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HOUSE BILL 20

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

INTRODUCED BY

Christine Chandler

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE HEALTHY WORKPLACES ACT;  
PROVIDING REQUIREMENTS FOR EARNED SICK LEAVE; PROVIDING  
PENALTIES.

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 "Healthy Workplaces Act".

SECTION 2. [NEW MATERIAL] PURPOSE OF ACT.--The purposes  
of the Healthy Workplaces Act are to:

A. regulate employee benefits regarding earned sick  
leave within New Mexico;

B. ensure that all employees in New Mexico can  
address their own health and safety needs and the health and  
safety needs of their families by requiring employers to  
provide a minimum amount of earned sick leave, including leave

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1 for the care of family members;

2 C. address the concern that many New Mexico  
3 employees currently have no access to sick leave for personal  
4 or family health needs;

5 D. reduce public and private health care costs and  
6 promote preventive health services in New Mexico by enabling  
7 employees to seek early and routine medical care for themselves  
8 and their family members;

9 E. protect the public's health in New Mexico by  
10 reducing the risk of contagion;

11 F. promote the economic stability of employees and  
12 their families;

13 G. protect employees in New Mexico from losing  
14 their jobs or facing workplace discipline when they use earned  
15 sick leave to care for themselves or their families;

16 H. benefit businesses by reducing worker turnover  
17 due to the lack of earned sick leave and decreasing the  
18 incidence of employees coming to work with illnesses and health  
19 conditions that reduce their productivity;

20 I. safeguard the public welfare, health, safety and  
21 prosperity of the people of New Mexico; and

22 J. accomplish the purposes described in Subsections  
23 A through I of this section in a manner that is feasible for  
24 employers.

25 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the

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1 Healthy Workplaces Act:

2 A. "earned sick leave" means time that is  
3 compensated at the same hourly rate and with the same benefits,  
4 including health care benefits, as an employee normally earns  
5 during hours worked and is provided by an employer to that  
6 employee for the purposes described in the Healthy Workplaces  
7 Act, but in no case shall the hourly rate be less than the  
8 applicable legally required minimum wage rate;

9 B. "employ" means suffer or permit to work;

10 C. "employee" means an individual employed by an  
11 employer within New Mexico for more than eighty hours in a  
12 twelve-month period;

13 D. "employer" means an individual, partnership,  
14 association, corporation, business trust, legal representative  
15 or any organized group of persons employing one or more  
16 employees at any one time, acting directly or indirectly in the  
17 interest of an employer in relation to an employee, but shall  
18 not include the United States, any state or any political  
19 subdivision of a state;

20 E. "family member" is defined as:

21 (1) a biological, adopted or foster child, a  
22 stepchild or legal ward, or a child to whom the employee stands  
23 in loco parentis;

24 (2) a biological, foster, step or adoptive  
25 parent or legal guardian of an employee, an employee's spouse

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1 or civil union partner, or a person who stood in loco parentis  
2 when the employee was a minor child;

3 (3) a person to whom the employee is legally  
4 married under the laws of any state;

5 (4) a grandparent or a spouse or civil union  
6 partner of a grandparent;

7 (5) a grandchild;

8 (6) a biological, foster or adopted sibling,  
9 or the spouse or civil union partner of a biological, foster or  
10 adopted sibling; or

11 (7) an individual related by blood or affinity  
12 whose close association with the employee is the equivalent of  
13 a family relationship;

14 F. "health care professional" means a person  
15 licensed pursuant to federal or state law to provide health  
16 care services, including nurses, nurse practitioners, physician  
17 assistants, doctors and emergency room personnel;

18 G. "retaliation" means denial of a right guaranteed  
19 pursuant to the Healthy Workplaces Act and any threat,  
20 discharge, suspension, demotion, reduction of hours or  
21 application of absence control policies that count an  
22 employee's use of earned sick leave as an absence that may lead  
23 to adverse action, or other adverse action against employees  
24 for the exercise of a right guaranteed pursuant to the Healthy  
25 Workplaces Act, including sanctions against an employee who is

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1 a recipient of benefits or rights pursuant to the Healthy  
2 Workplaces Act. "Retaliation" includes interference with or  
3 punishment for participating in an investigation, proceeding or  
4 hearing pursuant to the Healthy Workplaces Act; and

5 H. "secretary" means the secretary of workforce  
6 solutions or the secretary's designee.

7 SECTION 4. [NEW MATERIAL] USE AND ACCRUAL.--

8 A. Employees of an employer with fewer than ten  
9 employees shall accrue a minimum of one hour of earned sick  
10 leave for every thirty hours worked. Such employees shall not  
11 be entitled to use more than forty hours of earned sick leave  
12 per twelve-month period, unless the employer selects a higher  
13 limit.

