Chapter 24

PERSONNEL

IMPORTANCE OF PERSONNEL
What responsibilities for personnel administration you will have as Municipal Clerk will depend largely on the size of your municipality. In a small municipality, you may be quite involved in administering the personnel policy for all municipal employees; in a larger municipality, someone else may be responsible for overall personnel administration and you may be responsible only for the employees who report to you.

Either way, the fiscal importance of personnel services cannot be ignored. In New Mexico municipalities, personnel costs average 60 to 70% of the general fund budget.

The personnel of the municipality are the employees who actually carry out the policies and programs established by the governing body. The morale, interest, dedication and productivity of employees directly influence the effectiveness and efficiency of municipal programs and services. The fairness and openness with which employees are treated with respect to pay, employment benefits, grievances, and working conditions are crucial to city operations.

PERSONNEL POLICIES - VISIBLE AND INVISIBLE
Every municipality with paid employees has personnel policies, whether written or not. In fact, the lack of an established policy constitutes a sort of policy in itself.

If you are lucky, your municipality will have enacted a comprehensive ordinance or resolution covering the principles and procedures for dealing with: recruiting and selecting employees, hiring and firing, frequency and size of pay increases, employee benefits, grievance handling, and numerous other personnel matters, as well as defining who is responsible for the various decisions.

If you do not have an ordinance or regulations adopted by the governing body, you may have to gather bits and pieces of the policy from the past official actions of the governing body contained in the official minutes, resolutions, and ordinances; it helps if you keep a notebook.

A "laundry list" of the types of matters which may be contained in a municipal personnel policy is shown on page 24-8.

DOES YOUR MUNICIPALITY HAVE A MERIT SYSTEM?
Although state law does not require a municipality to enact a personnel "merit system," § 3-13-4 authorizes any municipality to establish a personnel merit system by ordinance if the governing body so wishes.

§ 3-13-4 is not definitive as to what the ordinance must contain to be a true personnel merit system. However, long-standing personnel management practice requires that a true merit system must contain all four of the following provisions:
1. recruiting of applicants and hiring through open competition based solely on individual merit (qualifications to perform the job, such as experience, training, knowledge and skill);

2. that all decisions on hiring, assignment, retention, compensation, promotion, demotion and terminations shall be based solely on individual merit (qualifications and job performance);

3. that an employee who has successfully completed a prescribed probationary period has attained job tenure (a property right to the job) and may only be suspended without pay, demoted or dismissed for "just cause" such as unsatisfactory performance or misconduct of some kind;

4. that an employee who has attained tenure through completion of probation may appeal his suspension without pay, demotion or dismissal, and may receive a fair hearing on the merits of the case ("due process" on depriving him of his "property right").

In addition, the U.S. Supreme Court has ruled in the case of Cleveland Board of Education v. Loudermill, (3/19/85), that an employee who has received tenure through successful completion of a probationary period must be given an informal hearing before he is dismissed, even though he may have a formal right of appeal after the dismissal. The court said that public employers do not have to give an employee tenure (a "property right") in his job, but if they do give that tenure, the hearing must take place before the tenure is taken away.

FEDERAL AND STATE LAWS GOVERNING EMPLOYMENT

Civil Rights

Four very important civil rights laws cover most municipal personnel management.

1. The Equal Employment Opportunity Act (Civil Rights Act of 1964, as amended), forbids discriminating against any person in any facet of employment because of race, color, religion, or national origin or because of age, sex, or physical or mental handicap EXCEPT where age, sex or physical or mental condition are bona fide qualifications for employment. It is enforced by the Equal Employment Opportunity Commission. Record-keeping provisions of the Equal Employment Opportunity Act apply to all local governments with 15 or more employees, and those with 100 or more employees must submit a report (EEO-4) annually.

