

**NEW MEXICO JUDICIAL BRANCH PERSONNEL RULES
PART II
FOR AT-WILL EMPLOYEES**

Supreme Court of New Mexico



Effective July 17, 2023

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PART 11

**New Mexico Judicial Branch Personnel Rules Part II
for At-Will Employees**

[NOTE: Definitions for both Part I (Career or Classified Employees) & Part II (At-Will Employees) begin on page 63; italicized words are defined.]

Adopted February 1, 2005; Amended August 1, 2010; July 1, 2014; July 1, 2019; March 1, 2021, September 10, 2021; May 13, 2023, June 22, 2023,
July 17, 2023

**NEW MEXICO JUDICIAL BRANCH PERSONNEL RULES
PART II
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Inquiries about the

New Mexico Judicial Branch Personnel Rules - Part I for Employees

New Mexico Judicial Branch Personnel Rules – Part II for At-Will Employees

Adopted by New Mexico Supreme Court Order 23-8500-005

Effective July 17, 2023

General Personnel Policies and Procedures

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Please note that this document has a glossary beginning on page 62 of the New Mexico Judicial Branch Personnel Rules Part I. When you see a word in italics, that word, and its definition will be found in the glossary.

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NOTHING CONTAINED IN THIS DOCUMENT SHALL BE CONSTRUED AS TO CREATE ANY CONTRACTUAL RIGHTS OF CONTINUED EMPLOYMENT OF AN AT-WILL EMPLOYEE. AT-WILL EMPLOYEES MAY BE TERMINATED AT ANY TIME WITHOUT CAUSE.

SECTION 15. GENERAL PROVISIONS AND PURPOSE

15.01 PURPOSE

To create a system of human resource management for *at-will employees*. An *at-will employee* is a person in the *Judicial Branch* who holds an *at-will job* classification as delineated in the *New Mexico Judicial Branch Job Classification and Pay Schedule*, excluding a justice or judge. (Amended 08/01/10; 07/01/19)

15.02 CITATION

The rules in this part shall be known as the *New Mexico Judicial Branch Personnel Rules - Part II for At-Will Employees*, and are to be cited as *NMJBPRawe*. (Amended 08/01/10)

15.03 SUPPLEMENTATION OF THE RULES

The *NMJBPRawe* shall be supplemented by general policies and procedures and shall be approved by the *Director*. These rules may be subject to interpretative memoranda issued by the *Director*. No policies, procedures, or interpretative memoranda shall be contrary to these rules. A complete set of all policies, procedures, and interpretative memoranda shall be maintained by the *AOC HRD*, are available on the *nmcourts.gov* website, and shall be made available to all *at-will employees*. (Amended 05/13/23)

Proposed additions and revisions to the *NMJBPR* or policies may be submitted to the *AOC HRD Director* and the *Director*. (Amended 05/13/23)

The *Director* may adopt, amend, or repeal temporarily, and based on a particular set of circumstances any *NMJBPR*, personnel policy, or procedure without a comment period or formal submission to the Supreme Court when it is in the best interest of the *NMJB*. (Added 07/01/19)

15.04 SUPREME COURT AUTHORITY

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The Supreme Court of the State of New Mexico is the superintending authority for the *Judicial Branch*. The *NMJBPRWE* are adopted, amended, or repealed at the discretion of the Supreme Court.

15.05 DISCRIMINATION, RETALIATION, AND HARASSMENT

(Ref: *Harassment (Including Sexual Harassment) Discrimination and Retaliation Policy, Harassment (Including Sexual), Discrimination and Retaliation Complaint Form, and Supreme Court Order No. 06-8500*)

- A. *Discrimination or harassment* based on race, color, religion, sex, age over forty (40), national origin, ancestry, physical or mental disability, serious medical condition, sexual orientation, gender identity, socioeconomic status, political affiliation, pregnancy, childbirth, conditions related to pregnancy or childbirth, citizenship, ethnic origin, marital status, military leave, veteran status, genetic information, spousal affiliation, cultural or religious headdress, and any other status protected by law, except where there is a bonafide occupational qualification, which justifies a differentiation, or any other reason not related to work performance shall not be tolerated in the *workplace*; nor shall *retaliation* against a person filing a *complaint*, participating in an investigation or reporting such *discrimination* or *harassment* be tolerated, even if there are no findings. (Amended 07/01/19, 05/13/23)

- B. *Discrimination, retaliation and harassment* are unacceptable and are grounds for *disciplinary action* up to and including *termination*. (Amended 07/01/19)

- C. An *at-will employee* who is aware of or who is the subject of *discrimination, retaliation, or harassment* shall immediately report such action. (Amended 08/01/10; Amended 07/01/19)

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SECTION 16. CLASSIFICATION

(Ref: Classification Policy)

16.01 PURPOSE

To establish and administer a uniform *classification* system; ensure *job* descriptions accurately describe duties and establish appropriate qualifications; and evaluate *job* worth based upon the Supreme Court adopted methodology of *job measurement*.

16.02 CLASSIFICATION PLAN

- A. The *Director* shall establish, maintain, and administer a *Classification Plan* for all positions throughout the *Judicial Branch*. (Amended 08/01/10)
- B. The *Classification and Compensation Plan*, effective July 1, shall be distributed to *Judicial Branch* entities no later than September 15th of each fiscal year. Changes to the *Classification Plan* shall be distributed when they occur. (Amended 07/01/19, 05/13/23)

16.03 JOB CLASSIFICATION AND MEASUREMENT

- A. The *AOC HRD Director* shall make recommendations to the *Director* regarding the *job measurements* on all existing *job* classifications. *Job* classification audits will be conducted in accordance with the Classification Policy. (Amended 07/01/14; 07/01/19)
- B. The *AOC HRD Director* shall create and modify *job* descriptions for newly proposed classifications, and conduct a classification study if applicable. (Added 07/01/14; Amended 07/01/19)
- C. Any pay increase associated with *compensation restoration* may be suspended by the Supreme Court due to budget constraints in which case any change in compensation shall become effective prospectively within twenty-four (24) months of the adopted new *job measurement*. (Added 08/01/10, amended 07/01/19)

16.04 CLASSIFICATIONS STUDIES (Amended 08/01/10)

The *AOC HRD Director* shall conduct *classification studies* in accordance with the Classification Policy.

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16.05 POSITION RECLASSIFICATION

A. Vacant Position

- (1) The *Administrative Authority* may initiate a request for position *reclassification* for a vacant position by submitting a *written* justification and if applicable an organizational chart. (Added 08/01/10; Amended 07/01/14)
- (2) The *AOC HRD Director* may approve a position *reclassification* when the *job content* assigned to a position has substantially changed, the *reclassification* is appropriate within the *judicial entity's* organizational structure, and when funds are available. (Amended 08/01/10)

B. Filled Position (Added 08/01/10)

- (1) The *Administrative Authority* may initiate a request for position *reclassification* on behalf of an *at-will employee* by submitting a request with supporting documentation to include the *Job Analysis Questionnaire* completed by the *at-will employee*, the *at-will employee's* updated *job* application and, if applicable transcripts, the *Supporting Documentation Form (SDF)*, and, if a supervisory position an organizational chart. (Amended 07/01/14; 07/01/19, 05/13/23)
- (2) The *AOC HRD Director* may approve a position *reclassification* when the *job content* assigned has substantially changed, the *reclassification* is appropriate within the *judicial entity's* organizational structure, funds are available, and the *at-will employee* meets the minimum qualifications of the *job*.

C. The *AOC HRD Director* shall issue a letter to the *at-will employee* and *Administrative Authority* approving or disapproving the position *reclassification* and shall include the effective date of the position's *reclassification*. (Amended 08/01/10)

D. Any change in compensation resulting from a *reclassification* shall be in accordance with *NMJBPRWE* Section 17.02 and 17.03. (Amended 08/01/10; 07/01/19)

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16.06 APPEALS

A. Reclassification (Amended 08/01/10)

Disapproval of *reclassifications* may be appealed to the *Director* within ten (10) *business days* of the initial determination by the *AOC HRD Director*.

- (1) The *written* appeal shall state the grounds for consideration.
- (2) The *Director* shall render a final decision within twenty (20) *business days* of receipt.
- (3) The *Director's* decision is final.

B. Job Measurement (Added 08/01/10)

There is no appeal for any *job measurement* and corresponding *pay range* assignment made by the *Director*.

C. Job Classification Study Implementation (Added 08/01/10)

Job classification assignments associated with movement to a revised or new *job classification* upon implementation of a *classification study* may be appealed to the *Director* in *writing* within ten (10) *business days* of the initial determination of the *Administrative Authority*.

- (1) The *written* appeal shall state the grounds for reconsideration.
- (2) The *Director* shall render a final decision within twenty (20) *business days* of receipt.
- (3) The *Director's* decision is final.

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SECTION 17. COMPENSATION

17.01 PURPOSE

To pay, motivate, and manage *at-will employees* through a comprehensive system of compensation.

