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SENATE BILL 3

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Mimi Stewart and Christine Chandler and Linda Serrato and
Patricia Roybal Caballero

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE PAID FAMILY AND MEDICAL
LEAVE ACT; CREATING THE PAID FAMILY AND MEDICAL LEAVE FUND;
PROVIDING FOR THE PAID FAMILY AND MEDICAL LEAVE PROGRAM TO PAY
AN ELIGIBLE EMPLOYEE A PERCENTAGE OF THE EMPLOYEE'S WAGES 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; PREEMPTING SIMILAR PROGRAMS; CREATING A TEMPORARY
ADVISORY COMMITTEE.

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".

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

2 A. "claim for leave" means an application for leave
3 compensation that an employee makes to the department pursuant
4 to the Paid Family and Medical Leave Act in accordance with
5 department rules;

6 B. "department" means the workforce solutions
7 department, the secretary or an employee of the department
8 exercising authority lawfully delegated to that employee by the
9 secretary;

10 C. "domestic partner" means a person with whom
11 another person maintains a household and a mutual committed
12 relationship without a legally recognized marriage;

13 D. "employee" means a person working within the
14 state who performs a service for wages or other remuneration
15 under a contract of hire, written or oral, express or implied,
16 and includes a person employed by the state or a political
17 subdivision of the state. "Employee" does not mean an employee
18 of an employer subject to the provisions of Title II of the
19 federal Railway Labor Act or an employee as defined in the
20 federal Railroad Unemployment Insurance Act;

21 E. "employer" means a person that has one or more
22 employees within the state and includes an agent of an employer
23 and the state or a political subdivision of the state;

24 F. "family leave" means leave for which an employee
25 can apply for leave compensation pursuant to the Paid Family

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1 and Medical Leave Act and that is granted to the employee to
2 allow the employee to bond with a child of the employee within
3 twelve months of the birth or adoption of a child or placement
4 of a foster child with the employee, to care for a family
5 member if the family member has a serious health condition or
6 following the death of a child under eighteen years of age for
7 whom the employee would have otherwise qualified for family
8 leave;

9 G. "family member" means a person who is:

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

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

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

23 (4) a grandparent, great-grandparent,
24 grandchild or sibling, whether a biological, foster, adoptive
25 or step relationship, of an employee or an employee's spouse or

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1 domestic partner; or

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

6 H. "fund" means the paid family and medical leave
7 fund;

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

11 J. "Indian tribe" means a federally recognized
12 Indian nation, tribe or pueblo, wholly or partially located in
13 New Mexico, a governmental unit, subdivision, agency,
14 department or instrumentality thereof or a business enterprise
15 wholly owned by such an Indian nation, tribe or pueblo;

16 K. "leave" means family leave, qualifying exigency
17 leave, safe leave or medical leave for which an employee can
18 apply for leave compensation pursuant to the Paid Family and
19 Medical Leave Act;

20 L. "leave compensation" means income that the
21 department pays from the fund to an employee who takes family
22 leave, qualifying exigency leave, safe leave or medical leave;

23 M. "medical leave" means leave for which an
24 employee can apply for leave compensation pursuant to the Paid
25 Family and Medical Leave Act to allow the employee to provide

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1 care for the employee's own serious health condition;

2 N. "qualifying exigency leave" means leave for
3 which an employee can apply for leave compensation pursuant to
4 the Paid Family and Medical Leave Act when a family member:

5 (1) is on active military duty; or

6 (2) has been notified of an impending call to
7 order to active military duty;

8 O. "safe leave" means leave for which an employee
9 can apply for leave compensation pursuant to the Paid Family
10 and Medical Leave Act that is granted to an employee who is the
11 victim or whose family member is the victim of domestic
12 violence, stalking, sexual assault or abuse. "Safe leave"
13 applies if the covered employee is using the leave from work to
14 protect the employee or the employee's family member by:

15 (1) seeking a civil protection order against a
16 perpetrator;

17 (2) obtaining medical care or mental health
18 counseling for the employee or for the employee's children to
19 address physical or psychological injuries;

