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HOUSE BILL 11

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Marian Matthews

AN ACT

RELATING TO LABOR; ENACTING THE PAID FAMILY AND MEDICAL LEAVE
INSURANCE ACT; CREATING THE PAID FAMILY AND MEDICAL LEAVE
INSURANCE AUTHORITY; CREATING THE PAID FAMILY AND MEDICAL LEAVE
INSURANCE BOARD; CREATING THE PAID FAMILY AND MEDICAL LEAVE
INSURANCE FUND; PROVIDING FOR ADMINISTRATION OF THE PAID FAMILY
AND MEDICAL LEAVE INSURANCE PROGRAM BY THE BOARD; EXCEPTING
CERTAIN EMPLOYEES; PROVIDING FOR RULEMAKING; PROVIDING FOR AN
APPEALS PROCESS; PREEMPTING SIMILAR PROGRAMS; PRESCRIBING
PENALTIES; MAKING AN APPROPRIATION.

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 Insurance Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Paid Family and Medical Leave Insurance Act:

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1 A. "authority" means the paid family and medical
2 leave insurance authority;

3 B. "base period" means the first four of the five
4 most recently completed quarters;

5 C. "base weekly earnings" means an amount equal to
6 one twenty-sixth of a covered employee's total wages and self-
7 employment income earned during the two quarters of the covered
8 employee's base period in which the employee's earnings were
9 highest;

10 D. "board" means the paid family and medical leave
11 insurance board;

12 E. "contribution rate" means the percentage of
13 subject earnings that employees and self-employed individuals
14 enrolled in the paid family and medical leave insurance program
15 are required to contribute to the fund;

16 F. "covered employee" means a person who has
17 contributed to the fund for at least six months during any
18 employment in the twelve-month period prior to submitting an
19 application for family and medical leave and:

20 (1) has earned at least two thousand three
21 hundred twenty-five dollars (\$2,325) in subject earnings during
22 the employee's highest earning quarter within the base period;
23 or

24 (2) is a self-employed individual who is a
25 resident of the state and has enrolled in the paid family and

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1 medical leave insurance program pursuant to Section 8 of the
2 Paid Family and Medical Leave Insurance Act;

3 G. "employee" means a person working within the
4 state who performs a service for wages under a contract of
5 hire, written or oral, express or implied, and includes an
6 individual employed by the state or a political subdivision of
7 the state. "Employee" does not mean an independent contractor,
8 a person employed by the United States, a person employed by a
9 private or public employer that is not subject to the
10 jurisdiction of the state, an employee of an employer subject
11 to the provisions of Title 2 of the federal Railway Labor Act
12 or an employee as defined in either the federal Railroad
13 Unemployment Insurance Act or the Federal Employers' Liability
14 Act (Railroads);

15 H. "employer" means a person that has one or more
16 employees within the state, including the state or a political
17 subdivision of the state;

18 I. "employment benefits" means benefits provided or
19 made available to employees by an employer, including group
20 life insurance, health insurance, disability insurance, sick
21 leave, annual leave, educational benefits, retirement benefits
22 and pensions;

23 J. "family and medical leave compensation" or
24 "compensation" means the paid leave provided to covered
25 employees from the fund;

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1 K. "family member" means a spouse, domestic
2 partner, sibling, son or daughter, grandparent, grandchild,
3 parent or person related to the employee by blood or affinity
4 whose close association with the employee shows to be the
5 equivalent of those family relationships;

6 L. "fund" means the paid family and medical leave
7 insurance fund;

8 M. "health care provider" means a physician,
9 physician assistant, nurse practitioner or other health care
10 professional authorized to provide health care services within
11 the scope of the professional's license;

12 N. "intermittent leave" means family and medical
13 leave taken in separate periods of time due to a single illness
14 or injury;

15 O. "Indian tribe" means a governmental unit,
16 subdivision, agency, department or instrumentality of a
17 federally recognized Indian nation, tribe or pueblo, wholly or
18 partially located in New Mexico, or a business enterprise
19 wholly owned by an Indian nation, tribe or pueblo;

20 P. "medical leave" means leave for which an
21 employee can apply for family and medical leave compensation
22 pursuant to the Paid Family and Medical Leave Insurance Act
23 that is granted to allow the employee to provide care for the
24 employee's own serious health condition;

25 Q. "person" means an individual, corporation,

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1 organization or other legal entity;

