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SENATE BILL 385

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO DOMESTIC AFFAIRS; ENACTING THE JOB SECURITY ACT;  
ALLOWING EMPLOYEES TO USE SICK OR ANNUAL LEAVE TO PROVIDE  
HEALTH CARE FOR FAMILY MEMBERS OR TO PARTICIPATE IN CHILDREN'S  
EDUCATIONAL ACTIVITIES; PROHIBITING EMPLOYEE DISCHARGE FOR USE  
OF SICK OR ANNUAL LEAVE.

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

Section 1. SHORT TITLE.--This act may be cited as the  
"Job Security Act".

Section 2. DEFINITIONS.--As used in the Job Security Act:

A. "child" means a biological, adopted or foster  
child, a legal ward, a grandchild of a person serving as the  
grandchild's parent or a child of a person standing in loco  
parentis; provided that the child is:

- (1) under the age of eighteen years; or

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

4                   B. "grandparent" means a parent of a parent of an  
5 employee;

6                   C. "parent" means a biological parent of an  
7 employee or an individual who stood in loco parentis to an  
8 employee when the employee was a child;

9                   D. "parent-in-law" means a parent of the spouse of  
10 an employee;

11                   E. "serious health condition" means an illness,  
12 injury, impairment or physical or mental condition that  
13 involves:

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

16                               (2) continuing treatment by a health care  
17 provider;

18                   F. "sick leave or other paid time off" means time  
19 allowed pursuant to the terms of an appropriate collective  
20 bargaining agreement or employer policy, as applicable, to an  
21 employee for illness, vacation or personal holiday; and

22                   G. "spouse" means a husband or wife.

23                   Section 3. PROTECTED USES OF LEAVE.--

24                   A. If, pursuant to the terms of a collective  
25 bargaining agreement or employer policy applicable to an

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1 employee, the employee is entitled to sick leave or other paid  
2 time off, then an employer shall allow an employee to use the  
3 employee's choice of sick leave or other paid time off to:

4 (1) care for a child of the employee with a  
5 health condition that requires treatment or supervision;

6 (2) care for a spouse, parent, parent-in-law  
7 or grandparent of the employee who has a serious health  
8 condition or an emergency; or

9 (3) participate in, as a child's primary  
10 caregiver, school-based activities for the employee's child.

11 B. An employee shall not take leave for purposes of  
12 the Job Security Act until the employee is eligible for either  
13 sick leave or annual leave.

14 C. Except for terms relating to the choice of  
15 leave, a collective bargaining agreement or employer policy  
16 applicable to leave shall remain otherwise unchanged.

17 D. Use of leave other than accrued sick leave or  
18 other paid time off to care for a child, grandchild, spouse,  
19 parent, parent-in-law or grandparent under the circumstances  
20 described in this section shall be governed by the terms of the  
21 appropriate collective bargaining agreement or employer policy  
22 as applicable.

23 Section 4. PROHIBITION OF DISCHARGE.--

24 A. An employer shall not discharge, threaten to  
25 discharge, demote, suspend, discipline or otherwise

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1 discriminate against an employee because the employee:

2 (1) has exercised, or attempted to exercise, a  
3 right provided pursuant to the Job Security Act; or

4 (2) has filed a complaint, testified or  
5 assisted in a proceeding pursuant to the Job Security Act.

6 B. Remedies shall be those available pursuant to  
7 the collective bargaining agreement or employer policies in  
8 place and applicable to the employee. An employee may apply  
9 for injunctive relief in any court of competent jurisdiction to  
10 enjoin an employer from taking action that will deny the  
11 employee the protection of the Job Security Act. An injunction  
12 filed pursuant to this section shall be in addition to all  
13 other remedies available to the employee at law or in equity.

14 Section 5. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2009.

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