



1           **WHEREAS, notwithstanding the FFCRA, many workers continue to lack**  
2 **access to paid sick leave; and**

3           **WHEREAS, the emergency paid sick leave benefits required by the FFCRA**  
4 **last only through December 31, 2020; and**

5           **WHEREAS, all workers at some time during each year need limited time off**  
6 **from work to take care of their own health needs or those of family members; and**

7           **WHEREAS, according to analysis of paid sick leave in Albuquerque by the**  
8 **University of New Mexico’s Bureau of Business and Economic Research:**

9 **36% of workers—100,596 employees—do not have access to paid sick leave,**  
10 **including 68,984 full-time workers; Employees least likely to have the right to earn**  
11 **sick time are employed in leisure and hospitality (64% have no paid sick leave)**  
12 **and retail (44% have no paid sick leave), by businesses with fewer than 10**  
13 **employees (53% have no paid sick leave), and part-time (68% have no paid sick**  
14 **leave); 90% of employees without the right to earn sick time earn less than**  
15 **\$15,000 a year; Albuquerque lags behind the rest of the country in rates of access**  
16 **to paid sick leave; Employees without paid leave go to work sick approximately**  
17 **3.5 times a year; 1.8 times with risk of spreading the illness; and 48% of**  
18 **businesses that do have paid leave experience lower turnover; and**

19           **WHEREAS, the lack of the right to earn sick time compels workers to work**  
20 **when they should be recuperating from illness or injury and increases the risk of**  
21 **passing illnesses to others; and**

22           **WHEREAS, one in six employees in the U.S. report that they or a family**  
23 **member has been fired, suspended, punished or threatened by an employer**  
24 **because they needed to take sick time to care for themselves or a family member;**  
25 **and**

26           **WHEREAS, workers in jobs with high public contact, such as health care,**  
27 **service, restaurant and retail workers, are unlikely to have the right to earn sick**  
28 **time, thereby increasing their risk of passing illnesses to co-workers and**  
29 **customers; and**

1           **WHEREAS, victims of domestic abuse, stalking and sexual assault often**  
2 **lose days of paid employment or lose their jobs because they need time off to**  
3 **recover and escape from such situations, and that lost income is particularly**  
4 **devastating for such victims, who need economic security to ensure safety; and**

5           **WHEREAS, the right to earn sick time as provided herein will reduce**  
6 **recovery time from illnesses, enable people to obtain preventive medical care and**  
7 **prenatal care, promote the use of regular medical providers rather than**  
8 **emergency care, enable parents to care for sick children instead of sending them**  
9 **to school, prevent people from spreading illness to the public and enable victims**  
10 **of domestic abuse, sexual assault and stalking to get away from their abusers,**  
11 **thereby protecting the health, safety and general welfare of people in**  
12 **Albuquerque; and**

13           **WHEREAS, an analysis on sick leave benefits in Albuquerque that was**  
14 **commissioned by the City Council and completed by the University of New**  
15 **Mexico Bureau of Business and Economic Research found that “a mandate on**  
16 **businesses with 5 or more employees would require the participation of 33% of**  
17 **all businesses in the city, and provide coverage to 94% of those currently without**  
18 **paid leave benefits.”; and**

19           **WHEREAS, the public health benefits of the right to earn sick time will be**  
20 **increased by covering workers in private homes, like workers caring for elderly,**  
21 **newborn and other medically-vulnerable people, and by covering businesses with**  
22 **fewer than 10 employees, which is the majority of businesses in Albuquerque;**  
23 **and**

24           **WHEREAS, establishing the right to earn and use sick time will level the**  
25 **playing field between Albuquerque businesses who already provide earned sick**  
26 **time and those who do not; and**

27           **WHEREAS, the right to use earned sick time to care for a family member**  
28 **must reflect the diversity of family caregiving relationships today; and**

29           **WHEREAS, providing for liquidated damages and penalties when**  
30 **employers violate this Ordinance will compensate workers for violations and**

1 incentivize voluntary employer compliance, thereby reducing the enforcement  
2 costs to the City; and

3 WHEREAS, employers are encouraged to provide more generous paid time  
4 off policies if they choose, and should not be burdened by the provisions of this  
5 Ordinance in doing so.