2 R. "serious health condition" means an illness,
3 injury, impairment or physical or mental condition that
4 involves:

5 (1) inpatient care in a hospital, hospice,
6 nursing home or residential medical care facility; or

7 (2) continuing treatment, including outpatient
8 treatment by a health care provider;

9 S. "subject earnings" means the portion of an
10 employee's total wages that does not exceed the federal social
11 security contribution and benefit base; and

12 T. "total wages" means all remuneration for
13 employment and dismissal payments, including the cash value of
14 all remuneration paid in any medium other than cash. "Total
15 wages" does not include the cash value of any remuneration paid
16 for agricultural labor or domestic service in any medium other
17 than cash or the cash value of employment benefits.

18 SECTION 3. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE
19 INSURANCE AUTHORITY--PAID FAMILY AND MEDICAL LEAVE INSURANCE
20 BOARD--CREATED.--

21 A. The "paid family and medical leave insurance
22 authority" is created and is administratively attached to the
23 workforce solutions department.

24 B. The "paid family and medical leave insurance
25 board" is created to oversee and operate the authority. The

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1 board is composed of the following eleven voting members:

2 (1) the secretary of workforce solutions or
3 the secretary's designee;

4 (2) the secretary of economic development or
5 the secretary's designee;

6 (3) the superintendent of insurance or the
7 superintendent's designee;

8 (4) the secretary of health care authority or
9 the secretary's designee;

10 (5) one member appointed by the speaker of the
11 house of representatives who advocates for the interests of
12 employees;

13 (6) one member appointed by the minority floor
14 leader of the house of representatives who has knowledge and
15 experience relating to the interests of the elderly and people
16 with chronic illness;

17 (7) one member appointed by the president pro
18 tempore of the senate who has personal knowledge and experience
19 with economically distressed and underserved communities and is
20 reflective of the ethnic and economic diversity of such
21 communities;

22 (8) one member appointed by the minority floor
23 leader of the senate who has knowledge and experience relating
24 to managing and developing employment benefit plans; and

25 (9) three members appointed by the governor as

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1 follows:

2 (a) one member who has knowledge and
3 experience relating to family and medical leave programs;

4 (b) one member who has knowledge and
5 experience relating to the delivery and management of child
6 care services; and

7 (c) one member with knowledge and
8 experience relating to the delivery of rural health care.

9 C. Appointed members of the board shall serve a
10 term of four years that expires on July 1 of the board member's
11 fourth year. All initial appointments to the board shall be
12 made by July 1, 2024, and initial appointed members of the
13 board shall determine by lot three members to serve two-year
14 terms and four members to serve four-year terms. Board members
15 shall serve until their successors have been appointed. If a
16 position on the board becomes vacant for any reason, a
17 successor shall be selected by the original appointing
18 authority in the same manner as the original appointment and
19 shall serve for the remainder of the vacated term.

20 D. A board member who fails to attend three
21 consecutive meetings or fails to attend fifty percent of all
22 meetings held during any calendar year shall automatically be
23 removed as a member of the board.

24 E. The governor shall select one of the members of
25 the board as the chair. The board shall annually elect a vice

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1 chair and such other officers as it deems necessary from among
2 its members.

3 F. A majority of the members of the board shall
4 constitute a quorum and shall be capable of conducting any
5 board business. The vote of a majority of a quorum shall
6 prevail, even though the vote may not represent an actual
7 majority of all the board members.

8 G. Board members shall receive per diem and mileage
9 as provided in the Per Diem and Mileage Act and shall receive
10 no other remuneration, compensation or allowance.

11 SECTION 4. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE
12 INSURANCE AUTHORITY STAFF.--

13 A. The position of "director of the paid family and
14 medical leave insurance authority" is created. The director
15 shall be hired by the board and shall serve at the pleasure of
16 the board. The director's salary shall be set by the board.

17 B. The director may employ additional staff, agents
18 or contractors as necessary for carrying out the authority's
19 duties pursuant to the Paid Family and Medical Leave Insurance
20 Act.

21 SECTION 5. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE
22 INSURANCE PROGRAM--EMPLOYEE CONTRIBUTIONS--AUTHORITY DUTIES--
23 AGENCIES AND DEPARTMENTS TO COOPERATE.--

24 A. The authority shall establish and administer a
25 paid family and medical leave insurance program to provide up

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1 to six weeks of family and medical leave compensation to
2 covered employees during any twelve-month period.

