

#### **10-9-24. Existing rules.**

Existing personnel rules, policies and pay plans for the employees of the state shall govern until new rules, policies and pay plans are established under the Personnel Act [ [10-9-1](#) NMSA 1978].

#### **10-9-25. Federal funds and assistance.**

When the provisions of any laws of the United States, or any rule, order, or regulation of any federal agency or authority providing federal funds for use in New Mexico, either directly or indirectly or as a grant-in-aid, to be matched or otherwise, impose as a condition for the receipt of such funds, other or higher personnel standards or different classifications than are provided for by the Personnel Act [ [10-9-1](#) NMSA 1978], the board has the authority and is directed to adopt rules and regulations to meet the requirements of such law, rule, order or regulation.