17.02 PAY

- A.** No *at-will employee* shall be paid for hours not worked, unless on approved leave, or *stand-by* status. (Added 08/01/10; amended 07/01/19)
- B.** An *at-will employee* shall report time and be compensated in compliance with the *FLSA* and *NMSA* 1978, Section 30-23-2 (1963). (Amended 08/01/10; 07/01/19)
- C.** *At-will employees* shall accurately record their time. (Added 07/01/19)
- D.** *At-will employees* are responsible for verifying they are paid appropriately for the hours worked or not worked. (Added 07/01/19)
- E.** The *Administrative Authority* shall determine a *pay rate* for an appointed *at-will employee* as follows:
 - (1)** as mandated by statute; or
 - (2)** as allowed or required by Supreme Court order; or (Amended 05/13/23)
 - (3)** as determined appropriate for placement within the assigned *pay range*, with consideration of the *at-will employee's* competency, demonstrated performance, and budget availability; (Added 07/01/19) and
 - (4)** at a rate not less than the minimum or more than the maximum of the *classification's pay range* or *alternative pay range*, except an *at-will employee's base pay rate* may exceed the maximum as a result of a downward *pay range* or *job measurement* adjustment. (Amended 08/01/10)
- F.** If an *at-will employee's base pay rate* is above the maximum of the range, it

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shall become frozen until the rate falls within the assigned *pay range*.

- G. An *at-will employee* at the maximum of the assigned *pay range* may receive lump sum payments if eligible for legislatively mandated salary increases. Disbursements will be made as specified in the compensation initiative's Supreme Court Order for the fiscal year legislatively approved, and so long as the *at-will employee* is an *at-will employee* with the Judiciary. Should the *at-will employee* transfer from one *judicial entity* to another, the gaining entity will assume paying the disbursement. (Added 08/01/10, amended 05/13/23)
- H. Pay increases shall be funded from balances remaining in the *judicial entity's* current appropriation and there shall be no request for deficiency or supplemental appropriation or emergency funding from the State Board of Finance to fund a pay increase. (Added 08/01/10)

17.03 PAY SYSTEM (Section Added 08/01/10)

A. Demotion

The *Administrative Authority* shall decrease the *at-will employee's base pay rate* upon *demotion*. The *pay rate* reduction shall be in accordance with 17.02 E. (Added 07/01/19)

B. Lateral Transfer

An *at-will employee's* transfer from one position to another position with the same assigned *pay range* and *position status* within the *Judicial Branch* shall not result in a *pay rate* change, unless approved by the *Director* to maintain *salary alignment*. (Amended 08/01/10; 07/01/14)

C. Reclassification

- (1) Any change in compensation as a result of a *reclassification* resulting in the movement to a higher *pay range* shall become effective no sooner than the first *pay period* following the *effective date* of the position's *reclassification*. Unless, the *Director* has suspended the operation of this rule due to budget constraints, in which case, any change in compensation shall become effective prospectively within twenty-four (24) months of the *reclassification*. (Amended 08/01/10; 07/01/19; 03/01/21)

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- (2) A *reclassification* resulting in the movement to a lower *pay range* shall not result in a loss of *compensation* and in accordance with the *NMJBPR* Section 17.02 (F); the *at-will employee's* base pay rate will remain frozen until it falls within the assigned *pay range*. (Amended 05/13/23)
- (3) The *pay rate* increase may be up to the established 100% compa ratio of the new *pay range* or an increase of up to 15% of the *at-will employee's* current *pay rate* without the approval of the *Director*. (Added 07/01/19, amended 05/13/23)

D. State Board or Commission Membership

An *at-will employee* who is a member of a state board or commission may, with the approval of the *Administrative Authority*, attend meetings or transact the business of the board or commission during *regularly scheduled work hours* and be paid for *regular work hours*, provided the service does not negatively affect the performance of the *at-will employee's* required duties. (Amended 07/01/19, 05/13/23)

E. Temporary Salary Increase

(Amended 07/01/14; 07/01/19; 05/13/23;07/14/23)

The *Administrative Authority* may grant an *at-will employee* a *temporary salary increase*.

- (1) A *temporary salary increase* shall:
 - a. not be for less than thirty (30) consecutive calendar days, and
 - b. not extend beyond the time such temporary condition ceases; or not be for more than twelve (12) consecutive months.
- (2) A *temporary salary increase* is limited to use for a vacant or an *effectively vacant* higher-level *job* classification, in which the *at-will employee* is performing the *job* duties in addition to their regular *job* duties. (Amended 05/13/23)
- (3) A *temporary salary increase* may be awarded to an *at-will employee* who is temporarily performing higher-level *job* duties that are

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assigned to a *job* classification with a higher *pay range*.

- (4) The *Administrative Authority* may increase an *at-will employee's base pay rate* of up to 100% of the new *pay range* or up to 15% of the *at-will employee's base pay rate* without approval from the *Director*, and by using the *multiple component of pay* mechanism in *SHARE*, (no change is made in *SHARE* to the *base pay rate*). (Amended 07/01/19, 05/13/23)
- (5) At the conclusion of the *temporary salary increase*, the *multiple component of pay* shall be removed. (Amended 05/13/23)
- (6) The *employment status* of the individual receiving a *temporary salary increase* as well as their *base pay rate* shall remain the same.
- (7) This provision does not apply to the at-will judges' staff whose *pay rate* is set by Supreme Court Order and includes: (added 05/13/23)
 - a. Appellate Paralegals (U),
 - b. Bailiffs (U),
 - c. Bailiff Security (U),
 - d. Certified Court Monitors (U)
 - e. Court Reporters (U), and
 - f. Trial Court Administrative Assistants (TCAA).

17.04 OVERTIME, HOLIDAY, SHIFT DIFFERENTIAL, ON-CALL, AND STAND-BY PAY

A. Overtime Pay Including Compensatory Time for Non-Exempt At-will Employees

- (1) A federal *Fair Labor Standards Act (FLSA) non-exempt at-will employee* is subject to the *overtime* provisions of the *FLSA* and must be compensated (payment or *compensatory time*) for all *time worked* over forty (40) hours in a *designated work week* at the *premium overtime* (time and one-half) rate of pay. (Amended 07/01/19)
 - a. In addition to a *non-exempt at-will employee's regularly scheduled work hours* to include telework, *time worked* includes: (Amended 05/13/23)

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1. training and workshop time,
 2. travel time required by management, and
 3. voting time.
- (2) An *FLSA non-exempt at-will employee* who has *non-worked paid time* in excess of forty (40) hours in a *designated work week* will be compensated (payment or *compensatory time*) for the extra hours at *straight time*. (Amended 07/01/19, 05/13/23)
- a. *Non-worked paid time* includes:
1. accrued leave, (i.e., *paid time off (PTO)*),
 2. *administrative leave*, jury duty/court leave,
 3. approved *holidays*, and
 4. any other *non-worked paid time* reported by an *FLSA non-exempt at-will employee* in excess of forty (40) hours.
- (3) *Overtime* or any extra hours worked must be approved by the *Administrative Authority* or designee (which may include the *FLSA non-exempt at-will employee's judge*) prior to *overtime* being worked. (Amended 07/01/19)
- (4) At the discretion of the *Administrative Authority*, *FLSA non-exempt at-will employees* may receive monetary compensation or compensatory time off. (Amended 07/01/19)
- (5) Any monetary compensation is subject to budget availability and shall be consistent with the *Overtime, Holiday, Shift Differential, and On-Call and Standby Pay Policy*. (Added 07/01/19)
- (6) Upon transfer or *promotion* from an *FLSA non-exempt* position to an *FLSA exempt* position, an *at-will employee's* premium bank balance and *compensatory time* balance must be reduced to zero. The *Administrative Authority* may accomplish this by paying out these balances, requiring the employee to use the accrued leave balances or

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a combination of the two at the discretion of the Administrative Authority. (Amended 07/01/19, 05/13/23)

- (7) Upon transfer to another *judicial entity*, *compensatory time* accrued by an *FLSA non-exempt at-will employee* may be accepted by the *Administrative Authority*, and if it is not accepted the time shall be paid out prior to the transfer. (Added 07/01/19)
- (8) Upon separation from the *Judicial Branch*, an *FLSA non-exempt at-will employee* who has *compensatory time* accrued shall be compensated for that time.
- (9) An *FLSA non-exempt at-will employee* shall not have a balance of more than eighty (80) hours of *compensatory time* or *administrative compensatory time* at the end of the calendar year; however, when special circumstances arise, the *Administrative Authority* may extend the eighty (80) hour limit. (Added 08/01/10; Amended 07/01/14, 07/01/19)

B. Overtime Pay Including Compensatory Time for Exempt At-will Employees

- (1) An *FLSA exempt at-will employee* may not be paid or accrue compensatory time for any extra hours worked beyond eighty (80) in a *pay period*. (Amended 08/01/10; 07/01/14; 07/01/19)
- (2) An *FLSA exempt at-will employee* is responsible for entering all actual hours worked into their *SHARE* payroll timesheet for tracking purposes. Any extra hours entered are for tracking purposes only and are not available for use. (Added 07/01/19)