6 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
7 ALBUQUERQUE:

8 SECTION 1. A new Article 19, the “Paid Sick Leave Ordinance,” is hereby added  
9 and adopted within Chapter 13, “Business and Occupations,” as follows:

10 “[§ 13-19-1 TITLE AND DECLARATION OF ALBUQUERQUE PUBLIC POLICY. This  
11 article may be cited as the “Albuquerque Paid Sick Leave Ordinance.” It is  
12 declared to be the policy of the Albuquerque Paid Sick Leave Ordinance (1) to  
13 ensure that all workers in the City of Albuquerque can address their own health  
14 needs and those of their family members during a public health emergency, by  
15 requiring employers to provide a minimum level of paid sick time, including time  
16 to care for their family members; (2) to ensure that workers and their families can  
17 follow the orders and recommendations of public health officials or health care  
18 providers during an emergency that threatens their health and the health of  
19 others in the community; (3) to protect the public’s health by reducing the risk of  
20 contagion during a public health emergency; (4) to promote the economic  
21 security and stability of workers in the City of Albuquerque and their families  
22 during a public health emergency; (5) to protect workers in the City of  
23 Albuquerque from losing their jobs or facing workplace discipline when they use  
24 paid sick time during a public health emergency to care for themselves or their  
25 families; (6) to establish minimum requirements for paid sick leave at levels  
26 consistent with the general health, safety and welfare of the people of the City of  
27 Albuquerque; and (7) to safeguard existing paid time off standards against unfair  
28 competition by those who do not provide workers an amount of paid sick leave  
29 adequate to maintain the general health, safety and welfare of the people of the

1 City of Albuquerque; and (8) to accomplish these purposes in a manner that is  
2 feasible for employers.

3 § 13-19-2 DEFINITIONS.

4 CITY. The City of Albuquerque.

5 DEPARTMENT. The office of the City Attorney, unless the mayor designates a  
6 different city agency or department.

7 DOMESTIC PARTNER. A person with whom another person maintains a  
8 household and a mutual committed relationship, without a legally recognized  
9 marriage.

10 EMPLOYER. (1) Any person, including any individual, estate, business trust,  
11 association, receiver, cooperative association, club, corporation, company, firm,  
12 partnership, joint venture, syndicate, legal representative or other entity or group  
13 of persons or entities who is required to apply for a business registration from  
14 the City of Albuquerque as required by the Business Registration Ordinance at  
15 Chapter 13, Article 1 of the Albuquerque Code of Ordinances, including their  
16 corporate officers or executives; (2) any non-profit corporation with a physical  
17 premises within the City of Albuquerque; or (3) any person employing an  
18 individual who works within the municipal limits of the City in the home of  
19 another person for the purpose of caring for a child, doing housekeeping or  
20 providing other services related to the care of persons in private homes or the  
21 maintenance of private homes or their premises. EMPLOYER shall include the  
22 City of Albuquerque.

23 FAMILY MEMBER. A spouse or domestic partner; a child (whether of a biological,  
24 foster, adoptive or step relationship), sibling, parent, grandparent, grandchild, or  
25 legal ward or guardian of the worker or of the worker's spouse or domestic  
26 partner, and the spouses or domestic partners of these individuals; a person to  
27 whom the worker stands or stood in loco parentis; or any other individual or  
28 relative whose close association with the worker or worker's spouse or domestic  
29 partner is the equivalent of a family relationship.

1 PAID SICK TIME. Time that is compensated at the same hourly rate and with the  
2 same benefits, including health care benefits, as the worker normally earns  
3 during hours worked and is provided by an employer to a worker for the  
4 purposes described in section 13-19-3(A) of this article, but in no case shall the  
5 hourly wage be less than that provided in Chapter 13, Article 12 of the  
6 Albuquerque Code of Ordinances.