20 (3) seeking new housing, relocating or making
21 the employee's home secure from a perpetrator; or

22 (4) attending or preparing for court-related
23 proceedings or seeking legal assistance to address issues
24 related to the act of domestic violence, stalking, sexual
25 assault or abuse;

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1 P. "secretary" means the secretary of workforce
2 solutions;

3 Q. "serious health condition" means an illness,
4 injury, impairment or physical or mental condition that
5 involves:

6 (1) inpatient care in a hospital, hospice or
7 residential medical facility; or

8 (2) continuing treatment by a health care
9 provider;

10 R. "spouse" means a partner to a lawful marriage;
11 and

12 S. "wages" means all remuneration for services,
13 including commissions, bonuses or unpaid loans to employees and
14 the cash value of all remuneration in any medium other than
15 cash.

16 SECTION 3. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE
17 FUND--CREATION.--

18 A. The "paid family and medical leave fund" is
19 created in the state treasury and shall be administered by the
20 department. The fund shall be held for the benefit of the
21 employees who paid into the fund and shall consist of all
22 revenue, including any fees collected pursuant to the Paid
23 Family and Medical Leave Act in accordance with department
24 rules. Money in the fund shall be invested by the state
25 investment officer. Income from investment of the fund shall

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1 be credited to the fund.

2 B. Money in the fund is appropriated to the
3 department to distribute leave compensation pursuant to the
4 Paid Family and Medical Leave Act and to cover the costs of
5 administration and outreach for the paid family and medical
6 leave program pursuant to that act.

7 C. Money shall be disbursed from the fund only on
8 warrant issued by the department of finance and administration
9 pursuant to vouchers signed by the secretary or the secretary's
10 authorized representative. Any unexpended or unencumbered
11 balance remaining at the end of a fiscal year shall not revert
12 or be transferred to any other fund.

13 D. To determine an actuarially sound premium rate
14 and a future premium rate-setting mechanism for the program
15 created pursuant to the Paid Family and Medical Leave Act, by
16 January 1, 2025, the department shall contract with a qualified
17 independent actuarial consultant who is a member of a leading
18 actuarial professional association and has the relevant
19 experience to analyze the following:

- 20 (1) the family and medical leave premium rate;
21 (2) the premium rate structure;
22 (3) the weekly benefit formula;
23 (4) the duration of benefits fund reserve; and
24 (5) other necessary components.

25 E. Beginning January 1, 2028, and not later than

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1 October 1 of each calendar year, the secretary shall ensure and
2 maintain the self-sufficiency and solvency of the fund by:

3 (1) performing an annual financial analysis;
4 (2) setting the premium for the following
5 calendar year, based on the percentage of employee wages and at
6 the rate necessary to obtain a total amount of contributions
7 equal to one hundred thirty-five percent of the benefits paid
8 during the previous fiscal year and all administrative costs of
9 the paid family and medical leave program during the previous
10 fiscal year, minus the amount of net assets remaining in the
11 fund as of June 30 of the current calendar year; provided that
12 the premium increase necessary under this provision shall not
13 exceed one-tenth percent of wages per employee per year. The
14 department shall provide public notice in advance of January 1
15 of any changes to the premium. For purposes of this paragraph,
16 the costs of administration include the costs of repayment of
17 interest and principal on general fund appropriations pursuant
18 to Section 15 of this 2024 act; and

19 (3) reporting the results of the analysis to
20 the appropriate legislative body.

21 SECTION 4. [NEW MATERIAL] APPLICABILITY--CONTRIBUTIONS TO
22 FUND--REMITTANCE OF CONTRIBUTIONS--EXEMPTION FOR PRIVATELY RUN
23 PROGRAMS--REQUIREMENTS OF PRIVATELY RUN PROGRAMS.--

24 A. The Paid Family and Medical Leave Act applies
25 to:

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

4 (2) the employers of employees as described in
5 Paragraph (1) of this subsection, whether or not the employer
6 is physically located in the state;

7 (3) self-employed individuals subject to state
8 jurisdiction who opt into the program; and

9 (4) Indian nations, tribes and pueblos that
10 elect to be covered, or to terminate coverage, in the program
11 for their employees.

