HOUSE BILL 20

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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AN ACT

RELATING TO EMPLOYMENT; ENACTING THE HEALTHY WORKPLACES ACT;
PROVIDING REQUIREMENTS FOR EARNED SICK LEAVE; PROVIDING
PENALTIES.

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 "Healthy Workplaces Act".

SECTION 2. [NEW MATERIAL] PURPOSE OF ACT.--The purposes
of the Healthy Workplaces Act are to:

A. regulate employee benefits regarding earned sick
leave within New Mexico;

B. ensure that all employees in New Mexico can
address their own health and safety needs and the health and
safety needs of their families by requiring employers to
provide a minimum amount of earned sick leave, including leave
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for the care of family members;

C. address the concern that many New Mexico employees currently have no access to sick leave for personal or family health needs;

D. reduce public and private health care costs and promote preventive health services in New Mexico by enabling employees to seek early and routine medical care for themselves and their family members;

E. protect the public's health in New Mexico by reducing the risk of contagion;

F. promote the economic stability of employees and their families;

G. protect employees in New Mexico from losing their jobs or facing workplace discipline when they use earned sick leave to care for themselves or their families;

H. benefit businesses by reducing worker turnover due to the lack of earned sick leave and decreasing the incidence of employees coming to work with illnesses and health conditions that reduce their productivity;

I. safeguard the public welfare, health, safety and prosperity of the people of New Mexico; and

J. accomplish the purposes described in Subsections A through I of this section in a manner that is feasible for employers.

SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
Healthy Workplaces Act:

A. "earned sick leave" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked and is provided by an employer to that employee for the purposes described in the Healthy Workplaces Act, but in no case shall the hourly rate be less than the applicable legally required minimum wage rate;

B. "employ" means suffer or permit to work;

C. "employee" means an individual employed by an employer within New Mexico for more than eighty hours in a twelve-month period;

D. "employer" means an individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States, any state or any political subdivision of a state;

E. "family member" is defined as:

(1) a biological, adopted or foster child, a stepchild or legal ward, or a child to whom the employee stands in loco parentis;

(2) a biological, foster, step or adoptive parent or legal guardian of an employee, an employee's spouse
or civil union partner, or a person who stood in loco parentis when the employee was a minor child;

(3) a person to whom the employee is legally married under the laws of any state;

(4) a grandparent or a spouse or civil union partner of a grandparent;

(5) a grandchild;

(6) a biological, foster or adopted sibling, or the spouse or civil union partner of a biological, foster or adopted sibling; or

(7) an individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship;

F. "health care professional" means a person licensed pursuant to federal or state law to provide health care services, including nurses, nurse practitioners, physician assistants, doctors and emergency room personnel;

G. "retaliation" means denial of a right guaranteed pursuant to the Healthy Workplaces Act and any threat, discharge, suspension, demotion, reduction of hours or application of absence control policies that count an employee's use of earned sick leave as an absence that may lead to adverse action, or other adverse action against employees for the exercise of a right guaranteed pursuant to the Healthy Workplaces Act, including sanctions against an employee who is
a recipient of benefits or rights pursuant to the Healthy Workplaces Act. "Retaliation" includes interference with or punishment for participating in an investigation, proceeding or hearing pursuant to the Healthy Workplaces Act; and

H. "secretary" means the secretary of workforce solutions or the secretary's designee.

SECTION 4. [NEW MATERIAL] USE AND ACCRUAL.--

A. Employees of an employer with fewer than ten employees shall accrue a minimum of one hour of earned sick leave for every thirty hours worked. Such employees shall not be entitled to use more than forty hours of earned sick leave per twelve-month period, unless the employer selects a higher limit.

B. Employees of an employer with ten or more employees shall accrue a minimum of one hour of earned sick leave for every thirty hours worked. Such employees shall not be entitled to use more than sixty-four hours of earned sick leave per twelve-month period, unless the employer selects a higher limit.