7 PAID TIME OFF POLICY. Any employer policy that provides for more generous  
8 paid time off than what this Ordinance requires.

9 WORKER. Any person whom an employer suffers or permits to perform work or  
10 to whom an employer provides remuneration for services or labor regardless of  
11 whether the person is classified as an independent contractor by the employer.

12 YEAR. A regular and consecutive 12-month period as determined by the  
13 EMPLOYER.

14 § 13-19-3 PAID SICK LEAVE.

15 A. In order to remedy the problem that many Albuquerque workers lack the  
16 right to paid sick leave, an employer shall provide workers paid sick time for:

17 1. A worker's mental or physical illness, injury or health condition;  
18 medical diagnosis, care or treatment of a mental or physical illness, injury or  
19 health condition; or preventive medical care;

20 2. A worker to care for a family member with a mental or physical  
21 illness, injury or health condition; to care for a family member who needs medical  
22 diagnosis, care, or treatment of a mental or physical illness, injury or health  
23 condition; to care for a family member who needs preventive medical care; or to  
24 care for a family member who is self-isolating due to being diagnosed with or  
25 experiencing symptoms of a communicable illness related to a public health  
26 emergency;

27 3. Closure of the worker's place of business or family member's school  
28 or place of care for public health reasons;

1           4.       Absence necessary because the worker's presence in the place of  
2 business or in the community would be a threat to the health of others, as  
3 determined by a public official, health authority or health care provider;

4           5.       Inability to work or telework while subject to an individual or general  
5 local, state or federal quarantine or isolation order, including a shelter-in-place  
6 order, related to a public health emergency; or closure of the worker's place of  
7 business by order of a local, state or federal public official or health authority or  
8 at the discretion of the employer due to a public health emergency;

9           6.       A worker to care for a child or other family member when the care  
10 provider of such individual is unavailable due to a public health emergency, or if  
11 the child's or family member's school or place of care has been closed by a local,  
12 state or federal public official or at the discretion of the school or place of care  
13 due to a public health emergency, including if a school or place of care is  
14 physically closed but providing instruction remotely;

15          7.       Absence necessary due to domestic abuse, sexual assault or  
16 stalking suffered by the worker or worker's family member, provided the leave is  
17 for the worker to obtain medical or psychological treatment or other counseling,  
18 relocate, prepare for or participate in legal proceedings, or obtain services, or to  
19 assist the worker's family member with any of the above activities.

20 **B.       PUBLIC HEALTH EMERGENCY PAID SICK LEAVE.**

21          1.       Through December 31, 2020, workers shall be entitled to use the  
22 following number of hours of pandemic paid sick time:

23               a.       For full-time workers, 80 hours.

24               b.       For part-time workers, a number of hours equal to the number  
25 of hours that such worker works, on average, over a two-week period.

26          2.       This calculation of hours worked shall include only time worked  
27 within the City, unless the employer's policy or another state or local law provides  
28 otherwise.

1           3.       An employer may reduce the number of hours of pandemic paid sick  
2 time by the number of hours of paid sick time already taken by a worker between  
3 April 1, 2020, and the effective date of this Ordinance.

4           4.       An employer may not require a worker to use any other paid or  
5 unpaid leave, paid time off or vacation time provided by the employer to the  
6 worker before the worker uses the pandemic paid sick time.

7           5.       Workers shall be entitled to use pandemic paid sick time beginning  
8 on the effective date of this Ordinance.