3 B. Beginning January 1, 2026, each covered employee
4 and self-employed individual who has enrolled in the paid
5 family and medical leave insurance program shall contribute a
6 percentage of the employee's or self-employed individual's
7 subject earnings to the fund. The contribution rate shall be
8 set by the authority and shall not exceed one-half percent of
9 subject earnings.

10 C. By January 1, 2027, and annually thereafter, the
11 authority shall conduct an actuarial study to evaluate the
12 sustainability of the fund. The study shall:

13 (1) determine the total amount of money in the
14 fund;

15 (2) determine the total amount of
16 contributions made to the fund during the previous calendar
17 year;

18 (3) determine the total amount of family and
19 medical leave compensation provided to covered employees during
20 the previous calendar year;

21 (4) determine the total cost of administration
22 of the paid family and medical leave insurance program during
23 the previous year;

24 (5) determine the total cost of administration
25 of the fund;

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1 (6) evaluate the effect that increasing or
2 decreasing the contribution rate would have on the fund;

3 (7) evaluate the effect that increasing the
4 maximum weekly compensation amount would have on the fund;

5 (8) identify the target fund balance
6 sufficient to ensure the ongoing sustainability of the fund;
7 and

8 (9) identify a recommended contribution rate
9 and maximum weekly compensation amount that would allow the
10 fund to reach the target fund balance.

11 D. On January 1, 2028, and annually thereafter, the
12 authority may adjust the contribution rate according to the
13 recommended contribution rate identified in the actuarial study
14 conducted by the authority. The authority may:

15 (1) increase the contribution rate to ensure
16 the sustainability of the fund as long as the contribution rate
17 does not exceed one-half percent of subject earnings; or

18 (2) decrease the contribution rate if the
19 actuarial study determines that the fund will remain solvent
20 after a decrease in the contribution rate.

21 E. The contributions of employees shall be remitted
22 by the employer following the end of each quarter for which the
23 contributions are deducted and on a date determined by the
24 authority.

25 F. To implement and administer the paid family and

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1 medical leave insurance program, the authority shall:

2 (1) evaluate and establish a process by which
3 employers may credit covered employee contributions to the
4 fund;

5 (2) establish and maintain a secure website
6 that displays all public notices issued by the authority;

7 (3) establish a process for determining
8 whether a person meets the requirements for family and medical
9 leave compensation, including the certification required for
10 establishing eligibility for the compensation;

11 (4) establish a process for determining
12 whether an employer qualifies for a waiver from the paid family
13 and medical leave insurance program;

14 (5) make and enter into any contract or
15 agreement necessary or incidental to the performance of its
16 duties. A contract or agreement shall not contain any
17 provision in which a contractor derives any direct or indirect
18 economic benefit from denying or otherwise influencing the
19 outcome of any claim for family and medical leave compensation;
20 and

21 (6) adopt and promulgate rules necessary to
22 implement the provisions of the Paid Family and Medical Leave
23 Insurance Act.

24 G. The authority may contract for:

25 (1) a person to administer the paid family and

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1 medical leave insurance program;

2 (2) actuarial studies that evaluate the
3 solvency of the fund; and

4 (3) public outreach related to the paid family
5 and medical leave insurance program.

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

10 SECTION 6. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE
11 INSURANCE FUND--CREATION.--

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

20 B. Money in the fund is appropriated to the
21 authority for the purposes of:

22 (1) distributing family and medical leave
23 compensation to covered employees; and

24 (2) paying the operational and administrative
25 costs of the authority and educating and informing the public

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1 about the paid family and medical leave insurance program;
2 provided that money shall only be used for paying operational
3 and administrative costs of the authority and educating and
4 informing the public when authorized by the enactment of a
5 specific appropriation by the legislature that:

6 (a) specifies the purpose for the
7 appropriation; and

8 (b) obligates money in the fund for a
9 period that is less than two years after the date of the
10 enactment of the appropriation.

11 C. Money shall be disbursed from the fund only on
12 warrant issued by the secretary of finance and administration
13 pursuant to vouchers signed by the director of the paid family
14 and medical leave insurance authority or the director's
15 authorized representative. Any unexpended or unencumbered
16 balance remaining at the end of a fiscal year shall not revert
17 to the general fund.

