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FISCAL IMPACT REPORT

SPONSOR McSorely **ORIGINAL DATE** 2/12/2007
LAST UPDATED 2/25/2007 **HB** _____

SHORT TITLE Family Leave Act **SB** 597/aSJC

ANALYST Moser

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

State Personnel Office (SPO)

Administrative Office of the Courts (AOC)

Attorney Generals Office (AGO)

SUMMARY

Synopsis of SJC Amendment

Senate Judiciary Committee Amendment to Senate Bill 597 clarifies that the Bill will apply in cases where existing "written" policies of the employer exists with respect to sick leave and other forms of time off.

Synopsis of Original Bill

Senate Bill 597 requires an employer to grant paid or unpaid family leave to an employee to care for family members as defined in the law. It also prohibits discharge or retaliation against employees who exercise the rights defined in this law. This law expands coverage provided under the federal Family Medical Leave Act of 1993 by providing additional rights at the state level.

FISCAL IMPLICATIONS

This bill may have a financial impact to small employers within the state of New Mexico. It is

difficult to calculate this impact.

SIGNIFICANT ISSUES

This legislation expands the scope of coverage provided under the federal Family Leave Act of 1993 by giving additional rights to employees within New Mexico and without defining the terms and conditions of the coverage, rights and responsibilities of the parties. The federal government in establishing the Family Medical Leave Act recognized that the law could be detrimental to the operations of a small business. Senate Bill 597:

- expands coverage to all employers in New Mexico regardless of size in addition to including parent-in-laws as a covered family member.
- provides coverage immediately upon employment as compared to the federal law which states that employees must have worked for the employer for at least 1250 hours in the prior twelve months to be covered. The State Personnel Office (SPO) states that this bill provides no minimum time limit that an employee must have worked for the employer in order to qualify. An employee could potentially work for one day and then request this leave, whereas leaving the employer in an unfavorable employment obligation with an employee.
- does not indicate a maximum amount of time stated that an employee can be out. SPO offers that this may leave the employer in an unfavorable employment obligation regarding the employee.
- does allow for the use of sick leave or other paid leave but does not authorize or recognize the use of unpaid leave such as leave without pay. These leaves would be governed by the employer's policies or a collective bargaining agreement.
- could have a significant impact on small employers with limited staffing.
- uses the term "serious health condition" without defining the term. The federal Family Medical Leave Act (FMLA) goes to great depth in explaining this term because of its significance to both the employee and the employer.
- does not speak with regard to Section 3, Prohibition of Discharge to the ability of the employee to perform the essential functions of the job or the length of time that the employer must continue to employ individuals unable to perform their jobs. This could effectively hamper the employer's ability to effectively deal with work demands and unique situations.

ALTERNATIVES

SPO suggests that amendments could be developed which:

- Add language requiring some minimum amount of time of employment such as 180 days at a minimum.
- Add language to address a maximum amount of time that the employee can take off such as one year.
- Add language to address "un-paid" leave to be substituted for paid leave in case no leave is offered or the paid leave runs out and the employee still needs care for a qualified family member.

An additional change may be to define terms so that they carry the same definition and requirements as within the FMLA.