12 B. Beginning January 1, 2026 and for each calendar
13 quarter thereafter until January 1, 2029, there is assessed
14 against each employee one-half percent of the employee's wages
15 up to the earnings cap established by the federal social
16 security administration program, pursuant to the Federal
17 Insurance Contributions Act. An employee shall not be required
18 to make any contributions to the fund from leave compensation.
19 Beginning January 1, 2029 and for each calendar quarter
20 thereafter, there is assessed against each employee an
21 assessment on the employee's wages at fifty-five percent of the
22 premium set by the secretary pursuant to Subsection E of
23 Section 3 of the Paid Family and Medical Leave Act.

24 C. Beginning January 1, 2026 and for each calendar
25 quarter thereafter until January 1, 2029, there is assessed

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1 against each employer with five or more employees an amount
2 equal to four-tenths percent of each participating employee's
3 wages up to the earnings cap established by the federal social
4 security program, pursuant to the Federal Insurance
5 Contributions Act. Beginning January 1, 2029 and for each
6 calendar year thereafter, there is assessed against each
7 employer with five or more employees an amount equal to each
8 participating employee's wages at forty-five percent of the
9 premium set by the secretary pursuant to Subsection E of
10 Section 3 of the Paid Family and Medical Leave Act. An
11 employer shall not recover, or seek to recover, any amounts
12 assessed against employers pursuant to this subsection from the
13 employer's employees.

14 D. Beginning January 1, 2026 and for each calendar
15 quarter thereafter until January 1, 2029, there is assessed
16 against each self-employed individual as described in Paragraph
17 (3) of Subsection A of this section one-half percent of the
18 individual's net income as designated by the self-employed
19 individual. Beginning January 1, 2029 and for each calendar
20 quarter thereafter, there is assessed against each self-
21 employed individual as described in Paragraph (3) of Subsection
22 A of this section an assessment on the individual's net income
23 as designated by the self-employed individual at fifty-five
24 percent of the premium set by the secretary pursuant to
25 Subsection E of Section 3 of the Paid Family and Medical Leave

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1 Act.

2 E. The contributions of employees and employers
3 shall be remitted by the employer following the end of each
4 quarter for which the contributions are deducted and on a date
5 determined by the secretary.

6 F. The contributions of self-employed individuals
7 shall be remitted by the individual following each end of the
8 quarter for which the contributions are deducted and on a date
9 determined by the secretary. A self-employed individual shall
10 not be required to make contributions to the fund from leave
11 compensation.

12 G. An employer that has adopted and operates a paid
13 family and medical leave plan or program for the benefit of its
14 employees that provides leave and leave compensation
15 substantially similar to or greater than the leave and leave
16 compensation offered pursuant to the Paid Family and Medical
17 Leave Act may apply for a waiver to exempt the employer and its
18 employees from participating in the paid family and medical
19 leave program. An employer granted a waiver pursuant to this
20 subsection and the employer's employees shall not be required
21 to remit premium contributions to the fund. The employer shall
22 apply and provide supporting documentation to the department
23 for exemption each calendar year.

24 H. An employer granted a waiver pursuant to
25 Subsection G of this section and the employer's employees shall

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1 have the same rights and protections enjoyed by employers and
2 employees covered pursuant to the Paid Family and Medical Leave
3 Act, including the right to appeal a waiver granted or denied
4 by Subsection G of this section to the department.

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

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

10 (2) employees may apply to the employer for
11 leave;

12 (3) employers must provide leave and leave
13 compensation substantially similar to or greater than that
14 granted to employees pursuant to the Paid Family and Medical
15 Leave Act; and

16 (4) employees may appeal to the department if
17 any right granted pursuant to the Paid Family and Medical Leave
18 Act is violated.

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

22 (1) require an employee to pay more for
23 private coverage than the employee would pay through
24 contribution to the fund as described in Subsection B of this
25 section; or

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1 (2) impose additional restrictions or
2 conditions on leave or leave compensation beyond those
3 explicitly authorized by state law.

