

HOUSE BILL 38

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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and Linda Serrato

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE PAID FAMILY AND MEDICAL LEAVE ACT; CREATING THE PAID FAMILY AND MEDICAL LEAVE TRUST FUND; PROVIDING FOR THE PAID FAMILY AND MEDICAL LEAVE PROGRAM TO PAY AN ELIGIBLE EMPLOYEE A PERCENTAGE OF THE EMPLOYEE'S SALARY TO ALLOW THE EMPLOYEE TO BOND WITH A NEW CHILD OR TO CARE FOR A FAMILY MEMBER; LIMITING THE TIME ALLOWED FOR PAID FAMILY AND MEDICAL LEAVE; EXCEPTING CERTAIN EMPLOYEES; PROVIDING FOR ADMINISTRATION OF THE PROGRAM BY THE WORKFORCE SOLUTIONS DEPARTMENT; ENACTING ADMINISTRATIVE PENALTIES;

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HJC→PREEMPTING SIMILAR PROGRAMS;←HJC CREATING A TEMPORARY
ADVISORY COMMITTEE.

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 "Paid Family and Medical Leave Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Paid Family and Medical Leave Act:

A. "child" means a biological, adopted or foster
child, a stepchild, a legal ward or a child of a person
standing in loco parentis, who is:

(1) under eighteen years of age; or

(2) eighteen years of age or older and
incapable of self-care because of mental or physical
disability;

B. "claim for leave" means an application for leave
HJC→compensation←HJC that an employee makes to the department
pursuant to the Paid Family and Medical Leave Act in accordance
with department rules;

C. "department" means the workforce solutions
department, the secretary or an employee of the department
exercising authority lawfully delegated to that employee by the
secretary;

D. "domestic partner" means a person with whom
another person maintains a household and a mutual committed
relationship, without a legally recognized marriage;

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E. "employee" means a person working within the state who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, and includes a person employed by the state or a political subdivision of the state; HJC→"employee" does not mean an employee of an employer subject to the provisions of Title II of the federal Railway Labor Act or an employee as defined in either the federal Railroad Unemployment Insurance Act or the federal Employers' Liability Act or other comparable federal law;←HJC

F. "employer" means a person that has one or more employees within the state and includes an agent of an employer and the state or a political subdivision of the state;

G. "family leave" means HJC→paid←HJC leave for which an employee HJC→applies←HJC HJC→can apply for leave compensation←HJC pursuant to the Paid Family and Medical Leave Act and that is granted to the employee to allow the employee to bond with a child of the employee within twelve months of the birth or adoption of a child or placement of a foster child with the employee or to care for a family member if the family member has a serious health condition;

H. "family member" means a person who is:

(1) regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom an employee stands in loco parentis or

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a person to whom the covered individual stood in loco parentis when the person was a minor;

(2) a biological, adoptive or foster parent, stepparent or legal guardian of an employee or the employee's spouse or domestic partner or a person who stood in loco parentis when the employee or the employee's spouse or domestic partner was a minor;

(3) a person to whom an employee is legally married under the laws of any state or a domestic partner of the employee;

(4) a grandparent, great-grandparent, grandchild or sibling, whether a biological, foster, adoptive or step relationship, of an employee or an employee's spouse or domestic partner; or

(5) any other individual related by blood or affinity whose close association with the employee or employee's spouse or domestic partner is the equivalent of a family relationship;

I. "fund" means the paid family and medical leave trust fund;

J. "health care provider" means an individual licensed or certified to provide health care in the ordinary course of business;

K. "leave" means family leave or medical leave for which an employee HJC→**applies**←HJC HJC→**can apply for leave**

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compensation←HJC pursuant to the Paid Family and Medical Leave Act;

L. "leave compensation" means income that the department pays from the fund to an employee HJC→for←HJC HJC→who takes←HJC family or medical leave;

M. "medical leave" means HJC→paid←HJC leave for which an employee HJC→applies←HJC HJC→can apply for leave compensation←HJC pursuant to the Paid Family and Medical Leave Act to allow the employee to provide care for the employee's own serious health condition or to care for a family member with a serious health condition;

N. "secretary" means the secretary of workforce solutions;

O. "serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

(1) inpatient care in a hospital, hospice or residential medical facility; or

(2) continuing treatment by a health care provider; and

P. "spouse" means a partner to a lawful marriage.

SECTION 3. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE TRUST FUND--CREATION.--

A. The "paid family and medical leave trust fund" is created as a nonreverting fund in the state treasury and

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shall be administered by the department. The fund shall be held in trust for the benefit of the employees who paid into the fund and shall consist of all revenue collected and attributable to the Paid Family and Medical Leave Act. Money in the fund shall be invested by the state investment officer. Income from investment of the fund shall be credited to the fund.

