



# CES NEWSLETTER

## NOVEMBER 2021

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## *Feature Article . . . . .*

### United States: Used or Not – Businesses Must Compensate Employees for Vacation Pay

Colorado's Supreme Court shined a bright light on the importance of risk management in the employment world this week. Examining the hot issue of vacation pay, this particular case offers excellent guidance to employers not only in Colorado, but nationally on the import of managing and dispersing employee unused vacation pay. Employers in Colorado will need to revisit their paid time off and vacation policies after the Colorado Supreme Court's recent decision in *Nieto v. Clark's Market, Inc.*, wherein the court ruled that a former employee of Clark's Market was entitled to compensation for earned and determinable vacation pay, despite the presence of an agreement purporting to forfeit earned vacation pay, after separation from the company.

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## Facts

Carmen Nieto was employed as a grocery store worker for over eight years with Clark's Market. Upon separation, she claimed that she was owed compensation for vacation time she never utilized during her employment. Clark's Market disputed her claim, relying on a provision in their employee handbook which read, "If you are discharged for any reason, or do not give proper notice, you will forfeit all earned vacation pay benefits." The lower courts granted Clark's Market's motion to dismiss based on Colorado Wage Claim Act (CWCA) provisions allowing employers to enter into agreements with employees regarding vacation pay. The appellate court went even further. It affirmed the dismissal and found that given the nature of Nieto's separation from the business, her vacation time had not "vested" under the terms of the employee handbook that both parties had previously agreed upon. Despite this, the Supreme Court of Colorado overturned the dismissal and held that Nieto was entitled to receive payment for her unused, earned vacation time. The Supreme Court also ruled that any term of an agreement that purports to forfeit earned vacation pay is void. As such, Nieto was entitled to collect for 136 hours of vacation time totaling \$2,244.

## "Earned" Vacation Pay

The Supreme Court focused on the term "earned" in its decision. It reasoned that although businesses do have the right to decide whether employees are given vacation pay, it may not be denied to that employee once it is earned. It also determined that the terms "earned" and "vested" are one and the same. Citing the intended purpose and public policy underpinnings of the CWCA, the court found that using a separate vesting requirement for earned vacation pay would be contrary to the intent of the law, which is to provide protection to employees in instances of this nature. The bottom line is that when an employer in Colorado chooses to provide vacation pay to its employees, an employee is entitled to receive all vacation pay that is "earned and determinable" but has not been paid upon separation from employment. Further, any agreement purporting to forfeit earned vacation pay is void.

The CWCA does not create an employee right to vacation pay, but if an employer decides to offer this benefit to employees, it cannot be forfeited once earned. Any employee handbook provision, or other document that removes this right from an employee is void and unenforceable. Going forward this may impact when, how and if employers continue to provide vacation pay for their employees.

By Ryan M. Hicks - Wood, Smith, Henning & Berman LLP



## Tip of the Month

**Sole Source:** A “sole source” procurement can be defined as any contract (such as a PO) entered into without a competitive process, based on a justification that only one known source exists or that only one single supplier can fulfill the requirements and that no existing contract is available through which the government agency can make the purchase.

Sole Source is also known as: sole source procurement, sole sourcing, sole-sourced contract, direct sourcing, sole supplier, no-bid contract, and direct source. “At least thirty days before it awards a sole source contract, a [New Mexico governmental entity's Purchasing office] shall post notice of its intent to award the contract on its website, if it maintains one, and shall transmit the notice to the state purchasing agent for posting on the state purchasing agent's website.” (13-1-126.1.A NMSA 1978)

These purchases can be negotiated much more quickly than a typical competitive contract, but they are often fraught with suspicion that the agency used illegal or immoral means to exclude competitors (usually cronyism or bribery). The misuse of Sole Source in purchases often results in audit findings for the agency making the purchases, and New Mexico law also makes it clear that “any qualified potential contractor that was not selected for a proposed sole source contract” may protest the action. (13-1-126.1.B NMSA 1978)

CES helps its members avoid the inappropriate use of Sole Source purchasing by providing existing contracts, for which full and open competition has occurred, available for specific selection and use.

