AN ACT
RELATING TO EMPLOYMENT; ENACTING THE PAID FAMILY AND MEDICAL LEAVE ACT; CREATING THE PAID LEAVE DIVISION IN THE WORKFORCE SOLUTIONS DEPARTMENT; PROVIDING FOR A PAID FAMILY AND MEDICAL LEAVE PROGRAM; CREATING THE PAID FAMILY AND MEDICAL LEAVE INSURANCE FUND; ENACTING CIVIL PENALTIES; MAKING AN APPROPRIATION.

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

SECTION 1. Section 9-26-4 NMSA 1978 (being Laws 2007, Chapter 200, Section 4) is amended to read:

"9-26-4. WORKFORCE SOLUTIONS DEPARTMENT CREATED.--The "workforce solutions department" is created in the executive branch pursuant to the Executive Reorganization Act. The department is a cabinet department that includes:

A. the office of the secretary;

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B. the administrative services division;  
C. the business services division;  
D. the labor relations division;  
E. the workforce technology division; [and]  
F. the workforce transition services division; and  
G. the paid leave division."

SECTION 2. [NEW MATERIAL] SHORT TITLE.---Sections 2
through 14 of this act may be cited as the "Paid Family and
Medical Leave Act".

SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
Paid Family and Medical Leave Act:

A. "child" means a biological, adopted or foster
child, a stepchild, a legal ward or:
   (1) a person under eighteen years of age;
   (2) a person eighteen years of age or older
and incapable of self-care because of a mental or physical
condition; or
   (3) a person who meets the criteria of
Paragraph (1) or (2) of this subsection, and to whom an
employee stands in loco parentis, or as a legal guardian or is
cared for by a person determined as a de facto parent,
regardless of age or dependence;

B. "claim for leave" means an application for leave
that an employee makes to the department pursuant to the Paid
Family and Medical Leave Act in accordance with department
rules;

C. "covered individual" means an employee who applies for and is approved to take leave;

D. "department" means the workforce solutions department, the secretary of workforce solutions or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "division" means the paid leave division of the department;

F. "domestic partner" means a person who is registered as a domestic partner under the laws of any state or political subdivision or who:

   (1) is at least eighteen years of age;

   (2) is not married or a member of another domestic partnership;

   (3) is in an exclusive committed relationship with and for the benefit of the other partner;

   (4) is sharing or has shared a primary residence with the other partner for twelve or more consecutive months;

   (5) is jointly responsible with the other partner for each other's common welfare;

   (6) shares joint financial obligations with the other partner; and

   (7) does not have a blood relationship with
the other partner that would preclude marriage between them under New Mexico law;

G. "employee":

(1) means a person who works for another in return for financial or other compensation, or an individual who is in the employment of an employer; and

(2) does not include employees of the United States;

H. "employer":

(1) means a person or an officer, agent, successor in interest or employee of that person having control of the payment of wages and doing business in or deriving income from sources within the state for whom an individual performs or performed any service as the employee of that person, including the following:

(a) any partnership, association, trust, estate, joint stock company, insurance company, limited liability company;

(b) corporation, whether domestic or foreign or the receiver, trustee in bankruptcy, trustee;

(c) the legal representative of a deceased person having any person in employment; or

(d) any state, state institutions, state agencies, any unit of local government including a county, city, town, municipal corporation, quasi-municipal corporation,
or political subdivision; and

(2) does not include the United States;

I. "family and medical leave" means leave that an
employee takes pursuant to the Paid Family and Medical Leave
Act for one of the following reasons:

(1) the serious health condition of the
employee;

(2) the serious health condition of a family
member of the employee;

(3) the employee's pregnancy; or

(4) the birth of the employee's child or
adoption of a child or placement of a foster child with the
employee for the purposes of bonding;

J. "family member" means:

(1) regardless of age, a biological, adopted
or foster child, stepchild, or legal ward, a child of a
domestic partner, a child to whom the covered individual stands
in loco parentis, or a person to whom the covered individual
stood in loco parentis when the person was a minor or a legal
guardian who is determined a de facto parent;

(2) a biological, adoptive or foster parent,
stepparent or legal guardian of a covered individual or a
covered individual's spouse or domestic partner or a person who
stood in loco parentis when the covered individual or the
covered individual's spouse or domestic partner was a minor;
(3) a person to whom the covered individual is legally married under the laws of any state, or a domestic partner of a covered individual;

