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AN ACT

RELATING TO EMPLOYMENT; ~~ENACTING~~ AMENDING THE HEALTHY
WORKPLACES ACT; PROVIDING REQUIREMENTS FOR EARNED SICK LEAVE; ~~—~~
OR EARNED PAID TIME OFF;
PROVIDING PENALTIES.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Healthy Workplaces Act".

SECTION 2. DEFINITIONS.--As used in the Healthy
Workplaces Act:

A. "division" means the labor relations division
of the workforce solutions department;

B. "domestic partner" means an individual with
whom another individual maintains a household and a mutual
committed relationship without a legally recognized marriage;

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

D. "employ" means suffer or permit to work;

E. "employee" means an individual employed by an

1 employer for remuneration, including an individual employed
2 on a part-time, seasonal or temporary basis; "employee" does
3 not mean an employee of an employer subject to the provisions
4 of Title II of the federal Railway Labor Act or an employee
5 as defined in either the federal Railroad Unemployment
6 Insurance Act or the Federal Employers' Liability Act;

7 F. "employer" means an individual, partnership,
8 association, corporation, business trust, legal
9 representative or any organized group of persons employing
10 one or more employees at any one time, acting in the interest
11 of an employer in relation to an employee, but shall not
12 include the United States, the state or any political
13 subdivision of the state;

14 G. "family member" means an employee's spouse or
15 domestic partner or a person related to an employee or an
16 employee's spouse or domestic partner as:

17 (1) a biological, adopted or foster child, a
18 stepchild or legal ward, or a child to whom the employee
19 stands in loco parentis;

20 (2) a biological, foster, step or adoptive
21 parent or legal guardian, or a person who stood in loco
22 parentis when the employee was a minor child;

23 (3) a grandparent;

24 (4) a grandchild;

25 (5) a biological, foster, step or adopted

1 sibling; (6) ~~a spouse or domestic partner of a family~~

2
2 (6) a 4 (7) an individual whose close association
spouse or
domestic
partner of
a family

3 member; or

4
5 with the employee or the employee's spouse or domestic 20
6 partner is the equivalent of a family relationship;

7 H. "health care professional" means a person earne
8 licensed pursuant to federal or state law to provide health d
9 care services, including nurses, nurse practitioners, sick
10 physician assistants, doctors and emergency room personnel; leave

11 I. "independent contractor" means a person who or
12 agrees to do certain work where the person who engages the earne
13 contractor may direct the result to be accomplished but does d
14 not have the right to control the manner in which the details paid
15 of the work are to be performed; and time

16 J. "retaliation" means any threat, discharge, off
17 discipline, suspension, demotion, non-promotion, less as an
18 favorable scheduling, reduction of hours or application of absen
19 absence control policies that count an employee's use of ce

that may lead to ~~adverse~~

21 adverse action, or other adverse action against employees for
the

22 exercise of a right guaranteed pursuant to the Healthy

23 Workplaces Act, including sanctions against an employee who

24 is a recipient of benefits or rights pursuant to the Healthy

25 Workplaces Act. "Retaliation" includes interference with or

punishment

1 Punishment for participating in an investigation, proceeding
2 or hearing pursuant to the Healthy Workplaces Act.

3 K. "earned paid time off" means the time that is
4 compensated at the same hourly rate and with the same
5 benefits,
6 including health care benefits, as an employee normally earns
7 during hours worked and is provided by an employer to that
8 employee for the purposes described in the Healthy Workplace
9 Act, but in no case shall the hourly rate be less than the
10 applicable legally required minimum wage rate, which can be
11 used for sick leave as defined in the Healthy Workplaces Act,
12 or any other use as defined by the employer;

13 M. "Benefit" means amounts paid by the employer
14 on behalf of an employee that is not considered wages or
15 salary and only that specific employee can access and utilize.
16 It does not include any favorable tax position provided by
17 such benefit.

18 The payment of benefit during sick leave or earned paid time
19 off
20 is solely for the maintenance of benefit, to ensure no loss,
or
interruption of benefit.

