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HOUSE BILL 213

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Patricia Roybal Caballero

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE PAID FAMILY AND MEDICAL LEAVE ACT; CREATING THE PAID LEAVE DIVISION IN THE WORKFORCE SOLUTIONS DEPARTMENT; PROVIDING FOR A PAID FAMILY AND MEDICAL LEAVE PROGRAM; CREATING THE PAID FAMILY AND MEDICAL LEAVE INSURANCE FUND; ENACTING CIVIL PENALTIES; MAKING AN APPROPRIATION.

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

**SECTION 1.** Section 9-26-4 NMSA 1978 (being Laws 2007, Chapter 200, Section 4) is amended to read:

"9-26-4. WORKFORCE SOLUTIONS DEPARTMENT CREATED.--The "workforce solutions department" is created in the executive branch pursuant to the Executive Reorganization Act. The department is a cabinet department that includes:

- A. the office of the secretary;

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- 1           B. the administrative services division;
- 2           C. the business services division;
- 3           D. the labor relations division;
- 4           E. the workforce technology division; ~~and~~
- 5           F. the workforce transition services division; and
- 6           G. the paid leave division."

7           **SECTION 2. [NEW MATERIAL] SHORT TITLE.--**Sections 2  
8 through 14 of this act may be cited as the "Paid Family and  
9 Medical Leave Act".

10           **SECTION 3. [NEW MATERIAL] DEFINITIONS.--**As used in the  
11 Paid Family and Medical Leave Act:

12           A. "child" means a biological, adopted or foster  
13 child, a stepchild, a legal ward or:

- 14                   (1) a person under eighteen years of age;
- 15                   (2) a person eighteen years of age or older  
16 and incapable of self-care because of a mental or physical  
17 condition; or

18                   (3) a person who meets the criteria of  
19 Paragraph (1) or (2) of this subsection, and to whom an  
20 employee stands in loco parentis, or as a legal guardian or is  
21 cared for by a person determined as a de facto parent,  
22 regardless of age or dependence;

23           B. "claim for leave" means an application for leave  
24 that an employee makes to the department pursuant to the Paid  
25 Family and Medical Leave Act in accordance with department

1 rules;

2 C. "covered individual" means an employee who  
3 applies for and is approved to take leave;

4 D. "department" means the workforce solutions  
5 department, the secretary of workforce solutions or an employee  
6 of the department exercising authority lawfully delegated to  
7 that employee by the secretary;

8 E. "division" means the paid leave division of the  
9 department;

10 F. "domestic partner" means a person who is  
11 registered as a domestic partner under the laws of any state or  
12 political subdivision or who:

13 (1) is at least eighteen years of age;

14 (2) is not married or a member of another  
15 domestic partnership;

16 (3) is in an exclusive committed relationship  
17 with and for the benefit of the other partner;

18 (4) is sharing or has shared a primary  
19 residence with the other partner for twelve or more consecutive  
20 months;

21 (5) is jointly responsible with the other  
22 partner for each other's common welfare;

23 (6) shares joint financial obligations with  
24 the other partner; and

25 (7) does not have a blood relationship with

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1 the other partner that would preclude marriage between them  
2 under New Mexico law;

3 G. "employee":

4 (1) means a person who works for another in  
5 return for financial or other compensation, or an individual  
6 who is in the employment of an employer; and

7 (2) does not include employees of the United  
8 States;

9 H. "employer":

10 (1) means a person or an officer, agent,  
11 successor in interest or employee of that person having control  
12 of the payment of wages and doing business in or deriving  
13 income from sources within the state for whom an individual  
14 performs or performed any service as the employee of that  
15 person, including the following:

16 (a) any partnership, association, trust,  
17 estate, joint stock company, insurance company, limited  
18 liability company;

19 (b) corporation, whether domestic or  
20 foreign or the receiver, trustee in bankruptcy, trustee;

21 (c) the legal representative of a  
22 deceased person having any person in employment; or

23 (d) any state, state institutions, state  
24 agencies, any unit of local government including a county,  
25 city, town, municipal corporation, quasi-municipal corporation,

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1 or political subdivision; and

2 (2) does not include the United States;

