AN ACT

RELATING TO EMPLOYMENT; ENACTING THE HEALTHY WORKPLACES ACT;
ESTABLISHING THE EARNED SICK LEAVE INCOME TAX CREDIT AND THE
EARNED SICK LEAVE CORPORATE INCOME TAX CREDIT; PROVIDING
REQUIREMENTS FOR EARNED SICK LEAVE; PROVIDING PENALTIES.

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

SECTION 1. A new section of the Income Tax Act is enacted
to read:

"[NEW MATERIAL] EARNED SICK LEAVE INCOME TAX CREDIT.--

A. A taxpayer who is not a dependent of another
individual who employs more than ten but fewer than one hundred
employees in New Mexico may claim a credit in an amount equal
to two hundred fifty dollars ($250) for each employee of the
taxpayer for whom the taxpayer is required to provide earned
sick leave pursuant to the Healthy Workplaces Act against the
.219784.2
taxpayer's tax liability imposed pursuant to the Income Tax Act. The tax credit provided by this section may be referred to as the "earned sick leave income tax credit".

B. A taxpayer may claim an earned sick leave income tax credit for the taxable year in which the taxpayer paid earned sick leave. To receive the earned sick leave income tax credit, a taxpayer shall apply to the department on forms and in the manner prescribed by the department.

C. That portion of an earned sick leave income tax credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed may be carried forward for a maximum of three consecutive taxable years.

D. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit provided by this section that would have been claimed on a joint return.

E. A taxpayer may be allocated the right to claim a tax credit provided by this section in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or a limited liability company shall not exceed the allowable credit pursuant to Subsection A of this section.

.219784.2

- 2 -
F. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

G. The department shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the effectiveness of the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the tax credit and whether the tax credit is performing the purpose for which it was created.

H. As used in this section, "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."

SECTION 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] EARNED SICK LEAVE CORPORATE INCOME TAX CREDIT.--

A. A taxpayer that employs more than ten but fewer than one hundred employees in New Mexico may claim a credit in .219784.2
an amount equal to two hundred fifty dollars ($250) for each
employee of the taxpayer for whom the taxpayer is required to
provide earned sick leave pursuant to the Healthy Workplaces
Act against the taxpayer's tax liability imposed pursuant to
the Corporate Income and Franchise Tax Act. The tax credit
provided by this section may be referred to as the "earned sick
leave corporate income tax credit".

B. A taxpayer may claim an earned sick leave
corporate income tax credit for the taxable year in which the
taxpayer paid earned sick leave. To receive an earned sick
leave corporate income tax credit, a taxpayer shall apply to
the department on forms and in the manner prescribed by the
department.

C. That portion of an earned sick leave corporate
income tax credit that exceeds a taxpayer's tax liability in
the taxable year in which the credit is claimed may be carried
forward for a maximum of three consecutive taxable years.

D. A taxpayer allowed a tax credit pursuant to this
section shall report the amount of the credit to the department
in a manner required by the department.

E. The department shall compile an annual report on
the tax credit provided by this section that shall include the
number of taxpayers approved by the department to receive the
credit, the aggregate amount of credits approved and any other
information necessary to evaluate the effectiveness of the
3.219784.2

- 4 -
credit. The department shall present the report to the revenue
stabilization and tax policy committee and the legislative
finance committee with an analysis of the effectiveness and
cost of the tax credit and whether the tax credit is performing
the purpose for which it was created.

F. As used in this section, "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."

SECTION 3. [NEW MATERIAL] SHORT TITLE.--Sections 3
through 17 of this act may be cited as the "Healthy Workplaces
Act".

SECTION 4. [NEW MATERIAL] PURPOSE OF ACT.--The purposes
of the Healthy Workplaces Act are to:

A. regulate employee benefits regarding earned sick
leave within New Mexico;

B. ensure that all employees in New Mexico can
address their own health and safety needs and the health and
safety needs of their families by requiring employers to
provide a minimum amount of earned sick leave, including leave
for the care of family members;

C. address the concern that many New Mexico
employees currently have no access to sick leave for personal

.219784.2

- 5 -
or family health needs;

D. reduce public and private health care costs and promote preventive health services in New Mexico by enabling employees to seek early and routine medical care for themselves and their family members;

E. protect the public's health in New Mexico by reducing the risk of contagion;

F. promote the economic stability of employees and their families;

G. protect employees in New Mexico from losing their jobs or facing workplace discipline when they use earned sick leave to care for themselves or their families;

H. benefit businesses by reducing worker turnover due to the lack of earned sick leave and decreasing the incidence of employees coming to work with illnesses and health conditions that reduce their productivity;

I. safeguard the public welfare, health, safety and prosperity of the people of New Mexico; and

J. accomplish the purposes described in Subsections A through I of this section in a manner that is feasible for employers.