18 SECTION 7. [NEW MATERIAL] FAMILY AND MEDICAL LEAVE
19 COMPENSATION--ELIGIBILITY--DOCUMENTATION REQUIRED.--

20 A. Beginning January 1, 2027, covered employees
21 shall be entitled to a total of six weeks of family and medical
22 leave compensation during any calendar year for any of the
23 following reasons:

- 24 (1) the birth of the covered employee's child;
25 (2) the placement of a child with the covered

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1 employee for adoption or foster care;

2 (3) to care for a family member of the covered
3 employee, if the family member has a serious health condition;
4 or

5 (4) to recover from the covered employee's
6 serious health condition.

7 B. Family and medical leave taken by a covered
8 employee due to the birth of the covered employee's child or
9 the placement of a child with the covered employee for adoption
10 or foster care may be taken before the impending birth or
11 placement to prepare for the birth or placement of the child.

12 C. Family and medical leave taken by a covered
13 employee due to the birth of the covered employee's child or
14 the placement of a child with the covered employee for adoption
15 or foster care shall not be taken intermittently unless the
16 covered employee and the employer agree otherwise. Family and
17 medical leave taken by any covered employee for any other
18 reason outlined in Subsection A of this section may be taken
19 intermittently if both the covered employee and employer agree.
20 A covered employee may receive family and medical leave
21 compensation in increments of no fewer than eight hours.

22 D. If a covered employee requests intermittent
23 leave, the covered employee's employer may require the covered
24 employee to transfer temporarily to an available alternative
25 position that the covered employee is qualified for if the

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1 position:

2 (1) has equivalent pay and employment
3 benefits; and

4 (2) better accommodates recurring periods of
5 leave than the covered employee's original position.

6 E. A covered employee shall:

7 (1) make a reasonable effort to schedule
8 family and medical leave so as not to unduly disrupt the
9 operations of the employer;

10 (2) provide the employer with prior notice of
11 the covered employee's intent to take family and medical leave
12 at least thirty calendar days before taking family and medical
13 leave, except when the circumstances require the covered
14 employee to begin leave in less than thirty days, in which case
15 the covered employee shall provide notice as soon as
16 practicable; and

17 (3) provide the employer with prior notice of
18 the schedule on which the covered employee will be taking
19 family and medical leave, to the extent practicable.

20 F. Family and medical leave taken pursuant to the
21 Paid Family and Medical Leave Insurance Act shall not result in
22 a reduction of the total amount of leave to which a covered
23 employee is otherwise entitled pursuant to contract, policy,
24 collective bargaining agreement or other law or rule in excess
25 of the amount of family and medical leave actually taken

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1 pursuant to the Paid Family and Medical Leave Insurance Act;
2 provided that an employer subject to the federal Family and
3 Medical Leave Act of 1993 may require a covered employee who
4 takes family and medical leave and receives family and medical
5 leave compensation under the Paid Family and Medical Leave
6 Insurance Act that also qualifies as leave under the federal
7 Family and Medical Leave Act of 1993 to take leave
8 concurrently.

9 G. A covered employee shall be ineligible to
10 receive family and medical leave compensation if:

11 (1) the covered employee or self-employed
12 individual files a fraudulent claim for family and medical
13 leave compensation or has filed a fraudulent claim for family
14 and medical leave compensation within the previous three years;

15 (2) the covered employee or self-employed
16 individual is receiving unemployment insurance benefits during
17 the period for which the claim for leave is filed;

18 (3) during leave, the covered employee or
19 self-employed individual does not provide the care or use leave
20 as described in the covered employee's application for leave;
21 or

22 (4) the covered employee is seeking medical
23 leave due to an injury or illness caused by circumstances that
24 would entitle the covered employee to temporary indemnity
25 benefits under the Workers' Compensation Act.

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1 H. To be eligible for family and medical leave
2 compensation, a covered employee shall:

3 (1) provide notice to the authority of the
4 need for compensation in a form and manner prescribed by the
5 authority;

6 (2) certify that the covered employee has
7 notified the covered employee's employer of the covered
8 employee's intent to take family and medical leave;

9 (3) upon request of the authority, provide
10 certification of the employee's need for family and medical
11 leave; and

12 (4) if applying for medical leave, certify
13 that the employee's serious health condition is not eligible
14 for benefits under the Workers' Compensation Act or the New
15 Mexico Occupational Disease Disablement Law.

