

## **DRAFT Policy Interpretation Relating to Non-Compliance with Administrative Mandate on Required COVID-19 Vaccination: Non-Disciplinary Separation Related to COVID-19 Mandate and Safe Practices – Staff**

To protect and preserve the health, safety and welfare of the University of New Mexico (UNM) community, UNM has implemented an Administrative Mandate on Required COVID-19 Vaccination and COVID-19 Safe Practices currently in force at all UNM locations in accordance with Centers for Disease Control and Prevention (CDC) guidance and the New Mexico Department of Health (DOH) mandates.

Non-compliance with these Mandates and/or Safe Practices constitutes a risk to the health, safety, and welfare of oneself and the UNM community and renders non-compliant employees unable to perform the essential functions/conditions/qualifications of the job.

To protect the University community in response to COVID-19, President of the University of New Mexico Garnett Stokes authorizes the issuance of the following policy interpretation of existing UAP policies on involuntary separation for staff failure to comply with the Administrative Mandate on Required COVID-19 Vaccination.

The following guidance is issued to clarify procedures for involuntary separation of employees under existing UNM administrative policy 3225 Separation of Employment, Section 4 Involuntary Separation. Per this interpretative guidance, UNM will provide for non-disciplinary separation of employment for non-compliance with UNM's COVID-19 Mandates and/or Safe Practices as appropriate.

Non-disciplinary separation is the process whereby an employee's employment is terminated by UNM for reason other than misconduct.

For purposes of this policy interpretation, "employees" includes non-probationary regular staff, term, and contract employees. This policy interpretation does not apply to temporary, on-call, or probationary employees, who are subject to termination from the UNM with or without cause and with or without notice at any time. Nothing in this policy interpretation shall be interpreted as extending the end of the original or extended appointment period of contract or term employees or altering the at-will status of temporary, on-call, or probationary employees.

This policy interpretation also does not apply to employees who have Compliance, Ethics & Equal Opportunity (CEEEO) approved reasonable accommodations or other appropriately approved exemptions from COVID-19 related Mandates and/or Safe Practices and who are in compliance with the terms of the accommodations/exemptions. Employees who have such accommodations/exemptions but who are not in compliance with the terms thereof may be subject to the non-disciplinary separation provisions of this process statement as provided herein. Information to request a reasonable accommodation/exemption forms can be found at <https://bringbackthepack.unm.edu/vaccine/vaccine-requirement-exemption-forms.html>.

**A. Non-Disciplinary Separation of Employment may Occur in the Following Circumstances:**

1. Employee Non-Compliance with COVID-19 Mandates and/or Safe Practices (CSP) when requested reasonable accommodation or exemption is unavailable after exhaustion of interactive dialogue:
  - a. Employee submits a request for reasonable accommodation in compliance with established University guidelines in accordance with University Administrative Policy 2720.
  - b. CEEEO determines that the interactive dialogue process has been exhausted and no reasonable accommodations can be established and/or employee refuses reasonable accommodations.
  - c. Given the significant safety threat created in these circumstances, employee is deemed unable to perform the essential functions/conditions/qualifications of the job as required by University policies, procedures, rules, and practices, both written and oral, including but not limited to those set forth in the University Administrative Policies and Procedures Manual and the Board of Regents' Policy Manual.
  - d. Employee will be involuntarily separated under an involuntary non-disciplinary separation as set forth in section B of this process statement.
2. Employee Non-Compliance with accommodations/exemptions from COVID-19 Mandates and/or Safe Practices (CSPs) after reasonable accommodation or exemption is granted through interactive dialogue:
  - a. Employee submits a request for reasonable accommodation in compliance with established University guidelines in accordance with University Administrative Policy 2720.
  - b. CEEEO determines through the interactive dialogue process that a reasonable accommodation or exemption from compliance with COVID-19 Mandates and/or CSPs can be established and employee agrees to comply with the identified reasonable accommodations and/or exemptions in lieu of compliance with the COVID-19 Mandates and/or CSPs.
  - c. Employee fails or refuses to comply with the identified reasonable accommodations and/or exemptions in compliance with the COVID-19 Mandates and/or CSPs.
  - d. Given the significant safety threat created in these circumstances, employee is deemed unable to perform the essential functions/conditions/qualifications of the job as required by University policies, procedures, rules, and practices, both written and oral, including but not limited to those set forth in the University Administrative Policies and Procedures Manual and the Board of Regents' Policy Manual.
  - e. Employee will be involuntarily separated under an involuntary non-disciplinary separation as set forth in section B of this process statement.
3. Employee Non-Compliance with COVID-19 Related Mandates/CSPs and Other Grounds:
  - a. Employee fails to comply with one or more COVID-19 Mandates/CSPs
  - b. Employee's failure to comply with one or more COVID-19 Mandates/CSPs creates an unsafe workspace environment for self and others.

