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HOUSE BILL 16

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

Christine Chandler and Patricia Roybal Caballero

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE PAID FAMILY AND MEDICAL LEAVE ACT; CREATING THE PAID FAMILY AND MEDICAL LEAVE TRUST FUND; PROVIDING FOR THE PAID FAMILY AND MEDICAL LEAVE PROGRAM TO PAY AN ELIGIBLE EMPLOYEE A PERCENTAGE OF THE EMPLOYEE'S SALARY TO ALLOW THE EMPLOYEE TO BOND WITH A NEW CHILD OR TO CARE FOR A FAMILY MEMBER; LIMITING THE TIME ALLOWED FOR PAID FAMILY AND MEDICAL LEAVE; EXCEPTING CERTAIN EMPLOYEES; PROVIDING FOR ADMINISTRATION OF THE PROGRAM BY THE WORKFORCE SOLUTIONS DEPARTMENT; ENACTING ADMINISTRATIVE PENALTIES; CREATING A TEMPORARY ADVISORY COMMITTEE; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Paid Family and Medical Leave Act".

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1           SECTION 2.   ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the  
2 Paid Family and Medical Leave Act:

3           A.   "child" means a biological, adopted or foster  
4 child, a stepchild, a legal ward or a child of a person  
5 standing in loco parentis, who is:

6                       (1) under eighteen years of age; or

7                       (2) eighteen years of age or older and  
8 incapable of self-care because of mental or physical  
9 disability;

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

14           C.   "department" means the workforce solutions  
15 department, the secretary or an employee of the department  
16 exercising authority lawfully delegated to that employee by the  
17 secretary;

18           D.   "domestic partner" means a person with whom  
19 another person maintains a household and a mutual committed  
20 relationship, without a legally recognized marriage;

21           E.   "employee" means a person working within the  
22 state who performs a service for wages or other remuneration  
23 under a contract of hire, written or oral, express or implied,  
24 and includes a person employed by the state or a political  
25 subdivision of the state;

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1           F. "employer" means a person that has one or more  
2 employees within the state and includes an agent of an employer  
3 and the state or a political subdivision of the state;

4           G. "family leave" means paid leave for which an  
5 employee applies pursuant to the Paid Family and Medical Leave  
6 Act and that is granted to the employee to allow the employee  
7 to bond with a child of the employee within twelve months of  
8 the birth or adoption of a child or placement of a foster child  
9 with the employee or to care for a family member if the  
10 caretaker of the family member has a serious health condition;

11           H. "family member" means a person who is:

12                   (1) regardless of age, a biological, adopted  
13 or foster child, stepchild or legal ward, a child of a domestic  
14 partner, a child to whom an employee stands in loco parentis or  
15 a person to whom the covered individual stood in loco parentis  
16 when the person was a minor;

17                   (2) a biological, adoptive or foster parent,  
18 stepparent or legal guardian of an employee or the employee's  
19 spouse or domestic partner or a person who stood in loco  
20 parentis when the employee or the employee's spouse or domestic  
21 partner was a minor;

22                   (3) a person to whom an employee is legally  
23 married under the laws of any state or a domestic partner of  
24 the employee;

25                   (4) a grandparent, great-grandparent,

1 grandchild or sibling, whether a biological, foster, adoptive  
2 or step relationship, of an employee or an employee's spouse or  
3 domestic partner; or

4 (5) any other individual related by blood or  
5 affinity whose close association with the employee or  
6 employee's spouse or domestic partner is the equivalent of a  
7 family relationship;

8 I. "fund" means the paid family and medical leave  
9 trust fund;

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

13 K. "leave" means family leave or medical leave for  
14 which an employee applies pursuant to the Paid Family and  
15 Medical Leave Act;

16 L. "leave compensation" means income that the  
17 department pays from the fund to an employee for family or  
18 medical leave;

19 M. "medical leave" means paid leave for which an  
20 employee applies pursuant to the Paid Family and Medical Leave  
21 Act to allow the employee to provide care for the employee's  
22 own serious health condition or to care for a family member  
23 with a serious health condition;

24 N. "secretary" means the secretary of workforce  
25 solutions;

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1           O. "serious health condition" means an illness,  
2 injury, impairment or physical or mental condition that  
3 involves:

4                   (1) inpatient care in a hospital, hospice or  
5 residential medical facility; or

6                   (2) continuing treatment by a health care  
7 provider; and

8           P. "spouse" means a partner to a lawful marriage.

9           **SECTION 3. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE**  
10 **TRUST FUND--CREATION--APPROPRIATIONS.--**

11           A. The "paid family and medical leave trust fund"  
12 is created as a nonreverting fund in the state treasury and  
13 shall be administered by the department. The fund shall be  
14 held in trust for the benefit of the employees who paid into  
15 the fund and shall consist of all revenue collected and  
16 attributable to the Paid Family and Medical Leave Act. Money  
17 in the fund shall be invested by the state investment officer.  
18 Income from investment of the fund shall be credited to the  
19 fund.