16 I. The weekly compensation offered to covered
17 employees shall be equal to ninety-five percent of the covered
18 employee's base weekly earnings up to an amount equal to forty
19 times the minimum wage rate provided in Section 50-4-22 NMSA
20 1978, and sixty percent of the covered employee's base weekly
21 earnings above an amount equal to forty times the minimum wage
22 rate. The total weekly compensation shall not exceed an amount
23 equal to sixty times the minimum wage rate unless the authority
24 determines, based on actuarial studies, that the fund can
25 sustainably compensate covered employees at a higher maximum

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1 weekly compensation amount set by the authority.

2 J. The authority shall withhold applicable federal
3 and state income taxes from a covered employee's family and
4 medical leave compensation.

5 K. Amounts deducted and withheld from family and
6 medical leave compensation shall remain in the fund until
7 transferred to the federal internal revenue service or the
8 taxation and revenue department.

9 L. The authority shall follow all procedures
10 specified by the United States department of labor and the
11 federal internal revenue service pertaining to the deducting
12 and withholding of income tax.

13 SECTION 8. [NEW MATERIAL] ENROLLMENT IN PAID FAMILY AND
14 MEDICAL LEAVE INSURANCE PROGRAM BY SELF-EMPLOYED INDIVIDUALS.--

15 A. A self-employed individual may submit an
16 application to the authority, in a form and manner prescribed
17 by the authority, to enroll in the paid family and medical
18 leave insurance program. A self-employed individual enrolled
19 in the program shall be required to remain in the program for
20 at least three years and shall be automatically re-enrolled in
21 the program each year thereafter, unless the self-employed
22 individual opts out of the program.

23 B. A self-employed individual may withdraw from the
24 paid family and medical leave insurance program upon submitting
25 written notice to the authority at least thirty days prior to

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1 the expiration of the initial three-year enrollment period or a
2 subsequent enrollment period.

3 SECTION 9. [NEW MATERIAL] FAMILY AND MEDICAL LEAVE
4 CERTIFICATION.--

5 A. The authority shall require a covered employee
6 who seeks family and medical leave compensation to provide, in
7 accordance with authority rules, evidence of the birth or
8 adoption of a child or placement of a foster child with the
9 covered employee or verification by a health care provider that
10 a family member has a serious health condition that supports
11 the covered employee's claim for compensation.

12 B. The authority shall require a covered employee
13 who seeks family and medical leave compensation to provide, in
14 accordance with authority rules, verification by a health care
15 provider that the covered employee has a serious health
16 condition that supports the covered employee's claim for
17 compensation.

18 C. Information contained in a covered employee's
19 files and records pertaining to the Paid Family and Medical
20 Leave Insurance Act are confidential and not open to public
21 inspection, other than to authority employees and agents in the
22 performance of their official duties and reporting
23 requirements. However, the covered employee or the covered
24 employee's authorized representative may review the records or
25 receive specific information from the records upon the

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1 presentation of the covered employee's signed authorization.

2 D. Employee information gathered by an employer
3 pursuant to the Paid Family and Medical Leave Insurance Act
4 shall be kept confidential by the employer; provided that
5 confidential records may be used by authority employees in the
6 performance of their duties.

7 SECTION 10. [NEW MATERIAL] EMPLOYER WAIVER.--

8 A. An employer that has adopted and operates a
9 private paid family and medical leave program or plan for the
10 benefit of its employees that provides leave and compensation
11 that is of equal or greater duration and value than the family
12 and medical leave compensation offered under the Paid Family
13 and Medical Leave Insurance Act may apply for a waiver to
14 exempt the employer and its employees from participating in the
15 paid family and medical leave insurance program. The employer
16 shall apply and provide supporting documentation to the
17 authority for exemption each calendar year. The documentation
18 shall include evidence that:

19 (1) the private program or plan offers at
20 least six weeks of paid family and medical leave;

21 (2) the private program or plan offers at
22 least as much family and medical leave compensation as the
23 compensation provided for in the Paid Family and Medical Leave
24 Insurance Act;

25 (3) the private program or plan does not

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1 impose any conditions or restrictions that are not explicitly
2 authorized by the Paid Family and Medical Leave Insurance Act;
3 and

4 (4) the private program or plan does not cost
5 employees more than the premium charged to employees pursuant
6 to the Paid Family and Medical Leave Insurance Act.

