

1 HOUSE BILL 415

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Mark Duncan

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10 AN ACT

11 RELATING TO EMPLOYMENT; PROVIDING THAT WHEN THE USE OF EARNED
12 SICK LEAVE IS NOT FORESEEABLE, AN EMPLOYEE SHALL NOTIFY THE
13 EMPLOYER ORALLY OR IN WRITING PURSUANT TO THE WRITTEN POLICY OF
14 THE EMPLOYER.

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

17 SECTION 1. Section 50-17-3 NMSA 1978 (being Laws 2021,
18 Chapter 131, Section 3) is amended to read:

19 "50-17-3. EARNED SICK LEAVE--USE AND ACCRUAL.--

20 A. Employees shall accrue a minimum of one hour of
21 earned sick leave for every thirty hours worked; provided that
22 employers may choose a higher accrual rate; and provided
23 further that an employer may instead elect to grant employees
24 the full sixty-four hours of earned sick leave for the upcoming
25 year on January 1 of each year or, for employees whose

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1 employment begins after January 1 of a given year, a pro rata
2 portion of the sixty-four hours for use in the remainder of
3 that year. Such employees shall not be entitled to use more
4 than sixty-four hours of earned sick leave per twelve-month
5 period, unless the employer selects a higher limit.

6 B. All employees shall accrue earned sick leave as
7 follows:

8 (1) earned sick leave as provided in the
9 Healthy Workplaces Act shall begin to accrue upon the latter of
10 commencement of the employee's employment or the effective date
11 of the Healthy Workplaces Act and may be used beginning on the
12 latter of those dates;

13 (2) employees who are exempt from overtime
14 requirements pursuant to the federal Fair Labor Standards Act
15 of 1938, 29 U.S.C. Section 213(a)(1), shall be assumed to work
16 forty hours in each work week for the purposes of earned sick
17 leave accrual unless their normal work week is less than forty
18 hours, in which case earned sick leave accrues based on their
19 normal work week;

20 (3) accrued unused earned sick leave shall
21 carry over from year to year, but an employer is not required
22 to permit an employee to use more than sixty-four hours in a
23 twelve-month period;

24 (4) nothing in this section shall be construed
25 as requiring financial or other reimbursement to an employee

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1 from an employer upon the employee's termination, resignation,
2 retirement or other separation from employment for accrued
3 earned sick leave that has not been used;

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

16 (6) when a different employer succeeds or
17 takes the place of an existing employer, all employees of the
18 original employer who remain employed by the successor employer
19 are entitled to all earned sick leave accrued when employed by
20 the original employer and are entitled to use all earned sick
21 leave previously accrued as provided in this section;

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

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- 1 (a) the calendar year;
- 2 (b) any fixed twelve-month leave year,
3 such as a fiscal year, a year required by other law or a year
4 starting on an employee's anniversary date;
- 5 (c) the twelve-month period measured
6 forward from the date an employee's first use of earned sick
7 leave occurs; or
- 8 (d) a rolling twelve-month period
9 measured backward from the date an employee uses any earned
10 sick leave; and

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

14 C. An employee may use earned sick leave:

- 15 (1) for the employee's:
- 16 (a) mental or physical illness, injury
17 or health condition;
- 18 (b) medical diagnosis, care or treatment
19 of a mental or physical illness, injury or health condition; or
- 20 (c) preventive medical care;
- 21 (2) for care of family members of the employee
22 for:
- 23 (a) mental or physical illness, injury
24 or health condition;
- 25 (b) medical diagnosis, care or treatment

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1 of a mental or physical illness, injury or health condition; or

2 (c) preventive medical care;

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

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

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

12 (b) relocate;

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

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

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

22 E. When the use of earned sick leave is
23 foreseeable, the employee shall make a reasonable effort to
24 provide oral or written notice of the need for such sick leave
25 to the employer in advance of the use of the earned sick leave

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1 and shall make a reasonable effort to schedule the use of
2 earned sick leave in a manner that does not unduly disrupt the
3 operations of the employer. When the use of earned sick leave
4 is not foreseeable, the employee shall notify the employer
5 orally or in writing [~~as soon as practicable~~] pursuant to the
6 written policy of the employer.

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

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

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

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