Need help learning whether CES can help with any particular good or service? Contact your area rep:

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Southern Services  
CES Regions 6-8 + Magdalena, Quemado, & Socorro  
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602-689-065



# Procurement News

1) Contract Expirations: None

2) Contract Extensions: None

3) Name Changes:

Apex Learning → Edmentum – awaiting paperwork

Ace Asphalt → Sunland Asphalt – updated in BlueBook

4) Terminations: None

5) New Contract Awards: None

6) Ongoing Solicitations

RFP #	RFP Description	Release	Due	Awards
RFP 2022-01	<i>AEPA 022</i> A – Furniture B – Health & Wellness C – Institutional Kitchen Equipment E – LED Lighting F – Event Seating & Staging Solutions G – Technology Catalog (CDWG)	7/20/21	9/14/21	12/2021

“But there is always a November space after the leaves have fallen when she felt it was almost indecent to intrude on the woods...for their glory terrestrial had departed and their glory celestial of spirit and purity and whiteness had not yet come upon them.”

— L.M. Montgomery, *Anne of Windy Poplars*

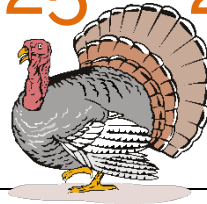


# Calendar of Events

- 11/1 All Saints' Day / Dia de los Inocentes
- 11/2 All Souls' Day / Dia de los Muertos
- 11/2 Election Day
- 11/7 Daylight Saving Time Ends
- 11/10 TAP Virtual: Dyslexia and A Structured Literacy Approach to Teaching Reading
- 11/10 Collective Bargaining Workshop (CES)
- 11/10 Marine Corps Birthday
- 11/11 Veterans Day
- 11/15-19 2021 LGD Virtual Budget Conference
- 11/16 TAP Virtual: Effective Self-Regulation Strategies to Support Prosocial and Social Skills
- 11/17 TAP Virtual: Skills Training in the Classroom: A Cognitive Model for Emotional Health
- 11/18 TAP Virtual: Educators Resources for Individuals with Autism Spectrum Disorders & Other Disabilities: Challenging Behaviors Toolkit
- 11/18 Great American Smokeout (Smoking Cessation)
- 11/25 Thanksgiving
- 11/25-26 CES Holidays (Office Closed)
- 11/26 Presidents' Day (NM)

## NOVEMBER 2021

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				





# The Order Corner

## HOW TO ORDER WITH CES

When ordering based upon a CES contract, there are only four main process categories through which to order, and you must first login securely to the Bluebook at [www.ces.org](http://www.ces.org) to know which of these methods apply for most of the vendors:

1) CES has implemented Direct Purchasing, which means that your PO and payment are made out directly to the vendor. HOWEVER, to be compliant with the CES contracting process, these orders MUST be uploaded via the **SUBMIT PO via DIRECT PURCHASE** link found in the Blue Book for the vendor with whom you are placing an order.

2) CES has kept its Traditional Purchasing submission method for those vendors who perform construction as part of at least one of their CES contracts (and some other specific situations). For this method, your PO and payment are made out to CES. This method can be easily identified by the vendor listing in the Blue Book not having the SUBMIT PO via DIRECT PURCHASE link. These POs & associated Quotes are emailed to [po@ces.org](mailto:po@ces.org).

- An example for construction is *A K Sales & Consulting Inc.*
- An example for non-construction is *Sivic Solutions Group, LLC.*

3) CES has made some contractual exceptions for "Give your PO to the vendor," referred to as Vendor Website. In these cases, you will be placing orders directly on the vendor's website.

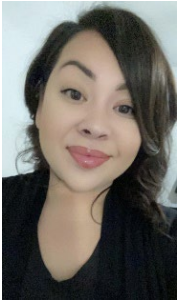
- *CDWG LLC*
- *Labatt Food Service*
- *Lakeshore Learning Materials*
- *MNJ Technologies Direct, Inc.*
- *Quill Corporation*
- *School Outfitters*
- *School Specialty*
- *Sewco, Inc. dba Officewise Furniture & Supply*
- *Staples Business Advantage*

4) If you are uncertain How To Order from one of these companies, their contact information is in the Bluebook – Call the Vendor. Their situations are each unique, and the easiest route is to follow their specific ordering instructions.

- *Aflac Group*
- *Competitive Benefits Administrators*
- *First Financial Group of America*
- *LegaleASE*
- *Trusted Capital Group*



## We Are New At CES!



I am our newest Purchasing Specialist, Marissa Lopez. I was born and raised here in Albuquerque. I have worked in finance, architecture, and construction for most of my professional career. I love spending time with family and friends, great food, and good music. I am excited to get to know and work with our members and vendors.