C. In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted. In situations in which the number of employees who work for an employer for compensation per week fluctuates above and below .218645.2
ten employees per week over the course of the twelve-month period, an employer is required to provide earned sick leave pursuant to Subsection B of this section if the employer maintained ten or more employees on the payroll for some portion of a day in each of twenty different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding twelve-month period.

D. All employees shall accrue earned sick leave as follows:

   (1) earned sick leave as provided in the Healthy Workplaces Act shall begin to accrue upon commencement of the employee’s employment;

   (2) employees shall be entitled to use accrued earned sick leave beginning on the thirtieth calendar day following commencement of their employment. After the thirtieth calendar day of employment, employees may use earned sick leave as it is accrued, subject to the limitations set forth in Subsections A and B of this section;

   (3) employees who are exempt from overtime requirements pursuant to the federal Fair Labor Standards Act of 1938, 29 U.S.C. Section 213(a)(1), will be assumed to work forty hours in each work week for the purposes of earned sick leave accrual unless their normal work week is less than forty hours, in which case earned sick leave accrues based on their normal work week;
(4) accrued unused earned sick leave shall carry over from year to year, but an employer is not required to permit an employee to use more than the maximum time provided for in Subsections A and B of this section in a twelve-month period;

(5) nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee’s termination, resignation, retirement or other separation from employment for accrued earned sick leave that has not been used;

(6) if an employee is transferred to a separate division, entity or location but remains employed by the same employer, the employee is entitled to all earned sick leave accrued at the prior division, entity or location and is entitled to use all earned sick leave as provided in this section. When there is a separation from employment, and the employee is rehired within twelve months of separation by the same employer, previously accrued earned sick leave that has not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned sick leave and accrue additional earned sick leave upon re-commencement of employment; and

(7) when a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer
are entitled to all earned sick leave accrued when employed by
the original employer and are entitled to use all earned sick
leave previously accrued.

E. An employee may use earned sick leave:

(1) for the employee's:

(a) mental or physical illness, injury
or health condition;
(b) medical diagnosis, care or treatment
of a mental or physical illness, injury or health condition; or
(c) preventive medical care;

(2) for care of family members of the employee for:

(a) mental or physical illness, injury
or health condition;
(b) medical diagnosis, care or treatment
of a mental or physical illness, injury or health condition; or
(c) preventive medical care;

(3) for meetings at the employee's child's
school or place of care related to the child's health or
disability;

(4) for closure of the employee's place of
business by order of a public official due to a public health
emergency; for an employee's need to care for a child whose
school or place of care has been closed by order of a public
official due to a public health emergency; or when it has been
determined by the health authorities having jurisdiction or by a health care professional that the employee's or employee's family member's presence in the community would jeopardize the health of others because of the employee's or family member's exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease; or

(5) for absence necessary due to domestic abuse, sexual assault or stalking suffered by the employee or a family member of the employee; provided that the leave is for the employee to:

(a) obtain medical or psychological treatment or other counseling;

(b) relocate;

(c) prepare for or participate in legal proceedings; or

(d) obtain services or assist a family member of the employee with any of the activities set forth in Subparagraphs (a) through (c) of this paragraph.

F. Earned sick leave shall be provided upon the oral or written request of an employee. When possible, the request shall include the expected duration of the sick leave absence.

G. When the use of earned sick leave is foreseeable, the employee shall make a good faith effort to
provide oral or written notice of the need for such sick leave
to the employer in advance of the use of the earned sick leave
and shall make a reasonable effort to schedule the use of
earned sick leave in a manner that does not unduly disrupt the
operations of the employer. When the use of earned sick leave
is not foreseeable, the employee shall notify the employer
orally or in writing as soon as practicable.

H. An employer may not require, as a condition of
an employee's taking earned sick leave, that the employee
search for or find a replacement worker to cover the hours
during which the employee is using earned sick leave.

I. Earned sick leave may be used in the smaller of
hourly increments or the smallest increment that the employer's
payroll system uses to account for absences or use of other
time.

J. An employer shall not require an employee to use
other paid leave before the employee uses sick leave pursuant
to the Healthy Workplaces Act.