4 K. The department shall withdraw approval of a
5 waiver for a privately operated paid leave plan or program that
6 violates the provisions of Subsections G through J of this
7 section. An employer whose waiver has been withdrawn pursuant
8 to this subsection may reapply for a waiver five years after
9 the original waiver was withdrawn.

10 L. Nothing in this section shall be construed to
11 prohibit an employer without a waiver from providing
12 supplemental leave compensation or extended length of leave to
13 employees receiving compensation from the department.

14 SECTION 5. [NEW MATERIAL] ELIGIBILITY--LEAVE COMPENSATION
15 CALCULATION--LEAVE DURATION--DOCUMENTATION REQUIRED--NOTICE OF
16 DETERMINATION.--

17 A. Beginning January 1, 2027, the department shall
18 provide leave compensation to an eligible employee who takes
19 leave after the employee, in accordance with the provisions of
20 the Paid Family and Medical Leave Act and department rules,
21 has:

22 (1) filed a claim for leave compensation
23 approved by the department; and

24 (2) contributed to the fund for at least six
25 months during any employment in the twelve-month period prior

1 to submitting an application; provided that any time during the
2 twelve-month period in which the individual was previously
3 covered by a privately operated paid leave plan or program
4 pursuant to Subsection G of Section 4 of the Paid Family and
5 Medical Leave Act shall count toward this requirement.

6 B. Beginning January 1, 2027, the department shall
7 provide leave compensation to an eligible self-employed
8 individual after the self-employed individual, in accordance
9 with the provisions of the Paid Family and Medical Leave Act
10 and department rules, has:

11 (1) filed a claim for leave compensation
12 approved by the department; and

13 (2) contributed to the fund for at least six
14 months during the twelve-month period prior to submitting an
15 application, not including contributions made for other
16 employment that the self-employed individual will continue
17 during the leave.

18 C. An employee or self-employed individual is
19 eligible for a maximum of twelve weeks of leave compensation
20 during any application year; provided that an employee or self-
21 employed individual is not required to use any leave
22 consecutively.

23 D. An employee or self-employed individual may
24 receive leave compensation for intermittent leave in increments
25 of no fewer than eight hours.

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

3 (1) the employee or self-employed individual
4 files a fraudulent claim for leave or has filed a fraudulent
5 claim for leave within the previous three years;

6 (2) the employee or self-employed individual
7 is receiving unemployment insurance benefits during the period
8 for which the claim for leave is filed;

9 (3) during leave, the employee or self-
10 employed individual does not provide the care or use leave as
11 described in the employee's application for leave;

12 (4) the leave compensation would duplicate the
13 amount the self-employed individual is receiving or has
14 received in temporary total disability benefits from a workers'
15 compensation claim for the same time period; or

16 (5) the leave compensation duplicates what the
17 employee is earning or has earned in wages for the same time
18 period.

19 F. The department shall issue leave compensation
20 from the fund to an eligible employee whose claim has been
21 approved as follows:

22 (1) the calculation of weekly leave
23 compensation shall be based on the employee's average weekly
24 wages during the twelve months immediately preceding the date
25 of the claim for leave. For the purposes of this paragraph,

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1 the "employee's average weekly wages" means an amount
2 calculated by the department by dividing the total wages earned
3 by an eligible employee during the previous twelve months by
4 the number of weeks worked during the previous twelve months.
5 If the employee worked fewer than twelve months, then weekly
6 leave compensation shall be based on the employee's average
7 weekly wages during the weeks the employee worked;

8 (2) an eligible employee's weekly leave
9 compensation shall equal one hundred percent of the
10 compensation that would be paid to a non-tipped, state-minimum-
11 wage-earning employee, pursuant to Section 50-4-22 NMSA 1978,
12 working the same number of hours per week as the employee, plus
13 sixty-seven percent of the employee's average weekly wages
14 greater than the non-tipped, state minimum wage compensation;
15 and

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

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

24 (1) a self-employed individual shall determine
25 the annual net income to be used by the department when the

