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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

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|------------------------|------------------------|----------------------------|------------------|
| Bill Number | <u>*SB198</u> | Sponsor | <u>Lopez</u> |
| Tracking Number | <u>.218932.1</u> | Committee Referrals | <u>STBTC/SJC</u> |
| Short Title | <u>Paid Sick Leave</u> | | |
| Analyst | <u>Canada</u> | Original Date | <u>2/9/2021</u> |
| | | Last Updated | <u></u> |

BILL SUMMARY

Synopsis of Bill

The bill creates the Paid Sick Leave Act that requires most employers to provide employees paid sick leave in circumstances related to an employee's mental or physical illness, to care for a family member with a mental or physical illness, or when an employee requests leave related to domestic abuse, sexual assault, or stalking. *SB198 establishes minimum hours employees can accrue for paid sick leave and maximum hours that can be used for this purpose annually. The bill requires employers to provide supplemental paid sick leave during a public health emergency for employees to respond to the effects of the public health emergency such as quarantine, testing, treatment, among other circumstances. The bill requires the Workforce Solutions Department (WSD) to investigate complaints against employers that do not follow provisions of the act. The bill allows a civil action lawsuit to be filed for violations of the Paid Sick Leave Act. The bill makes employers liable for not following provisions of the Paid Sick Leave Act and requires employers to pay fines or damages to those affected.

This analysis focuses on the impact to New Mexico public schools.

This bill has an emergency clause and becomes effective immediately on enactment.

FISCAL IMPACT

*SB198 does not contain an appropriation.

A sample of school district sick leave policies shows school employees receive an average of between eight and 12 sick days per year, among other paid and unpaid leave benefits. The minimum eight-day paid sick leave requirement within the Paid Sick Leave Act is less than or equal to the benefits offered by most school districts, which may incentivize school districts to decrease their leave policies if they exceed the minimum requirement of eight days. Because of the different policies in place, the specific number of employees or amount of additional sick time required outside of current offerings cannot be determined.

*SB198 would expand paid sick leave related to respond to the effects of a public health emergency until four weeks after a public health emergency ends. Recent federal regulations required employers to offer two weeks paid leave from March 2020 to December 2020 for the Covid-19 public health emergency, although that regulation recently expired. Although employers are no longer required to offer paid sick leave under federal requirements, the most recent national omnibus spending bill for Covid-19 relief includes a provision that extends employer tax credits for employers providing expanded sick, family, and medical leave voluntarily until March 31, 2021. Although employers may receive federal funding support through March, *SB198 requires employers to provide this additional benefit four weeks past the end of a public health emergency, which may exceed this timeline and require school districts and charter schools to provide additional leave without funding. It is unclear how many school employees will potentially be exposed to Covid-19 and consequently require leave for quarantine, testing, treatment, and caring for family members.

From March 2020 to the end of the 2019-2020 school year, schools were closed to in-person learning. Starting in fall 2020, the Public Education Department (PED) and Department of Health released gating criteria that determined when schools would be able to transition to in-person learning at a limited capacity. During this time, schools fell in and out of eligibility. At the end of January 2021, PED announced expanded in-person learning options. According to PED, this will be the first opportunity for in-person learning for most middle school and high school students since March. PED shared schools in New Mexico, aligned with national and international trends, have generally been able to avoid school-based outbreaks. The test positivity rate for school staff is 2.2 percent.

Additionally, school districts and charter schools that violate provisions of *SB198 in six specific circumstances could incur penalties that range from \$500 to \$1,000 for each violation. School districts and charter schools may also be responsible for costs tied to actual damages, back pay and benefits, reinstatement, rescission of disciplinary action, litigation costs, and attorney fees. WSD did a review of the 14 states that have paid sick leave requirements in place and determined that no single state law has as an aggressive array of requirements and employer penalties as in *SB198.

SUBSTANTIVE ISSUES

School Employees Paid Sick Leave. *SB198 creates a minimum amount of earned paid sick leave hours employees should be able to earn in a specific time period. The bill requires employers to allow employees to earn one hour of paid sick leave for every 30 hours worked. For an average full-time employee, under these circumstances eight days can be earned each year. A review of New Mexico policies indicated school districts are providing equal to or more generous paid sick leave benefits than the minimum requirements established in the bill; the less generous requirements in *SB198 could create an incentive for school districts to decrease the amount of paid sick leave offered to match requirements in the bill. Additionally, *SB198 allows employees to take up to 56 hours, the equivalent of seven days, of paid sick leave each year, with any unused leave carried over to the next year. Currently, school employees accrue more days per year than the cap on how much they would be able to use in a year established in *SB198. Of policies reviewed, most school districts allow paid sick leave balances to roll over to encourage employees to accrue as many sick days as possible as a contingency against future illness.