B. Money in the fund is appropriated to the department to distribute leave compensation pursuant to the Paid Family and Medical Leave Act and to cover the costs of administering the paid family and medical leave program pursuant to that act.

C. Money shall be disbursed from the fund only on warrant issued by the department of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

D. The secretary shall ensure and maintain the self-sufficiency and solvency of the fund by performing an annual financial analysis and reporting the results and recommendations based on the analysis to the appropriate legislative body for adjustment of the formula used to determine employer and employee contributions to the fund.

SECTION 4. [NEW MATERIAL] APPLICABILITY--CONTRIBUTIONS TO

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FUND--REMITTANCE OF CONTRIBUTIONS--EXEMPTION FOR PRIVATELY RUN PROGRAMS--REQUIREMENTS OF PRIVATELY RUN PROGRAMS.--

A. The Paid Family and Medical Leave Act applies to:

(1) all public and private employees who are subject to state jurisdiction, except those employees who are employed by the United States;

(2) the employers of employees as described in Paragraph (1) of this subsection, whether or not the employer is physically located in the state; and

(3) self-employed individuals subject to state jurisdiction who opt into the program.

B. Beginning July 1, 2023 and for each calendar quarter thereafter, there is assessed against each participating employee one-half percent of the employee's earnings to fund leave compensation payments. An employee's contribution to the fund shall not be deducted from the employee's leave compensation.

C. Beginning July 1, 2023 and for each calendar quarter thereafter, there is assessed against each employer with participating employees an amount equal to four-tenths percent of each participating employee's earnings to fund administrative costs HCEDC→and leave compensation payments←HCEDC .

D. Beginning July 1, 2023 and for each calendar

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quarter thereafter, there is assessed against each self-employed individual as described in Paragraph (3) of Subsection A of this section nine-tenths percent of the individual's HCEDC→annual←HCEDC net HCEDC→annual earnings←HCEDC HCEDC→income←HCEDC as designated by the self-employed individual.

E. The contributions of employees and employers shall be remitted by the employer following the end of each quarter for which the contributions are deducted and on a date determined by the secretary.

F. The contributions of self-employed individuals shall be remitted by the individual following each end of the quarter for which the contributions are deducted and on a date determined by the secretary. A self-employed individual shall not be required to make contributions from leave compensation.

G. An employer that has adopted and operates a paid family and medical leave plan or program for the benefit of its employees that provides leave and leave compensation equal to or greater than the leave and leave compensation offered under the Paid Family and Medical Leave Act may apply for a waiver to exempt the employer and its employees from making required contributions to the fund. The employer shall apply and provide supporting documentation to the department for exemption each calendar year.

H. An employer granted a waiver pursuant to

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Subsection G of this section and the employer's employees shall have the same rights and protections enjoyed by employers and employees covered under the Paid Family and Medical Leave Act, including the right to appeal to the department.

I. An employer granted a waiver pursuant to Subsection G of this section shall notify all employees covered by the employer's paid leave program that:

(1) the employee is covered by a privately run leave program rather than a public plan;

(2) employees may apply to the employer for leave;

(3) employers must provide leave and leave compensation equal to or greater than that granted to employees under the Paid Family and Medical Leave Act; and

(4) employees may appeal to the department if any right granted under the Paid Family and Medical Leave Act is violated.

J. A paid family and medical leave plan that is privately operated, as described in Subsection G of this section, shall not:

(1) require an employee to pay more for private coverage than the employee would pay through contribution to the fund as described in Subsection B of this section; or

(2) impose additional restrictions or

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conditions on the process of applying for or receiving leave or leave compensation beyond those explicitly authorized by state law.

K. The department shall withdraw approval of a waiver for a privately operated paid leave plan or program that violates the provisions of Subsections G through J of this section.

