

1 SENATE BILL 375

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Jacob R. Candelaria

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10 AN ACT

11 RELATING TO EMPLOYMENT; CREATING THE NEW MEXICO FAMILY ACT;
12 PROVIDING FOR A STATE UNPAID FAMILY AND MEDICAL LEAVE PROGRAM
13 ADMINISTERED BY THE WORKFORCE SOLUTIONS DEPARTMENT; CREATING
14 THE FAMILY AND MEDICAL LEAVE COMPENSATION FUND; PROVIDING FOR A
15 SUPPLEMENTAL INCOME TAX DISTRIBUTED TO THE FAMILY AND MEDICAL
16 LEAVE COMPENSATION FUND; PROVIDING FOR ADMINISTRATION OF THE
17 FAMILY AND MEDICAL LEAVE COMPENSATION FUND BY THE WORKFORCE
18 SOLUTIONS DEPARTMENT; PROVIDING FOR COMPENSATION FROM THE
19 FAMILY AND MEDICAL LEAVE COMPENSATION FUND TO EMPLOYEES WHO ARE
20 TAKING UNPAID FAMILY AND MEDICAL LEAVE; ESTABLISHING CONDITIONS
21 OF ELIGIBILITY FOR COMPENSATION FROM THE FAMILY AND MEDICAL
22 LEAVE COMPENSATION FUND; REQUIRING RULEMAKING; ALLOWING AN
23 INCOME TAX DEDUCTION; MAKING AN APPROPRIATION.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
2 through 10 of this act may be cited as the "New Mexico Family
3 Act".

4 SECTION 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

5 A. The legislature finds that:

6 (1) without paid family and medical leave,
7 many New Mexico workers are unable to afford to take time away
8 from work to care for themselves, ill or at-risk parents and
9 relatives or newborn or newly adopted children, but few New
10 Mexico workers have access to paid family and medical leave;

11 (2) often, workers who are eligible to take
12 leave pursuant to the federal Family and Medical Leave Act of
13 1993, which does not provide leave compensation, are unable to
14 take advantage of that right because they cannot afford to
15 exercise it. Moreover, the federal Family and Medical Leave
16 Act of 1993 only applies to businesses that employ at least
17 fifty employees within a given locale and does not apply to
18 domestic partners. Thus, a state law allowing all eligible
19 employees access to family and medical leave without pay from
20 their employers and to reasonable compensation during that time
21 of leave is necessary;

22 (3) family caregiving has a high societal
23 value, and working caregivers should not have to risk their
24 families' financial security in order to carry out caregiving
25 responsibilities;

1 (4) as the population ages, the number of
2 people with long-term health issues is on the increase, as is
3 the need for family members to provide care for these elders;

4 (5) at the time a child is born or adopted,
5 both a mother and father's ability to spend time bonding with
6 the new child leads to individuals and families that are both
7 physically and mentally healthier than when economic
8 circumstances force a parent's quick return to work because
9 there is no access to paid family and medical leave. A
10 statewide paid family and medical leave program will enable
11 more New Mexicans to be involved in caregiving and child-
12 bonding and will promote families' financial security and
13 independence; and

14 (6) helping families adapt to the competing
15 interests of work and home not only benefits workers but also
16 benefits employers by increasing worker productivity and
17 reducing worker turnover.

18 B. The purpose of the New Mexico Family Act is to
19 enable workers to take time away from work for their own
20 serious health issues, to provide physical or mental health
21 care for family members who cannot care for themselves or to
22 provide care for and bond with a newborn or newly adopted minor
23 child by providing the right to take unpaid family and medical
24 leave and to receive a reasonable level of compensation during
25 that unpaid time away from work.