SECTION 5. [NEW MATERIAL] 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; the burden of proof shall be upon the person for whom the work is performed to show independent contractor status by clear and convincing evidence;

E. "employee" means an individual employed by an employer, including an individual employed on a part-time, seasonal or temporary basis, or an individual performing domestic service in a private home for remuneration;

F. "employer" means an individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States. "Employer" includes the state or any political subdivision of the state, and "employer"
includes a person providing remuneration for domestic service in a private home;

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

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

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

(3) a grandparent;

(4) a grandchild;

(5) a biological, foster, step or adopted sibling;

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

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

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

I. "public health emergency" means a declaration or
proclamation issued pursuant to federal, state or local law of
an emergency related to a risk or threat to public health; and

J. "retaliation" means any threat, discharge,
discipline, suspension, demotion, non-promotion, less favorable
scheduling, reduction of hours or application of absence
control policies that count an employee's use of earned sick
leave as an absence that may lead to adverse action, or other
adverse action against employees for the exercise of a right
guaranteed pursuant to the Healthy Workplaces Act, including
sanctions against an employee who is a recipient of benefits or
rights pursuant to the Healthy Workplaces Act. "Retaliation"
includes interference with or punishment for filing a complaint
or participating in a proceeding or hearing pursuant to the
Healthy Workplaces Act.

SECTION 6. [NEW MATERIAL] APPLICABILITY.--The Healthy
Workplaces Act shall apply to an employer with eleven or more
New Mexico employees.

SECTION 7. [NEW MATERIAL] EARNED SICK LEAVE--USE AND
ACCRLAL.--

A. Employees shall accrue a minimum of one hour of
earned sick leave for every thirty hours worked; provided that
employers may choose a higher accrual rate or provide for
accrual of all earned sick leave at the beginning of a year.
Such employees shall not be entitled to use more than sixty-
four hours of earned sick leave per twelve-month period, unless
the employer selects a higher limit.

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

(1) earned sick leave as provided in the Healthy Workplaces Act shall begin to accrue upon commencement of the employee's employment and may be used beginning on the sixtieth day after the effective date of the Healthy Workplaces Act;

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

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

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

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

(6) when a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned sick leave accrued when employed by the original employer and are entitled to use all earned sick leave previously accrued.

C. An employee may use earned sick leave:

(1) for the employee's:

(a) mental or physical illness, injury or health condition;

(b) medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or

(c) preventive medical care;

(2) for care of family members of the employee
for:

(a) mental or physical illness, injury or health condition;

(b) medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or

(c) preventive medical care;

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

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

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

(b) relocate;

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

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

D. Earned sick leave shall be provided upon the oral or written request of an employee or an individual acting on the employee's behalf. When possible, the request shall include the expected duration of the sick leave absence.
E. When the use of earned sick leave is foreseeable, the employee shall make a good faith effort to provide oral or written notice of the need for such sick leave to the employer in advance of the use of the earned sick leave and shall make a reasonable effort to schedule the use of earned sick leave in a manner that does not unduly disrupt the operations of the employer. When the use of earned sick leave is not foreseeable, the employee shall notify the employer orally or in writing as soon as practicable.

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

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

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

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

SECTION 8. [NEW MATERIAL] EXISTING EARNED SICK LEAVE
POLICY--EXEMPTION.--An employer with an earned sick leave policy that provides sick leave separate from other forms of paid time off, and who makes available an amount of earned sick leave sufficient to meet the accrual requirements of the Healthy Workplaces Act that may be used for the same purposes and under the same conditions as earned sick leave under that act, is not required to provide additional earned sick leave. However, the sick leave required by the Healthy Workplaces Act is in addition to any paid time off provided by an employer that may be used for any purpose other than those specified in that act.

SECTION 9. [NEW MATERIAL] DOCUMENTATION.--

A. Documentation shall not be required for sick leave, except an employer may require reasonable documentation that sick leave has been used for a covered purpose if the employee uses three or more consecutive work days of sick leave.

B. Documentation signed by a health care professional indicating the amount of earned sick leave taken is necessary shall be considered reasonable documentation for sick leave taken pursuant to the Healthy Workplaces Act. In cases of domestic abuse, sexual assault or stalking, an employee may choose to provide one of the following types of documentation, which shall be considered as reasonable documentation: a police report, a court-issued document or a
signed statement from a victim services organization, clergy
member, attorney, advocate, the employee, a family member of
the employee or other person affirming that the sick leave was
taken for one of the purposes set forth in Paragraph (4) of
Subsection C of Section 7 of this 2021 act. A signed statement
required pursuant to this subsection may be written in the
employee's native language and shall not be required to be in a
particular format or notarized. An employer may not require
the documentation to explain the nature of any medical
condition or the details of the domestic abuse, sexual assault
or stalking.

C. If an employer chooses to require documentation
for the purpose of the use of earned sick leave, the employer
shall pay the cost of any verification by a health care
professional that is not covered by insurance or other benefit
plan.

D. An employee shall provide documentation upon
request to the employer in a timely manner. The employer shall
not delay the commencement of earned sick leave on the basis
that the employer has not yet received documentation.

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

SECTION 10. [NEW MATERIAL] NOTICE AND POSTING
REQUIREMENTS.--

A. An employer shall give written notice to an
employee at the commencement of employment of the following:
(1) the employee's right to earned sick leave;
(2) the manner in which sick leave is accrued
and calculated;
(3) the terms of the use of earned sick leave
as guaranteed by the Healthy Workplaces Act;
(4) that retaliation against employees for the
use of sick leave is prohibited;
(5) the employee's right to file a complaint
with the division if earned sick leave as required pursuant to
the Healthy Workplaces Act is denied by the employer or if the
employee is retaliated against; and
(6) all means of enforcing violations of the
Healthy Workplaces Act.