3 I. "family and medical leave" means leave that an  
4 employee takes pursuant to the Paid Family and Medical Leave  
5 Act for one of the following reasons:

6 (1) the serious health condition of the  
7 employee;

8 (2) the serious health condition of a family  
9 member of the employee;

10 (3) the employee's pregnancy; or

11 (4) the birth of the employee's child or  
12 adoption of a child or placement of a foster child with the  
13 employee for the purposes of bonding;

14 J. "family member" means:

15 (1) regardless of age, a biological, adopted  
16 or foster child, stepchild, or legal ward, a child of a  
17 domestic partner, a child to whom the covered individual stands  
18 in loco parentis, or a person to whom the covered individual  
19 stood in loco parentis when the person was a minor or a legal  
20 guardian who is determined a de facto parent;

21 (2) a biological, adoptive or foster parent,  
22 stepparent or legal guardian of a covered individual or a  
23 covered individual's spouse or domestic partner or a person who  
24 stood in loco parentis when the covered individual or the  
25 covered individual's spouse or domestic partner was a minor;

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1 (3) a person to whom the covered individual is  
2 legally married under the laws of any state, or a domestic  
3 partner of a covered individual;

4 (4) a grandparent, grandchild or sibling,  
5 whether biological, foster, adoptive or step relationship, of  
6 the covered individual or the covered individual's spouse or  
7 domestic partner; or

8 (5) a designated person, which shall mean one  
9 additional person designated by a covered individual for whom  
10 the covered individual will provide care under the Paid Family  
11 and Medical Leave Act if the designated person has a serious  
12 health condition;

13 K. "fund" means the paid family and medical leave  
14 insurance fund;

15 L. "health care provider" means an individual  
16 licensed or certified to provide health care in the ordinary  
17 course of business;

18 M. "leave" means paid family and medical leave that  
19 an employer provides to an employee pursuant to the Paid Family  
20 and Medical Leave Act;

21 N. "leave compensation" means income that the  
22 department pays from the fund to an employee on leave;

23 O. "parent" means the biological parent of an  
24 employee or an individual who stood in loco parentis or was the  
25 legal guardian to the employee when the employee was a child or

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1 who cared for the employee and was recognized in the community  
2 or determined a de facto parent, regardless of age or  
3 dependence;

4 P. "secretary" means the secretary of workforce  
5 solutions;

6 Q. "serious health condition" means an illness,  
7 injury, impairment or physical or mental condition that  
8 involves:

9 (1) inpatient care in a hospital, hospice or  
10 residential medical facility; or

11 (2) continuing treatment by a health care  
12 provider;

13 R. "state average weekly wage" means the amount  
14 computed by the department pursuant to Section 51-1-4 NMSA  
15 1978; and

16 S. "wages" means remuneration in cash or other form  
17 for services performed by an employee for an employer.

18 SECTION 4. [NEW MATERIAL] PAID FAMILY LEAVE DIVISION--  
19 CREATED--DUTIES.--The "paid family leave division" is created  
20 in the department to:

21 A. establish and administer a program that allows  
22 employees to take paid family and medical leave to bond with a  
23 child or to provide care for themselves or family members  
24 experiencing a serious health condition;

25 B. collect, manage and distribute proceeds from the

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1 fund in accordance with the Paid Family and Medical Leave Act;

2 C. monitor and assess the effectiveness of the paid  
3 family and medical leave program;

4 D. report annually to the legislature regarding the  
5 finances and effectiveness of the paid family and medical leave  
6 program and the fund;

7 E. request legislative amendments required to  
8 maintain the solvency and effectiveness of the paid family and  
9 medical leave program;

10 F. enforce rules for the administration of the Paid  
11 Family and Medical Leave Act;

12 G. coordinate and collaborate with other agencies  
13 to achieve the purpose of the Paid Family and Medical Leave  
14 Act;