SECTION 5. [NEW MATERIAL] ELIGIBILITY--LEAVE COMPENSATION CALCULATION--LEAVE DURATION--DOCUMENTATION REQUIRED--NOTICE OF DETERMINATION.--

A. Beginning HJC→January←HJC HJC→July←HJC 1, 2024, HJC→an employer shall←HJC HJC→allow←HJC HJC→the department shall provide leave compensation to←HJC an eligible employee HJC→to take←HJC HJC→who takes←HJC family leave or medical leave after the employee, in accordance with the provisions of the Paid Family and Medical Leave Act and department rules, has:

- (1) filed a claim for leave HJC→compensation←HJC approved by the department;
- (2) certified that the employee will not obtain new employment or enter into any new independent contractor agreements during the time the employee receives leave compensation pursuant to the Paid Family and Medical Leave Act; and
- (3) contributed to the fund for at least six

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months during any employment in the twelve-month period prior to submitting an application, not including contributions made for employment that the employee will continue during the leave.

B. Beginning HJC→January←HJC HJC→July←HJC 1, 2024, the department shall provide leave compensation to an eligible self-employed individual after the self-employed individual, in accordance with the provisions of the Paid Family and Medical Leave Act and department rules, has:

(1) filed a claim for leave

HJC→compensation←HJC approved by the department;

(2) certified that the self-employed

individual will not HCEDC→obtain←HCEDC HCEDC→commence←HCEDC new employment or enter into HCEDC→any←HCEDC new independent contractor agreements HCEDC→related to work performed by the individual←HCEDC during the time the self-employed individual receives leave compensation pursuant to the Paid Family and Medical Leave Act; and

(3) contributed to the fund for at least six

months during the twelve-month period prior to submitting an application, not including contributions made for other employment that the self-employed individual will continue during the leave.

C. An employee or self-employed individual is eligible HJC→to take←HJC HJC→for←HJC a maximum of twelve

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HJC→~~weeks~~←HJC HJC→weeks of←HJC leave HJC→compensation←HJC
during any twelve-month period; provided that an employee or
self-employed individual may HJC→~~take leave~~←HJC HJC→receive
leave compensation for leave taken←HJC intermittently and is
not required to use twelve weeks of leave at any one time.

D. An individual who becomes unemployed after
contributing to the fund as required by the Paid Family and
Medical Leave Act and who is eligible for leave
HJC→compensation←HJC at the time the individual becomes
unemployed may, within one year of becoming unemployed, apply
for HJC→~~leave~~←HJC and receive leave compensation if the
individual is not receiving unemployment insurance benefits.

E. An employee or self-employed individual shall be
ineligible to receive leave compensation if:

(1) the employee or self-employed individual
files a fraudulent claim for leave;

(2) the employee or self-employed individual
knowingly and willfully brings about the injury or sickness of
the employee, self-employed individual or another for which a
claim for leave is filed; or

(3) during leave, the employee or self-
employed individual does not provide the care or use leave as
described in the employee's application for leave.

F. The department shall issue leave compensation
from the fund to an HCEDC→eligible←HCEDC employee HCEDC→whose

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claim has been approved←HCEDC as follows:

(1) the calculation of weekly leave compensation shall be based on the employee's average weekly earnings during the twelve months immediately preceding the date of the claim for leave up to a maximum of sixty thousand dollars (\$60,000) in gross earnings per year. If the employee worked fewer than twelve months, then weekly leave compensation shall be based on the employee's average weekly earnings during the weeks the employee worked up to a maximum of sixty thousand dollars (\$60,000) in gross earnings;

(2) an HCEDC→eligible←HCEDC employee's weekly leave compensation shall equal one hundred percent of the compensation that would be paid to a minimum-wage-earning employee, pursuant to Section 50-4-22 NMSA 1978, working the same number of hours per week as the employee, plus sixty-seven percent of the HCEDC→employee's←HCEDC average earnings per week greater than the minimum wage compensation; and

(3) the maximum amount of weekly leave compensation shall be no more than the annual mean wage of all occupations in New Mexico as calculated by the United States bureau of labor statistics state occupational employment and wage estimates for the most recent year available divided by fifty-two.