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1 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the
2 New Mexico Family Act:

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

6 (1) under eighteen years of age; or

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

10 B. "department" means the workforce solutions
11 department, the secretary of workforce solutions or an employee
12 of the department exercising authority lawfully delegated to
13 that employee by the secretary;

14 C. "domestic partner" means a person who is at
15 least eighteen years of age, who is not married or a member of
16 another domestic partnership, who is in an exclusive committed
17 relationship with and for the benefit of the other partner, who
18 has shared a primary residence with the other partner for
19 twelve or more consecutive months, who is jointly responsible
20 with the other partner for each other's common welfare, who
21 shares joint financial obligations with the other partner and
22 who does not have a blood relationship with the other partner
23 that would preclude marriage between them under New Mexico law;

24 D. "employee" means either an individual domiciled
25 within the state who performs services either within or without

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1 the state for an employer or, to the extent permitted by law,
2 an individual domiciled outside of the state who performs
3 services within the state for an employer;

4 E. "employer" means a person or an officer, agent,
5 successor in interest or employee of that person having control
6 of the payment of wages, doing business in or deriving income
7 from sources within the state for whom an individual performs
8 or performed any service as the employee of that person, except
9 that if the person for whom the individual performs or
10 performed the services does not have control over the payment
11 of the wages for such services, "employer" means the person
12 having control of the payment of wages;

13 F. "health care provider" means a person licensed
14 by the state or permitted by law to provide health care
15 services;

16 G. "parent" means the biological parent of an
17 employee or an individual who stood in loco parentis to the
18 employee when the employee was a child;

19 H. "serious health condition" means an illness,
20 injury, impairment or physical or mental condition that
21 involves:

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

24 (2) continuing treatment by a health care
25 provider;

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1 I. "spouse" means a partner to a lawful marriage;
2 and

3 J. "wages" means remuneration in cash or other form
4 for services performed by an employee for an employer.

5 SECTION 4. [NEW MATERIAL] ENTITLEMENT TO LEAVE.--

6 A. Subject to the certification requirements
7 provided in Section 5 of the New Mexico Family Act, an employee
8 may request from an employer and shall be entitled to a total
9 of twelve workweeks of leave during any twelve-month period for
10 one or more of the following:

11 (1) the birth of a child of the employee and
12 the provision of care for that child;

13 (2) the placement of a minor child with the
14 employee for adoption or foster care and the provision of care
15 for that child;

16 (3) the provision of care for the spouse,
17 child, parent or domestic partner of the employee, if the
18 spouse, child, parent or domestic partner has a serious health
19 condition; or

20 (4) a serious health condition that makes the
21 employee unable to perform the functions of the position of the
22 employee.

23 B. The entitlement to leave under Paragraphs (1)
24 and (2) of Subsection A of this section for a birth or
25 placement of a child shall expire at the end of the

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1 twelve-month period beginning on the date of the birth or
2 placement.

3 C. The leave granted pursuant to this section may
4 be unpaid leave.

5 D. In a case in which domestic partners or married
6 spouses entitled to leave under this section are employed by
7 the same employer, the aggregate number of workweeks of leave
8 to which both may be entitled may be limited to twelve
9 workweeks during any twelve-month period, if the leave is
10 taken:

11 (1) pursuant to Paragraphs (1) and (2) of
12 Subsection A of this section; or

13 (2) to care for a sick parent under Paragraph
14 (3) of Subsection A of this section.

15 E. The department shall promulgate rules:

16 (1) setting the form of the request;

17 (2) addressing how intermittent leave or a
18 reduced-leave schedule and paid leave may be used in providing
19 the entitlement to leave granted in this section; and

20 (3) addressing the scheduling and notice by
21 employees to employers of leave to be taken.

22 SECTION 5. [NEW MATERIAL] CERTIFICATION.--

23 A. An employer shall require that a request for
24 leave pursuant to Section 4 of the New Mexico Family Act be
25 supported by a certificate, developed by the department, issued

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1 by the employee in the case of the birth or placement of a
2 child or by a health care provider of the employee or of the
3 child, spouse, parent or domestic partner of the employee in
4 the case of a serious medical condition, as appropriate. The
5 employee shall provide, in a timely manner, a copy of the
6 certificate to the employer.

7 B. The certificate provided pursuant to this
8 section shall be sufficient if it states:

9 (1) the date on which the birth or placement
10 of the child occurred or will occur or when the serious health
11 condition commenced; and

12 (2) in the case of a serious medical
13 condition:

14 (a) the probable duration of the
15 condition and, as appropriate, a statement that the employee is
16 needed to care for the child, spouse, parent or domestic
17 partner of the employee and an estimate of the amount of time
18 that the employee will be needed to provide the care or a
19 statement that the employee is unable to perform the functions
20 of the position of the employee and an estimate of the amount
21 of time the employee will be unable to perform those functions;
22 and

23 (b) the appropriate medical facts within
24 the knowledge of the health care provider regarding the
25 condition.