SECTION 5. [NEW MATERIAL] MORE GENEROUS EARNED SICK LEAVE
POLICY.--An employer with an earned sick leave policy that
provides sick leave separate from other forms of paid time off,
and who makes available an amount of earned sick leave
sufficient to meet the accrual requirements of the Healthy
Workplaces Act that may be used for the same purposes and under
the same conditions as earned sick leave under that act, is not
required to provide additional earned sick leave. However, the
sick leave required by the Healthy Workplaces Act is in
addition to any paid time off provided by an employer that may
be used for any purpose other than those specified in that act.

SECTION 6. [NEW MATERIAL] DOCUMENTATION.--

A. Documentation shall not be required for sick
leave, except an employer may require reasonable documentation
that sick leave has been used for a covered purpose if the
employee uses three or more consecutive days of sick leave.

B. Documentation signed by a health care
professional indicating the amount of earned sick leave taken
is necessary shall be considered reasonable documentation for
sick leave taken pursuant to the Healthy Workplaces Act. In
cases of domestic abuse, sexual assault or stalking, reasonable
documentation may include a police report, a court-issued
document or a signed statement from a victim services
organization, clergy member, attorney, advocate or other person
affirming that the sick leave was taken for one of the purposes
set forth in Paragraph (5) of Subsection E of Section 4 of the
Healthy Workplaces Act. An employer may not require the
documentation to explain the nature of any medical condition or
the details of the domestic abuse, sexual assault or stalking.

C. If an employer chooses to require documentation
for the purpose of the use of earned sick leave, the employer
shall pay the cost of any verification by a health care
professional that is not covered by insurance or other benefit plan.

D. An employee shall provide documentation upon request to the employer in a timely manner. The employer shall not delay the commencement of earned sick leave on the basis that the employer has not yet received documentation.

E. All information an employer obtains related to an employee's reasons for taking sick leave shall be treated as confidential and not disclosed except with the permission of the employee or as necessary for validation purposes for insurance disability claims, accommodations consistent with the federal Americans with Disabilities Act of 1990, as required by the Healthy Workplaces Act or by court order.

SECTION 7. [NEW MATERIAL] NOTICE AND POSTING REQUIREMENTS.--

A. An employer shall give written notice to an employee at the commencement of employment of the following:

(1) the employee's right to earned sick leave;
(2) the manner in which sick leave is accrued and calculated;
(3) the terms of the use of earned sick leave as guaranteed by the Healthy Workplaces Act;
(4) that retaliation against employees for the use of sick leave is prohibited;
(5) the employee's right to file a complaint.
with the secretary if earned sick leave as required pursuant to
the Healthy Workplaces Act is denied by the employer or if the
employee is retaliated against; and

(6) all means of enforcing violations of the
Healthy Workplaces Act.

B. Notice required pursuant to Subsection A of this
section shall be in English, Spanish or any language that is
the first language spoken by at least ten percent of the
employer's workforce, as requested by the employee.

C. Employers shall display a poster that contains
the information required pursuant to Subsection A of this
section in a conspicuous and accessible place in each
establishment where employees are employed. The poster
displayed should be in English, Spanish and any language that
is the first language spoken by at least ten percent of the
employer's workforce.

D. The secretary shall create and make available to
employers notices and posters in English, Spanish and any other
languages deemed appropriate by the secretary that contain the
information required pursuant to Subsection A of this section
for employers' use in complying with the provisions of this
section.

SECTION 8. [NEW MATERIAL] EMPLOYER SHALL RETAIN
DOCUMENTATION.—Employers shall retain for the immediately
preceding thirty-six-month period records documenting hours

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worked by employees and earned sick leave taken by employees.

SECTION 9. [NEW MATERIAL] EXERCISE OF RIGHTS
PROTECTED--RETAIATION PROHIBITED.--

A. An employer shall not take or threaten any adverse action whatsoever against an employee:

(1) that is reasonably likely to deter such employee from exercising or attempting to exercise a right granted pursuant to the Healthy Workplaces Act; or

(2) because the employee:

(a) has exercised or attempted to exercise such rights;

(b) has in good faith alleged violations of the Healthy Workplaces Act; or

(c) has raised a concern about violations of the Healthy Workplaces Act to the employer, the employer's agent, other employees, a government agency or to the public through print, online, social or any other media.