- c. Given the significant safety threat created in these circumstances, employee is deemed unable to perform the essential functions/conditions/qualifications of the job as required by University policies, procedures, rules, and practices, both written and oral, including but not limited to those set forth in the University Administrative Policies and Procedures Manual and the Board of Regent Policy Manual.
- d. Employee will be involuntarily separated under an involuntary non-disciplinary separation as set forth in section B of this policy statement.

## **B. The Non-Disciplinary Separation Process:**

1. Inability to perform the essential functions/conditions/qualifications of the job under the circumstances described herein constitutes adequate/just cause for separation of employment.
2. Administrative Leave: In consultation with their HR Consultant, supervisor should send employee home and request paid administrative leave in accordance with UAP 3415, section 3.7. Administrative Leave.
3. Issuance of Notice of Contemplated Action (NCA) – Non-Disciplinary Separation: The NCA must be approved by the VP for Human Resources, facilitated by the HR Consultant and must include the following:
  - Areas of COVID-19 Mandate and/or Safe Practice not in compliance.
  - Reason compliance is required.
  - Mandate and/or Safe Practice identification.
  - Timelines for response.

A copy of the NCA will be sent to the Division of HR for placement in the employee's official personnel file.

4. Employee Response: Employee may respond to the notice of contemplated action orally and/or in writing. The response is provided to the manager that signed the notice. An employee's written response must be received within eight (8) work days from receipt of that notice. Refer to the appropriate collective bargaining agreement regarding timelines for employees in positions covered under labor agreements.

If an employee wants to respond orally, a written request for the meeting to respond orally must be submitted within five (5) work days from receipt of the notice. Refer to the appropriate collective bargaining agreement regarding timelines for employees in positions covered under labor agreements. Any extension of time to the employee's response must be in writing and agreed upon by both the employee and the manager.

If responding orally, the employee may have a support person in the meeting but that individual must not verbally advocate on behalf of the employee. When an employee advises the manager of an intent to respond orally, the employee also must advise the manager if the employee is bringing a support person and if that person is an attorney. Refer to the

appropriate collective bargaining agreement regarding representation for employees in positions covered under labor agreements.

5. Issuance of Notice of Final Action (NFA): After considering the employee response (if any) an NFA will be issued and must include:
  - The final action to be taken, if any.
  - Areas of COVID-19 Mandate and/or Safe Practice not in compliance.
  - Reason compliance is required.
  - Mandate and/or Safe Practice identification.
  - A reply to the employee's response, if any.
  - The effective date of the action.
  - A statement of the appeal processes available to the employee.
6. Non-bargaining unit employees will have the right to appeal in accordance with UAP 3215, section 10. Appeal Process for Suspension and Discharge. Bargaining unit employees should refer to the relevant grievance and arbitration agreement for information on their appeal rights.
7. Employee will remain eligible for rehire.

**References:**

This process statement is in accordance with:

1. UAP 3215: Performance Improvement, section 1. General
2. UAP 3225: Separation of Employment, sections 4. Involuntary Separation

This process will remain in effect until rescinded.