**SECTION 3. EARNED ~~SICK LEAVE~~PAID TIME OFF--USE AND
ACCRUAL.--**

A. Employees shall accrue a minimum of one hour of

irty hours worked_
22 up to a maximum of forty hours accrued within a twelve-month
period
23 for a calendar or fiscal year as selected by the employer;
provided
24 that employers may choose a higher accrual rate; and provided
25 further that an employer may instead elect to grant the
employees

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1 the full ~~sixty~~~~Sixty-four~~ forty hours of earned sick leave or
earned paid time
2 off for the upcoming year on January 1 of each year, ~~or~~ or for
employees
3 whose employment begins after January 1 of a given year, a pro
rata
4 portion of the ~~sixty-four~~ forty hours for use in the remainder
of that
5 year. Such employees shall not be entitled to use more than
6 ~~sixty-four~~ forty hours of ~~earned~~~~paid~~ sick leave or earned paid
time off per
7 twelve-month period, unless the employer selects a higher
limit.

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8 B. All employees shall accrue ~~earned~~-sick leave or
earned paid time
9 off as follows:
10 (1) earned paid sick leave or earned paid time off as
provided in the
11 Healthy ~~Workplaces~~Workplace Act shall begin to accrue upon the
latter of
12 commencement of the employee's employment or the effective
13 date of the Healthy Workplaces Act and may be used ~~beginning~~

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to the federal Fair Labor Standards Act of 1938,
1 29 U.S.C. Section 213(a)(1), shall be assumed to

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19 work forty hours
20 in each work week for the purposes of earned sick leave or
21 earned ~~sick leave~~ paid time off accrual unless their normal work week
is
22 less than forty hours, in which case earned paid sick leave
23 or earned paid time off accrues based on their normal work
week;
24 (3) accrued unused earned paid sick leave or earned paid
time off
25 shall carry over from ~~year to year,~~ 12-month period to 12-
month period,
1 but an employer is not required to permit an employee to use
more
1 than ~~sixty-four~~ forty hours in a
2 twelve-month period;
3 (4) nothing in this section shall be construed as requiring
financial
4 or other reimbursement to an employee from an employer upon
the ~~employee's~~
5 employee's termination, resignation, retirement or other
separation ~~from employment~~
6 from employment for accrued earned sick leave or earned paid
time off
7 that has not been used;
8 (5) if an employee is transferred to a separate division,
entity or

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location and is entitled to use all ~~earned~~

- 12 ~~paid~~ sick leave or earned paid time off as provided in this section.
- 13 When there is a separation from employment, and the employee is rehired
- 14 within twelve months of separation by the same employer, previously
- 15 accrued earned sick leave or earned paid time off that has not been used
- 16 shall be reinstated. Further, the employee shall be entitled to use
- 17 accrued earned sick leave or earned paid time off and accrue additional
- 18 earned sick leave or earned paid time off upon re-commencement of ~~employment;~~

19 employment;
20 (6) when a different employer succeeds or takes the place of
21 an
22 existing employer, all employees of the original employer who
23 remain
24 employed by the successor employer are entitled to all earned
25 sick leave
or earned paid time off accrued when employed by the original
employer
and are entitled to use all earned sick leave or earned paid
time off
previously accrued as provided in this section;

1 (7) for purposes of this subsection, an employer may choose
any one ~~of~~
2 Of the following methods for determining the twelve-month
period in which ~~the~~
3 The earned sick leave or earned paid time off may be used:
4 (a) the calendar year;
5 (b) any fixed twelve-month leave or time off year, such as a
fiscal year,
6 a year required by other law or a year starting on an
employee's
7 anniversary date ~~;~~
8 (c) the twelve-month period measured forward from the date an
9 employee's first use of earned sick leave or time off occurs;
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urrently with the twelve-month period elected by the employer.

- 14** C. An employee may use earned sick leave or earned paid time off:

- 15 (1) for the employee's:
- 16 (a) mental or physical illness, injury or health condition;
- 17 (b) medical diagnosis, care or treatment of a mental or
physical illness,
- 18 injury or health condition; or
- 19 (c) preventive medical care;
- 20 (2) for care of family members of the employee for:
- 21 (a) mental or physical illness, injury or health condition;
- 22 (b) medical diagnosis, care or
23 treatment of a mental or physical illness, injury or health_
condition; or
- 1 ~~condition; or~~
- 24 (c) preventive medical care;
- 25 (3) for meetings at the employee's child's

1 school or place of care related to the child's health or
2 disability; or

3 (4) for absence necessary due to domestic
4 abuse, sexual assault or stalking suffered by the employee or
5 a family member of the employee; provided that the leave ~~is or~~
earned paid
6 time off is for the employee to:

7 (a) obtain medical or psychological
8 treatment or other counseling;

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13 member of the employee with any of the activities
14 set forth in Subparagraphs (a) through (c) of this
15 paragraph.

