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AN ACT

RELATING TO EMPLOYMENT; ENACTING THE CAREGIVER LEAVE ACT TO PROVIDE EMPLOYEES OF PRIVATE ENTITIES WHO HAVE ACCRUED PAID SICK LEAVE WITH THE OPPORTUNITY TO USE SICK LEAVE FOR FAMILY CAREGIVING; ENACTING THE PUBLIC EMPLOYEE CAREGIVER LEAVE ACT TO PROVIDE PUBLIC EMPLOYEES THE RIGHT TO USE ACCRUED SICK LEAVE FOR FAMILY CAREGIVING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Caregiver Leave Act".

SECTION 2. DEFINITIONS.--As used in the Caregiver Leave Act:

A. "eligible employee" means, except as provided pursuant to Section 4 of the Caregiver Leave Act, an individual who is in the employ of an employer and who, in accordance with the employer's policies, is eligible to accrue sick leave;

B. "employer" means a person that employs one or more employees and that offers eligible employees sick leave;

C. "family member" means an individual who is the spouse or domestic partner of or is by blood, marriage or legal adoption a parent, grandparent, great-grandparent, child, foster child, grandchild, great-grandchild, brother, sister, niece, nephew, aunt or uncle of an eligible employee;

1 and

2 D. "sick leave" means a leave of absence from
3 employment for which an employer pays an eligible employee
4 due to illness or injury or to receive care from a licensed
5 or certified health professional. "Sick leave" does not
6 include leave to which an employee is entitled under the
7 federal Family and Medical Leave Act of 1993, regardless of
8 whether the employee uses sick leave during that leave.

9 SECTION 3. ACCUMULATED SICK LEAVE--APPLICATION TO
10 FAMILY CAREGIVING.--

11 A. An employer that provides eligible employees
12 with sick leave for an eligible employee's own illness or
13 injury or to receive health care shall permit its eligible
14 employees to use accrued sick leave to care for their family
15 members in accordance with the same terms and procedures that
16 the employer imposes for any other use of sick leave by
17 eligible employees.

18 B. An eligible employee's employer shall not
19 discharge or threaten to discharge, demote, suspend or
20 retaliate or discriminate in any manner, including using the
21 employee's use of caregiver leave as a factor in the
22 employee's performance evaluation, against an eligible
23 employee because that employee requests or uses caregiver
24 leave in accordance with the employer's general sick leave
25 policy, files a complaint with the workforce solutions

1 department for violation of the Caregiver Leave Act,
2 cooperates in an investigation or prosecution of an alleged
3 violation of the Caregiver Leave Act or opposes any policy or
4 practice established pursuant to the Caregiver Leave Act.

5 C. Nothing in this section shall require an
6 employer to provide sick leave to its employees.

7 D. The provisions of the Caregiver Leave Act are
8 nonexclusive and cumulative and are in addition to any other
9 rights or remedies afforded by contract or under other
10 provision of law. The Caregiver Leave Act does not prohibit
11 an employer from providing greater sick leave benefits than
12 are provided pursuant to that act.

13 E. The secretary of workforce solutions shall
14 adopt and promulgate rules to implement the provisions of the
15 Caregiver Leave Act. These rules shall include, at a
16 minimum, grievance procedures for according eligible
17 employees recourse for violations of the Caregiver Leave Act.

18 SECTION 4. EXEMPTIONS.--

19 A. The provisions of the Caregiver Leave Act shall
20 not apply to:

21 (1) an employee of an employer subject to
22 the provisions of Title II of the federal Railway Labor Act
23 or to an employer or employee as defined in either the
24 federal Railroad Unemployment Insurance Act or the Federal
25 Employers' Liability Act or other comparable federal law; or

1 (2) any other employment expressly exempted
2 under rules adopted by the workforce solutions department as
3 necessary to implement the provisions of the Caregiver Leave
4 Act in accordance with applicable state and federal law.

5 B. Nothing in the Caregiver Leave Act shall be
6 construed to invalidate, diminish or otherwise interfere with
7 any collective bargaining agreement, nor shall it be
8 construed to invalidate, diminish or otherwise interfere with
9 any party's power to collectively bargain for a collective
10 bargaining agreement.