20           B. Money in the fund is appropriated to the  
21 department to distribute leave compensation pursuant to the  
22 Paid Family and Medical Leave Act and to cover the costs of  
23 administering the paid family and medical leave program  
24 pursuant to that act.

25           C. Money shall be disbursed from the fund only on

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1 warrant issued by the department of finance and administration  
2 pursuant to vouchers signed by the secretary or the secretary's  
3 authorized representative. Any unexpended or unencumbered  
4 balance remaining at the end of a fiscal year shall not revert  
5 to the general fund.

6 D. The secretary shall ensure and maintain the  
7 self-sufficiency and solvency of the fund by performing an  
8 annual financial analysis and reporting the results and  
9 recommendations based on the analysis to the appropriate  
10 legislative body for adjustment of the formula used to  
11 determine employer and employee contributions to the fund.

12 SECTION 4. [NEW MATERIAL] APPLICABILITY--CONTRIBUTIONS TO  
13 FUND--REMITTANCE OF CONTRIBUTIONS--EXEMPTION FOR PRIVATELY RUN  
14 PROGRAMS--REQUIREMENTS OF PRIVATELY RUN PROGRAMS.--

15 A. The Paid Family and Medical Leave Act applies  
16 to:

17 (1) all public and private employees who are  
18 subject to state jurisdiction, except those employees who are  
19 employed by the United States;

20 (2) the employers of employees as described in  
21 Paragraph (1) of this subsection, whether or not the employer  
22 is physically located in the state; and

23 (3) self-employed individuals subject to state  
24 jurisdiction who opt into the program.

25 B. Beginning July 1, 2021 and for each calendar

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1 quarter thereafter, there is assessed against each  
2 participating employee one-half percent of the employee's  
3 earnings to fund leave compensation payments. An employee's  
4 contribution to the fund shall not be deducted from the  
5 employee's leave compensation.

6 C. Beginning July 1, 2021 and for each calendar  
7 quarter thereafter, there is assessed against each employer  
8 with participating employees an amount equal to four-tenths  
9 percent of each participating employee's earnings to fund  
10 administrative costs.

11 D. Beginning July 1, 2021 and for each calendar  
12 quarter thereafter, there is assessed against each self-  
13 employed individual as described in Paragraph (3) of Subsection  
14 A of this section nine-tenths percent of the individual's net  
15 annual earnings as designated by the self-employed individual.

16 E. The contributions of employees and employers  
17 shall be remitted by the employer following the end of each  
18 quarter for which the contributions are deducted and on a date  
19 determined by the secretary.

20 F. The contributions of self-employed individuals  
21 shall be remitted by the individual following each end of the  
22 quarter for which the contributions are deducted and on a date  
23 determined by the secretary. A self-employed individual shall  
24 not be required to make contributions from leave compensation.

25 G. An employer that has adopted and operates a paid

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1 family and medical leave plan or program for the benefit of its  
2 employees that provides leave and leave compensation equal to  
3 or greater than the leave and leave compensation offered under  
4 the Paid Family and Medical Leave Act may apply for a waiver to  
5 exempt the employer and its employees from making required  
6 contributions to the fund. The employer shall apply and  
7 provide supporting documentation to the department for  
8 exemption each calendar year.

9 H. An employer granted a waiver pursuant to  
10 Subsection G of this section and the employer's employees shall  
11 have the same rights and protections enjoyed by employers and  
12 employees covered under the Paid Family and Medical Leave  
13 Act, including the right to appeal to the department.

