

BORRADOR Interpretación de la política relativa al incumplimiento del Mandato Administrativo sobre la Vacunación Obligatoria contra el COVID-19: Separación no disciplinaria relacionada con el mandato de COVID-19 y las prácticas seguras - Personal

Para proteger y preservar la salud, la seguridad y el bienestar de la comunidad de la Universidad de Nuevo México (UNM), la UNM ha implementado un Mandato Administrativo sobre la Vacunación Obligatoria contra el COVID-19 y las Prácticas Seguras contra el COVID-19, actualmente en vigor en todas las sedes de la UNM, de acuerdo con las orientaciones de los Centros para el Control y la Prevención de Enfermedades (CDC por sus siglas en inglés) y los mandatos del Departamento de Salud de Nuevo México (DOH por sus siglas en inglés)

El incumplimiento de estos Mandatos y/o Prácticas Seguras constituye un riesgo para la salud, la seguridad y el bienestar de uno mismo y de la comunidad de la UNM y hace que los empleados que no los cumplen no puedan realizar las funciones/condiciones/cualificaciones esenciales del trabajo.

Para proteger a la comunidad universitaria en respuesta al COVID-19, la Presidente de la Universidad de Nuevo México, Garnett Stokes, autoriza la emisión de la siguiente política de interpretación de las políticas existentes de las Políticas Administrativas de la Universidad sobre la separación involuntaria del personal por no cumplir con el Mandato Administrativo sobre la Vacunación Obligatoria Contra el COVID-19.

La siguiente guía se emite para aclarar los procedimientos de separación involuntaria de los empleados bajo la política administrativa existente de la UNM 3225 Separación de Empleo, Sección 4 Separación Involuntaria. Según esta orientación interpretativa, la UNM dispondrá la separación no disciplinaria del empleo por incumplimiento de los mandatos y/o las prácticas seguras de COVID-19 de la UNM, según corresponda.

La separación no disciplinaria es el proceso por el cual un empleado es despedido por la UNM por una razón distinta a la mala conducta.

A los efectos de esta interpretación de la política, "empleados" incluye al personal regular no-probatorio, a los empleados a término y a los contratados. Esta interpretación de la política no se aplica a los empleados temporales, de guardia o en período de prueba, que están sujetos a la terminación de la UNM con o sin causa y con o sin previo aviso en cualquier momento. Nada de lo dispuesto en esta interpretación política se interpretará como una prórroga del período de nombramiento original o prorrogado de los empleados con contrato o a término, ni como una alteración de la condición de voluntarios de los empleados temporales, de guardia o en período de prueba.

Esta interpretación de la política tampoco se aplica a los empleados que tienen acomodaciones razonables aprobadas por el Departamento de Cumplimiento, Ética e Igualdad de Oportunidades (CEEO por sus siglas en inglés) u otras exenciones debidamente aprobadas de los Mandatos y/o Prácticas Seguras relacionadas con el COVID-19 y que cumplen con los términos de las acomodaciones/exenciones. Los empleados que dispongan de dichas acomodaciones/exenciones pero que no cumplan con

los términos de las mismas pueden estar sujetos a las disposiciones de separación no disciplinaria de esta declaración de proceso, tal y como se establece en el presente documento. La información para solicitar los formularios de acomodación razonable/exención puede encontrarse en <https://bringbackthepack.unm.edu/vaccine/vaccine-requirement-exemption-forms.html>.

A. La separación no disciplinaria del empleo puede producirse en las siguientes circunstancias:

1. Incumplimiento por parte del empleado de los mandatos y/o de las prácticas seguras (CSP) cuando no se dispone de la acomodación razonable solicitada o de la exención tras agotar el diálogo interactivo 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. CEEO 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. CEEO 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.