9 **C.    EARNED PAID SICK LEAVE**

10          1.       Accrual and use of earned paid sick leave. Workers shall accrue a  
11 minimum of one hour of paid sick time for every 30 hours worked, provided that  
12 employers may choose a higher accrual rate or to provide for accrual of all earned  
13 paid sick time at the beginning of the year. Workers cannot use or accrue more  
14 than 56 hours of earned paid sick time in a year, unless the employer's policy  
15 provides for a higher limit on use or accrual. Paid sick time shall begin to accrue  
16 on the worker's date of hire or 30 calendar days after the effective date of this  
17 Ordinance, whichever is later. An employer may, but is not obligated to, loan paid  
18 sick time to a worker in advance of accrual by such worker. Workers exempt from  
19 overtime requirements under federal and state law will be assumed to work no  
20 more than 40 hours in each work week for purposes of paid sick time accrual,  
21 unless the employer selects a higher limit. Workers shall only accrue paid sick  
22 time for time worked within the City, unless the employer's policy or another state  
23 or local law provides otherwise.

24          2.       Workers shall be entitled to use accrued paid sick time beginning on  
25 January 1, 2021, or the 90th calendar day following the date of hire, whichever is  
26 later, unless the employer's policy provides that workers may use accrued time  
27 earlier. Provided, however, a worker shall not be entitled to use accrued paid sick  
28 time until the worker has worked 56 hours in a year.

29          3.       Request for paid sick time. An employer shall provide paid sick time  
30 upon the request of a worker or an individual acting on the worker's behalf. Such



1 request may be made orally, in writing, by electronic means or by any other  
2 means acceptable to the employer. When possible, the request shall include the  
3 expected duration of the absence. When the use of paid sick time is foreseeable,  
4 such as a scheduled medical appointment or similar matters, the worker shall  
5 make a good faith effort to provide notice to the employer in advance of the use  
6 of the paid sick time and shall make a reasonable effort to schedule the use of  
7 paid sick time in a manner that does not unduly disrupt the operations of the  
8 employer.

9 4. Carry-over of earned paid sick time. Unused earned paid sick time  
10 shall be carried over to the following year, but workers cannot carry over more  
11 than 56 hours of paid sick time in a year, unless the employer's policy provides  
12 otherwise. If a worker is transferred but remains employed by the same employer,  
13 or if a successor employer replaces the original employer, or if a worker  
14 separates from employment but is rehired by the same employer within 12  
15 months, the employer shall reinstate all previously accrued and unused earned  
16 paid sick time to the worker, up to a maximum of 56 hours, unless the employer  
17 chooses to provide more, or unless the employer previously chose to pay out the  
18 earned paid sick time upon transfer or separation.

19 5. Documentation of paid sick time. An employer may require  
20 reasonable documentation that paid sick time has been used for a covered  
21 purpose if the worker uses three or more consecutive paid sick days.  
22 Documentation signed by a health care professional indicating that paid sick time  
23 is necessary shall be considered reasonable. If an employer chooses to require  
24 documentation from a health care professional, the employer is responsible for  
25 reimbursing out-of-pocket medical expenses that the worker incurs in obtaining  
26 the documentation, if the medical visit is not medically necessary and made  
27 solely to obtain documentation for the employer, and if such costs are not  
28 covered by the worker's or family member's insurance plan. In cases of domestic  
29 abuse, sexual assault or stalking, reasonable documentation may include a police  
30 report, a court-issued document, or a signed statement from a victim services

1 organization, clergy member, attorney, advocate, or other person affirming that  
2 the paid sick time was taken for one of the purposes of Subsection 13-19-3(A)(7).  
3 An employer may not require that the documentation explain the nature of any  
4 medical condition or the details of the domestic abuse, sexual assault or stalking.

5 6. Confidentiality. All information an employer obtains related to the  
6 worker's reasons for taking paid sick time shall be treated as confidential and not  
7 disclosed except with the permission of the worker.

8 § 13-19-4 NO IMPACT ON MORE GENEROUS SICK TIME OR PAID TIME OFF  
9 POLICIES; NO SEPARATE TRACKING; NO ADDITIONAL SICK TIME REQUIRED.