16 D. Earned sick leave or earned paid time off shall be provided upon the
17 oral or written request of an employee or an individual acting on the
18 employee's behalf. When possible, the request shall include the expected
19 duration of the sick leave or paid time off absence.

3 E. When the use of earned sick leave ~~is~~
20 or earned paid time off is foreseeable,
21 the employee shall make a reasonable effort to provide oral or written
22 notice of the need for such sick leave or earned paid time off to the
23 employer in advance of the use of the earned sick leave or earned paid time
24 off and shall make a reasonable effort to schedule the use of earned
25 sick leave or earned paid time off in a manner that does not unduly

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1 disrupt the operations of the employer. When the use of
2 earned sick leave or earned paid time off is not foreseeable,
3 the employee
4 shall notify the employer orally or in writing as soon as
5 practicable.

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

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1 ~~hourly increments or the smallest increment that the~~
10 ~~employer's employer's payroll system uses~~
11 ~~Uses to account for absences or use of other time, as defined~~
~~by the employer~~
12 ~~or in four-hour increments, whichever is smaller.~~

13 H. An employer shall not require an employee to use other
paid
14 leave before the employee uses sick leave or earned time off
pursuant to ~~the Healthy Workplaces Act.~~
15 the Workplaces Act.

16 I. An employer's failure to provide earned sick leave or
earned paid
17 time off based on the employer's misclassification of the
employee as an
18 independent contractor is a violation of the Healthy
Workplaces Act.

2 ~~Healthy Workplaces Act.~~

19 **SECTION 4. MORE GENEROUS EARNED SICK LEAVEPAID TIME OFF**
POLICY. ~~---.~~ An
20 employer with a paid time off policy that makes available an
21 amount of earned sick leavepaid time off sufficient to meet
the accrual
22 requirements of the Healthy Workplaces Act and that may be
23 used for at minimum the same purposes and under the same
24 terms and conditions as that act is deemed to be in
25 compliance with that act. However, on the effective date of

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3 employer pursuant to a collective bargaining agreement unless
4 that paid time off provided may be used for the same purposes
5 and under the same terms and conditions as the Healthy_
Workplaces Act.

3 ~~Workplaces Act.~~

6 **SECTION 5.** DOCUMENTATION, ~~---~~ ---

4 A. Documentation shall not be required for sick

7 _leave or earned paid time
8 off, except an employer may require reasonable documentation
that sick
9 leave or earned paid time off has been used for a covered
purpose if the
10 employee uses two or more consecutive work days of sick
leave. or earned
11 paid time off.
12 B. Documentation signed by a health care professional
indicating the
13 amount of earned sick leave or earned paid time off taken is
necessary
14 shall be considered reasonable documentation for sick leave
or earned paid
15 time off taken pursuant to the Healthy Workplaces Act. In
cases of domestic
16 abuse, sexual assault or stalking, an employee may choose to
provide
17 one of the following types of documentation, which shall be
considered
18 as reasonable documentation: a police report, a court-issued
document or a
19 signed statement from a victim services organization, clergy
20 member, attorney, advocate, the employee, a family member of

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purposes set forth in Paragraph (4)

23 of Subsection C of Section 3 of the Healthy Workplaces Act.

24 A signed statement required pursuant to this subsection may

25 be written in the employee's native language and shall not be

1 required to be in a particular format or notarized. An

2 employer may not require the documentation to explain the

3 nature of any medical condition or the details of the

4 domestic abuse, sexual assault or stalking.

5 C. An employee shall provide documentation upon

6 request to the employer in a timely manner. The employer

7 shall not delay the commencement of earned sick leave or
8 earned paid time
9 off on the basis that the employer has not yet received
10 documentation.
11 D. All information an employer obtains related to
12 an employee's reasons for taking sick leave ~~shall be treated or~~
13 earned paid time off
14 shall be treated as confidential and not disclosed except
15 with the
16 permission of the employee or as necessary for validation
17 purposes for
18 insurance disability claims, accommodations consistent with
19 the federal Americans with Disabilities Act of 1990, as
20 required by the Healthy Workplaces Act or by court order.
21 **SECTION 6. NOTICE AND POSTING REQUIREMENTS.--**
22 A. An employer shall give written or electronic
23 notice to an employee at the commencement of employment of
24 the following:
25 (1) the employee's right to earned sick leave or earned paid
time
leave off;
(2) the manner in which sick leave or earned paid time off is
accrued and calculated;
(3) the terms of the use of earned sick leave or earned paid
time off
as guaranteed by the Healthy Workplaces Act;