C. Holiday Pay for FLSA Non-Exempt At-will Employees

- (1) An *FLSA non-exempt at-will employee* (including an *FLSA non-exempt benefited temporary employee* or an *FLSA non-exempt non-benefited temporary employee*) who works on a *designated holiday* shall be compensated at the *holiday premium pay rate* of double time and one-half. Double time and one-half equates to regular pay for *holiday* compensation, plus time and one-half. (Amended 07/01/19)

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- (2) Compensation will be in the form of *holiday premium compensatory time* unless the *FLSA non-exempt at-will employee* and management agree in advance otherwise. (Added 07/01/19)
- (3) The *Administrative Authority* approval must be given prior to an *FLSA non-exempt at-will employee* working on a *designated holiday*. (Added 07/01/19)
- (4) When a *designated holiday* falls on an *FLSA non-exempt at-will employee's* regularly scheduled work day and the *FLSA non-exempt at-will employee* is not required to work, the *FLSA non-exempt at-will employee* shall be paid the *FLSA non-exempt at-will employee's* hourly rate for the number of hours the *FLSA non-exempt at-will employee* would have normally worked, up to a maximum of eight (8) hours per day. An *FLSA non-exempt at-will employee* working alternative work schedules must revert to a regular *work week* of five (5) days a week, eight (8) hours a day in the week in which a *designated holiday* falls. (Added 07/01/14)
- (5) *FLSA non-exempt part-time at-will employees* whose work schedule includes the day a *designated holiday* is observed will be compensated for the number of hours the *FLSA non-exempt part-time at-will employee* would normally have worked on that day. An *FLSA non-exempt part-time at-will employee* whose normal work schedule does not include the day a *designated holiday* is observed will not be compensated for the *designated holiday*. (Added 07/01/14)
- (6) An *FLSA non-exempt at-will employee* shall receive *holiday pay* on *designated holidays* that the *FLSA non-exempt at-will employee* does not work provided the *FLSA non-exempt at-will employee* is in a pay status for no less than one (1) hour, for both the *FLSA non-exempt at-will employee's* last scheduled workday before the *designated holiday* and the *FLSA non-exempt at-will employee's* first scheduled workday after the *holiday*. (Amended 07/01/14; 07/01/19)
- (7) An *FLSA non-exempt at-will employee* shall not receive *holiday premium pay* and *overtime pay* for the same hours worked on a *holiday*. (Amended 07/01/19)
- (8) An *FLSA non-exempt at-will employee* who works a designated shift between the hours of 6:00 p.m. and 7:00 a.m. on a *designated holiday*

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shall receive *holiday premium pay* and *shift differential pay* for the same hours worked on a *holiday*. (Added 07/01/19)

- (9) An *FLSA non-exempt at-will employee* shall be compensated for *holiday compensatory time* at the time of separation. (Added 07/01/19, amended 05/13/23)

D. Holiday Pay for FLSA Exempt At-will Employees

- (1) An *FLSA exempt at-will employee* (including an *FLSA, exempt benefited temporary employee* or an *FLSA exempt non-benefited temporary employee*) who works on a *designated holiday* shall not be paid or accrue compensatory time for holiday hours worked. (Added 07/01/19, amended 05/13/23)
- (2) An *FLSA exempt at-will employee* is responsible for entering all actual hours worked into their *SHARE* payroll timesheet for tracking purposes. Any extra hours entered are for tracking purposes only and are not available for use. (Added 07/01/19)
- (3) When a *designated holiday* falls on an *FLSA exempt at-will employee's* regularly scheduled workday and the *FLSA exempt at-will employee* is not required to work, the *FLSA exempt at-will employee* shall be paid the *FLSA exempt at-will employee's* hourly rate for the number of hours the *FLSA exempt at-will employee* would have normally worked, up to a maximum of eight (8) hours per day. An *FLSA exempt at-will employee* working alternative work schedules must revert back to a regular *work week* of five (5) days a week, eight (8) hours a day in the week in which a *holiday* falls. (Added 07/01/19)
- (4) An *FLSA exempt part-time at-will employee* whose work schedule includes the day a *holiday* is observed will be compensated for the number of hours the *FLSA exempt part-time at-will employee* would normally have worked on that day. An *FLSA exempt part-time at-will employee* whose normal work schedule does not include the day a *holiday* is observed will not be compensated for the *holiday*. (Added 07/01/19)
- (5) An *FLSA exempt at-will employee* shall receive *holiday pay* on *designated holidays* that the *FLSA exempt at-will employee* does not work provided the *FLSA exempt at-will employee* is in a pay status for

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no less than one (1) hour, for both the *FLSA exempt at-will employee's* last scheduled workday before the *holiday* and the *FLSA exempt at-will employee's* first scheduled workday after the *holiday*. (Added 07/01/19)

E. Shift Differential Pay

- (1) An *FLSA non-exempt at-will employee* assigned to work a scheduled shift at the request of the *Administrative Authority* between the hours of 6:00 p.m. and 7:00 a.m. and who works during this timeframe shall receive *shift differential pay*. (Added 07/01/19)
- (2) The schedule shift must be assigned to the *at-will employee* in advance of it being worked, and for a duration exceeding one *pay period* for it to be eligible for *shift differential pay*. (Added 05/13/23)
- (3) An *FLSA non-exempt at-will employee* who requests and is approved to work a schedule between the hours of 6:00 p.m. and 7:00 a.m., but the shift is not a requirement of the *job* shall not receive *shift differential pay*. (Added 07/01/19)
- (4) All *FLSA non-exempt at-will employees* eligible for *shift differential pay* within a *judicial entity* shall be paid the same *shift differential pay rate*, unless approved by the *Director*. (Added 08/01/10; amended 09/10/21)
- (5) *Shift differential pay* shall be no more than \$3.00 per hour in addition to the regular rate of pay for the hours worked between 6:00 p.m. and 7:00 a.m. and shall be at the discretion of the *Administrative Authority*. (Added 07/01/19)
- (6) If an *FLSA non-exempt at-will employee*, who is receiving *shift differential pay*, separates employment, the *at-will employee's compensatory time* (if they accrued the time as a non-exempt and if applicable) shall be included in the buy-back. (Added 07/01/19)
- (7) This provision does not apply to the at-will judges' staff whose *pay rate* is set by Supreme Court Order and includes: (Added 05/13/23)
 - a. Appellate Paralegals (U),
 - b. Bailiffs (U),
 - c. Bailiff Security (U),

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- d. Certified Court Monitors (U)
- e. Court Reporters (U), and
- f. Trial Court Administrative Assistants (TCAA).

F. Stand-By Pay
(Ref: Stand-By Policy)

At-will employees may receive a designated amount of pay for every hour of *stand-by* consistent with the *NMJB* On-Call, Stand-By, and Call Back Pay Policy.

17.05 NO COMPENSATION DURING LEAVE WITHOUT PAY

In accordance with *NMJBPRAW*E Section 19.11, *Leave Without Pay*, an *at-will employee* on authorized or unauthorized *leave without pay* shall not be compensated, and may experience changes to benefit coverage, leave accruals, and PERA credit.

17.06 PERFORMANCE AND COST-OF LIVING COMPENSATION ADJUSTMENT

Performance and cost-of-living compensation adjustments shall be governed by the legislation creating and authorizing them.

17.07 OUT-OF-CYCLE COMPENSATION INCREASE

(Ref: Out-of-Cycle Increase Guidelines, Criteria, and Form Instructions, and Supreme Court Order 05-8500) (Section Added 08/01/10; amended 07/01/19)

A. The *Administrative Authority* may recommend to the *Director* an out-of-cycle increase, consistent with the Out-of-Cycle Increase Guidelines, based upon the following criteria:

- (1) demonstrated exceptional performance; or
- (2) *salary alignment*. (Amended 07/01/19)

B. The *Director* shall make a determination and issue a letter of explanation to the *Administrative Authority* approving or disapproving the out-of-cycle increase within thirty (30) days of receipt of request to *AOC HRD*. If the recommendation is approved, the *effective date* shall be no later than the first full *pay period* following the *Director's* approval. The thirty (30) days are automatically suspended each year during the legislative session and two (2)

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weeks immediately prior to the start of the legislative session. (Amended 07/01/19)

- C. This provision does not apply to the at-will judges' staff whose *pay rate* is set by Supreme Court Order and includes: (Added 05/13/23)
- a. Appellate Paralegals,
 - b. Bailiffs (U),
 - c. Bailiff Security (U),
 - d. Certified Court Monitors (U)
 - e. Court Reporters (U), and
 - f. Trial Court Administrative Assistants (TCAA).

17.08 MARKET ADJUSTMENT

(Ref: Market Adjustment Policy)

- A. An *Administrative Authority* may request the *Director* to conduct a *market review* of the competitive *pay rates* for a *classification* series within a geographic location or specific market to address critical *recruitment* and retention problems.
- B. Based upon the *market review*, the *Director* may recommend to the Supreme Court assignment of *alternative pay ranges*.
- C. The *pay rate* for positions within the geographic location or specific market may be adjusted to an *alternative pay range* to meet competition and to remedy *recruitment* and retention problems.
- D. An *alternative pay range* assignment shall be for no more than a two (2) year duration. The adjustment may be extended thereafter in two (2) year increments with updated and supporting *market review* data.

