



STATE OF NEW MEXICO

FISCAL YEAR 2019

Policies for the Governor Exempt Employees



Michelle Lujan Grisham, Governor

Department of Finance and Administration



DEPARTMENT OF FINANCE
AND ADMINISTRATION

Olivia Padilla-Jackson, Cabinet Secretary

TABLE OF CONTENTS

	<u>POLICY NO.</u>	<u>PAGE NO.</u>
I.	INTRODUCTION AND USER'S GUIDE.....	5-6
II.	STATUTORY AUTHORITY	
	Section 10-9-4 NMSA 1978.....	7
	Section 10-9-5 NMSA 1978.....	8
III.	AMENDMENTS TO THE POLICIES FOR GOVERNOR	
	EXEMPT EMPLOYEESESPP 10.a.....	9
IV.	ABSENCE AND LEAVE	
	Administrative Leave.....ESPP 20.a.....	10
	Annual Leave AccrualESPP 20.b.....	11
	Emergency Medical LeaveESPP 20.c.....	12-13
	Personal Leave DayESPP 20.d.....	14
	Sick Leave Accrual and PaymentESPP 20.e.....	15
	Overtime – FLSA.....ESPP 20 f.....	16-17
	Holiday Pay.....ESPP 20.g.....	18
V.	POLITICAL ACTIVITIES – HATCH ACTESPP 30.a.....	19-21
VI.	CLASSIFICATION	
	Selection for Exempt Positions/EmployeesESPP 40.a.....	22
	Temporary Exempt PositionESPP 40.b.....	23
VII.	COMPENSATION	
	Performance-Based Salary IncreaseESPP.50.a.....	24
	Relocation Reimbursement for New Employees.....ESPP 50.b.....	25
VIII.	SEPARATION.....ESPP 60.a.....	26
IX.	TRANSFER	
	Transfer of Personnel.....ESPP 70.a.....	27
	Transfer of Leave.....ESPP 70.b.....	28

INTRODUCTION AND USER'S GUIDE

Two statutes work together to determine which state employees shall be covered by the Policies for the Governor Exempts:

- Section 10-9-4 NMSA 1978 lists those state positions exempt from the State Personnel Act.
- Section 10-9-5 NMSA 1978 lists all employees to be covered by an exempt salary plan and charges the Department of Finance and Administration (DFA) with preparation of this annual exempt salary plan. The annual exempt salary plan, which is a listing of classifications and salary ranges by agency, is prepared by DFA for the Governor's approval and is published each year in the executive budget document.

These statutes must be read in conjunction with the enabling statute of a particular agency, department, board, commission or other state entity to determine precisely which positions within that entity are exempt positions.

The Policies for the Governor Exempts are prepared and updated as necessary by DFA on behalf of the Governor's Office. The policies are intended to guide state agencies in all aspects of personnel administration related to exempt staff.

These policies must be considered in close relationship to existing State Personnel Board rules and regulations. Citations to specific State Personnel Board rules and regulations are provided if applicable.

To find a specific exempt policy provision, check the Table of Contents. If you need to cite a policy, give all the numbers and letters as indicated in this example: ESPP 20.e.

Nothing contained in this policy or in any other materials or information distributed by the State of New Mexico creates a contract of employment between an employee and the State of New Mexico. **Exempt employment is on an at-will basis.** No statements to the contrary, written or oral, either made before or during an individual's employment, will modify the at-will status of exempt employees.

INTRODUCTION AND USER'S GUIDE

On behalf of the Governor, the Cabinet Secretary of DFA and the Governor Exempt Pay Plan Director review all actions related to Exempt State Employees. All questions related to these policies and procedures should be directed to:

Governor Exempt Pay Plan Director
490 Old Santa Fe Trail – Suite 400
Santa Fe, NM 87503
Telephone 505-476-2225
FAX 505-476-2226

STATE POSITIONS EXEMPT FROM THE PERSONNEL ACT

Section 10-9-4 NMSA 1978. Coverage of Service.

The Personnel Act 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 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 policy-making; 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.

EXECUTIVE BRANCH EXEMPT SALARIES PLAN

Section 10-9-5, NMSA 1978. Public officers and public employees; executive branch; annual exempt salary 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 elected 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.