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- 5 pursuant to the Healthy Workplaces Act is denied by the employer or if
- 6 the employee is retaliated against; and

7 (6) all means of enforcing violations of the
8 Healthy Workplaces Act.
9 B. Notice required pursuant to Subsection A of
10 this section shall be in English, Spanish or any language
11 that is the first language spoken by at least ten percent of
12 the employer's workforce, as requested by the employee.
13 C. Employers shall display a poster that contains
14 the information required pursuant to Subsection A of this
15 section in a conspicuous and accessible place in each
16 establishment where employees are employed. The poster
17 displayed should be in English, Spanish and any language that
18 is the first language spoken by at least ten percent of the
19 employer's workforce.
20 D. The division shall create and make available to
21 employers notices and posters in English, Spanish and any
22 other languages deemed appropriate by the division that
23 contain the information required pursuant to Subsection A of
24 this section for employers' use in complying with the
25 provisions of this section.

1 **SECTION 7. EMPLOYER SHALL RETAIN**

2 DOCUMENTATION.--Employers shall retain for the immediately

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business, at a third-party professional human resources
provider, at a third-party service provider, or at
another third-party administrative service provider.
Nothing in this section shall be interpreted to
restrict an employer to a maximum of eighteen-months
of records.

SECTION 8. EXERCISE OF RIGHTS PROTECTED ~~RETALIATION~~
~~PROHIBITED.~~

13 A. An employer shall not take or threaten any
14 adverse action whatsoever against an employee:
15 (1) that is reasonably likely to deter such
16 employee from exercising or attempting to exercise a right
17 granted pursuant to the Healthy Workplaces Act; or
18 (2) because the employee:
19 (a) has exercised or attempted to
20 exercise such rights;
21 (b) has reasonably alleged violations of the Healthy
22 ~~of the Healthy~~ Workplaces Act; or
23 (c) has raised a concern about
24 violations of the Healthy Workplaces Act to the employer, ~~the~~
25 the employer's agent, other employees, a government agency

1 or to the public through print, online, social or any other
media.
2 B. An employer shall not attempt to require an employee to
3 sign a
4 contract or other agreement that would limit or prevent the
5 employee
6 from asserting rights provided for in the Healthy Workplaces
Act or to
7 otherwise establish a workplace policy that would limit or
prevent the
8 exercise of such rights. An ~~employer's~~ employer's attempt to

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- 9 C. An employer shall not count use of sick leave or earned
paid time off in a way that will lead to discipline,
discharge, demotion, or non-promotion,
- 1 less favorable scheduling, reduction of hours τ

10 suspension or any other
11 adverse action.

12 **SECTION 9. ENFORCEMENT.--**

13 A. The division shall be authorized to coordinate
implementation and
14 enforcement of the Healthy Workplaces Act and shall promulgate
appropriate
15 rules to implement that act.

16 B. The division shall coordinate implementation
17 and enforcement of the Healthy Workplaces Act, including:

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

21 (2) establishing a process for investigating
22 and resolving complaints in a timely manner and keeping
23 complainants notified regarding the status of the
24 investigation of their complaint;

25 (3) ensuring employer compliance with the

1 (2) establishing a process for investigating
2 and resolving complaints in a timely manner and keeping

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or other measures; and

8 (4) establishing a system for reviewing

9 complaints.

10 C. The division shall maintain as confidential the

11 identity of any complainant unless disclosure of such

12 complainant's identity is necessary for resolution of the

13 investigation or otherwise required by law. The division

14 shall, prior to such disclosure and to the extent

15 practicable, notify a complainant that the division will be

16 disclosing the complainant's identity.

