

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 38

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Christine Chandler and Patricia Roybal Caballero
and Linda Serrato

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE PAID FAMILY AND MEDICAL
LEAVE ACT; CREATING THE PAID FAMILY AND MEDICAL LEAVE TRUST
FUND; PROVIDING FOR THE PAID FAMILY AND MEDICAL LEAVE PROGRAM
TO PAY AN ELIGIBLE EMPLOYEE A PERCENTAGE OF THE EMPLOYEE'S
SALARY TO ALLOW THE EMPLOYEE TO BOND WITH A NEW CHILD OR TO
CARE FOR A FAMILY MEMBER; LIMITING THE TIME ALLOWED FOR PAID
FAMILY AND MEDICAL LEAVE; EXCEPTING CERTAIN EMPLOYEES;
PROVIDING FOR ADMINISTRATION OF THE PROGRAM BY THE WORKFORCE
SOLUTIONS DEPARTMENT; ENACTING ADMINISTRATIVE PENALTIES;
CREATING A TEMPORARY ADVISORY COMMITTEE.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Paid Family and Medical Leave Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
.218534.3

underscoring material = new
[bracketed material] = delete

1 Paid Family and Medical Leave Act:

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

5 (1) under eighteen years of age; or

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

9 B. "claim for leave" means an application for leave
10 that an employee makes to the department pursuant to the Paid
11 Family and Medical Leave Act in accordance with department
12 rules;

13 C. "department" means the workforce solutions
14 department, the secretary or an employee of the department
15 exercising authority lawfully delegated to that employee by the
16 secretary;

17 D. "domestic partner" means a person with whom
18 another person maintains a household and a mutual committed
19 relationship, without a legally recognized marriage;

20 E. "employee" means a person working within the
21 state who performs a service for wages or other remuneration
22 under a contract of hire, written or oral, express or implied,
23 and includes a person employed by the state or a political
24 subdivision of the state;

25 F. "employer" means a person that has one or more

.218534.3

underscoring material = new
~~[bracketed material] = delete~~

1 employees within the state and includes an agent of an employer
2 and the state or a political subdivision of the state;

3 G. "family leave" means paid leave for which an
4 employee applies pursuant to the Paid Family and Medical Leave
5 Act and that is granted to the employee to allow the employee
6 to bond with a child of the employee within twelve months of
7 the birth or adoption of a child or placement of a foster child
8 with the employee or to care for a family member if the family
9 member has a serious health condition;

10 H. "family member" means a person who is:

11 (1) regardless of age, a biological, adopted
12 or foster child, stepchild or legal ward, a child of a domestic
13 partner, a child to whom an employee stands in loco parentis or
14 a person to whom the covered individual stood in loco parentis
15 when the person was a minor;

16 (2) a biological, adoptive or foster parent,
17 stepparent or legal guardian of an employee or the employee's
18 spouse or domestic partner or a person who stood in loco
19 parentis when the employee or the employee's spouse or domestic
20 partner was a minor;

21 (3) a person to whom an employee is legally
22 married under the laws of any state or a domestic partner of
23 the employee;

24 (4) a grandparent, great-grandparent,
25 grandchild or sibling, whether a biological, foster, adoptive

.218534.3

1 or step relationship, of an employee or an employee's spouse or
2 domestic partner; or

3 (5) any other individual related by blood or
4 affinity whose close association with the employee or
5 employee's spouse or domestic partner is the equivalent of a
6 family relationship;

7 I. "fund" means the paid family and medical leave
8 trust fund;

9 J. "health care provider" means an individual
10 licensed or certified to provide health care in the ordinary
11 course of business;

12 K. "leave" means family leave or medical leave for
13 which an employee applies pursuant to the Paid Family and
14 Medical Leave Act;

15 L. "leave compensation" means income that the
16 department pays from the fund to an employee for family or
17 medical leave;

18 M. "medical leave" means paid leave for which an
19 employee applies pursuant to the Paid Family and Medical Leave
20 Act to allow the employee to provide care for the employee's
21 own serious health condition or to care for a family member
22 with a serious health condition;

23 N. "secretary" means the secretary of workforce
24 solutions;

25 O. "serious health condition" means an illness,

.218534.3

underscoring material = new
~~[bracketed material] = delete~~

1 injury, impairment or physical or mental condition that
2 involves:

3 (1) inpatient care in a hospital, hospice or
4 residential medical facility; or

5 (2) continuing treatment by a health care
6 provider; and

7 P. "spouse" means a partner to a lawful marriage.

8 SECTION 3. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE
9 TRUST FUND--CREATION.--

10 A. The "paid family and medical leave trust fund"
11 is created as a nonreverting fund in the state treasury and
12 shall be administered by the department. The fund shall be
13 held in trust for the benefit of the employees who paid into
14 the fund and shall consist of all revenue collected and
15 attributable to the Paid Family and Medical Leave Act. Money
16 in the fund shall be invested by the state investment officer.
17 Income from investment of the fund shall be credited to the
18 fund.

19 B. Money in the fund is appropriated to the
20 department to distribute leave compensation pursuant to the
21 Paid Family and Medical Leave Act and to cover the costs of
22 administering the paid family and medical leave program
23 pursuant to that act.

24 C. Money shall be disbursed from the fund only on
25 warrant issued by the department of finance and administration

.218534.3

underscoring material = new
[bracketed material] = delete

1 pursuant to vouchers signed by the secretary or the secretary's
2 authorized representative. Any unexpended or unencumbered
3 balance remaining at the end of a fiscal year shall not revert
4 to the general fund.

5 D. The secretary shall ensure and maintain the
6 self-sufficiency and solvency of the fund by performing an
7 annual financial analysis and reporting the results and
8 recommendations based on the analysis to the appropriate
9 legislative body for adjustment of the formula used to
10 determine employer and employee contributions to the fund.

11 SECTION 4. [NEW MATERIAL] APPLICABILITY--CONTRIBUTIONS TO
12 FUND--REMITTANCE OF CONTRIBUTIONS--EXEMPTION FOR PRIVATELY RUN
13 PROGRAMS--REQUIREMENTS OF PRIVATELY RUN PROGRAMS.--

14 A. The Paid Family and Medical Leave Act applies
15 to:

16 (1) all public and private employees who are
17 subject to state jurisdiction, except those employees who are
18 employed by the United States;

19 (2) the employers of employees as described in
20 Paragraph (1) of this subsection, whether or not the employer
21 is physically located in the state; and

22 (3) self-employed individuals subject to state
23 jurisdiction who opt into the program.

24 B. Beginning July 1, 2023 and for each calendar
25 quarter thereafter, there is assessed against each

.218534.3

underscoring material = new
~~[bracketed material] = delete~~

1 participating employee one-half percent of the employee's
2 earnings to fund leave compensation payments. An employee's
3 contribution to the fund shall not be deducted from the
4 employee's leave compensation.

5 C. Beginning July 1, 2023 and for each calendar
6 quarter thereafter, there is assessed against each employer
7 with participating employees an amount equal to four-tenths
8 percent of each participating employee's earnings to fund
9 administrative costs.

10 D. Beginning July 1, 2023 and for each calendar
11 quarter thereafter, there is assessed against each self-
12 employed individual as described in Paragraph (3) of Subsection
13 A of this section nine-tenths percent of the individual's net
14 annual earnings as designated by the self-employed individual.

15 E. The contributions of employees and employers
16 shall be remitted by the employer following the end of each
17 quarter for which the contributions are deducted and on a date
18 determined by the secretary.

19 F. The contributions of self-employed individuals
20 shall be remitted by the individual following each end of the
21 quarter for which the contributions are deducted and on a date
22 determined by the secretary. A self-employed individual shall
23 not be required to make contributions from leave compensation.

24 G. An employer that has adopted and operates a paid
25 family and medical leave plan or program for the benefit of its

.218534.3

1 employees that provides leave and leave compensation equal to
2 or greater than the leave and leave compensation offered under
3 the Paid Family and Medical Leave Act may apply for a waiver to
4 exempt the employer and its employees from making required
5 contributions to the fund. The employer shall apply and
6 provide supporting documentation to the department for
7 exemption each calendar year.

8 H. An employer granted a waiver pursuant to
9 Subsection G of this section and the employer's employees shall
10 have the same rights and protections enjoyed by employers and
11 employees covered under the Paid Family and Medical Leave
12 Act, including the right to appeal to the department.

