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SENATE BILL 60

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO PUBLIC EMPLOYEES; ENACTING THE HAZARDOUS DUTY OFFICERS' EMPLOYER-EMPLOYEE RELATIONS ACT; PROVIDING PROCEDURES FOR EMPLOYERS AND EMPLOYEES TO FOLLOW IN CERTAIN ADMINISTRATIVE ACTIONS; PROVIDING CERTAIN RIGHTS TO HAZARDOUS DUTY OFFICERS IN CERTAIN CIRCUMSTANCES; PROVIDING TIME LIMITATIONS FOR PURSUING CERTAIN ADMINISTRATIVE ACTIONS; PROVIDING FOR CIVIL PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Hazardous Duty Officers' Employer-Employee Relations Act".

Section 2. DEFINITIONS.--As used in the Hazardous Duty Officers' Employer-Employee Relations Act:

A. "emergency medical technician" means an individual who has been licensed by the department of health as an emergency medical technician;

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1 B. "firefighter" means an individual who is
2 employed as a non-volunteer firefighter and who has taken the
3 oath prescribed for firefighters;

4 C. "hazardous duty officer" or "officer" means an
5 individual who is employed full-time by the state or a
6 political subdivision of the state as a firefighter, emergency
7 medical technician or paramedic, provided that "hazardous duty
8 officer" does not include an individual who has not completed
9 the probationary period established by the individual's
10 employer as a condition of employment; and

11 D. "paramedic" means an individual who has been
12 licensed by the department of health as a paramedic.

13 Section 3. INVESTIGATIONS OF HAZARDOUS DUTY OFFICERS--
14 REQUIREMENTS--LIMITATION.--

15 A. When a hazardous duty officer is under
16 investigation by the officer's employer for alleged actions
17 that could result in administrative sanctions being levied
18 against the officer, any interrogation of the officer shall be
19 conducted:

20 (1) when the officer is on duty or during the
21 officer's normal waking hours, unless the urgency of the
22 investigation requires otherwise; and

23 (2) at the employer's facility, unless the
24 urgency of the investigation requires otherwise.

25 B. Prior to commencement of an interrogation

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1 session:

2 (1) the officer shall be informed of the name
3 and rank of the person in charge of the interrogation and all
4 other persons who will be present during the interrogation;

5 (2) the officer shall be informed of the
6 nature of the investigation, and the names of all known
7 complainants shall be disclosed to the officer unless the chief
8 administrator of the officer's employer determines that the
9 identification of the complainant shall not be disclosed
10 because it is necessary for the protection of an informant or
11 because disclosure would jeopardize or compromise the integrity
12 or security of the investigation; and

13 (3) a reasonable attempt shall be made to
14 notify the officer's immediate superior of the pending
15 interrogation.

16 C. During an interrogation session, the following
17 requirements shall be adhered to:

18 (1) each interrogation session shall not
19 exceed two hours unless the parties mutually consent to
20 continuation of the session;

21 (2) there shall not be more than two
22 interrogation sessions within a twenty-four-hour period, unless
23 the parties mutually consent to additional sessions, provided
24 that there shall be at least a one-hour rest period between the
25 sessions;

1 (3) the combined duration of the officer's
2 work shift and an interrogation session shall not exceed
3 fourteen hours within a twenty-four-hour period, unless the
4 urgency of the investigation requires otherwise;

5 (4) there shall not be more than two
6 interrogators at any given time;

7 (5) the officer shall be allowed to attend to
8 physical necessities as they occur in the course of an
9 interrogation session; and

10 (6) the officer shall not be subjected to
11 offensive language or illegal coercion by the officer's
12 interrogator in the course of an interrogation session.

13 D. An interrogation of an officer shall be
14 recorded, and the complete interrogation shall be published as
15 a transcript; provided that any recesses called during the
16 interrogation shall be noted in the transcript. An accurate
17 copy of the transcript or tape shall be provided to the
18 officer, upon written request, no later than fifteen working
19 days after the investigation has been completed.

20 E. Punitive action or denial of promotion on
21 grounds other than merit shall not be undertaken for misconduct
22 if the investigation of an allegation is not completed within
23 one year of discovery by the employer; provided that the
24 one-year limitation period shall apply only if the discovery of
25 the misconduct occurred on or after July 1, 2010. If the

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1 employer determines that discipline may be taken, it shall
2 complete its investigation and notify the officer of its
3 proposed disciplinary action within that year, except in any of
4 the following circumstances:

5 (1) if the officer voluntarily waives the
6 one-year time period in writing, the time period shall be
7 tolled for the period of time specified in the written waiver;

8 (2) if the alleged misconduct is also the
9 subject of a criminal investigation or criminal prosecution,
10 the time during which the criminal investigation or criminal
11 prosecution is pending shall toll the one-year time period;

12 (3) if the investigation is a multi-
13 jurisdictional investigation that requires a reasonable
14 extension for coordination of the involved agencies;

15 (4) if the investigation involves an employee
16 who is incapacitated or otherwise unavailable;

17 (5) if the investigation involves a matter in
18 civil litigation in which the officer is named as a party
19 defendant, the one-year time period shall be tolled while that
20 civil action is pending;

21 (6) if the investigation involves a matter in
22 criminal litigation in which the complainant is a criminal
23 defendant, the one-year time period shall be tolled during the
24 period of that defendant's criminal investigation and
25 prosecution; or

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1 (7) if the investigation involves an
2 allegation of workers' compensation fraud on the part of the
3 officer.

