

1 SENATE BILL 11

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO EMPLOYMENT; ENACTING THE PAID FAMILY AND MEDICAL
12 LEAVE ACT; CREATING THE PAID FAMILY AND MEDICAL LEAVE FUND;
13 PROVIDING FOR THE PAID FAMILY AND MEDICAL LEAVE PROGRAM TO PAY
14 AN ELIGIBLE EMPLOYEE A PERCENTAGE OF THE EMPLOYEE'S SALARY TO
15 ALLOW THE EMPLOYEE TO BOND WITH A NEW CHILD OR TO CARE FOR A
16 FAMILY MEMBER; LIMITING THE TIME ALLOWED FOR PAID FAMILY AND
17 MEDICAL LEAVE; EXCEPTING CERTAIN EMPLOYEES; PROVIDING FOR
18 ADMINISTRATION OF THE PROGRAM BY THE WORKFORCE SOLUTIONS
19 DEPARTMENT; PREEMPTING SIMILAR PROGRAMS; CREATING A TEMPORARY
20 ADVISORY COMMITTEE; MAKING AN APPROPRIATION.
21

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

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

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

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1 Paid Family and Medical Leave Act:

2 A. "claim for leave" means an application for leave
3 compensation that an employee makes to the department pursuant
4 to the Paid Family and Medical Leave Act in accordance with
5 department rules;

6 B. "department" means the workforce solutions
7 department, the secretary or an employee of the department
8 exercising authority lawfully delegated to that employee by the
9 secretary;

10 C. "domestic partner" means a person with whom
11 another person maintains a household and a mutual committed
12 relationship without a legally recognized marriage;

13 D. "employee" means a person working within the
14 state who performs a service for wages or other remuneration
15 under a contract of hire, written or oral, express or implied,
16 and includes a person employed by the state or a political
17 subdivision of the state. "Employee" does not mean an employee
18 of an employer subject to the provisions of Title II of the
19 federal Railway Labor Act or an employee as defined in either
20 the federal Railroad Unemployment Insurance Act or the federal
21 Employers' Liability Act;

22 E. "employer" means a person that has one or more
23 employees within the state and includes an agent of an employer
24 and the state or a political subdivision of the state;

25 F. "family leave" means leave for which an employee

.223784.6

1 can apply for leave compensation pursuant to the Paid Family
2 and Medical Leave Act and that is granted to the employee to
3 allow the employee to bond with a child of the employee within
4 twelve months of the birth or adoption of a child or placement
5 of a foster child with the employee, to care for a family
6 member if the family member has a serious health condition or
7 following the death of a child for whom the employee would have
8 otherwise qualified for family leave;

9 G. "family member" means a person who is:

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

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

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

23 (4) a grandparent, great-grandparent,
24 grandchild or sibling, whether a biological, foster, adoptive
25 or step relationship, of an employee or an employee's spouse or

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1 domestic partner; or

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

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

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

11 J. "leave" means family leave, safe leave or
12 medical leave for which an employee can apply for leave
13 compensation pursuant to the Paid Family and Medical Leave Act;

14 K. "leave compensation" means income that the
15 department pays from the fund to an employee who takes family,
16 safe or medical leave;

17 L. "medical leave" means leave for which an
18 employee can apply for leave compensation pursuant to the Paid
19 Family and Medical Leave Act to allow the employee to provide
20 care for the employee's own serious health condition;

21 M. "safe leave" means leave for which an employee
22 can apply for leave compensation pursuant to the Paid Family
23 and Medical Leave Act that is granted to an employee who is the
24 victim or whose family member is the victim of domestic
25 violence, stalking, sexual assault or abuse. "Safe leave"

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1 applies if the covered employee is using the leave from work to
2 protect the employee or the employee's family member by:

3 (1) seeking a civil protection order against a
4 perpetrator;

5 (2) obtaining medical care or mental health
6 counseling for the employee or for the employee's children to
7 address physical or psychological injuries;

8 (3) seeking new housing, relocating or making
9 the employee's home secure from a perpetrator; or

10 (4) attending or preparing for court-related
11 proceedings or seeking legal assistance to address issues
12 related to the act of domestic violence, stalking, sexual
13 assault or abuse;

14 N. "secretary" means the secretary of workforce
15 solutions;

16 O. "serious health condition" means an illness,
17 injury, impairment or physical or mental condition that
18 involves:

19 (1) inpatient care in a hospital, hospice or
20 residential medical facility; or

21 (2) continuing treatment by a health care
22 provider;

23 P. "spouse" means a partner to a lawful marriage;
24 and

25 Q. "wages" means all remuneration for services,

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1 including commissions, bonuses or unpaid loans to employees and
2 the cash value of all remuneration in any medium other than
3 cash.

