

## NM Paid Sick Leave

On April 8, 2021, the State of New Mexico passed the [Healthy Workplaces Act](#) (HWA) requiring all employers who operate in the state to provide paid sick leave (PSL) to their employees effective July 1, 2022. New Mexico joins 15 other states and the District of Columbia in requiring private employers to provide their employees with paid sick leave.

### Benefits and Coverage

- The HWA requires all employers who operate in New Mexico to provide PSL to all of their employees, including full-time, part-time, seasonal, and temporary employees. Small employers are **not** exempt from the HWA.
- Employees accrue one hour of PSL per 30 hours worked up to a total of 64 hours per year.
- Employers may choose to frontload the entire amount of required PSL or provide more generous benefits than the law requires.

### Covered Uses

- Employees may use PSL under the HWA for the following reasons:
  - Employee's own mental or physical illness/injury; diagnosis, care, or treatment of a mental or physical illness/injury; or preventive medical care
  - Employee's need to care for a family member due to the family member's mental or physical illness/injury; diagnosis, care, or treatment of a mental or physical illness/injury; or preventive medical care
  - Meetings at the employee's child's school or place of care, that are related to the child's health or disability

- Absence related to domestic abuse, sexual assault, or stalking of the employee or employee's family member, provided that the purpose of leave is to obtain medical or psychological treatment, relocate, prepare for or participate in legal proceedings, or assist a family member with the aforementioned needs
- PSL under the HWA must be taken in one-hour increments unless the employer permits smaller increments.
- Employers that have existing paid time off (PTO) policies that provide at least 64 hours of leave per year (including PTO under a collective bargaining agreement), for the same reasons and under all of the same terms and conditions outlined in the HWA, may use their existing PTO policy to meet their requirement to provide PSL.

## **Restrictions and Obligations**

- Employers may not require employees to find their own replacements as a condition of using PSL.
- Employers must provide PSL for covered absences upon employees' written request for leave. The written request should include the expected duration of absence, and when the need for leave is foreseeable, the employee should make a good faith effort to minimize disruption to the employer's business operations.
- If at least two consecutive days of PSL are used, employers may require reasonable documentation of the need for PSL for a qualifying reason. "Reasonable documentation" may include:
  - Written statement from a healthcare professional
  - Police report
  - Court-issued document
  - Signed statement from a clergy member, attorney, the employee/employee's family member, a social service organization, or other individual who has knowledge of the employee's need for leave; employers may not require specific information about the employee's medical condition or situation
- The HWA includes a requirement that employers post in the workplace and, upon commencement of employment, provide written or electronic notice of employees' rights under the HWA including:
  - The right to earned PSL
  - How PSL is calculated and accrued
  - The terms of PSL use under the HWA
  - Prohibition on employer retaliation
  - The right to file complaint with the Labor Relations Division of the Workforce Solutions Department if PSL is improperly denied or retaliation occurs
  - All means of enforcing HWA violations
- Employers must retain, for four years, records documenting each employee's hours worked and PSL used.

- Employers will be penalized for failing to provide PSL under the terms of the HWA, including, but not limited to: failure to pay an employee for PSL, unlawful denial of leave, retaliation, failure to provide notice or keep required records, or improper classification of employees as independent contractors. Employees may file a civil action in court within three years of the alleged violation.
- When violations are determined to have occurred, penalties may include fines, back pay, or lost wages and benefits. Employees who prevail in court may also be able to recover reasonable attorney fees and other legal costs.

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