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1 self-employed individual enrolls in the paid family and medical
2 leave program. A self-employed individual may adjust the
3 individual's annual net income one time per year on the
4 anniversary of the individual's enrollment;

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

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

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

21 H. When an employee, a self-employed individual or
22 an authorized representative submits a claim for leave
23 compensation with the department, the department shall verify:

24 (1) if the applicant is an employee, a record
25 of total wages, the total number of weeks worked and the

1 average number of hours worked per week during the previous
2 twelve months in the employment from which the employee seeks
3 leave; or

4 (2) if the applicant is a self-employed
5 individual, documentation that the individual's business
6 operated and earned net income from self-employment during the
7 previous twelve months.

8 I. The department shall notify the employer and
9 employee or self-employed individual in writing within twenty
10 business days of application:

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

19 (2) if denied, and shall notify the employee
20 or self-employed individual of the grounds for denying the
21 employee's or self-employed individual's application for
22 eligibility and of the employee's or self-employed individual's
23 right to appeal; and

24 (3) if further information or supporting
25 documentation is required to determine the employee's or self-

1 employed individual's eligibility for paid leave or the amount
2 of leave compensation; provided that when the department
3 receives sufficient information or supporting documentation
4 from the employee or self-employed individual to make an
5 eligibility determination, the department shall adhere to the
6 notification provision of this subsection.

7 J. Every individual filing a new claim for leave
8 compensation shall, at the time of filing such claim, be
9 advised that:

10 (1) leave compensation may be subject to
11 federal and state income taxes;

12 (2) requirements exist pertaining to estimated
13 tax payments;

14 (3) the individual may elect to have federal
15 income tax deducted and withheld from the individual's leave
16 compensation payments at the amount specified in the Internal
17 Revenue Code of 1986; and

18 (4) the individual is permitted to change a
19 previously elected withholding status one time during each
20 benefit year.

21 K. Amounts deducted and withheld from leave
22 compensation shall remain in the fund until transferred to the
23 federal internal revenue service.

24 L. The department shall follow all state and
25 federal laws, rules and procedures pertaining to the deducting

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1 and withholding of income tax.

2 SECTION 6. [NEW MATERIAL] CLAIMS FOR LEAVE--
3 DOCUMENTATION--CONFIDENTIALITY.--

4 A. The department shall require an employee or
5 self-employed individual who seeks family leave compensation to
6 provide, in accordance with department rules, evidence of the
7 birth or adoption of a child or placement of a foster child
8 with the employee or verification by a health care provider
9 that a family member has a serious health condition that
10 supports the employee's or self-employed individual's claim for
11 leave compensation; provided that any verification by a health
12 care provider shall include an expected time line for the
13 employee's or self-employed individual's return to work.

14 B. The department shall require an employee or
15 self-employed individual who seeks medical leave compensation
16 to provide, in accordance with department rules, verification
17 by a health care provider that the employee or self-employed
18 individual has a serious health condition that supports the
19 employee's or self-employed individual's claim for leave
20 compensation; provided that any verification by a health care
21 provider shall include an expected time line for the employee's
22 or self-employed individual's return to work.

23 C. The department shall require an employee or
24 self-employed individual who seeks safe leave compensation to
25 provide, in accordance with department rules, a police report,

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1 court-issued document or signed statement from a victim
2 services organization, a clergy member, an attorney, an
3 advocate, the employee or self-employed individual, a family
4 member of the employee or self-employed individual or other
5 person that supports the employee's or self-employed
6 individual's claim for leave compensation.

7 D. The department shall require an employee or
8 self-employed individual who seeks qualifying exigency leave
9 compensation to provide, in accordance with department rules, a
10 copy of the military member's active duty orders or other
11 documentation issued by the military that indicates that the
12 military member is on covered active duty, or call to covered
13 active duty status, and the dates of the military member's
14 covered active duty service.

