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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>HB20/HLVMCS/HJCS/aHFI#1/ aSHPAC/aSTBTC/aSJC/aSFI#1</u>	Sponsor	<u>HJC HLVMC/HJC; SHPAC/STBTC/SJC</u>
Tracking Number	<u>.218645.2</u>	Committee Referrals	<u>SHPAC/STBTC/SJC</u>
Short Title	<u>Healthy Workplaces Act</u>		
Analyst	<u>Canada</u>	Original Date	<u>2/19/2021</u>
		Last Updated	<u>3/19/2021</u>

BILL SUMMARY

Synopsis of SFI#1 Amendment

Senate Floor amendment #1 for the House Judiciary Committee substitute for the House, Labor, Veterans' and Military Affairs Committee substitute for House Bill 20 (HB20/HLVMCS/HJCS/aHFI#1/aSHPAC/aSTBTC/aSJC/aSFI#1) reinstates the exemption that the Healthy Workplaces Act does not apply to the state or any political subdivision of the state, which includes employees in the public education system.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the House Judiciary Committee substitute for House Labor, Veterans' and Military Affairs Committee substitute for House Bill 20 (HB20/HLVMCS/HJCS/aHFI#1/aSHPAC/aSTBTC/aSJC) strikes section 2 of the bill that outlines the purpose of the act. The bill also changes the definition of "employer" to include state or any subdivision of the state, specifically excluded in the definition previously. The bill maintains the exclusion of the act applying to federal government employees within this definition. The bill also omits section 5 of the bill that requires supplemental leave to be guaranteed during public health emergencies and removes the definition of "public health emergency." The bill adds a definition for an "independent contractor." The bill prohibits an employer to retaliate against an employee who has reasonably alleged violations of the Healthy Workplaces Act. The bill also omits section 15, which was previously the severability provision.

This analysis focuses on the impact to New Mexico public schools.

Synopsis of STBTC Amendment

The Senate Tax, Business and Transportation Committee amendment to the House Judiciary Committee substitute for the House Labor, Veterans' and Military Affairs Committee substitute for House Bill 20 as amended (HB20/aHLVMC/aHJC/aHFI#1/aSHPAC/aSTBTC) clarifies employees may start using their accrued paid sick leave 60 days after the beginning of their

employment or after the effective date of the act, whichever is later. The bill also allows employers four different methods to determine the 12-month period during which paid sick leave may be used. The employer can use the calendar year, a fiscal year or any other fixed year, the 12-month period after the first paid sick leave was used, or a rolling 12-month period measured backward from the date an employee first uses earned sick leave.

Synopsis of SHPAC Amendment

The Senate Health and Public Affairs Committee amendment to the House Judiciary Committee substitute for the House Veterans' and Military Affairs Committee substitute for House Bill 20 as amended (HB20/aHLVMC/aHJC/aHFI#1/aSHPAC) clarifies, if employers' previous paid leave policies adhere to the act, those paid leave policies would be compliant with the Healthy Workplaces Act. The bill also details sick leave under the act would be added to what is already provided under a collective bargaining agreement if the conditions and purposes of the leave differed from the act's conditions and purposes. The bill also establishes July 1, 2022, as the effective date of the act.

Synopsis of HFI#1 Amendment

House Floor amendment #1 for the House Judiciary Committee substitute for the House, Labor, Veterans' and Military Affairs Committee substitute for House Bill 20 (HB20/aHLVMC/aHJC/aHFI#1) removes the emergency clause from the bill. The bill adds a detail that earned sick leave would be accrued when the employee starts working or the effective date of the Healthy Workplaces Act. The bill also adds additional detail that explains earned sick leave can be used 60 days after the date the sick leave started to accrue. HB20/aHLVMC/aHJC/aHFI#1 specifies paid sick leave would be in addition to any leave provided by an employer pursuant to a collective bargaining agreement. The bill also changes the required documentation stating the reason for sick leave to be after two days rather than after three days.

Synopsis of the Original Bill

The House Judiciary Committee substitute for the House, Labor, Veterans' and Military Affairs Committee substitute for House Bill 20 (*HB20/aHLVMC/aHJC) creates the Healthy Workplaces Act that requires most employers to provide employees paid sick leave in different circumstances related to the employee's or employee's family health or wellbeing. The bill establishes minimum hours employees can accrue for paid sick leave and maximum hours that can be used for this purpose annually. *HB20/aHLVMC/aHJC requires employers to provide supplemental paid sick leave during a public health emergency for employees to respond to the effects of the public health emergency such as quarantine, testing, treatment, and other circumstances. The bill requires the Workforce Solutions Department (WSD) to investigate complaints against employers that do not follow provisions of the act. The bill allows for court action within three years of alleged violations of the Healthy Workplaces Act. *HB20/aHLVMC/aHJC makes employers liable for not following provisions of the Paid Sick Leave Act and requires employers to pay fines or damages to those affected.

This bill has an emergency clause and becomes effective immediately on enactment.

FISCAL IMPACT

HB20/HLVMCS/HJCS/aHFI#1/aSHPAC/aSTBTC/aSJC does not contain an appropriation.

