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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

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

7 F. "employer" means an individual, partnership,
8 association, corporation, business trust, legal
9 representative or any organized group of persons employing
10 one or more employees at any one time, acting in the interest
11 of an employer in relation to an employee, but shall not
12 include the United States, the state or any political
13 subdivision of the state;

14 G. "family member" means an employee's spouse or
15 domestic partner or a person related to an employee or an
16 employee's spouse or domestic partner as:

17 (1) a biological, adopted or foster child, a
18 stepchild or legal ward, or a child to whom the employee
19 stands in loco parentis;

20 (2) a biological, foster, step or adoptive
21 parent or legal guardian, or a person who stood in loco
22 parentis when the employee was a minor child;

23 (3) a grandparent;

24 (4) a grandchild;

25 (5) a biological, foster, step or adopted

1 sibling;

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

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

7 H. "health care professional" means a person
8 licensed pursuant to federal or state law to provide health
9 care services, including nurses, nurse practitioners,
10 physician assistants, doctors and emergency room personnel;

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

16 J. "retaliation" means any threat, discharge,
17 discipline, suspension, demotion, non-promotion, less
18 favorable scheduling, reduction of hours or application of
19 absence control policies that count an employee's use of
20 earned sick leave as an absence that may lead to adverse
21 action, or other adverse action against employees for the
22 exercise of a right guaranteed pursuant to the Healthy
23 Workplaces Act, including sanctions against an employee who
24 is a recipient of benefits or rights pursuant to the Healthy
25 Workplaces Act. "Retaliation" includes interference with or

1 punishment for participating in an investigation, proceeding
2 or hearing pursuant to the Healthy Workplaces Act.

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

4 A. Employees shall accrue a minimum of one hour of
5 earned sick leave for every thirty hours worked; provided
6 that employers may choose a higher accrual rate; and provided
7 further that an employer may instead elect to grant employees
8 the full sixty-four hours of earned sick leave for the
9 upcoming year on January 1 of each year or, for employees
10 whose employment begins after January 1 of a given year, a
11 pro rata portion of the sixty-four hours for use in the
12 remainder of that year. Such employees shall not be entitled
13 to use more than sixty-four hours of earned sick leave per
14 twelve-month period, unless the employer selects a higher
15 limit.

16 B. All employees shall accrue earned sick leave as
17 follows:

18 (1) earned sick leave as provided in the
19 Healthy Workplaces Act shall begin to accrue upon the latter
20 of commencement of the employee's employment or the effective
21 date of the Healthy Workplaces Act and may be used beginning
22 on the latter of those dates;

23 (2) employees who are exempt from overtime
24 requirements pursuant to the federal Fair Labor Standards Act
25 of 1938, 29 U.S.C. Section 213(a)(1), shall be assumed to

1 work forty hours in each work week for the purposes of earned
2 sick leave accrual unless their normal work week is less than
3 forty hours, in which case earned sick leave accrues based on
4 their normal work week;

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

9 (4) nothing in this section shall be
10 construed as requiring financial or other reimbursement to an
11 employee from an employer upon the employee's termination,
12 resignation, retirement or other separation from employment
13 for accrued earned sick leave that has not been used;

14 (5) if an employee is transferred to a
15 separate division, entity or location but remains employed by
16 the same employer, the employee is entitled to all earned
17 sick leave accrued at the prior division, entity or location
18 and is entitled to use all earned sick leave as provided in
19 this section. When there is a separation from employment,
20 and the employee is rehired within twelve months of
21 separation by the same employer, previously accrued earned
22 sick leave that has not been used shall be reinstated.
23 Further, the employee shall be entitled to use accrued earned
24 sick leave and accrue additional earned sick leave upon
25 re-commencement of employment;

1 (6) when a different employer succeeds or
2 takes the place of an existing employer, all employees of the
3 original employer who remain employed by the successor
4 employer are entitled to all earned sick leave accrued when
5 employed by the original employer and are entitled to use all
6 earned sick leave previously accrued as provided in this
7 section;

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

12 (a) the calendar year;