(4) a grandparent, grandchild or sibling, whether biological, foster, adoptive or step relationship, of the covered individual or the covered individual's spouse or domestic partner; or

(5) a designated person, which shall mean one additional person designated by a covered individual for whom the covered individual will provide care under the Paid Family and Medical Leave Act if the designated person has a serious health condition;

K. "fund" means the paid family and medical leave insurance fund;

L. "health care provider" means an individual licensed or certified to provide health care in the ordinary course of business;

M. "leave" means paid family and medical leave that an employer provides to an employee pursuant to the Paid Family and Medical Leave Act;

N. "leave compensation" means income that the department pays from the fund to an employee on leave;

O. "parent" means the biological parent of an employee or an individual who stood in loco parentis or was the legal guardian to the employee when the employee was a child or
who cared for the employee and was recognized in the community
or determined a de facto parent, regardless of age or
dependence;
P. "secretary" means the secretary of workforce
solutions;
Q. "serious health condition" means an illness,
injury, impairment or physical or mental condition that
involves:
   (1) inpatient care in a hospital, hospice or
residential medical facility; or
   (2) continuing treatment by a health care
provider;
R. "state average weekly wage" means the amount
computed by the department pursuant to Section 51-1-4 NMSA
1978; and
S. "wages" means remuneration in cash or other form
for services performed by an employee for an employer.

SECTION 4. [NEW MATERIAL] PAID FAMILY LEAVE DIVISION--
CREATED--DUTIES.--The "paid family leave division" is created
in the department to:
   A. establish and administer a program that allows
employees to take paid family and medical leave to bond with a
child or to provide care for themselves or family members
experiencing a serious health condition;
   B. collect, manage and distribute proceeds from the
fund in accordance with the Paid Family and Medical Leave Act;

C. monitor and assess the effectiveness of the paid family and medical leave program;

D. report annually to the legislature regarding the finances and effectiveness of the paid family and medical leave program and the fund;

E. request legislative amendments required to maintain the solvency and effectiveness of the paid family and medical leave program;

F. enforce rules for the administration of the Paid Family and Medical Leave Act;

G. coordinate and collaborate with other agencies to achieve the purpose of the Paid Family and Medical Leave Act;

H. ensure that employers are in compliance with the Paid Family and Medical Leave Act;

I. accept gifts, grants and donations to be used for the paid family and medical leave program;

J. review and adjudicate applications for leave; and

K. maintain the self-sufficiency and solvency of the fund.

SECTION 5. [NEW MATERIAL] ELIGIBILITY--DURATION OF LEAVE--ACCRUAL OF OTHER TYPES OF LEAVE.--

A. Beginning July 1, 2021, an employer shall allow
an employee to take family leave or medical leave after the employee, in accordance with the provisions of the Paid Family and Medical Leave Act and division rules:

(1) has been absent from work for at least five days due to a serious health condition or because of the need for family leave;

(2) on the fifth or a subsequent day of absence from employment, has filed a claim for leave with the department pursuant to the Paid Family and Medical Leave Act; and

(3) has made at least twenty-six contributions to the fund in accordance with department rules.

B. An employee is eligible to take a maximum of twelve weeks of leave during any twelve-month period; provided that an employee may take leave intermittently and is not required to use twelve weeks of leave at any one time.

C. Other types of leave as provided for by an employer's leave policy shall continue to accrue on a daily basis while an employee is on leave pursuant to the Paid Family and Medical Leave Act.

SECTION 6. [NEW MATERIAL] LEAVE BENEFIT CALCULATION.--

A. An employee's biweekly benefit shall be based upon an employee's average weekly income calculated as the employee's total gross income for the twelve months preceding submission of an application for leave divided by the number of
weeks that the employee worked during that same period.

B. If the employee's average weekly income is:

   (1) less than thirteen percent of the state average weekly wage, the employee's biweekly leave compensation shall be one hundred percent of the employee's average weekly income multiplied by two;

   (2) between thirteen percent and fifty percent of the state average weekly wage, the employee's biweekly leave compensation is ninety percent of the employee's average weekly income multiplied by two; or

   (3) greater than fifty percent of the state average weekly wage, the employee's biweekly leave compensation is the sum of the following, multiplied by two:

       (a) ninety percent of the employee's average weekly wage up to fifty percent of the state average weekly wage; and

       (b) fifty percent of the employee's average weekly wage that is greater than fifty percent of the state average weekly wage.