G. The department shall issue leave compensation from the fund to self-employed individuals as follows:

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(1) a self-employed individual shall determine the annual net income to be used by the department when the self-employed individual enrolls in the paid family and medical leave program up to a maximum of sixty thousand dollars (\$60,000). A self-employed individual may adjust the individual's annual net income one time per year on the anniversary of the individual's enrollment;

(2) the calculation of weekly leave compensation shall be based on the self-employed individual's designated annual net income;

(3) a self-employed individual's weekly leave compensation shall equal one hundred percent of the compensation that would be paid to a minimum-wage-earning employee, pursuant to Section 50-4-22 NMSA 1978, working full time each week, plus sixty-seven percent of the

HCEDC→~~employee's average net income per week~~←HCEDC

HCEDC→self-employed individual's net income per week←HCEDC

greater than the minimum wage compensation; and

(4) the maximum amount of weekly leave compensation shall be no more than the annual mean wage of all occupations in New Mexico as calculated by the United States bureau of labor statistics state occupational employment and wage estimates for the most recent year available divided by fifty-two.

H. When an employee or self-employed individual

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submits a claim for leave HJC→compensation←HJC , the employee or self-employed individual shall provide the department with:

(1) if the applicant is an employee, a record of total earnings, the total number of weeks worked and the average number of hours worked per week during the previous twelve months in the employment from which the employee seeks leave; or

(2) if the applicant is a self-employed individual, documentation that the individual's business operated and HCEDC→~~earned gross income~~←HCEDC HCEDC→net income←HCEDC from self-employment during the previous twelve months.

I. The department shall notify the employer and employee or self-employed individual in writing within ten business days of application:

(1) if approved, and shall notify the employee or self-employed individual of the amount of leave compensation that the employee or self-employed individual is eligible to receive biweekly; provided that an eligible employee or self-employed individual shall begin receiving leave compensation within ten business days of the date of submission of a properly completed application or ten business days after approved leave begins;

(2) if denied, and shall notify the employee or self-employed individual of the grounds for denying the

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employee's or self-employed individual's application for eligibility and of the employee's or self-employed individual's right to appeal; and

(3) if further information or supporting documentation is required to determine the employee's or self-employed individual's eligibility for paid leave or the amount of leave compensation; provided that when the department receives sufficient information or supporting documentation from the employee or self-employed individual to make an eligibility determination, the department shall adhere to the notification provision of this subsection.

**SECTION 6. [NEW MATERIAL] CLAIMS FOR LEAVE--
DOCUMENTATION--CONFIDENTIALITY.--**

A. The department shall require an employee or self-employed individual who seeks family leave HJC→compensation←HJC to provide, in accordance with department rules, information relating to the family member that verifies the employee's or self-employed individual's claim for family leave HJC→compensation←HJC .

B. The department shall require an employee or self-employed individual who seeks medical leave HJC→compensation←HJC to provide, in accordance with department rules, verification by a health care provider that the employee, self-employed individual or family member has a serious health condition that supports the employee's or self-

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employed individual's claim for leave HJC→compensation←HJC .

C. Information contained in an employee's or self-employed individual's files and records pertaining to the Paid Family and Medical Leave Act are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the employee, the self-employed individual or an authorized representative of either may review the records or receive specific information from the records upon the presentation of the employee's or self-employed individual's signed authorization.

D. Employee information gathered by a private employer pursuant to the Paid Family and Medical Leave Act shall be kept confidential by the employer; provided that confidential records may be used by public employees in the performance of their duties.

SECTION 7. [NEW MATERIAL] EMPLOYEE NOTICE TO EMPLOYER--
REDUCTION OF OTHER LEAVE PROHIBITED.--

HJC→A. Beginning July 1, 2024, an employer shall allow an employee to take up to a combined total of twelve weeks of family leave and medical leave during any twelve-month period. An employee may take leave intermittently and is not required to use twelve weeks of leave at any one time.←HJC

HJC→A.←HJC HJC→B.←HJC An employee shall:

(1) make a reasonable effort to schedule leave so as not to unduly disrupt the operations of the employer;

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(2) provide the employer with prior notice of the schedule on which the employee will be taking leave, to the extent practicable; and

(3) provide the employer with a copy of the employee's application for leave.

