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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

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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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

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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, including application of the  
12 employee's use of caregiver leave as a factor in the employee's  
13 performance evaluation.

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

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

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

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1 for violations of the Caregiver Leave Act.

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

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

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

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

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

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

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

24 D. "state" or "state agency" means the state of New  
25 Mexico or any of its branches, agencies, departments, boards,

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1 instrumentalities or institutions."

2 SECTION 6. A new section of Chapter 10 NMSA 1978 is  
3 enacted to read:

4 "[NEW MATERIAL] ACCUMULATED SICK LEAVE--APPLICATION TO  
5 FAMILY CAREGIVING.--

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

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

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

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1 against the eligible employee, including application of the  
2 employee's use of caregiver leave as a factor in the employee's  
3 performance evaluation.

4 C. Nothing in this section shall require a state  
5 agency to provide sick leave to its employees.

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

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

19 (1) the director of the state personnel office  
20 for those state agencies to which the provisions of the  
21 Personnel Act apply; and

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