C. The maximum biweekly leave compensation shall be one hundred twenty per cent of the state average weekly wage multiplied by two.

D. Family and medical leave insurance benefits are not payable for fewer than eight hours of family and medical leave taken in one work week.
SECTION 7. [NEW MATERIAL] CLAIMS FOR LEAVE--PROCESS--
NOTICE--DOCUMENTATION.--

A. Beginning July 1, 2020, the division shall accept contributions to the fund.

B. Beginning July 1, 2021, the division shall accept claims for leave.

C. Upon receipt of a claim for leave, the division shall have fourteen calendar days to determine the employee's eligibility to take leave and the amount of leave compensation to be paid to the employee in accordance with the provisions of Section 6 of the Paid Family and Medical Leave Act. Within twenty-four hours of the division's determination of eligibility and the amount of leave compensation, the department shall notify the employee in writing of the result of the eligibility determination and the amount of leave compensation, if any, that the employee will receive.

D. Upon approval of an employee's leave application, the division shall provide leave compensation to an employee in the most reasonably efficient manner possible and no later than one week from the date that the employee submits an application for leave. The division may provide subsequent leave compensation payments on the same schedule as the state payroll to increase efficiency and cost-effectiveness. The department shall issue leave compensation biweekly for as long as an employee is entitled to receive
leave compensation.

E. Upon denial of an employee's application for leave, the division shall include in its written determination the grounds for its denial of the employee's application and notice of the employee's right to appeal the determination.

F. Upon a determination that the division requires further documentation to support an employee's claim for leave, the division shall include in its written determination a list of the missing documents or information and the employee shall have fourteen business days to provide that documentation or information. Failure of the employee to respond within that statutory period will result in a denial of the employee's application. The division shall allow an employee to reapply without penalty after issuing a denial based on the provisions of this subsection.

G. The division shall require an employee who files a claim for leave to provide, in accordance with division rules, one or more of the following documents relating to the individual upon whose behalf the employee seeks leave:

(1) a birth certificate in the instance of the birth of a child;

(2) hospital documentation of the affected individual;

(3) certification or a statement issued by a health care provider or by the children, youth and families...
department;

(4) verification by a health care provider that the employee or a family member has a serious health condition; or

(5) any other verification required by the department for adjudication of a claim for leave.

SECTION 8. [NEW MATERIAL] RETURN TO EMPLOYMENT.--

A. Upon an employee's return after leave, an employer shall:

(1) restore the employee to the position of employment held by the employee when the leave commenced; or

(2) place the employee in a position for which employee benefits, wages and other terms and conditions of employment are the same or greater than those of the position from which the employee took leave.

B. Nothing in this section shall be construed to entitle a restored employee to:

(1) the accrual of seniority or employment benefits during the period the employee is using leave; or

(2) the right to any benefit or position of employment other than the right the employee would have been entitled to had the employee not taken the leave.

C. Any yearly certification or training that an employer requires as a condition of employment may remain in place and applicable to any employee taking leave; provided

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that nothing in this subsection shall supersede another
provision of law or a collective bargaining agreement that
governs an employee's return to work after leave.

D. Nothing in this section shall prohibit an
employer from requiring an employee who takes more than twelve
weeks of leave to report periodically to the employer on the
status and intention of the employee to return to work.

E. During the period that an employee is on leave
pursuant to the Paid Family and Medical Leave Act, an employer
that offers health coverage in which the employee is enrolled
at the time of starting leave shall maintain the same or
substantially similar health coverage as that health coverage
in which the employee was enrolled at the time of starting
leave. The employer shall offer that health coverage to the
employee during the employee's leave under the same conditions
of health coverage that would apply if the employee had not
taken leave. An employee who accepts continuation of health
coverage under this subsection shall pay a share of the health
insurance premium payment that the employee would have paid had
the employee not taken leave.

SECTION 9. [NEW MATERIAL] FUND CONTRIBUTIONS.--Except as
provided in Subsection B of Section 11 of the Paid Family and
Medical Leave Act, beginning January 1, 2020, employees shall
make contributions to the fund. The proceeds of the fund shall
be used to pay leave compensation to eligible employees
pursuant to that act and the cost of administering the
provisions of that act. In accordance with that act and
division rules, employers shall deduct from each employee's pay
a minimum of two dollars ($2.00) per calendar quarter and remit
those deductions to the fund.