14 I. An employer granted a waiver pursuant to  
15 Subsection G of this section shall notify all employees covered  
16 by the employer's paid leave program that:

17 (1) the employee is covered by a privately run  
18 leave program rather than a public plan;

19 (2) employees may apply to the employer for  
20 leave;

21 (3) employers must provide leave and leave  
22 compensation equal to or greater than that granted to employees  
23 under the Paid Family and Medical Leave Act; and

24 (4) employees may appeal to the department if  
25 any right granted under the Paid Family and Medical Leave Act

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1 is violated.

2 J. A paid family and medical leave plan that is  
3 privately operated, as described in Subsection G of this  
4 section, shall not:

5 (1) require an employee to pay more for  
6 private coverage than the employee would pay through  
7 contribution to the fund as described in Subsection B of this  
8 section; or

9 (2) impose additional restrictions or  
10 conditions on the process of applying for or receiving leave or  
11 leave compensation beyond those explicitly authorized by state  
12 law.

13 K. The department shall withdraw approval of a  
14 waiver for a privately operated paid leave plan or program that  
15 violates the provisions of Subsections G through J of this  
16 section.

17 SECTION 5. [NEW MATERIAL] ELIGIBILITY--LEAVE COMPENSATION  
18 CALCULATION--LEAVE DURATION--DOCUMENTATION REQUIRED--NOTICE OF  
19 DETERMINATION.--

20 A. Beginning January 1, 2022, an employer shall  
21 allow an eligible employee to take family leave or medical  
22 leave after the employee, in accordance with the provisions of  
23 the Paid Family and Medical Leave Act and department rules,  
24 has:

25 (1) filed a claim for leave approved by the

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1 department;

2 (2) certified that the employee will not  
3 obtain new employment or enter into any new independent  
4 contractor agreements during the time the employee receives  
5 leave compensation pursuant to the Paid Family and Medical  
6 Leave Act; and

7 (3) contributed to the fund for at least six  
8 months during any employment in the twelve-month period prior  
9 to submitting an application, not including contributions made  
10 for employment that the employee will continue during the  
11 leave.

12 B. Beginning January 1, 2022, the department shall  
13 provide leave compensation to an eligible self-employed  
14 individual after the self-employed individual, in accordance  
15 with the provisions of the Paid Family and Medical Leave Act  
16 and department rules, has:

17 (1) filed a claim for leave approved by the  
18 department;

19 (2) certified that the self-employed  
20 individual will not obtain new employment or enter into any new  
21 independent contractor agreements during the time the self-  
22 employed individual receives leave compensation pursuant to the  
23 Paid Family and Medical Leave Act; and

24 (3) contributed to the fund for at least six  
25 months during the twelve-month period prior to submitting an

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1 application, not including contributions made for other  
2 employment that the self-employed individual will continue  
3 during the leave.

4 C. An employee or self-employed individual is  
5 eligible to take a maximum of twelve weeks' leave during any  
6 twelve-month period; provided that an employee or self-employed  
7 individual may take leave intermittently and is not required to  
8 use twelve weeks of leave at any one time.

9 D. An individual who becomes unemployed after  
10 contributing to the fund as required by the Paid Family and  
11 Medical Leave Act and who is eligible for leave at the time the  
12 individual becomes unemployed may, within one year of becoming  
13 unemployed, apply for leave and receive leave compensation if  
14 the individual is not receiving unemployment insurance  
15 benefits.

16 E. An employee or self-employed individual shall be  
17 ineligible to receive leave compensation if:

18 (1) the employee or self-employed individual  
19 files a fraudulent claim for leave;

20 (2) the employee or self-employed individual  
21 knowingly and willfully brings about the injury or sickness of  
22 the employee, self-employed individual or another for which a  
23 claim for leave is filed; or

24 (3) during leave, the employee or self-  
25 employed individual does not provide the care or use leave as

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1 described in the employee's application for leave.

2 F. The department shall issue leave compensation  
3 from the fund to an employee as follows:

4 (1) the calculation of weekly leave  
5 compensation shall be based on the employee's average weekly  
6 earnings during the twelve months immediately preceding the  
7 date of the claim for leave up to a maximum of sixty thousand  
8 dollars (\$60,000) in gross earnings per year. If the employee  
9 worked fewer than twelve months, then weekly leave compensation  
10 shall be based on the employee's average weekly earnings during  
11 the weeks the employee worked up to a maximum of sixty thousand  
12 dollars (\$60,000) in gross earnings;

13 (2) an employee's weekly leave compensation  
14 shall equal one hundred percent of the compensation that would  
15 be paid to a minimum-wage-earning employee, pursuant to Section  
16 50-4-22 NMSA 1978, working the same number of hours per week as  
17 the employee, plus sixty-seven percent of the employee's  
18 average earnings per week greater than the minimum wage  
19 compensation; and

20 (3) the maximum amount of weekly leave  
21 compensation shall be no more than the annual mean wage of all  
22 occupations in New Mexico as calculated by the United States  
23 bureau of labor statistics state occupational employment and  
24 wage estimates for the most recent year available divided by  
25 fifty-two.

