

SENATE BILL 123

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Michael Padilla

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

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. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Caregiver Leave

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Act".

SECTION 2. [NEW MATERIAL] 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; and

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

SECTION 3. [NEW MATERIAL] ACCUMULATED SICK LEAVE--
APPLICATION TO FAMILY CAREGIVING.--

A. An employer that provides eligible employees with sick leave for an eligible employee's own illness or

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injury or to receive health care shall permit its eligible employees to use accrued sick leave to care for their family members in accordance with the same terms and procedures that the employer imposes for any other use of sick leave by eligible employees.

B. An eligible employee's employer shall not discharge or threaten to discharge, demote, suspend or retaliate or discriminate in any manner, including using the employee's use of caregiver leave as a factor in the employee's performance evaluation, against an eligible employee because that employee requests or uses caregiver leave in accordance with the employer's general sick leave policy, files a complaint with the workforce solutions department for violation of the Caregiver Leave Act, cooperates in an investigation or prosecution of an alleged violation of the Caregiver Leave Act or opposes any policy or practice established pursuant to the Caregiver Leave Act.

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

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

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

SECTION 4. [NEW MATERIAL] EXEMPTIONS.--

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

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

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

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

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

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"[NEW MATERIAL] SHORT TITLE.--Sections 5 through 8 of this act may be cited as the "Public Employee Caregiver Leave Act"."

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

"[NEW MATERIAL] DEFINITIONS.--As used in the Public Employee Caregiver Leave Act:

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

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

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

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

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

"[NEW MATERIAL] ACCUMULATED SICK LEAVE--APPLICATION TO FAMILY CAREGIVING.--

A. A state agency or public school that provides eligible employees with sick leave for an eligible employee's own illness or injury or to receive health care shall permit its eligible employees to use accrued sick leave to care for their family members in accordance with the same terms and procedures that the state agency or public school imposes for any other use of sick leave by eligible employees.

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

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established pursuant to that act.

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

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

E. Each state agency director and public school administrator shall adopt and promulgate policies to implement the provisions of the Public Employee Caregiver Leave Act. These policies shall include, at a minimum, grievance procedures for according eligible employees recourse for violations of the Public Employee Caregiver Leave Act. As used in this section, "state agency director" means:

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

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

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

"[NEW MATERIAL] EXEMPTIONS.--

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

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