17 **SECTION 10. CIVIL ACTIONS--TIME LIMITS--BURDENS OF PROOF.--**

18 A. A civil action may be filed in a court of

19 competent jurisdiction for a violation of the Healthy_
Workplaces Act

20 ~~Workplaces Act~~ within ~~three years~~ eighteen-months from the
date the alleged

21 ~~violation occurred;~~ after the division has completed the
investigation

22 ~~process.~~ The investigation process shall take no longer than
six-months to

23 ~~complete. provided that the time limit to file a~~

24 ~~civil action established by this subsection shall be tolled~~

25 ~~during an investigation by the division of the violation or~~

1 ~~related violations by the same employer. A lack of an~~

2 ~~investigation by the division shall not act as a bar to a~~

3 ~~civil action brought by a complainant pursuant to the Healthy~~

4 ~~Workplaces Act.~~

5 B. The division, the office of the attorney

6 general or a person or entity that has a member who has been

7 affected by a violation of the Healthy Workplaces Act may

8 bring a civil action for a violation of the Healthy

9 Workplaces Act.

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14 | after the effective date of the Healthy Workplaces Act as
15 | part of a continuing course of conduct, regardless of the
16 | date on which the violations occurred;

~~(2) cannot be pursued by an employee on behalf of
the employee or be pursued by an employee on behalf of other
employees similarly situated; or~~

(3) be pursued by an agent or representative
designated by an employee.

D. It shall not be a defense to any action brought
pursuant to this section that the complaint was brought by or
in regard to the employment of a worker who does not have
evidence of having a legal presence in the United States.

E. The parties in a civil action regarding
retaliation by an employer shall be subject to the following
burdens of proof:

(1) when an employee presents a prima facie
showing of retaliation, the employer shall then have the
burden to establish a legitimate, non-retaliatory reason for
the adverse employment action; and

(2) when an employer meets the burden of
proof required by Paragraph (1) of this subsection, the
employee shall then have the burden to establish that the
reason cited by the employer was pretextual.

SECTION 11. EMPLOYER LIABILITY.--

13 A. An employer that violates the Health

14 Workplaces Act shall be liable to the affected employee:

15 (1) for an instance of sick leave or earned paid time off taken by

16 an employee but unlawfully not compensated by

the employer 7

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17 in an amount equal to three times the wages that should have
18 been paid or five hundred dollars (\$500), whichever is_
greater;

1 ~~greater;~~

19 (2) for an instance of sick leave or earned paid time off
requested

20 by an employee but unlawfully denied by the employer and not

21 taken by the employee or unlawfully conditioned on searching

22 for or finding a replacement worker, in an amount equal to

23 actual damages or five hundred dollars (\$500), whichever is_
greater;

2 ~~greater;~~

24 (3) for each instance of retaliation

25 prohibited by the Healthy Workplaces Act excepting discharge

1 from employment, in an amount equal to actual damages,

2 including back pay, wages or benefits lost, an additional

3 amount of two hundred fifty dollars (\$250) and equitable

4 relief such as rescission of disciplinary measures taken by

5 the employer or other relief as determined by a court of law;

6 (4) for each instance of prohibited

7 discharge from employment, in an amount equal to actual

8 damages, including back pay, wages or benefits lost, an

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fifty

dollars (\$250); and

14 (6) for each misclassification of an

15 employee as an independent contractor, actual damages or five
16 hundred dollars (\$500), whichever is greater.

17 B. A plaintiff prevailing in a legal action
18 brought pursuant to the Healthy Workplaces Act shall recover
19 all appropriate legal or equitable relief, the costs and
20 expenses of suit and reasonable attorney fees. ~~In an action up to a maximum
of 33 percent~~
21 of the award. In an action brought by the division or the attorney
22 general, any damages recovered shall be payable to the individual employees
23 who experienced the violation.

24 **SECTION 12. OTHER LEGAL REQUIREMENTS.**--The Healthy
25 Workplaces Act provides minimum requirements pertaining to

1 ~~earned sick leave and shall not be construed to preempt,~~

1 limit or otherwise affect the applicability of any other law, earned
2 sick leave or earned paid time off and shall not be construed to preempt,
3 regulation, requirement, policy or standard, including
4 collective bargaining agreements, that provides for greater
5 accrual or use by employees of earned sick leave, ~~whether~~ or earned paid
time off,
6 whether paid or unpaid, or that extends other protections to employees.

7 **SECTION 13. Good Faith Provision.** --

8 A. An employer with a first-time infraction shall be provided with the
9 corrective action and a reasonable deadline to comply, no sooner than 30
10 days. If corrective action has not been taken by the deadline imposed, the
11 appropriate civil penalty as defined within the Healthy Workplaces Act may
12 be assessed; and not before.

13 **SECTION 13 14. EFFECTIVE DATE.**--The effective date of the

14 provisions of this act is July 1, ~~2022~~ 2023._____

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