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. SHORT TITLE.--This act may be cited as the
"Healthy Workplaces Act".

SECTION 2. DEFINITIONS.--As used in the Healthy Workplaces Act:

A. "division" means the labor relations division
of the workforce solutions department;

B. "domestic partner" means an individual with
whom another individual maintains a household and a mutual
committed relationship without a legally recognized marriage;

C. "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;

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

E. "employee" means an individual employed by an
employer for remuneration, including an individual employed
on a part-time, seasonal or temporary basis; "employee" does
not mean an employee of an employer subject to the provisions
of Title II of the federal Railway Labor Act or an employee
as defined in either the federal Railroad Unemployment
Insurance Act or the Federal Employers' Liability Act;

F. "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 in the interest
of an employer in relation to an employee, but shall not
include the United States, the state or any political
subdivision of the state;

G. "family member" means an employee's spouse or
domestic partner or a person related to an employee or an
employee's spouse or domestic partner 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, or a person who stood in loco
parentis when the employee was a minor child;

(3) a grandparent;

(4) a grandchild;

(5) a biological, foster, step or adopted
sibling;

(6) a spouse or domestic partner of a family member; or

(7) an individual whose close association with the employee or the employee's spouse or domestic partner is the equivalent of a family relationship;

H. "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;

I. "independent contractor" means a person who agrees to do certain work where the person who engages the contractor may direct the result to be accomplished but does not have the right to control the manner in which the details of the work are to be performed; and

J. "retaliation" means any threat, discharge, discipline, suspension, demotion, non-promotion, less favorable scheduling, 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.

SECTION 3. EARNED SICK LEAVE--USE AND ACCRUAL.--

A. Employees shall accrue a minimum of one hour of earned sick leave for every thirty hours worked; provided that employers may choose a higher accrual rate; and provided further that an employer may instead elect to grant employees the full sixty-four hours of earned sick leave for the upcoming year on January 1 of each year or, for employees whose employment begins after January 1 of a given year, a pro rata portion of the sixty-four hours for use in the remainder of that year. 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.

B. 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 the latter of commencement of the employee's employment or the effective date of the Healthy Workplaces Act and may be used beginning on the latter of those dates;

(2) 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), shall 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;

(3) 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 sixty-four hours in a
twelve-month period;

(4) 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;

(5) 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;
(6) 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 as provided in this section;

(7) for purposes of this subsection, an employer may choose any one of the following methods for determining the twelve-month period in which the earned sick leave may be used:

(a) the calendar year;

(b) any fixed twelve-month leave year, such as a fiscal year, a year required by other law or a year starting on an employee's anniversary date;

(c) the twelve-month period measured forward from the date an employee's first use of earned sick leave occurs; or

(d) a rolling twelve-month period measured backward from the date an employee uses any earned sick leave; and

(8) for purposes of this subsection, "year to year" shall run concurrently with the twelve-month period elected by the employer.

C. 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; or

(4) 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.

D. Earned sick leave shall be provided upon the oral or written request of an employee or an individual acting on the employee's behalf. When possible, the request shall include the expected duration of the sick leave absence.

E. When the use of earned sick leave is foreseeable, the employee shall make a reasonable 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.

F. 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.

G. 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.

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

I. An employer's failure to provide earned sick
leave based on the employer's misclassification of the
employee as an independent contractor is a violation of the
Healthy Workplaces Act.

SECTION 4. MORE GENEROUS EARNED SICK LEAVE POLICY.--An
employer with a paid time off policy that makes available an
amount of earned sick leave sufficient to meet the accrual
requirements of the Healthy Workplaces Act and that may be
used for at minimum the same purposes and under the same
terms and conditions as that act is deemed to be in
compliance with that act. However, on the effective date of
the Healthy Workplaces Act, the sick leave required by that
act shall be in addition to any paid time off provided by an
employer pursuant to a collective bargaining agreement unless
that paid time off provided may be used for the same purposes
and under the same terms and conditions as the Healthy
Workplaces Act.