POLICY NO: **ESPP 10.a**

AMENDMENTS TO THE POLICIES FOR GOVERNOR EXEMPT EMPLOYEES

Policy

These Policies for Governor Exempt Employees shall be adhered to by state agencies that employ exempt personnel. The policies are reviewed at least annually and updated as necessary. The Governor shall approve the Policies for Governor Exempt Employees and any amendments thereto.

POLICY NO: ESPP 20.a

ADMINISTRATIVE LEAVE

Policy

State Personnel Board Rule Section 1.7.7.14 NMAC, granting of administrative leave, shall be applicable to exempt employees, except that for purposes of this policy any reference to “director” in Section 1.7.7.14 NMAC shall mean DFA Secretary.

These regulations state, in part, that the agency head may authorize exempt employee’s administrative leave with pay for up to five consecutive work days when it is in the best interest of the agency to do so. Administrative leave in excess of five consecutive workdays must have prior written approval from the DFA Secretary.

Exempt employees shall not be paid for unused administrative leave upon separation or transfer. Administrative leave shall not be transferred when an exempt employee transfers to another agency or a classified position.

Procedures

Each agency shall be responsible submitting requests for administrative leave in excess of five consecutive days to the Governor Exempt Pay Plan Director.

Each agency shall be responsible for calculating, adjusting and tracking administrative leave for exempt employees.

POLICY NO: ESPP 20.b

ANNUAL LEAVE ACCRUAL

Policy

Exempt employees shall accrue annual leave at a rate determined by the employee's cumulative years of service to the State. Cumulative years of service shall include any combination of service as an exempt or classified employee in the executive branch, and as an employee of the legislative branch, the judicial branch, the district attorney's office, or the state police.

Exempt employees shall accrue annual leave as follows:

Years of Service		Per Pay Period
At Least	Less Than	(in hours)
0	3	4.62
3	7	5.54
7	14	6.46
14.0 and over		7.39

A maximum of 240 hours will be carried forward into the next calendar year after the last pay period beginning in December.

A maximum of 240 hours will be paid at the time of separation

Exempt employees shall not be paid for more than 240 hours of annual leave upon separation or transfer.

The estate of an employee who pass away while in Governor Exempt service shall be paid for the employee's total accrued annual leave.

Procedures

Each agency shall be responsible for calculating, adjusting, and paying out the total amount of annual leave due for the exempt employee at the time of separation of employment with the State. When the agency submits separation on the Personnel/Position Action Request Form (PPARF) to the Governor Exempt Director the number of annual leave hours paid out must be outlined in the "Comments" section.

POLICY NO: ESPP 20.c

EMERGENCY MEDICAL LEAVE

Policy

The intended recipient of the donated leave must have exhausted all sick, annual leave, and personal day leave, and must be absent from work due to a *medical emergency* of the employee or a member of the employee's immediate family or the death of a member of the employee's immediate family and shall only receive leave in accordance with this section.

Exempt employees may donate accrued annual leave to or receive accrued annual leave from another exempt employee within or between agencies. Exempt employees may donate accrued annual leave to or receive accrued annual leave from a classified employee within the same agency. Classified employees shall be bound to comply with any applicable State Personnel Rule.

Prior to any transfers of annual leave, agencies shall submit, by written request to the DFA Secretary via the Governor Exempt Pay Plan Director. The requesting agency will and receive written approval/disapproval from the Governor Exempt Pay Plan Director of such transfers of leave. The transferred leave will be designated for the medical emergency leave account of the specified employee. Funds to cover the leave will not be transferred.

The donors may not transfer more hours than they have accrued at the time of the request. Donated leave will be prorated when transferred to the recipient.

Donated leave shall revert to the employees who donated the leave on a prorated basis when the medical emergency ends or the leave recipient separates from employment.

Supporting documentation shall be kept confidential and will not be subject to public inspection without the written consent of the donor(s) and recipient.

EMERGENCY MEDICAL LEAVE CONTINUED

Procedures

The agency of the recipient shall submit a letter of request to the DFA Secretary via the Governor Exempt Pay Plan Director containing the following information:

1. The name, position title and hourly rate of pay of the proposed leave recipient;
2. A description of the nature, severity, and anticipated duration of the medical emergency involved and a statement that the recipient is unable to work;
3. A list of donors, hours of annual leave donated, and hours of annual leave to be transferred; and
4. Any other information the employing agency may reasonably require.