B. An employer shall not attempt to require an employee to sign a contract or other agreement that would limit or prevent the employee from asserting rights provided for in the Healthy Workplaces Act or to otherwise establish a workplace policy that would limit or prevent the exercise of such rights. An employer's attempt to impose such a contract, agreement or policy shall constitute an adverse action enforceable pursuant to the Healthy Workplaces Act.
C. An employer shall not count use of sick leave in a way that will lead to discipline, discharge, demotion, non-promotion, less favorable scheduling, reduction of hours, suspension or any other adverse action.

SECTION 10. [NEW MATERIAL] ENFORCEMENT AND PENALTIES.--

A. The secretary shall be authorized to coordinate implementation and enforcement of the Healthy Workplaces Act and shall promulgate appropriate rules to implement that act.

B. The secretary shall coordinate implementation and enforcement of the Healthy Workplaces Act, including:

(1) establishing a system to receive complaints, in writing and by telephone, regarding alleged violations of the Healthy Workplaces Act;

(2) establishing a process for investigating and resolving complaints in a timely manner and keeping complainants notified regarding the status of the investigation of their complaint;

(3) ensuring employer compliance with the Healthy Workplaces Act through the use of audits, investigations or other measures; and

(4) establishing a system for reviewing complaints.

C. The secretary shall maintain as confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the
investigation or otherwise required by law. The secretary shall, prior to such disclosure and to the extent practicable, notify a complainant that the secretary will be disclosing the complainant’s identity.

D. An employer that violates any of the provisions of the Healthy Workplaces Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. The secretary may institute in the name of the state an action in the district court of the county in which the employer that has failed to comply with the Healthy Workplaces Act resides or has a principal office or place of business, for the purpose of prosecuting violations. The district attorney for the district in which any violation occurs shall aid and assist the secretary in the prosecution.

F. In addition to penalties provided pursuant to this section, an employer that violates a provision of the Healthy Workplaces Act shall be liable to the employees affected in the amount of their unpaid or underpaid sick leave plus interest, in an additional amount equal to twice the unpaid or underpaid sick leave and for any other actual damages. For each instance of sick leave requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned on searching for or finding a replacement worker, the employer shall be liable to
the employees affected for actual damages or five hundred
dollars ($500), whichever is greater.

G. An action to recover such liability may be
maintained in any court of competent jurisdiction by any one or
more employees for and on behalf of the employee or employees
and for other employees similarly situated, or such employee or
employees may designate an agent or representative to maintain
such action on behalf of all employees similarly situated.
Such an action must be filed within three years from the date
the last alleged violation occurred. Such an action may
encompass all violations that occurred as part of a continuing
course of conduct regardless of the date on which they
occurred.

H. The court in any action brought under Subsection
G of this section shall, in addition to any judgment awarded to
a prevailing employee, allow costs of the action and reasonable
attorney fees to be paid by the employer. In any proceedings
brought pursuant to the provisions of this section, the
employee shall not be required to pay any filing fee or other
court costs necessarily incurred in such proceedings.

I. In addition to any remedy or penalty provided
pursuant to the Healthy Workplaces Act, a court may order
appropriate injunctive relief, including requiring an employer
to post in the place of business a notice describing violations
by the employer as found by the court or a copy of a cease and
SECTION 11. [NEW MATERIAL] OTHER LEGAL REQUIREMENTS.--
The Healthy Workplaces Act provides minimum requirements pertaining to earned sick leave and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, requirement, policy or standard, including collective bargaining agreements, that provides for greater accrual or use by employees of earned sick leave, whether paid or unpaid, or that extends other protections to employees.

SECTION 12. SEVERABILITY.--If any part or application of the provisions of the Healthy Workplaces Act is held invalid, the remainder of its application to other situations or persons shall not be affected.

SECTION 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.