17.09 COMPENSATION INCREASE FOR CERTIFIED BILINGUAL COMMUNICATION AT-WILL EMPLOYEES (Added 07/01/14)

- A. The *Administrative Authority* may approve an *at-will employee's* advance request to have the *at-will employee's* bilingual certification recognized for additional pay.
- B. A *written* request to the *Administrative Authority* seeking such additional pay shall be provided before the *at-will employee* begins the certification process.

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- C. The approval or disapproval of the *Administrative Authority* is only in regard to additional pay upon certification completion, not the *at-will employee's* ability to seek certification unless such is funded by the *judicial entity*.
- D. To be considered for a certified bilingual compensation increase, an *at-will employee* must be a certified bilingual *at-will employee*. A certified bilingual *at-will employee* is an *at-will employee* who meets each of the following requirements:
- (1) The *at-will employee* successfully completes the New Mexico Center for Language Access bilingual communication program, obtaining certification of successful completion.
 - (2) The *at-will employee* keeps the *employee's* bilingual communication certification current, including compliance with any continuing education requirements required by the New Mexico Center for Language Access.
- E. A certified bilingual *at-will employee* shall be given an increase of \$1.00 per hour as a *multiple component of pay* in addition to an *at-will employee's* regular hourly rate of pay. This increase shall be in addition to the *at-will employee's base pay rate*. (Amended 07/01/19)
- (1) The increased compensation required for a certified bilingual *at-will employee* shall be funded within the *judicial entity's* appropriation, and there will be no request for a deficiency or supplemental appropriation or emergency funding from the State Board of Finance to implement and maintain the compensation increase.
 - (2) The *Administrative Authority* shall annually determine whether the *at-will employee's* bilingual communication certification is current and, if not, shall reduce the *at-will employee's* pay by \$1.00 per hour until such time as the *at-will employee's* bilingual communication becomes current, at which time the additional compensation of \$1.00 per hour shall be reinstated. (Amended 07/01/19)
 - (3) The *Administrative Authority* within the *judicial entity* in which the *at-will employee* is employed shall determine upon an *at-will employee's* job transfer, promotion, or demotion, whether the *at-will employee's* bilingual communication certification is required and, if it is not, shall reduce the *at-will employee's* pay by the *multiple*

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component of pay \$1.00 per hour immediately before any *job* change transpires. (Amended 07/01/19)

- (4) If an *at-will employee*, who is receiving a compensation increase for certified bilingual communication separates employment with compensatory time they earned while in an FLSA non-exempt status, which requires it to be paid out upon separation, the compensatory time pay out shall include the certified bilingual compensation. [Note: compensation for *paid time off (PTO)* leave payout upon separation shall not include bilingual pay – see 19.14.I] (Added 07/01/19, amended 05/13/23)

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SECTION 18. APPOINTMENT OF AT-WILL EMPLOYEES

18.01 PURPOSE

To govern the *appointment* of a person to an at-will position in the *Judicial Branch*.

18.02 EQUAL EMPLOYMENT OPPORTUNITY

- A. The *Judicial Branch* is an Equal Employment Opportunity Employer.
- B. All decisions and procedures regarding *recruitment*, selection, *promotion* and other terms and conditions of employment shall be made without regard to *discrimination* on the basis of race, color, religion, sex, age over forty (40), national origin, ancestry, physical or mental disability, serious medical condition, pregnancy, childbirth, conditions related to pregnancy or childbirth, sexual orientation, gender identity, socioeconomic status, citizenship, ethnic origin, marital status, military leave, veteran status, genetic information, spousal affiliation, political affiliation, cultural or religious headdress, and any other status protected by law, except where there is a bona fide occupational qualification which justifies a differentiation, and shall be in compliance with equal employment laws, the Americans with Disabilities Act, the Family and Medical Leave Act, and all other applicable federal and state laws. (42 U.S.C.A. §§12101) (Amended 07/01/19, 05/13/23)

18.03 NEPOTISM (Amended 08/01/10)

- A. No person shall be appointed, transferred, or promoted to a position and *no at-will employee* shall hold a position in a *judicial entity* if that person or *at-will employee* will be within the chain of *supervision* of a *family member*, *household member*, or *domestic partner* or a person the employee is in a relationship with.
- B. No person shall be appointed to an at-will position and no *at-will employee* shall hold a position in a *judicial entity* in which a *family member*, *household member*, or *domestic partner* is an elected or appointed judge or justice.
- C. No person shall be appointed to a position or hold a position in the Supreme Court, *AOC*, Compilation Commission, Building Commission, or Law Library when a *family member*, *household member*, or *domestic partner* is a Supreme Court Justice.

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- D.** If an *at-will employee* is in one of the above-prohibited positions, every effort will be made by the *Administrative Authority* to transfer the affected *at-will employee* to a comparable position for which the *at-will employee* qualifies within the *Judicial Branch*. If a like position is not available, then the affected *at-will employee* shall resign or be terminated.

18.04 RECRUITMENT OF PERSONNEL

- A.** The *recruitment* procedure for an *at-will employee* shall be at the discretion of the *Appointing Authority*.
- B.** The *Appointing Authority* is the individual who has the primary responsibility to recruit, review and recommend applicants for vacant at-will positions in the *Judicial Branch*. An *Appointing Authority* may designate this responsibility to another supervisor or manager. (Added 07/01/19)
- C.** The applicant selected shall meet minimum qualifications of the *job* description. Offers of employment may not be made to an *at-will employee* until the minimum qualifications have been verified and certified in *writing* by the *Administrative Authority or designee*, through receipt of a resume or application. (Amended 07/01/19)
- D.** The applicant selected shall not be in violation of the Criminal Offender Employment Act (*NMSA* 1978, Section 28-2-1 to 28-2-6, 1974, as amended through 2010).
- E.** The Administrative Authority may, after confirming a sufficient budget, approve a position's *double-fill* upon appropriate justification, including the incumbent's *resignation* letter and for a period not to exceed 90 days. The *Administrative Authority* shall send to the *AOC HRD Director* notification of any *double-fills* prior to their effective date. (Added 07/01/19, amended 05/13/23)

18.05 APPOINTMENT

The *Appointing Authority* may make an offer of employment by a letter, which shall contain, at minimum, specific at-will conditions of employment. (Amended 07/01/19)

18.06 POST OF DUTY (Added 08/01/10)
(Ref: Supreme Court Order 05-8200)

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- A. An *at-will employee's* assigned post of duty shall be indicated in the employment offer letter and any change to the assigned post of duty shall be communicated to the *at-will employee* in *writing* for inclusion in the employee's personnel file. (See 18.06 C.) (Amended 05/13/23)
- B. When it is in the best interest of the *judicial entity*, the *Administrative Authority* may transfer an *at-will employee* from one physical location to another.
- C. The *at-will employee* shall be notified in *writing* and shall be notified by a minimum of ten (10) working days before the change of post is effective. (Added 07/01/19)

18.07 PERSONAL STAFF OF JUSTICES AND JUDGES

The employment of an *at-will employee* appointed by a single justice or judge terminates with the expiration of the term of the justice or judge who made the original *appointment*, or with the death, *resignation*, relocation, non-election, non-retention or removal of the appointing judge or justice; provided, however, that the *Administrative Authority* may extend the employment of the *at-will employee* for no more than ninety (90) days, when it is in the best interest of the *judicial entity*. (Amended 08/01/10)

18.08 RIGHTS OF NEW MEXICO JUDICIAL BRANCH AT-WILL EMPLOYEES
(Added 07/01/14; amended 07/01/19)

- A. *At-will employees* serve at the discretion of his or her judge(s), justice(s), *director*, commissioner, or court executive officer and may be dismissed by the *judicial entity* for any reason, and without warning. There may be exclusions that would include not terminating an *at-will employee* for refusing to commit an illegal act, or if the *at-will employee* is on family medical leave. (Amended 07/01/19)
- B. The *appointing authority* judge as well as the Chief Judge or Chief Justice may discipline or separate an *at-will employee* from employment. (Added 07/01/14, amended 07/01/19)
- C. Hearing officers, and special commissioners shall be appointed by and serve at the pleasure of the Chief Judge and the judges of the judicial district to which the officer is assigned.

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- D. If an *at-will employee* serves an entire division or program of the *judicial entity*, dismissal shall be based upon a majority vote of the judges overseeing the division or program. *At-will employees* who report to the *Administrative Authority* or a court executive officer may be dismissed by the *Administrative Authority* or his or her designee. (Added 07/01/19)

- E. *At-will employees* have no rights under the New Mexico *Judicial Branch Personnel Rules Part I*, specifically, to grieve or appeal a *disciplinary action*, including termination. (Added 07/01/14)

- F. Court executive officers may be dismissed without cause only by a majority vote from their *judicial entity's* district judges. (Added 07/01/19)

18.09 APPOINTING AUTHORITY

Ref: General Personnel Policies and Procedures – *Administrative Authority, Appointing Authority* and *At-Will Employee Job Classification List*.)

