



P.O. Box 846 • Santa Fe, New Mexico 87504-0846
Tel. (505) 982-5573 • (800)-432-2036
Fax (505) 984-1392
www.nmml.org

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PERSONNEL POLICIES AND PROCEDURES

Personnel policies and procedures constitute the basic "rules of the game" as far as the relations between employers and employees are concerned. They are conditions of the employment agreement between the employer and the employee, especially if the agreement is oral rather than written, as it is in most cases, and they are used in any court suits, administrative hearings by regulatory agencies, internal grievances, or mediation or arbitration hearings.

WHO ESTABLISHES PERSONNEL POLICIES?

Municipal personnel policies and procedures may be adopted by the Governing Body of the municipality by:

1. enacting an ordinance
2. adopting a resolution
3. passing a simple motion to adopt; or
4. a combination of the above, usually with an ordinance outlining the basic tenets of personnel policy but stating that regulations and procedures will be adopted pursuant to the ordinance.

Some charter municipalities have enacted basic personnel policies as part of the charter adopted by vote of the electorate.

Some personnel policies and procedures may also be promulgated by an executive order of the Mayor, City Manager or other chief administrative officer.

Department heads may also issue specific policies and procedures for their departments so long as they do not conflict with the overall personnel policies of the municipality (for which reason, it is a smart idea to require their review by the Personnel Officer and approval by the Governing body before they become effective). Some departments do need special policies and procedures - they are common for police and fire departments.

Personnel policies may also be established by terms of a collective bargaining agreement.

WHAT IF THEY AREN'T WRITTEN AND FORMALLY ADOPTED?

If personnel policies are not in writing and officially adopted, they may be:

1. inconsistently applied, depending on who asks;
2. not understood by supervisors and employees and the Governing Body;
3. contrary to state or federal law;

4. unenforceable;
5. a potential liability for the municipality; and
6. the cause of the immeasurable chaos, confusion, discontent, grievances, and complaints by employees supervisors and the general public - your customers!

WHAT MATTERS DO PERSONNEL POLICIES AND PROCEDURES COVER?

Much depends on how large the municipality is and how many levels of supervision are involved in day to day operations. The perfect, absolutely comprehensive personnel policy has yet to be written, 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, creed, ancestry, age, sex, handicaps), 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 (see Page 5), 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 coverages, 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.

WHAT'S THE DIFFERENCE BETWEEN A POLICY AND A PROCEDURE?

A policy is a statement of guiding principles to be followed; a procedure is a method by which those principles are implemented and carried out. Many New Mexico municipalities have written personnel policies; few have written procedures. Sometimes, especially in larger cities, some sections of the personnel policies become so detailed and specific that they virtually outline the procedures, especially for disciplinary actions, grievances and appeals of adverse actions.

Procedures commonly outline each step of a process and, where paperwork is involved, who initiates and who approves, and how they are routed. Most items affecting payroll include procedures to insure an audit trail.

WHAT'S THE DIFFERENCE BETWEEN A POLICY AND A REGULATION?

In many cases, the policy contains all the regulations; in others, the regulations are supplemental to the policy and are adopted separately. For instance, the State Personnel Act, § 10-9-1 et seq., sets out many statutory policies, but empowers the State Personnel Board to adopt regulations and procedures to implement them. Some municipal ordinances contain policies only and empower the City Manager or chief administrative officer or a personnel board to adopt regulations and procedures.

HOW DO WE GET WRITTEN PERSONNEL POLICIES IF WE DON'T HAVE THEM OR AMEND THE ONES WE HAVE?

1. The most practical way is to get a committee appointed to make recommendations to the Governing Body. The committee may be the Personnel Board, if you have one, or a committee of knowledgeable employees and department heads, and, if available, citizens with personnel knowledge and experience. You may include one or two Governing Body members, but since a lot of hard work is required, it's essential to get members willing to devote the necessary time to it.
2. If you have no or very few personnel policies, start with writing down the unwritten policies already in place and proceed from there. You may find that some policies were actually established by Governing Body actions in minutes years ago. If you have some written policies, check them against past minutes as well, to make sure they reflect what the governing body actually voted on.
3. Look at personnel policies from other municipalities, which you can get from the municipality or, in some cases, from the League. You don't have to "reinvent the wheel" if you can find good policies and good wording from other municipalities.
4. Take into account the possible subjects listed on pages 1 and 2 that you may want to include and the state and federal laws listed below. You may need several drafts before you get what you want.
5. **Do not just adopt some other organization's personnel policy without tailoring it to your organization.** In some municipalities, league staff has run into such "canned" policies that are so irrelevant or sloppy that they even include references to federal, state or county officials or to officers of the private business from which they were "borrowed." Many times such "canned" policies are worse than having none at all.
6. Make sure your proposed policies are reviewed by your municipal attorney (as well as an attorney well versed in public employment law, if possible) and a competent personnel management profes-

