

New Mexico: Private Employers Must Provide Up to 64 Hours of Paid Sick Leave to Employees in 2022

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Disability, Leave and Health
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Beginning on July 1, 2022, New Mexico will join 15 other states (and Washington, D.C.) in requiring private employers to provide paid sick leave to their employees.

On April 8, 2021, New Mexico Governor Michelle Lujan Grisham signed House Bill 20, thereby enacting the [Healthy Workplaces Act](#) (HWA). Generally, the HWA entitles employees to up to 64 hours of paid sick leave each year.

Covered Employees and Employers

HWA will require individuals, partnerships, associations, corporations, business trusts, legal representatives or any organized groups of persons employing at least one employee at any time provide paid sick leave to all employees, including full-time, part-time, seasonal, and temporary employees. Significantly, HWA will not obligate public employers (*i.e.*, the United States, the state, or any political subdivision of the state) to provide paid sick leave to employees. Unlike paid sick leave laws in some states, small employers are not exempted from the HWA.

Sick Leave Entitlement

Employees will accrue one hour of paid sick leave for every 30 hours worked, up to a total of 64 hours a year. An employer may choose to frontload its employees with the 64 hours at the beginning of the year or, of course, be more generous in providing employees with paid sick leave. An employer can choose how it would like to define a “year” in which paid sick leave must be used (*i.e.*, the calendar year, fiscal year, a rolling 12-month period measured forward from the date an employee first requests sick leave, and the like).

Permitted Uses

Employees may use paid sick leave for the following reasons:

1. The employee’s:
 - a. Mental or physical illness, injury, or health condition;
 - b. Medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
 - c. Preventive medical care;
2. The employee needs to care for a family member relating to the family member’s:
 - a. Mental or physical illness, injury, or health condition;
 - b. Medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
 - c. Preventive medical care;
3. For meetings at the employee’s child’s school or place of care related to the child’s health or disability;
4. For absence necessary due to domestic abuse, sexual assault, or stalking suffered by the employee or a family member of the employee; provided that the leave is for the employee to:

- a. Obtain medical or psychological treatment or other counseling;
- b. Relocate;
- c. Prepare for or participate in legal proceedings; or
- d. Obtain services or assist a family member of the employee with any of the activities set forth in the statute.

Employees must take paid sick leave in one-hour increments, unless the employer permits employees to take leave in smaller increments. Additionally, as a condition of taking paid sick leave, employers may not require that the employee search for and find a replacement worker to cover the employee's paid sick leave.

Notice and Documentation

Employers must provide paid sick leave upon an employee's oral or written request. Employees should include the expected duration of sick leave being requested. When the leave is foreseeable, employees should make a good faith effort to provide notice and make a reasonable effort to leave in a manner that does not unduly disrupt business operations. Employers may require employees to provide reasonable documentation that sick leave is being used for a qualifying HWA reason if the employee uses at least two consecutive workdays of sick leave.

Documentation signed by a health care professional indicating the amount of earned sick leave taken is necessary will be considered reasonable documentation, as will a police report, a court-issued document, or a signed statement from a victim services organization, clergy member, attorney, advocate, the employee, a family member of the employee, or other person. An employer may not require that the documentation explain the nature of any medical condition or the details of the domestic abuse, sexual assault, or stalking.

Interaction with Employer's Paid Time Off Policy

Employers with paid time off (PTO) policies that provide the minimum amount of leave required by the HWA (*i.e.*, 64 hours) may use their PTO policy to comply with their HWA requirements, so long as employees can take PTO for the same reasons set forth in the HWA and under the same terms and conditions. For example, employees requesting PTO for a qualifying, HWA reason cannot be required to receive advance approval from their manager to take time off and must be able to use PTO in hourly increments or less.

Sick leave required by the HWA will be in addition to any PTO provided by an employer pursuant to a collective bargaining agreement, unless that PTO may be used for the same purposes and under the same terms and conditions as the HWA.

Notice to Employees

An employer must give written or electronic notice to an employee at the commencement of employment of the following:

1. The employee's right to earned sick leave;
2. The manner in which sick leave is accrued and calculated;
3. The terms of use of earned sick leave as guaranteed by the HWA;
4. That retaliation against employees for use of sick leave is prohibited;
5. The employee's right to file a complaint with the Labor Relations Division of The Workforce Solutions Department if earned sick leave as required pursuant to the HWA is denied by the employer or if the employee is retaliated against; and
6. All means of enforcing violations of the HWA.

The Labor Relations Division of the Workforce Solutions Department provide a poster that must be posted in the workplace.

Anti-Retaliation

The HWA prohibits retaliation against employees who take this leave, providing an avenue of relief if employees feel their employer has taken any adverse action against them.

Recordkeeping

Employers must retain records for each employee for a four-year period, documenting hours worked and paid sick leave used.

Violations of HWA

Aggrieved employees may file a civil action in court for a violation of the HWA within three years from the date the alleged violation occurred. An employer that violated the HWA may be liable to the affected employee for a number of enumerated violations, including an employer's failure to compensate an employee for sick leave, unlawfully denying sick leave, discharging an employee relating to the employee's use of paid sick leave, and failure to provide notice or comply with the HWA's recordkeeping requirements. Employers also will be penalized if they fail to provide sick leave to employees who are misclassified as independent contractors. Penalties for the foregoing violations vary from fines, to back pay, lost wages, and benefits.

Additionally, a plaintiff prevailing in a legal action brought pursuant to the HWA will recover all appropriate legal or equitable relief, the costs and expenses of suit, and reasonable attorney fees.

Next Steps

Employers should consult with legal counsel to create and review their PTO or paid sick leave policies for compliance.

Jackson Lewis attorneys are available to assist employers in their compliance efforts. If you have questions about the HWA, including the poster and employee notice requirements, revisions to language in employee handbooks, implementation strategies, or any other workplace issues, please contact the Jackson Lewis attorney with whom you regularly work.

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