7 B. An employer granted a waiver pursuant to
8 Subsection A of this section shall notify all employees covered
9 by the employer's paid leave program at the start of the
10 employee's employment and annually thereafter that:

11 (1) the employee is covered by a privately run
12 family and medical leave program rather than a public plan;

13 (2) employees may apply to the employer for
14 family and medical leave;

15 (3) employers shall provide family and medical
16 leave and family and medical leave compensation that is of
17 equal or greater value and duration than that granted to
18 employees under the Paid Family and Medical Leave Insurance
19 Act; and

20 (4) employees may appeal to the authority if
21 any right granted under the Paid Family and Medical Leave
22 Insurance Act is violated.

23 C. Employees who work for an employer that has
24 received a waiver from the authority shall not contribute a
25 percentage of their earnings to the fund.

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1 D. A denial of family and medical leave
2 compensation by a private plan or program shall be subject to
3 the denial of compensation appeal procedure outlined in Section
4 14 of the Paid Family and Medical Leave Insurance Act.

5 E. Nothing in this section shall be construed to
6 limit an employer from providing a private paid family and
7 medical leave program or plan that provides greater benefits
8 than required by the Paid Family and Medical Leave Insurance
9 Act.

10 SECTION 11. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE
11 FRAUD--DISQUALIFICATION FROM PAID FAMILY AND MEDICAL LEAVE
12 INSURANCE PROGRAM--REPAYMENT OF FAMILY AND MEDICAL LEAVE
13 COMPENSATION--PENALTIES.--

14 A. Family and medical leave compensation fraud
15 consists of:

16 (1) making a false statement or
17 misrepresentation regarding a material fact, or willfully
18 failing to report a material fact, to obtain family and medical
19 leave compensation; and

20 (2) aiding, abetting, assisting, promoting or
21 facilitating the production of a misrepresented claim for
22 family and medical leave compensation.

23 B. Except as otherwise provided for in this section
24 regarding the repayment of family and medical leave
25 compensation, a person who commits family and medical leave

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1 compensation fraud that results in improper family and medical
2 leave compensation of:

3 (1) not more than two hundred fifty dollars
4 (\$250) is guilty of a petty misdemeanor and shall be sentenced
5 pursuant to the provisions of Section 31-19-1 NMSA 1978;

6 (2) more than two hundred fifty dollars (\$250)
7 but not more than two thousand five hundred dollars (\$2,500) is
8 guilty of a misdemeanor and shall be sentenced pursuant to the
9 provisions of Section 31-19-1 NMSA 1978;

10 (3) more than two thousand five hundred
11 dollars (\$2,500) but not more than twenty thousand dollars
12 (\$20,000) is guilty of a fourth degree felony and shall be
13 sentenced pursuant to the provisions of Section 31-18-15 NMSA
14 1978; and

15 (4) more than twenty thousand dollars
16 (\$20,000) is guilty of a third degree felony and shall be
17 sentenced pursuant to the provisions of Section 31-18-15 NMSA
18 1978.

19 C. A person participating in the paid family and
20 medical leave insurance program who willfully makes a false
21 statement or misrepresentation regarding a material fact, or
22 willfully fails to report a material fact, to obtain family and
23 medical leave compensation shall be disqualified from receiving
24 any compensation under the program for three years after making
25 the false statement or misrepresentation or failing to report

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1 the material fact.

2 D. If family and medical leave compensation is paid
3 to a covered employee erroneously or as a result of willful
4 misrepresentation by the covered employee, or if a claim for
5 family and medical leave compensation is rejected after
6 compensation is paid, the authority may seek repayment of
7 family and medical leave compensation from the covered employee
8 who received compensation. When payment is made due to willful
9 misrepresentation, the authority may seek payment of a penalty
10 not to exceed fifty percent of the family and medical leave
11 compensation paid as a result of the misrepresentation.

12 E. If family and medical leave compensation is paid
13 as a result of willful misrepresentation by a health care
14 provider, the authority may seek payment of a penalty from the
15 health care provider not to exceed three hundred percent of the
16 family and medical leave compensation paid as a result of the
17 misrepresentation.

18 F. A person, including an employer, who
19 intentionally aids, abets, assists, promotes or facilitates the
20 making of a misrepresented claim for compensation shall be
21 liable for the same financial penalty as the person who made
22 the claim.