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

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

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

SECTION 11. [NEW MATERIAL] EMPLOYER SHALL RETAIN
DOCUMENTATION.--Employers shall retain for the immediately
preceding forty-eight-month period records documenting hours
worked by employees and earned sick leave taken by employees.

SECTION 12. [NEW MATERIAL] EXERCISE OF RIGHTS PROTECTED--
RETRIBUTION PROHIBITED.--

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

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

(2) because the employee:

(a) has exercised or attempted to

exercise such rights;

.219784.2
- 17 -
(b) has in good faith alleged violations of the Healthy Workplaces Act; or

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

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

C. An employer shall not count use of sick leave in a way that will lead to discipline, discharge, demotion, non-promotion, less favorable scheduling, reduction of hours, suspension or any other adverse action.

SECTION 13. [NEW MATERIAL] COMPLAINTS--ADMINISTRATIVE HEARINGS--DIVISION DUTIES--RULES--CONFIDENTIALITY OF COMPLAINTS--ENFORCEMENT AND PENALTIES.--

A. A person or an entity that has a member who has been affected by a violation of the Healthy Workplaces Act may file a complaint with the division.

B. Within sixty days of the date of enactment of .219784.2

- 18 -
the Healthy Workplaces Act, the division shall establish by
rule a dispute resolution process for complaints filed pursuant
to Subsection A of this section. The process shall include an
option for a party to a dispute to request an administrative
hearing where both parties have an opportunity to provide facts
and reasons for the dispute. When a party to a dispute
requests an administrative hearing, the division shall not make
a determination with respect to the dispute until the
completion of the hearing.

C. The division shall promulgate rules for the
implementation and administration of the Healthy Workplaces
Act. The rules shall include a system:

   (1) to receive complaints regarding violations
of the Healthy Workplaces Act. This system shall provide for
the use of multiple means of communicating complaints; and

   (2) for communications with employees and
employers regarding administrative hearings and decisions
regarding complaints.

D. When the division determines that an employer
has misclassified an employee as an independent contractor, the
division shall notify the taxation and revenue department, the
workforce transition services division of the workforce
solutions department, the workers' compensation administration
and the federal internal revenue service.

SECTION 14. [NEW MATERIAL] CIVIL ACTIONS--TIME LIMITS--
BURDENS OF PROOF.--

A. A civil action may be filed in a court of competent jurisdiction for a violation of the Healthy Workplaces Act within three years from the date the alleged violation occurred.

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

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

(1) encompass all violations that occurred as part of a continuing course of conduct, regardless of the date on which the violations occurred;

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

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

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

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

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

(2) when an employer meets the burden of proof required by Paragraph (1) of this subsection, the employee shall then have the burden to establish that the reason cited by the employer was not the reason for the adverse employment action; and

(3) when it is established that the adverse employment action was motivated by a combination of both lawful and unlawful reasons, the employer shall have the burden to demonstrate that the action would have been taken even in the absence of the unlawful reason.

SECTION 15. [NEW MATERIAL] EMPLOYER LIABILITY.--

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

(1) for an instance of earned sick leave taken by an employee but unlawfully not compensated by the employer, in an amount equal to three times the wages that should have been paid or one thousand dollars ($1,000), whichever is greater;

(2) for an instance of earned sick leave
requested by an employee but unlawfully denied by the employer
and not taken by the employee or unlawfully conditioned on
searching for or finding a replacement worker, in an amount
equal to actual damages or one thousand dollars ($1,000),
whichever is greater;

(3) for each instance of retaliation
prohibited by the Healthy Workplaces Act excepting discharge
from employment, in an amount equal to actual damages,
including back pay, wages or benefits lost, an additional
amount of five hundred dollars ($500) and equitable relief such
as rescission of disciplinary measures taken by the employer or
other relief as determined by a court of law;

(4) for each instance of prohibited discharge
from employment, in an amount equal to actual damages,
including back pay, wages or benefits lost, an additional
amount of one thousand dollars ($1,000) and reinstatement or
other equitable relief as determined by a court of law;

(5) for each willful notice or recordkeeping
violation, five hundred dollars ($500); and

(6) for each misclassification of an employee
as an independent contractor, actual damages or one thousand
dollars ($1,000), whichever is greater.

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

SECTION 16. [NEW MATERIAL] STATE PREEMPTION.--A political
subdivision of the state, including a home rule municipality,
or an institution of the state shall not adopt a law, policy or
resolution that regulates or attempts to regulate earned sick
leave.

SECTION 17. SEVERABILITY.--If any part or application of
the provisions of the Healthy Workplaces Act is held invalid,
the remainder or its application to other situations or persons
shall not be affected.

SECTION 18. APPLICABILITY.--The provisions of Sections 1
and 2 of this act apply to taxable years beginning on or after
January 1, 2022.

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