15 E. Information contained in an employee's or self-
16 employed individual's files and records pertaining to the Paid
17 Family and Medical Leave Act are confidential and not open to
18 public inspection, other than to department employees in the
19 performance of their official duties. However, the employee,
20 the self-employed individual or an authorized representative of
21 either may review the records or receive specific information
22 from the records upon the presentation of the employee's or
23 self-employed individual's signed authorization.

24 F. Employee information acquired by a private
25 employer pursuant to the Paid Family and Medical Leave Act

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1 shall be kept confidential by the employer; provided that
2 confidential records may be used by department employees in the
3 performance of their duties.

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

6 A. Beginning January 1, 2027, an employer shall
7 allow an employee to take up to a combined total of twelve
8 weeks of family leave, medical leave, qualifying exigency leave
9 and safe leave during any application year. An employee or
10 self-employed individual is not required to use any leave
11 consecutively and may take leave in increments of no fewer than
12 eight hours.

13 B. An employee shall:

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

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

19 (3) provide the employer with documentation of
20 the approved leave compensation request pursuant to department
21 rules.

22 C. The employer has the right to appeal a
23 determination to the department within fifteen calendar days
24 after receipt of documentation of the approved leave
25 compensation request.

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1 D. Leave taken pursuant to the Paid Family and
2 Medical Leave Act shall not result in a reduction of the total
3 amount of leave to which an employee is otherwise entitled
4 pursuant to contract, policy, collective bargaining agreement
5 or other law or rule in excess of the amount of leave actually
6 taken pursuant to the Paid Family and Medical Leave Act;
7 provided that an employer subject to the federal Family and
8 Medical Leave Act of 1993 may require an employee who takes
9 leave and receives leave compensation pursuant to the Paid
10 Family and Medical Leave Act that also qualifies for leave
11 pursuant to the federal Family and Medical Leave Act of 1993 to
12 take leave concurrently. An employer shall not require an
13 employee to exhaust any other leave entitlement prior to
14 granting leave pursuant to the Paid Family and Medical Leave
15 Act.

16 E. Nothing in this section shall be construed to
17 entitle an employee to more leave than required pursuant to
18 Section 5 of the Paid Family and Medical Leave Act.

19 F. An employer shall post and keep posted in a
20 conspicuous place upon its premises a notice that informs
21 employees of the right to take leave and summarizes the major
22 provisions of the Paid Family and Medical Leave Act.

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

24 A. A self-employed individual shall notify the
25 department within ten business days of the self-employed

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1 individual's return to work.

2 B. Upon an employee's return after leave or upon
3 the completion of an intermittent leave claim, an employer
4 shall notify the department within ten business days that the
5 employee has returned to work.

6 C. An employer that has employed an employee for
7 ninety days or more prior to the commencement of an employee's
8 leave shall:

9 (1) restore the employee to the position held
10 by the employee when the leave was commenced; or

11 (2) place the employee in a position for which
12 employee benefits, wages or other terms and conditions of
13 employment are equivalent to or greater than those provided in
14 the position from which the employee took leave.

15 D. Nothing in this section shall be construed to
16 entitle a restored employee to:

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

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

22 E. Any yearly certification or training that an
23 employer requires as a condition of employment may remain in
24 place and applicable to any employee taking leave; provided
25 that nothing in this subsection shall supersede another

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1 provision of law or a collective bargaining agreement that
2 governs an employee's return to work after leave.

3 F. Nothing in this section shall prohibit an
4 employer from requiring an employee who uses leave to report
5 periodically to the employer on the status and intention of the
6 employee to return to work.

7 G. An employer shall pay its share of health
8 insurance premiums and maintain an employee's health coverage
9 while the employee is on leave pursuant to the Paid Family and
10 Medical Leave Act under terms that the employee would have
11 received if the employee had not taken leave. The employee on
12 leave shall pay the same share of premium payments as the
13 employee would have paid if the employee were not on leave.

14 SECTION 9. [NEW MATERIAL] INTERFERENCE AND RETALIATION
15 PROHIBITED.--

16 A. It is unlawful for an employer or any other
17 person to interfere with, restrain or deny the exercise of, or
18 the attempt to exercise, any right protected pursuant to the
19 Paid Family and Medical Leave Act.