14 B. Employees of an employer with ten or more  
15 employees shall accrue a minimum of one hour of earned sick  
16 leave for every thirty hours worked. Such employees shall not  
17 be entitled to use more than sixty-four hours of earned sick  
18 leave per twelve-month period, unless the employer selects a  
19 higher limit.

20 C. In determining the number of employees  
21 performing work for an employer for compensation during a given  
22 week, all employees performing work for compensation on a  
23 full-time, part-time or temporary basis shall be counted. In  
24 situations in which the number of employees who work for an  
25 employer for compensation per week fluctuates above and below

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1 ten employees per week over the course of the twelve-month  
2 period, an employer is required to provide earned sick leave  
3 pursuant to Subsection B of this section if the employer  
4 maintained ten or more employees on the payroll for some  
5 portion of a day in each of twenty different calendar weeks,  
6 whether or not the weeks were consecutive, in either the  
7 current or the preceding twelve-month period.

8 D. All employees shall accrue earned sick leave as  
9 follows:

10 (1) earned sick leave as provided in the  
11 Healthy Workplaces Act shall begin to accrue upon commencement  
12 of the employee's employment;

13 (2) employees shall be entitled to use accrued  
14 earned sick leave beginning on the thirtieth calendar day  
15 following commencement of their employment. After the  
16 thirtieth calendar day of employment, employees may use earned  
17 sick leave as it is accrued, subject to the limitations set  
18 forth in Subsections A and B of this section;

19 (3) employees who are exempt from overtime  
20 requirements pursuant to the federal Fair Labor Standards Act  
21 of 1938, 29 U.S.C. Section 213(a)(1), will be assumed to work  
22 forty hours in each work week for the purposes of earned sick  
23 leave accrual unless their normal work week is less than forty  
24 hours, in which case earned sick leave accrues based on their  
25 normal work week;

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1 (4) accrued unused earned sick leave shall  
2 carry over from year to year, but an employer is not required  
3 to permit an employee to use more than the maximum time  
4 provided for in Subsections A and B of this section in a  
5 twelve-month period;

6 (5) nothing in this section shall be construed  
7 as requiring financial or other reimbursement to an employee  
8 from an employer upon the employee's termination, resignation,  
9 retirement or other separation from employment for accrued  
10 earned sick leave that has not been used;

11 (6) if an employee is transferred to a  
12 separate division, entity or location but remains employed by  
13 the same employer, the employee is entitled to all earned sick  
14 leave accrued at the prior division, entity or location and is  
15 entitled to use all earned sick leave as provided in this  
16 section. When there is a separation from employment, and the  
17 employee is rehired within twelve months of separation by the  
18 same employer, previously accrued earned sick leave that has  
19 not been used shall be reinstated. Further, the employee shall  
20 be entitled to use accrued earned sick leave and accrue  
21 additional earned sick leave upon re-commencement of  
22 employment; and

23 (7) when a different employer succeeds or  
24 takes the place of an existing employer, all employees of the  
25 original employer who remain employed by the successor employer

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1 are entitled to all earned sick leave accrued when employed by  
2 the original employer and are entitled to use all earned sick  
3 leave previously accrued.