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SECTION 19. LEAVE AND HOLIDAYS

19.01 PURPOSE

To establish the procedure for accruing, accumulating, and using leave.

19.02 ABSENCE WITHOUT LEAVE

- A. *At-will employees* who fail to appear for work without authorized leave, or who appear for work but are in violation of policies governing the *at-will employee's* readiness for work shall be considered *absent without leave*. *At-will employees* shall not be paid for any periods of *absence without leave* and shall not accrue *paid time off (PTO)* leave. (Amended 05/13/23)
- B. *Absence without leave* is *just cause* for, and may result in *disciplinary action* up to and including termination.

19.03 ADMINISTRATIVE LEAVE

(Ref: Leave Policy, and Inclement Weather Policy)

- A. The Chief Justice may authorize *administrative leave* with pay for any period.
- B. An *Administrative Authority* may authorize an *at-will employee administrative leave* with pay for a period not to exceed ten (10) *business days* per calendar year when it is in the best interests of the *Judicial Branch* to do so. (Amended 08/01/10)
- C. The *administrative leave* that is granted by the Chief Justice without a specific day and time, such as for fairs and fiestas, must be pre-approved by the *at-will employee's* immediate supervisor prior to being taken. (Added 08/01/10)
- D. An *Administrative Authority* may not authorize *administrative leave* to supplement *holiday leave*, or *administrative leave* granted by the Chief Justice. (Added 08/01/10)
- E. An *Administrative Authority* may grant up to eighty (80) hours of *administrative leave* in a calendar year for an *at-will employee* to participate in an *employee* assistance program, counseling, or drug or *alcohol* rehabilitation program. (Added 08/01/10)

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- F. The *Director* may authorize *administrative compensatory time*, and *administrative compensatory time buy-back* to *at-will employees* whose *Administrative Authority* provides justification of his or her extraordinary efforts which have had a statewide or judicial wide positive impact. (Added 07/01/19)

19.04 BEREAVEMENT LEAVE

An *at-will employee* may request up to a maximum of five (5) work days of bereavement leave with pay to grieve the death of an *immediate family member*, a *sibling*, or a *domestic partner*. An *at-will employee* may request up to a maximum of two (2) business days of bereavement leave with pay to grieve the death of a *family member*. The *at-will employee* shall request approval for this leave from the immediate supervisor. Compensation during bereavement leave shall be commensurate with the *at-will employee's* usual paid work hours. (Amended 08/01/10; 07/01/19, 05/13/23)

19.05 BONE MARROW AND ORGAN DONOR LEAVE (Added 4/1/14)

- A. An *at-will employee* may request up to twenty (20) workdays for the purpose of donating an organ or bone marrow. [*NMSA 24-28-3, 2013*]
- B. Medical verification for the purpose of the leave and leave duration will be required.
- C. An *at-will employee* may request and use donated *paid time off (PTO)* leave for the purpose of donating an organ or bone marrow. If an *at-will employee* requests donations of *paid time off (PTO)* leave but does not receive twenty (20) workdays, the *Administrative Authority* may grant the remainder of the leave up to a maximum of twenty (20) workdays in administrative leave. (Amended 05/13/23)
- D. Any paid leave of absence granted pursuant to this provision shall not result in a loss of compensation, seniority, *paid time off (PTO)* leave, or banked *overtime/compensatory time* for which the *at-will employee* is otherwise eligible. (Amended 05/13/23)

19.06 COURT LEAVE/JURY DUTY

An *at-will employee* called to serve as a juror or subpoenaed in an official capacity as

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a non-expert *witness* in a case in which the *at-will employee* is not a party shall be entitled to court leave.

- A. When, in obedience to a subpoena, an *at-will employee* appears as a *witness* before a federal or state grand jury or court, or before a federal or state agency, the *at-will employee* shall be entitled to leave with pay for the required period. *Witness* fees received by the *at-will employee* as a non-expert *witness*, excluding reimbursement for meals, travel and *overtime*, shall be remitted to the *at-will employee's judicial entity*.
- B. An *at-will employee* shall be entitled to leave with pay for serving on a jury and shall not be entitled to receive any jury fees for normal working hours but shall be entitled to retain reimbursement for meals and travel and any jury service fees earned in excess of normal working hours. Proof of summons must be provided. Jury fees received shall be remitted to the *at-will employee's judicial entity*. (Amended 08/01/10; 07/01/14, 05/13/23)

19.07 EDUCATIONAL LEAVE

(Ref: Leave Policy; and Application for Educational Leave Form)

An *at-will employee* may be granted educational leave in accordance with the Leave Policy, Section 4. (Amended 08/01/10)

A *full-time at-will employee* who has completed one (1) year of employment may be approved for up to four (4) hours of educational leave per week. *Part-time at-will employees* who work more than twenty (20) hours per week but less than forty (40) hours per week may be approved for up to two (2) hours of educational leave per week. Educational leave is paid leave granted during the *at-will employee's regularly scheduled work hours* for the purpose of obtaining formal education that will enhance the *at-will employee's* professional development in the judiciary. This leave may only be used for class attendance, including online attendance and regular travel to and from class. Educational leave is not to be used as study time, or to make up a missed lunch should the class be scheduled during an *at-will employee's* normal lunch hour. (Added 07/01/19, 05/13/23)

19.08 FAMILY EDUCATIONAL LEAVE

A *full-time at-will employee* may be granted up to eight (8) hours per calendar year of family educational leave. The purpose of this leave is to provide an *at-will employee* with the opportunity to participate in academic activities (excluding travel time), which occurs during *regularly scheduled work hours* of an *immediate family*

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member or domestic partner. (Amended 08/01/10)

Part-time at-will employees working more than twenty (20) hours per week but less than forty (40) may be granted up to four (4) hours per calendar year of family educational leave. (Added 07/01/19)

- A. An *at-will employee* must request leave in advance from the *at-will employee's* immediate supervisor and explain the academic activity for which leave is requested.
- B. Allowed academic activities focus on academic enrichment and include, but are not limited to: parent/teacher conferences and association meetings, organized field trips, college orientations, school registrations, graduations, tutorial sessions and organized educational programs. Each activity will be considered on a case-by-case basis by the immediate supervisor. Athletic events shall not be considered academic activities. Travel time to the academic event may be included if the event occurs during the *at-will employee's* normally scheduled work hours. (Amended 07/01/19, 05/13/23)
- C. The leave allowed under this rule does not have to be taken in consecutive hours. (Amended 07/01/19, 5/13/23)
- D. This leave is not accrued leave and is forfeited upon separation.
- E. This leave is limited to a maximum of eight (8) hours per calendar year regardless of the number of *immediate family members* of an *at-will employee*. (Amended 08/01/10)

19.09 FAMILY MEDICAL LEAVE

(Ref: Family and Medical Leave Act Policy)

Family and medical leave under the federal Family and Medical Leave Act, 29 U.S.C. Section 2601-2654 (FMLA) shall be administered for eligible *at-will employees* in accordance with the Family and Medical Leave Act Policy.

19.10 HOLIDAYS

The Chief Justice declares *holidays* for the *Judicial Branch*.

19.11 LEAVE WITHOUT PAY

(Ref: Leave Policy, and Request for Leave Without Pay Form)

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A. Authorized

An *at-will employee* may be granted *leave without pay* for the justifiable personal reasons as follows:

- (1) **Short Term** – An *at-will employee* shall apply in *writing*, in advance, for *leave without pay* and may be granted *leave without pay* upon approval of the *Administrative Authority*. Short-term requests for *leave without pay* include intermittent requests for up to thirty (30) consecutive days. (Added 08/01/10; amended 07/01/19)
- (2) **Long Term** – An *at-will employee* shall apply in *writing*, in advance, for *leave without pay* for a period of more than thirty (30) consecutive calendar days and up to twelve (12) consecutive months. The *at-will employee* will be granted such leave only when the *Administrative Authority* can ensure the *at-will employee* a position of like status and pay at the same geographic location upon the return from *leave without pay*. However, if the *judicial entity* cannot ensure the *at-will employee* a position of like status and pay at the same geographic location and the *at-will employee* agrees in *writing* to waive that requirement, such leave may be granted without the assurance of a position being available at the end of the leave. (Added 08/01/10)

B. Effect on Other Leave

An *at-will employee* will not accrue any leave while on *leave without pay*. (Amended 07/01/19)

19.12 MILITARY LEAVE

- A. An *at-will employee* who serves in the State Guard or National Guard, a State Defense Force, a reserve component of the uniformed services of the United States, the Civil Air Patrol, or who volunteers for such service shall be granted military leave with or without pay in accordance with the Uniformed Services Employment and Re-employment Rights Act (USERRA), 38 U.S.C. Section 4301-4335, for “service in the uniformed services” as defined in that Act, and with the New Mexico Statutes and Rules, including, but not limited to *NMSA* 1978, Sections 20-4-7, 20-5-14, and 20-7-5. The *Administrative Authority* may authorize the *Appointing Authority* to temporarily fill a vacancy, and the *at-will employee* may return to work as provided by the law.