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1           G. The department shall issue leave compensation  
2 from the fund to self-employed individuals as follows:

3                   (1) a self-employed individual shall determine  
4 the annual net income to be used by the department when the  
5 self-employed individual enrolls in the paid family and medical  
6 leave program up to a maximum of sixty thousand dollars  
7 (\$60,000). A self-employed individual may adjust the  
8 individual's annual net income one time per year on the  
9 anniversary of the individual's enrollment;

10                   (2) the calculation of weekly leave  
11 compensation shall be based on the self-employed individual's  
12 designated annual net income;

13                   (3) a self-employed individual's weekly leave  
14 compensation shall equal one hundred percent of the  
15 compensation that would be paid to a minimum-wage-earning  
16 employee, pursuant to Section 50-4-22 NMSA 1978, working full  
17 time each week, plus sixty-seven percent of the employee's  
18 average net income per week greater than the minimum wage  
19 compensation; and

20                   (4) the maximum amount of weekly leave  
21 compensation shall be no more than the annual mean wage of all  
22 occupations in New Mexico as calculated by the United States  
23 bureau of labor statistics state occupational employment and  
24 wage estimates for the most recent year available divided by  
25 fifty-two.

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1           H. When an employee or self-employed individual  
2 submits a claim for leave, the employee or self-employed  
3 individual shall provide the department with:

4                   (1) if the applicant is an employee, a record  
5 of total earnings, the total number of weeks worked and the  
6 average number of hours worked per week during the previous  
7 twelve months in the employment from which the employee seeks  
8 leave; or

9                   (2) if the applicant is a self-employed  
10 individual, documentation that the individual's business  
11 operated and earned gross income from self-employment during  
12 the previous twelve months.

13           I. The department shall notify the employer and  
14 employee or self-employed individual in writing within ten  
15 business days of application:

16                   (1) if approved, and shall notify the employee  
17 or self-employed individual of the amount of leave compensation  
18 that the employee or self-employed individual is eligible to  
19 receive biweekly; provided that an eligible employee or self-  
20 employed individual shall begin receiving leave compensation  
21 within ten business days of the date of submission of a  
22 properly completed application or ten business days after  
23 approved leave begins;

24                   (2) if denied, and shall notify the employee  
25 or self-employed individual of the grounds for denying the

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1 employee's or self-employed individual's application for  
2 eligibility and of the employee's or self-employed individual's  
3 right to appeal; and

4 (3) if further information or supporting  
5 documentation is required to determine the employee's or self-  
6 employed individual's eligibility for paid leave or the amount  
7 of leave compensation; provided that when the department  
8 receives sufficient information or supporting documentation  
9 from the employee or self-employed individual to make an  
10 eligibility determination, the department shall adhere to the  
11 notification provision of this subsection.

12 SECTION 6. [NEW MATERIAL] CLAIMS FOR LEAVE--  
13 DOCUMENTATION--CONFIDENTIALITY.--

14 A. The department shall require an employee or  
15 self-employed individual who seeks family leave to provide, in  
16 accordance with department rules, information relating to the  
17 child that verifies the employee's or self-employed  
18 individual's claim for family leave.

19 B. The department shall require an employee or  
20 self-employed individual who seeks medical leave to provide, in  
21 accordance with department rules, verification by a health care  
22 provider that the employee, self-employed individual or family  
23 member has a serious health condition that supports the  
24 employee's or self-employed individual's claim for leave.

25 C. Information contained in an employee's or self-

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1 employed individual's files and records pertaining to the Paid  
2 Family and Medical Leave Act are confidential and not open to  
3 public inspection, other than to public employees in the  
4 performance of their official duties. However, the employee,  
5 the self-employed individual or an authorized representative of  
6 either may review the records or receive specific information  
7 from the records upon the presentation of the employee's or  
8 self-employed individual's signed authorization.