4 SECTION 3. [NEW MATERIAL] PAID FAMILY AND MEDICAL LEAVE
5 FUND--CREATION.--

6 A. The "paid family and medical leave fund" is
7 created in the state treasury and shall be administered by the
8 department. The fund shall be held for the benefit of the
9 employees who paid into the fund and shall consist of all
10 revenue collected and attributable to the Paid Family and
11 Medical Leave Act. Money in the fund shall be invested by the
12 state investment officer. Income from investment of the fund
13 shall be credited to the fund.

14 B. Money in the fund is appropriated to the
15 department to distribute leave compensation pursuant to the
16 Paid Family and Medical Leave Act and to cover the costs of
17 administration and outreach for the paid family and medical
18 leave program pursuant to that act.

19 C. Money shall be disbursed from the fund only on
20 warrant issued by the department of finance and administration
21 pursuant to vouchers signed by the secretary or the secretary's
22 authorized representative. Any unexpended or unencumbered
23 balance remaining at the end of a fiscal year shall not revert
24 to the general fund.

25 D. Beginning January 1, 2027, and not later than

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1 October 1 of each calendar year, the secretary shall ensure and
2 maintain the self-sufficiency and solvency of the fund by:

3 (1) performing an annual financial analysis;
4 and

5 (2) setting the premium for the following
6 calendar year, based on the percentage of employee wages and at
7 the rate necessary to obtain a total amount of contributions
8 equal to one hundred thirty-five percent of the benefits paid
9 during the previous fiscal year and all administrative costs
10 for payment of those benefits during the previous fiscal year,
11 minus the amount of net assets remaining in the fund as of June
12 30 of the current calendar year. For purposes of this
13 paragraph, the costs of administration include the costs of
14 repayment of interest and principal on general fund
15 appropriations pursuant to Section 15 of this 2023 act.

16 SECTION 4. [NEW MATERIAL] APPLICABILITY--CONTRIBUTIONS TO
17 FUND--REMITTANCE OF CONTRIBUTIONS--EXEMPTION FOR PRIVATELY RUN
18 PROGRAMS--REQUIREMENTS OF PRIVATELY RUN PROGRAMS.--

19 A. The Paid Family and Medical Leave Act applies
20 to:

21 (1) all public and private employees who are
22 subject to state jurisdiction, except those employees who are
23 employed by the United States;

24 (2) the employers of employees as described in
25 Paragraph (1) of this subsection, whether or not the employer

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1 is physically located in the state;

2 (3) self-employed individuals subject to state
3 jurisdiction who opt into the program; and

4 (4) tribal governments, wholly or partially
5 located in New Mexico, that elect to be covered, or to
6 terminate coverage, in the program for their employees.

7 B. Beginning January 1, 2025 and for each calendar
8 quarter thereafter until January 1, 2028, there is assessed
9 against each employee one-half percent of the employee's
10 earnings. An employee's contribution to the fund shall not be
11 deducted from the employee's leave compensation. Beginning
12 January 1, 2028 and for each calendar quarter thereafter, there
13 is assessed against each employee an assessment on the
14 employee's earnings at fifty-five percent of the premium set by
15 the secretary pursuant Subsection D of Section 3 of the Paid
16 Family and Medical Leave Act.

17 C. Beginning January 1, 2025 and for each calendar
18 quarter thereafter until January 1, 2028, there is assessed
19 against each employer with five or more employees an amount
20 equal to four-tenths percent of each participating employee's
21 earnings. Beginning January 1, 2028 and for each calendar year
22 thereafter, there is assessed against each employer with five
23 or more employees an amount equal to each participating
24 employee's earnings at forty-five percent of the premium set by
25 the secretary under Subsection D of Section 3 of the Paid

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1 Family and Medical Leave Act.