Upon approval by the DFA Secretary, the Governor Exempt Pay Plan Director will assist the agency with the transfer of donated annual leave to the donated leave account of the recipient, converting the dollar value of the donor's annual leave based on the donor's hourly rate of pay to hours of leave based on the recipient's hourly rate of pay.

POLICY NO: ESPP 20.d

PERSONAL LEAVE DAY

Policy

Exempt employees are eligible for one eight-hour personal leave day per year upon hire. The personal leave will be prorated for employees working less than an eight-hour day. The personal leave day must be taken in one consecutive block. The personal leave day shall be taken at any time between the date of hire and December 31st of any calendar year or it will be forfeited.

Exempt employees will not receive payment for an unused personal leave day upon separation.

Procedures

Each agency shall be responsible for ensuring that only one personal leave day is awarded to each exempt employee per calendar year.

POLICY NO: ESPP 20.e

SICK LEAVE ACCRUAL AND PAYMENT

Policy

Exempt employees shall accrue sick leave at the same rate as classified employees. See Section 1.7.7.10 NMAC.

Payment of accumulated unused sick leave shall only be made as provided by Section 10-7-10 NMSA 1978, which states: "...an employee of the state who has accumulated six hundred hours of unused sick leave shall be entitled to be paid for additional unused sick leave at a rate equal to fifty percent of his hourly wage multiplied by the number of hours of unused sick leave over six hundred hours, not to exceed one hundred twenty hours of such sick leave in any one fiscal year..." and Section 10-7-11 NMSA 1978 which states: "...immediately prior to retirement from state service, an employee of the state who has accumulated six hundred hours of unused sick leave shall be entitled to be paid for additional unused sick leave at a rate equal to fifty percent of his hourly wage multiplied by the number of hours of unused sick leave over six hundred hours, not to exceed four hundred hours of such sick leave."

Procedures

Each agency shall be responsible for calculating and adjusting sick leave for exempt employees.

OVERTIME – FAIR LABOR STANDARDS ACT (FLSA)

Policy

The Fair Labor Standards Act (FLSA) is a federal law that sets standards regarding child labor, minimum wage, overtime pay, and record-keeping. 29 U.S.C. §§ 201 – 219.

Coverage under FLSA

For the purposes of this policy, there are three categories of state exempt employees.

1. Employees who are covered by FLSA and are not exempt from its provisions are “FLSA covered and non-exempt” employees.
2. Employees who are not covered by FLSA are “FLSA non-covered” employees.
3. Employees who are exempt from FLSA are “FLSA exempt” employees.

Whether employees are FLSA covered and non-exempt, FLSA non-covered, or FLSA exempt depends on the duties they perform and the amount and manner of their compensation (see definitions, p. 29, for further clarification of these terms). At the time of hiring, transfer or promotion, all exempt employees shall be informed, in writing, by the agency, of their exact FLSA status, based upon the employee’s duties and compensation and the FLSA.

FLSA Covered and Non-exempt Employees

FLSA covered and non-exempt employees shall be compensated with overtime at one and one half the employee’s regular hourly rate for all hours worked in excess of 40 hours during the designated workweek.

Agencies shall pay FLSA covered and non-exempt employees for overtime worked unless the employee, in advance, agrees in writing to be compensated by compensatory time off in lieu of overtime compensation. Compensatory time shall be given at a rate of one and one half times the amount of the hours worked over forty hours in a work week. Employees may accrue a maximum of 240 hours of compensatory time, unless otherwise authorized by statute. Employees shall be paid for accrued compensatory time upon separation.

Agencies shall determine the need for all employees to work overtime, shall authorize, in writing, any overtime, and shall prohibit and prevent unauthorized overtime work.

POLICY NO: ESPP 20.f

OVERTIME – FAIR LABOR STANDARDS ACT (FLSA) - CONTINUED

FLSA Non-covered and FLSA Exempt Employees

FLSA non-covered and FLSA exempt employees may be required to work in excess of 40 hours per week and are expected to work all hours necessary to perform their duties to the best of their abilities without additional compensation. FLSA non-covered and FLSA exempt employees shall not be awarded compensatory time for hours worked in excess of 40 hours per week and shall not receive cash payments in lieu of compensatory time.

