

10-8-4. Per diem and mileage rates; in lieu of payment.

A. Notwithstanding any other specific law to the contrary and except as provided in Subsection I of this section, every nonsalaried public officer shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or per diem expenses in the following amounts for a board or committee meeting attended; provided that the officer shall not receive per diem expenses for more than one board or committee meeting that occurs on the same day; or for each day spent in discharge of official duties for travel within the state but away from the officer's home:

(1) forty-five dollars (\$45.00) if the officer physically attends the board or committee meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

(2) ninety-five dollars (\$95.00) if the officer physically attends the board or committee meeting for four hours or more during a single calendar day.

B. Every salaried public officer or employee who is traveling within the state but away from the officer's or employee's home and designated post of duty on official business shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or for each day spent in the discharge of official duties, the amount established by the department of finance and administration for the fiscal year in which the travel occurs. The department of finance and administration shall establish the reimbursement rate to be used for the next fiscal year by May 1 of each fiscal year; provided that such rate shall take into consideration the rates available for lodging, meals and incidentals as determined by the United States general services administration for that period of time.

C. Every public officer or employee who is traveling outside of the state on official business shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or for each day spent in the discharge of official duties, the amount established by the department of finance and administration for the fiscal year in which the travel occurs. The department of finance and administration shall establish the reimbursement rate to be used for the next fiscal year by May 1 of each fiscal year; provided that such rate shall take into consideration the rates available for lodging, meals and incidentals as determined by the United States general services administration for that period of time. For a salaried public officer or employee of a local public body or state agency, expenses shall be substantiated in accordance with rules promulgated by the secretary of finance and administration, and the secretary may promulgate rules defining what constitutes out-of-state travel for the purposes of the Per Diem and Mileage Act. For a public officer or employee of a public post-secondary educational institution, expenses shall be substantiated in accordance with rules promulgated by the governing board of that public post-secondary educational institution, and the governing board may promulgate rules defining what constitutes out-of-state travel for the purposes of the Per Diem and Mileage Act.

D. Every public officer or employee shall receive up to the internal revenue service standard mileage rate set January 1 of the previous year for each mile traveled in a privately owned vehicle or eighty-eight cents (\$.88) a mile for each mile traveled in a privately owned airplane

if the travel is necessary to the discharge of the officer's or employee's official duties and if the private conveyance is not a common carrier; provided, however, that only one person shall receive mileage for each mile traveled in a single privately owned vehicle or airplane, except in the case of common carriers, in which case the person shall receive the cost of the ticket in lieu of the mileage allowance.

E. The per diem and mileage or per diem and cost of tickets for common carriers paid to salaried public officers or employees is in lieu of actual expenses for transportation, lodging and subsistence.

F. In addition to the in-state per diem set forth in this section, the department of finance and administration, by rule, may authorize a flat subsistence rate in the amount set by the legislature in the general appropriation act for commissioned officers of the New Mexico state police in accordance with rules promulgated by the department of finance and administration.

G. In lieu of the in-state per diem set in Subsection B of this section, the department of finance and administration may, by rule, authorize a flat monthly subsistence rate for certain employees of the department of transportation, provided that the payments made under this subsection shall not exceed the maximum amount that would be paid under Subsection B of this section.

H. Per diem received by nonsalaried public officers for travel on official business or in the discharge of their official duties, other than attending a board or committee meeting, and per diem received by public officers and employees for travel on official business shall be prorated in accordance with rules of the department of finance and administration or the governing board.

I. The provisions of Subsection A of this section do not apply to payment of per diem expense to a nonsalaried public official of a municipality for attendance at board or committee meetings held within the boundaries of the municipality.

J. In addition to any other penalties prescribed by law for false swearing on an official voucher, it shall be cause for removal or dismissal from office.

K. With prior written approval of the secretary or the secretary's designee or the local public body, a nonsalaried public officer of a state agency or local public body, a salaried public officer of a state agency or local public body or a salaried employee of a state agency or local public body is entitled to per diem expenses under this subsection and shall receive:

(1) reimbursement for actual expenses for lodging; and

(2) reimbursement for actual expenses for meals and incidentals not to exceed the maximum amounts for in-state and out-of-state travel established by the department of finance and administration for the fiscal year in which the travel occurs; provided that the department of finance and administration shall establish the maximum rates for the reimbursement of actual expenses for meals and incidentals as described in Subsections B and C of this section.

L. With prior written approval of the governing board or its designee, a nonsalaried public officer of a public post-secondary educational institution, a salaried public officer of a public post-secondary educational institution or a salaried employee of a public post-secondary educational institution is entitled to per diem expenses under this subsection and shall receive:

(1) reimbursement for actual expenses for lodging; and

(2) reimbursement for actual expenses for meals and incidentals not to exceed the maximum amounts for in-state and out-of-state travel established by the department of finance and administration for the fiscal year in which the travel occurs; provided that the department of finance and administration shall establish the maximum rates for the reimbursement of actual expenses for meals and incidentals as described in Subsections B and C of this section.