Hello! My name is Kelley Scheib. I was born and raised in Albuquerque, NM. I spent the last 12 years in the liquor distribution industry. I did various jobs for the first 4 years and spent the last 8 years in the accounting department. I am excited to start this new journey as a Purchasing Specialist with CES.



I am Lianne Pierce, Ancillary Program Director. I grew up in Western Pennsylvania and attended college in Ohio and Kansas. I lived in Odessa, and Dallas, Texas for several years and was married in Dallas. I came to Albuquerque Labor Day weekend in 1992 and have been here ever since. I have a background in insurance and education. I taught for Albuquerque Public Schools for 21 years and then obtained my Master's degree in Educational Administration from Wayland Baptist University. I have been an educational administrator for APS since 2016, with my focus being predominantly in the field of Special Education. I am thankful and excited to be part of the CES Team.



Hello! I am Monica Myers, Purchasing Specialist. I was born and raised in Albuquerque. I studied Computer Networking at TVI and later switched to accounting at CNM. I have an Associates degree in Accounting. I love accounting. I am great at figuring out strange issues that might pop up in AP and AR. I also enjoy processes. I like to look at processes and take them apart to see what works and doesn't to make it more efficient. My family life is busy with two young kids and a supporting husband. I love to watch Netflix shows, Climb, Run, dance, and decorate the house for different seasons.





I am Anthony Montañó, CES' Finance Manager. New Mexico public education is a very important part of my life. I have a Masters degree in Public Administration from the University of New Mexico with an emphasis on Public Budgeting and a Bachelors degree in Business Administration from the Robert O. Anderson School of Management with 30 credit hours in Accounting. My entire financial career has been rooted in public education, with 11 years working for Albuquerque Public Schools and 4 years working for the University of New Mexico. My wife MaryBeth and I enjoy learning from our travels around the world. I am excited to support the CES members in their mission to cultivate the future of New Mexico.



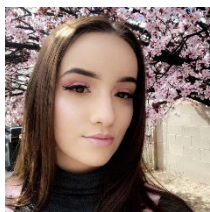
I am Yvonne Tabet, the new Human Resources Manager. I come from Public Education with over 30 years of experience, as School Counselor, Teacher, Assistant Principal, Principal and Human Resources Director. I am from Belen and reside with my family in Adelino, NM. I am married to John Kirkpatrick and have three children – Jane, age 22; John Leo, age 20; and Jackson, age 17.



I am CES' newest Media Specialist, Aaron Gonzales. I am an experienced videographer, video editor, and graphic designer, specializing in social media marketing. I have an Associates degree in Arts from New Mexico State University. I love creating media content and how it constantly challenges me to creatively think outside the box and try new things. I am really excited to be on the team!



Hi, I'm Alicia Herrera. I am a former Realtor and Property Manager, and before that I worked as a Certified Pharmacy Technician. I've been working as a Payroll Administrator since 2017 and, as of October 2021, I am now the Payroll Specialist at CES.



I am Abigail Hansen, Receptionist at CES, having begun in June. I am an Albuquerque native and bring a variety of experience, having worked at Victoria's Secret, Aerotek Recruiting & Staffing, Ulta Beauty, and ResourceMFG. I am currently studying at Central New Mexico Community College. I look forward to assisting you as you call or visit CES.