HJC→**B.**←HJC HJC→**C.**←HJC Leave taken shall not result in a reduction of the total amount of leave to which an employee is entitled in excess of the amount of leave actually taken; provided that an employer subject to the federal Family and Medical Leave Act of 1993 may require an employee who takes HJC→**family leave or medical**←HJC leave and receives leave compensation under the Paid Family and Medical Leave Act HJC→~~to~~←HJC HJC→~~take paid leave concurrently with~~←HJC HJC→**that**←HJC **also qualifies for**←HJC leave under the federal Family and Medical Leave Act of 1993 HJC→**to take the leaves**←HJC **concurrently**←HJC .

HJC→**C.**←HJC HJC→**D.**←HJC Nothing in this section shall be construed to entitle an employee to more leave than required pursuant to Section 5 of the Paid Family and Medical Leave Act.

HJC→**D.**←HJC HJC→**E.**←HJC An employer shall post and keep posted in a conspicuous place upon its premises a notice that informs employees of the right to take family and medical leave and summarizes the major provisions of the Paid Family and Medical Leave Act.

SECTION 8. [NEW MATERIAL] RETURN TO EMPLOYMENT.--

A. A self-employed individual shall notify the department within ten business days of the self-employed individual's return to work.

B. Upon an employee's return after leave, an employer shall:

(1) restore the employee to the position of employment held by the employee when the leave commenced or place the employee in a position for which employee benefits, wages and other terms and conditions of employment are the same as or greater than those of the position from which the employee took leave; and

(2) immediately notify the department that the employee has returned to work.

C. Nothing in this section shall be construed to entitle a restored employee to:

(1) the accrual of seniority or employment benefits during the period the employee is using leave; or

(2) the right to any benefit or position of employment other than the right the employee would have been entitled to had the employee not taken the leave.

D. Any yearly certification or training that an employer requires as a condition of employment may remain in place and applicable to any employee taking leave; provided that nothing in this subsection shall supersede another

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provision of law or a collective bargaining agreement that governs an employee's return to work after leave.

E. Nothing in this section shall prohibit an employer from requiring an employee who uses leave to report periodically to the employer on the status and intention of the employee to return to work.

F. An employer shall pay its share of health insurance premiums and maintain an employee's health coverage while the employee is on leave pursuant to the Paid Family and Medical Leave Act under terms that the employee would have received if the employee had not taken leave. The employee on leave shall pay the same share of premium payments as the employee would have paid if the employee were not on leave.

SECTION 9. [NEW MATERIAL] INTERFERENCE AND RETALIATION PROHIBITED.--

A. It is unlawful for an employer or any other person to interfere with, restrain or deny the exercise of, or the attempt to exercise, any right protected under the Paid Family and Medical Leave Act.

B. An employer shall timely provide to the employee documents required to apply for leave.

C. An employer, employee organization or other person shall not take retaliatory personnel action or otherwise discriminate against a person because the person exercised rights protected under the Paid Family and Medical Leave Act.

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Such rights include:

(1) requesting, filing for, applying for or exercising any right to take leave as provided for under the Paid Family and Medical Leave Act;

(2) communicating to the employer or any other person or entity an intent to file a claim, a complaint with the department or courts or an appeal;

(3) testifying, planning to testify or assisting at any time in any investigation, hearing or proceeding under the Paid Family and Medical Leave Act;

(4) informing any person about an employer's alleged violation of the Paid Family and Medical Leave Act; and

(5) informing any person of the person's rights under the Paid Family and Medical Leave Act.

D. It is unlawful for an employer's absence policy to count paid family and medical leave taken under the Paid Family and Medical Leave Act as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action.

E. The protections provided in this section shall apply to any person who HJC→, **reasonably but**←HJC mistakenly, HJC→~~but in good faith~~←HJC, alleges violations of the Paid Family and Medical Leave Act.

F. A person that is found by a hearing officer or court of competent jurisdiction to have discharged a worker in

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violation of this section shall rehire that employee; provided that the worker agrees to be rehired.