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1 C. The department shall promulgate rules to address
2 how an employer may challenge the validity of a certificate and
3 how conflicts of opinion arising from the certificate may be
4 resolved.

5 SECTION 6. [NEW MATERIAL] EMPLOYMENT AND BENEFITS
6 PROTECTION.--

7 A. An employee who takes leave pursuant to the New
8 Mexico Family Act shall be entitled, on return from that leave:

9 (1) to be restored by the employer to the
10 position of employment held by the employee when the leave
11 commenced; or

12 (2) to be restored to an equivalent position
13 with equivalent employment benefits, wages and other terms and
14 conditions of employment.

15 B. The taking of leave pursuant to the New Mexico
16 Family Act shall not result in the loss of an employment
17 benefit accrued prior to the date on which the leave commenced.

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

20 (1) the accrual of seniority or employment
21 benefits during a period of leave; or

22 (2) a right, benefit or position of employment
23 other than a right, benefit or position to which the employee
24 would have been entitled had the employee not taken the leave.

25 D. As a condition of restoration under Subsection A

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1 of this section, the employer of an employee who has taken
2 leave for a serious medical condition may have a uniformly
3 applied practice or policy that requires the employee to
4 receive certification from a health care provider that the
5 employee is able to resume work, except that nothing in this
6 subsection shall supersede a valid law or a collective
7 bargaining agreement that governs the return to work of that
8 employee.

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

13 F. Except as provided in Subsection G of this
14 section, during a period that an employee takes leave pursuant
15 to the New Mexico Family Act, the employer shall maintain
16 coverage under a group health plan approved by the
17 superintendent of insurance for the duration of the leave at
18 the level and under the conditions that coverage would have
19 been provided if the employee had continued in employment
20 continuously for the duration of the leave.

21 G. The employer may recover from the employee the
22 premium that the employer paid for maintaining group health
23 plan coverage for the employee pursuant to Subsection F of this
24 section if the employee fails to return from leave after the
25 period of leave to which the employee is entitled has expired

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1 for a reason other than the continuation, recurrence or onset
2 of a serious health condition that entitled or entitles the
3 employee to leave or other circumstances beyond the control of
4 the employee.

5 H. An employer may require that a claim that an
6 employee is unable to return to work because of the
7 continuation, recurrence or onset of the serious health
8 condition be supported by a certificate issued by a health care
9 provider and submitted to the employer stating that a serious
10 health condition prevented the employee from being able to
11 perform the functions of the position of the employee on the
12 date that the leave of the employee expired or that the
13 employee is needed to care for the child, spouse, parent or
14 domestic partner of the employee who has a serious medical
15 condition on the date that the leave expired.

16 SECTION 7. [NEW MATERIAL] RECORDS RETENTION.--

17 A. A certificate or other documentation required to
18 be submitted by an employee or health care provider to an
19 employer pursuant to the New Mexico Family Act shall be
20 retained and available for disclosure to the department or
21 other person authorized by that act to investigate unlawful
22 acts for at least five years from the date of submission to the
23 employer.

24 B. The department shall promulgate rules regarding
25 the records to be created and kept pertaining to compliance

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1 with the New Mexico Family Act.

2 SECTION 8. [NEW MATERIAL] FAMILY AND MEDICAL LEAVE
3 COMPENSATION FUND CREATED--ADMINISTRATION.--

4 A. The "family and medical leave compensation fund"
5 is created as a nonreverting fund in the state treasury and
6 shall be administered by the workforce solutions department.
7 The fund shall consist of the net revenue attributable to the
8 family and medical leave income tax and the family and medical
9 leave corporate income tax and any money that is appropriated
10 or donated or that otherwise accrues to the fund. Money in the
11 fund shall be invested by the state investment officer in the
12 manner that land grant permanent funds are invested pursuant to
13 Chapter 6, Article 8 NMSA 1978. Income from investment of the
14 fund shall be credited to the fund.

15 B. Money in the family and medical leave
16 compensation fund is appropriated to the workforce solutions
17 department to make family and medical leave compensation
18 payments pursuant to the New Mexico Family Act and to
19 administer the provisions of that act.