23 SECTION 12. [NEW MATERIAL] EMPLOYMENT AND EMPLOYMENT
24 BENEFITS PROTECTION.--

25 A. A covered employee who has been employed by the
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1 employee's current employer for at least one hundred twenty
2 days and takes family and medical leave pursuant to the Paid
3 Family and Medical Leave Insurance Act for the intended purpose
4 of the leave shall be entitled on return from the leave:

5 (1) to be restored by the employer to the
6 position of employment held by the covered employee when the
7 leave commenced;

8 (2) to be restored to an equivalent position
9 with equivalent employment benefits and pay; or

10 (3) in the case of a medical leave, if the
11 covered employee is medically unable to perform the employee's
12 original job upon returning to work, to be transferred to work
13 suitable to the employee's physical condition if such work is
14 available.

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

17 (1) the accrual of any seniority or employment
18 benefits during a period of family and medical leave; or

19 (2) any right, employment benefit or position
20 of employment other than any right, employment benefit or
21 position to which the covered employee would have been entitled
22 had the covered employee not taken family and medical leave.

23 C. An employer shall pay its share of group life
24 insurance, health insurance and disability insurance premiums
25 and maintain a covered employee's insurance coverage while the

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1 employee is on leave pursuant to the Paid Family and Medical
2 Leave Insurance Act under terms that the covered employee would
3 have received if the covered employee had not taken leave. The
4 covered employee on leave shall pay the same share of premium
5 payments as the covered employee would have paid if the
6 employee were not on leave; provided that nothing in this
7 section shall prohibit an employer acting in good faith to
8 dispute an employee's eligibility to receive family and medical
9 leave or compensation.

10 D. Nothing in this section shall be construed to
11 prohibit an employer from requiring a covered employee on
12 family and medical leave to report periodically to the employer
13 on the status and intention of the covered employee to return
14 to work.

15 SECTION 13. [NEW MATERIAL] INTERFERENCE AND RETALIATION
16 PROHIBITED.--

17 A. It is unlawful for an employer or any other
18 person to interfere with or restrain or deny the exercise of or
19 the attempt to exercise any right protected under the Paid
20 Family and Medical Leave Insurance Act.

21 B. An employer, employee organization or other
22 person shall not take retaliatory action or otherwise
23 discriminate against a covered employee because the covered
24 employee exercised rights protected under the Paid Family and
25 Medical Leave Insurance Act. Such rights include:

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1 (1) requesting, filing for, applying for or
2 exercising any right to take family and medical leave as
3 provided for under the Paid Family and Medical Leave Insurance
4 Act;

5 (2) communicating to the employer or any other
6 person or entity an intent to file a claim, a complaint with
7 the authority or courts or an appeal;

8 (3) testifying, planning to testify or
9 assisting at any time in any investigation, hearing or
10 proceeding under the Paid Family and Medical Leave Insurance
11 Act;

12 (4) informing any person about an employer's
13 alleged violation of the Paid Family and Medical Leave
14 Insurance Act; and

15 (5) informing any person of the person's
16 rights under the Paid Family and Medical Leave Insurance Act.

17 C. It is unlawful for an employer's absence policy
18 to count family and medical leave taken under the Paid Family
19 and Medical Leave Insurance Act as an absence that may lead to
20 or result in discipline, discharge, demotion, suspension or any
21 other adverse action.

22 D. The protections provided in this section shall
23 apply to any person who reasonably but mistakenly alleges
24 violations of the Paid Family and Medical Leave Insurance Act.

25 E. An employer that is found by a hearing officer

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1 or court of competent jurisdiction to have discharged a covered
2 employee in violation of this section shall rehire that
3 employee; provided that the covered employee agrees to be
4 rehired.

5 F. Nothing in this section shall be construed to
6 limit an employer from making a report in good faith to the
7 authority, a law enforcement officer or a law enforcement
8 agency relating to family and medical leave compensation fraud
9 allegedly committed by an employee.