sional (preferably one with municipal experience) and consider their advice and suggestions before you take your final draft to the Governing Body (or Personnel Board) for approval and adoption. You may need their advice and expertise in explaining some provisions to the Governing Body, especially if they are big changes from your current policies.

You may need to pay for outside personnel consultants (including some municipal personnel officers who "moonlight" in private practice) or you may persuade another municipality's personnel specialist to do it as a favor.

7. **Do not lose heart or get discouraged** at the time it takes or the obstacles you have to overcome. It is far better to take the time to get something that fits your situation and that you can live with for a long period of time than to settle for a "quick fix" that may bring you problems farther along. If you can't get a full set of policies adopted, try to get as much as you can - you can build on it later if it is sound.

WHAT STATE AND FEDERAL LAWS AFFECT OUR PERSONNEL POLICIES?

The list is fairly long and we are bound to miss some, but here's what comes readily to mind. All references are to New Mexico Statutes Annotated, 1978 Compilation, unless otherwise noted.

Municipal Merit Systems

Adoption by ordinance - §3-13-4

Various federal laws providing funding which require merit systems.

Nondiscrimination, Recruiting, Hiring, Retention, Working Conditions

N.M. Human Rights Act - §23-1-1 through 28-28-1-14.

N.M. Nepotism provision - §10-1-10 & 11.

N.M. law officers and dispatch qualifications
- Chapter 29, NMSA 1978

N.M. Municipal Housing - §3-45-5C
(executive director may be fired only for cause.)

Federal Civil Rights Act of 1964, as amended.

Federal Age Discrimination in Employment Act.

Federal Rehabilitation Act of 1973, as amended §504 - otherwise qualified individuals with disabilities

Federal Americans With Disabilities Act of 1990 (now commonly called ADA).

Federal Family and Medical Leave Act of 1993.

Various federal laws providing funding which require merit systems.

Pay

N.M. Wage and Hour Law - §50-4-1 through 50-4-19 - payday frequency, final pay, etc.

N.M. Mileage and Per Diem Act - §10-8-1 through 10-8-8, plus Department of Finance and Administration (DFA) Rules 95-1.

Federal Fair Labor Standards Act - Federal minimum wage, overtime pay.

Title VII, Federal Civil Rights Act of 1964 - "Equal Pay for Equal Work."

Federal Tax Reform Act of 1986 as amended, (Comprehensive Omnibus Budget Reconciliation Act - COBRA) - rules on personal use of city vehicles and provisions for group health continuation for terminated employees.

Benefits

N.M. Worker's Compensation Act - §52-1-1 through 52-1-70, plus Subsequent Injuries Act - §52-2-1 through 52-2-13 and Occupational Disease Disablement Act, - §52-3-1 through 52-3-60.

N.M. provisions on public employee Group Insurance, Cafeteria Plans - §10-7-4 through 10-7-5.1.

N.M. Deferred Compensation provisions - §10-7-8, §10-7A-1 through 10-7A-11.

N.M. Public Employees Retirement Act (PERA) - §10-11-1 through 10-11-140.

Federal Social Security and Medicare requirements (FICA)

N.M. Retiree Health Care Act - §10-7C-1 through 10-7C-16.

N.M. Unemployment Compensation Act - §51-1-1 through 51-1-54.

WHAT ABOUT THOSE TECHNICAL PROCESSES LIKE JOB CLASSIFICATION, PAY PLANS, AND PERFORMANCE APPRAISAL SYSTEMS, IF WE WANT AND NEED THEM?