Benefits, like sick leave for school employees, are determined differently across the United States. In some areas, states set sick leave policies in state law; New Mexico and other states leave these determinations to local school boards. For example, in Oregon and Kentucky, state law requires

that school district employees are offered at least 10 days of paid sick leave. On average in large school districts nationally, teachers receive 11 days of sick leave per year and paid sick leave policies from 10 days to 14 days. A sample of publicly available school district paid sick leave policies shows that policies across New Mexico vary in stipulations tied to paid sick leave and the duration of time an employee can accrue. From policies reviewed, school employees paid sick leave allocations range between eight and 12 days per year.

Covid-19 and Paid Sick Leave. *SB198 requires employers to provide employees supplemental leave during a public health emergency equivalent to the paid leave promised to employees through the federal Families First Coronavirus Response Act (FRCA) passed in March 2020. FRCA required certain employers, including school districts and public schools, to provide employees two weeks of paid sick leave for quarantine, recovery, testing, and other similar activities related to the effects of the public health emergency, through December 31, 2020. To offset the cost to employers providing this benefit, the federal regulations created an employer tax credit available through March 2021. Requirements to provide additional benefits to school employees expired on December 31, 2020, and the recent federal stimulus package did not include requirements that extended this benefit, leaving it up to state and local jurisdictions to address. Since March 2020, Colorado, New York, North Carolina, and other states have passed legislation to temporarily broaden access to paid leave in response to the impacts of Covid-19. Employers that had existing paid sick leave policies could not require employees to use other available paid leave before using the federally provided sick time.

*SB198 requires employers to provide employees with supplemental paid sick leave for absences due to a public health emergency, such as

- 1) Treatment, testing, or care of an employee or an employee’s family member due to a transmittable condition related to a public health emergency;
- 2) Self-isolation related to a transmittable condition related to a public health emergency;
- 3) Preventive care for transmittable conditions related to the public health emergency; and
- 4) Other circumstances related to the public health emergency like caring for a family member when schools are closed.

OTHER SIGNIFICANT ISSUES

Teacher-Specific Duties. Although most school districts and charter schools offer paid sick leave that exceed the requirements in *SB198, paid sick leave benefits have stipulations due to the unique features of school employee positions, such as teachers. Some school-specific paid sick leave plans require supervisors to monitor when employees request sick leave days and determine if a pattern emerges, such as an employee typically taking leave before or after holidays, on a staff development day, or on an early-release day. Patterns can result in disciplinary action. Additionally, some policies require employees to show evidence of a medical note from a doctor when leave is submitted or if the leave is taken after a number of consequent days. *SB198 allows paid sick leave under three days to not require documentation, but after three days, medical documentation may be required.

Teacher-specific contracts are usually nine months with shorter hours than the typical eight-hour workday. According to research from the National Bureau of Economic Research, teacher attendance is directly related to student outcomes; the more teachers are absent, the more student achievement is affected. For example, when teachers are absent for 10 days, the decrease in student achievement is equivalent to the difference between having a new teacher and one with two or

three years of experience. Research suggests absent teachers are typically replaced by less qualified substitute teachers and instructional intensity and consistency may decline. Additional research indicates that teacher absences represent significant costs to school districts that must pay for substitutes and associated administrative costs. To encourage less teacher absenteeism, within the now defunct NMTeach evaluation system, teacher attendance made up 5 percent of a teacher's summative evaluation rating, although teachers were allowed to take up to six days of leave before it impacted their annual performance evaluation.

RELATED BILLS

Duplicates HB37, Paid Sick Leave Act, which requires most employers to provide employees paid sick leave.

Conflicts with HB20, Healthy Workplaces Act, which requires employers to allow employees to use a different amount of awarded sick leave per year and creates penalties for businesses that do not comply, among other elements.

SOURCES OF INFORMATION

- LESC Files
- Department of Workforce Solutions

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