13 I. An employer granted a waiver pursuant to
14 Subsection G of this section shall notify all employees covered
15 by the employer's paid leave program that:

16 (1) the employee is covered by a privately run
17 leave program rather than a public plan;

18 (2) employees may apply to the employer for
19 leave;

20 (3) employers must provide leave and leave
21 compensation equal to or greater than that granted to employees
22 under the Paid Family and Medical Leave Act; and

23 (4) employees may appeal to the department if
24 any right granted under the Paid Family and Medical Leave Act
25 is violated.

underscoring material = new
[bracketed material] = delete

1 J. A paid family and medical leave plan that is
2 privately operated, as described in Subsection G of this
3 section, shall not:

4 (1) require an employee to pay more for
5 private coverage than the employee would pay through
6 contribution to the fund as described in Subsection B of this
7 section; or

8 (2) impose additional restrictions or
9 conditions on the process of applying for or receiving leave or
10 leave compensation beyond those explicitly authorized by state
11 law.

12 K. The department shall withdraw approval of a
13 waiver for a privately operated paid leave plan or program that
14 violates the provisions of Subsections G through J of this
15 section.

16 SECTION 5. [NEW MATERIAL] ELIGIBILITY--LEAVE COMPENSATION
17 CALCULATION--LEAVE DURATION--DOCUMENTATION REQUIRED--NOTICE OF
18 DETERMINATION.--

19 A. Beginning January 1, 2024, an employer shall
20 allow an eligible employee to take family leave or medical
21 leave after the employee, in accordance with the provisions of
22 the Paid Family and Medical Leave Act and department rules,
23 has:

24 (1) filed a claim for leave approved by the
25 department;

.218534.3

underscoring material = new
~~[bracketed material] = delete~~

1 (2) certified that the employee will not
2 obtain new employment or enter into any new independent
3 contractor agreements during the time the employee receives
4 leave compensation pursuant to the Paid Family and Medical
5 Leave Act; and

6 (3) contributed to the fund for at least six
7 months during any employment in the twelve-month period prior
8 to submitting an application, not including contributions made
9 for employment that the employee will continue during the
10 leave.

11 B. Beginning January 1, 2024, the department shall
12 provide leave compensation to an eligible self-employed
13 individual after the self-employed individual, in accordance
14 with the provisions of the Paid Family and Medical Leave Act
15 and department rules, has:

16 (1) filed a claim for leave approved by the
17 department;

18 (2) certified that the self-employed
19 individual will not obtain new employment or enter into any new
20 independent contractor agreements during the time the self-
21 employed individual receives leave compensation pursuant to the
22 Paid Family and Medical Leave Act; and

23 (3) contributed to the fund for at least six
24 months during the twelve-month period prior to submitting an
25 application, not including contributions made for other

.218534.3

1 employment that the self-employed individual will continue
2 during the leave.

3 C. An employee or self-employed individual is
4 eligible to take a maximum of twelve weeks' leave during any
5 twelve-month period; provided that an employee or self-employed
6 individual may take leave intermittently and is not required to
7 use twelve weeks of leave at any one time.

8 D. An individual who becomes unemployed after
9 contributing to the fund as required by the Paid Family and
10 Medical Leave Act and who is eligible for leave at the time the
11 individual becomes unemployed may, within one year of becoming
12 unemployed, apply for leave and receive leave compensation if
13 the individual is not receiving unemployment insurance
14 benefits.

15 E. An employee or self-employed individual shall be
16 ineligible to receive leave compensation if:

17 (1) the employee or self-employed individual
18 files a fraudulent claim for leave;

19 (2) the employee or self-employed individual
20 knowingly and willfully brings about the injury or sickness of
21 the employee, self-employed individual or another for which a
22 claim for leave is filed; or

23 (3) during leave, the employee or self-
24 employed individual does not provide the care or use leave as
25 described in the employee's application for leave.

underscored material = new
~~[bracketed material] = delete~~

1 F. The department shall issue leave compensation
2 from the fund to an employee as follows:

3 (1) the calculation of weekly leave
4 compensation shall be based on the employee's average weekly
5 earnings during the twelve months immediately preceding the
6 date of the claim for leave up to a maximum of sixty thousand
7 dollars (\$60,000) in gross earnings per year. If the employee
8 worked fewer than twelve months, then weekly leave compensation
9 shall be based on the employee's average weekly earnings during
10 the weeks the employee worked up to a maximum of sixty thousand
11 dollars (\$60,000) in gross earnings;

12 (2) an employee's weekly leave compensation
13 shall equal one hundred percent of the compensation that would
14 be paid to a minimum-wage-earning employee, pursuant to Section
15 50-4-22 NMSA 1978, working the same number of hours per week as
16 the employee, plus sixty-seven percent of the employee's
17 average earnings per week greater than the minimum wage
18 compensation; and

19 (3) the maximum amount of weekly leave
20 compensation shall be no more than the annual mean wage of all
21 occupations in New Mexico as calculated by the United States
22 bureau of labor statistics state occupational employment and
23 wage estimates for the most recent year available divided by
24 fifty-two.