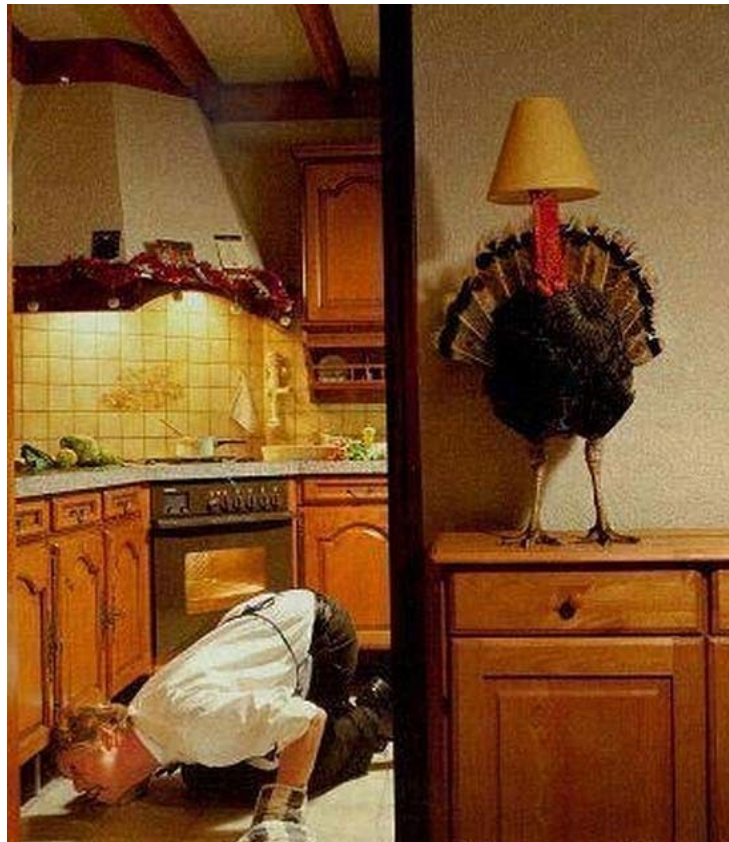
# Job Opportunities at CES

## Ancillary Program

- Social Worker – Regions 2, 4, 8
- Occupational Therapist – Regions 2, 4, 8
- Physical Therapist – regions 2, 4
- Speech/Language Pathologist – Regions 1, 2, 4
- Educational Diagnostician – Regions 2, 3, 4, 7, 8
- School Psychologist – Regions 2, 3, 4, 6, 7
- Registered Nurse – Regions 1, 4, 8
- Audiologist – Regions 1, 4
- Rehabilitation Counselor – Region 2
- Adaptive PE Teacher – Region 4
- Certified Orientation & Mobility Specialist – Regions 1, 2, 4
- Teacher for the Visually Impaired – Region 4

## Other

- Professional Services Consultant



## Bulletin Board



**John Tortelli**, Procurement & Contract Specialist with CES, was awarded Buyer of The Year by the NM Public Purchasing Association at their annual conference on Wednesday, October 20<sup>th</sup>. Having been nominated by a peer, he was selected by the judging panel from among several nominees. John has broad experience in purchasing, including years in the private corporate sector, municipal government, and now NM's only cooperative serving all local government bodies and qualifying nonprofit organizations. John has demonstrated his continual willingness to teach and assist others in understanding the NM Procurement Code, best practices, and carrying out successful procurements. He is an out-of-the-box thinker who helps lead in problem solving with his associates.





# OCTOBER LEAP Teacher(s) of the Month LEADERSHIP



This month, we highlight two teachers, Ben and Brittany Doherty, for their leadership in Des Moines Municipal Schools, New Mexico. When their district needed an agriculture teacher, they stepped up to job share and then signed up for more added responsibilities. On top of being full-time calf/cow ranchers, below is a list of ways each has shown leadership in Des Moines Schools. LEAP teachers are awesome!

## Ben

High School Agriculture Teacher  
Sophomore Class Sponsor  
Varsity Boys Head Basketball Coach  
JH Boys Head Basketball Coach

## Brittany

Senior Employability Teacher  
Junior High Agriculture Teacher  
FFA Advisor  
Senior Class Sponsor  
Bus Route Driver



## ▲ NMSBA 2021 Annual Convention

December 2-4 2021, Embassy Suites Hotel, Albuquerque, NM

The New Mexico School Boards Association will conduct its 2021 Annual Convention. The conference began Thursday, December 2 with the Board of Directors Meeting and New Board Member Training. On Friday, December 3 attendees will listen to several informative keynote speakers and participate in the Annual Delegate Assembly to adopt legislative priorities and elect state officers. New Mexico's School Board Recognition Awards and Leadership Development Training Awards will be presented at the Annual Awards Ceremony on Friday as well. The Convention will continue on Saturday, December 4 with several breakout sessions on important school governance and public education topics.

For those interested in exhibitor or sponsorship opportunities, please contact Carolyn Mole, Finance Director. For those interested in presenting information or workshops please contact Lorraine Vigil, Program Director.

[www.nmsba.org](http://www.nmsba.org)

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