20 C. Money shall be disbursed from the family and
21 medical leave compensation fund only on warrant of the
22 secretary of finance and administration upon vouchers signed by
23 the secretary of workforce solutions or the secretary's
24 authorized representative. Any unexpended or unencumbered
25 balance remaining at the end of a fiscal year shall not revert

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1 to the general fund.

2 SECTION 9. [NEW MATERIAL] FAMILY AND MEDICAL LEAVE
3 COMPENSATION--CLAIM--BENEFIT--APPLICATION.--

4 A. An employee who has been granted a period of
5 unpaid leave in excess of five days pursuant to the federal
6 Family and Medical Leave Act of 1993 or the New Mexico Family
7 Act may file a claim with the department for family and medical
8 leave compensation. The claim shall be submitted to the
9 department after the fifth day of unpaid leave but no later
10 than forty-nine days after the first day of unpaid leave.

11 B. Family and medical leave compensation shall be a
12 daily benefit for each day of unpaid leave granted pursuant to
13 the federal Family and Medical Leave Act of 1993 or the New
14 Mexico Family Act, beginning with the sixth day of unpaid
15 leave, equal to nine percent of the employee's average weekly
16 wages for the month immediately preceding the first day of
17 unpaid leave. The maximum benefit payable in a twelve-month
18 period beginning with the first day of unpaid leave is forty-
19 two times the daily benefit.

20 C. A claim shall be made by submitting an
21 application to the department, on a form developed by the
22 department, accompanied by:

- 23 (1) the certificate and other documentation
24 submitted by the employee or health care provider to an
25 employer to qualify the employee for unpaid leave pursuant to

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1 the federal Family and Medical Leave Act of 1993 or the New
2 Mexico Family Act;

3 (2) a certificate of the employer, on a form
4 developed by the department, that confirms the period of unpaid
5 leave granted to the employee and the employee's weekly wages
6 for the month immediately preceding the first day of the period
7 of unpaid leave so confirmed; and

8 (3) additional documentation required by the
9 department to support the employee's eligibility for family and
10 medical leave compensation.

11 D. Upon receipt of a claim application, the
12 department shall determine the employee's eligibility and
13 determine the amount of daily family and medical leave
14 compensation benefit. The department shall notify the employee
15 of the amount of the daily benefit and request any additional
16 information needed to determine eligibility. If the employee
17 is determined to be eligible, the department shall mail a check
18 or otherwise pay the employee the family and medical leave
19 compensation benefit for the number of days of unpaid leave
20 covered in the claim. If the department determines that the
21 employee is not eligible for family and medical leave
22 compensation, it shall notify the employee in writing of that
23 determination and the reasons why.

24 E. The department shall promulgate rules for the
25 administration of the compensation benefit claim, application,

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1 notification and payment process described in this section.

2 SECTION 10. [NEW MATERIAL] NOTICE.--An employer shall
3 post and keep posted, in conspicuous places upon its premises
4 where notices to employees and applicants for employment are
5 customarily posted, a notice, to be developed by the
6 department, setting forth excerpts from, or summaries of, the
7 pertinent provisions of the New Mexico Family Act and
8 information pertaining to enforcing compliance with that act.
9 An employer that willfully violates this section shall be
10 assessed a civil money penalty not to exceed one hundred
11 dollars (\$100) for each separate offense.

12 SECTION 11. A new section of the Tax Administration Act
13 is enacted to read:

14 "[NEW MATERIAL] DISTRIBUTION--FAMILY AND MEDICAL LEAVE
15 INCOME TAX--FAMILY AND MEDICAL LEAVE CORPORATE INCOME TAX.--A
16 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
17 made to the family and medical leave compensation fund of the
18 net revenue attributable to the family and medical leave income
19 tax and the family and medical leave corporate income tax."

20 SECTION 12. A new section of the Income Tax Act is
21 enacted to read:

22 "[NEW MATERIAL] FAMILY AND MEDICAL LEAVE INCOME TAX--
23 RATE.--In addition to the tax imposed by Section 7-2-3 NMSA
24 1978, a supplemental tax is imposed at the rate of two-tenths
25 percent on the taxable income of every resident individual and

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1 on the taxable income of every nonresident individual employed
2 or engaged in the transaction of business in, into or from this
3 state, or deriving any income from any property or employment
4 within this state. The tax imposed by this section may be
5 referred to as the "family and medical leave income tax".