25 G. The department shall issue leave compensation

.218534.3

underscored material = new
~~[bracketed material] = delete~~

1 from the fund to self-employed individuals as follows:

2 (1) a self-employed individual shall determine
3 the annual net income to be used by the department when the
4 self-employed individual enrolls in the paid family and medical
5 leave program up to a maximum of sixty thousand dollars
6 (\$60,000). A self-employed individual may adjust the
7 individual's annual net income one time per year on the
8 anniversary of the individual's enrollment;

9 (2) the calculation of weekly leave
10 compensation shall be based on the self-employed individual's
11 designated annual net income;

12 (3) a self-employed individual's weekly leave
13 compensation shall equal one hundred percent of the
14 compensation that would be paid to a minimum-wage-earning
15 employee, pursuant to Section 50-4-22 NMSA 1978, working full
16 time each week, plus sixty-seven percent of the employee's
17 average net income per week greater than the minimum wage
18 compensation; and

19 (4) the maximum amount of weekly leave
20 compensation shall be no more than the annual mean wage of all
21 occupations in New Mexico as calculated by the United States
22 bureau of labor statistics state occupational employment and
23 wage estimates for the most recent year available divided by
24 fifty-two.

25 H. When an employee or self-employed individual

.218534.3

underscoring material = new
~~[bracketed material] = delete~~

1 submits a claim for leave, the employee or self-employed
2 individual shall provide the department with:

3 (1) if the applicant is an employee, a record
4 of total earnings, the total number of weeks worked and the
5 average number of hours worked per week during the previous
6 twelve months in the employment from which the employee seeks
7 leave; or

8 (2) if the applicant is a self-employed
9 individual, documentation that the individual's business
10 operated and earned gross income from self-employment during
11 the previous twelve months.

12 I. The department shall notify the employer and
13 employee or self-employed individual in writing within ten
14 business days of application:

15 (1) if approved, and shall notify the employee
16 or self-employed individual of the amount of leave compensation
17 that the employee or self-employed individual is eligible to
18 receive biweekly; provided that an eligible employee or self-
19 employed individual shall begin receiving leave compensation
20 within ten business days of the date of submission of a
21 properly completed application or ten business days after
22 approved leave begins;

23 (2) if denied, and shall notify the employee
24 or self-employed individual of the grounds for denying the
25 employee's or self-employed individual's application for

.218534.3

underscored material = new
~~[bracketed material] = delete~~

1 eligibility and of the employee's or self-employed individual's
2 right to appeal; and

3 (3) if further information or supporting
4 documentation is required to determine the employee's or self-
5 employed individual's eligibility for paid leave or the amount
6 of leave compensation; provided that when the department
7 receives sufficient information or supporting documentation
8 from the employee or self-employed individual to make an
9 eligibility determination, the department shall adhere to the
10 notification provision of this subsection.

11 SECTION 6. [NEW MATERIAL] CLAIMS FOR LEAVE--
12 DOCUMENTATION--CONFIDENTIALITY.--

13 A. The department shall require an employee or
14 self-employed individual who seeks family leave to provide, in
15 accordance with department rules, information relating to the
16 family member that verifies the employee's or self-employed
17 individual's claim for family leave.

18 B. The department shall require an employee or
19 self-employed individual who seeks medical leave to provide, in
20 accordance with department rules, verification by a health care
21 provider that the employee, self-employed individual or family
22 member has a serious health condition that supports the
23 employee's or self-employed individual's claim for leave.

24 C. Information contained in an employee's or self-
25 employed individual's files and records pertaining to the Paid

underscoring material = new
~~[bracketed material] = delete~~

1 Family and Medical Leave Act are confidential and not open to
2 public inspection, other than to public employees in the
3 performance of their official duties. However, the employee,
4 the self-employed individual or an authorized representative of
5 either may review the records or receive specific information
6 from the records upon the presentation of the employee's or
7 self-employed individual's signed authorization.