4 E. An employee may use earned sick leave:

5 (1) for the employee's:

6 (a) mental or physical illness, injury  
7 or health condition;

8 (b) medical diagnosis, care or treatment  
9 of a mental or physical illness, injury or health condition; or

10 (c) preventive medical care;

11 (2) for care of family members of the employee  
12 for:

13 (a) mental or physical illness, injury  
14 or health condition;

15 (b) medical diagnosis, care or treatment  
16 of a mental or physical illness, injury or health condition; or

17 (c) preventive medical care;

18 (3) for meetings at the employee's child's  
19 school or place of care related to the child's health or  
20 disability;

21 (4) for closure of the employee's place of  
22 business by order of a public official due to a public health  
23 emergency; for an employee's need to care for a child whose  
24 school or place of care has been closed by order of a public  
25 official due to a public health emergency; or when it has been

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1 determined by the health authorities having jurisdiction or by  
2 a health care professional that the employee's or employee's  
3 family member's presence in the community would jeopardize the  
4 health of others because of the employee's or family member's  
5 exposure to a communicable disease, whether or not the employee  
6 or family member has actually contracted the communicable  
7 disease; or

8 (5) for absence necessary due to domestic  
9 abuse, sexual assault or stalking suffered by the employee or a  
10 family member of the employee; provided that the leave is for  
11 the employee to:

12 (a) obtain medical or psychological  
13 treatment or other counseling;

14 (b) relocate;

15 (c) prepare for or participate in legal  
16 proceedings; or

17 (d) obtain services or assist a family  
18 member of the employee with any of the activities set forth in  
19 Subparagraphs (a) through (c) of this paragraph.

20 F. Earned sick leave shall be provided upon the  
21 oral or written request of an employee. When possible, the  
22 request shall include the expected duration of the sick leave  
23 absence.

24 G. When the use of earned sick leave is  
25 foreseeable, the employee shall make a good faith effort to

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1 provide oral or written notice of the need for such sick leave  
2 to the employer in advance of the use of the earned sick leave  
3 and shall make a reasonable effort to schedule the use of  
4 earned sick leave in a manner that does not unduly disrupt the  
5 operations of the employer. When the use of earned sick leave  
6 is not foreseeable, the employee shall notify the employer  
7 orally or in writing as soon as practicable.

8 H. An employer may not require, as a condition of  
9 an employee's taking earned sick leave, that the employee  
10 search for or find a replacement worker to cover the hours  
11 during which the employee is using earned sick leave.

12 I. Earned sick leave may be used in the smaller of  
13 hourly increments or the smallest increment that the employer's  
14 payroll system uses to account for absences or use of other  
15 time.

16 J. An employer shall not require an employee to use  
17 other paid leave before the employee uses sick leave pursuant  
18 to the Healthy Workplaces Act.

19 SECTION 5. [NEW MATERIAL] MORE GENEROUS EARNED SICK LEAVE  
20 POLICY.--An employer with an earned sick leave policy that  
21 provides sick leave separate from other forms of paid time off,  
22 and who makes available an amount of earned sick leave  
23 sufficient to meet the accrual requirements of the Healthy  
24 Workplaces Act that may be used for the same purposes and under  
25 the same conditions as earned sick leave under that act, is not

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1 required to provide additional earned sick leave. However, the  
2 sick leave required by the Healthy Workplaces Act is in  
3 addition to any paid time off provided by an employer that may  
4 be used for any purpose other than those specified in that act.

5 SECTION 6. [NEW MATERIAL] DOCUMENTATION.--

6 A. Documentation shall not be required for sick  
7 leave, except an employer may require reasonable documentation  
8 that sick leave has been used for a covered purpose if the  
9 employee uses three or more consecutive days of sick leave.

10 B. Documentation signed by a health care  
11 professional indicating the amount of earned sick leave taken  
12 is necessary shall be considered reasonable documentation for  
13 sick leave taken pursuant to the Healthy Workplaces Act. In  
14 cases of domestic abuse, sexual assault or stalking, reasonable  
15 documentation may include a police report, a court-issued  
16 document or a signed statement from a victim services  
17 organization, clergy member, attorney, advocate or other person  
18 affirming that the sick leave was taken for one of the purposes  
19 set forth in Paragraph (5) of Subsection E of Section 4 of the  
20 Healthy Workplaces Act. An employer may not require the  
21 documentation to explain the nature of any medical condition or  
22 the details of the domestic abuse, sexual assault or stalking.

23 C. If an employer chooses to require documentation  
24 for the purpose of the use of earned sick leave, the employer  
25 shall pay the cost of any verification by a health care

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1 professional that is not covered by insurance or other benefit  
2 plan.