Procedures

Each agency shall be responsible for calculating, adjusting, and paying out compensatory time for FLSA covered and non-exempt employees

POLICY NO: ESPP 20.g

HOLIDAY PAY

Policy

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

An agency head may direct employees to work on a holiday.

Exempt employees required to work on a holiday shall be compensated by compensatory time off at a rate of one and one half times the amount of hours actually worked on the holiday.

Procedures

Each agency shall be responsible for calculating and adjusting holiday pay and holiday compensatory time for exempt employees.

No exempt employee shall be paid for unused holiday compensatory time upon separation or transfer.

POLICY NO: ESPP 30.a

POLITICAL ACTIVITIES – HATCH ACT

Policy

All employees are encouraged to participate in community activities, promote good citizenship, and contribute to public service.

The federal Hatch Act, however, limits the political activity of certain exempt employees. The Hatch Act applies to employees whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency, unless the employee exercises no functions in connection with that activity. 5 U.S.C. §§ 1501- 1508; 5 CFR Part 151.

Employees Covered by the Hatch Act

An employee is covered if he/she is principally employed by the state executive branch and works in connection with programs financed in whole or in part by federal loans or grants. The employee may work part-time, full-time, or on a seasonal basis. The employee is subject to the Hatch Act even if on annual, sick, leave without pay, administrative leave, or furlough. There is no requirement that his/her salary be paid with federal funds.

Employees covered by the Hatch Act may:

- Vote and express opinions on political subjects and candidates generally;
- Run for public office in non-partisan elections and can solicit, accept, and receive contributions for that purpose;
- Campaign for and hold office in political clubs and organizations;
- Actively campaign for candidates for public office in partisan and non-partisan elections; or
- Contribute money to political organizations and attend political fundraising functions.

Employees covered by the Hatch Act may not:

- Run for public office in a partisan election;
- Use official authority or influence or interfere with or affect the results of an election or nomination; or
- Directly or indirectly coerce, command or advise a state officer or employee to pay, lend, or contribute anything of value to a political committee, organization, party or person for political purposes.

POLITICAL ACTIVITIES – HATCH ACT CONTINUED

Employees not Covered by the Hatch Act

An employee is not covered by the Hatch Act if he/she does not exercise any functions in connection with federally-financed activities. Employees of educational or research institutions supported in whole or in part by state or political subdivisions or by religious, philanthropic or cultural organizations are not covered by the Act. The Governor, Lt. Governor, an elected head of an executive department who is not classified, and a person holding public, elective office who would otherwise be covered by the Act are all exempt from the Act.

An exempt employee who is not covered by the Hatch Act may:

- Run for a partisan or non-partisan elective office.
- Take an active part in political campaigns and political party activity

An exempt employee who believes that he/she is not covered by the Hatch Act and who wishes to become a candidate for partisan, elective office shall receive a confirmation determining that they are not covered by the Hatch Act from the employee's agency head. The confirmation shall contain the basis for making such determination and shall be submitted in writing to the DFA Secretary who shall report the information to the Office of the Governor. The Office of the Governor will not be responsible for making a determination as to whether the employee is or is not covered by the Hatch Act.

PENALTIES for Violation:

The federal Merit Systems Protection Board has jurisdiction to enforce the Hatch Act. The Board may determine that a violation of the Hatch Act warrants removal of the employee. If the State fails to remove the employee within 30 days or removes but rehires the employee within 18 months, the Board shall direct the withholding of an amount of federal funding equal to two years of the employee's salary.

Candidacy for Elective Office

1. An employee covered by the Hatch Act that intends to run in a partisan election must resign.
2. An employee covered by the Hatch Act that intends to run in a non-partisan election and an employee not covered by the Hatch Act that intends to run for either a partisan or non-partisan election may:

- a. Remain working in their position but take any accrued annual leave for any work days used to campaign;
- b. Request leave without pay for the duration of the campaign with the intention of returning to the position after the election; or
- c. Resign their position.

