AN ACT

RELATING TO EMPLOYMENT; ENACTING THE HEALTHY WORKPLACES ACT;
PROVIDING REQUIREMENTS FOR EARNED SICK LEAVE; PROVIDING
PENALTIES; DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Healthy Workplaces Act".

SECTION 2. [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

.219479.2
for the care of family members;

C. address the concern that many New Mexico employees currently have no access to sick leave for personal 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 3. [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 participating in
an investigation, proceeding or hearing pursuant to the Healthy
Workplaces Act.

SECTION 4. [NEW MATERIAL] EARNED SICK LEAVE--USE AND
ACCRUAL.--

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 paid 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 5. [NEW MATERIAL] SUPPLEMENTAL LEAVE DURING A
PUBLIC HEALTH EMERGENCY.--

A. In addition to the accrued earned sick leave provided pursuant to Section 4 of the Healthy Workplaces Act, on the date a public health emergency is declared, an employer shall provide supplemental paid sick leave for absences due to the circumstances listed in Subsection E of this section. Such supplemental paid sick leave shall be provided in the following amounts at a minimum:

(1) eighty hours for an employee who normally works forty or more hours in a week; or

(2) the number of hours the employee works on average in a fourteen-day period for an employee who normally works fewer than forty hours in a week.

B. The supplemental paid sick leave provided pursuant to Subsection A of this section shall be the entirety of supplemental paid sick leave required pursuant to the Healthy Workplaces Act for a public health emergency regardless of whether the public health emergency is subsequently amended, extended or renewed.

C. If a public health emergency was declared before and remains in effect on the effective date of the Healthy Workplaces Act, supplemental paid sick leave required pursuant to this section shall be provided to employees on the effective date of the Healthy Workplaces Act.

D. An employer may count an employee's unused
accrued earned sick leave pursuant to Section 4 of the Healthy Workplaces Act toward the supplemental paid sick leave required in Subsection A of this section. An employee may use supplemental paid sick leave provided pursuant to this section until four weeks after the official termination of a public health emergency.

E. Supplemental paid sick leave provided pursuant to this section shall be available to an employee for absences due to:

   (1) care, testing or treatment of the employee or a family member to whom the employee provides care as a consequence of being diagnosed with, experiencing symptoms of or exposure to a communicable illness or transmittable condition that is related to a public health emergency;

   (2) self-isolation by the employee or a family member to whom the employee provides care as a consequence of being diagnosed with, experiencing symptoms of or exposure to a communicable illness or transmittable condition that is related to a public health emergency;

   (3) the pursuit of preventive care for the employee or a family member to whom the employee provides care for a communicable illness that is related to a public health emergency;

   (4) compliance with a determination by the employer or a local, state or federal public official or health
authority having jurisdiction over the location of work for the employee or a family member to whom the employee provides care that:

(a) the place of employment is closed;
(b) the individual's presence on the job or in the community would jeopardize the health of others due to exposure to a communicable illness or transmittable condition related to a public health emergency; or
(c) the individual is exhibiting symptoms of a communicable illness or transmittable condition related to a public health emergency, regardless of whether the individual has been diagnosed with the communicable illness;
(5) care of a family member when that individual's:
(a) care provider is unavailable due to a public health emergency; or
(b) school or place of care has been physically closed due to a public health emergency, whether or not the school or place of care is providing instruction or services remotely; or
(6) an inability to work due to a health condition that may increase the risk posed by a communicable illness that is related to a public health emergency.

F. An employee shall notify the employee's employer of the need to use supplemental paid sick leave pursuant to .219479.2
this section as soon as practicable when the need for the leave
is foreseeable and the employer's place of business has not
been closed.

G. Documentation shall not be required to take
supplemental paid sick leave provided pursuant to this section.

SECTION 6. [NEW MATERIAL] MORE GENEROUS EARNED SICK LEAVE
POLICY.--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 7. [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 4 of the Healthy Workplaces 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 8. [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 9. [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 10. [NEW MATERIAL] EXERCISE OF RIGHTS PROTECTED--

RETOALIATION 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;

(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 11. [NEW MATERIAL] COMPLAINTS AND
INVESTIGATIONS--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. The division shall investigate a violation that it identifies or a complaint of a violation of the Healthy Workplaces Act. The division shall institute or cause to be instituted a civil action for a violation of the Healthy Workplaces Act.

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 about investigations of complaints.

D. The division shall begin an investigation within thirty calendar days of receiving a complaint of a violation of the Healthy Workplaces Act and shall provide status reports on the progress of the investigation to the complainant and the employer in intervals of no greater than ninety days until the investigation is completed. When an investigation is completed, the division shall notify the complainant and the employer of the result.
E. In conducting an investigation regarding potential violations of the Healthy Workplaces Act:

(1) the division shall endeavor to maintain the confidentiality of the complainant and the affected employee to the extent allowed by law;

(2) the division may review the records regarding all of the employees at a given work location or for a particular employer; and

(3) with the authorization of the employee or person reporting the violation, the division may disclose the name and identifying information as necessary to investigate the complaint or enforce the Healthy Workplaces Act or for other purposes that the division establishes by rule.

F. When conducting an investigation regarding a potential violation of the Healthy Workplaces Act, the division shall use the burdens of proof required for civil actions pursuant to Section 12 of the Healthy Workplaces Act.

G. 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 unemployment insurance division of the workforce solutions department, the workers' compensation administration and the federal internal revenue service.

SECTION 12. [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; provided that the time limit to file a civil action established by this subsection shall be tolled during an investigation by the division of the violation or related violations by the same employer. An investigation by the division shall not be required to file a civil action, and a lack of an investigation by the division shall not act as a bar to a civil action brought by a complainant pursuant to the Healthy Workplaces Act.

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

SECTION 15. 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 16. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.