

HOUSE BILL 415

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Mark Duncan

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; PROVIDING THAT WHEN THE USE OF EARNED SICK LEAVE IS NOT FORESEEABLE, AN EMPLOYEE SHALL NOTIFY THE EMPLOYER ORALLY OR IN WRITING PURSUANT TO THE WRITTEN POLICY OF THE EMPLOYER.

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

SECTION 1. Section 50-17-3 NMSA 1978 (being Laws 2021, Chapter 131, Section 3) is amended to read:

.229854.1AIC March 6, 2025 (1:36pm)

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"50-17-3. 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; and provided further that an employer may instead elect to grant employees the full sixty-four hours of earned sick leave for the upcoming year on January 1 of each year or, for employees whose employment begins after January 1 of a given year, a pro rata portion of the sixty-four hours for use in the remainder of that 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 the latter of commencement of the employee's employment or the effective date of the Healthy Workplaces Act and may be used beginning on the latter of those dates;

(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

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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;

(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

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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 as provided in this section;

(7) for purposes of this subsection, an employer may choose any one of the following methods for determining the twelve-month period in which the earned sick leave may be used:

- (a) the calendar year;
- (b) any fixed twelve-month leave year, such as a fiscal year, a year required by other law or a year starting on an employee's anniversary date;
- (c) the twelve-month period measured forward from the date an employee's first use of earned sick leave occurs; or
- (d) a rolling twelve-month period measured backward from the date an employee uses any earned sick leave; and

(8) for purposes of this subsection, "year to year" shall run concurrently with the twelve-month period elected by the employer.

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

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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

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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 reasonable 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~~] pursuant to the written policy of the employer HCEDC→or in the absence of a written policy, as soon as practicable←HCEDC .

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.

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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."

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