2 D. Beginning January 1, 2025 and for each calendar
3 quarter thereafter until January 1, 2028, there is assessed
4 against each self-employed individual as described in Paragraph
5 (3) of Subsection A of this section one-half percent of the
6 individual's net income as designated by the self-employed
7 individual. Beginning January 1, 2028 and for each calendar
8 quarter thereafter, there is assessed against each self-
9 employed individual as described in Paragraph (3) Subsection A
10 of this section an assessment on the individual's net income as
11 designated by the self-employed individual at fifty-five
12 percent of the premium set by the secretary under Subsection D
13 of Section 3 of the Paid Family and Medical Leave Act.

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

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

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

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1 or greater than the leave and leave compensation offered under
2 the Paid Family and Medical Leave Act may apply for a waiver to
3 exempt the employer and its employees from participating in the
4 paid family and medical leave program. The employer shall
5 apply and provide supporting documentation to the department
6 for exemption each calendar year.

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

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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 leave or leave compensation beyond those
10 explicitly authorized by state law.

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

15 L. Nothing in this section shall be construed to
16 prohibit an employer without a waiver from providing
17 supplemental leave compensation or extended length of leave to
18 employees receiving compensation from the department.

19 SECTION 5. [NEW MATERIAL] ELIGIBILITY--LEAVE COMPENSATION
20 CALCULATION--LEAVE DURATION--DOCUMENTATION REQUIRED--NOTICE OF
21 DETERMINATION.--

22 A. Beginning January 1, 2026, the department shall
23 provide leave compensation to an eligible employee who takes
24 leave after the employee, in accordance with the provisions of
25 the Paid Family and Medical Leave Act and department rules,

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1 has:

2 (1) filed a claim for leave compensation
3 approved by the department;

4 (2) certified that the employee will not
5 obtain new employment or enter into any new independent
6 contractor agreements during the time the employee receives
7 leave compensation pursuant to the Paid Family and Medical
8 Leave Act, except with regard to intermittent leave; and

9 (3) contributed to the fund for at least six
10 months during any employment in the twelve-month period prior
11 to submitting an application.

12 B. Beginning January 1, 2026, the department shall
13 provide leave compensation to an eligible self-employed
14 individual after the self-employed individual, in accordance
15 with the provisions of the Paid Family and Medical Leave Act
16 and department rules, has:

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

19 (2) certified that the self-employed
20 individual will not commence new employment or enter into new
21 independent contractor agreements related to work performed by
22 the individual during the time the self-employed individual
23 receives leave compensation pursuant to the Paid Family and
24 Medical Leave Act, except with regard to intermittent leave;
25 and

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1 (3) contributed to the fund for at least six
2 months during the twelve-month period prior to submitting an
3 application, not including contributions made for other
4 employment that the self-employed individual will continue
5 during the leave.

6 C. An employee or self-employed individual is
7 eligible for a maximum of twelve weeks of leave compensation
8 during any twelve-month period; provided that an employee or
9 self-employed individual may receive leave compensation for
10 leave taken intermittently and is not required to use twelve
11 weeks of leave at any one time.

12 D. An employee or self-employed individual may
13 receive leave compensation for intermittent leave in increments
14 of no fewer than four hours.

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 or has filed a fraudulent
19 claim for leave within the previous three years;

20 (2) the employee or self-employed individual
21 is receiving unemployment insurance benefits during the period
22 for which the 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.

