

HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE CAREGIVER LEAVE ACT TO
PROVIDE EMPLOYEES OF PRIVATE ENTITIES WHO HAVE ACCRUED PAID
SICK LEAVE WITH THE OPPORTUNITY TO USE SICK LEAVE FOR FAMILY
CAREGIVING; ENACTING THE PUBLIC EMPLOYEE CAREGIVER LEAVE ACT TO
PROVIDE PUBLIC EMPLOYEES THE RIGHT TO USE ACCRUED SICK LEAVE
FOR FAMILY CAREGIVING.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 3 of this act may be cited as the "Caregiver Leave
Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Caregiver Leave Act:

A. "eligible employee" means an individual who is
in the employ of an employer and who, in accordance with the

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underscored material = new
[bracketed material] = delete

1 employer's policies, is eligible to accrue sick leave;

2 B. "employer" means a person that employs one or
3 more employees and that offers eligible employees sick leave;

4 C. "family member" means an individual who is
5 related within a third degree of consanguinity or affinity to an
6 eligible employee; and

7 D. "sick leave" means a leave of absence from
8 employment for which an employer pays an eligible employee due
9 to illness or injury or to receive care from a licensed or
10 certified health professional. "Sick leave" does not include
11 leave to which an employee is entitled under the federal Family
12 and Medical Leave Act of 1993, regardless of whether the
13 employee uses sick leave during that leave.

14 SECTION 3. [NEW MATERIAL] ACCUMULATED SICK LEAVE--
15 APPLICATION TO FAMILY CAREGIVING.--

16 A. An employer that provides eligible employees
17 with sick leave for an eligible employee's own illness or
18 injury or to receive health care shall permit its eligible
19 employees to use accrued sick leave to care for their family
20 members in accordance with the same terms and procedures that
21 the employer imposes for any other use of sick leave by
22 eligible employees.

23 B. If an eligible employee requests or uses
24 caregiver leave in accordance with the employer's general sick
25 leave policy, files a complaint with the workforce solutions

1 department for violation of the Caregiver Leave Act, cooperates
2 in an investigation or prosecution of an alleged violation of
3 the Caregiver Leave Act or opposes any policy, practice or act
4 that is prohibited by the Caregiver Leave Act, the eligible
5 employee's employer shall not:

6 (1) discharge or threaten to discharge the
7 eligible employee;

8 (2) demote the eligible employee;

9 (3) suspend the eligible employee; or

10 (4) retaliate or discriminate in any manner
11 against the eligible employee.

12 C. Nothing in this section shall require an
13 employer to provide sick leave to its employees.

14 D. The provisions of the Caregiver Leave Act are
15 nonexclusive and cumulative and are in addition to any other
16 rights or remedies afforded by contract or under other
17 provision of law. The Caregiver Leave Act does not prohibit an
18 employer from providing greater sick leave benefits than are
19 provided pursuant to that act.

20 E. The secretary of workforce solutions shall adopt
21 and promulgate rules to implement the provisions of the
22 Caregiver Leave Act. These rules shall include, at a minimum,
23 grievance procedures for according eligible employees recourse
24 for violations of the Caregiver Leave Act.

25 SECTION 4. A new section of Chapter 10 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] SHORT TITLE.--Sections 4 through 6 of this
3 act may be cited as the "Public Employee Caregiver Leave Act".

4 SECTION 5. A new section of Chapter 10 NMSA 1978 is
5 enacted to read:

6 "[NEW MATERIAL] DEFINITIONS.--As used in the Public
7 Employee Caregiver Leave Act:

8 A. "eligible employee" means a salaried officer or
9 employee or legislator of the state who, in accordance with the
10 policies of the state agency employing the officer or employee,
11 is eligible to accrue sick leave;

12 B. "family member" means an individual who is
13 related within a third degree of consanguinity or affinity to an
14 eligible employee;

15 C. "sick leave" means a leave of absence from
16 employment for which a state agency pays an eligible employee
17 due to illness or injury or to receive care from a licensed or
18 certified health professional. "Sick leave" does not include
19 leave to which an employee is entitled under the federal Family
20 and Medical Leave Act of 1993, regardless of whether the
21 employee uses sick leave during that leave; and

22 D. "state" or "state agency" means the state of New
23 Mexico or any of its branches, agencies, departments, boards,
24 instrumentalities or institutions."

25 SECTION 6. A new section of Chapter 10 NMSA 1978 is

.204800.3

1 enacted to read:

2 "[NEW MATERIAL] ACCUMULATED SICK LEAVE--APPLICATION TO
3 FAMILY CAREGIVING.--

4 A. A state agency that provides eligible employees
5 with sick leave for an eligible employee's own illness or
6 injury or to receive health care shall permit its eligible
7 employees to use accrued sick leave to care for their family
8 members in accordance with the same terms and procedures that
9 the state agency imposes for any other use of sick leave by
10 eligible employees.

11 B. If an eligible employee requests or uses
12 caregiver leave in accordance with the state agency's general
13 sick leave policy, files a grievance for violation of this
14 section, cooperates in an investigation or prosecution of an
15 alleged violation of this section or opposes any policy,
16 practice or act that is prohibited by the Public Employee
17 Caregiver Leave Act, the state agency employing the eligible
18 employee shall not:

19 (1) discharge or threaten to discharge the
20 eligible employee;
21 (2) demote the eligible employee;
22 (3) suspend the eligible employee; or
23 (4) retaliate or discriminate in any manner
24 against the eligible employee.

25 C. Nothing in this section shall require a state

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1 agency to provide sick leave to its employees.

2 D. The provisions of the Public Employee Caregiver
3 Leave Act are nonexclusive and cumulative and are in addition
4 to any other rights or remedies afforded by contract or under
5 other provision of law. The Public Employee Caregiver Leave
6 Act does not prohibit a state agency from providing greater
7 sick leave benefits than are provided pursuant to that act.

8 E. Each state agency director shall adopt and
9 promulgate policies to implement the provisions of the Public
10 Employee Caregiver Leave Act. These policies shall include, at
11 a minimum, grievance procedures for according eligible
12 employees recourse for violations of the Public Employee
13 Caregiver Leave Act. As used in this section, "state agency
14 director" means:

15 (1) the director of the state personnel office
16 for those state agencies to which the provisions of the
17 Personnel Act apply; and

18 (2) the director of a state agency to which
19 the provisions of the Personnel Act do not apply."