8 D. Employee information gathered by a private
9 employer pursuant to the Paid Family and Medical Leave Act
10 shall be kept confidential by the employer; provided that
11 confidential records may be used by public employees in the
12 performance of their duties.

13 SECTION 7. [NEW MATERIAL] EMPLOYEE NOTICE TO EMPLOYER--
14 REDUCTION OF OTHER LEAVE PROHIBITED.--

15 A. An employee shall:

16 (1) make a reasonable effort to schedule leave
17 so as not to unduly disrupt the operations of the employer;

18 (2) provide the employer with prior notice of
19 the schedule on which the employee will be taking leave, to the
20 extent practicable; and

21 (3) provide the employer with a copy of the
22 employee's application for leave.

23 B. Leave taken shall not result in a reduction of
24 the total amount of leave to which an employee is entitled in
25 excess of the amount of leave actually taken; provided that an

.218534.3

underscored material = new
~~[bracketed material] = delete~~

1 employer subject to the federal Family and Medical Leave Act of
2 1993 may require an employee who takes leave and receives leave
3 compensation under the Paid Family and Medical Leave Act to
4 take paid leave concurrently with leave under the federal
5 Family and Medical Leave Act of 1993.

6 C. Nothing in this section shall be construed to
7 entitle an employee to more leave than required pursuant to
8 Section 5 of the Paid Family and Medical Leave Act.

9 D. An employer shall post and keep posted in a
10 conspicuous place upon its premises a notice that informs
11 employees of the right to take family and medical leave and
12 summarizes the major provisions of the Paid Family and Medical
13 Leave Act.

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

15 A. A self-employed individual shall notify the
16 department within ten business days of the self-employed
17 individual's return to work.

18 B. Upon an employee's return after leave, an
19 employer shall:

20 (1) restore the employee to the position of
21 employment held by the employee when the leave commenced or
22 place the employee in a position for which employee benefits,
23 wages and other terms and conditions of employment are the same
24 as or greater than those of the position from which the
25 employee took leave; and

.218534.3

1 (2) immediately notify the department that the
2 employee has returned to work.

3 C. Nothing in this section shall be construed to
4 entitle a restored employee to:

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

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

10 D. Any yearly certification or training that an
11 employer requires as a condition of employment may remain in
12 place and applicable to any employee taking leave; provided
13 that nothing in this subsection shall supersede another
14 provision of law or a collective bargaining agreement that
15 governs an employee's return to work after leave.

16 E. Nothing in this section shall prohibit an
17 employer from requiring an employee who uses leave to report
18 periodically to the employer on the status and intention of the
19 employee to return to work.

20 F. An employer shall pay its share of health
21 insurance premiums and maintain an employee's health coverage
22 while the employee is on leave pursuant to the Paid Family and
23 Medical Leave Act under terms that the employee would have
24 received if the employee had not taken leave. The employee on
25 leave shall pay the same share of premium payments as the

underscoring material = new
~~[bracketed material] = delete~~

1 employee would have paid if the employee were not on leave.

2 SECTION 9. [NEW MATERIAL] INTERFERENCE AND RETALIATION
3 PROHIBITED.--

4 A. It is unlawful for an employer or any other
5 person to interfere with, restrain or deny the exercise of, or
6 the attempt to exercise, any right protected under the Paid
7 Family and Medical Leave Act.

8 B. An employer shall timely provide to the employee
9 documents required to apply for leave.

10 C. An employer, employee organization or other
11 person shall not take retaliatory personnel action or otherwise
12 discriminate against a person because the person exercised
13 rights protected under the Paid Family and Medical Leave Act.
14 Such rights include:

15 (1) requesting, filing for, applying for or
16 exercising any right to take leave as provided for under the
17 Paid Family and Medical Leave Act;

18 (2) communicating to the employer or any other
19 person or entity an intent to file a claim, a complaint with
20 the department or courts or an appeal;

21 (3) testifying, planning to testify or
22 assisting at any time in any investigation, hearing or
23 proceeding under the Paid Family and Medical Leave Act;

24 (4) informing any person about an employer's
25 alleged violation of the Paid Family and Medical Leave Act; and

.218534.3

underscored material = new
[bracketed material] = delete

1 (5) informing any person of the person's
2 rights under the Paid Family and Medical Leave Act.