No exempt employee shall engage in political activity while on active duty. Under no circumstances shall any state property, equipment, supplies, or time on the job be used to conduct an election campaign or

POLICY NO: ESPP 30.a

POLITICAL ACTIVITIES – HATCH ACT CONTINUED

<p><u>Procedures</u> other political activities.</p> <p>Each agency shall be responsible for submitting a Personnel/Position Action Request Form (PPARF) to place an exempt employee on leave or to process a resignation.</p>	
---	--

SELECTION FOR EXEMPT POSITIONS/EMPLOYEES CONTINUED

Procedures

State agencies shall not make an offer of employment until approval has been granted by the Office of the Governor, or other appointing authority and the DFA Secretary.

To process an action for creation, change, reclassification, or deletion of an exempt position, an agency shall:

1. Submit a completed Personnel/Position Action Request Form (PPARF) to the Governor Exempt Pay Plan Director. The request must be fully documented and justified on the PPARF.
2. Recommend the classification they believe is appropriate for the position which they are creating, changing, reclassifying or deleting.
3. Submit budget projections for the current fiscal year and the budget impact for the next fiscal year documenting sufficient budget for the creation, change or deletion of an exempt position.
4. Submit statutory basis for the personnel action.

To process an action to hire, increase salary, promote, change or terminate an exempt employee, an agency shall:

Submit a completed Personnel/Position Action Request Form (PPARF) to the Governor's office and/or Governor Exempt Pay Plan Director two weeks prior to a desired effective date. All transactions shall have an effective date of the pay period following the DFA Secretary's approval. Retroactive requests should only occur on rare occasion. If a retroactive transaction must occur, the request must be accompanied with a memorandum of justification from the agency head and must be approved by the DFA Secretary. The PPARF is to be completed in its entirety in order to process a hire.

To submit actions for an exempt position impacted by reorganizations requested through the State Personnel Office, an agency shall:

1. Submit a completed PPARF to the Governor Exempt Pay Plan Director.
2. Fully document and justify the request on the PPARF. After approval of the PPARF by the DFA Secretary, Governor Exempt Pay Plan Director must sign off on SDF/PADF 01, Department Table Update, prior to implementation of the reorganization.

TEMPORARY EXEMPT POSITION

Definition

A Temporary Exempt position is a Statutory Exempt position that is scientific or professional in nature and is temporary in nature.

Policy

A Temporary Exempt position shall be approved by the Office of the Governor, or other appointing authority and the DFA Secretary. A Temporary Exempt position shall not exceed one year unless otherwise approved by the Office of the Governor, or other appointing authority and the DFA Secretary. The Office of the Governor, or other appointing authority and the DFA Secretary, may determine that special conditions exist to justify a longer period.

Procedures

To create a Temporary Exempt position an agency shall:

1. Submit a completed PPARF to the Governor Exempt Pay Plan Director. The request is to be fully documented and justified on the PPARF.
2. Each agency shall be responsible for recommending the classification they believe is appropriate for the position which they are requesting to be created, changed, or reclassified.
3. Submit budget projections for the current fiscal year and the budget impact for the next fiscal year documenting sufficient budget for the creation of a temporary exempt position.

PERFORMANCE-BASED SALARY INCREASE

Policy

Upon application to the Governor, or other appointing authority and the DFA Secretary, and subject to budget availability, exempt employees may be eligible for an extra-meritorious performance-based salary adjustment.

To justify a salary increase, an exempt employee must continually demonstrate job performance that adds value to the agency. Requests for a salary increase must be accommodated within an agency's budget and cannot exceed ten percent (10%) of the exempt employee's base salary within a fiscal year unless otherwise approved by the Office of the Governor, or other appointing authority and the DFA Secretary.

The Office of the Governor, or other appointing authority and the DFA Secretary, retains the discretion to grant a salary increase for correction of salary inequity or salary compaction.

All salary increase requests must be fully justified and shall be effective at the beginning of the pay period following approval.

Procedures

To request a salary increase an agency shall:

1. Submit an original Personnel/Position Action Request Form (PPARF) to the Governor's office and/or the Governor Exempt Pay Plan Director;
2. Code the action as a pay rate change and the reason as an authorized increase; and
3. Include the following information:
 - How the exempt employee's performance adds value to the agency;
 - How the exempt employee's job performance surpasses other similarly situated exempt employees;
 - The exempt employee's salary history;
 - Submit budget projections for the current fiscal year and the budget impact for the next fiscal year documenting sufficient budget for the performance based salary increases.