15 H. ensure that employers are in compliance with the  
16 Paid Family and Medical Leave Act;

17 I. accept gifts, grants and donations to be used  
18 for the paid family and medical leave program;

19 J. review and adjudicate applications for leave;  
20 and

21 K. maintain the self-sufficiency and solvency of  
22 the fund.

23 SECTION 5. [NEW MATERIAL] ELIGIBILITY--DURATION OF  
24 LEAVE--ACCRUAL OF OTHER TYPES OF LEAVE.--

25 A. Beginning July 1, 2021, an employer shall allow

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1 an employee to take family leave or medical leave after the  
2 employee, in accordance with the provisions of the Paid Family  
3 and Medical Leave Act and division rules:

4 (1) has been absent from work for at least  
5 five days due to a serious health condition or because of the  
6 need for family leave;

7 (2) on the fifth or a subsequent day of  
8 absence from employment, has filed a claim for leave with the  
9 department pursuant to the Paid Family and Medical Leave Act;  
10 and

11 (3) has made at least twenty-six contributions  
12 to the fund in accordance with department rules.

13 B. An employee is eligible to take a maximum of  
14 twelve weeks of leave during any twelve-month period; provided  
15 that an employee may take leave intermittently and is not  
16 required to use twelve weeks of leave at any one time.

17 C. Other types of leave as provided for by an  
18 employer's leave policy shall continue to accrue on a daily  
19 basis while an employee is on leave pursuant to the Paid Family  
20 and Medical Leave Act.

21 SECTION 6. [NEW MATERIAL] LEAVE BENEFIT CALCULATION.--

22 A. An employee's biweekly benefit shall be based  
23 upon an employee's average weekly income calculated as the  
24 employee's total gross income for the twelve months preceding  
25 submission of an application for leave divided by the number of

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1 weeks that the employee worked during that same period.

2 B. If the employee's average weekly income is:

3 (1) less than thirteen percent of the state  
4 average weekly wage, the employee's biweekly leave compensation  
5 shall be one hundred percent of the employee's average weekly  
6 income multiplied by two;

7 (2) between thirteen percent and fifty percent  
8 of the state average weekly wage, the employee's biweekly leave  
9 compensation is ninety percent of the employee's average weekly  
10 income multiplied by two; or

11 (3) greater than fifty percent of the state  
12 average weekly wage, the employee's biweekly leave compensation  
13 is the sum of the following, multiplied by two:

14 (a) ninety percent of the employee's  
15 average weekly wage up to fifty percent of the state average  
16 weekly wage; and

17 (b) fifty percent of the employee's  
18 average weekly wage that is greater than fifty percent of the  
19 state average weekly wage.

20 C. The maximum biweekly leave compensation shall be  
21 one hundred twenty per cent of the state average weekly wage  
22 multiplied by two.

23 D. Family and medical leave insurance benefits are  
24 not payable for fewer than eight hours of family and medical  
25 leave taken in one work week.

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1           SECTION 7.   ~~[NEW MATERIAL]~~ CLAIMS FOR LEAVE--PROCESS--  
2 NOTICE--DOCUMENTATION.--

3           A.   Beginning July 1, 2020, the division shall  
4 accept contributions to the fund.

5           B.   Beginning July 1, 2021, the division shall  
6 accept claims for leave.

7           C.   Upon receipt of a claim for leave, the division  
8 shall have fourteen calendar days to determine the employee's  
9 eligibility to take leave and the amount of leave compensation  
10 to be paid to the employee in accordance with the provisions of  
11 Section 6 of the Paid Family and Medical Leave Act.  Within  
12 twenty-four hours of the division's determination of  
13 eligibility and the amount of leave compensation, the  
14 department shall notify the employee in writing of the result  
15 of the eligibility determination and the amount of leave  
16 compensation, if any, that the employee will receive.

17           D.   Upon approval of an employee's leave  
18 application, the division shall provide leave compensation to  
19 an employee in the most reasonably efficient manner possible  
20 and no later than one week from the date that the employee  
21 submits an application for leave.  The division may provide  
22 subsequent leave compensation payments on the same schedule as  
23 the state payroll to increase efficiency and cost-  
24 effectiveness.  The department shall issue leave compensation  
25 biweekly for as long as an employee is entitled to receive

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1 leave compensation.

2 E. Upon denial of an employee's application for  
3 leave, the division shall include in its written determination  
4 the grounds for its denial of the employee's application and  
5 notice of the employee's right to appeal the determination.