SECTION 10. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE
INSURANCE FUND--CREATED--APPROPRIATION TO DIVISION.--

A. The "paid family and medical leave insurance
fund" is created as a nonreverting fund in the state treasury
and shall be administered by the department. The fund shall
consist of all revenue collected and attributable to the Paid
Family and Medical Leave Act. Money in the fund shall be
invested by the state investment officer pursuant to Section
6-8-7 NMSA 1978. Income from investment of the fund shall be
credited to the fund.

B. Money in the fund is appropriated to the
division to distribute leave compensation pursuant to the Paid
Family and Medical Leave Act and to cover the cost of
administering the paid family and medical leave program
pursuant to that act.

C. Money shall be disbursed from the fund only by
warrant issued by the department of finance and administration
upon vouchers signed by the secretary or the secretary's
authorized representative. Any unexpended or unencumbered
balance remaining at the end of a fiscal year shall not revert
to the general fund.

SECTION 11. [NEW MATERIAL] SELF-EMPLOYED INDIVIDUAL OPTION--EXEMPTION FOR EMPLOYEES COVERED BY A PRIVATELY RUN LEAVE PROGRAM.--

A. Self-employed individuals may opt to contribute to and receive leave compensation from the paid medical and family leave fund. To be eligible to receive leave compensation, a self-employed individual shall commit to and make payments to the fund for a minimum of three years. After a self-employed individual has made payments to the fund for at least three years, the individual may opt out. An individual who opts out shall not be eligible for leave compensation and may only opt in again after twenty-six successive payments have been made to the fund after the date of opting out.

B. An employee of an employer that runs its own paid family and medical leave plan for its employees that provides leave and leave compensation equal to or greater than the leave and leave compensation offered pursuant to the Paid Family and Medical Leave Act, may request exemption from making contributions to the fund. An employee who seeks an exemption pursuant to this subsection shall apply and provide supporting documentation to the division for the exemption each calendar year on a form supplied by the division.

SECTION 12. [NEW MATERIAL] NOTICE OF INTENT TO APPLY FOR LEAVE--EXCEPTION FOR UNFORESEEABLE EVENT--EMPLOYER NOTICE
REQUIREMENT.--

A. An employee shall notify the employee's employer at least thirty days in advance of the employee's intent to make a claim for leave, provided that an employee is exempt from this requirement if the employee's need for leave is unforeseeable. If the employee's need for leave is unforeseeable, the employee shall notify the employer within ten days of learning of the need for leave.

B. An employer shall post and keep posted a summary of the provisions of the Paid Family and Medical Leave Act and information pertaining to enforcement of that act in a conspicuous place upon its premises where notices to employees and applicants for employment are customarily posted.

SECTION 13. [NEW MATERIAL] CLAIMS FOR LEAVE--ADVERSE DETERMINATIONS--APPEALS.--

A. Any party to an application for leave may appeal an adverse determination relating to a claim for leave.

B. Within ten business days of the date an adverse determination is issued, an employee who seeks a redetermination shall file a request for redetermination in accordance with department rules.

C. A panel of at least three hearing officers appointed by the secretary shall convene a hearing on a request for redetermination within ten days of receiving the employee's notice of intent to appeal and make a recommendation to the
secretary to confirm or deny the appeal. The secretary shall
issue a written decision that includes reasoning for the
secretary's determination to the employee and the employee's
employer.

D. An employee may appeal the secretary's final
decision to the district court pursuant to 39-3-1.1 NMSA 1978.

SECTION 14. [NEW MATERIAL] CIVIL PENALTIES.--

A. The department or a court of appropriate
jurisdiction may assess a civil penalty not to exceed ten
thousand dollars ($10,000) upon any employee who files a
fraudulent claim for leave. An employee who files a fraudulent
claim for leave may be subject to termination of employment.

B. The department or a court of appropriate
jurisdiction may assess an employer who wrongfully denies an
employee the employee's right to leave or otherwise violates a
provision of the Paid Family and Medical Leave Act a civil
penalty not to exceed ten thousand dollars ($10,000) for each
violation of that act.

C. The department or a court of appropriate
jurisdiction may assess an employer that willfully violates
Subsection B of Section 12 of the Paid Family and Medical Leave
Act a civil penalty that shall not exceed one thousand dollars
($1,000) for each separate offense.