

employees expressly exempted by the Workforce Solutions Department according to state or federal law. A clause (Section 4B) is added, stating that the Caregiver Leave Act will not interfere in collective bargaining agreements.

Synopsis of SJC Amendment

The House Judiciary Committee amendment in two locations replaces the words “in the third degree of consanguinity or affinity to” with words that make clear what this indicates – “a parent, grandparent, great-grandparent, child, grandchild, brother, sister, niece, nephew, aunt or uncle,” and adds people living in the household of the employee to the list of those whose care can be assumed to be an extension of the employee’s sick leave. Two brief grammatical language changes are also made.

Synopsis of Bill

House Bill 86 requires all employees of public and private entities within the state be allowed to use accrued sick leave to care for family members. “Employer,” “sick leave”, and “family member” are defined in the bill. Sick leave as defined does not include leave allowed through the federal Family and Medical Leave Act. Employees who do not receive sick leave would not be covered under the act.

Provisions are made for the secretary of Workforce Solutions Department to receive complaints related to family caregiving and to make rules relevant to the act, including establishing a grievance procedure for complaints made. Employer retribution for reporting violations of the act would not be permitted. Sections 4 to 6 of the act are referred to as the “Public Employee Caregiver Act;” they do not differ from the private employees’ “Caregiver Leave Act” except that each agency’s director would be required to adopt policies to implement the Act’s provisions, including establishment of a grievance procedure.

FISCAL IMPLICATIONS

Although the legislation does not specify which unit of WSD would receive complaints relative to the Family Caregiver Act, WSD indicates that “If the intention of the bill is for the Human Rights Bureau of the Labor Relations Division to handle the investigation of complaints, the bureau would need two additional full time employees to handle the anticipated increase in investigations related to House Bill 86. The investigator positions are a payband 65 and budgeted above at midpoint plus 35 percent for benefits and overheads.” Those costs are reflected in the table as the high point in the estimate, while the low point assumes that the volume of complaints would be very low and could be accounted for by existing WSD personnel.

SIGNIFICANT ISSUES

WSD states that “The Human Rights Bureau of the Labor Relations Division (‘HRB’) is responsible for enforcing the New Mexico Human Rights Act by investigating claims of discrimination based on race, age, religion, color, national origin, ancestry, sex, sexual orientation, physical or mental handicap or serious medical condition, spousal affiliation, or gender identity. Investigations filed with the HRB relating to the Caregiver Leave Act could potentially follow normal department investigative procedures for the HRB. However, neither

the private nor public ‘employee caregivers’ automatically fall within a protected class under the Human Rights Act. The investigation of violations and resulting proceedings may fall outside the normal channels of the Human Rights Bureau, subject to a different legal standard, necessitating an entirely new investigation and enforcement unit outside of the HRB.”

On the other hand, the State Personnel Office notes that its rules governing sick leave already includes family caregiving (in Section 1.7.7.10(D) NMAC) provides that employees can use accrued sick leave to care for a family member up to the third degree.

PERFORMANCE IMPLICATIONS

In assuming that the aspects of the Caregiver Leave Act dealing with grievance reception and adjudication for privately-employed employees might be placed in the Human Rights Division of WSD, WSD notes that family caregivers would not be a protected class in the same sense as those who might face discrimination due to race, sexual orientation, gender, etc., which might require that a new unit be established that was not dependent upon the Human Rights Bureau’s restriction to investigating discrimination.

TECHNICAL ISSUES

SPO notes that the state has collective bargaining agreements with each of the three unions recognized as representing groups of employees, and uses the term “grievance”, to specify apparent violations in those collective bargaining agreements. SPO suggests the use of the term “complaint” instead of “grievance” in this legislation to avoid confusion.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Employees would continue to be able to be paid for family caregiving only if their employers’ policies permitted that.

LAC/al/sb/jle