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(Amended 07/01/19)

- B.** An *at-will employee* who is on military leave with pay shall have the same rights and benefits as any other *at-will employee* who is on leave with pay.

19.13 PAID PARENTAL LEAVE (Added and Effective 03/1/2021)

- A.** After one (1) full year of continuous employment in the *Judicial Branch*, excluding temporary appointments, a *full-time at-will employee* is eligible to request up to twelve (12) weeks (480 hours) of *Paid Parental Leave* for use within the first six (6) months following the birth or adoption of a *child(ren)*. *Part-time at-will employees* are eligible on a pro-rated basis, for example, *at-will employees* who work 30 hours per week may receive up to 360 hours, and *at-will employees* who work 20 hours per week may receive up to 240 hours).
- B.** *Paid Parental Leave* will run concurrently with leave eligible under the FMLA, as applicable, and provided the request qualifies under the Act, and will be charged towards the twelve (12) weeks of FMLA entitlement.
- C.** If, during the first six months of a child's birth or adoption, an employee becomes eligible for paid parental leave, the combined FMLA taken for the birth or adoption of a child(ren), and the *Paid Parental Leave* may not exceed 480-hours. The *Paid Parental Leave* shall not supplement or be in addition to the twelve (12) weeks an employee may be eligible for under the FMLA, rather is intended to provide a total of twelve (12) weeks combined for use in the six months following the birth or adoption of a *child(ren)*, and may not be applied retroactively.
- D.** The *Paid Parental Leave* may be taken intermittently.
- E.** *Paid Parental Leave* is to assist and support new parents in balancing work and family and provide eligible *at-will employees* with paid leave for activities related to the bonding, care, and well-being of their newborn or newly adopted *child(ren)*, and may be used by eligible *at-will employees* even if both of the parents, or adoptive parents, are employed by the *judicial branch*. (See the New Mexico *Judicial Branch Family and Medical Leave Act Policy*)
- F.** *Paid Parental Leave* shall be paid based upon the eligible *at-will employee's* base pay rate, excluding *temporary salary increases* or *multiple components*

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of pay (i.e., bilingual pay, shift pay, etc.), and determined by the *at-will employee's regularly scheduled work hours*.

- G.** *At-will employees* should request the *Paid Parental Leave* using the approved form and provide the required supporting documentation thirty (30) days prior to the birth or adoption of the *child(ren)*.
- H.** The *Judicial Entity* Human Resources shall communicate available options with the *at-will employee* upon receipt of a request for *Paid Parental Leave*, including FMLA leave if the *at-will employee* is eligible for such leave, and provide management with updates on, and any revisions to, the request.
- I.** Any unused leave at the end of the six (6) month period is lost; *Paid Parental Leave* has no cash value, will not result in a payout benefit, and may not be donated or transferred to another *at-will employee*.
- J.** The *Paid Parental Leave* may not be accumulated and is per event. If an *at-will employee* has multiple newborns or adoptions at the same time, the *at-will employee* would be eligible for a total of twelve (12) weeks for that date/event.
- K.** An *at-will employee* may apply for short-term disability for qualifying events; however, an *at-will employee* may not receive short-term disability at the same time as receiving *Paid Parental Leave*.
- L.** If a *holiday* occurs while an eligible *at-will employee* is taking *full-time Paid Parental Leave*, the *at-will employee* will receive Family Medical Leave *holiday pay* (FMHOL), and the *holiday* will count towards the twelve (12) week allowance.

19.14 PAID TIME OFF (PTO) (Added and Effective 05/13/2023)

Effective May 13, 2023, all *at-will employees' accrued annual leave, sick leave and personal holiday* will be combined into one leave type called *paid time off or PTO*. Due to limitations for use in the *SHARE* system, *at-will employees* will use the time reporting codes for annual leave and sick leave in *SHARE* to record their use of *PTO* leave, and an *at-will employee's PTO* balance will be available in *SHARE* under the title vacation leave and sick leave. (Amended 06/22/23)

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All references to *PTO* in these NMJBPR include the hours an employee has accrued or will accrue in their annual leave and sick leave accrual buckets in the SHARE Human Capital system. (Added 06/22/23)

- A. PTO Accrual:** An *at-will employee* shall accrue *paid time off* or *PTO leave* from the first day of employment pursuant to the chart in NMJBPR 5.14(M) and shall accrue *PTO* leave in proportion to hours worked. For service of less than eighty (80) hours per *pay period*, *PTO* accrual will be prorated. *PTO* may be accrued without limit. In addition to serving in the *Judicial Branch*, for purposes of *PTO* leave accrual, time employed in the executive and/or legislative branches of the state of New Mexico, including the Public Defender's Office and District Attorney's Office will be counted. (Amended 05/13/23)
- B. Transfer of PTO within the NMJB:** The *judicial entity* of the departing *at-will employee* may, at the *Administrative Authority's* discretion and with sufficient budget pay out all or some of the accrued *PTO* balance up to 300 hours. Any *PTO* not paid out must be accepted upon transfer by the *judicial entity* the *at-will employee* is transferring into without limit.
- C. Transfer of annual leave into the NMJB:** The *Administrative Authority* of a *judicial entity* shall accept the accrued annual leave over 240 hours of an *at-will employee* transferring from an agency of the executive, or legislative branches including the Public Defender's Office and the District Attorney's Office. The annual leave over 240 hours will be converted to *PTO* upon transfer to the *judicial entity*, though will continue to be shown in SHARE as *annual leave* and use of this leave will require the time reporting codes related to *annual leave*. The annual leave hours at or below 240 should be paid out according to the *at-will employee's* former executive, or legislative agency's personnel policy governing annual leave payouts upon separation. (Amended 06/22/23)
- D. Transfer of sick leave into the NMJB:** The *Administrative Authority* of a *judicial entity* shall accept all accrued sick leave up to 600 hours of an *employee* transferring from an agency of the Executive, or Legislative branches including the Public Defender's Office and the District Attorney's Office. The sick leave hours up to 600 will be converted to *PTO* upon transfer to the *judicial entity*, though will continue to be shown in SHARE as *sick leave* and use of this leave will require the time reporting codes related to *sick leave*. (Amended 06/22/23)

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- E. Transfer of PTO leave out of the NMJB when an *at-will employee* transfers to another governmental entity:** If an *employee* transfers to another branch of government, i.e., the executive or legislative branch, the *employee* may be paid up to a maximum of 240 hours of their *PTO* balance. As the annual and sick leave are reflected separately in SHARE, the *employee* will be first paid up to the maximum 240 balance using the balance in the annual leave accrual bucket, and then from the sick leave accrual bucket. If the gaining governmental entity agrees to accept the annual leave balance, the *employee* may decline the buyback up to 240 hours of *PTO* upon transfer. If the *employee* has a sick leave balance after the 240 hour maximum combined balance is paid, the remaining balance of the *employee*'s sick leave shall transfer to the Executive or Legislative Branch according to their personnel rules. Any annual leave in excess of the maximum 240-hour payout that the gaining agency will not accept upon transfer shall be lost. (Amended 06/22/23)
- F. PTO balance and end-of-year carryover balance:** There is no limit to the number of *PTO* leave hours that may be carried forward after the last *pay period* beginning in December of each year. There is no limit to the number of *PTO* leave hours an *at-will employee* may accrue.
- G.** An *employee* who transfers from a *term* or *permanent position* to a *benefited temporary position* without a *break in service* may accrue *PTO* leave and may carry forward the balance and use that leave balance in accordance with the *NMJBPR*. (See definitions of *temporary position* and *benefited temporary employee*)
- H.** An *at-will employee* who is on *leave without pay*, unpaid Family Medical Leave, *suspension without pay*, *absent without leave*, or any type of unpaid leave shall not accrue *PTO* leave for those unpaid hours.
- I.** *PTO* leave payout upon separation including retirement shall be at an *at-will employee*'s base *pay rate*, and not include any *multiple components of pay* such as compensation for Certified Bilingual Communication, temporary pay differentials, and *shift differential pay*, and shall be in accordance with Section 5.14.S(1) *PTO* leave payout upon separation. [Note: compensation for *compensatory time* buyback upon separation must include the bilingual pay – see 3.09.E.4]

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- J.** An *at-will employee* who is elected as a judge or justice shall be paid for their *PTO* leave prior to their transfer to their judgeship position, in accordance with Section 5.14.S (1) *PTO* leave payout upon separation.
- K.** The estate of an *at-will employee* who dies while employed by the *Judicial Branch* shall be compensated for all of the *at-will employee's* accrued *PTO* leave at the *employee's* base *pay rate*.
- L.** **Additional and Temporary Provisions – Personal Holiday Leave:** The personal holiday leave will be inactivated in the Judiciary Salary Plan effective December 31, 2023. Any *at-will employee*, who receives a personal holiday during the calendar year 2023, will be allowed to use it. A personal holiday is 8 hours for a full-time *at-will employee*, prorated for *part-time at-will employees*, and has been calculated into the *PTO* leave accrual rates, which means some *at-will employees* may realize two personal holidays in 2023. Personal holiday leave must be taken in full at one time, (e.g., the 8 hours cannot be taken in two increments of 4 hours). Any *at-will employee* who does not take the personal leave day by December 31, 2023, shall not be compensated for it, and it will be lost. The personal leave day of an *at-will employee* transferring from an agency of the legislative or executive branches to a *judicial entity* shall forfeit their personal holiday upon transfer.