POLICY NO: ESPP 50.b

RELOCATION REIMBURSEMENT FOR NEW EMPLOYEES

Policy

Contingent on budget availability, exempt employees who relocate into or within the state of New Mexico may be reimbursed for moving expenses pursuant to Section 2.42.3 NMAC.

An agency shall not reimburse an exempt employee unless the employee is presently appointed, elected, or in the employ of the state and is being paid with public money at the time the moving expense is incurred. Section 2.42.3.8(B) NMAC.

Procedures

1. The agreement for reimbursement of moving expenses must be in writing;
2. The prospective employee must be advised that tax consequences may result from payment and that the employee is responsible for paying any taxes imposed;
3. Expenses must be actual and reasonable as determined by the agency and DFA;
4. Expenses must directly relate to acceptance of employment with the State of New Mexico; and
5. **The agency must request prior approval in writing from the DFA Secretary before offering to reimburse relocation expenses.**

SEPARATION

Policy

Exempt employees separating from state employment shall be paid for a maximum of 240 hours of annual leave. Governor exempt employees shall not be paid for unused holiday compensatory time, unused administrative compensatory time, unused sick leave, unused administrative leave, or an unused personal leave day upon separation. See ESPP 20.a, 20.b, 20.c, 20.d, 20.e, 20.f, 20.g.

Exempt to Exempt, Separate Branches of Government

Exempt employees who separate from the executive branch, judicial branch, the legislative branch, the district attorney, or the state police, and who return to exempt service in the executive branch within 14 calendar days of separation may transfer all accrued sick leave and up to 240 hours of accrued annual leave, subject to the approval of the Governor's Office and/or DFA Secretary.

Procedures

For payments of accrued annual leave for exempt employees upon separation from state employment, state agencies shall submit an original PPARF to the Governor Exempt Pay Plan Director within two weeks of the employee's separation. The number of annual leave hours being paid must be outlined in the Personnel/Position Action Request Form (PPARF) "Comments" box (e.g., "100 annual leave hours to be paid").

POLICY NO: ESPP 70.a

TRANSFER OF PERSONNEL

Policy

Employees may transfer from one position to another within the state payroll system without a break in service.

Procedure

To request a transfer of an employee from one position to another, an agency shall:

1. Submit an original Personnel/Position Action Request Form (PPARF) to the Governor's office and/or DFA Administrative Services Division.

TRANSFER OF LEAVE

Policy

Exempt to Exempt, Same Agency

Exempt employees who transfer from one exempt position to another within the same agency, without a break in service, shall retain all accrued leave (including annual leave, sick leave, personal leave, administrative leave and holiday leave).

Exempt to Exempt, Agency A to Agency B

Exempt employees who transfer from one agency to another without a break in service shall retain all accrued leave, except for any administrative leave or compensatory time earned unless agreed to by the receiving agency.

Exempt to Classified

Exempt employees who transfer to a position in the classified service shall retain leave according to State Personnel Board rule: "All accrued annual and sick leave shall be transferred when persons change status from a position in the exempt service to a position in the classified service without a break in employment." Section 1.7.7.18(B) NMAC.

Classified to Exempt

Employees who transfer from a classified position to an exempt position within the same agency without a break in service shall retain all accrued leave. When a classified employee transfers to an exempt position at another state agency, the employee shall retain all accrued leave except for administrative leave or compensatory time unless agreed to by the receiving agency.

Procedure

The transferring agency must submit a letter to the employing agency specifying all accrued leave. To request a transfer of an employee an agency must submit an original Personnel/Position Action Request Form (PPARF) to Governor Exempt Pay Plan Director.

POLICY NO: ESPP 80.a

EMPLOYMENT RECORDS OF GOVERNOR EXEMPT EMPLOYEES

Policy

ESPP 80.a hereby adopts and incorporates by reference the State Personnel Board Rule 1.7.1.12 NMAC regarding employment records of classified employees for governor exempt employees.

APPENDIX I

DEPARTMENT OF FINANCE AND ADMINISTRATION

POLICY FOR GOVERNOR EXEMPT POSITIONS DEFINITIONS

Anniversary Date - The first date the employee began working in their current job classification. The anniversary date can be found in the "Entry Date" field of the Personnel/Position Action Request Form (PPARF).

