

CITY of ALBUQUERQUE

TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. F/S O-20-26 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton & Lan Sena

1 **ORDINANCE**

2 **ADOPTING A PAID SICK LEAVE ORDINANCE; REQUIRING TEMPORARY PUBLIC**
3 **HEALTH EMERGENCY SICK LEAVE**

4 **WHEREAS, the spread of COVID-19 endangers life and property to such**
5 **extent that extraordinary measures must be taken to protect the public health,**
6 **safety and welfare; and**

7 **WHEREAS, the City of Albuquerque faces the continuing threat of the**
8 **spread of COVID-19 and damage caused by COVID-19 until the pandemic**
9 **subsides and unless the City takes proactive measures to prevent or control the**
10 **spread of the virus; and**

11 **WHEREAS, the City of Albuquerque faces the continuing threat of damage**
12 **to public health thereby perpetuating an uncertain financial burden; and**

13 **WHEREAS, workers who are sick are more likely to go to work if they do**
14 **not have paid leave, especially if they don't have symptoms, thereby increasing**
15 **health and safety risks for their fellow workers and other members of the public**
16 **with whom they, or the products of their work, come into contact; and**

17 **WHEREAS, paid sick leave will reduce the spread of COVID-19 and**
18 **otherwise mitigate the effects of COVID-19 among these workers, thereby**
19 **promoting public health and safety; and**

20 **WHEREAS, effective April 1, 2020, the federal Families First Coronavirus**
21 **Response Act ("FFCRA") requires employers of fewer than 500 employees (with**
22 **certain hardship exemptions for employers with fewer than 50 employees, and**

1 certain other exemptions) to provide eighty hours of emergency paid sick leave
2 benefits to employees who may not be able to work because of COVID-19; and

3 WHEREAS, the FFCRA provides for a dollar-for-dollar refundable federal
4 tax credit for the business expenses of paying employees for the sick leave
5 required under the Act; and

6 WHEREAS, the emergency paid sick leave benefits required by the FFCRA
7 last only through December 31, 2020; and

8 WHEREAS, all workers at some time during each year need limited time off
9 from work to take care of their own health needs or those of family members, and
10 the current public health emergency could have the impact of compounding that
11 immediate need; and

12 WHEREAS, although this ordinance is limited to the provision of public
13 health emergency sick leave, a more comprehensive sick leave ordinance will be
14 put forth for consideration by the Council.

15 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
16 ALBUQUERQUE:

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

20 “[§ 13-19-1 TITLE AND DECLARATION OF ALBUQUERQUE PUBLIC POLICY. This
21 article may be cited as the “Albuquerque Public Health Emergency Paid Sick
22 Leave Ordinance.” It is declared to be the policy of the Albuquerque Public Health
23 Emergency Paid Sick Leave Ordinance (1) to ensure that all workers in the City of
24 Albuquerque can address their own health needs and those of their family
25 members during a public health emergency, by requiring employers to provide a
26 minimum level of paid sick time, including time to care for their family members;
27 (2) to ensure that workers and their families can follow the orders and
28 recommendations of public health officials or health care providers during an
29 emergency that threatens their health and the health of others in the community;
30 (3) to protect the public’s health by reducing the risk of contagion during a public

1 health emergency; (4) to promote the economic security and stability of workers
2 in the City of Albuquerque and their families during the public health emergency;

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 or homes
19 of another person(s) 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; a person to whom the worker stands or
26 stood in loco parentis;.

27 PAID SICK TIME. Time that is compensated at the same hourly rate and with the
28 same benefits, including health care benefits, as the worker normally earns
29 during hours worked and is provided by an employer to a worker for the
30 purposes described in section 13-19-3(A) of this article, but in no case shall the

1 hourly wage be less than that provided in Chapter 13, Article 12 of the
2 Albuquerque Code of Ordinances.

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

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

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

10 § 13-19-3 PUBLIC HEALTH EMERGENCY PAID SICK TIME.

11 1. Through December 31, 2020, workers who are confirmed with
12 medical diagnosis of COVID-19 are entitled to use the following number of hours
13 of paid sick time:

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

15 b. For part-time workers, a number of hours equal to the number
16 of hours that such worker works, on average, over the two-week period
17 immediately prior to the need for paid sick time.

18 2. An employer may not require a worker to use any other paid or
19 unpaid leave, paid time off or vacation time provided by the employer to the
20 worker before the worker uses the paid sick time required by this Section.

21 § 13-19-6 NOTICE AND RECORDS. On or before the effective date of this
22 Ordinance, the Department shall make available on its website a summary notice
23 to workers in English and Spanish of each provision of this Ordinance.

24 Employers shall provide this notice to each worker on the first day of work, and
25 shall post it in a conspicuous place in each establishment where workers are
26 employed in Albuquerque, provided, however, that in cases where the employer
27 does not maintain a physical workplace, or a worker teleworks or performs work
28 through a web-based platform, notification shall be sent via electronic
29 communication or a conspicuous posting in the web-based platform. If an
30 employer's business is closed due to a public health emergency, these notice

1 and posting requirements shall be waived for the period in which the place of
2 business is closed.

3 **§ 13-19-7 ENFORCEMENT.**

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

20 **B. Civil enforcement. The Department or any person or any entity a**
21 **member of which is aggrieved by a violation of this Ordinance may bring a**
22 **civil action in a court of competent jurisdiction against an employer violating**
23 **any provision of this Ordinance within four years from the date the alleged**
24 **violation occurred. Such action may be brought without first seeking the**
25 **administrative remedies described in (A), above. Upon prevailing, the plaintiff**
26 **shall recover all appropriate legal or equitable relief, including an injunction**
27 **to order compliance with the requirements of this Act and to restrain**
28 **continued violations; liquidated damages calculated at three times the value**
29 **of the paid sick time accrued; the costs and expenses of suit; and reasonable**
30 **attorney's fees. In the case of retaliation or adverse action, the plaintiff shall**

1 also recover actual damages, including but not limited to back pay, and shall
2 have a right to reinstatement, rescission of discipline or other appropriate
3 relief. A plaintiff may establish a prima facie case of retaliation by way of
4 proof that the employer took adverse action within 90 days after the worker
5 exercised rights protected under this Ordinance. In an action brought by the
6 Department, any damages recovered shall be payable to the individual
7 workers who experienced the violation.

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

16 D. Small Business Exemption. Employers with fewer than fifty (50)
17 employees that qualify for exemption from the sick leave requirements of
18 FFCRA are also exempt from the requirements of this Ordinance. Such
19 employers must provide written documentation of their exemption if
20 requested by the Department.

21 § 13-19-8 RELATIONSHIP TO OTHER REQUIREMENTS.

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

27 B. This article shall not be construed to diminish or impair the rights or
28 obligations of a worker or employer under any valid contract, collective
29 bargaining agreement, employment benefit plan or other agreement providing
30 more generous paid sick time to a worker than required herein.]”

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

6 **SECTION 3. COMPILATION.** Section 1 of this Ordinance shall amend, be
7 incorporated in, and made part of the Revised Ordinances of Albuquerque, New
8 Mexico, 1994.

9 **SECTION 4. EFFECTIVE DATE.** This ordinance is passed as an emergency
10 measure and takes effect immediately upon publication by title and general
11 summary.

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