3 D. An employee shall provide documentation upon  
4 request to the employer in a timely manner. The employer shall  
5 not delay the commencement of earned sick leave on the basis  
6 that the employer has not yet received documentation.

7 E. All information an employer obtains related to  
8 an employee's reasons for taking sick leave shall be treated as  
9 confidential and not disclosed except with the permission of  
10 the employee or as necessary for validation purposes for  
11 insurance disability claims, accommodations consistent with the  
12 federal Americans with Disabilities Act of 1990, as required by  
13 the Healthy Workplaces Act or by court order.

14 SECTION 7. [NEW MATERIAL] NOTICE AND POSTING  
15 REQUIREMENTS.--

16 A. An employer shall give written notice to an  
17 employee at the commencement of employment of the following:

- 18 (1) the employee's right to earned sick leave;
- 19 (2) the manner in which sick leave is accrued  
20 and calculated;
- 21 (3) the terms of the use of earned sick leave  
22 as guaranteed by the Healthy Workplaces Act;
- 23 (4) that retaliation against employees for the  
24 use of sick leave is prohibited;
- 25 (5) the employee's right to file a complaint

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1 with the secretary if earned sick leave as required pursuant to  
2 the Healthy Workplaces Act is denied by the employer or if the  
3 employee is retaliated against; and

4 (6) all means of enforcing violations of the  
5 Healthy Workplaces Act.

6 B. Notice required pursuant to Subsection A of this  
7 section shall be in English, Spanish or any language that is  
8 the first language spoken by at least ten percent of the  
9 employer's workforce, as requested by the employee.

10 C. Employers shall display a poster that contains  
11 the information required pursuant to Subsection A of this  
12 section in a conspicuous and accessible place in each  
13 establishment where employees are employed. The poster  
14 displayed should be in English, Spanish and any language that  
15 is the first language spoken by at least ten percent of the  
16 employer's workforce.

17 D. The secretary shall create and make available to  
18 employers notices and posters in English, Spanish and any other  
19 languages deemed appropriate by the secretary that contain the  
20 information required pursuant to Subsection A of this section  
21 for employers' use in complying with the provisions of this  
22 section.

23 SECTION 8. [NEW MATERIAL] EMPLOYER SHALL RETAIN  
24 DOCUMENTATION.--Employers shall retain for the immediately  
25 preceding thirty-six-month period records documenting hours

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1 worked by employees and earned sick leave taken by employees.

2 SECTION 9. [NEW MATERIAL] EXERCISE OF RIGHTS

3 PROTECTED--RETALIATION PROHIBITED.--

4 A. An employer shall not take or threaten any  
5 adverse action whatsoever against an employee:

6 (1) that is reasonably likely to deter such  
7 employee from exercising or attempting to exercise a right  
8 granted pursuant to the Healthy Workplaces Act; or

9 (2) because the employee:

10 (a) has exercised or attempted to  
11 exercise such rights;

12 (b) has in good faith alleged violations  
13 of the Healthy Workplaces Act; or

14 (c) has raised a concern about  
15 violations of the Healthy Workplaces Act to the employer, the  
16 employer's agent, other employees, a government agency or to  
17 the public through print, online, social or any other media.

18 B. An employer shall not attempt to require an  
19 employee to sign a contract or other agreement that would limit  
20 or prevent the employee from asserting rights provided for in  
21 the Healthy Workplaces Act or to otherwise establish a  
22 workplace policy that would limit or prevent the exercise of  
23 such rights. An employer's attempt to impose such a contract,  
24 agreement or policy shall constitute an adverse action  
25 enforceable pursuant to the Healthy Workplaces Act.

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1           C. An employer shall not count use of sick leave in  
2 a way that will lead to discipline, discharge, demotion,  
3 non-promotion, less favorable scheduling, reduction of hours,  
4 suspension or any other adverse action.

5           **SECTION 10. [NEW MATERIAL] ENFORCEMENT AND PENALTIES.--**

6           A. The secretary shall be authorized to coordinate  
7 implementation and enforcement of the Healthy Workplaces Act  
8 and shall promulgate appropriate rules to implement that act.