3 D. It is unlawful for an employer's absence policy
4 to count paid family and medical leave taken under the Paid
5 Family and Medical Leave Act as an absence that may lead to or
6 result in discipline, discharge, demotion, suspension or any
7 other adverse action.

8 E. The protections provided in this section shall
9 apply to any person who mistakenly, but in good faith, alleges
10 violations of the Paid Family and Medical Leave Act.

11 F. A person that is found by a hearing officer or
12 court of competent jurisdiction to have discharged a worker in
13 violation of this section shall rehire that employee; provided
14 that the worker agrees to be rehired.

15 SECTION 10. [NEW MATERIAL] ADVERSE DETERMINATIONS--APPEAL
16 PROCEDURES--ADMINISTRATIVE ACTIONS--DEPARTMENTAL DISCIPLINARY
17 POWERS.--

18 A. An employee or a self-employed individual named
19 in an application for leave may appeal an adverse determination
20 of that application to the department as follows:

- 21 (1) the aggrieved party shall:
- 22 (a) file an appeal in writing with the
 - 23 department within fifteen business days of receiving notice of
 - 24 the adverse decision;
 - 25 (b) set forth the reasons for appeal;

underscoring material = new
~~[bracketed material] = delete~~

1 and

2 (c) provide notice to all parties that
3 an appeal has been filed; and

4 (2) the secretary shall:

5 (a) hold a hearing within ten business
6 days after an appeal is properly made, due notice is given to
7 the parties in dispute and mediation is refused by any party;

8 (b) develop a record of the proceedings;

9 and

10 (c) rule on the appeal within five
11 business days after the completion of the hearing and issue a
12 final decision in accordance with Subsection B of Section
13 39-3-1.1 NMSA 1978.

14 B. An aggrieved party or the department on its own
15 motion may bring an administrative action for an alleged
16 violation of the Paid Family and Medical Leave Act under a
17 public or privately run leave program as follows:

18 (1) the aggrieved party or the department
19 shall:

20 (a) file a complaint alleging a
21 violation of the Paid Family and Medical Leave Act in writing
22 with the department within thirty business days of becoming
23 aware of the alleged violation;

24 (b) set forth the grounds of the
25 complaint; and

.218534.3

underscoring material = new
~~[bracketed material] = delete~~

1 (c) provide notice to parties to the
2 alleged violation that a complaint has been filed; and

3 (2) the secretary shall:

4 (a) upon receipt of a complaint alleging
5 a violation, first allow for mediation upon agreement by all
6 parties;

7 (b) hold a hearing within ten business
8 days after an appeal is properly made, due notice is given to
9 the parties in dispute and mediation is refused by any party;

10 (c) develop a record of the proceedings;

11 (d) have power to take disciplinary
12 action, including investigating, fining, censuring or
13 reprimanding a party or suspending or revoking a waiver issued
14 pursuant to the Paid Family and Medical Leave Act; and

15 (e) rule on the appeal within five
16 business days after the completion of the hearing and issue a
17 final decision in accordance with Subsection B of Section
18 39-3-1.1 NMSA 1978.

19 C. A party may appeal a final decision made by the
20 department pursuant to the provisions of this section to the
21 district court pursuant to Section 39-3-1.1 NMSA 1978.

22 D. The department may appear in its own name in
23 district court in actions for injunctive relief to prevent any
24 person or entity from violating the provisions of the Paid
25 Family and Medical Leave Act or rules promulgated by the

.218534.3

underscoring material = new
[bracketed material] = delete

1 department.

2 SECTION 11. [NEW MATERIAL] ADMINISTRATIVE PENALTIES.--

3 A. The department may assess an administrative
4 penalty not to exceed ten thousand dollars (\$10,000) upon any
5 employee or self-employed individual who files a fraudulent
6 claim for leave or otherwise willfully violates a provision of
7 the Paid Family and Medical Leave Act. An employee who files a
8 fraudulent claim for leave may be subject to termination of
9 employment.