2. The Equal Pay Act of 1963 In Addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

3. The Age Discrimination in Employment Act forbids discriminating against any otherwise qualified applicant or employee solely on the basis of being over 40 years of age. It is also enforced by the EEOC.
4. The **Americans with Disabilities Act of 1990** forbids discriminating against any otherwise qualified applicant or employee solely on the basis of a physical or mental impairment or condition if a reasonable accommodation can be made which would allow the impaired person to perform the job. Reasonable accommodation includes such things as providing physical access for persons with mobility or hearing or sight impairment, providing accessories or equipment which help to overcome the impairment, reassigning certain nonessential duties the impaired person cannot perform to other employees in the work group, if possible, or allowing more flexible work schedules. Whether an accommodation is "reasonable" depends somewhat on the out of pocket costs to the employer, the funds available to the employer to make the accommodation, and whether the accommodation creates an undue hardship on the employer. The employment portions of the Americans with Disabilities Act (ADA) are enforced by the EEOC.

5. **Title II of the Genetic Information Nondiscrimination Act of 2008** protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers’ acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members: the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt or genetic services by applicants, employees or their family members.

6. The **New Mexico Human Rights Act**, as amended, forbids discrimination against otherwise qualified applicants and employees for all the same reasons as the Equal Employment Opportunity Act, plus: ancestry (where your ancestors came from); serious medical condition; spousal affiliation, if the employer has 50 or more employees; and sexual orientation or gender identity, if the employer has 15 or more employees. The Human Rights Act applies to all New Mexico local governments with 4 or more employees. It is enforced by the New Mexico Human Rights Commission.

None of these acts requires that you employ unqualified employees but all require that judgments in all personnel decisions be made on a legitimate, job-related basis. Objectivity, fairness and equal treatment are essential.

Standard notices announcing the municipality's coverage by these laws must be posted where employees and the public will see them.

**Fair Labor Standards Act**

All municipalities are covered by the federal Fair Labor Standards Act, which says that any employee must be paid a minimum hourly rate and that all overtime worked by any employee over limits specified in the Act must be compensated at the rate of time and one-half unless the job may be exempted as "executive," "administrative" or "professional." The basic points of FLSA are covered under Payroll, Chapter 15.
A notice that your employees are covered by the Fair Labor Standards Act must be prominently posted for employees to see.

**Immigration Reform Act of 1986**
This act forbids hiring non-citizens who do not have official authorization to work from the U.S. Citizenship and Immigration Services. At time of hiring you are required to check and record documents proving that the person is either a U.S. citizen or has USCIS permission to work. You must complete and file a form I-9. For more information, see [https://www.uscis.gov/i-9-central](https://www.uscis.gov/i-9-central).

**Social Security**
See Payroll chapter, page 15-5.

**Federal and State Income Tax Withholding**
See Payroll chapter, page 15-5.

**Unemployment Compensation**
See Payroll chapter, pages 15-6 through 15-8.

**Worker's Compensation**

**LOCALLY DETERMINED BENEFITS**

**Employee Group Insurance**
§ 10-7-4 says that all municipalities "shall cooperate in providing group term life, medical or disability income insurance for the benefit of eligible employees and salaried officers...". The statute does not prescribe what kind or what amount of insurance must be provided, and it does not say that the municipality must pay a portion of the premium. However, the statute does allow municipalities to pay up to 100% of the insurance premium if they so choose.

**Cafeteria Benefit Plans**
§§10-7-14 through 10-7-18 authorize municipalities to provide employees with variable benefit choices under so-called "cafeteria plans" through a salary reduction method, which reduces the employee's gross taxable income for federal and State income tax purposes.

Check your local policy to see if cafeteria benefits are available.

**Paid Leave**
No state or federal law requires that any time not worked be paid for. Municipalities establish their own vacation, sick or other leave policies either by ordinance or by resolution.

If your municipality allows employees to earn annual leave (vacation leave), any unused vacation must be paid when an employee terminates employment. Numerous court decisions have found that earned vacation is a part of compensation and must be paid even if the employee quits or dies.
Sick leave, on the other hand, is considered to be a benefit and is not paid unless it is taken. Some municipalities provide that accrued sick leave over a given balance may be converted to annual leave, but not on a one for one basis.