9           B. The secretary shall coordinate implementation  
10 and enforcement of the Healthy Workplaces Act, including:

11                   (1) establishing a system to receive  
12 complaints, in writing and by telephone, regarding alleged  
13 violations of the Healthy Workplaces Act;

14                   (2) establishing a process for investigating  
15 and resolving complaints in a timely manner and keeping  
16 complainants notified regarding the status of the investigation  
17 of their complaint;

18                   (3) ensuring employer compliance with the  
19 Healthy Workplaces Act through the use of audits,  
20 investigations or other measures; and

21                   (4) establishing a system for reviewing  
22 complaints.

23           C. The secretary shall maintain as confidential the  
24 identity of any complainant unless disclosure of such  
25 complainant's identity is necessary for resolution of the

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1 investigation or otherwise required by law. The secretary  
2 shall, prior to such disclosure and to the extent practicable,  
3 notify a complainant that the secretary will be disclosing the  
4 complainant's identity.

5 D. An employer that violates any of the provisions  
6 of the Healthy Workplaces Act is guilty of a misdemeanor and  
7 upon conviction shall be sentenced pursuant to the provisions  
8 of Section 31-19-1 NMSA 1978.

9 E. The secretary may institute in the name of the  
10 state an action in the district court of the county in which  
11 the employer that has failed to comply with the Healthy  
12 Workplaces Act resides or has a principal office or place of  
13 business, for the purpose of prosecuting violations. The  
14 district attorney for the district in which any violation  
15 occurs shall aid and assist the secretary in the prosecution.

16 F. In addition to penalties provided pursuant to  
17 this section, an employer that violates a provision of the  
18 Healthy Workplaces Act shall be liable to the employees  
19 affected in the amount of their unpaid or underpaid sick leave  
20 plus interest, in an additional amount equal to twice the  
21 unpaid or underpaid sick leave and for any other actual  
22 damages. For each instance of sick leave requested by an  
23 employee but unlawfully denied by the employer and not taken by  
24 the employee or unlawfully conditioned on searching for or  
25 finding a replacement worker, the employer shall be liable to

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1 the employees affected for actual damages or five hundred  
2 dollars (\$500), whichever is greater.

3 G. An action to recover such liability may be  
4 maintained in any court of competent jurisdiction by any one or  
5 more employees for and on behalf of the employee or employees  
6 and for other employees similarly situated, or such employee or  
7 employees may designate an agent or representative to maintain  
8 such action on behalf of all employees similarly situated.  
9 Such an action must be filed within three years from the date  
10 the last alleged violation occurred. Such an action may  
11 encompass all violations that occurred as part of a continuing  
12 course of conduct regardless of the date on which they  
13 occurred.

14 H. The court in any action brought under Subsection  
15 G of this section shall, in addition to any judgment awarded to  
16 a prevailing employee, allow costs of the action and reasonable  
17 attorney fees to be paid by the employer. In any proceedings  
18 brought pursuant to the provisions of this section, the  
19 employee shall not be required to pay any filing fee or other  
20 court costs necessarily incurred in such proceedings.

21 I. In addition to any remedy or penalty provided  
22 pursuant to the Healthy Workplaces Act, a court may order  
23 appropriate injunctive relief, including requiring an employer  
24 to post in the place of business a notice describing violations  
25 by the employer as found by the court or a copy of a cease and

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1 desist order applicable to the employer.

2 SECTION 11. [NEW MATERIAL] OTHER LEGAL REQUIREMENTS.--

3 The Healthy Workplaces Act provides minimum requirements  
4 pertaining to earned sick leave and shall not be construed to  
5 preempt, limit or otherwise affect the applicability of any  
6 other law, regulation, requirement, policy or standard,  
7 including collective bargaining agreements, that provides for  
8 greater accrual or use by employees of earned sick leave,  
9 whether paid or unpaid, or that extends other protections to  
10 employees.

11 SECTION 12. SEVERABILITY.--If any part or application of  
12 the provisions of the Healthy Workplaces Act is held invalid,  
13 the remainder of its application to other situations or persons  
14 shall not be affected.

15 SECTION 13. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2021.