9 D. Employee information gathered by a private  
10 employer pursuant to the Paid Family and Medical Leave Act  
11 shall be kept confidential by the employer; provided that  
12 confidential records may be used by public employees in the  
13 performance of their duties.

14 SECTION 7. [NEW MATERIAL] EMPLOYEE NOTICE TO EMPLOYER--  
15 REDUCTION OF OTHER LEAVE PROHIBITED.--

16 A. An employee shall:

17 (1) make a reasonable effort to schedule leave  
18 so as not to unduly disrupt the operations of the employer;

19 (2) provide the employer with prior notice of  
20 the schedule on which the employee will be taking leave, to the  
21 extent practicable; and

22 (3) provide the employer with a copy of the  
23 employee's application for leave.

24 B. Leave taken shall not result in a reduction of  
25 the total amount of leave to which an employee is entitled in

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1 excess of the amount of leave actually taken; provided that an  
2 employer subject to the federal Family and Medical Leave Act of  
3 1993 may require an employee who takes leave and receives leave  
4 compensation under the Paid Family and Medical Leave Act to  
5 take paid leave concurrently with leave under the federal  
6 Family and Medical Leave Act of 1993.

7 C. Nothing in this section shall be construed to  
8 entitle an employee to more leave than required pursuant to  
9 Section 5 of the Paid Family and Medical Leave Act.

10 D. An employer shall post and keep posted in a  
11 conspicuous place upon its premises a notice that informs  
12 employees of the right to take family and medical leave and  
13 summarizes the major provisions of the Paid Family and Medical  
14 Leave Act.

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

16 A. A self-employed individual shall notify the  
17 department within ten business days of the self-employed  
18 individual's return to work.

19 B. Upon an employee's return after leave, an  
20 employer shall:

21 (1) restore the employee to the position of  
22 employment held by the employee when the leave commenced or  
23 place the employee in a position for which employee benefits,  
24 wages and other terms and conditions of employment are the same  
25 or greater than those of the position from which the employee

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1 took leave; and

2 (2) immediately notify the department that the  
3 employee has returned to work.

4 C. Nothing in this section shall be construed to  
5 entitle a restored employee to:

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

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

11 D. Any yearly certification or training that an  
12 employer requires as a condition of employment may remain in  
13 place and applicable to any employee taking leave; provided  
14 that nothing in this subsection shall supersede another  
15 provision of law or a collective bargaining agreement that  
16 governs an employee's return to work after leave.

17 E. Nothing in this section shall prohibit an  
18 employer from requiring an employee who uses leave to report  
19 periodically to the employer on the status and intention of the  
20 employee to return to work.

21 F. An employer shall pay its share of health  
22 insurance premiums and maintain an employee's health coverage  
23 while the employee is on leave pursuant to the Paid Family and  
24 Medical Leave Act under terms that the employee would have  
25 received if the employee had not taken leave. The employee on

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1 leave shall pay the same share of premium payments as the  
2 employee would have paid if the employee were not on leave.

3 SECTION 9. [NEW MATERIAL] INTERFERENCE AND RETALIATION  
4 PROHIBITED.--

5 A. It is unlawful for an employer or any other  
6 person to interfere with, restrain or deny the exercise of, or  
7 the attempt to exercise, any right protected under the Paid  
8 Family and Medical Leave Act.

9 B. An employer shall timely provide to the employee  
10 documents required to apply for leave.

11 C. An employer, employee organization or other  
12 person shall not take retaliatory personnel action or otherwise  
13 discriminate against a person because the person exercised  
14 rights protected under the Paid Family and Medical Leave Act.  
15 Such rights include:

16 (1) requesting, filing for, applying for or  
17 exercising any right to take leave as provided for under the  
18 Paid Family and Medical Leave Act;

19 (2) communicating to the employer or any other  
20 person or entity an intent to file a claim, a complaint with  
21 the department or courts, or an appeal;

22 (3) testifying, planning to testify or  
23 assisting at any time in any investigation, hearing or  
24 proceeding under the Paid Family and Medical Leave Act;

25 (4) informing any person about an employer's

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1 alleged violation of the Paid Family and Medical Leave Act; and  
2 (5) informing any person of the person's  
3 rights under the Paid Family and Medical Leave Act.