A sample of school district sick leave policies from school districts shows school employees receive an average of between eight and 12 sick days per year, among other paid and unpaid leave benefits. The minimum eight-day paid sick leave requirement for an employee who works 40 hour weeks within the Healthy Workplaces Act is less than or equal to the benefits offered by most school districts, which may incentivize school districts to decrease their leave policies if they exceed the minimum requirement of eight days. Additionally, the bill requires the sick leave under the Healthy Workplaces Act to be in addition to any paid time off provided by an employer pursuant to a collective bargaining agreement, unless the paid time off they already have access to is for the same purpose and under the same conditions. Because of the different policies in place, the specific number of employees or amount of additional sick time required outside of current offerings cannot be determined.

School districts and charter schools may incur penalties for violating provisions of *HB20 in six specific circumstances that range from \$500 to \$1,000 for each violation. School districts and charter schools may also be responsible for costs tied to actual damages, back pay and benefits, reinstatement, rescission of disciplinary action, litigation costs, and attorney fees. WSD did a review of the 14 states that have paid sick leave requirements in place and determined that no single state law has as an aggressive array of requirements and employer penalties as in HB20/HLVMCS/HJCS/aHFI#1/aSHPAC/aSTBTC/aSJC.

SUBSTANTIVE ISSUES

School Employees Paid Sick Leave. HB20/HLVMCS/HJCS/aHFI#1/aSHPAC/aSTBTC/aSJC creates a minimum amount of earned paid sick leave hours employees should be able to earn in a specific time period. The bill requires employers allow employees to earn one hour of paid sick leave for every 30 hours worked. For an average full-time employee, under these circumstances eight days can be earned each year. Policies that were reviewed in New Mexico show evidence school districts are providing equal to or more generous paid sick leave benefits than the minimum requirements established in the bill, but the established minimum requirements could create an incentive for school districts to decrease the amount of paid sick leave offered to match requirements in the bill. Additionally, HB20/HLVMCS/HJCS/aHFI#1/aSHPAC/aSTBTC/aSJC allows employees to take up to 64 hours, the equivalent of eight days, of paid sick leave each year, with any unused leave carrying over to the next year. Currently, school employees on average accrue equal to or more days per year than the cap on how much they would be able to use in a year established in HB20/HLVMCS/HJCS/aHFI#1/aSHPAC/aSTBTC/aSJC. Of policies reviewed, most school districts allow paid sick leave balances to roll over to encourage employees to accrue as many sick days as possible as a contingency against future illness. The bill states the sick leave can carry over from year to year, but an employer is not required to allow an employee to use more than 64 hours in a year.

Benefits, like sick leave for school employees, are determined differently across the United States. In some areas, states determine minimum requirements of school employee paid sick leave policies in state law; New Mexico and other states leave these determinations to local school boards. For example, in Oregon and Kentucky, state law requires that school district employees are offered at least 10 days of paid sick leave. On average in large school districts nationally, teachers receive 11 days of sick leave per year and paid sick leave policies from 10 days to 14 days. A sample of publically available school district paid sick leave policies shows that policies across New Mexico vary in stipulations tied to paid sick leave and the duration of time an employee can accrue. From

policies reviewed, school employees paid sick leave allocations range between eight and 12 days per year.

OTHER SIGNIFICANT ISSUES

Teacher-Specific Duties. Although most school districts and charter schools do offer paid sick leave that exceed the requirements in the bill, paid sick leave benefits have stipulations due to the unique features of school employee positions, such as teachers. Some school-specific paid sick leave plans require supervisors to monitor when employees request sick leave days and determine if a pattern emerges, such as an employee typically taking leave before or after holidays, on a staff development day, or on an early release day. Patterns can result in disciplinary action. Additionally, some policies require employees to show evidence of a medical note from a doctor when leave is submitted or if the leave is taken after a number of consequent days. The bill allows paid sick leave under two days to not require documentation, but after two days medical documentation may be required.

Teacher-specific contracts are usually nine months with shorter hours than the typical eight-hour workday. According to research from the National Bureau of Economic Research, teacher attendance is directly related to student outcomes; the more teachers are absent, the more student achievement is affected. For example, when teachers are absent for 10 days, the decrease in student achievement is equivalent to the difference between having a brand new teacher and one with two or three years more experience. Research suggests absent teachers are typically replaced by less qualified substitute teachers and instructional intensity and consistency may decline. Additional research indicates that teacher absences represent significant costs to school districts that must pay for substitutes and associated administrative costs. To encourage less teacher absenteeism, within the previous now defunct NMTech evaluation system, teacher attendance made up 5 percent of a teacher's summative evaluation rating, although teachers were allowed to take up to six days of leave before it impacted their annual performance evaluation.

RELATED BILLS

Relates to HB37, Paid Sick Leave Act, which requires employers to allow employees the same amount of awarded sick leave per year and creates penalties for businesses that do not comply, among other elements.

Relates to HB38, Paid Family and Medical Leave Act, which establishes paid leave for family or medical purposes.

SOURCES OF INFORMATION

- LESC Files
- Department of Workforce Solutions

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