SECTION 5. 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 two or more consecutive work
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, an
employee may choose to provide one of the following types of
documentation, which shall be considered as reasonable
documentation: a police report, a court-issued document or a
signed statement from a victim services organization, clergy
member, attorney, advocate, the employee, a family member of
the employee or other person affirming that the sick leave
was taken for one of the purposes set forth in Paragraph (4)
of Subsection C of Section 3 of the Healthy Workplaces Act.
A signed statement required pursuant to this subsection may
be written in the employee's native language and shall not be
required to be in a particular format or notarized. 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. 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.

D. 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 6. NOTICE AND POSTING REQUIREMENTS.--

A. An employer shall give written or electronic
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 division 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 division shall create and make available to employers notices and posters in English, Spanish and any other languages deemed appropriate by the division that contain the information required pursuant to Subsection A of this section for employers' use in complying with the provisions of this section.

SECTION 7. EMPLOYER SHALL RETAIN DOCUMENTATION.--Employers shall retain for the immediately preceding forty-eight-month period records documenting hours worked by employees and earned sick leave taken by employees.

SECTION 8. 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 reasonably 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 9. ENFORCEMENT.--

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

B. The division 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 division 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 division shall, prior to such disclosure and to the extent practicable, notify a complainant that the division will be
disclosing the complainant's identity.

SECTION 10. CIVIL ACTIONS--TIME LIMITS--BURDENS OF PROOF.--

A. A civil action may be filed in a court of competent jurisdiction for a violation of the Healthy Workplaces Act within three years from the date the alleged violation occurred; provided that the time limit to file a civil action established by this subsection shall be tolled during an investigation by the division of the violation or related violations by the same employer. A lack of an investigation by the division shall not act as a bar to a civil action brought by a complainant pursuant to the Healthy Workplaces Act.

B. The division, the office of the attorney general or a person or entity that has a member who has been affected by a violation of the Healthy Workplaces Act may bring a civil action for a violation of the Healthy Workplaces Act.

C. A civil action to enforce any provision of the Healthy Workplaces Act may be filed without first filing an administrative complaint with the division and may:

(1) encompass all violations that occurred after the effective date of the Healthy Workplaces Act as part of a continuing course of conduct, regardless of the date on which the violations occurred;
(2) be pursued by an employee on behalf of the employee or be pursued by an employee on behalf of other employees similarly situated; or

(3) be pursued by an agent or representative designated by an employee.

D. It shall not be a defense to any action brought pursuant to this section that the complaint was brought by or in regard to the employment of a worker who does not have evidence of having a legal presence in the United States.

E. The parties in a civil action regarding retaliation by an employer shall be subject to the following burdens of proof:

   (1) when an employee presents a prima facie showing of retaliation, the employer shall then have the burden to establish a legitimate, non-retaliatory reason for the adverse employment action; and

   (2) when an employer meets the burden of proof required by Paragraph (1) of this subsection, the employee shall then have the burden to establish that the reason cited by the employer was pretextual.

SECTION 11. EMPLOYER LIABILITY.--

A. An employer that violates the Healthy Workplaces Act shall be liable to the affected employee:

   (1) for an instance of sick leave taken by an employee but unlawfully not compensated by the employer,
in an amount equal to three times the wages that should have been paid or five hundred dollars ($500), whichever is greater;

(2) for an 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, in an amount equal to actual damages or five hundred dollars ($500), whichever is greater;

(3) for each instance of retaliation prohibited by the Healthy Workplaces Act excepting discharge from employment, in an amount equal to actual damages, including back pay, wages or benefits lost, an additional amount of two hundred fifty dollars ($250) and equitable relief such as rescission of disciplinary measures taken by the employer or other relief as determined by a court of law;

(4) for each instance of prohibited discharge from employment, in an amount equal to actual damages, including back pay, wages or benefits lost, an additional amount of five hundred dollars ($500) and reinstatement or other equitable relief as determined by a court of law;

(5) for each willful notice or recordkeeping violation, two hundred fifty dollars ($250); and

(6) for each misclassification of an
employee as an independent contractor, actual damages or five hundred dollars ($500), whichever is greater.

B. A plaintiff prevailing in a legal action brought pursuant to the Healthy Workplaces Act shall recover all appropriate legal or equitable relief, the costs and expenses of suit and reasonable attorney fees. In an action brought by the division or the attorney general, any damages recovered shall be payable to the individual employees who experienced the violation.

SECTION 12. 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 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2022.