SECTION 10. [NEW MATERIAL] ADVERSE

DETERMINATIONS--APPEAL PROCEDURES--ADMINISTRATIVE
ACTIONS--DEPARTMENTAL DISCIPLINARY POWERS.--

A. An employee or a self-employed individual named in an application for leave may appeal an adverse determination of that application to the department as follows:

(1) the aggrieved party shall:

(a) file an appeal in writing with the department within fifteen business days of receiving notice of the adverse decision;

(b) set forth the reasons for appeal;
and

(c) provide notice to all parties that an appeal has been filed; and

(2) the secretary shall:

(a) hold a hearing within ten business days after an appeal is properly made, due notice is given to the parties in dispute and mediation is refused by any party;

(b) develop a record of the proceedings;
and

(c) rule on the appeal within five business days after the completion of the hearing and issue a final decision in accordance with Subsection B of Section

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39-3-1.1 NMSA 1978.

B. An aggrieved party or the department on its own motion may bring an administrative action for an alleged violation of the Paid Family and Medical Leave Act under a public or privately run leave program as follows:

(1) the aggrieved party or the department shall:

(a) file a complaint alleging a violation of the Paid Family and Medical Leave Act in writing with the department within thirty business days of becoming aware of the alleged violation;

(b) set forth the grounds of the complaint; and

(c) provide notice to parties to the alleged violation that a complaint has been filed; and

(2) the secretary shall:

(a) upon receipt of a complaint alleging a violation, first allow for mediation upon agreement by all parties;

(b) hold a hearing within ten business days after an appeal is properly made, due notice is given to the parties in dispute and mediation is refused by any party;

(c) develop a record of the proceedings;

(d) have power to take disciplinary action, including investigating, fining, censuring or

reprimanding a party or suspending or revoking a waiver issued pursuant to the Paid Family and Medical Leave Act; and

(e) rule on the appeal within five business days after the completion of the hearing and issue a final decision in accordance with Subsection B of Section 39-3-1.1 NMSA 1978.

C. A party may appeal a final decision made by the department pursuant to the provisions of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

D. The department may appear in its own name in district court in actions for injunctive relief to prevent any person or entity from violating the provisions of the Paid Family and Medical Leave Act or rules promulgated by the department.

SECTION 11. [NEW MATERIAL] ADMINISTRATIVE PENALTIES.--

A. The department may assess an administrative penalty not to exceed ten thousand dollars (\$10,000) upon any employee or self-employed individual who files a fraudulent claim for leave or otherwise willfully violates a provision of the Paid Family and Medical Leave Act. An employee who files a fraudulent claim for leave may be subject to termination of employment.

B. The department may assess an employer who wrongfully denies an employee the employee's right to leave or otherwise violates a provision of the Paid Family and Medical

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Leave Act an administrative penalty not to exceed ten thousand dollars (\$10,000) for each violation of that act.

HCEDC→C. The administrative penalties collected by the department pursuant to Subsections A and B of this section shall be deposited into the fund.←HCEDC

HJC→HCEDC→SECTION 12. ~~[NEW MATERIAL] PRIVATE RIGHT OF ACTION BY EMPLOYEES.~~

~~A. An employee covered by a privately run or state-run leave program or that employee's successor in interest who has suffered damages as a result of a violation of the Paid Family and Medical Leave Act is granted a right to bring an action in district court for:~~

~~(1) any wages, salary, employment benefits or other compensation denied or lost to the employee by reason of the violation;~~

~~(2) in a case in which wages, salary, employment benefits or other compensation has not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, including the cost of providing care, up to a sum equal to twelve weeks of wages or salary for the employee;~~

~~(3) the interest on amounts described in this subsection calculated at the prevailing rate; and~~

~~(4) such equitable relief as may be~~

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~~appropriate, including employment, reinstatement and promotion.~~

~~B. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court may award attorney fees to the prevailing party if the party:~~

~~(1) complaining of the violation of the Paid Family and Medical Leave Act has brought an action that the party knew to be groundless; or~~

~~(2) charged with the violation of the Paid Family and Medical Leave Act has willfully engaged in the violation.~~

~~C. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.~~ ←HCEDC←HJC

HJC→HJC→SECTION 12. [NEW MATERIAL] PRIVATE RIGHT OF ACTION BY EMPLOYEES.---

~~A. An employee covered by a privately run or state-run leave program or that employee's successor in interest who has suffered damages as a result of a violation of the Paid Family and Medical Leave Act is granted a right to bring an action in district court for:~~

~~(1) any wages, salary, employment benefits or other compensation denied or lost to the employee by reason of the violation;~~