11 SECTION 5. A new section of Chapter 10 NMSA 1978 is
12 enacted to read:

13 "SHORT TITLE.--Sections 5 through 8 of this act may be
14 cited as the "Public Employee Caregiver Leave Act"."

15 SECTION 6. A new section of Chapter 10 NMSA 1978 is
16 enacted to read:

17 "DEFINITIONS.--As used in the Public Employee Caregiver
18 Leave Act:

19 A. "eligible employee" means, except as provided
20 pursuant to Section 8 of this 2019 act, an individual who is
21 an officer or employee of the state or of a public school and
22 who, in accordance with the policies of the state agency or
23 public school employing the officer or employee, is eligible
24 to accrue sick leave;

25 B. "family member" means an individual who is the

1 spouse or domestic partner of or is by blood, marriage or
2 legal adoption a parent, grandparent, great-grandparent,
3 child, grandchild, great-grandchild, brother, sister, niece,
4 nephew, aunt or uncle, or is living in the household of an
5 eligible employee;

6 C. "sick leave" means a leave of absence from
7 employment for which a state agency or public school pays an
8 eligible employee due to illness or injury or to receive care
9 from a licensed or certified health professional. "Sick
10 leave" does not include leave to which an employee is
11 entitled under the federal Family and Medical Leave Act of
12 1993, regardless of whether the employee uses sick leave
13 during that leave; and

14 D. "state" or "state agency" means the state of
15 New Mexico or any of its branches, agencies, departments,
16 boards, instrumentalities or institutions."

17 SECTION 7. A new section of Chapter 10 NMSA 1978 is
18 enacted to read:

19 "ACCUMULATED SICK LEAVE--APPLICATION TO FAMILY
20 CAREGIVING.--

21 A. A state agency or public school that provides
22 eligible employees with sick leave for an eligible employee's
23 own illness or injury or to receive health care shall permit
24 its eligible employees to use accrued sick leave to care for
25 their family members in accordance with the same terms and

1 procedures that the state agency or public school imposes for
2 any other use of sick leave by eligible employees.

3 B. A state agency or public school employing an
4 eligible employee shall not discharge or threaten to
5 discharge, demote, suspend or retaliate or discriminate in
6 any manner, including using the employee's use of caregiver
7 leave as a factor in the employee's performance evaluation,
8 against an eligible employee because that employee requests
9 or uses caregiver leave in accordance with the state agency's
10 or public school's general sick leave policy, files a
11 grievance for violation of the Public Employee Caregiver
12 Leave Act, cooperates in an investigation or prosecution of
13 an alleged violation of that act or opposes any policy or
14 practice established pursuant to that act.

15 C. Nothing in this section shall require a state
16 agency or public school to provide sick leave to its
17 employees.

18 D. The provisions of the Public Employee Caregiver
19 Leave Act are nonexclusive and cumulative and are in addition
20 to any other rights or remedies afforded by contract or under
21 other provision of law. The Public Employee Caregiver Leave
22 Act does not prohibit a state agency or public school from
23 providing greater sick leave benefits than are provided
24 pursuant to that act.

25 E. Each state agency director and public school

1 administrator shall adopt and promulgate policies to
2 implement the provisions of the Public Employee Caregiver
3 Leave Act. These policies shall include, at a minimum,
4 grievance procedures for according eligible employees
5 recourse for violations of the Public Employee Caregiver
6 Leave Act. As used in this section, "state agency director"
7 means:

8 (1) the director of the state personnel
9 office for those state agencies to which the provisions of
10 the Personnel Act apply; and

11 (2) the director of a state agency to which
12 the provisions of the Personnel Act do not apply."

13 SECTION 8. A new section of Chapter 10 NMSA 1978 is
14 enacted to read:

15 "EXEMPTIONS.--

16 A. The provisions of the Public Employee Caregiver
17 Leave Act shall not apply to any employment expressly
18 exempted under rules adopted by the state personnel office or
19 any other state agency.

20 B. Nothing in the Public Employee Caregiver Leave
21 Act shall be construed to invalidate, diminish or otherwise
22 interfere with any collective bargaining agreement, nor shall
23 it be construed to invalidate, diminish or otherwise interfere
24 with any party's power to collectively bargain for a
25 collective bargaining agreement."