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

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

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

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

25 C. An employee may use earned sick leave:

- 1 (1) for the employee's:
- 2 (a) mental or physical illness, injury
- 3 or health condition;
- 4 (b) medical diagnosis, care or
- 5 treatment of a mental or physical illness, injury or health
- 6 condition; or
- 7 (c) preventive medical care;
- 8 (2) for care of family members of the
- 9 employee for:
- 10 (a) mental or physical illness, injury
- 11 or health condition;
- 12 (b) medical diagnosis, care or
- 13 treatment of a mental or physical illness, injury or health
- 14 condition; or
- 15 (c) preventive medical care;
- 16 (3) for meetings at the employee's child's
- 17 school or place of care related to the child's health or
- 18 disability; or
- 19 (4) for absence necessary due to domestic
- 20 abuse, sexual assault or stalking suffered by the employee or
- 21 a family member of the employee; provided that the leave is
- 22 for the employee to:
- 23 (a) obtain medical or psychological
- 24 treatment or other counseling;
- 25 (b) relocate;

1 (c) prepare for or participate in legal
2 proceedings; or

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

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

11 E. When the use of earned sick leave is
12 foreseeable, the employee shall make a reasonable effort to
13 provide oral or written notice of the need for such sick
14 leave to the employer in advance of the use of the earned
15 sick leave and shall make a reasonable effort to schedule the
16 use of earned sick leave in a manner that does not unduly
17 disrupt the operations of the employer. When the use of
18 earned sick leave is not foreseeable, the employee shall
19 notify the employer orally or in writing as soon as
20 practicable.

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

25 G. Earned sick leave may be used in the smaller of

1 hourly increments or the smallest increment that the
2 employer's payroll system uses to account for absences or use
3 of other time.

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

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

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

24 SECTION 5. DOCUMENTATION.--

25 A. Documentation shall not be required for sick

1 leave, except an employer may require reasonable
2 documentation that sick leave has been used for a covered
3 purpose if the employee uses two or more consecutive work
4 days of sick leave.

5 B. Documentation signed by a health care
6 professional indicating the amount of earned sick leave taken
7 is necessary shall be considered reasonable documentation for
8 sick leave taken pursuant to the Healthy Workplaces Act. In
9 cases of domestic abuse, sexual assault or stalking, an
10 employee may choose to provide one of the following types of
11 documentation, which shall be considered as reasonable
12 documentation: a police report, a court-issued document or a
13 signed statement from a victim services organization, clergy
14 member, attorney, advocate, the employee, a family member of
15 the employee or other person affirming that the sick leave
16 was taken for one of the purposes set forth in Paragraph (4)
17 of Subsection C of Section 3 of the Healthy Workplaces Act.
18 A signed statement required pursuant to this subsection may
19 be written in the employee's native language and shall not be
20 required to be in a particular format or notarized. An
21 employer may not require the documentation to explain the
22 nature of any medical condition or the details of the
23 domestic abuse, sexual assault or stalking.

24 C. An employee shall provide documentation upon
25 request to the employer in a timely manner. The employer

1 shall not delay the commencement of earned sick leave on the
2 basis that the employer has not yet received documentation.

3 D. All information an employer obtains related to
4 an employee's reasons for taking sick leave shall be treated
5 as confidential and not disclosed except with the permission
6 of the employee or as necessary for validation purposes for
7 insurance disability claims, accommodations consistent with
8 the federal Americans with Disabilities Act of 1990, as
9 required by the Healthy Workplaces Act or by court order.

10 SECTION 6. NOTICE AND POSTING REQUIREMENTS.--

11 A. An employer shall give written or electronic
12 notice to an employee at the commencement of employment of
13 the following:

14 (1) the employee's right to earned sick
15 leave;

16 (2) the manner in which sick leave is
17 accrued and calculated;

18 (3) the terms of the use of earned sick
19 leave as guaranteed by the Healthy Workplaces Act;

20 (4) that retaliation against employees for
21 the use of sick leave is prohibited;

22 (5) the employee's right to file a complaint
23 with the division if earned sick leave as required pursuant
24 to the Healthy Workplaces Act is denied by the employer or if
25 the employee is retaliated against; and

1 (6) all means of enforcing violations of the
2 Healthy Workplaces Act.

3 B. Notice required pursuant to Subsection A of
4 this section shall be in English, Spanish or any language
5 that is the first language spoken by at least ten percent of
6 the employer's workforce, as requested by the employee.