6 F. Upon a determination that the division requires  
7 further documentation to support an employee's claim for leave,  
8 the division shall include in its written determination a list  
9 of the missing documents or information and the employee shall  
10 have fourteen business days to provide that documentation or  
11 information. Failure of the employee to respond within that  
12 statutory period will result in a denial of the employee's  
13 application. The division shall allow an employee to reapply  
14 without penalty after issuing a denial based on the provisions  
15 of this subsection.

16 G. The division shall require an employee who files  
17 a claim for leave to provide, in accordance with division  
18 rules, one or more of the following documents relating to the  
19 individual upon whose behalf the employee seeks leave:

20 (1) a birth certificate in the instance of the  
21 birth of a child;

22 (2) hospital documentation of the affected  
23 individual;

24 (3) certification or a statement issued by a  
25 health care provider or by the children, youth and families

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1 department;

2 (4) verification by a health care provider  
3 that the employee or a family member has a serious health  
4 condition; or

5 (5) any other verification required by the  
6 department for adjudication of a claim for leave.

7 SECTION 8. [NEW MATERIAL] RETURN TO EMPLOYMENT.--

8 A. Upon an employee's return after leave, an  
9 employer shall:

10 (1) restore the employee to the position of  
11 employment held by the employee when the leave commenced; or

12 (2) place the employee in a position for which  
13 employee benefits, wages and other terms and conditions of  
14 employment are the same or greater than those of the position  
15 from which the employee took leave.

16 B. Nothing in this section shall be construed to  
17 entitle a restored employee to:

18 (1) the accrual of seniority or employment  
19 benefits during the period the employee is using leave; or

20 (2) the right to any benefit or position of  
21 employment other than the right the employee would have been  
22 entitled to had the employee not taken the leave.

23 C. Any yearly certification or training that an  
24 employer requires as a condition of employment may remain in  
25 place and applicable to any employee taking leave; provided

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1 that nothing in this subsection shall supersede another  
2 provision of law or a collective bargaining agreement that  
3 governs an employee's return to work after leave.

4 D. Nothing in this section shall prohibit an  
5 employer from requiring an employee who takes more than twelve  
6 weeks of leave to report periodically to the employer on the  
7 status and intention of the employee to return to work.

8 E. During the period that an employee is on leave  
9 pursuant to the Paid Family and Medical Leave Act, an employer  
10 that offers health coverage in which the employee is enrolled  
11 at the time of starting leave shall maintain the same or  
12 substantially similar health coverage as that health coverage  
13 in which the employee was enrolled at the time of starting  
14 leave. The employer shall offer that health coverage to the  
15 employee during the employee's leave under the same conditions  
16 of health coverage that would apply if the employee had not  
17 taken leave. An employee who accepts continuation of health  
18 coverage under this subsection shall pay a share of the health  
19 insurance premium payment that the employee would have paid had  
20 the employee not taken leave.

21 SECTION 9. [NEW MATERIAL] FUND CONTRIBUTIONS.--Except as  
22 provided in Subsection B of Section 11 of the Paid Family and  
23 Medical Leave Act, beginning January 1, 2020, employees shall  
24 make contributions to the fund. The proceeds of the fund shall  
25 be used to pay leave compensation to eligible employees

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1 pursuant to that act and the cost of administering the  
2 provisions of that act. In accordance with that act and  
3 division rules, employers shall deduct from each employee's pay  
4 a minimum of two dollars (\$2.00) per calendar quarter and remit  
5 those deductions to the fund.

6 SECTION 10. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE  
7 INSURANCE FUND--CREATED--APPROPRIATION TO DIVISION.--

8 A. The "paid family and medical leave insurance  
9 fund" is created as a nonreverting fund in the state treasury  
10 and shall be administered by the department. The fund shall  
11 consist of all revenue collected and attributable to the Paid  
12 Family and Medical Leave Act. Money in the fund shall be  
13 invested by the state investment officer pursuant to Section  
14 6-8-7 NMSA 1978. Income from investment of the fund shall be  
15 credited to the fund.

16 B. Money in the fund is appropriated to the  
17 division to distribute leave compensation pursuant to the Paid  
18 Family and Medical Leave Act and to cover the cost of  
19 administering the paid family and medical leave program  
20 pursuant to that act.