Break in Service - A break in service occurs when an employee is not on any agency's payroll for more than one workday.

Governor Exempt Pay Plan Director - The DFA employee designated by the DFA Secretary to receive/review submission from agencies on behalf of their exempt employees.

FLSA Covered and Non-exempt Employee - An employee who, based on the duties performed and the amount and manner of compensation, is covered by the Fair Labor Standards Act (FLSA) and is not exempted from the minimum wage and overtime provisions of the FLSA. 29 U.S.C §§ 201- 219.

FLSA Exempt Employee - An employee who, based on the duties performed and the amount and manner of compensation, is exempt from the FLSA minimum wage and overtime provisions. In general, employees will be FLSA exempt only if they are in executive, professional, or administrative positions, or if they are employed in outside sales or certain computer related occupations. 29 U.S.C § 213 and 29 C.F.R. 541.

FLSA Non-covered Employee - An employee who is not covered by FLSA and therefore not subject to FLSA minimum wage and overtime provisions. The following employees are not covered: an elected official and the personal staff, policy-making appointees, and legal advisors of an elected official, legislative employees, bona-fide volunteers, independent contractors, prisoners and certain trainees. 29 U.S.C. § 203 (e).

Permanent Statutory Exempt- A Statutory Exempt position that has no end date.

Policymaking Exempt - A Policymaking Exempt position is a Statutory Exempt position that is exempt from the Personnel Act under Section 10-9-4(N) NMSA 1978 because the State Personnel Board in its discretion has decided the position is one of policymaking.

**DEPARTMENT OF FINANCE AND ADMINISTRATION
POLICY FOR GOVERNOR EXEMPT POSITIONS
DEFINITIONS (CONTINUED)**

Statutory Exempt - A Statutory Exempt position is a full time equivalent (FTE) position exempted from coverage of the Personnel Act by Section 10-9-4 NMSA 1978 or by other statutory authority.

Temporary Exempt - A Temporary Exempt position is a Statutory Exempt position that is scientific or professional in nature and is temporary in nature. Section 10-9-4(L) NMSA 1978.

Term Exempt - A Term Exempt position is Statutory Exempt position that has a specific end date. The position may be established for a one-time special project or program and is often associated with a state or federally funded program.

Transactions - Changes made to exempt employee positions or exempt employee information.

Years of Service - Total years of employment with the State of New Mexico. Years of service shall include any combination of service as an exempt or classified employee in the executive branch, and as an employee of the legislative branch, the judicial branch, the district attorney's office, or the state police.

APPENDIX II

FORMS

PERSONNEL / POSITION ACTION REQUEST FORM

Business Unit:	Current Posn. #:	Proposed Posn. #:
Empl. Name:	Empl. ID:	

Personnel Data

Personnel Action: None (Required):		Reason	Effective Date:
DOB:	Gender:	Highest Education Level:	
Marital Status:		As of (Date):	SSN: - -
Home Address:			
City:		State:	Zip Code:
County:			
Home Phone: () -	ext.	E-mail:	Ethnicity:
Military Status:		Expected Job End Date:	Officer Code:
Task Group:	Task Profile:		Pay Group:
Current Hourly Rate: \$	Proposed Hourly Rate: \$	Annual Salary: \$	
FICA:	FTE:	Retirement Plan:	Comments:

Current Position Data

Position Title:		Effective Date:
Supervisory:	Job Code:	Reg/Temp:
Full/Part:	Union Code:	Short Title (0-99):
Department:	Location:	Reports To Posn. :
Supervisor Level:	FLSA Status:	End Date:

Proposed Position Data

Position Action: None		Other (If Applicable):
Position Title:		Effective Date:
Supervisory:	Job Code:	Reg/Temp:
Full/Part:	Union Code:	Short Title (0-99):
Department:	Location:	Reports To Posn. :
Supervisor Level:	FLSA Status:	End Date:
Does this Position Require a BAR?	Please Document All Position Changes Here:	

Name of employee who completed this form _____ Date _____ Phone _____ E-mail _____

Approvals

Agency Origin	Date	Agency/Admin Approval	Date
DFA GOVEX Administrator	Date	DFA Budget Division	Date
SPO/GOV Office Approval	Date	DFA Approval	Date