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1 F. The department shall issue leave compensation
2 from the fund to an eligible employee whose claim has been
3 approved as follows:

4 (1) the calculation of weekly leave
5 compensation shall be based on the employee's average weekly
6 wages during the twelve months immediately preceding the date
7 of the claim for leave. For the purposes of this paragraph,
8 the "employee's average weekly wages" means an amount
9 calculated by the department by dividing the total wages earned
10 by an eligible employee during the previous twelve months by
11 the number of weeks worked during the previous twelve months.
12 If the employee worked fewer than twelve months, then weekly
13 leave compensation shall be based on the employee's average
14 weekly wages during the weeks the employee worked;

15 (2) an eligible employee's weekly leave
16 compensation shall equal one hundred percent of the
17 compensation that would be paid to a non-tipped, state-
18 minimum-wage-earning employee, pursuant to Section 50-4-22 NMSA
19 1978, working the same number of hours per week as the
20 employee, plus sixty-seven percent of the employee's average
21 wages per week greater than the non-tipped, state minimum wage
22 compensation; and

23 (3) the maximum amount of weekly leave
24 compensation shall be no more than the annual mean wage of all
25 occupations in New Mexico as calculated by the United States

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1 bureau of labor statistics state occupational employment and
2 wage estimates for the most recent year available divided by
3 fifty-two.

4 G. The department shall issue leave compensation
5 from the fund to self-employed individuals as follows:

6 (1) a self-employed individual shall determine
7 the annual net income to be used by the department when the
8 self-employed individual enrolls in the paid family and medical
9 leave program. A self-employed individual may adjust the
10 individual's annual net income one time per year on the
11 anniversary of the individual's enrollment;

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

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

22 (4) the maximum amount of weekly leave
23 compensation shall be no more than the annual mean wage of all
24 occupations in New Mexico as calculated by the United States
25 bureau of labor statistics state occupational employment and

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1 wage estimates for the most recent year available divided by
2 fifty-two.

3 H. When an employee, self-employed individual or
4 authorized representative submits a claim for leave
5 compensation, the employee or self-employed individual shall
6 provide the department with:

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

12 (2) if the applicant is a self-employed
13 individual, documentation that the individual's business
14 operated and earned net income from self-employment during the
15 previous twelve months.

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

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

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1 approved leave begins;

2 (2) if denied, and shall notify the employee
3 or self-employed individual of the grounds for denying the
4 employee's or self-employed individual's application for
5 eligibility and of the employee's or self-employed individual's
6 right to appeal; and

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

15 J. Every individual filing a new claim for leave
16 compensation shall, at the time of filing such claim, be
17 advised in writing that:

18 (1) leave compensation may be subject to
19 federal and state income taxes;

20 (2) requirements exist pertaining to estimated
21 tax payments;

22 (3) the individual may elect to have federal
23 income tax deducted and withheld from the individual's leave
24 compensation payments at the amount specified in the Internal
25 Revenue Code of 1986; and

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1 (4) the individual is permitted to change a
2 previously elected withholding status one time during each
3 benefit year.

4 K. Amounts deducted and withheld from leave
5 compensation shall remain in the fund until transferred to the
6 federal internal revenue service.

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

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 compensation to
15 provide, in accordance with department rules, evidence of the
16 birth or adoption of a child or placement of a foster child
17 with the employee or verification by a health care provider
18 that a family member has a serious health condition that
19 supports the employee's or self-employed individual's claim for
20 leave compensation.

21 B. The department shall require an employee or
22 self-employed individual who seeks medical leave compensation
23 to provide, in accordance with department rules, verification
24 by a health care provider that the employee or self-employed
25 individual has a serious health condition that supports the

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1 employee's or self-employed individual's claim for leave
2 compensation.

3 C. The department shall require an employee or
4 self-employed individual who seeks safe leave compensation to
5 provide, in accordance with department rules, a police report,
6 a court-issued document or a signed statement from a victim
7 services organization, a clergy member, an attorney, an
8 advocate, the employee or self-employed individual, a family
9 member of the employee or self-employed individual or other
10 person that supports the employee's or self-employed
11 individual's claim for leave compensation.

12 D. Information contained in an employee's or self-
13 employed individual's files and records pertaining to the Paid
14 Family and Medical Leave Act are confidential and not open to
15 public inspection, other than to department employees in the
16 performance of their official duties. However, the employee,
17 the self-employed individual or an authorized representative of
18 either may review the records or receive specific information
19 from the records upon the presentation of the employee's or
20 self-employed individual's signed authorization.