21 C. Money shall be disbursed from the fund only by  
22 warrant issued by the department of finance and administration  
23 upon vouchers signed by the secretary 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 11. [NEW MATERIAL] SELF-EMPLOYED INDIVIDUAL  
3 OPTION--EXEMPTION FOR EMPLOYEES COVERED BY A PRIVATELY RUN  
4 LEAVE PROGRAM.--

5 A. Self-employed individuals may opt to contribute  
6 to and receive leave compensation from the paid medical and  
7 family leave fund. To be eligible to receive leave  
8 compensation, a self-employed individual shall commit to and  
9 make payments to the fund for a minimum of three years. After  
10 a self-employed individual has made payments to the fund for at  
11 least three years, the individual may opt out. An individual  
12 who opts out shall not be eligible for leave compensation and  
13 may only opt in again after twenty-six successive payments have  
14 been made to the fund after the date of opting out.

15 B. An employee of an employer that runs its own  
16 paid family and medical leave plan for its employees that  
17 provides leave and leave compensation equal to or greater than  
18 the leave and leave compensation offered pursuant to the Paid  
19 Family and Medical Leave Act, may request exemption from making  
20 contributions to the fund. An employee who seeks an  
21 exemption pursuant to this subsection shall apply and provide  
22 supporting documentation to the division for the exemption each  
23 calendar year on a form supplied by the division.

24 SECTION 12. [NEW MATERIAL] NOTICE OF INTENT TO APPLY FOR  
25 LEAVE--EXCEPTION FOR UNFORESEEABLE EVENT--EMPLOYER NOTICE

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1 REQUIREMENT.--

2           A. An employee shall notify the employee's employer  
3 at least thirty days in advance of the employee's intent to  
4 make a claim for leave, provided that an employee is exempt  
5 from this requirement if the employee's need for leave is  
6 unforeseeable. If the employee's need for leave is  
7 unforeseeable, the employee shall notify the employer within  
8 ten days of learning of the need for leave.

9           B. An employer shall post and keep posted a summary  
10 of the provisions of the Paid Family and Medical Leave Act and  
11 information pertaining to enforcement of that act in a  
12 conspicuous place upon its premises where notices to employees  
13 and applicants for employment are customarily posted.

14           SECTION 13. [NEW MATERIAL] CLAIMS FOR LEAVE--ADVERSE  
15 DETERMINATIONS--APPEALS.--

16           A. Any party to an application for leave may appeal  
17 an adverse determination relating to a claim for leave.

18           B. Within ten business days of the date an adverse  
19 determination is issued, an employee who seeks a  
20 redetermination shall file a request for redetermination in  
21 accordance with department rules.

22           C. A panel of at least three hearing officers  
23 appointed by the secretary shall convene a hearing on a request  
24 for redetermination within ten days of receiving the employee's  
25 notice of intent to appeal and make a recommendation to the

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1 secretary to confirm or deny the appeal. The secretary shall  
2 issue a written decision that includes reasoning for the  
3 secretary's determination to the employee and the employee's  
4 employer.

5 D. An employee may appeal the secretary's final  
6 decision to the district court pursuant to 39-3-1.1 NMSA 1978.

7 SECTION 14. [NEW MATERIAL] CIVIL PENALTIES.--

8 A. The department or a court of appropriate  
9 jurisdiction may assess a civil penalty not to exceed ten  
10 thousand dollars (\$10,000) upon any employee who files a  
11 fraudulent claim for leave. An employee who files a fraudulent  
12 claim for leave may be subject to termination of employment.

13 B. The department or a court of appropriate  
14 jurisdiction may assess an employer who wrongfully denies an  
15 employee the employee's right to leave or otherwise violates a  
16 provision of the Paid Family and Medical Leave Act a civil  
17 penalty not to exceed ten thousand dollars (\$10,000) for each  
18 violation of that act.

19 C. The department or a court of appropriate  
20 jurisdiction may assess an employer that willfully violates  
21 Subsection B of Section 12 of the Paid Family and Medical Leave  
22 Act a civil penalty that shall not exceed one thousand dollars  
23 (\$1,000) for each separate offense.

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