7 C. Employers shall display a poster that contains
8 the information required pursuant to Subsection A of this
9 section in a conspicuous and accessible place in each
10 establishment where employees are employed. The poster
11 displayed should be in English, Spanish and any language that
12 is the first language spoken by at least ten percent of the
13 employer's workforce.

14 D. The division shall create and make available to
15 employers notices and posters in English, Spanish and any
16 other languages deemed appropriate by the division that
17 contain the information required pursuant to Subsection A of
18 this section for employers' use in complying with the
19 provisions of this section.

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

24 SECTION 8. EXERCISE OF RIGHTS PROTECTED--RETALIATION
25 PROHIBITED.--

1 A. An employer shall not take or threaten any
2 adverse action whatsoever against an employee:

3 (1) that is reasonably likely to deter such
4 employee from exercising or attempting to exercise a right
5 granted pursuant to the Healthy Workplaces Act; or

6 (2) because the employee:

7 (a) has exercised or attempted to
8 exercise such rights;

9 (b) has reasonably alleged violations
10 of the Healthy Workplaces Act; or

11 (c) has raised a concern about
12 violations of the Healthy Workplaces Act to the employer, the
13 employer's agent, other employees, a government agency or to
14 the public through print, online, social or any other media.

15 B. An employer shall not attempt to require an
16 employee to sign a contract or other agreement that would
17 limit or prevent the employee from asserting rights provided
18 for in the Healthy Workplaces Act or to otherwise establish a
19 workplace policy that would limit or prevent the exercise of
20 such rights. An employer's attempt to impose such a
21 contract, agreement or policy shall constitute an adverse
22 action enforceable pursuant to the Healthy Workplaces Act.

23 C. An employer shall not count use of sick leave
24 in a way that will lead to discipline, discharge, demotion,
25 non-promotion, less favorable scheduling, reduction of hours,

1 suspension or any other adverse action.

2 SECTION 9. ENFORCEMENT.--

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

6 B. The division shall coordinate implementation
7 and enforcement of the Healthy Workplaces Act, including:

8 (1) establishing a system to receive
9 complaints, in writing and by telephone, regarding alleged
10 violations of the Healthy Workplaces Act;

11 (2) establishing a process for investigating
12 and resolving complaints in a timely manner and keeping
13 complainants notified regarding the status of the
14 investigation of their complaint;

15 (3) ensuring employer compliance with the
16 Healthy Workplaces Act through the use of audits,
17 investigations or other measures; and

18 (4) establishing a system for reviewing
19 complaints.

20 C. The division shall maintain as confidential the
21 identity of any complainant unless disclosure of such
22 complainant's identity is necessary for resolution of the
23 investigation or otherwise required by law. The division
24 shall, prior to such disclosure and to the extent
25 practicable, notify a complainant that the division will be

1 disclosing the complainant's identity.

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

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

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

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

22 (1) encompass all violations that occurred
23 after the effective date of the Healthy Workplaces Act as
24 part of a continuing course of conduct, regardless of the
25 date on which the violations occurred;

1 (2) be pursued by an employee on behalf of
2 the employee or be pursued by an employee on behalf of other
3 employees similarly situated; or

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

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

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

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

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

21 **SECTION 11. EMPLOYER LIABILITY.--**

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

24 (1) for an instance of sick leave taken by
25 an employee but unlawfully not compensated by the employer,

1 in an amount equal to three times the wages that should have
2 been paid or five hundred dollars (\$500), whichever is
3 greater;

4 (2) for an instance of sick leave requested
5 by an employee but unlawfully denied by the employer and not
6 taken by the employee or unlawfully conditioned on searching
7 for or finding a replacement worker, in an amount equal to
8 actual damages or five hundred dollars (\$500), whichever is
9 greater;

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

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

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

25 (6) for each misclassification of an

1 employee as an independent contractor, actual damages or five
2 hundred dollars (\$500), whichever is greater.

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

10 SECTION 12. OTHER LEGAL REQUIREMENTS.--The Healthy
11 Workplaces Act provides minimum requirements pertaining to
12 earned sick leave and shall not be construed to preempt,
13 limit or otherwise affect the applicability of any other law,
14 regulation, requirement, policy or standard, including
15 collective bargaining agreements, that provides for greater
16 accrual or use by employees of earned sick leave, whether
17 paid or unpaid, or that extends other protections to
18 employees.

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

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