21 E. Employee information gathered by a private
22 employer pursuant to the Paid Family and Medical Leave Act
23 shall be kept confidential by the employer; provided that
24 confidential records may be used by department employees in the
25 performance of their duties.

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1 SECTION 7. ~~[NEW MATERIAL]~~ EMPLOYEE NOTICE TO EMPLOYER--
2 REDUCTION OF OTHER LEAVE PROHIBITED.--

3 A. Beginning January 1, 2026, an employer shall
4 allow an employee to take up to a combined total of twelve
5 weeks of family leave, medical leave and safe leave during any
6 twelve-month period. An employee may take leave intermittently
7 in increments of no fewer than four hours and is not required
8 to use twelve weeks of leave at any one time.

9 B. An employee shall:

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

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

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

17 C. The employer has the right to appeal
18 determination to the department within thirty calendar days
19 after receipt of the employee's application for leave.

20 D. Leave taken shall not result in a reduction of
21 the total amount of leave to which an employee is entitled in
22 excess of the amount of leave actually taken; provided that an
23 employer subject to the federal Family and Medical Leave Act of
24 1993 may require an employee who takes leave and receives leave
25 compensation under the Paid Family and Medical Leave Act that

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1 also qualifies for leave under the federal Family and Medical
2 Leave Act of 1993 to take leave concurrently.

3 E. Nothing in this section shall be construed to
4 entitle an employee to more leave than required pursuant to
5 Section 5 of the Paid Family and Medical Leave Act.

6 F. An employer shall post and keep posted in a
7 conspicuous place upon its premises a notice that informs
8 employees of the right to take leave and summarizes the major
9 provisions of the Paid Family and Medical Leave Act.

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

11 A. A self-employed individual shall notify the
12 department within ten business days of the self-employed
13 individual's return to work.

14 B. Upon an employee's return after leave, an
15 employer shall notify the department that the employee has
16 returned to work within ten business days.

17 C. An employer that has employed an employee for
18 ninety days or more, prior to the commencement of an employee's
19 leave, shall:

20 (1) restore the employee to the position held
21 by the employee when the leave was commenced; or

22 (2) place the employee in a position for which
23 employee benefits, wages or other terms and conditions of
24 employment are equivalent to or greater than those provided in
25 the position from which the employee took leave.

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1 D. Nothing in this section shall be construed to
2 entitle a restored employee to:

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

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

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

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

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

25 SECTION 9. [NEW MATERIAL] INTERFERENCE AND RETALIATION

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1 PROHIBITED.--

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

6 B. An employer shall timely provide to the employee
7 documents required to apply for leave.

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

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

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

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

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

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

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

5 E. The protections provided in this section shall
6 apply to any person who reasonably but mistakenly, alleges
7 violations of the Paid Family and Medical Leave Act.

8 F. An employer that is found by a hearing officer
9 or court of competent jurisdiction to have discharged a worker
10 in violation of this section shall rehire that employee;
11 provided that the worker agrees to be rehired.

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

15 A. An employee, a self-employed individual or
16 authorized representative named in an application for leave may
17 appeal an adverse determination of that application to the
18 department as follows:

19 (1) the aggrieved party shall:

20 (a) file an appeal in writing with the
21 department within fifteen business days of receiving notice of
22 the adverse decision;

23 (b) set forth the reasons for appeal;

24 and

25 (c) provide notice to all parties that

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1 an appeal has been filed; and

2 (2) the secretary or authorized representative
3 may:

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

7 (b) develop a record of the proceedings;
8 and

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

13 B. An aggrieved party, including an employee or
14 former employee, or the department on its own motion may bring
15 an administrative action for an alleged violation of the Paid
16 Family and Medical Leave Act under a public or privately run
17 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

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

3 (2) the secretary or authorized representative
4 shall:

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

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

11 (c) develop a record of the proceedings;

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

16 (e) rule on a complaint within five
17 business days after the completion of the hearing and issue a
18 final decision in accordance with Subsection B of Section
19 39-3-1.1 NMSA 1978.

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

23 D. The department may appear in its own name in
24 district court in actions for injunctive relief to prevent any
25 person or entity from violating the provisions of the Paid

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1 Family and Medical Leave Act or rules promulgated by the
2 department.