10 SECTION 14. [NEW MATERIAL] ADVERSE DETERMINATIONS--APPEAL
11 PROCEDURES--ADMINISTRATIVE ACTIONS--AUTHORITY DISCIPLINARY
12 POWERS.--

13 A. A covered employee or the covered employee's
14 authorized representative named in an application for leave may
15 appeal an adverse determination of that application to the
16 authority as follows:

17 (1) the aggrieved party shall:

18 (a) file an appeal in writing with the
19 authority within fifteen business days of receiving notice of
20 the adverse decision;

21 (b) set forth the reasons for appeal;

22 and

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

25 (2) the authority may:

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

4 (b) develop a record of the proceedings;
5 and

6 (c) rule on the appeal within five
7 business days after the completion of the hearing and issue a
8 final decision in accordance with Subsection B of Section
9 39-3-1.1 NMSA 1978.

10 B. An aggrieved party, including a covered employee
11 or former employee, or the authority on its own motion may
12 bring an administrative action for an alleged violation of the
13 Paid Family and Medical Leave Insurance Act under a public or
14 privately run leave program as follows:

15 (1) the aggrieved party or the authority
16 shall:

17 (a) file a complaint alleging a
18 violation of the Paid Family and Medical Leave Insurance Act in
19 writing with the authority within thirty business days of
20 becoming aware of the alleged violation;

21 (b) set forth the grounds of the
22 complaint; and

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

25 (2) the authority shall:

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1 (a) upon receipt of a complaint alleging
2 a violation, first allow for mediation upon agreement by all
3 parties;

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

7 (c) develop a record of the proceedings;

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

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

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

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

25 SECTION 15. [NEW MATERIAL] WRITTEN NOTICE REQUIRED OF

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1 EMPLOYERS.--Each employer, at the time of hiring a new covered
2 employee and annually thereafter, shall provide written notice
3 to each of the employer's employees that provides information
4 on the:

5 A. covered employee's rights and obligations under
6 the Paid Family and Medical Leave Insurance Act;

7 B. process for filing a claim for compensation;

8 C. protections that employees have to be able to
9 apply for or use family and medical leave compensation without
10 retaliation from an employer; and

11 D. right to file an appeal to the authority for
12 denial of family and medical leave compensation.

13 SECTION 16. [NEW MATERIAL] AUTHORITY REPORTING
14 REQUIREMENTS.--

15 A. No later than July 1, 2025 and annually
16 thereafter, the authority shall submit a report to the
17 legislature that includes information on the:

18 (1) projected and actual participation in the
19 paid family and medical leave insurance program;

20 (2) balance of the fund;

21 (3) reasons why covered employees are
22 receiving family and medical leave compensation;

23 (4) success of outreach and education efforts;

24 (5) demographic information of covered
25 employees who apply for family and medical leave compensation,

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1 including the employee's gender, age and income level;

2 (6) total number of claims made and claims
3 denied;

4 (7) total amount of contributions to the fund
5 paid during the previous fiscal year;

6 (8) total cost of administration of the fund
7 during the previous fiscal year; and

8 (9) target fund balance sufficient to ensure
9 the ongoing sustainability of the fund.

10 B. The authority shall make the report available to
11 the public on the authority's website.

12 SECTION 17. [NEW MATERIAL] PUBLIC EDUCATION CAMPAIGN.--

13 The authority shall conduct a public education campaign that
14 provides information on the paid family and medical leave
15 insurance program. The public education campaign shall include
16 information on the requirements for receiving family and
17 medical leave compensation and how to apply for family and
18 medical leave compensation. The authority may use money from
19 the fund for the purposes of the public education campaign.

20 SECTION 18. [NEW MATERIAL] PREEMPTION.--

21 A. A city, county, home rule municipality or other
22 political subdivision of the state shall not adopt or continue
23 in effect any ordinance, rule, regulation, resolution or
24 statute that establishes a program of rights and benefits as
25 set out in the Paid Family and Medical Leave Insurance Act,

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1 excluding a paid sick leave or paid time-off ordinance, policy
2 or resolution.

3 B. Subject to the requirements of the Paid Family
4 and Medical Leave Insurance Act, the provisions of Subsection A
5 of this section shall not prevent a city, county, home rule
6 municipality or other political subdivision of the state from
7 establishing any leave policies for its employees.

8 SECTION 19. [NEW MATERIAL] COLLECTIVE BARGAINING
9 AGREEMENTS UNAFFECTED.--Nothing in the Paid Family and Medical
10 Leave Insurance Act shall be construed to diminish the rights,
11 privileges or remedies of any employee under any collective
12 bargaining agreement.