M. PTO Leave Accrual Chart:

PERIOD OF EMPLOYMENT (see 19.14 A)	PTO HOURS EARNED PER PAY PERIOD [Prorated if less than 80 hours]	PTO HOURS ACCRUED BASED ON 2080 HOURS (FULL-TIME)
Day 1 – 3 years	9.0	234
Over 3 – 7 years	10.0	260
Over 7 – 14 years	11.0	286
Over 14 years and beyond	12.0	312

[Note: the *PTO* accrual rates are reflected in the employee’s annual and sick leave accrual buckets in SHARE] (Added 6/22/23)

- N.** An *at-will employee* may use *PTO* leave only after it has been accrued.
- O.** An *at-will employee* may use *PTO* leave when approved in advance by the immediate supervisor unless advance approval cannot be obtained because of unforeseen circumstances, which might include taking *PTO* leave for the

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illness of the *at-will employee* or a family member. If the *at-will employee's* reason for *PTO* leave is known in advance, a request for approval shall be made in advance; otherwise, a request for *PTO* leave approval must be made as soon as possible but no later than prior to the *at-will employee's* scheduled shift, or in accordance with the established reporting policies of 24/7 operations.

P. Reasonable effort will be made to accommodate the *at-will employee's* leave request while balancing the operational needs of the *judicial entity*.

Q. An *at-will employee* may be approved to use *PTO* leave to supplement approved bereavement leave.

R. PTO for medical reasons & health care provider's certificate:

(1) If an *at-will employee's* use of *PTO* leave is not approved in advance and is used for medical reasons the *Administrative Authority* or *Human Resources* may request the *at-will employee* to provide a medical provider's statement when the *PTO* leave use is in question. An *Administrative Authority* or *Human Resources* may require a medical release prior to an *at-will employee's* return to work.

(2) Management may request the *at-will employee* to provide a certificate from a *health care provider* verifying the illness, injury, or treatment.

(3) A return to work release is required including any work-related restrictions when an *at-will employee* has been out for their own serious medical condition. (See the *NMJB FMLA* policy)

(4) If the requested certificate is not provided, *PTO* leave may be denied, and the *at-will employee* may be ordered to return to work by a specific date. Unauthorized absences shall not be compensated, are considered *absent without leave*, and are subject to *disciplinary action*.

S. Compensation for PTO Leave - Upon Separation

(1) An *at-will employee* who separates from the judiciary shall be compensated for a maximum of 240 hours of *PTO* leave at the *at-will employee's* current *base pay rate*. (See also section 19.14 I.)

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T. Compensation for PTO Leave - Buy-Back

- (1) An *at-will employee* who has accumulated more than 600 hours of unused *PTO* leave is entitled to be paid for the unused *PTO* leave in excess of 600 hours at the *at-will employee's* hourly rate of pay in accordance with the following schedule:

Compensation for PTO Buy-Back	Buy-Back up to amount over 600 hours
Fiscal Year 2024	Up to 100 hours in excess of 600 may be sold back
Fiscal Year 2025	Up to 200 hours in excess of 600 may be sold back
Fiscal Year 2026	Up to 300 hours in excess of 600 may be sold back
Fiscal Year 2027 and thereafter	Up to 400 hours in excess of 600 may be sold back

- (2) The *PTO* leave buy-back will be offered once per fiscal year in the second full *pay period* in July.
- (3) To request to participate in the *PTO* buy-back an *at-will employee* must notify *Human Resources* no later than May 15th of each year of their intent to buy-back in July by submitting to *Human Resources* the *NMJB PTO Buy-Back Request Form*. The buy-back will occur the second full *pay period* that starts in July, based on balances as of the first full *pay period* in July. (Note: local HR Professionals may be asked to run reports of eligible employees and buy-back hours for budgetary projection purposes.)

U. Compensation for PTO Leave - Upon Retirement

- (1) Effective May 13, 2023, an *at-will employee* who retires from the judiciary with a PERA eligible retirement payout shall be compensated for *PTO* leave hours at the *at-will employee's* current *base pay rate* and based on the below schedule, which is based on *time employed* in the *Judicial Branch*, which need not be consecutive. Payouts are in accordance with the chart below. (Amended 07/14/23)
- (2) Retiring employee **shall** provide their HR Professional confirmation from PERA that they are retiring before payout may be made. (Added 07/14/23)

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TIME EMPLOYED WITH THE <i>JUDICIAL BRANCH</i> FOR PTO BUY-BACK UPON RETIREMENT	PTO PAYOUT UPON RETIREMENT
Day 1 - 6 years	Up to 300 hours
Over 6 - 10 years	Up to 400 hours
Over 10 – 14 years	Up to 550 hours
Over 14 – 20 years	Up to 700 hours
Over 20 years	Up to 800 hours

19.15 PTO LEAVE DONATIONS

(Ref: PTO Leave Donation Program Policy)

- A. Only an *at-will employee* who meets the following criteria shall be eligible to receive donations of *PTO* leave:
 - (1) The *at-will employee* shall be on Family Medical Leave, as outlined in the *PTO* Leave Donation policy and forms.
 - (2) The *at-will employee* shall not be receiving Workers’ Compensation.
 - (3) The *at-will employee* must have exhausted all of their *PTO* leave and *compensatory time*.
 - a. The purpose of the leave shall be for a qualifying Family Medical Leave (FML) event. *[Note: see the FMLA policy]*
 - (4) Donation of *PTO* leave shall be administered in accordance with the *PTO* Donation Program Policy.

19.16 WORKSITE WELLNESS INCLUDING SELF-CARE AND PHYSICAL FITNESS ACTIVITY LEAVE

- A. An *at-will employee* may be granted leave during work hours for self-care wellness activities and/or physical fitness activity in accordance with the *NMJB* Worksite Wellness Including Self-Care and Physical Fitness Activity Policy. (Ref. Worksite Wellness Including Self-Care Policy & Brochure) (Amended

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- B.** An *at-will employee* may request one (1) hour of administrative leave per week in order to participate in *self-care*. The one (1) hour can be taken in increments, such as two (2) thirty minutes for *self-care* activities. Administrative leave for *self-care* is separate and in addition to any approved physical fitness leave. (Added 05/13/23)

- C.** An *at-will employee* may request up to thirty (30) minutes of *physical fitness* leave three (3) times per week or forty-five (45) minutes of *physical fitness* leave two (2) times per week to participate in *physical fitness* activities. (Added 05/13/23)

- D.** An *at-will employee* who is interested in becoming trained in *mental health first aid* may request from their Administrative Authority up to eight (8) hours of administrative leave to attend *mental health first-aid* training. (Added 05/13/23)

19.17 VOTING LEAVE

An *at-will employee* registered to vote may be absent from work for up to two (2) hours for the purpose of voting between the time of the opening and the time of the closing of the polls on election day or for early voting. (Amended 08/01/10)

- A.** The immediate supervisor may specify the hours during this period in which the *at-will employee* may be absent.

- B.** These provisions do not apply to any *at-will employee* whose workday begins more than two (2) hours after the opening of the polls or ends more than three (3) hours prior to the closing of the polls.

- C.** Only elections listed under the New Mexico Election Code *NMSA* 1978, § 1-1-19 are eligible for paid authorized voting leave: (Added 07/01/19)
 - a.** General elections;

 - b.** Primary elections;

 - c.** Statewide special elections;

 - d.** Elections to fill vacancies in the office of the representative in Congress;

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- e. Local elections included in the Local Elections Act,
- f. School district elections;
- g. Municipal officer or municipal bond elections; or
- h. Special district officer or special district bond or other special district elections.

Elections for officers of water, fire, and sanitation districts are not eligible, nor are political caucuses. Managers and supervisors are encouraged to work with their *at-will employees* by allowing time off using the *at-will employee's* accrued leave for other elections, not covered under the New Mexico Election Code. (Added 07/01/19, amended 05/13/23)

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SECTION 20. POLITICAL ACTIVITY

20.01 PURPOSE

To establish guidelines for all *at-will employees* regarding participation in political activities.

20.02 ACTIVITIES

A. Permitted Political Activities

An *at-will employee* may:

- (1) Be a candidate,
- (2) Register to vote,
- (3) Express opinions on all political subjects and candidates,
- (4) Engage in political activity to include the following provided no such activity is conducted while on duty:
 - a. serve as a party officials and convention delegates,
 - b. attend political rallies,
 - c. sign nominating petitions,
 - d. take an active part in the management of political campaigns,
 - e. serve as election officials, or
 - f. make financial contributions to a political party or organization.