You can do a lot of the work the same way as in establishing the personnel policies - by committee with outside consultation. That is enough material for another whole handout, but ask municipalities that have gone through the process. It can be done if you are willing to devote the necessary time and effort.

Remember, the personnel policies you adopt have a profound effect on employees' lives and livelihood.

Remember, too, that whatever is in your written personnel policy and the employee's job description becomes a part of the employee's employment contract - so you must be extra careful to state what the municipality expects of the employee and what the employee is entitled to from the municipality.

DO NOT PROMISE ANYTHING ABOVE AND BEYOND WHAT THE MUNICIPALITY INTENDS TO STAND BEHIND AND WILL DELIVER! FAILURE TO FOLLOW YOUR OWN PERSONNEL POLICY IS ONE OF THE MOST POTENTIALLY EXPENSIVE LIABILITY EXPOSURES YOU CAN HAVE.

The effort to get it right is worth the time.

DO WE HAVE TO HAVE A MERIT SYSTEM? New Mexico law (§3-13-4 NMSA 1978) authorizes any municipality to adopt a merit system by ordinance, but does not require adoption of a merit system. §3-13-4 does not spell out what a true merit system includes and several municipalities have adopted what they thought were merit systems but which really do not contain all the basic requirements.

A true merit system contains at least the following provisions, which you should look for in your ordinance:

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.

DON'T MERIT SYSTEMS INCLUDE JOB CLASSIFICATION AND PAY SYSTEMS?

Yes. In order to establish what qualifications applicants will be judged on, you have to know what the jobs actually do and what qualifications are required to do them. The easiest way to do that is to establish a job classifications system where jobs with substantially similar duties and qualifications are given the same title and description (job classification).

Then in order to make sure that jobs with substantially similar qualifications and responsibilities are compensated approximately the same (job-based pay), a formal pay structure of pay ranges (sometimes called grades) is established and each class of job is assigned to one pay range. The normal practice is for an employee to start at the lower end of the range and to progress solely on the basis of satisfactory or exceptional performance.

Measuring performance as to unsatisfactory, satisfactory or exceptional requires a formal performance appraisal system.

If your municipality thinks it has established a merit system but has not provided a job classification and pay system, a formal performance appraisal system and a procedure for appeals of "adverse actions" (disciplinary procedures), most personnel professionals would say that it doesn't truly have a merit system.

IS AN APPEAL DIFFERENT FROM A GRIEVANCE?

In personnel management parlance, yes. A *grievance* may be about anything connected with the job or the action of a fellow employee or supervisor, whereas an *appeal* should be restricted to an adverse employment action (suspension without pay, demotion, dismissal). Any employee may have a grievance, but only an employee who has successfully completed the probationary period should be able to appeal an adverse employment action; an employee who serves "at will" (see below) should not be granted the right to appeal an adverse employment action.

Even with a merit system, some jobs and some employees are usually "at will" rather than covered by tenure (property right). "At will" employment generally covers the employee who runs the merit system (usually the city manager or the municipal clerk) and employees who have not completed the probationary period as well as temporary or seasonal employees.

WHAT DO YOU MEAN BY "AT WILL" EMPLOYMENT?

The statutes imply that where a municipality does not have a city manager and has not established a merit system, all employees serve at the will of the mayor and governing body and:

may be replaced by the mayor's naming a different person for any job at the "organizational meeting" of the governing body and the governing body's approving that appointment by vote of a majority of all members [§3-11-5 NMSA 1978]; or

may be dismissed at any time by vote of the majority of all members of the governing body [§3-116D(1)]; or

may be dismissed at any time by the mayor with the approval of the majority of all members of the governing body [§3-11-6D(2)]; or

may be dismissed by the City Manager without the approval of the Mayor or Commission [§3-14-14.A(2)].

That is "at will" employment, which means the employee may be dismissed or replaced with or without "cause" and that employee does not acquire a "property right" in continued employment, thereby requiring "due process" in removing that property right under Article XIV of the Bill of Rights of the U.S. Constitution.

Incidentally, if either your personnel ordinance, your personnel regulations, or your employee handbook uses the word "permanent" to refer to a job other than temporary or seasonal, or to an employee who has successfully completed the probationary period, get it amended to use some other term such as "regular" - courts are inclined to rule that "permanent" implies a property right to the job.