6 SECTION 13. A new section of the Income Tax Act is
7 enacted to read:

8 "[NEW MATERIAL] DEDUCTION--FAMILY AND MEDICAL LEAVE INCOME
9 TAX LIABILITY.--

10 A. A taxpayer that is a business and that has a
11 family and medical leave income tax liability may claim a
12 deduction from net income in an amount equal to fifty percent
13 of what that liability would be if not for the deduction
14 pursuant to this section.

15 B. Married individuals filing separate returns for
16 a taxable year for which they could have filed a joint return
17 may each claim only one-half of the deduction provided by this
18 section that would have been claimed on a joint return.

19 C. A taxpayer allowed a deduction pursuant to this
20 section shall report the amount of the deduction to the
21 department in a manner required by the department.

22 D. The department shall compile an annual report on
23 the deduction provided by this section that shall include the
24 number of taxpayers that claimed the deduction, the aggregate
25 amount of deductions claimed and any other information

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1 necessary to evaluate the effectiveness of the deduction.
2 Beginning in 2020, the department shall compile and present the
3 annual reports to the revenue stabilization and tax policy
4 committee and the legislative finance committee with an
5 analysis of the cost and benefit to the state of the
6 deduction."

7 SECTION 14. A new section of the Corporate Income and
8 Franchise Tax Act is enacted to read:

9 "[NEW MATERIAL] FAMILY AND MEDICAL LEAVE CORPORATE INCOME
10 TAX--RATE.--In addition to the taxes imposed by Section 7-2A-3
11 NMSA 1978, a supplemental tax is imposed at the rate of two-
12 tenths percent on the net income of every domestic corporation
13 and on the net income of every foreign corporation employed or
14 engaged in the transaction of business in, into or from this
15 state or deriving any income from any property or employment
16 within this state. The tax imposed by this section may be
17 referred to as the "family and medical leave corporate income
18 tax"."

19 SECTION 15. A new section of the Corporate Income and
20 Franchise Tax Act is enacted to read:

21 "[NEW MATERIAL] DEDUCTION--FAMILY AND MEDICAL LEAVE
22 CORPORATE INCOME TAX LIABILITY.--

23 A. A taxpayer that has a family and medical leave
24 corporate income tax liability may claim a deduction from net
25 income in an amount equal to fifty percent of what that

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1 liability would be if not for the deduction pursuant to this
2 section.

3 B. A taxpayer allowed a deduction pursuant to this
4 section shall report the amount of the deduction to the
5 department in a manner required by the department.

6 C. The department shall compile an annual report on
7 the deduction provided by this section that shall include the
8 number of taxpayers that claimed the deduction, the aggregate
9 amount of deductions claimed and any other information
10 necessary to evaluate the effectiveness of the deduction.
11 Beginning in 2020, the department shall compile and present the
12 annual reports to the revenue stabilization and tax policy
13 committee and the legislative finance committee with an
14 analysis of the cost and benefit to the state of the
15 deduction."

16 SECTION 16. TEMPORARY PROVISION.--Notwithstanding the
17 effective date of Sections 1 through 15 of this act, the
18 workforce solutions department shall comply with the rulemaking
19 provisions of Subsection E of Section 4, Subsection C of
20 Section 5, Subsection B of Section 7 and Subsection E of
21 Section 9 of the New Mexico Family Act beginning July 1, 2015.

22 SECTION 17. APPROPRIATION.--One million dollars
23 (\$1,000,000) is appropriated from the general fund to the
24 family and medical leave compensation fund for expenditure in
25 fiscal year 2016 and subsequent fiscal years to provide for

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1 rulemaking and the administration of the provisions of the New
2 Mexico Family Act and to make family and medical leave
3 compensation payments pursuant to that act. Any unexpended or
4 unencumbered balance remaining at the end of a fiscal year
5 shall not revert to the general fund.

6 SECTION 18. APPLICABILITY.--The provisions of Sections 12
7 through 15 of this act apply to taxable years beginning on and
8 after January 1, 2018.

9 SECTION 19. EFFECTIVE DATE.--

10 A. The effective date of the provisions of Sections
11 1 through 15 of this act is July 1, 2018.

12 B. The effective date of the provisions of Sections
13 16 and 17 of this act is July 1, 2015.