

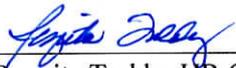


THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT
JONATHAN NEZ VICE PRESIDENT

MEMORANDUM

TO : Division and Executive Directors
EXECUTIVE BRANCH

FROM : 
Reycita Toddy, HR Classification & Pay Manager
Department of Personnel Management

DATE : December 26, 2017

SUBJECT: NAVAJO NATION COUNCIL RESOLUTION CO-60-17

On December 1, 2017, the Department of Personnel Management (DPM) requested a legal opinion from the Department of Justice (DOJ) regarding the recent approval of the above-mentioned resolution that amended the Navajo Preference in Employment Act (NPEA) at 15 N.N.C. § 603, 604(B)(8). For purposes of complying with the resolution, the concerns were: defining the term “program manager” and the affect, if any, on the accrued annual and sick leave.

The Department of Justice provided a legal opinion regarding the term “program manager” and how the amendment would affect program managers’ accrued annual and sick leave.

In summary, the response to Question 1 is that the amendment adds “program managers” of the Executive and Legislative Branches to the list of at-will employees exempt from the “just cause” requirement of Section 604(B)(8) of NPEA. The amendment also defines “program manager” as it is defined in the Navajo Nation Personnel Policies Manual. 15 N.N.C. § 603(R) (as amended).

The effect of the amendment is to change the status of program managers to professional at-will employees, with a status similar to the Human Resources Director and the attorneys at the DOJ. The amendment takes effect immediately when there is a vacancy for a program manager position and for all current program managers on November 6, 2018.

Under the NNPPM § XXI, a Program Manager is “anyone who has the authority to hire, terminate, discipline or otherwise initiate personnel action. It is also intended to include all supervisors at higher levels, i.e. Department Managers, Division Directors. It then appears that all those supervisors who have the authority to take personnel action, including hiring, termination, and disciplinary action, are included, as are Department Managers.

Whether a specific supervisor is a program manager under the amendment is not clear based on position title alone. While some supervisors may fall into the program manager category under the NNPPM’s definition, other supervisors may not have the authority to hire, terminate, discipline, or otherwise initiate personnel action. Those with the title “Department Manager,” if any, however, would be automatically included.

For the above reason, NNDOJ recommended that DPM discuss with the Division Director and the Speaker's Office and create lists of job titles that fit the NNPPM program manager definition. If, according to the division, an employee in a certain position has the duties described in the NNPPM's program manager definition, they should be listed as a "Program Manager."

With reference to Question 2, nothing in the amendment suggests that Navajo Nation Council intended to change leave accrual for program managers who become professional at-will employees. In addition, nothing in the NPEA or the NNPPM bars leave accrual for professional at-will employees. Current professional at-will employees accrue annual leave under the NNPPM, and the Council did not change that with this amendment. The amendment is only changing program manager's ability to grieve disciplinary actions. It does not otherwise change their status under the NNPPM.

Based on the foregoing, the DPM is requesting your assistance in providing a list of all positions that qualify as a "program manager." The attached "Professional At-will Position List" will be utilized to create a list of job titles within your respective division that fit the NNPPM's program manager definition.

The DPM is requesting that all Professional At-Will Position Lists be completed and submitted to DPM no later than 5:00 p.m. on January 12, 2018. Please note: All vacant positions must be properly reviewed prior to advertisement and selection.

Should you have any further questions, please contact DPM at (928) 871-6330. DPM is available to meet with any divisions needing assistance with the completion of the Professional At-Will List. Thank you.

CONCURRED:



Dr. Sharon Begay-McCabe
Human Resources Director

XC: Clara Pratte, Chief of Staff
Paul Spruhan, Assistant Attorney General, DOJ
LaVonne Tsosie, Division Director, DHR

PROFESSIONAL AT-WILL POSITION LIST

Pursuant to the Navajo Nation Council, Resolution CO-60-17, the Navajo Preference in Employment Act (NPEA) has been amended to provide for the addition of Program Managers ... as a class of employees exempt from the Just Cause provisions of the Act." Resolution CO-60-17 at 1. The amendment adds "program managers" of the Executive and Legislative Branches" to the list of At-will employees exempt from the "just cause" requirement of Section 604(B)(8) of NPEA." 15 N.N.C. § 604(B)(8) (as amended). in addition, the amendment defines "program manager" as it is defined in the Personnel Policies Manual (PPM). 15 N.N.C. § 603 (R), (as amended).

CRITERIA

- The Navajo Nation Personnel Policies Manual (NNPPM) § XXI, defines a Program Manager as "anyone who has the authority to hire, terminate, discipline, or otherwise initiate personnel action. It is also intended to include all supervisors at higher levels, i.e. Department Managers, Division Directors.
- While some supervisors may fall into the program manager category under the NNPPM's definition, other supervisors may not have "the authority to hire, terminate, discipline, or otherwise initiate personnel action." Those with the title "Department Manager," if any, however, would be automatically included.

1	Department Manager I, II or III - automatically included
2	Position has authority to hire, terminate, discipline, or otherwise initiate personnel action

INSTRUCTIONS

To assist the Department of Personnel Management (DPM) in determining which positions meet the NNPPM's program manager definition and to properly designate those positions, the DPM is requesting that each division complete the Professional At-will Position List.

- Please indicate the appropriate Criteria Number and an explanation of the position's authorities.
- If according to the Division Director, an employee in a certain position has the duties described in the NNPPM's program manager definition, they should be listed as "Program Manager" along with the official classified position title in parentheses (Programs and Projects Specialist). (**SEE EXAMPLE Below**).
- **The Division Director must sign and date the Professional At-will Position List for his/her respective division.** A Professional At-will Position List - Supplement is attached if additional sheet(s) are needed.

CRITERIA NO.	POS. NO.	POSITION TITLE
1	212244	<i>Department Manager I</i>
Please explain authorities. Position has the authority to hire, terminate, discipline or initiate personnel action.		

CRITERIA NO.	POS. NO.	POSITION TITLE
2	244441	<i>Program Manager (Programs and Projects Specialist)</i>
Please explain authorities. Position reports to the Division Director and has the authority to hire, terminate, discipline or initiate personnel action.		

PROFESSIONAL AT-WILL POSITION LIST

DEPT. NO.:	DEPT. NAME:
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CRITERIA NO.	POS. NO.	POSITION TITLE

Please explain responsibilities.

CRITERIA NO.	POS. NO.	POSITION TITLE

Please explain responsibilities.

CRITERIA NO.	POS. NO.	POSITION TITLE

Please explain responsibilities.

CRITERIA NO.	POS. NO.	POSITION TITLE

Please explain responsibilities.

CRITERIA NO.	POS. NO.	POSITION TITLE

Please explain responsibilities.

CRITERIA NO.	POS. NO.	POSITION TITLE

Please explain responsibilities.

CRITERIA NO.	POS. NO.	POSITION TITLE

Please explain responsibilities.

I, hereby acknowledge that the information provided meet the requirements of Resolution CO-60-17 and the Navajo Nation Personnel Policies Manual.

Division Director's Signature	Date
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Division Director's Name (Print)
