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SENATE BILL 123

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

INTRODUCED BY

Michael Padilla

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE CAREGIVER LEAVE ACT TO PROVIDE EMPLOYEES OF PRIVATE ENTITIES WHO HAVE ACCRUED PAID SICK LEAVE WITH THE OPPORTUNITY TO USE SICK LEAVE FOR FAMILY CAREGIVING; ENACTING THE PUBLIC EMPLOYEE CAREGIVER LEAVE ACT TO PROVIDE PUBLIC EMPLOYEES THE RIGHT TO USE ACCRUED SICK LEAVE FOR FAMILY CAREGIVING.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Caregiver Leave Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Caregiver Leave Act:

A. "eligible employee" means, except as provided pursuant to Section 4 of the Caregiver Leave Act, an individual

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1 who is in the employ of an employer and who, in accordance with
2 the employer's policies, is eligible to accrue sick leave;

3 B. "employer" means a person that employs one or
4 more employees and that offers eligible employees sick leave;

5 C. "family member" means an individual who is the
6 spouse or domestic partner of or is by blood, marriage or legal
7 adoption a parent, grandparent, great-grandparent, child,
8 foster child, grandchild, great-grandchild, brother, sister,
9 niece, nephew, aunt or uncle of an eligible employee; and

10 D. "sick leave" means a leave of absence from
11 employment for which an employer pays an eligible employee due
12 to illness or injury or to receive care from a licensed or
13 certified health professional. "Sick leave" does not include
14 leave to which an employee is entitled under the federal Family
15 and Medical Leave Act of 1993, regardless of whether the
16 employee uses sick leave during that leave.

17 SECTION 3. [NEW MATERIAL] ACCUMULATED SICK LEAVE--
18 APPLICATION TO FAMILY CAREGIVING.--

19 A. An employer that provides eligible employees
20 with sick leave for an eligible employee's own illness or
21 injury or to receive health care shall permit its eligible
22 employees to use accrued sick leave to care for their family
23 members in accordance with the same terms and procedures that
24 the employer imposes for any other use of sick leave by
25 eligible employees.

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1 B. An eligible employee's employer shall not
2 discharge or threaten to discharge, demote, suspend or
3 retaliate or discriminate in any manner, including using the
4 employee's use of caregiver leave as a factor in the employee's
5 performance evaluation, against an eligible employee because
6 that employee requests or uses caregiver leave in accordance
7 with the employer's general sick leave policy, files a
8 complaint with the workforce solutions department for violation
9 of the Caregiver Leave Act, cooperates in an investigation or
10 prosecution of an alleged violation of the Caregiver Leave Act
11 or opposes any policy or practice established pursuant to the
12 Caregiver Leave Act.

13 C. Nothing in this section shall require an
14 employer to provide sick leave to its employees.

15 D. The provisions of the Caregiver Leave Act are
16 nonexclusive and cumulative and are in addition to any other
17 rights or remedies afforded by contract or under other
18 provision of law. The Caregiver Leave Act does not prohibit an
19 employer from providing greater sick leave benefits than are
20 provided pursuant to that act.

21 E. The secretary of workforce solutions shall adopt
22 and promulgate rules to implement the provisions of the
23 Caregiver Leave Act. These rules shall include, at a minimum,
24 grievance procedures for according eligible employees recourse
25 for violations of the Caregiver Leave Act.

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1 SECTION 4. [NEW MATERIAL] EXEMPTIONS.--

2 A. The provisions of the Caregiver Leave Act shall
3 not apply to:

4 (1) an employee of an employer subject to the
5 provisions of Title II of the federal Railway Labor Act or to
6 an employer or employee as defined in either the federal
7 Railroad Unemployment Insurance Act or the Federal Employers'
8 Liability Act or other comparable federal law; or

9 (2) any other employment expressly exempted
10 under rules adopted by the workforce solutions department as
11 necessary to implement the provisions of the Caregiver Leave
12 Act in accordance with applicable state and federal law.

13 B. Nothing in the Caregiver Leave Act shall be
14 construed to invalidate, diminish or otherwise interfere with
15 any collective bargaining agreement, nor shall it be construed
16 to invalidate, diminish or otherwise interfere with any party's
17 power to collectively bargain for a collective bargaining
18 agreement.