20 B. An employer shall timely provide to the employee
21 documents required to apply for leave.

22 C. An employer, employee organization or other
23 person shall not take retaliatory personnel action or otherwise
24 discriminate against a person because the person exercised
25 rights protected pursuant to the Paid Family and Medical Leave

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1 Act. Such rights include:

2 (1) requesting, filing for, applying for or
3 exercising any right to take leave as provided for pursuant to
4 the Paid Family and Medical Leave Act;

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

8 (3) testifying, planning to testify or
9 assisting at any time in any investigation, hearing or
10 proceeding pursuant to the Paid Family and Medical Leave Act;

11 (4) informing any person about an employer's
12 alleged violation of the Paid Family and Medical Leave Act; and

13 (5) informing any person of the person's
14 rights pursuant to the Paid Family and Medical Leave Act.

15 D. It is unlawful for an employer's absence policy
16 to count leave taken pursuant to the Paid Family and Medical
17 Leave Act as an absence that may lead to or result in
18 discipline, discharge, demotion, suspension or any other
19 adverse action.

20 E. The protections provided in this section shall
21 apply to any person who reasonably but mistakenly alleges
22 violations of the Paid Family and Medical Leave Act.

23 F. An employer that is found by a hearing officer
24 or court of competent jurisdiction to have discharged a worker
25 in violation of this section shall rehire that employee;

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1 provided that the worker agrees to be rehired.

2 SECTION 10. [NEW MATERIAL] ADVERSE DETERMINATIONS--APPEAL
3 PROCEDURES--ADMINISTRATIVE ACTIONS--DEPARTMENTAL DISCIPLINARY
4 POWERS.--

5 A. An employee, a self-employed individual or an
6 authorized representative named in an application for leave may
7 appeal an adverse determination of that application to the
8 department as follows:

9 (1) the aggrieved party shall:

10 (a) file an appeal in writing with the
11 department within fifteen business days of receiving notice of
12 the adverse decision;

13 (b) set forth the reasons for appeal;

14 and

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

17 (2) the secretary or authorized representative
18 may:

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

22 (b) develop a record of the proceedings;

23 and

24 (c) rule on the appeal within twenty
25 business days after the completion of the hearing and issue a

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1 final decision in accordance with Subsection B of Section
2 39-3-1.1 NMSA 1978.

3 B. An aggrieved party, including an employee or
4 former employee, or the department on its own motion may bring
5 an administrative action for an alleged violation of the Paid
6 Family and Medical Leave Act under a public or privately run
7 leave program as follows:

8 (1) the aggrieved party or the department
9 shall:

10 (a) file a complaint alleging a
11 violation of the Paid Family and Medical Leave Act in writing
12 with the department within thirty business days of becoming
13 aware of the alleged violation;

14 (b) set forth the grounds of the
15 complaint; and

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

18 (2) the secretary or authorized representative
19 shall:

20 (a) upon receipt of a complaint alleging
21 a violation, first allow for mediation upon agreement by all
22 parties;

23 (b) hold a hearing within ten business
24 days after a complaint is properly made, due notice is given to
25 the parties in dispute and mediation is refused by any party;

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1 (c) develop a record of the proceedings;

2 (d) have power to take disciplinary
3 action, including investigating, fining, censuring or
4 reprimanding a party or suspending or revoking a waiver issued
5 pursuant to the Paid Family and Medical Leave Act; and

6 (e) rule on a complaint within twenty
7 business days after the completion of the hearing and issue a
8 final decision in accordance with Subsection B of Section
9 39-3-1.1 NMSA 1978.

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

13 D. The department may appear in its own name in
14 district court in actions for injunctive relief to prevent any
15 person or entity from violating the provisions of the Paid
16 Family and Medical Leave Act or rules promulgated by the
17 department.

18 SECTION 11. [NEW MATERIAL] PREEMPTION.--

19 A. A city, county, home rule municipality or other
20 political subdivision of the state shall not adopt or continue
21 in effect any ordinance, rule, regulation, resolution or
22 statute that establishes a program of rights and benefits as
23 set out in the Paid Family and Medical Leave Act, excluding a
24 paid sick leave or paid time-off ordinance, policy or
25 resolution.