10 This Ordinance creates a floor, not a ceiling. Nothing in this Ordinance prohibits  
11 an employer from providing more generous policies than the minimum  
12 established under this Ordinance, and this Ordinance shall not be interpreted in a  
13 way that makes it in any way more difficult for employers to offer benefits that  
14 exceed the requirements of this Ordinance. Any employer with a paid time off  
15 policy that makes available an amount of paid time off sufficient to meet or  
16 exceed this Ordinance's accrual and use requirements, and that may be used for  
17 the same purposes and under the same conditions as paid sick time under this  
18 Ordinance, is not required to provide additional or separate paid sick time, nor to  
19 track sick time separately from paid time off, nor to in any way reduce the  
20 benefits provided to workers. If a worker covered by a paid time off policy uses all  
21 available paid time off for reasons unrelated to sick time, the employer is not  
22 required to provide the worker additional sick time.

23 § 13-19-5 EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.

24 A. Because it is the public policy of the City of Albuquerque that workers be  
25 permitted to exercise rights granted under this Ordinance, no employer nor other  
26 person shall take or threaten any adverse action whatsoever against a worker  
27 that is reasonably likely to deter such worker from exercising or attempting to  
28 exercise any right granted under this Ordinance or because the worker has  
29 exercised or attempted to exercise rights protected under this Ordinance, has in  
30 good faith alleged violations of this Ordinance or has raised any concern about

1 workplace health and safety practices or hazards related to COVID-19 to the  
2 employer, the employer's agent, other workers, a government agency, or to the  
3 public such as through print, online, social or any other media.

4 **B. No employer nor other person shall attempt to require any worker to sign a**  
5 **contract or other agreement that would limit or prevent the worker from**  
6 **disclosing information about workplace health and safety practices or hazards**  
7 **related to COVID-19, or to otherwise abide by a workplace policy that would limit**  
8 **or prevent such disclosures. An employer's attempt to impose such a contract,**  
9 **agreement or policy shall constitute an adverse action enforceable under this**  
10 **Ordinance.**

11 **C. An employer shall not require a worker to find a replacement worker as a**  
12 **condition of using paid sick time nor count use of paid sick time in a way that will**  
13 **lead to discipline, discharge, demotion, suspension or any other adverse action.**

14 **§ 13-19-6 NOTICE AND RECORDS. On or before the effective date of this**  
15 **Ordinance, the Department shall make available on its website a summary notice**  
16 **to workers in English and Spanish of each provision of this Ordinance.**  
17 **Employers shall provide this notice to each worker on the first day of work, and**  
18 **shall post it in a conspicuous place in each establishment where workers are**  
19 **employed in Albuquerque, provided, however, that in cases where the employer**  
20 **does not maintain a physical workplace, or a worker teleworks or performs work**  
21 **through a web-based platform, notification shall be sent via electronic**  
22 **communication or a conspicuous posting in the web-based platform. If an**  
23 **employer's business is closed due to a public health emergency, these notice**  
24 **and posting requirements shall be waived for the period in which the place of**  
25 **business is closed. Employers shall accurately track and record the amount of**  
26 **paid sick time available to, accrued by or used by each worker for each pay**  
27 **period in any format the employer chooses, keep such records for the time period**  
28 **required for employment and payroll records set forth in 11.3.400.401(F) NMAC,**  
29 **and make such records available to the Department upon request. Upon a**  
30 **worker's request, an employer shall inform a worker of the amount of paid sick**

1 time available to, accrued by and used by the worker. An employer's failure to  
2 maintain records of the amount of paid sick time available to, accrued by or used  
3 by each worker is a violation of this Ordinance. In the absence of records, the fact  
4 finder may rely on accurate and contemporaneously maintained records of the  
5 worker's work time to determine the amount of sick time accrued and used, or, if  
6 no accurate records are available, on the worker's reasonable estimates of hours  
7 worked. Employers who offer paid time off policies may comply with the above  
8 provisions by tracking and recording the equivalent amount of paid time off  
9 provided and used. Employers may, but are not required to, track or provide paid  
10 sick time separately from other forms of paid time off.

11 § 13-19-7 ENFORCEMENT.

