

## **State Resources**

New Mexico Department  
of Workforce Solutions

<https://www.dws.state.nm.us/en-us/>

### **Does your job offer require that you sign a non-compete agreement?**

The state of New Mexico has no laws requiring an employee to sign a non-compete agreement, but an employer may require you to do so as a term and condition of employment. The New Mexico Supreme Court has held that a non-compete agreement is enforceable if the restrictions it imposes are "reasonable," it protects a legitimate business interest, and it does not violate a public interest. Whether such an agreement is reasonable depends on the specific situation. The agreement must be reasonable in its geographic scope, temporal scope, and prohibited activities. For purposes of geographic scope, this usually means that it is limited to regions where the employer has a substantial business interest (e.g., a significant percentage of clients are located within the proposed mile radius). Likewise, an agreement is temporally reasonable if there is a corresponding justification for how it impacts the employer's business (e.g., restriction is one year because clients visit once every year). A restriction of one or two years is frequently found to be reasonable.

### **Does your salary match the salary of your co-workers?**

Employers in New Mexico are not required to provide you with the pay scale for the position offered to you. However, you can still ask for this information. You can also share your compensation details with co-workers and ask them if they are willing to share such details with you. Under federal law, most employers are prohibited from instituting policies that restrict employees from discussing pay with one another. Remember to consider not just salary, but also other compensation elements like equity, bonuses, moving expenses or vacation time when evaluating whether your compensation package is fair. There is no law in New Mexico prohibiting employers from asking prospective hires about their salary history at any point. In New Mexico, both the State of New Mexico and private employers with four or more employees are required to pay the same rate to men and women for equal work on jobs that require equal skill, effort, and responsibility under similar working conditions.

### **Assuming your employment is "at will," can you negotiate for contractual protections?**

New Mexico is an "at will" state. This means that your employer may generally terminate your employment at any time, for any reason, or no reason at all. There are three exceptions to an at-will employment: 1) you have a written agreement for additional protections; 2) you are discharged for a reason against public policy; 3) you are discharged for an illegal reason (i.e. discrimination, retaliation). Generally stated, New Mexico recognizes a public policy exception when an employee pursues a state benefit, including worker's compensation, occupational disease disablement benefits, New Mexico OSHA, etc. Regardless, if you are discharged by an employer, unpaid wages or compensation are immediately due unless your pay is determined by task, piece, commission, or method of calculation.

### **Have you properly excluded your individual inventions prior to accepting your job offer?**

Your employer may have you sign an agreement clarifying that any invention you develop while working for it becomes their property and/or that you are required to assign your rights to it. Usually, there is a place in the agreement to identify any such prior inventions and you should make sure you identify any such inventions and avoid using them or incorporating them into work you do for the employer.

### **Does your job offer require that you sign a forced arbitration agreement?**

Many employers require that employees sign arbitration agreements that waive the employee's right to pursue claims in court or to pursue claims collectively or through class actions. In most cases, such agreements are permitted. Some employers' agreements have opt-out provisions which allow you to opt-out of the arbitration process. It is generally a good idea to do so if given the option. Additionally, some employers have elected not to force their employees to sign such agreements and whether a prospective employer requires that you sign an arbitration agreement can be one factor you consider when evaluating multiple job opportunities.

Authors: Clara S. Acosta (Lubin & Enoch, PC) and Kristin Smith (MIT Equal Pay Working Group)

This work is licensed under the Creative Commons Attribution-No Derivatives 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nd/4.0/> or send a letter to Creative Commons, PO Box 1866, Mountain View, CA 94042, USA. Content is current as of November 2021.

<p><b>State Resources</b></p> <p>New Mexico Department of Workforce Solutions</p> <p><a href="https://www.dws.state.nm.us/en-us/">https://www.dws.state.nm.us/en-us/</a></p>	<p><b>Reviewing Your NEW MEXICO Job Offer</b></p>	<p><b>Federal Resources</b></p> <p>Equal Employment Opportunity Commission</p> <p><a href="http://www.eeoc.gov">http://www.eeoc.gov</a></p>
--	---	---

### **Does your job offer require that you sign a non-compete agreement?**

The state of New Mexico has no laws requiring an employee to sign a non-compete agreement, but an employer may require you to do so as a term and condition of employment. The New Mexico Supreme Court has held that a non-compete agreement is enforceable if the restrictions it imposes are "reasonable," it protects a legitimate business interest, and it does not violate a public interest. Whether such an agreement is reasonable depends on the specific situation. The agreement must be reasonable in its geographic scope, temporal scope, and prohibited activities. For purposes of geographic scope, this usually means that it is limited to regions where the employer has a substantial business interest (e.g., a significant percentage of clients are located within the proposed mile radius). Likewise, an agreement is temporally reasonable if there is a corresponding justification for how it impacts the employer's business (e.g., restriction is one year because clients visit once every year). A restriction of one or two years is frequently found to be reasonable.

### **Does your salary match the salary of your co-workers?**

Employers in New Mexico are not required to provide you with the pay scale for the position offered to you. However, you can still ask for this information. You can also share your compensation details with co-workers and ask them if they are willing to share such details with you. Under federal law, most employers are prohibited from instituting policies that restrict employees from discussing pay with one another. Remember to consider not just salary, but also other compensation elements like equity, bonuses, moving expenses or vacation time when evaluating whether your compensation package is fair. There is no law in New Mexico prohibiting employers from asking prospective hires about their salary history at any point. In New Mexico, both the State of New Mexico and private employers with four or more employees are required to pay the same rate to men and women for equal work on jobs that require equal skill, effort, and responsibility under similar working conditions.

### **Assuming your employment is "at will," can you negotiate for contractual protections?**

New Mexico is an "at will" state. This means that your employer may generally terminate your employment at any time, for any reason, or no reason at all. There are three exceptions to an at-will employment: 1) you have a written agreement for additional protections; 2) you are discharged for a reason against public policy; 3) you are discharged for an illegal reason (i.e. discrimination, retaliation). Generally stated, New Mexico recognizes a public policy exception when an employee pursues a state benefit, including worker's compensation, occupational disease disablement benefits, New Mexico OSHA, etc. Regardless, if you are discharged by an employer, unpaid wages or compensation are immediately due unless your pay is determined by task, piece, commission, or method of calculation.

### **Have you properly excluded your individual inventions prior to accepting your job offer?**

Your employer may have you sign an agreement clarifying that any invention you develop while working for it becomes their property and/or that you are required to assign your rights to it. Usually, there is a place in the agreement to identify any such prior inventions and you should make sure you identify any such inventions and avoid using them or incorporating them into work you do for the employer.

### **Does your job offer require that you sign a forced arbitration agreement?**

Many employers require that employees sign arbitration agreements that waive the employee's right to pursue claims in court or to pursue claims collectively or through class actions. In most cases, such agreements are permitted. Some employers' agreements have opt-out provisions which allow you to opt-out of the arbitration process. It is generally a good idea to do so if given the option. Additionally, some employers have elected not to force their employees to sign such agreements and whether a prospective employer requires that you sign an arbitration agreement can be one factor you consider when evaluating multiple job opportunities.

Authors: Clara S. Acosta (Lubin & Enoch, PC) and Kristin Smith (MIT Equal Pay Working Group)

This work is licensed under the Creative Commons Attribution-No Derivatives 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nd/4.0/> or send a letter to Creative Commons, PO Box 1866, Mountain View, CA 94042, USA. Content is current as of November 2021.