3 SECTION 11. [NEW MATERIAL] PREEMPTION.--

4 A. A city, county, home rule municipality or other
5 political subdivision of the state shall not adopt or continue
6 in effect any ordinance, rule, regulation resolution or statute
7 that establishes a program of rights and benefits as set out in
8 the Paid Family and Medical Leave Act, excluding a paid sick
9 leave or paid time-off ordinance, policy or resolution.

10 B. Subject to the requirements of the Paid Family
11 and Medical Leave Act, the provisions of Subsection A of this
12 section shall not prevent a city, county, home rule
13 municipality or other political subdivision of the state from
14 establishing any leave policies for its employees.

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

20 SECTION 13. [NEW MATERIAL] DEPARTMENT TO PROMULGATE
21 RULES--AGENCIES AND DEPARTMENTS TO COOPERATE.--

22 A. By July 1, 2024, the department shall adopt and
23 promulgate rules to implement the provisions of the Paid Family
24 and Medical Leave Act.

25 B. State agencies and departments shall cooperate

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1 with the secretary to timely and efficiently provide the
2 information and services necessary to carry out the provisions
3 of the Paid Family and Medical Leave Act.

4 SECTION 14. TEMPORARY PROVISION--PAID FAMILY AND MEDICAL
5 LEAVE IMPLEMENTATION ADVISORY COMMITTEE--CREATED--PURPOSE--
6 MEMBERS.--

7 A. The "paid family and medical leave
8 implementation advisory committee" is created in the workforce
9 solutions department. The advisory committee consists of
10 thirteen members appointed by the secretary of workforce
11 solutions. Members of the advisory committee include:

12 (1) a representative of a nonprofit
13 organization that advocates for women and girls;

14 (2) a representative of an organization that
15 advocates for individuals fifty years of age or older;

16 (3) a representative of a statewide chamber of
17 commerce;

18 (4) two representatives of a small business
19 development center advisory council;

20 (5) a representative of a medical society with
21 expertise in the care of children;

22 (6) a member representing the parents of
23 newborn children;

24 (7) a member representing adoptive and foster
25 parents;

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1 (8) a member representing unpaid family
2 caregivers;

3 (9) the director of the commission on the
4 status of women;

5 (10) a representative of a university-based
6 bureau of business and economic research;

7 (11) a representative of an organization with
8 expertise in chronic illnesses; and

9 (12) a representative of an organization with
10 expertise in disabilities.

11 B. The paid family and medical leave implementation
12 advisory committee shall provide input regarding best practices
13 for the efficient and timely development, implementation and
14 promulgation of rules and educational materials to carry out
15 the provisions of the Paid Family and Medical Leave Act.

16 C. The secretary of workforce solutions shall
17 consult with the paid family and medical leave implementation
18 advisory committee at least quarterly as rules are developed to
19 implement a program pursuant to the Paid Family and Medical
20 Leave Act.

21 D. Members of the paid family and medical leave
22 implementation advisory committee are not entitled to per diem
23 and mileage expenses. The workforce solutions department
24 shall provide staff for the committee.

25 E. The paid family and medical leave implementation

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1 advisory committee shall function from the date of its
2 appointment, which shall be no later than October 1, 2023,
3 until January 1, 2025.

4 SECTION 15. TEMPORARY PROVISION--REPAYMENT OF
5 APPROPRIATION.--Beginning January 1, 2026, six million dollars
6 (\$6,000,000) shall be transferred from the paid family and
7 medical leave fund at the end of each fiscal year to the
8 general fund until the total transfers pursuant to this section
9 equal the total amount of an appropriation made to the
10 workforce solutions department in the 2023 legislative session.

11 SECTION 16. APPROPRIATION.--Thirty-six million five
12 hundred thousand dollars (\$36,500,000) is appropriated from the
13 general fund to the workforce solutions department for
14 expenditure in fiscal years 2024 and 2025 for administrative
15 costs associated with the implementation of the Paid Family and
16 Medical Leave Act. Any unexpended or unencumbered balance
17 remaining at the end of fiscal year 2025 shall revert to the
18 general fund.