12 A. Administrative investigation and enforcement. Any person or organization  
13 may file an administrative complaint with the Department charging that an  
14 employer has violated this Ordinance as to any worker or other person. When the  
15 Department receives a complaint, the Department may review records regarding  
16 all workers at the employer's worksite in order to protect the identity of any  
17 worker identified in the complaint and to determine whether a pattern of  
18 violations has occurred. The name of any worker identified in a complaint to the  
19 Department shall be kept confidential as long as possible. Where the Department  
20 determines that a worker's name must be disclosed in order to investigate a  
21 complaint further, it may so do only with the worker's consent. When the  
22 Department identifies a violation, it may attempt to reach an administrative  
23 resolution for payment of damages and penalties as set forth herein prior to  
24 bringing enforcement action in court. Any guidelines or rules promulgated by the  
25 City for the above purposes shall have the force and effect of law and may be  
26 relied on by employers, workers and other parties to determine their rights and  
27 responsibilities under this Ordinance.

28 B. Civil enforcement. The Department or any person or any entity a  
29 member of which is aggrieved by a violation of this Ordinance may bring a  
30 civil action in a court of competent jurisdiction against an employer violating

1 any provision of this Ordinance within four years from the date the alleged  
2 violation occurred. Such action may be brought without first seeking the  
3 administrative remedies described in (A), above. Upon prevailing, the plaintiff  
4 shall recover all appropriate legal or equitable relief, including an injunction  
5 to order compliance with the requirements of this Act and to restrain  
6 continued violations; liquidated damages calculated at three times the value  
7 of the paid sick time accrued; the costs and expenses of suit; and reasonable  
8 attorney's fees. In the case of retaliation or adverse action, the plaintiff shall  
9 also recover actual damages, including but not limited to back pay, and shall  
10 have a right to reinstatement, rescission of discipline or other appropriate  
11 relief. A plaintiff may establish a prima facie case of retaliation by way of  
12 proof that the employer took adverse action within 90 days after the worker  
13 exercised rights protected under this Ordinance. In an action brought by the  
14 Department, any damages recovered shall be payable to the individual  
15 workers who experienced the violation.

16 C. Penalties. In addition to civil remedies for workers provided herein,  
17 any employer found to be in violation of this article shall also be liable for a  
18 civil penalty payable to the City of fifty dollars per week for each separate  
19 violation, not to exceed the amount set forth in Section 1-1-99 for each  
20 separate offense. Each section of this Ordinance and worker for whom a  
21 violation is identified shall be counted separately for purposes of identifying  
22 a separate offense. Civil penalties shall be retained by the Department and  
23 used to finance activities to enforce this article.

24 § 13-19-8 RELATIONSHIP TO OTHER REQUIREMENTS.

25 A. This Ordinance provides for minimum standards for paid sick time and  
26 shall not be construed as creating or imposing any requirement in conflict  
27 with, nor to preempt or otherwise limit or affect the applicability of, any other  
28 law, contract, regulation, requirement, policy or standard that provides for  
29 more generous compensation, rights, benefits or protections.

30 B. This article shall not be construed to diminish or impair the rights or

1 obligations of a worker or employer under any valid contract, collective  
2 bargaining agreement, employment benefit plan or other agreement providing  
3 more generous paid sick time to a worker than required herein.]”

4 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,  
5 clause, word or phrase of this Chapter is for any reason held to be invalid or  
6 unenforceable by any court of competent jurisdiction or if application thereof to  
7 any person or circumstance is judged invalid, such decision shall not affect the  
8 validity of the remaining provisions of this Chapter.

9 SECTION 3. COMPILATION. Section 1 of this Ordinance shall amend, be  
10 incorporated in, and made part of the Revised Ordinances of Albuquerque, New  
11 Mexico, 1994.

12 SECTION 4. EFFECTIVE DATE. This ordinance is passed as an emergency  
13 measure and takes effect immediately upon publication by title and general  
14 summary.