4 D. It is unlawful for an employer's absence policy  
5 to count paid family and medical leave taken under the Paid  
6 Family and Medical Leave Act as an absence that may lead to or  
7 result in discipline, discharge, demotion, suspension or any  
8 other adverse action.

9 E. The protections provided in this section shall  
10 apply to any person who mistakenly, but in good faith, alleges  
11 violations of the Paid Family and Medical Leave Act.

12 F. A person that is found by a hearing officer or  
13 court of competent jurisdiction to have discharged a worker in  
14 violation of this section shall rehire that employee; provided  
15 that the worker agrees to be rehired.

16 SECTION 10. [NEW MATERIAL] ADVERSE DETERMINATIONS--APPEAL  
17 PROCEDURES--ADMINISTRATIVE ACTIONS--DEPARTMENTAL DISCIPLINARY  
18 POWERS.--

19 A. An employee or a self-employed individual named  
20 in an application for leave may appeal an adverse determination  
21 of that application to the department as follows:

- 22 (1) the aggrieved party shall:  
23 (a) file an appeal in writing with the  
24 department within fifteen business days of receiving notice of  
25 the adverse decision;

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1 (b) set forth the reasons for appeal;  
2 and

3 (c) provide notice to all parties that  
4 an appeal has been filed; and

5 (2) the secretary shall:

6 (a) hold a hearing within ten business  
7 days after an appeal is properly made, due notice is given to  
8 the parties in dispute and mediation is refused by any party;

9 (b) develop a record of the proceedings;  
10 and

11 (c) rule on the appeal within five  
12 business days after the completion of the hearing and issue a  
13 final decision in accordance with Subsection B of Section  
14 39-3-1.1 NMSA 1978.

15 B. An aggrieved party or the department on its own  
16 motion may bring an administrative action for an alleged  
17 violation of the Paid Family and Medical Leave Act under a  
18 public or privately run leave program as follows:

19 (1) the aggrieved party or the department  
20 shall:

21 (a) file a complaint alleging a  
22 violation of the Paid Family and Medical Leave Act in writing  
23 with the department within thirty business days of becoming  
24 aware of the alleged violation;

25 (b) set forth the grounds of the

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1 complaint; and

2 (c) provide notice to parties to the  
3 alleged violation that a complaint has been filed; and

4 (2) the secretary shall:

5 (a) upon receipt of a complaint alleging  
6 a violation, first allow for mediation upon agreement by all  
7 parties;

8 (b) hold a hearing within ten business  
9 days after an appeal is properly made, due notice is given to  
10 the parties in dispute and mediation is refused by any party;

11 (c) develop a record of the proceedings;

12 (d) have power to take disciplinary  
13 action, including investigating, fining, censuring or  
14 reprimanding a party or suspending or revoking a waiver issued  
15 pursuant to the Paid Family and Medical Leave Act; and

16 (e) rule on the appeal within five  
17 business days after the completion of the hearing and issue a  
18 final decision in accordance with Subsection B of Section  
19 39-3-1.1 NMSA 1978.

20 C. A party may appeal a final decision made by the  
21 department pursuant to the provisions of this section to the  
22 district court pursuant to Section 39-3-1.1 NMSA 1978.

23 D. The department may appear in its own name in  
24 district court in actions for injunctive relief to prevent any  
25 person or entity from violating the provisions of the Paid

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1 Family and Medical Leave Act or rules promulgated by the  
2 department.

3 SECTION 11. [NEW MATERIAL] ADMINISTRATIVE PENALTIES.--

4 A. The department may assess an administrative  
5 penalty not to exceed ten thousand dollars (\$10,000) upon any  
6 employee or self-employed individual who files a fraudulent  
7 claim for leave or otherwise willfully violates a provision of  
8 the Paid Family and Medical Leave Act. An employee who files a  
9 fraudulent claim for leave may be subject to termination of  
10 employment.

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

16 SECTION 12. [NEW MATERIAL] PRIVATE RIGHT OF ACTION BY  
17 EMPLOYEES.--

18 A. An employee covered by a privately run or state-  
19 run leave program or that employee's successor in interest who  
20 has suffered damages as a result of a violation of the Paid  
21 Family and Medical Leave Act is granted a right to bring an  
22 action in district court for:

- 23 (1) any wages, salary, employment benefits or
- 24 other compensation denied or lost to the employee by reason of
- 25 the violation;

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1 (2) in a case in which wages, salary,  
2 employment benefits or other compensation has not been denied  
3 or lost to the employee, any actual monetary losses sustained  
4 by the employee as a direct result of the violation, including  
5 the cost of providing care, up to a sum equal to twelve weeks  
6 of wages or salary for the employee;

7 (3) the interest on amounts described in this  
8 subsection calculated at the prevailing rate; and

9 (4) such equitable relief as may be  
10 appropriate, including employment, reinstatement and promotion.