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~~(2) in a case in which wages, salary, employment benefits or other compensation has not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, including the cost of providing care, up to a sum equal to twelve weeks of wages or salary for the employee;~~

~~(3) the interest on amounts described in this subsection calculated at the prevailing rate; and~~

~~(4) such equitable relief as may be appropriate, including employment, reinstatement and promotion.~~

~~B. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court may award attorney fees to the prevailing party if the party:~~

~~(1) complaining of the violation of the Paid Family and Medical Leave Act has brought an action that the party knew to be groundless; or~~

~~(2) charged with the violation of the Paid Family and Medical Leave Act has willfully engaged in the violation.~~

~~G. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.~~ ←HJC←HJC

HJC→SECTION 12. [NEW MATERIAL] PREEMPTION.--

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A. A city, county, home rule municipality or other political subdivision of the state shall not adopt nor continue in effect any ordinance, rule, regulation, resolution or statute that establishes a program of rights and benefits as set out in the Paid Family and Medical Leave Act, excluding a paid sick leave or paid time off ordinance, policy or resolution.

B. Subject to the requirements of the Paid Family and Medical Leave Act, the provision of Subsection A of this section shall not prevent a city, county, home rule municipality or other political subdivision of the state from establishing any leave policies for its employees. ←HJC

SECTION HJC → ~~HCEDC → 13.~~ ← ~~HCEDC~~ ~~HCEDC → 12.~~ ← ~~HCEDC~~ ← HJC
HJC → 13. ← HJC [NEW MATERIAL] COLLECTIVE BARGAINING AGREEMENTS UNAFFECTED.--Nothing in the Paid Family and Medical Leave Act shall be construed to diminish the rights, privileges or remedies of any employee under any collective bargaining agreement.

SECTION HJC → ~~HCEDC → 14.~~ ← ~~HCEDC~~ ~~HCEDC → 13.~~ ← ~~HCEDC~~ ← HJC
HJC → 14. ← HJC [NEW MATERIAL] DEPARTMENT TO PROMULGATE RULES-- AGENCIES AND DEPARTMENTS TO COOPERATE.--

A. By July 1, 2023, the department shall adopt and promulgate rules to implement the provisions of the Paid Family and Medical Leave Act.

B. State agencies and departments shall cooperate

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with the secretary to timely and efficiently provide the information and services necessary to carry out the provisions of the Paid Family and Medical Leave Act.

SECTION HJC → ~~HCEDC~~ → 15. ← ~~HCEDC~~ ~~HCEDC~~ → 14. ← ~~HCEDC~~ ← HJC

HJC → 15. ← HJC TEMPORARY PROVISION--PAID FAMILY AND MEDICAL LEAVE IMPLEMENTATION ADVISORY COMMITTEE--CREATED--PURPOSE-- MEMBERS.--

A. The "paid family and medical leave implementation advisory committee" is created in the workforce solutions department. The advisory committee shall consist of thirteen members appointed by the secretary of workforce solutions. Members of the advisory committee include:

- (1) a representative of a nonprofit organization that advocates for women and girls;
- (2) a representative of an organization that advocates for individuals fifty years of age or older;
- (3) a representative of a statewide chamber of commerce;
- (4) two representatives of a small business development center advisory council;
- (5) a representative of a medical society with expertise in the care of children;
- (6) a member representing the parents of newborn children;
- (7) a member representing adoptive and foster

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parents;

(8) a member representing unpaid family caregivers;

(9) the director of the commission on the status of women;

(10) a representative of a university-based bureau of business and economic research;

(11) a representative of an organization with expertise in chronic illnesses; and

(12) a representative of an organization with expertise in disabilities.

B. The paid family and medical leave implementation advisory committee shall provide input regarding best practices for the efficient and timely development, implementation and promulgation of rules and educational materials to carry out the provisions of the Paid Family and Medical Leave Act.

C. The secretary of workforce solutions shall consult with the paid family and medical leave implementation advisory committee at least quarterly as rules are developed to implement a program pursuant to the Paid Family and Medical Leave Act.

D. Members of the paid family and medical leave implementation advisory committee shall not be entitled to per diem and mileage expenses. The workforce solutions department shall provide staff for the committee.

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E. The paid family and medical leave implementation advisory committee shall function from the date of its appointment, which shall be no later than July 1, 2022, until July 1, 2023.

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