History: 1953 Comp., § 5-10-3, enacted by Laws 1963, ch. 31, § 3; 1971, ch. 116, § 3; 1974, ch. 26, § 1; 1975, ch. 106, § 1; 1977, ch. 194, § 1; 1978, ch. 184, § 3; 1979, ch. 38, § 1; 1980, ch. 9, § 1; 1980, ch. 32, § 1; 1981, ch. 109, § 1; 1984, ch. 29, § 2; 1987, ch. 129, 1 § 1; 1989, ch. 338, § 2; **2003, ch. 215, § 1; 2009, ch. 170, § 1; 2021, ch. 81, § 2.**

ANNOTATIONS

Compiler's notes. — The General Appropriation Act, referred to in Subsection F, is the yearly act passed by the state legislature which funds all state agencies and personnel.

Cross references. — For payment of travel advances upon public vouchers, see **6-5-8 NMSA 1978.**

For applicability to court of appeal judges, see **34-1-9 NMSA 1978.**

For applicability to magistrates attending training program, see **35-2-4 NMSA 1978.**

For applicability to district attorneys and their employees, see **36-1-3 NMSA 1978.**

The 2021 amendment, effective April 6, 2021, changed the rates of per diem reimbursement for in-state and out-of-state travel for certain public officers and employees; in Subsection A, after "Subsection K or L of this section or", deleted "up to ninety-five dollars (\$95.00)", after "per diem expenses", added "in the following amounts", after "attended", added "provided that the officer shall not receive per diem expenses for more than one board or committee meeting that occurs on the same day", and deleted "Nonsalaried public officers who travel to attend a board or committee meeting may elect to be reimbursed per diem under either Paragraph (1) or (2) of this subsection", and added new Paragraphs A(1) and A(2); in Subsection B, after "Subsection K or L of this section or", deleted former Paragraphs B(1) and B(2) and added the remainder of the subsection; in Subsection C, after "Every public officer or employee", added "who is traveling outside of the state on official business", and after "Subsection K or L of this section or", deleted former Paragraphs C(1) and C(2) and added the remainder of the subsection; in Subsection K, deleted former Paragraph K(2) and added a new Paragraph K(2); and in Subsection L, deleted former Paragraph L(2) and added a new Paragraph L(2).

The 2009 amendment, effective June 19, 2009, in Subsection D, after "employee shall receive", deleted "thirty-two cents (\$.32) a mile" and added "up to the internal revenue service standard mileage rate set January 1 of the previous year".

The 2003 amendment, effective July 1, 2003, in Subsection A, increased the per diem for nonsalaried public officers from \$75.00 to \$95.00; in Subsection B(1), increased the per diem for public officers and employees from \$65.00 to \$85.00, and the maximum from \$75.00 to \$135.00; in Subsection C(1), increased the out-of-state per diem from \$75.00 to \$115.00 and the maximum from \$95.00 to \$215.00; in Subsection C(2) to increase the post-secondary institution rate from \$75.00 to \$115.00 and the maximum from \$95.00 to \$215.00; in Subsection D, increased the mileage rate in a private vehicle from \$.25 per mile to \$.32 per mile, and the mileage rate in a private airplane from \$.40 per mile to \$.88 per mile; and in Subsection K(2), increased the reimbursement for meals from \$30.00 per day to \$45.00 per day.

Source of compensation. — Nothing in the Per Diem and Mileage Act specifies the source from which board members are to receive compensation for travel costs. *N.M. Bd. of Veterinary Med. v. Riegger*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'd in part, rev'd in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Per diem not part of wages. — Where an employee could not show that reimbursement for per diem expenses for out-of-town travel was in excess of his actual expenses and thus constituted a real economic gain to him, per diem payments were not included in his wages for purposes of calculating the amount of workers' compensation payable to the employee. *Antillon v. N.M. State Highway Dep't*, 1991-NMCA-093, 113 N.M. 2, 820 P.2d 436.

Enforcement of dropped restriction disallowed. — Where a 35-mile condition is retained only in a per diem clause of a bargaining agreement and it is clear that the parties intended that the 35-mile condition would not apply to a special living allowance provision, the highway department, once it agrees to drop a restriction during negotiations, cannot now be allowed to enforce it. *Local 2238 AFSCME v. N.M. State Highway Dep't*, 1979-NMSC-057, 93 N.M. 195, 598 P.2d 1155.

Intent of payment. — Payment under this section is intended to defray costs incurred in travel associated with the performance of public business rather than serve as a salary for services performed. 1977 Op. Att'y Gen. No. 77-20.

State highway commissioners. — State highway commissioners, as unsalaried state officers, may not draw the statutory per diem allowance while engaged in official state business at their residence or personal business premises. 1977 Op. Att'y Gen. No. 77-20.

County commissioners. — The "designated post of duty" of a county commissioner is established by reference to Section 4-38-8 NMSA 1978 at the county seat, and, therefore, a county commissioner may not receive per diem for travel to commission meetings or other official business at the county seat. 1988 Op. Att'y Gen. No. 88-65.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 67 C.J.S. Officers and Public Employees §§ 224, 225.