**Holidays**
No state or federal law requires that municipal offices be closed on federal or state holidays or that municipal employees be given a paid day off or that premium pay be given for work performed on a federal or state holiday. A municipality's policy regarding which holidays are observed and when, as well as how employees who work on municipal holidays will be compensated, is set by the local governing body by resolution.

The 10 State legal holidays in New Mexico (§ 12-5-2) are:

1. New Year's Day - January 1
2. Martin Luther King Jr.’s Birthday - Third Monday in January
3. Presidents' Day - Third Monday in February
4. Memorial Day - Last Monday in May
5. Independence Day - July 4
6. Labor Day - First Monday in September
7. Columbus Day - Second Monday in October
8. Armistice Day and Veteran's Day - November 11
9. Thanksgiving Day - Fourth Thursday in November
10. Christmas Day - December 25

**Retirement**
Any municipality may join the Public Employees Retirement Association of New Mexico by passing a resolution to do so and submitting it to PERA. Thereafter, a minimum of 7% of gross pay will be deducted from the employee's pay and an equal amount contributed by the employer.

Optional retirement plans with higher benefits and, consequently, higher contribution rates are available for municipal general members and municipal police and fire members.

Deductions and contributions are submitted monthly to PERA of New Mexico, Santa Fe. Complete benefit and procedural information is available from PERA.

Municipalities may choose to supply retirement benefits provided by private carriers and some municipalities have chosen to do so.

Check your local policy for procedures and rates. Applications should be retained for audit purposes.

**PERSONNEL RECORDS**
Where personnel records are kept will depend on whether your municipality has separate individuals to perform personnel duties and payroll duties; if so, some records may be kept in both places, depending upon operational needs. For our purposes, we will discuss three categories of personnel records: the individual employee's file, the municipal employment file, and the payroll file.
**Individual Employee File**
The individual employee file contains those materials which relate to one particular employee.

Some of the contents, such as references from former employers and medical records and insurance claims, are strictly confidential and should be kept in a secure place. The employee whose file it is should be allowed to review all parts of the file except the references from previous employers. Only persons authorized as a part of their official duties may examine the file without the employee's permission.

Some of the contents of an employee's file are public record, however. See Chapter 8 - Public Records.

The employee's file should contain:

1. Application for employment;
2. Cumulative employment history - a brief listing of department, job title, pay rate, and disciplinary actions from hiring to termination (see Sample I). Some companies sell file jackets with space to record this information;
3. Emergency contact data - name of person to be contacted, personal physician, emergency medical information;
4. Personnel actions - forms or notes authorizing hiring, pay increase, transfer, disciplinary actions, termination or similar matters;
5. References from previous employers - NOT AVAILABLE TO EMPLOYEE - not a public record (matter of opinion);
6. Performance ratings - not a public record (matter of opinion);
7. Benefit applications (if not kept in Payroll file);
8. Medical examination reports - not a public record - highly confidential. These should be kept as a separate locked file or put them in a sealed envelope; and
9. Other data - complimentary letters, training certificates, awards, etc.

Records of former employees are retained for 55 years after termination. This is because employment questions regarding retirement or Workers' Compensation may occur long after an employee has left the payroll. Some portions of personnel file are only kept for a short time after termination. Check your retention schedule.

Some department heads may insist on having an employee file within the department, but the official record should always be maintained by the Municipal Clerk or by the designated personnel officer, where official reports and references originate.
Municipal Employment Files
In addition to the individual employee files, the Municipal Clerk or designated personnel officer should maintain subject files on certain matters which relate to municipal personnel management. Although individual employee data is the basis of these records, their main emphasis is the effect of employees as a group upon the operations and expenses of the municipal government as a whole.

1. **EEO File**
   This is a confidential file showing the age, sex, race, job title, department, pay rate and length-of-service of employees on the work force. This is essential for making required reports on Equal Employment and Affirmative Action. Names of employees are not listed on the official reports, so if you can identify and track employees without naming them, so much the better.