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1 B. Subject to the requirements of the Paid Family
2 and Medical Leave Act, the provisions of Subsection A of this
3 section shall not prevent a city, county, home rule
4 municipality or other political subdivision of the state from
5 establishing any leave policies for its employees.

6 **SECTION 12. [NEW MATERIAL] COLLECTIVE BARGAINING**
7 **AGREEMENTS UNAFFECTED.--**Nothing in the Paid Family and Medical
8 Leave Act shall be construed to diminish the rights, privileges
9 or remedies of any employee under any collective bargaining
10 agreement.

11 **SECTION 13. [NEW MATERIAL] DEPARTMENT TO PROMULGATE**
12 **RULES--AGENCIES AND DEPARTMENTS TO COOPERATE.--**

13 A. By July 1, 2025, the department shall adopt
14 initial rules to implement provisions in Sections 3, 4 and 5 of
15 the Paid Family and Medical Leave Act.

16 B. State agencies and departments shall cooperate
17 with the secretary to timely and efficiently provide the
18 information and services necessary to carry out the provisions
19 of the Paid Family and Medical Leave Act.

20 **SECTION 14. TEMPORARY PROVISION--PAID FAMILY AND MEDICAL**
21 **LEAVE IMPLEMENTATION ADVISORY COMMITTEE--CREATED--PURPOSE--**
22 **MEMBERS.--**

23 A. The "paid family and medical leave
24 implementation advisory committee" is created in the workforce
25 solutions department. The advisory committee consists of

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1 sixteen members appointed by the secretary of workforce
2 solutions. Members of the advisory committee include:

3 (1) a representative of a nonprofit
4 organization that advocates for women and girls;

5 (2) a representative of an organization that
6 advocates for individuals fifty years of age or older;

7 (3) a representative of a statewide chamber of
8 commerce;

9 (4) a representative of a small business
10 development center advisory council;

11 (5) a representative of a medical society with
12 expertise in the care of children;

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

15 (7) a member representing adoptive and foster
16 parents;

17 (8) a member representing unpaid family
18 caregivers;

19 (9) the director of the commission on the
20 status of women;

21 (10) a representative of a university-based
22 bureau of business and economic research;

23 (11) a member representing small business
24 owners;

25 (12) a representative of an organization with

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1 expertise in chronic illnesses;

2 (13) a representative of an organization with
3 expertise in disabilities;

4 (14) two representatives of a statewide
5 organization representing labor; and

6 (15) a representative with expertise in
7 benefits and leave administration.

8 B. The paid family and medical leave implementation
9 advisory committee shall provide input regarding best practices
10 for the efficient and timely development, implementation and
11 promulgation of rules and educational materials to carry out
12 the provisions of the Paid Family and Medical Leave Act.

13 C. The secretary of workforce solutions shall
14 consult with the paid family and medical leave implementation
15 advisory committee at least quarterly as rules are developed to
16 implement a program pursuant to the Paid Family and Medical
17 Leave Act.

18 D. Members of the paid family and medical leave
19 implementation advisory committee are not entitled to per diem
20 and mileage expenses. The workforce solutions department
21 shall provide staff for the committee.

22 E. The paid family and medical leave implementation
23 advisory committee shall function from the date of its
24 appointment, which shall be no later than October 1, 2024,
25 until January 1, 2026.

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SECTION 15. TEMPORARY PROVISION--REPAYMENT OF
APPROPRIATION.--Beginning January 1, 2028, six million dollars
(\$6,000,000) shall be transferred from the paid family and
medical leave fund at the end of each fiscal year to the
general fund until the total transfers pursuant to this section
equal the total amount of an appropriation made to the
workforce solutions department for costs associated with the
implementation of the Paid Family and Medical Leave Act
contingent on the passage of legislation in the second session
of the fifty-sixth legislature appropriating funds for the
purposes of the Paid Family and Medical Leave Act.