4 Section 4. POLYGRAPH EXAMINATIONS.--

5 A. A hazardous duty officer shall not be compelled
6 to submit to a polygraph examination against the officer's
7 will.

8 B. Disciplinary action shall not be taken against
9 an officer refusing to submit to a polygraph examination.

10 C. No comment shall be entered anywhere in the
11 investigator's notes, or anywhere else, that an officer refused
12 to take, or did not take, a polygraph examination.

13 D. Testimony or evidence to the effect that an
14 officer refused to take, or was subjected to, a polygraph
15 examination shall not be admissible at a subsequent judicial or
16 administrative proceeding.

17 Section 5. RIGHT TO PRODUCE EVIDENCE.--When a hazardous
18 duty officer is under investigation for an administrative
19 matter, the officer shall be permitted to produce any relevant
20 documents, witnesses or other evidence to support the officer's
21 case and the officer may cross-examine any adverse witnesses
22 during any grievance process or appeal involving disciplinary
23 action.

24 Section 6. PERSONNEL FILES.--

25 A. No document containing comments adverse to a

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1 hazardous duty officer shall be entered into the officer's
2 personnel file unless the officer has read and signed the
3 document. When an officer refuses to sign a document
4 containing adverse comments, the document may be entered into
5 an officer's personnel file if:

6 (1) the officer's refusal to sign is noted on
7 the document by the chief administrator of the officer's
8 employer; and

9 (2) the notation regarding the officer's
10 refusal to sign the document is witnessed by a third party.

11 B. A hazardous duty officer may file a written
12 response to any document containing adverse comments entered
13 into the officer's personnel file, and the response shall be
14 filed with the officer's employer within thirty days after the
15 document was entered into the officer's personnel file. A
16 hazardous duty officer's written response shall be attached to
17 the document.

18 C. Upon the request of a hazardous duty officer, an
19 employer shall, at reasonable times and at reasonable intervals
20 during usual business hours and with no loss of compensation to
21 the officer, permit that officer to inspect personnel files
22 that are used or have been used to determine that officer's
23 qualifications for employment, promotion, additional
24 compensation or termination or other disciplinary action.

25 Section 7. FORCED DISCLOSURE OF FINANCIAL INFORMATION.--

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1 An employer shall not require a hazardous duty officer to
2 disclose any information concerning the officer's property,
3 income, assets, source of income, debts or personal or domestic
4 expenditures, including those of any member of the officer's
5 family or household, unless that information is otherwise
6 required to be furnished under state law or obtained pursuant
7 to court order.

8 Section 8. SEARCH OF PERSONAL EFFECTS.--No employer shall
9 search a locker or other space for storage that has been
10 assigned to a hazardous duty officer except in the presence of
11 the officer or with the officer's consent unless a valid search
12 warrant has been obtained or unless the officer has been
13 notified that a search will be conducted.

14 Section 9. POLITICAL ACTIVITY.--

15 A. A hazardous duty officer shall not be prohibited
16 by an employer from engaging in any political activity when the
17 officer is off duty, except as otherwise provided by law.

18 B. A hazardous duty officer who is an employee of a
19 political subdivision of the state shall not, as a condition of
20 that employment, be prohibited from seeking election to, or
21 serving as a member of, the governing body of any other
22 political subdivision of the state.

23 Section 10. EXERCISE OF RIGHTS.--A hazardous duty officer
24 shall not be subjected to any retaliation by an employer due to
25 the officer's lawful exercise of the officer's rights under the

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1 Hazardous Duty Officers' Employer-Employee Relations Act.

2 Section 11. CIVIL PENALTY.--In addition to remedies that
3 may be otherwise available, upon a finding by a district court
4 that an employer or one of its employees, agents or assigns,
5 with respect to acts taken within the scope of employment,
6 maliciously violated any provision of the Hazardous Duty
7 Officers' Employer-Employee Relations Act with the intent to
8 injure a hazardous duty officer, the employer shall, for each
9 violation, be liable for a civil penalty not to exceed
10 twenty-five thousand dollars (\$25,000) to be awarded to the
11 officer whose right or protection was denied and for reasonable
12 attorney fees as may be determined by the court.

13 Section 12. APPLICABILITY.--The provisions of the
14 Hazardous Duty Officers' Employer-Employee Relations Act govern
15 the relationships between hazardous duty officers, as
16 employees, and the state or any of its political subdivisions,
17 including home rule municipalities and class H counties, as
18 employers; provided that nothing in that act shall supersede or
19 otherwise affect the application of any statute or local
20 ordinance relating to criminal investigations or procedure.

21 Section 13. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2010.