2. **Applicant Files**
   Applications which do not result in employment may be filed by individual, job type or title, or even by time period, depending upon volume and your own desires. By law, they must be retained for three years after receipt or disposition, whichever is later.

3. **Claims Files**
   Unemployment Compensation, Disability, Worker's Compensation, Tort Claims - All of these have three factors in common: (a) they are insurable risks with non-productive costs; (b) they are determined by outside third parties; and (c) they are all subject to challenge and adjudication by a set process. In the case of some of them, the municipal attorney's help will be needed, but much of the information will come from administrative records, incident reports, and personnel and payroll files. For instance, attendance records will show whether the involved employee(s) worked the day of the incident; the time sheet will show whether it happened during working hours; the incident report will describe the circumstances; the payroll records will show the pay rate; attendance and leave records will show time lost, etc.

   Municipalities pay for unemployment compensation benefits and receive a notification of each claim filed against them. Someone in the municipality will need to check that the claimant is really a former employee and enter the dates beginning and ending of employment, and state the reason for termination. If the employee was fired for misconduct or is on strike or resigned voluntarily, you may challenge the claim and all or part of it may be disqualified, thereby saving the municipality unnecessary expense.

   The same sort of challenge is possible for "work-related" injuries which raise worker's compensation claims, and sometimes temporary or permanent disability claims. Whether your municipality is self-insured for these claims or pays a carrier for insurance or contributes a state-sponsored liability fund, it behooves someone in the municipality (usually the Clerk or Clerk-Treasurer) to check official records and to challenge questionable claims in a timely manner or alert the municipal attorney to the case.
4. **Collective Bargaining Agreement(s)**  
If your municipality has signed a collective bargaining agreement with any employee organization, it will contain certain provisions which must be followed, often including pay rates, promotion policies or grievance procedures. This is an essential part of any overall municipal employment file.

**Payroll-Related Files**  
Payroll-related files are, in this context, the documents concerning individual employees which trigger some reaction in the payroll. If payroll and personnel functions are divided in your municipality, some records may only pass through payroll and wind up in personnel, but they must be available to auditors sniffing their way along the audit trail. All of them are authorizations for some payroll action, all are essential documents.

See Chapter 15 for contents of an employee's payroll file.
WHAT MATTERS MAY PERSONNEL POLICIES AND PROCEDURES COVER?

Much depends on how large the municipality is and what you feel you need. There is probably no such thing as *the perfect, absolutely comprehensive personnel policies and procedures*, but the following will give you an idea of what might be included, depending on perceived need:

**Working Conditions Generally**

- Chart of municipal organization and lines of authority, hours of work, location of work, reporting for work, conduct on the job, job discrimination (race, color, ancestry, age, sex, etc.), sexual harassment, required dress or uniform, telephone use, telephone etiquette, handling the public, coffee breaks, health and safety, use and care of municipal vehicles and equipment, accident reporting, employee grievances, etc.

**Pay**

- Starting pay, frequency of pay days and pay period covered, reporting time worked, required and voluntary deductions, deductions for missed work, pay increases (how often, how much, for what reasons, who approves, when effective), standby pay, callback pay, overtime compensation, mileage and per diem reimbursement, pay advances, promotion, severance pay (if any), etc.

**Hiring, Retention and Firing**

- Who decides "at will" employment, recruiting, selection, hiring, employment of relatives, job descriptions, performance appraisal, transfer between jobs, promotion, demotion, retirement, layoff, resignation, dismissal, appeal rights (if any), exit interviews, return of municipal property, final pay, etc.

**Discipline**

- Who decides unauthorized absences, prohibited actions by employees, causes of discipline, severity of discipline (oral warning, written reprimand, suspension without pay, demotion for cause, dismissal), notice of discipline, appeal of disciplinary action (if any), etc.

**Employee Benefits**

- Paid holidays, annual (vacation) leave, sick leave, unpaid leave, group health insurance, life insurance, temporary disability, permanent disability, other insurance coverage, retirement plan, worker's compensation, jury leave, military training leave, etc.