19 SECTION 5. A new section of Chapter 10 NMSA 1978 is
20 enacted to read:

21 "[NEW MATERIAL] SHORT TITLE.--Sections 5 through 8 of this
22 act may be cited as the "Public Employee Caregiver Leave Act"."

23 SECTION 6. A new section of Chapter 10 NMSA 1978 is
24 enacted to read:

25 "[NEW MATERIAL] DEFINITIONS.--As used in the Public

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1 Employee Caregiver Leave Act:

2 A. "eligible employee" means, except as provided
3 pursuant to Section 8 of this 2019 act, an individual who is an
4 officer or employee of the state or of a public school and who,
5 in accordance with the policies of the state agency or public
6 school employing the officer or employee, is eligible to accrue
7 sick leave;

8 B. "family member" means an individual who is the
9 spouse of or is by blood, marriage or legal adoption a parent,
10 grandparent, great-grandparent, child, grandchild, great-
11 grandchild, brother, sister, niece, nephew, aunt or uncle, or
12 is living in the household of an eligible employee;

13 C. "sick leave" means a leave of absence from
14 employment for which a state agency or public school pays an
15 eligible employee due to illness or injury or to receive care
16 from a licensed or certified health professional. "Sick leave"
17 does not include leave to which an employee is entitled under
18 the federal Family and Medical Leave Act of 1993, regardless of
19 whether the employee uses sick leave during that leave; and

20 D. "state" or "state agency" means the state of New
21 Mexico or any of its branches, agencies, departments, boards,
22 instrumentalities or institutions."

23 SECTION 7. A new section of Chapter 10 NMSA 1978 is
24 enacted to read:

25 "[NEW MATERIAL] ACCUMULATED SICK LEAVE--APPLICATION TO

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1 FAMILY CAREGIVING.--

2 A. A state agency or public school that provides
3 eligible employees with sick leave for an eligible employee's
4 own illness or injury or to receive health care shall permit
5 its eligible employees to use accrued sick leave to care for
6 their family members in accordance with the same terms and
7 procedures that the state agency or public school imposes for
8 any other use of sick leave by eligible employees.

9 B. A state agency or public school employing an
10 eligible employee shall not discharge or threaten to discharge,
11 demote, suspend or retaliate or discriminate in any manner,
12 including using the employee's use of caregiver leave as a
13 factor in the employee's performance evaluation, against an
14 eligible employee because that employee requests or uses
15 caregiver leave in accordance with the state agency's or public
16 school's general sick leave policy, files a grievance for
17 violation of the Public Employee Caregiver Leave Act,
18 cooperates in an investigation or prosecution of an alleged
19 violation of that act or opposes any policy or practice
20 established pursuant to that act.

21 C. Nothing in this section shall require a state
22 agency or public school to provide sick leave to its employees.

23 D. The provisions of the Public Employee Caregiver
24 Leave Act are nonexclusive and cumulative and are in addition
25 to any other rights or remedies afforded by contract or under

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1 other provision of law. The Public Employee Caregiver Leave
2 Act does not prohibit a state agency or public school from
3 providing greater sick leave benefits than are provided
4 pursuant to that act.

5 E. Each state agency director and public school
6 administrator shall adopt and promulgate policies to implement
7 the provisions of the Public Employee Caregiver Leave Act.
8 These policies shall include, at a minimum, grievance
9 procedures for according eligible employees recourse for
10 violations of the Public Employee Caregiver Leave Act. As used
11 in this section, "state agency director" means:

12 (1) the director of the state personnel office
13 for those state agencies to which the provisions of the
14 Personnel Act apply; and

15 (2) the director of a state agency to which
16 the provisions of the Personnel Act do not apply."

17 SECTION 8. A new section of Chapter 10 NMSA 1978 is
18 enacted to read:

19 "[NEW MATERIAL] EXEMPTIONS.--

20 A. The provisions of the Public Employee Caregiver
21 Leave Act shall not apply to any employment expressly exempted
22 under rules adopted by the state personnel office or any other
23 state agency.

24 B. Nothing in the Public Employee Caregiver Leave
25 Act shall be construed to invalidate, diminish or otherwise

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1 interfere with any collective bargaining agreement, nor shall
2 it be construed to invalidate, diminish or otherwise
3 interfere with any party's power to collectively bargain for
4 a collective bargaining agreement."

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