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

15 SECTION 12. [NEW MATERIAL] PRIVATE RIGHT OF ACTION BY
16 EMPLOYEES.--

17 A. An employee covered by a privately run or state-
18 run leave program or that employee's successor in interest who
19 has suffered damages as a result of a violation of the Paid
20 Family and Medical Leave Act is granted a right to bring an
21 action in district court for:

22 (1) any wages, salary, employment benefits or
23 other compensation denied or lost to the employee by reason of
24 the violation;

25 (2) in a case in which wages, salary,

underscoring material = new
[bracketed material] = delete

1 employment benefits or other compensation has not been denied
2 or lost to the employee, any actual monetary losses sustained
3 by the employee as a direct result of the violation, including
4 the cost of providing care, up to a sum equal to twelve weeks
5 of wages or salary for the employee;

6 (3) the interest on amounts described in this
7 subsection calculated at the prevailing rate; and

8 (4) such equitable relief as may be
9 appropriate, including employment, reinstatement and promotion.

10 B. Costs shall be allowed to the prevailing party
11 unless the court otherwise directs. The court may award
12 attorney fees to the prevailing party if the party:

13 (1) complaining of the violation of the Paid
14 Family and Medical Leave Act has brought an action that the
15 party knew to be groundless; or

16 (2) charged with the violation of the Paid
17 Family and Medical Leave Act has willfully engaged in the
18 violation.

19 C. The relief provided in this section is in
20 addition to remedies otherwise available against the same
21 conduct under the common law or other statutes of this state.

22 SECTION 13. [NEW MATERIAL] COLLECTIVE BARGAINING
23 AGREEMENTS UNAFFECTED.--Nothing in the Paid Family and Medical
24 Leave Act shall be construed to diminish the rights, privileges
25 or remedies of any employee under any collective bargaining

.218534.3

underscoring material = new
[bracketed material] = delete

1 agreement.

2 SECTION 14. [NEW MATERIAL] DEPARTMENT TO PROMULGATE
3 RULES--AGENCIES AND DEPARTMENTS TO COOPERATE.--

4 A. By July 1, 2023, the department shall adopt and
5 promulgate rules to implement the provisions of the Paid Family
6 and Medical Leave Act.

7 B. State agencies and departments shall cooperate
8 with the secretary to timely and efficiently provide the
9 information and services necessary to carry out the provisions
10 of the Paid Family and Medical Leave Act.

11 SECTION 15. TEMPORARY PROVISION--PAID FAMILY AND MEDICAL
12 LEAVE IMPLEMENTATION ADVISORY COMMITTEE--CREATED--PURPOSE--
13 MEMBERS.--

14 A. The "paid family and medical leave
15 implementation advisory committee" is created in the workforce
16 solutions department. The advisory committee shall consist of
17 thirteen members appointed by the secretary of workforce
18 solutions. Members of the advisory committee include:

- 19 (1) a representative of a nonprofit
20 organization that advocates for women and girls;
- 21 (2) a representative of an organization that
22 advocates for individuals fifty years of age or older;
- 23 (3) a representative of a statewide chamber of
24 commerce;
- 25 (4) two representatives of a small business

.218534.3

1 development center advisory council;

2 (5) a representative of a medical society with
3 expertise in the care of children;

4 (6) a member representing the parents of
5 newborn children;

6 (7) a member representing adoptive and foster
7 parents;

8 (8) a member representing unpaid family
9 caregivers;

10 (9) the director of the commission on the
11 status of women;

12 (10) a representative of a university-based
13 bureau of business and economic research;

14 (11) a representative of an organization with
15 expertise in chronic illnesses; and

16 (12) a representative of an organization with
17 expertise in disabilities.

18 B. The paid family and medical leave implementation
19 advisory committee shall provide input regarding best practices
20 for the efficient and timely development, implementation and
21 promulgation of rules and educational materials to carry out
22 the provisions of the Paid Family and Medical Leave Act.

23 C. The secretary of workforce solutions shall
24 consult with the paid family and medical leave implementation
25 advisory committee at least quarterly as rules are developed to

.218534.3

underscoring material = new
~~[bracketed material] = delete~~

1 implement a program pursuant to the Paid Family and Medical
2 Leave Act.

3 D. Members of the paid family and medical leave
4 implementation advisory committee shall not be entitled to per
5 diem and mileage expenses. The workforce solutions department
6 shall provide staff for the committee.

7 E. The paid family and medical leave implementation
8 advisory committee shall function from the date of its
9 appointment, which shall be no later than July 1, 2022, until
10 July 1, 2023.