**Personnel Records**

- Who keeps contents, who may examine, who may add or delete items from file, how long kept, release to third parties.

Even this list, long as it is, may not cover everything that could be included in personnel policies and procedures. Just how complex and detailed your policies and procedures may be depends on what your municipality needs and can afford, in time and money.
Progressive Discipline
Presented by the Town of Bernalillo

All newly hired employees are subject to a one-year probationary period. Therefore employees in temporary, emergency, or probationary status may be dismissed, suspended, or demoted for any reason.

All non-probationary employees may be dismissed, demoted, or suspended only for just cause (identified in our Rules and Regulations under Causes for Discipline Section).

- Misconduct on the job
- Negligence in the performance of duty, including negligence in the operation of Town vehicles or equipment
- Inefficiency in work performance
- Failure to meet prescribed standards of work
- Insubordination, or the failure to follow the lawful order of a recognized superior
- Demonstrated disloyalty or disrespect for the Town Administration or other legally constituted authority
- Unauthorized absence from work
- Physical or mental unfitness for duty due to influence from alcohol or drugs
- Acceptance of money, gifts, privileges or other valuable consideration, which was given with the expectation of influencing the employee in the performance of his/her duties
- Use of position for personal advantage
- Misuse, theft or destruction of Town property
- Falsification of records
- Conviction of a criminal offense
- Sedition, treason or membership in an organization listed as subversive by the Attorney General of the United States
- Violation of any Federal or State law, Town ordinance or any Section of these Rules
- Violation of departmental rules or professional code of ethics accepted by those in the same profession as the employee

Disciplinary actions can include the following:

- Verbal Reprimand
- Written Reprimand
- Suspension
- Demotion
- Termination

The Mayor, Town Administrator, Department Head, and Supervisors have the authority to discipline employees under their supervision. However, only the Mayor and Town
Administrator have the power to dismiss, suspend, or demote an employee for disciplinary action. Any action taken must be reported through the proper chain of command to the Department Head, Human Resources Director, Town Administrator and the Mayor.

Minor infractions are disciplined by verbal or written reprimands. Continued or repetitive infractions will invoke progressively severe disciplinary action. Some incidents in themselves will be sufficient cause for suspension and dismissal.

**Verbal Reprimand:** The employee is notified verbally that their work performance needs improvement. The verbal reprimand includes the following:

- An outline of specific areas needing improvement
- A statement of goals for the improvement and a time frame for completion
- Informing the employee that the failure to improve will result in more serious action

(Note: Verbal reprimands are documented and placed in the employees personnel file)

**Written Reprimand:** A formal, written reprimand is given to an employee if after a reasonable time, a verbal reprimand does not result in improvement of an employee’s job performance. A formal written reprimand may be given to an employee if the nature or seriousness of the malfeasance or conduct warrants it. The written reprimand should always include the following:

- The date(s) on which the unacceptable performance occurred and a brief description of the incident(s)
- A reference to the *Rules and Regulations or Departmental Policies and Procedures* that were violated
- A statement of the disciplinary consequences if performance does not improve
- The goals of improvement and the time frame for accomplishing these goals
- The employee’s right to respond to and rebut the charges against him/her verbally and in writing within three (3) working days of the notification of disciplinary action (per the Town of Bernalillo’s *Rules and Regulations*)

The employee must sign an acknowledgement of having received the written reprimand. The employee signature signifies only that the employee has received and read the document, not that the employee agrees with the statements in the reprimand itself.

The written reprimand will be discussed in a private meeting. Written reprimands are documented and placed in the employee’s personnel file.

Any Department Head, or their designated representative, may relieve an employee from duty and order them to leave the worksite. This order shall not constitute suspension or dismissal until the Mayor or Town Administrator so order such action. As
mentioned earlier, only the Mayor and Town Administrator have the power to dismiss, suspend, or demote an employee for disciplinary action.

**Grievance:** Only permanent full-time and part-time employees are entitled to the grievance procedures outlined in the Town of Bernalillo’s *Rules and Regulations.*