11 B. Costs shall be allowed to the prevailing party  
12 unless the court otherwise directs. The court may award  
13 attorney fees to the prevailing party if the party:

14 (1) complaining of the violation of the Paid  
15 Family and Medical Leave Act has brought an action that the  
16 party knew to be groundless; or

17 (2) charged with the violation of the Paid  
18 Family and Medical Leave Act has willfully engaged in the  
19 violation.

20 C. The relief provided in this section is in  
21 addition to remedies otherwise available against the same  
22 conduct under the common law or other statutes of this state.

23 SECTION 13. [NEW MATERIAL] COLLECTIVE BARGAINING  
24 AGREEMENTS UNAFFECTED.--Nothing in the Paid Family and Medical  
25 Leave Act shall be construed to diminish the rights, privileges

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1 or remedies of any employee under any collective bargaining  
2 agreement.

3 SECTION 14. [NEW MATERIAL] DEPARTMENT TO PROMULGATE  
4 RULES--AGENCIES AND DEPARTMENTS TO COOPERATE.--

5 A. By July 1, 2021, the department shall adopt and  
6 promulgate rules to implement the provisions of the Paid Family  
7 and Medical Leave Act.

8 B. State agencies and departments shall cooperate  
9 with the secretary to timely and efficiently provide the  
10 information and services necessary to carry out the provisions  
11 of the Paid Family and Medical Leave Act.

12 SECTION 15. TEMPORARY PROVISION--PAID FAMILY AND MEDICAL  
13 LEAVE IMPLEMENTATION ADVISORY COMMITTEE CREATED--PURPOSE--  
14 MEMBERS.--

15 A. The "paid family and medical leave  
16 implementation advisory committee" is created in the workforce  
17 solutions department. The advisory committee shall consist of  
18 thirteen members appointed by the secretary of workforce  
19 solutions. Members of the advisory committee shall include:

- 20 (1) a representative of a nonprofit  
21 organization that advocates for women and girls;
- 22 (2) a representative of an organization that  
23 advocates for individuals fifty years of age or older;
- 24 (3) a representative of a statewide chamber of  
25 commerce;

1 (4) two representatives of a small business  
2 development center advisory council;

3 (5) a representative of a medical society with  
4 expertise in the care of children;

5 (6) a member representing the parents of  
6 newborn children;

7 (7) a member representing adoptive and foster  
8 parents;

9 (8) a member representing unpaid family  
10 caregivers;

11 (9) the director of the commission on the  
12 status of women;

13 (10) a representative of a university-based  
14 bureau of business and economic research;

15 (11) a representative of an organization with  
16 expertise in chronic illnesses; and

17 (12) a representative of an organization with  
18 expertise in disabilities.

19 B. The paid family and medical leave implementation  
20 advisory committee shall provide input regarding best practices  
21 for the efficient and timely development, implementation and  
22 promulgation of rules and educational materials to carry out  
23 the provisions of the Paid Family and Medical Leave Act.

24 C. The secretary of workforce solutions shall  
25 consult with the paid family and medical leave implementation

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1 advisory committee at least quarterly as rules are developed to  
2 implement a program pursuant to the Paid Family and Medical  
3 Leave Act.

4 D. Members of the paid family and medical leave  
5 implementation advisory committee shall not be entitled to per  
6 diem and mileage expenses. The workforce solutions department  
7 shall provide staff for the committee.

8 E. The paid family and medical leave implementation  
9 advisory committee shall function from the date of its  
10 appointment, which shall be no later than July 1, 2020, until  
11 July 1, 2021.

12 SECTION 16. APPROPRIATION.--One million dollars  
13 (\$1,000,000) is appropriated from the general fund to the paid  
14 family and medical leave trust fund for expenditure in fiscal  
15 year 2021 and subsequent fiscal years to implement the  
16 provisions of the Paid Family and Medical Leave Act. Any  
17 unexpended or unencumbered balance remaining at the end of a  
18 fiscal year shall not revert to the general fund.