B. Prohibited Political Activities

An *at-will employee* is prohibited from:

- (1) Engaging in any political activity while on duty, including but not limited to wearing buttons, posting signs, circulating petitions or

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sending e-mails; or

- (2) Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or any political purpose; or
- (3) Using *judicial entity* supplies, equipment or facilities in connection with any political activity; or
- (4) Directly or indirectly coercing, attempting to coerce, commanding or advising a state or local officer, *employee* or *at-will employee* to buy tickets for a political fund raiser, to pay, lend or contribute anything of value to a party, committee, organization, *judicial entity* or person for a political purpose; or
- (5) Threatening to deny *promotions* to any *employee* or *at-will employee* who does not vote for, or does not support certain candidates; or (Amended 05/13/23)
- (6) Requiring or compelling an *employee* or *at-will employee* to apply for membership in or become a member of a political organization or in any manner to take part in political activity.

20.03 CANDIDACY

A. Candidacy

An *at-will employee* becomes a candidate when the *at-will employee* files a petition or nomination papers, pays a filing fee, or is nominated by a political party for a public office.

B. Partisan Political Election

- (1) An *at-will employee* may, be subject to *NMJBPRWE* 20.03 (B)(2), and be a candidate in a *partisan election* including a judicial position, but the *at-will employee* shall use *paid time off (PTO)* leave, or *leave without pay*, subject to the approval of the *Administrative Authority*, if campaigning requires that *at-will employee* be absent from assigned duties. (Amended 05/13/23)
- (5) At the discretion of the *Administrative Authority*, an *at-will employee*

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who is a candidate for an incumbent's office within the same court that the *at-will employee* is employed, may be directed and required to use *paid time off (PTO)* leave, or shall be granted an unpaid leave of absence while the candidacy is pending. (Amended 05/13/23)

- (6) If elected, the *at-will employee* shall continue to use *paid time off (PTO)* leave, or the unpaid leave of absence until *resignation*. (Amended 05/13/23)
- (7) If elected, the *at-will employee* shall resign prior to taking the oath of office.

C. Non-Partisan Political Election

An *at-will employee* may use *paid time of (PTO)* leave, or *leave without pay*, subject to the approval of the *Administrative Authority*, to campaign in a *non-partisan election* and if elected, may be granted *administrative leave* to participate in the work of a legally constituted state or local board or commission. (Amended 08/01/10, amended 05/13/23)

20.04 HATCH ACT (5 U.S.C. 1501 – 1508) (Added 08/01/10)

An *at-will employee* is responsible for determining if candidacy is in any way limited by the Hatch Act.

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SECTION 21. RECORDS MANAGEMENT, INSPECTION, AND RETENTION

21.01 PURPOSE

To establish general guidelines regarding the management and inspection of records.

21.02 RECORDS MANAGEMENT

The *Administrative Authority* shall establish and maintain a records management program in accordance with federal, state and local government law. (Amended 07/01/19)

21.03 RECORD INSPECTION BY THE PUBLIC

(Ref: Employee Records Management and Inspection Policy)

Inspection of public records of the *Judicial Branch* shall be governed by the provisions of the New Mexico Public Records Act, *NMSA* 1978, Section 14-2-1. There are exceptions to the right to inspect public records and any record not subject to public inspection shall be in accordance with the Public Records Act.

21.04 EMPLOYEE RECORDS

(Ref: Employee Records Management and Inspection Policy)

21.05 EMPLOYEE RECORDS RETENTION

At will-employee personnel records shall be retained for fifty-five (55) years after the *at-will employee's* date of separation and shall be in accordance with the Records Retention and Disposition Schedules for Personnel Records.

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SECTION 22. OUTSIDE EMPLOYMENT

22.01 PURPOSE

(Ref: Outside Employment Form, NM *Judicial Branch* Code of Conduct, Canon 4)

To allow outside employment under certain circumstances.

22.02 ENGAGING IN OUTSIDE EMPLOYMENT

- A.** Before an *at-will employee* may engage in outside employment (including self-employment), whether compensated or non-compensated, *the at-will employee* shall complete an Outside Employment Approval Form, and have such outside employment approved by the *Administrative Authority*., as provided in *NMJBPRWE* Section 22.02 (B).
- B.** The *Administrative Authority* shall review the information provided on the form and at the *Administrative Authority's* discretion may approve the request if:
- (1) No conflicts of interest result,
 - (2) The outside employment does not interfere with the *at-will employee's job* performance, and is not otherwise detrimental to the interests of the *Judicial Branch*, (Amended 08/01/10)
 - (3) The outside employment is not directly related to the *practice of law* unless it is *pro bono work* approved by the *Administrative Authority*, and
 - (4) The *at-will employee* gives *written* notice to the *Administrative Authority* before the work is commenced. The notice shall include the name of the *employer* and the type of work to be performed. (Amended 08/01/10)
- C.** Approval may be withdrawn anytime at the discretion of the *Administrative Authority*. Once approval has been granted, the *Administrative Authority* may request the *at-will employee* provide an updated Outside Employment Form, and may approve or disapprove the outside employment as provided in *NMJBPRWE* Section 22.02 (B). (Added 08/01/10)

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SECTION 23. EMPLOYEE FITNESS TO WORK

This section is subject to any limitation of the Workers' Compensation Act.

23.01 PURPOSE

The *NMJB* is committed to ensuring a safe and productive working environment; that all *at-will employees* are provided information on the effects of drug and *alcohol* abuse; and to require drug and/or *alcohol* testing when objective evidence provides *reasonable suspicion*. (Amended 07/01/19)

23.02 DRUG AND ALCOHOL TESTING

(Ref: Drug and Alcohol-Free Work Place Policy and Drug and Alcohol Testing Policy)

The *NMJB* is committed to protecting the safety, health and well-being of *at-will employees* and other individuals in our workplaces. Additionally, the *NMJB* is committed to carrying out the provisions of the Federal Drug-Free Work Place Act of 1988 (Public Law 100-690) by providing a drug-free work place for any person who is a Federal grantee or Federal contractor. (Added 05/13/23)

The *NMJB* is committed to ensuring *at-will employees* are capable of performing essential duties and responsibilities in a safe manner and in a drug and alcohol-free workplace. (Added 07/01/19)

The *Administrative Authority* may require an *at-will employee* to undergo *drug* and *alcohol* testing based on *reasonable suspicion* that the *at-will employee* is impaired to any degree by the use of an *intoxicant*, *controlled substance*, illegal substance and/or *alcohol* while on duty. Drug and *alcohol* testing shall be conducted in compliance with the Drug-and Alcohol Testing Policy. (Amended 05/13/23)

23.03 FITNESS FOR DUTY

If an *at-will employee* exhibits objective indications that he or she is physically or mentally unfit to perform the essential functions of the *job*, the *Administrative Authority* may request that the *at-will employee's* fitness for duty be evaluated by a medical provider. (Added 07/01/19)

23.04 TERMINATION (Added 07/01/19)

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The *Administrative Authority* may terminate an *at-will employee* without grievance rights, who is incapacitated to the extent that the *at-will employee* is unable to perform the essential functions as assigned with or without a reasonable accommodation if the *at-will employee*:

- A. Does not return to work at the conclusion of family and medical leave benefits,
- B. Has been offered and refused a modified duty assignment that complies with the work restrictions certified by a *health care provider*,
- C. Fails to reach Maximum Medical Improvement (MMI) and return to full duty at the conclusion of the modified duty assignment which shall not exceed six (6) months, or
- D. Cannot perform the essential functions and a reasonable accommodation cannot be made.

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SECTION 24. AMERICANS WITH DISABILITIES ACT (ADA) (Added 07/01/19)

This section is subject to any limitations of the Workers' Compensation Act.

24.01 PURPOSE

The *NMJB* is committed to ensuring to complying fully with the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act (ADAAA), which prohibit *discrimination*, based on disability and ensure equal opportunity in employment for qualified individuals with disabilities. (Added 07/01/19)

**NEW MEXICO JUDICIAL BRANCH PERSONNEL RULES
PART II
FOR AT-WILL EMPLOYEES**

SECTION 25. FURLOUGH AND LAYOFF (Added 07/01/19)

25.01 PURPOSE

To establish a plan for an *at-will employee's furlough or layoff*.

25.02 FURLOUGH OR LAYOFF

- A.** The need for an *at-will employee furlough or layoff* shall be documented in a *Furlough or Layoff Plan*.
- (1)** The Plan shall be submitted to the *Director* for approval at least thirty (30) *business days* prior to any action being taken. The Plan shall include the criteria to be used to determine the order of *furlough or layoff* and the order in which affected *at-will employees* will be returned to pre-plan status.
- (2)** *Notification in writing* shall be given to the affected *at-will employee* at least fifteen (15) *business days* prior to *furlough or layoff*.
- B.** An *at-will employee* has no grievance rights with regard to *furlough or layoff* actions.

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**See Glossary of Terms at end of Personnel Rules Part I.
The definitions apply to both
Personnel Rules Part I (for Employees) and Part II (for *At-Will Employees*),
and General Policies and Procedures.**